

BIENVENIDO GONZALUDO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 150910. February 06, 2006

Ponente: GARCIA, J.

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GARCIA, J.:

Under consideration is this petition for review on certiorari under Rule 45 of the Rules of Court to nullify and set aside the following issuances of the Court of Appeals (CA) in CA-G.R. CR No. 22185, to wit:

- Decision dated 19 July 2001,[1] dismissing the appeal thereto taken by the herein petitioner from a judgment of conviction promulgated by the Regional Trial Court of Bacolod City, Branch 50, in a criminal case for estafa thru falsification of public document thereat commenced by the People against four (4) accused, including the petitioner; and
- Resolution dated 22 October 2001,[2] denying petitioner's motion for reconsideration.

The material facts may be briefly stated, as follows:

Before his death in 1992, one Ulysses Villaflor was a member of the Bacolod City Police Office. On January 11, 1978, Ulysses married Anita Manlangit in Bacolod City. Thereafter, the couple stayed with Ulysses's mother Anastacia Tobongbanua at the latter's house at Purok 5, Mansungay, Bacolod City.

Later, Ulysses was assigned to Pagadian City. However, he would often go home to Bacolod City to supervise his tire-recapping business thereat.

Meanwhile, his wife Anita secured a teaching job in Catubig, Samar prompting her to leave Bacolod City and live in Samar.

After less than a year in Pagadian City, Ulysses was re-assigned to Bacolod City. And, in December of 1978, he was able to buy for P1,500.00 a small house located near that of his mother at Purok 5, Mansungay, Bacolod City.

Then, in 1985, Ulysses took one Rosemarie Gelogo as his mistress and brought her into the house. In time, improvements were made on the house, the most substantial of which were those introduced sometime in March 1991. What used to be a small house, which Ulysses bought for only P1,500.00, was thus transformed into a 2-storey structure partially made of concrete hollow blocks and with galvanized iron roofing which thereby enhanced its value to P200,000.00.

After Ulysses's demise in January of 1992, his mistress Rosemarie Gelogo offered to sell the 2-storey house for P80,000.00 to herein petitioner Bienvenido Gonzaludo, a.k.a. Ben Gonzaludo, who lives just nearby. Initially, petitioner was not interested to buy the house because he already had one, let alone the fact that he did not have enough money for the purpose. Nonetheless, since the house was being sold for a cheap price, petitioner convinced the spouses Gregg Canlas and Melba Canlas, to whom he is related by affinity, to buy the same. Herein, petitioner introduced the Canlases to Rosemarie Gelogo.

On January 20, 1993, Rosemarie Gelogo and Gregg Canlas executed a Deed of Sale,[3] witnessed by petitioner. In that deed, Rosemarie Gelogo signed as Rosemarie G. Villaflor and represented herself to be the lawful owner of the 2-storey house. By virtue of the same deed, vendee Gregg Canlas acquired all of Rosemarie's rights and interest on the subject house.

Later, upon complaint of Ulysses's widow Anita Manlangit, an Information dated May 31, 1994[4] was filed with the Regional Trial Court of Bacolod City charging Rosemarie Gelogo, alias Rosemarie Villaflor, the spouses Gregg Canlas and Melba Canlas and petitioner with the crime of Estafa thru Falsification of Public Document allegedly committed, as follows:

