

ORLANDO P. NAYA, PETITIONER, VS. SPS. ABRAHAM AND GUILLERMA ABING AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 146770. February 27, 2003

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before us is a Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, of the decision rendered by the Court of Appeals[1] affirming the decision[2] of the Regional Trial Court of Cebu City, Branch 15 convicting Orlando P. Naya of estafa under Article 316, paragraph 2 of the Revised Penal Code.

The Antecedents

Orlando P. Naya was the owner in fee simple of a parcel of residential land located in Talisay, Cebu province identified as Lot 2049-B of the Tal-Ming Estate, with an area of 485 square meters covered by Transfer Certificate of Title No. 65042 issued by the Register of Deeds.[3]

On December 14, 1987, Orlando, as seller, and Abraham and Guillerma Abing, as buyers, entered into a Contract to Sell,[4] two parcels of land with an area of 400 square meters for the total price of Sixty Thousand Pesos (P60,000.00). Under the terms of the Contract to Sell, Orlando, as seller, agreed that –

(1)

After the spouses Abing have paid the amount of TWENTY THOUSAND PESOS (P20,000.00), the balance of FORTY THOUSAND PESOS (P40,000.00) payable in monthly installments of ONE THOUSAND FIFTEEN AND 74/100 PESOS (P1,015.74), for five (5) years to start on June 30, 1988 and for every 30[th] of the month thereafter.

(2)

He shall be at liberty to sell the lots to other persons if the buyers, spouses Abing fail to make payment of any of the installments within sixty (60) days from its due date;

He also bound himself to execute a first deed of sale over the said property and deliver title to the vendees over said property free from encumbrance and liens upon full payment of the purchase price of the property.

(3)

Upon full payment of purchase price, he shall deliver to the buyer, spouses Abing, a final Deed of Sale and Certificate of Title in their names free of encumbrance.

Guillerma Abing remitted to Orlando the amount of P20,000.00 as downpayment and the amount of P2,000.00 a month, even in excess of the monthly amount of P1,015.74 agreed upon in the Contract to Sell. The following

monthly installment payments were received by Orlando Naya and his agent Loreta Bacaltos:

Exhibit Number

Date

Amount

Exhibit "B" dated June 25, 1988

P2,000.00

Exhibit "B-2" dated July 30, 1988

2,000.00

Exhibit "B-3" dated Sept. 3, 1988

2,000.00

Exhibit "B-4" dated Oct. 1, 1988

2,000.00

Exhibit "B-5" dated Nov. 5, 1988

2,000.00

Exhibit "B-6" dated Dec. 3, 1988

2,000.00

Exhibit "B-7" dated Jan. 7, 1989

2,000.00

Unknown to Guillerma Abing, Orlando Naya executed on January 13, 1989 a Deed of Absolute Sale over Lot 2049-B and his other lots in favor of William Po for the price of P200,000.00, receipt of which Orlando Naya acknowledged.[5] Orlando represented in said deed that he was the lawful owner of the properties, free from all taxes and encumbrances and that the properties were untenanted. Said deed was registered with the Register of Deeds on December 5, 1989 and on said date, Transfer Certificate of Title No. 67775 was issued by the Register of Deeds in favor and under the name of William Po, as vendee.

However, Orlando never told the Spouses of said sale to William Po. Nevertheless, Guillerma Abing continued remitting to Orlando amounts in partial payments of the purchase price of the lots for which he issued receipts:

Exhibit "B-8" dated Jan. 23, 1989

5,000.00

Exhibit "B-9" dated April 3, 1989

4,000.00

Exhibit "B-10" dated June 3, 1989

2,000.00

Exhibit “B-11” dated June 23, 1989

2,000.00

Exhibit “B-12” dated Sept. 1, 1989

4,000.00

Exhibit “B-13” dated Dec. 24, 1989

3,000.00

P34,000.00

Guillerma Abing had paid Orlando Naya the total amount of Fifty-Four Thousand Pesos (P54,000.00) inclusive of the Twenty Thousand Pesos (P20,000.00) which she had paid upon the signing of the Contract to Sell.

On December 27, 1989, Orlando consented to the construction by Abraham Abing, the husband of Guillerma Abing, of a fence and a residential house or warehouse in the subject lots. The Spouses purchased hollow blocks for their fence for the price of P40,000.00.

The Spouses were flabbergasted when during the construction of the fence, William Po evicted them. The construction materials for the house of the couple remained unused.

The Spouses Abing subsequently learned that Orlando, on January 13, 1989, had sold the subject lots to William Po for the amount of Two Hundred Thousand Pesos (P200,000.00) and that the latter had already secured a title over the property under his name.[6]

On February 28, 1992, Guillerma Abing executed an affidavit and, through her counsel, filed a criminal-complaint for estafa against Orlando and Loreta Bacaltos with the Office of the Provincial Prosecutor.

