

JAIME GUINHAWA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 162822. August 25, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Jaime Guinhawa was engaged in the business of selling brand new motor vehicles, including Mitsubishi vans, under the business name of Guinrox Motor Sales. His office and display room for cars were located along Panganiban Avenue, Naga City. He employed Gil Azotea as his sales manager.

On March 17, 1995, Guinhawa purchased a brand new Mitsubishi L-300 Versa Van with Motor No. 4D56A-C8929 and Serial No. L069WQZJL-07970 from the Union Motors Corporation (UMC) in Paco, Manila. The van bore Plate No. DLK 406. Guinhawa's driver, Leopoldo Olayan, drove the van from Manila to Naga City. However, while the van was traveling along the highway in Labo, Daet, Camarines Norte, Olayan suffered a heart attack. The van went out of control, traversed the highway onto the opposite lane, and was ditched into the canal parallel to the highway.[1] The van was damaged, and the left front tire had to be replaced.

The incident was reported to the local police authorities and was recorded in the police blotter.[2] The van was repaired and later offered for sale in Guinhawa's showroom.[3]

Sometime in October 1995, the spouses Ralph and Josephine Silo wanted to buy a new van for their garment business; they purchased items in Manila and sold them in Naga City.[4] They went to Guinhawa's office, and were shown the L-300 Versa Van which was on display. The couple inspected its interior portion and found it beautiful. They no longer inspected the under chassis since they presumed that the vehicle was brand new.[5] Unaware that the van had been damaged and repaired on account of the accident in Daet, the couple decided to purchase the van for P591,000.00. Azotea suggested that the couple make a downpayment of P118,200.00, and pay the balance of the purchase price by installments via a loan from the United Coconut Planters Bank (UCPB), Naga Branch, with the L-300 Versa Van as collateral. Azotea offered to make the necessary arrangements with the UCPB for the consummation of the loan transaction. The couple agreed. On November 10, 1995, the spouses executed a Promissory Note[6] for the amount of P692,676.00 as payment of the balance on the purchase price, and as evidence of the chattel mortgage over the van in favor of UCPB.

On October 11, 1995, the couple arrived in Guinhawa's office to take delivery of the van. Guinhawa executed the deed of sale, and the couple paid the P161,470.00 downpayment, for which they were issued Receipt No. 0309.[7] They were furnished a Service Manual[8] which contained the warranty terms and conditions. Azotea instructed the couple on how to start the van and to operate its radio. Ralph Silo no longer conducted a test drive; he and his wife assumed that there were no defects in the van as it was brand new.[9]

On October 12, 1995, Josephine Silo, accompanied by Glenda Pingol, went to Manila on board the L-300 Versa Van, with Glenda's husband, Bayani Pingol III, as the driver. Their trip to Manila was uneventful. However, on the return trip to Naga from Manila on October 15 or 16, 1995, Bayani Pingol heard a squeaking sound which

seemed to be coming from underneath the van. They were in Calauag, Quezon, where there were no humps along the road.[10] Pingol stopped the van in Daet, Camarines Norte, and examined the van underneath, but found no abnormalities or defects.[11] But as he drove the van to Naga City, the squeaking sound persisted. Believing that the van merely needed grease, Pingol stopped at a Shell gasoline station where it was examined. The mechanic discovered that some parts underneath the van had been welded. When Pingol complained to Guinhawa, the latter told him that the defects were mere factory defects. As the defects persisted, the spouses Silo requested that Guinhawa change the van with two Charade-Daihatsu vehicles within a week or two, with the additional costs to be taken from their downpayment. Meanwhile, the couple stopped paying the monthly amortization on their loan, pending the replacement of the van. Guinhawa initially agreed to the couple's proposal, but later changed his mind and told them that he had to sell the van first. The spouses then brought the vehicle to the Rx Auto Clinic in Naga City for examination. Jesus Rex Raquitico, Jr., the mechanic, examined the van and discovered that it was the left front stabilizer that was producing the annoying sound, and that it had been repaired.[12] Raquitico prepared a Job Order containing the following notations and recommendations:

- CHECK UP SUSPENSION (FRONT)

- REPLACE THE ROD END

- REPLACE BUSHING

NOTE: FRONT STEP BOARD HAS BEEN ALREADY DAMAGED AND REPAIRED.