That on or about the 20[th] day of January, 1993 in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, conspiring, confederating and acting in concert, with intent to gain, defrauded the herein offended party, Anita Manlangit Vda. de Villaflor, herein represented by her mother-in-law and Attorney-in-Fact, Anastacia Tobongbanua, in the following manner, to wit: that accused Rosemarie Gelogo alias Rosemarie G. Villaflor being the occupant of a house made of concrete materials with a floor area of 40 ft. by 24 ft., with galvanized iron roofing, worth P200,000.00, owned by the deceased Ulysses Villaflor, husband of the herein offended party, did, then and there willfully, unlawfully and feloniously commit acts of falsification by then and there preparing and/or causing to be prepared a public document denominated as a Deed of Sale dated January 20, 1993 entered as Doc. No. 402, Page No. 81, Book No. XVII, Series of 1993 of the Notarial Register of Atty. Ramon B. Clapiz, to the effect that she is the lawful owner of the said house and affixing or causing to be affixed thereon her name and signature, Rosemarie G. Villaflor, purportedly as wife of the deceased Ulysses Villaflor, thus making untruthful statement in the narration of facts as accused well know that such was not the case for the deceased Ulysses Villaflor has a legal wife in the person of the herein offended party, by reason of which accused was able to effect the sale and eventual occupancy of the said house to the herein accused Sps. Gregg Canlas and Melba Canlas who despite of their knowledge that such house was not owned by Rosemarie Gelogo bought the same from her in the amount of P80,000.00 and, herein accused Bienvenido Gonzaludo alias "Ben", despite of his knowledge that such house was not owned by Rosemarie Gelogo, participated in the commission of the herein offense by causing his name and signature to be affixed in the said Deed of Sale as witness to the fraudulent sale entered into by the parties, to the damage and prejudice of the herein offended party in the amount of TWO HUNDRED THOUSAND PESOS (P200,000.00), Philippine Currency.

Act contrary to law.

Docketed as Criminal Case No. 94-16532, the Information was raffled to Branch 50 of the court.

Because accused Rosemarie Gelogo remained at large, only the spouses Gregg Canlas and Melba Canlas and herein petitioner were arraigned, all of whom entered a plea of "Not Guilty."

After due proceedings, the trial court, in a decision dated February 17, 1998,[5] acquitted the Canlas spouses but convicted petitioner of the complex crime of Estafa Thru Falsification of Public Document and sentenced him accordingly. Dispositively, the decision reads:

FOR ALL THE FOREGOING, the Court finds the accused Bienvenido Gonzaludo GUILTY beyond reasonable doubt as a principal and co-conspirator of the complex Crime of Estafa Thru Falsification of a Public Document and there being no extenuating circumstances and pursuant to the provision of Article 315 of the Revised Penal Code, he is sentenced to suffer the penalty of Reclusion Temporal. Applying the Indeterminate Sentence Law, the accused is sentenced to a prison term of Eight (8) years of Prison Mayor to Twenty (20) years of Reclusion Temporal. By way of Civil Liability, the accused is sentenced to pay the offended party the sum of P200,000.00, representing the value of the house and the sum of P20,000.00 as attorney's fees.

The case with respect to the accused-Spouses Gregg and Melba Canlas is ordered dismissed as their guilt was not proved beyond reasonable doubt.

Therefrom, petitioner went to the CA via ordinary appeal in CA-G.R. CR No. 22185.

As stated at the outset hereof, the appellate court, in its decision dated July 19, 2001, dismissed petitioner's appeal for lack of merit and affirmed the trial court's judgment of conviction, thus:

WHEREFORE, foregoing premises considered, the appeal is hereby ordered DISMISSED, having no merit in fact and in law, and the decision of the trial court AFFIRMED.

SO ORDERED.

With his motion for reconsideration having been denied by the CA in its resolution of October 22, 2001, petitioner is now with us via the present recourse on his submissions that the CA erred when it -

I—

xxx sustained the decision of the trial court convicting the petitioner of the crime of Estafa thru Falsification of Public Document as defined and punished under Paragraph 2(a), Article 315, Revised Penal Code EVEN IF not any of the statutory elements of the crime herein charged is present or has been proved and/or not all of the statutory elements of the offense thus charged are present or have been proved beyond reasonable doubt;

II—

xxx sustained the conviction of your petitioner ALTHOUGH the material allegations in the information filed below have not been proved at all beyond reasonable doubt;

III—

xxx sustained the conviction of herein petitioner of a crime not properly charged in the information;

IV—

xxx grossly misappreciated the facts and misapplied the law and jurisprudence concerning the status of the house subject of this case as to whether the same is totally a conjugal property of Ulysses and Anita or the house wholly or substantially belongs to Rosemarie Gelogo a.k.a. Rosemarie G. Villaflor.

The petition is partly impressed with merit.

Basic in this jurisdiction is the doctrine that in criminal cases, an appeal throws the whole case wide open for review. Issues, whether raised or not by the parties, may be resolved by the appellate court.[6] The Court is duty-bound to look into the validity of the factual and legal basis relied upon by the two (2) courts below in convicting petitioner in this case.