On March 17, 1992, Loreta Bacaltos filed her counter-affidavit alleging, inter alia, that she was not the proper party liable to private respondent Abing as she was not the owner of the subject property, and that she only acted as an agent of seller Orlando Naya; more, she had no knowledge of the properties covered by the Contract to Sell.

After the requisite preliminary investigation, an Information was filed against Orlando with the Regional Trial Court for estafa which reads:

The undersigned accuses Orlando Naya of the crime of Estafa, under Article 316, paragraph 2, of the Revised Penal Code, committed as follows:

That sometime in the month of November 1989, more or less, in the Municipality of Talisay, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to defraud, knowing that Lot 2049-B (Lot 5 and 6) which is a portion of Lot No. 2049, under Transfer Certificate of Title No. 65042, of a subdivision plan, located at Tabunok, Talisay, Cebu, with a total area of 400 square meters, were already encumbered, did then and there willfully, unlawfully and feloniously sell, cede, transfer and convey or dispose of the same real properties to Mr. William Po, to the damage and prejudice of Guillerma Abing in the total amount of P92,000.00 Pesos, Philippine Currency.

CONTRARY TO LAW.[7]

After the prosecution had adduced its testimonial evidence, it filed on September 2, 1993 its Formal Offer of Evidence. The accused did not offer any objection to the documentary evidence of the prosecution. On February

4, 1994, the trial court issued an order admitting all the documentary evidence of the prosecution. The trial court set the case for continuation of trial for Orlando Naya to adduce his evidence on March 23, 1994 at 8:30 a.m. However, on said date and time, his counsel failed to appear. The trial court issued an order declaring that accused had waived his right to adduce evidence in his behalf.

On June 23, 1994, the trial court rendered judgment finding the accused guilty beyond reasonable doubt of estafa defined and penalized in Article 316, paragraph 2 of the Revised Penal Code, the decretal portion of which reads:

WHEREFORE, in view of all the foregoing evidences, arguments, and considerations, this court hereby finds the accused Orlando Naya GUILTY beyond reasonable doubt of the crime of Estafa as penalized under Art. 316 of the Revised Penal Code as he is hereby sentenced to serve imprisonment of two (2) months and one (1) day to four (4) months of arresto mayor in its minimum and medium periods and to pay a fine of P92,000.00 and to indemnify the offended party, Guillerma Abing the sum of P92,000.00 representing the value of the land sold and to reimburse the offended party by way of consequential damages the sum of P40,000.00 and the hollow block fence that was constructed by the complainant with the full consent and authority of Orlando Naya, the accused herein. The accused is also required to pay the amount of P50,000.00 in the concept of moral damages to the offended party, Guillerma Abing and P20,000.00 exemplary damages and attorney's fees of P5,000.00 in addition to the appearance fees of the lawyer of the accused after computing and counting the same.

IT IS SO ORDERED.[8]

Petitioner appealed to the Court of Appeals which rendered judgment affirming the decision of the trial court.

In his petition, he assails the decision of the trial court contending that:

- 1) THE TRIAL COURT ERRED IN HOLDING THAT THE CONVEYANCE EXECUTED BY THE ACCUSED IN FAVOR OF WILLIAM PO CONSTITUTES THE CRIME OF ESTAFA AS AGAINST THE PRIVATE COMPLAINANT.
- 2) THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED BASED ON THE EVIDENCE ADDUCED BY THE PROSECUTION.[9]

Prefatorily, case law has it that an appeal in a criminal proceeding throws the whole case open for review and the appellate court is mandated to correct any error in the appealed judgment, whether this is assigned as an error or has not assigned as error the issue of whether or not under the Information petitioner was charged with and may be convicted of estafa under Article 316, paragraph 2 of the Revised Penal Code.

This Court will first consider and resolve said issue. Section 14(2) of Article III of the 1987 Constitution provides that an accused has the right to be informed of the nature and cause of the accusation against him. Indeed, Section 6, Rule 110 of the Revised Rules of Criminal Procedure requires that the acts or omissions complained of as constituting the offense must be alleged in the Information. Section 8 of said rule provides that the Information shall state the designation of the offense given by the statute and aver the acts or omissions constituting the offense. The real nature of the crime charged is determined by the facts alleged in the Information and not by the title or designation of the offense contained in the caption of the Information.[10] It is fundamental that every element of which the offense is comprised must be alleged in the Information. What facts and circumstances are necessary to be alleged in the Information must be determined by reference to the definition and the essential elements of the specific crimes.[11]

Article 316, paragraph 2 of the Revised Penal Code reads:

Art. 316. Other forms of swindling. - The penalty of arresto mayor in its minimum and medium periods and a

fine of not less than the value of the damage caused and not more than three times such value, shall be imposed upon:

... ..

