# FRANCISCO R. LLAMAS AND CARMELITA C. LLAMAS, PETITIONERS, VS. THE HONORABLE COURT OF APPEALS, BRANCH 66 OF THE REGIONAL TRIAL COURT OF MAKATI CITY AND THE PEOPLE OF THE PHILIPPI...

*G.R. No. 149588. August 16, 2010*

Ponente: NACHURA, J.

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**NACHURA, J.:**

Before this Court is a Motion for Reconsideration filed by herein petitioner-spouses Francisco R. Llamas and Carmelita C. Llamas. On September 29, 2009, this Court promulgated a Decision[1] in the above-captioned case, denying the petition for "Annulment of Judgment and Certiorari, with Preliminary Injunction" filed by petitioners. Petitioners are assailing the decision of the Regional Trial Court (RTC) of Makati City convicting them of the offense "Other Forms of Swindling" punishable under Article 316, paragraph 2, of the Revised Penal Code (RPC).

Briefly, the antecedent facts are as follows:

> On August 14, 1984, petitioners were charged before the Regional Trial Court (RTC) of Makati with, as aforesaid, the crime of "other forms of swindling" in the Information, docketed as Criminal Case No. 11787, which reads:
>
> That on or about the 20[th] day of November, 1978, in the Municipality of Parañaque, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another, well knowing that their parcel of land known as Lot No. 11, Block No. 6 of the Subdivision Plan (LRC) Psd 67036, Cadastral Survey of Parañaque, LRC Record No. N-26926, Case No. 4896, situated at Barrio San Dionisio, Municipality of Parañaque, Metro Manila, was mortgaged to the Rural Bank of Imus, did then and there willfully, unlawfully and feloniously sell said property to one Conrado P. Avila, falsely representing the same to be free from all liens and encumbrances whatsoever, and said Conrado P. Avila bought the aforementioned property for the sum of P12,895.00 which was paid to the accused, to the damage and prejudice of said Conrado P. Avila in the aforementioned amount of P12,895.00.
>
> Contrary to law.

After trial on the merits, the RTC rendered its Decision on June 30, 1994, finding petitioners guilty beyond reasonable doubt of the crime charged and sentencing them to suffer the penalty of imprisonment for two months and to pay the fine of P18,085.00 each.

On appeal, the Court of Appeals, in its February 19, 1999 Decision in CA-G.R. No. CR No. 18270, affirmed the decision of the trial court. In its December 22, 1999 Resolution, the appellate court further denied petitioners' motion for reconsideration.

Assailing the aforesaid issuances of the appellate court, petitioners filed before this Court, on February 11, 2000, their petition for review, docketed as G.R. No. 141208. The Court, however, on March 13, 2000, denied the same for petitioners' failure to state the material dates. Since it subsequently denied petitioners' motion for reconsideration on June 28, 2000, the judgment of conviction became final and executory.

With the consequent issuance by the trial court of the April 19, 2001 Warrant of Arrest, the police arrested, on April 27, 2001, petitioner Carmelita C. Llamas for her to serve her 2-month jail term. The police, nevertheless, failed to arrest petitioner Francisco R. Llamas because he was nowhere to be found.

On July 16, 2001, petitioner Francisco moved for the lifting or recall of the warrant of arrest, raising for the first time the issue that the trial court had no jurisdiction over the offense charged.

There being no action taken by the trial court on the said motion, petitioners instituted, on September 13, 2001, the instant proceedings for the annulment of the trial and the appellate courts' decisions.

The Court initially dismissed on technical grounds the petition in the September 24, 2001 Resolution, but reinstated the same, on motion for reconsideration, in the October 22, 2001 Resolution. [2]

In its September 29, 2009 Decision, this Court held that, following the ruling in People v. Bitanga,[3] the remedy of annulment of judgment cannot be availed of in criminal cases. The Court likewise rejected petitioners' contention that the trial court had no jurisdiction over the case.

Petitioners are now before this Court seeking the reversal of the September 29, 2009 Decision and, consequently, the annulment of their conviction by the trial court. In their Verified Motion for Reconsideration,[4] petitioners ask this Court to "revisit and take a second look" at the issues in the case "without being unduly hampered by any perceived technical shortfalls of a beleaguered innocent litigant." In particular, they raise the following issues:

> 1. WITH ALL DUE RESPECT, AND IN LIGHT OF THE CORRECT APPLICATIONS OF DOCTRINAL JURISPRUDENCE, PETITIONERS HAD PURSUED THEIR MORE THAN TWENTY FIVE (25) YEARS QUEST FOR JUSTICE AS INNOCENT MEN, AND HAD HONESTLY MAINTAINED THAT THEIR RESORT TO REVERSE, SET ASIDE AND/OR ANNUL, IS IN LINE WITH JURISPRUDENCE AND LAW, ANY TECHNICAL SHORTFALLS [OR] DEFECTS NOTWITHSTANDING[;]
>
> 2. WITH ALL DUE RESPECT, AGAIN IN LIGHT OF APPLICABLE JURISPRUDENCE ON THE ISSUE OF JURISDICTION, PETITIONERS ARE NOT BARRED FROM RAISING SUCH QUESTION OF JURISDICTION AT ANY TIME AND IN FACT MAINTAIN THAT RESPONDNET COURTS HAD NO JURISDICTION IN LAW AND ENLIGHTENING DOCTRINES TO TRY AND DECIDE THIS CASE;
>
> 3. AGAIN WITH ALL DUE RESPECT AND UNFORTUNATELY, THE VERY JUSTIFYING MERITS OF PETITIONERS' APPROPRIATE INSTANT REMEDY; HAD NOT CONSEQUENTLY BEEN PASSED UPON, TO UPHOLD THE PARAMOUNT CONSTITUTIONAL CHERISED MANDATE, "THE PRESUMPTION OF INNOCENCE MUST BE UPHELD, EXCEPT ONLY UPON ESTABLISHED AND ADMISSIBLE EVIDENCE BEYOND REASONABLE DOUBT; AND
>
> 4. PETITIONERS VERY HUMBLY BESEECH THIS HONORABLE COURT'S HIGHEST SENSE OF MAGNANIMITY, UNDERSTANDING, JUDICIOUS WISDOM AND COMPASSION, SO THAT JUSTICE MAY TRULY AND JUSTLY BE RENDERED IN FAVOR OF PETITIONERS AS IT MUST, GIVEN THE VERY UNIQUE AND COMPELLING JUSTIFICATIONS HEREOF[.][5]