NOTE: FRONT LEFT SUSPENSION MOUNTING IS NOT ON SPECIFIED ALIGNMENT/MEASUREMENT[13]

Josephine Silo filed a complaint for the rescission of the sale and the refund of their money before the Department of Trade and Industry (DTI). During the confrontation between her and Guinhawa, Josephine learned that Guinhawa had bought the van from UMC before it was sold to them, and after it was damaged in Daet. Subsequently, the spouses Silo withdrew their complaint from the DTI.

On February 14, 1996, Josephine Silo filed a criminal complaint for violation of paragraph 1, Article 318 of the Revised Penal Code against Guinhawa in the Office of the City Prosecutor of Naga City. After the requisite investigation, an Information was filed against Guinhawa in the Municipal Trial Court (MTC) of Naga City. The inculpatory portion reads:

The undersigned Assistant Prosecutor of Naga City accuses Jaime Guinhawa of the crime of OTHER DECEITS defined and penalized under Art. 318, par. 1 of the Revised Penal Code, committed as follows:

"That on or about October 11, 1995, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the said accused, being a motor vehicle dealer using the trade name of Guinhawa Motor Sales at Panganiban Avenue, Naga City, and a dealer of brand new cars, by means of false pretenses and fraudulent acts, did then and there willfully, unlawfully and feloniously defraud private complainant, JOSEPHINE P. SILO, as follows: said accused by means of false manifestations and fraudulent representations, sold to said private complainant, as brand new, an automobile with trade name L-300 Versa Van colored beige and the latter paid for the same in the amount of P591,000.00, when, in truth and in fact, the same was not brand new because it was discovered less than a month after it was sold to said Josephine P. Silo that said L-300 Versa Van had defects in the underchassis and stepboard and repairs had already been done thereat even before said sale, as was found upon check-up by an auto mechanic; that private complainant returned said L-300 Versa Van to the accused and demanded its replacement with a new one or the return of its purchase price from said accused but despite follow-up demands no replacement was made nor was the purchase price returned to private complainant up to the present to her damage and prejudice in the amount of P591,000.00, Philippine Currency, plus other damages that may be proven in court." [14]

Guinhawa testified that he was a dealer of brand new Toyota, Mazda, Honda and Mitsubishi cars, under the business name Guinrox Motor Sales. He purchased Toyota cars from Toyota Philippines, and Mitsubishi cars from UMC in Paco, Manila.[15] He bought the van from the UMC in March 1995, but did not use it; he merely had it displayed in his showroom in Naga City.[16] He insisted that the van was a brand new unit when he sold it to the couple.[17] The spouses Silo bought the van and took delivery only after inspecting and taking it for a road tests.[18] His sales manager, Azotea, informed him sometime in November 1995 that the spouses Silo had complained about the defects under the left front portion of the van. By then, the van had a kilometer reading of 4,000 kilometers.[19] He insisted that he did not make any false statement or fraudulent misrepresentation to the couple about the van, either before or simultaneous with its purchase. He posited that the defects noticed by the couple were not major ones, and could be repaired. However, the couple refused to have the van repaired and insisted on a refund of their payment for the van which he could not allow. He then had the defects repaired by the UMC.[20] He claimed that the van was never involved in any accident, and denied that his driver, Olayan, met an accident and sustained physical injuries when he drove the van from Manila to Naga City.[21] He even denied meeting Bayani Pingol.

The accused claimed that the couple filed a Complaint[22] against him with the DTI on January 25, 1996, only to withdraw it later.[23] The couple then failed to pay the amortizations for the van, which caused the UCPB to file a petition for the foreclosure of the chattel mortgage and the sale of the van at public auction.[24]

Azotea testified that he had been a car salesman for 16 years and that he sold brand new vans.[25] Before the couple took delivery of the vehicle, Pingol inspected its exterior, interior, and underside, and even drove it for the couple.[26] He was present when the van was brought to the Rx Auto Clinic, where he noticed the dent on its front side.[27] He claimed that the van never figured in any vehicular accident in Labo, Daet, Camarines Norte on March 17, 1995.[28] In fact, he declared, he found no police record of a vehicular accident involving the van on the said date.[29] He admitted that Olayan was their driver, and was in charge of taking delivery of cars purchased from the manufacturer in Manila.[30]

On November 6, 2001, the trial court rendered judgment convicting Guinhawa. The fallo of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered declaring the accused, JAIME GUINHAWA, guilty of the crime of Other Deceits defined and penalized under Art. 318(1) of the Revised Penal Code, the prosecution having proven the guilt of the accused beyond reasonable doubt and hereby imposes upon him the penalty of imprisonment from 2 months and 1 day to 4 months of Arresto Mayor and a fine of One Hundred Eighty Thousand Seven Hundred and Eleven Pesos (P180,711.00) the total amount of the actual damages caused to private complainant.