It is worthy to note that petitioner was convicted by the trial court of the complex crime charged in the Information for allegedly having conspired with Rosemarie Gelogo, who used the fictitious surname "Villaflor" for the purpose of giving her a semblance of authority to sell the house purportedly owned by her paramour, Ulysses Villaflor, who was legally married to private complainant, Anita Villaflor.

First and foremost, therefore, it is incumbent upon the prosecution to establish Rosemarie Gelogo's criminal liability for the complex crime of estafa through falsification of public document, and thereafter, establish by proof beyond reasonable doubt that herein petitioner conspired with Rosemarie in the commission of the same complex crime. In other words, if Rosemarie cannot be held liable for the complex crime of estafa through falsification of public document under the Information filed in this case, with all the more reason should it be for petitioner, as alleged co-conspirator.

For an accused to be convicted of the complex crime of estafa through falsification of public document, all the elements of the two crimes of estafa and falsification of public document must exist.

To secure conviction for estafa under Article 315, paragraph 2(a) of the Revised Penal Code, the Court has time and again ruled that the following requisites must concur:

- (1) that the accused made false pretenses or fraudulent representations as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions;
- (2) that such false pretenses or fraudulent representations were made prior to or simultaneous with the commission of the fraud;
- (3) that such false pretenses or fraudulent representations constitute the very cause which induced the offended party to part with his money or property; and
- (4) that as a result thereof, the offended party suffered damage[7] (Emphasis supplied).

There is no question that the first, second and fourth elements are present: there was false or fraudulent misrepresentation by Rosemarie Gelogo when she used the fictitious surname "Villaflor"; the misrepresentation or false pretense was made prior to or simultaneous with the commission of the fraud; and private complainant Anita Manlangit's right to the subject 2-storey house was lost or at the very least prejudiced when Rosemarie sold it to the Canlases.

It is petitioner's thesis, however, that there is here an absence of the third element, i.e., "that such false pretenses or fraudulent representations constitute the very cause which induced the offended party to part with his money or property," contending that private complainant Anita Manlangit, who was the offended party in this case, was never induced to part with any money or property by means of fraud, committed simultaneously with the false pretense or fraudulent representation by Rosemarie.

We find merit in petitioner's submission.

As early as in the 1903 case of *U.S. vs. Mendezona*,^[8] we held that therein accused may be convicted for estafa only when the deceit or false pretenses, committed simultaneously with the fraud, were the efficient cause or primary consideration which induced the offended party to part with his money or property.

Thirty (30) years thereafter, the rule remains the same. In the 1933 case of *People vs. Lilius*,^[9] the Court, through then Chief Justice Ramon Avanceña, acquitted the accused of estafa because the deceit did not precede the defraudation, which means that the deceit was not the cause which could have induced the damage or prejudice to or loss of property suffered by the injured party.

In the cases of *People vs. Quesada*,^[10] *People vs. Fortuno*,^[11] and *People vs. Sabio*,^[12] which span more than another forty-five (45) years after *Lilius*, the Court continued to apply the same principle in determining criminal liability for estafa, i.e., that the deceit must have been committed prior to or simultaneous with the fraudulent act because this was the only way that said deceit could become the efficient cause or primary consideration which could have induced the offended party to part with his money or property.

The doctrine remains the same a hundred (100) years after the 1903 case of *Mendezona*. Thus, in the 2003 case of *Alcantara vs. Court of Appeals*,^[13] this Court acquitted the therein accused of the crime of *estafa* explaining, through Justice Romeo J. Callejo, Sr., that the false pretense or fraudulent act must be committed prior to or simultaneously with the commission of the fraud, thus:

xxx fraud in its general sense is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust, or confidence justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another. It is a generic term embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling and. any unfair way by which another is cheated. And deceit is the false representation of a matter of fact whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury. The false pretense or fraudulent act must be committed prior to or simultaneously with the commission of the fraud.

We find no cogent reason to depart from this settled principle that the deceit, which must be prior to or simultaneously committed with the act of defraudation, must be the efficient cause or primary consideration which induced the offended party to part with his money or property and rule differently in the present case.

