

LILIBETH ARICHETA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 172500. September 21, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Assailed before Us is the Decision[1] of the Court of Appeals in CA-G.R. CR No. 25540 which affirmed with modifications the Decision[2] of the Regional Trial Court (RTC) of Manila, Branch 29, in Criminal Case No. 96-152984, convicting petitioner Lilibeth Aricheta of the crime of Estafa.

In an Information filed on 7 October 1996, petitioner was charged with Estafa allegedly committed as follows:

That sometime in April 1994, in the City of Manila, Philippines, the said accused being then the owner of a parcel of land located at Bo. Bagumbong, Novaliches, Kalookan City containing an area of forty-eight (48) sq. meters more or less, with improvements thereon which she acquired from the National Housing Authority (NHA) by virtue of a Deed of Sale with Mortgage, did then and there willfully, unlawfully and feloniously defraud MARGARITA VASQUEZ, in the following manner, to wit: the said accused well knowing that she had already sold the said lot to a third party, willfully, unlawfully and feloniously sold the same lot to MARGARITA VASQUEZ as evidenced by a Deed of Sale with assumption of Mortgage executed between her and MARGARITA VASQUEZ on 27[th] April, 1994 before Notary Public Nonilo A. Quitangon and recorded in the latter's Notarial Register as Doc. No. 238, Page 49, Book XV, Series of 1994, in consideration of which the said MARGARITA VASQUEZ paid accused P50,000.00 and to assume the sum of P191,075.00 with the NHA, without the knowledge and consent of MARGARITA VASQUEZ, which amount once in her possession, with intent to defraud, misapplied, misappropriated and converted to her own personal use and benefit, to the damage and prejudice of MARGARITA Vasquez in the amount of P50,000.00, Philippine currency.[3]

When arraigned on 13 January 1997, petitioner, assisted by counsel de oficio, pleaded not guilty to the crime charged.[4]

On 18 February 1997, the pre-trial conference was terminated.[5]

The prosecution presented private complainant Margarita Sevilla Vasquez and Norita A. de Guzman.

Private complainant testified that petitioner was a family friend whom she had known for more than ten years. She used to buy viands from petitioner's mother, who was the latter's sister-in-law's officemate at the National Housing Authority (NHA).

Petitioner agreed to sell to private complainant her rights over a house and lot described as Lot 5, Blk. 2, located at Barangay Bagumbong, Novaliches, Caloocan City. Private complainant agreed to pay petitioner P50,000.00 and to assume payment of the monthly amortization to the NHA for twenty-five (25) years. The former was able to see the property twice -- first, in April 1994 before she agreed to buy the same; and second, in May 1994. The property was without water and electricity, not yet finished, and still unoccupied. The ground floor had no

partition, while the second floor had no room and ceiling.

On 27 April 1994, private complainant and petitioner entered into a Deed of Sale with Assumption of Mortgage.[6] It contained a provision stating that “the Vendor is the absolute owner of the said property and hereby warrants the Vendee from any lawful claim of whomsoever over the same.” The payment of P50,000.00 to petitioner was made by private complainant in the latter’s office located at 329 NDC Compound, Pureza St., Sta. Mesa, Manila. After the execution of the document and payment, private complainant tried to occupy the house and lot, but was told by petitioner that she could not occupy the same yet, because she still had no gate pass or ID issued by the NHA. Petitioner told her she would be able to secure the gate pass within a month or in May 1994.

In May 1994, private complainant asked petitioner about the gate pass, but was told that its issuance was being delayed. Almost everyday, private complainant called petitioner, but she was told the gate pass was not yet available. She even went to the house of petitioner who told her that a case between the NHA and the developer was the cause of the delay.

In October 1995, private complainant went to the NHA and was informed by a certain Amy Cruz that the gate pass had already been obtained by petitioner. Consequently, she went to Barangay Bagumbong, Caloocan City, where she found out that someone was already occupying the house and lot. She confronted petitioner on the matter, and the latter admitted that she (petitioner) sold it to another person. Petitioner also told her that the person who bought it leased the same to another person.

Under the circumstances, private complainant orally asked petitioner to return the P50,000.00 she paid her. Thereafter, private complainant sent petitioner a demand letter,[7] which the latter ignored. She then filed both civil and criminal cases against petitioner.

Private complainant explained that she did not submit the deed of sale to the NHA because she trusted the petitioner. However, she said that when she tried to secure the gate pass, she presented the deed of sale to a certain Amy Cruz who told her that only petitioner was authorized to get the gate pass, and that she already did. She added that petitioner did not tell her to submit the deed of sale to the NHA.