As to the civil aspect of this case which have been deemed instituted with this criminal case, Articles 2201 and 2202 of the Civil Code provides:

"Art. 2201. In contracts and quasi-contracts, the damages for which the obligor who acted in good faith is liable shall be those that are the natural and probable consequences of the breach of the obligation, and which the parties have foreseen or could have reasonably foreseen at the time the obligation was constituted.

"In case of fraud, malice or wanton attitude, the obligor shall be responsible for all damages which may be reasonably attributed to the non-performance of the obligation."

"Art. 2202. In crimes and quasi-delicts, the defendant shall be liable for all damages which are the natural and probable consequences of the act or omission complained of. It is not necessary that such damages have been foreseen or could have reasonably been foreseen by the defendant."

Thus, accused is condemned to pay actual damages in the amount of One Hundred Eighty Thousand Seven Hundred and Eleven Pesos (Php180,711.00), which represents the 20% downpayment and other miscellaneous

expenses paid by the complainant plus the amount of Nineteen Thousand Two Hundred Forty-One (Php19,241.00) Pesos, representing the 1st installment payment made by the private complainant to the bank. Accused is, likewise, ordered to pay moral damages in the amount of One Hundred Thousand Pesos (Php100,000.00) in view of the moral pain suffered by the complainant; for exemplary damages in the amount of Two Hundred Thousand Pesos (Php200,000.00) to serve as deterrent for those businessmen similarly inclined to take undue advantage over the public's innocence. As for attorney's fees, the reasonable amount of One Hundred Thousand Pesos (Php100,000.00) is hereby awarded.

SO ORDERED.[31]

The trial court declared that the accused made false pretenses or misrepresentations that the van was a brand new one when, in fact, it had figured in an accident in Labo, Daet, Camarines Norte, and sustained serious damages before it was sold to the private complainant.

Guinhawa appealed the decision to the Regional Trial Court (RTC) of Naga City, Branch 19, in which he alleged that:

- The lower court erred in its finding that the repair works on the left front portion and underchassis of the van was the result of the accident in Labo, Camarines Norte, where its driver suffered an attack of hypertension.
- The lower court erred in its four (4) findings of fact that accused-appellant made misrepresentation or false pretenses "that the van was a brand new car," which constituted deceit as defined in Article 318, paragraph 1 of the Revised Penal Code.
- The lower court erred in finding accused-appellant civilly liable to complainant Josephine Silo. But, even if there be such liability, the action therefor has already prescribed and the amount awarded was exorbitant, excessive and unconscionable.[32]

Guinhawa insisted that he never talked to the couple about the sale of the van; hence, could not have made any false pretense or misrepresentation.

On August 1, 2002, the RTC affirmed the appealed judgment.[33]

Guinhawa filed a petition for review with the Court of Appeals (CA), where he averred that:

I

THE COURT A QUO ERRED IN CONVICTING PETITIONER OF THE CRIME OF OTHER DECEITS AND SENTENCING HIM TO SUFFER IMPRISONMENT OF TWO MONTHS AND ONE DAY TO FOUR MONTHS OF ARRESTO MAYOR AND TO PAY FINE IN THE AMOUNT OF P180,711.00.

II

THE COURT A QUO ERRED IN ORDERING PETITIONER TO PAY PRIVATE COMPLAINANT P180,711.00 AS DOWNPAYMENT, P19,241.00 AS FIRST INSTALLMENT WITH UCPB NAGA, P100,000.00 AS MORAL DAMAGES, P200,000.00 AS EXEMPLARY DAMAGES AND P100,000.00 AS ATTORNEY'S FEES.[34]

On January 5, 2004, the CA rendered judgment affirming with modification the decision of the RTC. The fallo of the decision reads:

WHEREFORE, premises considered, the instant petition is hereby partially granted insofar as the following are concerned: a) the award of moral damages is hereby REDUCED to P10,000.00 and b) the award of attorney's fees and exemplary damages are hereby DELETED for lack of factual basis. In all other respects, We affirm the decision under review.

Costs against petitioner.