While it may be said that there was fraud or deceit committed by Rosemarie in this case, when she used the surname "Villaflor" to give her semblance of authority to sell the subject 2-storey house, such fraud or deceit was employed upon the Canlas spouses who were the ones who parted with their money when they bought the house. However, the Information charging Rosemarie of *estafa* in the present case, alleged damage or injury not upon the Canlas spouses, but upon private complainant, Anita Manlangit. Since the deceit or fraud was not the efficient cause and did not induce Anita Manlangit to part with her property in this case, Rosemarie cannot be held liable for *estafa*. With all the more reason must this be for herein petitioner.

The lack of criminal liability for *estafa*, however, will not necessarily absolve petitioner from criminal liability arising from the charge of falsification of public document under the same Information charging the complex crime of *estafa* through falsification of public document. It is settled doctrine that –

When a complex crime has been charged in an information and the evidence fails to support the charge on one of the component offenses, can the defendant still be separately convicted of the other offense? The question has long been answered in the affirmative. In *United States vs. Lahoylahoy and Madanlog* (38 Phil. 330), the Court has ruled to be legally feasible the conviction of an accused on one of the offenses included in a complex crime charged, when properly established, despite the failure of evidence to hold the accused of the other charge.^[14]

Article 172 of the Revised Penal Code punishes any private individual who shall commit any of the acts of falsification enumerated in Article 171 in any public or official document or letter of exchange or any other kind of commercial document. In turn, Article 171 of the same Code provides:

Art. 171. Falsification by public officer, employee or notary or ecclesiastic minister.- The penalty of prision mayor and a fine not to exceed P5,000 pesos [sic] shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

- Counterfeiting or imitating any handwriting, signature or rubric;
- Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;

- Attributing to persons who have participated in any act or proceeding statements other than those in fact made by them;
- Making untruthful statements in a narration of facts;
- Altering true dates;
- Making any alteration or intercalation in a genuine document which changes its meaning;
- Issuing in an authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such a copy a statement contrary to, or different from, that of the genuine original; or
- Intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book.

The same penalty shall be imposed upon any ecclesiastical minister who shall commit any of the offenses enumerated in the preceding paragraphs of this article, with respect to any record or document of such character that its falsification may affect the civil status of persons. (Emphasis supplied)

As correctly found by the trial court, petitioner conspired with Rosemarie to falsify, that is, by making untruthful statement in the narration of facts in the deed of sale, by declaring Rosemarie to be the owner of the house subject of such sale and signing as "Rosemarie Villaflor" instead of her real name, Rosemarie Gelogo, in order to sell the same to the Canlas spouses. It is established by evidence beyond reasonable doubt that Rosemarie committed the crime of falsification of public document. Likewise, proof beyond reasonable doubt has been duly adduced to establish conspiracy between Rosemarie and petitioner who is the brother-in-law of Melba Canlas, one of the buyers of the house in this case.

WHEREFORE, the assailed decision and resolution of the Court of Appeals are hereby MODIFIED. Petitioner is hereby ACQUITTED of the complex crime of Estafa through Falsification of Public Document, but found GUILTY of the crime of Falsification of Public Document and is accordingly imposed an indeterminate sentence of 4 months and 1 day of arresto mayor, as minimum, to 2 years, 4 months and 1 day of prision correccional, as maximum, and to pay a fine of P5,000.00.

No costs.

SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez, Corona and Azcuna, JJ., concur.

[1] Penned by Associate Justice Jose L. Sabio, Jr. with Associate Justices Ma. Alicia Austria-Martinez (now a member of this Court) and Hilarion L. Aquino (ret.), concurring; Rollo, pp. 138-147.

[2] Rollo, p. 186.

[3] Rollo, pp. 81-82.

[4] Rollo, pp. 78-79.

[5] Rollo, pp. 83-97.

[6] Calderon vs. People, G.R. No. 158495, October 21, 2004.

[7] Fernandez vs. People, 341 SCRA 277 (2000).

[8] 2 Phil. 353 (1903).

[9] 59 Phil. 339 (1933).

[10] 60 Phil. 515 (1934).

[11] 73 Phil. 407 (1941).

[12] 86 SCRA 568 (1978).

[13] 416 SCRA 418 (2003).

[14] People vs. Santiano, 299 SCRA 583 (1998).

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