Petitioners likewise pray for a referral of the case to the Court En Banc for oral argument or to be allowed to submit written supplementary pleadings for them to state the compelling reasons why their motion for reconsideration should be allowed.


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In the interest of justice and for humanitarian reasons, the Court deems it necessary to re-examine this case.

Admittedly, petitioners took many procedural missteps in this case, from the time it was pending in the trial court until it reached this Court, all of which could serve as enough basis to dismiss the present motion for reconsideration. However, considering petitioners' advanced age, the length of time this case has been pending, and the imminent loss of personal liberty as a result of petitioners' conviction, the Court resolves to grant pro hac vice the motion for reconsideration.

This Court has, on occasion, suspended the application of technical rules of procedure where matters of life, liberty, honor or property, among other instances, are at stake.[6] It has allowed some meritorious cases to proceed despite inherent procedural defects and lapses on the principle that rules of procedure are mere tools designed to facilitate the attainment of justice. The strict and rigid application of rules that tend to frustrate rather than promote substantial justice must always be avoided. It is far better and more prudent for the court to excuse a technical lapse and afford the parties a review of the case to attain the ends of justice, rather than dispose of the case on technicality and cause grave injustice to the parties.[7]

This Court notes that the case was allowed to run its course as a petition for certiorari, such that in its April 12, 2004 Resolution, it said "Considering the allegations, issues and arguments adduced in the petition for review on certiorari x x x." Likewise, in its February 10, 2003 Resolution,[8] the Court said, "It appearing that Atty. Francisco R. Llamas, in his own behalf and as counsel for petitioners, has failed to file their reply to the Solicitor General's comment on the petition for review on certiorari within the extended period x x x."

Thus, the Court, at the first instance, had recognized that the petition, although captioned differently, was indeed one for certiorari.

Since we have resolved to treat the petition as one for certiorari, the doctrine in People v. Bitanga[9] no longer finds application in this case.

Next, we proceed to resolve the substantive issues raised by petitioners.

Article 316 (2) of the Revised Penal Code states:

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

In every criminal prosecution, the State must prove beyond reasonable doubt all the elements of the crime charged and the complicity or participation of the accused.[10]

For petitioners to be convicted of the crime of swindling under Article 316 (2) of the Revised Penal Code, the prosecution had the burden to prove the confluence of the following essential elements of the crime:

- 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; and


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- that the act of disposing of the real property be made to the damage of another.[11]

One of the essential elements of swindling under Article 316, paragraph 2, is that the act of disposing the encumbered real property is made to the damage of another. In this case, neither the trial court nor the CA made any finding of any damage to the offended party. Nowhere in the Decision of the RTC or that of the CA is there any discussion that there was damage suffered by complainant Avila, or any finding that his rights over the property were prejudiced.

On the contrary, complainant had possession and control of the land even as the cases were being heard. His possession and right to exercise dominion over the property was not disturbed. Admittedly, there was delay in the delivery of the title. This, however, was the subject of a separate case, which was eventually decided in petitioners' favor.[12]

If no damage should result from the sale, no crime of estafa would have been committed by the vendor, as the element of damage would then be lacking.[13] The inevitable conclusion, therefore, is that petitioners should be acquitted of the crime charged.

WHEREFORE, the foregoing premises considered, the Motion for Reconsideration is GRANTED. The assailed Decision dated September 29, 2009 is set aside and a new one is entered acquitting petitioners of the crime charged on the ground of the prosecution's failure to prove their guilt beyond reasonable doubt.

**SO ORDERED.**

Corona, C.J., (Chairperson), Brion, Peralta, and Villarama[*], JJ., concur.

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[*] Designated member vice Associate Justice Consuelo Ynares-Santiago [ret.]

[1] Rollo, pp. 492-498.

[2] Id. at 493-494.

[3] G.R. No. 159222, June 26, 2007, 525 SCRA 623.

[4] Rollo, pp. 504-526.

[5] Id. at 506.

[6] See Lastimoso v. Asayo, G.R. No. 154243, December 4, 2007, 539 SCRA 381, 385.

[7] Tanenglian v. Lorenzo, G.R. No. 173415, March 28, 2008, 550 SCRA 348, 368 citing Vallejo v. Court of Appeals, 471 Phil. 670, 684 (2004).

[8] Rollo, p. 189.

[9] Supra note 3.

[10] People v. Limpangog, 444 Phil. 691, 693 (2003).

[11] Naya v. Spouses Abing, 446 Phil. 484, 494 (2003) citing Reyes, Revised Penal Code, 1981 ed., Book II, p. 786.

[12] Rollo, p. 547.

[13] Reyes, Revised Penal Code, Book II, 1998 revised ed., p. 803 citing People v. Mariano, CA, 40 O.G., Supp.

4, 91.


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