SO ORDERED.[35]

The CA ruled that the private complainant had the right to assume that the van was brand new because Guinhawa held himself out as a dealer of brand new vans. According to the appellate court, the act of displaying the van in the showroom without notice to any would-be buyer that it was not a brand new unit was tantamount to deceit. Thus, in concealing the van's true condition from the buyer, Guinhawa committed deceit.

The appellate court denied Guinhawa's motion for reconsideration, prompting him to file the present petition for review on certiorari, where he contends:

I

THE COURT A QUO ERRED IN NOT HOLDING THAT THE INFORMATION CHARGED AGAINST PETITIONER DID NOT INFORM HIM OF A CHARGE OF OTHER DECEITS.

II

THE COURT A QUO ERRED IN HOLDING THAT PETITIONER EMPLOYED FRAUD OR DECEIT AS DEFINED UNDER ARTICLE 318, REVISED PENAL CODE.

III

THE COURT A QUO ERRED IN NOT CONSIDERING THE CIRCUMSTANCES POINTING TO THE INNOCENCE OF THE PETITIONER.[36]

The issues for resolution are (1) whether, under the Information, the petitioner was charged of other deceits under paragraph 1, Article 318 of the Revised Penal Code; and (2) whether the respondent adduced proof beyond reasonable doubt of the petitioner's guilt for the crime charged.

The petitioner asserts that based on the allegations in the Information, he was charged with estafa through false pretenses under paragraph 2, Article 315 of the Revised Penal Code. Considering the allegation that the private complainant was defrauded of P591,000.00, it is the RTC, not the MTC, which has exclusive jurisdiction over the case. The petitioner maintains that he is not estopped from assailing this matter because the trial court's lack of jurisdiction can be assailed at any time, even on appeal, which defect cannot even be cured by the evidence adduced during the trial. The petitioner further avers that he was convicted of other deceits under paragraph 1, Article 318 of the Revised Penal Code, a crime for which he was not charged; hence, he was deprived of his constitutional right to be informed of the nature of the charge against him. And in any case, even if he had been charged of other deceits under paragraph 1 of Article 318, the CA erred in finding him guilty. He insists that the private complainant merely assumed that the van was brand new, and that he did not make any misrepresentation to that effect. He avers that deceit cannot be committed by concealment, the absence of any notice to the public that the van was not brand new does not amount to deceit. He posits that based on the principle of caveat emptor, if the private complainant purchased the van without first inspecting it, she must suffer the consequences. Moreover, he did not attend to the private complainant when they examined the van; thus, he could not have deceived them.

The petitioner maintains that, absent evidence of conspiracy, he is not criminally liable for any representation Azotea may have made to the private complainant, that the van was brand new. He insists that the respondent was estopped from adducing evidence that the vehicle was involved in an accident in Daet, Camarines Norte on March 17, 1995, because such fact was not alleged in the Information.

In its comment on the petition, the Office of the Solicitor General avers that, as gleaned from the material averments of the Information, the petitioner was charged with other deceits under paragraph 1, Article 318 of the

Revised Penal Code, a felony within the exclusive jurisdiction of the MTC. The petitioner was correctly charged and convicted, since he falsely claimed that the vehicle was brand new when he sold the same to the private complainant. The petitioner's concealment of the fact that the van sustained serious damages as an aftermath of the accident in Daet, Camarines Norte constituted deceit within the meaning of paragraph 1 of Article 318.

The Information filed against the petitioner reads:

That on or about October 11, 1995, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the said accused, being a motor vehicle dealer using the trade name of Guinhawa Motor Sales at Panganiban Avenue, Naga City, and dealer of brand new cars, by means of false pretenses and fraudulent acts, did then and there, willfully, unlawfully and feloniously defraud private complainant, JOSEPHINE P. SILO, as follows: said accused by means of false manifestations and fraudulent representations, sold to said private complainant, as brand new, an automobile with trade name L-300 Versa Van colored beige and the latter paid for the same in the amount of P591,000.00, when, in truth and in fact, the same was not brand new because it was discovered less than a month after it was sold to said Josephine P. Silo that said L-300 Versa Van had defects in the underchassis and stepboard and repairs have already been done thereat even before said sale, as was found upon check-up by an auto mechanic; that private complainant returned said L-300 Versa Van to the accused and demanded its replacement with a new one or the return of its purchase price from said accused but despite follow-up demands no replacement was made nor was the purchase price returned to private complainant up to the present to her damage and prejudice in the amount of P591,000.00, Philippine Currency, plus other damages that may be proven in court.