Private complainant further said that although her sister-in-law, Rexelita Cordero -- petitioner’s best friend, kumare and officemate at the NHA --convinced her to buy the house and lot subject of this case, Ms. Cordero was not an agent of petitioner.

Mrs. Norita A. de Guzman, an officemate of private complainant at Kibono Manufacturing Company, confirmed the transaction between private complainant and petitioner regarding the sale of the right of the petitioner over the house and lot involved in this case. She narrated that on 27 April 1994, she was told by private complainant that someone would be arriving in their office who was selling her rights over some property in Caloocan City, and that private complainant would be paying this person. This person turned out to be the petitioner.

Mrs. De Guzman testified she saw private complainant give to petitioner the amount of P50,000.00 in cash. Thereafter, the contract was signed and she, together with another officemate, was asked by private complainant to act as witnesses. During the transaction, she was two feet away from private complainant and petitioner. After the signing, she said they appeared before Atty. Nonilo A. Quitangon who notarized the Deed of Sale with Assumption of Mortgage.

For the defense, petitioner took the witness stand.

Petitioner testified that the house and lot, subject matter of this case, was awarded to her through a raffle at the NHA. She has to pay monthly amortizations for twenty-five (25) years to the NHA. She said the property cannot

be sold during this period.

Petitioner denied personally knowing the private complainant. She insisted that she did not sell the house and lot to private complainant but merely mortgaged it to her. She narrated that she first mortgaged the property to Margarita Galang who occupied the property with the condition that she would vacate the same when the money she loaned is returned. Petitioner then mortgaged the same property to private complainant because her kumare was borrowing money from her. She, however, did not inform private complainant of the first mortgage. She signed a deed of sale but did not totally read the document. What she understood was that if she cannot redeem the property within six months, the property is deemed sold. Since petitioner has not returned the amount she borrowed from Margarita Galang, the latter is entitled to occupy the property which, according to petitioner, is still in her name.

Petitioner further explained that despite the prohibition to sell or mortgage the property within the 25-year period, she still mortgaged the property to Margarita Galang within one year from the award of the property to her. She said she has no proof that she mortgaged the property to Ms. Galang, but she signed a document as evidence that she received money. Although she signed the deed of sale, she claimed she is still the owner per notice of the NHA.

On 25 September 2000, the trial court promulgated its Decision convicting accused-petitioner of Estafa. The decretal portion of the decision reads:

WHEREFORE, this Court finds the accused, LILIBETH ARICHETA, GUILTY beyond reasonable doubt of the crime of ESTAFA and she is hereby sentenced to suffer the indeterminate penalty of SIX (6) YEARS, ONE (1) DAY of prision mayor minimum as minimum to EIGHT (8) YEARS, EIGHT (8) MONTHS, ONE (1) DAY of the medium of prision mayor medium as maximum with all the accessory penalties provided by law, and to pay the costs.[8]

Via a notice of appeal, accused-petitioner appealed the decision to the Court of Appeals.[9]

In its decision dated 26 April 2006, the Court of Appeals affirmed with modifications the trial court's decision as follows:

WHEREFORE, in view of the foregoing, the Decision dated September 25, 2000 is hereby AFFIRMED with MODIFICATIONS. Accused is hereby sentenced to suffer the indeterminate penalty of TWO (2) YEARS, ELEVEN (11) MONTHS and TEN (10) DAYS of prision correccional minimum to medium as minimum to EIGHT (8) YEARS, EIGHT (8) MONTHS and TWENTY-ONE (21) DAYS of prision correccional maximum to prision mayor minimum as maximum with all the accessory penalties provided by law and to pay the costs.[10]

The Court of Appeals, in upholding petitioner's conviction, ratiocinated:

The Deed of Sale with Assumption of Mortgage (Exh. "A") dated April 27, 1994 and signed by accused Lilibeth L. Aricheta in favor of Margarita Vasquez speaks only of the mortgage with the National Housing Authority (NHA). Margarita Vasquez, as vendee, agreed to assume payment of the balance on the loan with NHA. Said instrument includes the warranty by Lilibeth L. Aricheta, as vendor, that she "is the absolute owner of said property" and "warrants the vendee from any lawful claim of whomsoever over the same." (Exhibit "A").