2. Any person who, knowing that the real property is encumbered, shall dispose of the same, although such encumbrance be not recorded;

The law was taken from Article 455 of the Spanish Penal Code of 1850 which reads:

En la misma pena incurrirá el que dispusiere de una cosa como libre, sabiendo que estaba gravada.

Although the words “como libre” meaning “free from encumbrance” do not appear in the English text of the Revised Penal Code, nonetheless, the same are deemed incorporated in the Revised Penal Code. The gravamen of the crime is the disposition of legally encumbered real property by the offender under the express representation that there is no encumbrance thereon. Hence, for one to be criminally liable for estafa under the law, the accused must make an express representation in the deed of conveyance that the property sold or disposed of is free from any encumbrance.

The prosecution is burdened to allege in the Information and prove the confluence of the following essential elements of the crime for the accused to be criminally liable for estafa under Article 316, paragraph 2 of the Revised Penal Code:

Elements:

- That the thing disposed of be real property.
- That the offender knew that the real property was encumbered, whether the encumbrance is recorded or not.
- That there must be express representation by the offender that the real property is free from encumbrance.
- That the act of disposing of the real property be made to the damage of another.[12]

However, there is no allegation in the Information that petitioner expressly represented in the sale of the subject property to William Po that the said property was free from any encumbrance. Irrefragably, then, petitioner was not charged with estafa under Article 316, paragraph 2 of the Revised Penal Code. Hence, the trial court committed a reversible error in finding petitioner guilty beyond reasonable doubt of estafa under said provision and that the Court of Appeals likewise erred in affirming the decision of the trial court on appeal.

Petitioner avers that the Court of Appeals erred in ordering him to pay the amount of P94,000.00 by way of actual damages. He posits that he is not liable for moral and exemplary damages and attorney's fees.

We agree in part with petitioner. Notwithstanding the reversal of his conviction for estafa, petitioner is nevertheless liable to private respondents for their payments of the subject lots in the total amount of P54,000.00 and the value of hollow blocks used in the construction of their fence in the amount of P40,000.00. Petitioner is also liable to private respondents for moral damages it appearing in the record that petitioner acted in evident bad faith and succeeded in defrauding private respondents. The latter purchased the subject lots and paid the price therefor with the undertaking of petitioner that upon payment in full of the purchase price of the property, petitioner will execute the final Deed of Absolute Sale over the property and cause the issuance under their names the title over the subject property without any liens or encumbrances. However, petitioner hoodwinked private respondents and sold the property to William Po. Although petitioner was no longer the owner of the property, he continued receiving from private respondents their partial payments for the property. Worse, petitioner even allowed private respondents to cause the construction of a fence around the perimeter of the property although he

had already sold the property to William Po. Fraud and bad faith of petitioner having been proved by the prosecution, petitioner is liable to private respondents for moral damages in the amount of P40,000.00 and for exemplary damages in the amount of P20,000.00.[13]

IN LIGHT OF ALL THE FOREGOING, the petition is partially GRANTED. The decision of the Court of Appeals affirming the decision of the Regional Trial Court of Cebu City, Branch 15, convicting petitioner of estafa under Article 316, paragraph 2 of the Revised Penal Code is REVERSED. Petitioner is hereby ordered to pay to private respondents the amount of P94,000.00 as actual damages, the amount of P40,000.00 as moral damages, P20,000.00 as exemplary damages and P20,000.00 as attorney's fees.

Costs against petitioner.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Quisumbing, and Austria-Martinez, JJ., concur.

[1] Penned by Associate Justice Bernardo P. Abesamis, with Associate Justices Eugenio S. Labitoria and Wenceslao I. Agnir, Jr., concurring.

[2] Penned by Judge German G. Lee, Jr. (later appointed Associate Justice of the Sandiganbayan).

[3] Exhibit "D."

[4] Exhibit "A."

[5] Exhibit "E."

[6] Rollo, pp. 15-17.

[7] Original Records, Criminal Case No. CBU-28824, p. 1.

[8] Original Records, pp. 82-83.

[9] Rollo, p. 9.

[10] *People v. Escosio*, 220 SCRA 475 (1993).

[11] *Balitaan v. Court of First Instance, et al.*, 115 SCRA 729 (1982).

[12] *Reyes*, Revised Penal Code, 1981 ed., Book II, p. 786.

[13] *Bart Osmeña & Associates v. Court of Appeals, et al.*, 120 SCRA 395 (1983).

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