CONTRARY TO LAW.[37]

Section 6, Rule 110 of the Rules of Criminal Procedure requires that the Information must allege the acts or omissions complained of as constituting the offense:

SEC. 6. Sufficiency of complaint or information. - A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

When an offense is committed by more than one person, all of them shall be included in the complaint or information.

The real nature of the offense charged is to be ascertained by the facts alleged in the body of the Information and the punishment provided by law, not by the designation or title or caption given by the Prosecutor in the Information.[38] The Information must allege clearly and accurately the elements of the crime charged.[39]

As can be gleaned from its averments, the Information alleged the essential elements of the crime under paragraph 1, Article 318 of the Revised Penal Code.

The false or fraudulent representation by a seller that what he offers for sale is brand new (when, in fact, it is not) is one of those deceitful acts envisaged in paragraph 1, Article 318 of the Revised Penal Code. The provision reads:

Art. 318. Other deceits. - The penalty of arresto mayor and a fine of not less than the amount of the damage caused and not more than twice such amount shall be imposed upon any person who shall defraud or damage another by any other deceit not mentioned in the preceding articles of this chapter.

This provision was taken from Article 554 of the Spanish Penal Code which provides:

El que defraudare o perjudicare a otro, usando de cualquier engaño que no se halle expresado en los artículos

anteriores de esta sección, será castigado con una multa del tanto al duplo del perjuicio que irrogare; y en caso de reincidencia, con la del duplo y arresto mayor en su grado medio al máximo.

For one to be liable for "other deceits" under the law, it is required that the prosecution must prove the following essential elements: (a) false pretense, fraudulent act or pretense other than those in the preceding articles; (b) such false pretense, fraudulent act or pretense must be made or executed prior to or simultaneously with the commission of the fraud; and (c) as a result, the offended party suffered damage or prejudice.[40] It is essential that such false statement or fraudulent representation constitutes the very cause or the only motive for the private complainant to part with her property.

The provision includes any kind of conceivable deceit other than those enumerated in Articles 315 to 317 of the Revised Penal Code.[41] It is intended as the catchall provision for that purpose with its broad scope and intendment.[42]

Thus, the petitioner's reliance on paragraph 2(a), Article 315 of the Revised Penal Code is misplaced. The said provision reads:

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a)

By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; or by means of other similar deceits.

The fraudulent representation of the seller, in this case, that the van to be sold is brand new, is not the deceit contemplated in the law. Under the principle of *eiusdem generis*, where a statement ascribes things of a particular class or kind accompanied by words of a generic character, the generic words will usually be limited to things of a similar nature with those particularly enumerated unless there be something in the context to the contrary.[43]

Jurisdiction is conferred by the Constitution or by law. It cannot be conferred by the will of the parties, nor diminished or waived by them. The jurisdiction of the court is determined by the averments of the complaint or Information, in relation to the law prevailing at the time of the filing of the criminal complaint or Information, and the penalty provided by law for the crime charged at the time of its commission.

Section 32 of Batas Pambansa Blg. 129, as amended by Republic Act No. 7691, provides that the MTC has exclusive jurisdiction over offenses punishable with imprisonment not exceeding six years, irrespective of the amount of the fine:

Sec. 32. Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in Criminal Cases. - Except in cases falling within the exclusive original jurisdiction of Regional Trial Courts and of the Sandiganbayan, the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall exercise:

(1) Exclusive original jurisdiction over all violations of city or municipal ordinances committed within their respective territorial jurisdiction; and

(2) Exclusive original jurisdiction over all offenses punishable with imprisonment not exceeding six (6) years irrespective of the amount of fine, and regardless of other imposable accessory or other penalties, including the civil liability arising from such offenses or predicated thereon, irrespective of kind, nature, value or amount thereof: Provided, however, That in offenses involving damage to property through criminal negligence, they shall have exclusive original jurisdiction thereof.

Since the felony of other deceits is punishable by *arresto mayor*, the MTC had exclusive jurisdiction over the

offense lodged against the petitioner.