x x x x

At the time accused-[appellant] signed the deed of sale in favor of Margarita Vasquez she represented to the latter that she was the absolute owner of the property subject matter of the sale. Accused-[appellant] warranted to defend said transaction from the claim of anybody whomsoever. Whether the previous transaction in favor

of Magdalena Galang was a sale or a mortgage, aforesaid written guaranty embodied in the sale to Margarita Vasquez was violated. The representation, therefore, that accused-[appellant] was the absolute owner of the property sold to Margarita Vasquez and it was free from the claim of anybody was fraudulent. Said false pretense was simultaneous with the commission of the fraud. Margarita Vasquez was induced to deliver the sum of P50,000.00 on account of said fraudulent misrepresentation. Margarita Vasquez suffered damage.[11]

Petitioner is now before us via a petition for review on certiorari raising a sole issue:

WHETHER THE COURT OF APPEALS ERRED IN AFFIRMING THE TRIAL COURT'S FINDINGS THAT THE PETITIONER IS GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF ESTAFA.

Petitioner contends that the element of deceit which, in this case is the making of false representations that she is the owner of the subject property when she transacted with private complainant, is not present in the case at bar because at the time she transacted with private complainant, she was still the owner thereof. She claims that nowhere in the records of the case was it shown that she previously sold or mortgaged the subject property and that the records of the NHA show that the property remained in her name at the time she dealt with private complainant.

Estafa under Article 315, paragraph 2, of the Revised Penal Code is committed by any person who defrauds another by using a fictitious name; or falsely pretends to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; or by means of similar deceits executed prior to or simultaneously with the commission of fraud.[12] Under this class of estafa, the element of deceit is indispensable.[13]

The elements of Estafa by means of deceit as defined under Article 315(2)(a) of the Revised Penal Code are as follows: (1) that there must be a false pretense, fraudulent act or fraudulent means; (2) that such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud; (3) that the offended party must have relied on the false pretense, fraudulent act or fraudulent means, that is, he was induced to part with his money or property because of the false pretense, fraudulent act or fraudulent means; and (4) that as a result thereof, the offended party suffered damage.[14]

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 forms of surprise, trick, cunning, dissembling and any other unfair way by which another is cheated. Deceit is a species of fraud.[15] 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,[16] it being essential that such false statement or representation constitutes the very cause or the only motive which induces the offended party to part with his money. In the absence of such requisite, any subsequent act of the accused, however fraudulent and suspicious it might appear, cannot serve as basis for prosecution for estafa under the said provision.[17]

As can be gleaned from the allegations in the information, petitioner was charged with Estafa for allegedly selling to private complainant the subject property knowing fully well that she had already sold the same to a third party. From this, it is therefore clear that the supposed false representation or false pretense made by petitioner to private complainant was that she was still the owner of the property when she sold it to private complainant.

The prosecution relies heavily on the provision contained in the Deed of Sale with Assumption of Mortgage "That

the Vendor is the absolute owner of said property and hereby warrants the Vendee from any lawful claim of whomsoever over the same.” It argues that petitioner, in executing said document in favor of private complainant, fraudulently represented that she is the absolute owner of the property and warranted that the transfer of rights over the property is free “from any lawful claim of whomsoever over the same” because at the time she made this representation, she had already sold/mortgaged the property to another person.

The question to be resolved is whether the prosecution was able to prove beyond reasonable doubt the alleged false representation or false pretense contained in the information.

As above explained, the alleged false representation or false pretense made by petitioner to private complainant was that she was still the owner of the property when she sold it to private complainant. To prove such allegation, the prosecution should first establish that the property was previously sold to a third party before it was sold to private complainant. The prosecution utterly failed to do this. The fundamental rule is that upon him who alleges rests the burden of proof.[18] It made this allegation but it failed to support it with competent evidence. Except for private complainant’s bare allegation that petitioner told her that she (petitioner) sold the property to another person, the records are bereft of evidence showing that the property was indeed previously sold to a third person before it was sold again to private complainant. What was shown by the prosecution and admitted by the defense is the fact that the property is being currently occupied by a person other than private complainant. This fact does not prove that the property was previously sold to another person before being sold again to private complainant. Even assuming arguendo that the property was previously mortgaged, this does not prove that petitioner is no longer its owner when she sold the same to private complainant. At most, it only shows that the property is encumbered and that there was no change in ownership which is contrary to the prosecution’s claim that there was already a transfer of ownership before the property was sold to private complainant.