On the merits of the petition, the Court agrees with the petitioner's contention that there is no evidence on record that he made direct and positive representations or assertions to the private complainant that the van was brand new. The record shows that the private complainant and her husband Ralph Silo were, in fact, attended to by Azotea. However, it bears stressing that the representation may be in the form of words, or conduct resorted to by an individual to serve as an advantage over another. Indeed, as declared by the CA based on the evidence on record:

Petitioner cannot barefacedly claim that he made no personal representation that the herein subject van was brand new for the simple reason that nowhere in the records did he ever refute the allegation in the complaint, which held him out as a dealer of brand new cars. It has thus become admitted that the petitioner was dealing with brand new vehicles - a fact which, up to now, petitioner has not categorically denied. Therefore, when private complainant went to petitioner's showroom, the former had every right to assume that she was being sold brand new vehicles there being nothing to indicate otherwise. But as it turned out, not only did private complainant get a defective and used van, the vehicle had also earlier figured in a road accident when driven by no less than petitioner's own driver.[44]

Indeed, the petitioner and Azotea obdurately insisted in the trial court that the van was brand new, and that it had never figured in vehicular accident. This representation was accentuated by the fact that the petitioner gave the Service Manual to the private complainant, which manual contained the warranty terms and conditions, signifying that the van was "brand new." Believing this good faith, the private complainant decided to purchase the van for her buy-and-sell and garment business, and even made a downpayment of the purchase price.

As supported by the evidence on record, the van was defective when the petitioner sold it to the private complainant. It had ditched onto the shoulder of the highway in Daet, Camarines Norte on its way from Manila to Naga City. The van was damaged and had to be repaired; the rod end and bushing had to be replaced, while the left front stabilizer which gave out a persistent annoying sound was repaired. Some parts underneath the van were even welded together. Azotea and the petitioner deliberately concealed these facts from the private complainant when she bought the van, obviously so as not to derail the sale and the profit from the transaction.

The CA is correct in ruling that fraud or deceit may be committed by omission. As the Court held in *People v. Balasa*:^[45]

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 device, 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. On the other hand, 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.^[46]

It is true that mere silence is not in itself concealment. Concealment which the law denounces as fraudulent implies a purpose or design to hide facts which the other party sought to know.^[47] Failure to reveal a fact which the seller is, in good faith, bound to disclose may generally be classified as a deceptive act due to its inherent capacity to deceive.^[48] Suppression of a material fact which a party is bound in good faith to disclose is equivalent to a false representation.^[49] Moreover, a representation is not confined to words or positive assertions; it may consist as well of deeds, acts or artifacts of a nature calculated to mislead another and thus allow the

fraud-feasor to obtain an undue advantage.[50]

Fraudulent nondisclosure and fraudulent concealment are of the same genre. Fraudulent concealment presupposes a duty to disclose the truth and that disclosure was not made when opportunity to speak and inform was presented, and that the party to whom the duty of disclosure, as to a material fact was due, was induced thereby to act to his injury.[51]

Article 1389 of the New Civil Code provides that failure to disclose facts when there is a duty to reveal them constitutes fraud. In a contract of sale, a buyer and seller do not deal from equal bargaining positions when the latter has knowledge, a material fact which, if communicated to the buyer, would render the grounds unacceptable or, at least, substantially less desirable.[52] If, in a contract of sale, the vendor knowingly allowed the vendee to be deceived as to the thing sold in a material matter by failing to disclose an intrinsic circumstance that is vital to the contract, knowing that the vendee is acting upon the presumption that no such fact exists, deceit is accomplished by the suppression of the truth.[53]

In the present case, the petitioner and Azotea knew that the van had figured in an accident, was damaged and had to be repaired. Nevertheless, the van was placed in the showroom, thus making it appear to the public that it was a brand new unit. The petitioner was mandated to reveal the foregoing facts to the private complainant. But the petitioner and Azotea even obdurately declared when they testified in the court a quo that the vehicle did not figure in an accident, nor had it been repaired; they maintained that the van was brand new, knowing that the private complainant was going to use it for her garment business. Thus, the private complainant bought the van, believing it was brand new.

Significantly, even when the petitioner was apprised that the private complainant had discovered the van's defects, the petitioner agreed to replace the van, but changed his mind and insisted that it must be first sold.

The petitioner is not relieved of his criminal liability for deceitful concealment of material facts, even if the private complainant made a visual inspection of the van's interior and exterior before she agreed to buy it and failed to inspect its under chassis. Case law has it that where the vendee made only a partial investigation and relies, in part, upon the representation of the vendee, and is deceived by such representation to his injury, he may maintain an action for such deceit.[54] The seller cannot be heard to say that the vendee should not have relied upon the fraudulent concealment; that negligence, on the part of the vendee, should not be a defense in order to prevent the vendor from unjustifiably escaping with the fruits of the fraud.

In one case,[55] the defendant who repainted an automobile, worked it over to resemble a new one and delivered it to the plaintiff was found to have warranted and represented that the automobile being sold was new. This was found to be "a false representation of an existing fact; and, if it was material and induced the plaintiff to accept something entirely different from that which he had contracted for, it clearly was a fraud which, upon its discovery and a tender of the property back to the seller, [it] entitled the plaintiff to rescind the trade and recover the purchase money." [56]

On the petitioner's insistence that the private complainant was proscribed from charging him with estafa based on the principle of caveat emptor, case law has it that this rule only requires the purchaser to exercise such care and attention as is usually exercised by ordinarily prudent men in like business affairs, and only applies to defects which are open and patent to the service of one exercising such care.[57] In an avuncular case, it was held that:

... The rule of caveat emptor, like the rule of sweet charity, has often been invoked to cover a multitude of sins; but we think its protecting mantle has never been stretched to this extent. It can only be applied where it is shown or conceded that the parties to the contract stand on equal footing and have equal knowledge or equal means of knowledge and there is no relation of trust or confidence between them. But, where one party

undertakes to sell to another property situated at a distance and of which he has or claims to have personal knowledge and of which the buyer knows nothing except as he is informed by the seller, the buyer may rightfully rely on the truth of the seller's representations as to its kind, quality, and value made in the course of negotiation for the purpose of inducing the purchase. If, in such case, the representations prove to be false, neither law nor equity will permit the seller to escape responsibility by the plea that the buyer ought not to have believed him or ought to have applied to other sources to ascertain the facts. ...[58]

It bears stressing that Azotea and the petitioner had every opportunity to reveal to the private complainant that the van was defective. They resolved to maintain their silence, to the prejudice of the private complainant, who was a garment merchant and who had no special knowledge of parts of motor vehicles. Based on the surrounding circumstances, she relied on her belief that the van was brand new. In fine, she was the innocent victim of the petitioner's fraudulent nondisclosure or concealment.

The petitioner cannot pin criminal liability for his fraudulent omission on his general manager, Azotea. The two are equally liable for their collective fraudulent silence. Case law has it that wherever the doing of a certain act or the transaction of a given affair, or the performance of certain business is confided to an agent, the authority to so act will, in accordance with a general rule often referred to, carry with it by implication the authority to do all of the collateral acts which are the natural and ordinary incidents of the main act or business authorized.[59]

The MTC sentenced the petitioner to suffer imprisonment of from two months and one day, as minimum, to four months of arresto mayor, as maximum. The CA affirmed the penalty imposed by the trial court. This is erroneous. Section 2 of Act 4103, as amended, otherwise known as the Indeterminate Sentence Law, provides that the law will not apply if the maximum term of imprisonment does not exceed one year:

SEC. 2. This Act shall not apply to persons convicted of offenses punished with death penalty or life-imprisonment; to those convicted of treason, conspiracy or proposal to commit treason; to those convicted of misprision of treason, rebellion, sedition or espionage; to those convicted of piracy; to those who are habitual delinquents; to those who shall have escaped from confinement or evaded sentence; to those who having been granted conditional pardon by the Chief Executive shall have violated the terms thereof; to those whose maximum term of imprisonment does not exceed one year, not to those already sentenced by final judgment at the time of approval of this Act, except as provided in Section 5 hereof. (As amended by Act No. 4225.)

In this case, the maximum term of imprisonment imposed on the petitioner was four months and one day of arresto mayor. Hence, the MTC was proscribed from imposing an indeterminate penalty on the petitioner. An indeterminate penalty may be imposed if the minimum of the penalty is one year or less, and the maximum exceeds one year. For example, the trial court may impose an indeterminate penalty of six months of arresto mayor, as minimum, to two years and four months of prision correccional, as maximum, since the maximum term of imprisonment it imposed exceeds one year. If the trial court opts to impose a penalty of imprisonment of one year or less, it should not impose an indeterminate penalty, but a straight penalty of one year or less instead. Thus, the petitioner may be sentenced to a straight penalty of one year, or a straight penalty of less than one year, i.e., ten months or eleven months. We believe that considering the attendant circumstances, a straight penalty of imprisonment of six months is reasonable.

Conformably with Article 39 in relation to paragraph 3, Article 38 of the Revised Penal Code, the petitioner shall suffer subsidiary imprisonment if he has no property with which to pay the penalty of fine.