The prosecution cannot rely on the warranty contained in the Deed of Sale with Assumption of Mortgage that “the Vendor warrants the Vendee from any lawful claim of whomsoever over the same” for the reason that the same is not alleged in the Information. This is not part of the charge against petitioner. Petitioner was indicted for making false representations to the private complainant that she is the owner of the property involved when this property was supposedly already sold to another person. The allegations were made pursuant to Section 9, Rule 110[19] of the Revised Rules of Criminal Procedure. She was not charged with falsely representing to private complainant that the property was not mortgaged or being occupied by a third person. The charge in the information is specific. The charge cannot be broadened to include what is not alleged to the detriment of the petitioner. If this were to be done, the petitioner’s right to be informed of the nature and cause of the accusation against her would be violated.[20]

In *Andaya v. People*,[21] this Court said:

It is fundamental that every element constituting the offense must be alleged in the information. The main purpose of requiring the various elements of a crime to be set out in the information is to enable the accused to suitably prepare his defense because he is presumed to have no independent knowledge of the facts that constitute the offense. The allegations of facts constituting the offense charged are substantial matters and an accused’s right to question his conviction based on facts not alleged in the information cannot be waived. No matter how conclusive and convincing the evidence of guilt may be, an accused cannot be convicted of any offense unless it is charged in the information on which he is tried or is necessarily included therein. To convict him of a ground not alleged while he is concentrating his defense against the ground alleged would plainly be unfair and underhanded. The rule is that a variance between the allegation in the information and proof adduced during trial shall be fatal to the criminal case if it is material and prejudicial to the accused so much so that it affects his substantial rights.

We are not saying that petitioner did not commit any wrongdoing. There was indeed an injustice committed to private complainant when she was not able to occupy the property she bought from petitioner. The problem, however, is we cannot convict petitioner for an act not alleged in the information. To do so would be violative of the fundamental law of the land.

Where the inculpatory facts and circumstances are susceptible of two or more interpretations, one of which is consistent with the innocence of the accused while the other may be compatible with the finding of guilt, the Court must acquit the accused because the evidence does not fulfill the test of moral certainty required for conviction.[22]

In the present case, the prosecution, which has the burden to prove beyond reasonable doubt all the essential elements of the felony, failed to discharge this burden. It failed to establish, as alleged in the information, the false representation or false pretense that petitioner supposedly committed; that is, the property in question was previously sold to another person before it was sold to private complainant. With this failure, the presumption of innocence in favor of petitioner prevails and we are thus constrained to render an acquittal.

ALL THE FOREGOING CONSIDERED, the petition for review on certiorari is GRANTED. The decision of the Court of Appeals convicting petitioner of Estafa in CA-G.R. CR No. 25540 is REVERSED and SET ASIDE. Petitioner Lilibeth Aricheta is ACQUITTED of said charge on ground of reasonable doubt. No costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Azcuna, and Reyes, JJ., concur.

[1] Penned by Associate Justice Arcangelita M. Romilla-Lontok with Associate Justices Marina L. Buzon and Aurora Santiago-Lagman, concurring; CA rollo, pp. 160-171

[2] Records, pp. 132-138.

[3] Id. at 1.

[4] Id. at 25.

[5] Id. at 28.

[6] Exhibit A, Folder of Exhibits, p. 1.

[7] Exhibit B, Id. at 3.

[8] Records, p. 138.

[9] Id. at 139.

[10] CA rollo, p. 171.

[11] Id. at 167-169.

[12] Paredes v. Calilung, G.R. No. 156055, 5 March 2007.

[13] People v. Billaber, 465 Phil. 726, 744 (2004).

[14] Cosme, Jr. v. People, G.R. No. 149753, 27 November 2006, 508 SCRA 190, 203-204.

[15] Sim, Jr. v. Court of Appeals, G.R. No. 159280, 18 May 2004, 428 SCRA 459, 468.

[16] *Alcantara v. Court of Appeals*, 462 Phil. 72, 89 (2003).

[17] *Preferred Home Specialties, Inc. v. Court of Appeals*, G.R. No. 163593, 16 December 2005, 478 SCRA 387, 411-412.

[18] *People v. Petralba*, G.R. No. 137512, 27 September 2004, 439 SCRA 158, 170.

[19] SECTION 9. Cause of the Accusation. — The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

[20] Section 14(2), Article III, 1987 Constitution; *People v. Galido*, G.R. Nos. 148689-92, 30 March 2004, 426 SCRA 502, 512; *Burgos v. Sandiganbayan*, 459 Phil. 794, 806 (2003).

[21] G.R. No. 168486, 27 June 2006, 493 SCRA 539, 558.

[22] *People v. Malbog*, 396 Phil. 784, 807 (2000).

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