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED. The assailed Decision and Resolution are AFFIRMED WITH MODIFICATION. Considering the surrounding circumstances of the case, the petitioner is hereby sentenced to suffer a straight penalty of six (6) months imprisonment. The petitioner shall suffer subsidiary

imprisonment in case of insolvency.

Costs against the petitioner.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

[1] Exhibit "B."

[2] Exhibit "D."

[3] TSN, 1 June 2000, pp. 16-17.

[4] TSN, 3 August 2000, p. 5.

[5] TSN, 6 October 1999, p. 18.

[6] Exhibit "DD-1."

[7] Exhibit "FF."

[8] Exhibit "J."

[9] TSN, 6 October 1999, p. 18.

[10] TSN, 29 January 1998, pp. 5-7.

[11] Exhibit "F."

[12] Exhibits "K" to "K-1."

[13] Exhibit "AA."

[14] Records, p. 1.

[15] TSN, 1 June 2000, p. 6.

[16] Exhibit "4-A."

[17] TSN, 1 June 2000, p. 19.

[18] *Id.* at 7.

[19] Exhibit "4-A."

[20] TSN, 1 June 2000, p. 19; Exhibits "4" to "4-C."

[21] Exhibit "4."

[22] Exhibit "8."

[23] Exhibit "11."

[24] Exhibits "DD" and "EE."

[25] TSN, 23 November 2000, p. 11.

[26] TSN, 3 August 2000, pp. 6-7.

- [27] Id. at 10.
- [28] Id. at 14.
- [29] Id. at 13.
- [30] Id. at 13-14.
- [31] Records, pp. 641-642.
- [32] Records, p. 575.
- [33] Id. at 588-592.
- [34] Id. at 606.
- [35] Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Buenaventura J. Guerrero and Regalado E. Maambong, concurring; CA Rollo, p. 100.
- [36] Rollo, p. 9.
- [37] Records, p. 1.
- [38] Buhat v. Court of Appeals, G.R. No. 119601, 17 December 1996, 265 SCRA 701; People v. Escosio, G.R. No. 101742, 25 March 1993, 220 SCRA 475; Buaya v. Polo, G.R. No. 75079, 26 January 1989, 169 SCRA 471.
- [39] Serapio v. Sandiganbayan, G.R. No. 148769, 28 January 2003, 396 SCRA 443.
- [40] ... 1. que exista realmente una defraudacion, un perjuicio ejetivo; (2) que este se haya causado mediante engaño, esto es, con el empleo de medios fraudulentos puestos en juego por el estafador para conseguir su mal proposito. (Viada, CODIGO PENAL, 6th ed., Vol. 6, p. 570)
- [41] Reyes, The Revised Penal Code, 2001 ed., Vol. II, p. 815.
- [42] Regalado, CRIMINAL LAW CONSPECTUS, 1st ed., p. 592.
- [43] Philippine Bank of Communications v. Court of Appeals, G.R. No. 118552, 5 February 1996, 253 SCRA 241.
- [44] Rollo, p. 34.
- [45] G.R. No. 106357, 3 September 1998, 295 SCRA 49. (Emphasis supplied)
- [46] Id. at 71-72.
- [47] Phillips Petroleum Co. v. Daniel Motors Co., 149 S.W.2d 979 (1941).
- [48] Testo v. Russ Dunmire Oldsmobile, Inc., 83 A.L.R., 3rd ed., p. 680 (1976); 554 P.2d 349.
- [49] Tyler v. Savage, 143 U.S. 79, 12 S.Ct. 340, 36 L.Ed. 82.
- [50] Lindberg Cadillac Company v. Leonard Aron, 371 S.W.2d 651 (1963).
- [51] Lovell v. Smith, 169 So. 280 (1936).
- [52] Supra, at note 47.
- [53] Lindbergh Cadillac Company v. Aron, 371 S.W.2d 651 (1963).

[54] *Burnett v. Boyer*, 285 S.W. 670; *Madton v. Norton*, 238 N.W. 686.

[55] *Kraus v. National Bank of Commerce of Mankato*, 167 N.W. 353.

[56] *Snellgrove v. Dingelhof*, 103 S.E. 418 (1920).

[57] *Judd v. Walker*, 89 S.W. 558.

[58] *Nolan v. Fitzpatrick, et al.*, 173 N.W. 255 (1919).

[59] *Park v. Moorman Manufacturing Company*, 40 A.L.R. 2d 273 (1952).

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