

CANDIDA MARIANO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, AND COURT OF APPEALS, RESPONDENTS.

G.R. No. 80161. December 14, 1992

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The accused Candida Mariano brought this petition to review the decision of the Court of Appeals which affirmed her conviction by the Regional Trial Court of Bulacan of the crime of estafa in Criminal Case No. 2966-M.

The information which charges the accused with conversion of pieces of jewelry belonging to Antonia Santos alleges:

"That on or about the 22nd day of September 1978, in the municipality of Bocaue, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the said accused Candida Mariano, by means of false pretenses and fraudulent manifestations, received from the complaining witness Antonia M. Santos several pieces of jewelry amounting to P38,500.00, for the purpose of selling the same on commission with express obligation of turning over the proceeds thereof, if sold or to return the said pieces of jewelry if not sold, but the said accused, once in possession of the said pieces of jewelry and far from complying with her aforesaid obligation and in spite of repeated demands to return the same, did then and there willfully, unlawfully and feloniously, with grave abuse of confidence and with deceit, misappropriate, misapply and convert to her personal use and benefit the pieces of jewelry in the amount of P38,500.00, belonging to the said Antonia M. Santos, to the damage and prejudice of the said owner in the said amount of P38,500.00." (Rollo, p. 17)

A document dated September 22, 1978 (Exhibit "A") was introduced as the evidence for the receipt by the accused Mariano of the jewelries with the obligation to sell and turn over the proceeds therefor, or return the same jewelries. A demand letter (Exhibit "B") against accused-petitioner indicating, however, that the complainant was referring to a transaction dated September 30, 1978 was also offered in evidence. (See Original Records, p. 405) The findings of facts of the lower court were culled from the testimonies of the complainant Antonia Santos - the lone prosecution witness, and of the accused-petitioner Mariano - the lone defense witness.

The antecedent facts are summarized by the Court of Appeals from the evidence on record. The prosecution's narration as abstracted are:

X X X X X X X X

"The evidence for the prosecution shows that appellant Candida Mariano is an acquaintance of complaining witness Antonia M. Santos, they being townmates in Bocaue, Bulacan, besides being classmates in 1948. The appellant was also a regular customer of the private respondent complainant for about two years in the latter's business of selling clothing materials in Divisoria, Manila.

"On September 22, 1978, at about 8:00 o'clock in the morning, before complainant Antonia Santos could leave her residence in Biñan 1st, Bocaue, Bulacan, to attend to her business in Divisoria, appellant Candida Mariano

came to her house to see the jewelries which complainant was intending to sell. Complainant showed the appellant the following jewelries and their corresponding prices:

'1 Sinsing solo 2 ½ k. brillante P31,000

1 paris Hikaw dangling 3,000

1 Singsing panglalaki 2 big stone 4,500

P38,500'

"Thereupon, appellant Candida Mariano told complainant Antonia Santos that she (appellant) was interested to sell the said jewelries and that she had a buyer. The complainant, having full trust and confidence in the appellant, entrusted the said jewelries to the latter who signed a 'Katibayan' or Receipt therefor, with the following agreed conditions:

'x x x. To be sold in CASH ONLY within 3 days from date of signing this receipt; if I could not sell, I shall return all the jewelry within the period mentioned above; if I would be able to sell, I shall immediately deliver and account the whole proceeds of sale thereof to the owner of jewelries, my compensation or commission shall be the over-price on the value of each jewelry on the above; I am prohibited to sell any jewelry on credit or by installment, deposit, give for safekeeping, lend, pledge or give as security or guaranty under any circumstance or manner, any jewelry to other persons or person.

'I sign my name this 22nd day of September, 1979.

'(SGD.) CANDIDA MARIANO.'

"Three days after the appellant received the jewelries, the complainant went to see her, and the latter, instead of turning over the proceeds of the sale or delivering back the jewelries if unsold, pleaded that she (appellant) be given one (1) week more to comply with her obligation. The complainant acceded.

"Five days thereafter, or before the one week extended period expired, the appellant went to the complainant and informed her that the jewelries were already sold but that the cash was not yet available. The appellant, however, assured the complainant that she (appellant) would turn over the proceeds of the sale within that week.

"But the appellant did not show up anymore. Having got tired of going to the residence of the appellant, the complainant consulted her lawyer who then prepared and sent, in her behalf, a formal demand letter dated October 2, 1978, to the appellant. Despite her receipt of the demand letter on October 7, 1978, thru her authorized representative, the appellant ignored the same and did not deliver the proceeds of the sale or return the jewelries." (Rollo, pp. 37-38)

Meanwhile, the version of the defense is as follows:

"On the other hand, appellant Candida Mariano, while admitting in her testimony that she received from complainant Antonia Santos the subject three (3) jewelries and signed a receipt or 'Katibayan' (Exhibit "A") therefor on September 22, 1978, puts up the defense that the said jewelries 'are one and the same jewelries' which are already in the possession of one Amelia Bote who, on September 30, 1978, executed a separate written agreement (Exhibit "4") with the complainant. This agreement was executed in the handwriting of Amelia Bote herself and signed by her certifying that on September 30, 1978 she received from private complainant two (2) jewelries, namely: 'isang sinsing pambabae brillante (2 karat),' worth P29,000.00, and 'isang sinsing panlalake, brillante may 2 bato,' worth P3,500.00, with the agreed conditions that she (Bote) will sell the said jewelries in cash within two (2) days from receipt thereof and immediately turn-over the proceeds

of the sale to the complainant, or return the jewelries, if unsold, on October 2, 1978. The agreed compensation or commission of Amelia Bote, according to the agreement, shall be the overprice she makes on the value of each jewelry. It was further agreed in Exhibit "4" that Amelia Bote cannot sell the jewelries on credit or by installment, nor can she lend, pledge or give the same as security. At the left side margin of Exhibit "4" is the signature of appellant Candida Mariano as 'Guarantor,' which signature she admitted to be her own.

"In explaining the circumstances behind the execution of Exhibit "A" and Exhibit "4", the appellant, a Bachelor of Science in Education graduate and engaged in the business of making ladies' wear, narrated that on September 22, 1978, while she was at the store of the complainant in Divisoria to buy clothing materials, the latter offered her a lady's ring, telling her to sell it because she (complainant) - then a fire victim - was in dire need of money. The appellant told the complainant that she would refer the matter to Amelia Bote whom she heard was looking for jewelries. The complainant then gave her the ring to show it to Amelia Bote. After having seen it, the latter expressed her desire to buy it for P28,000.00. Amelia Bote also told the appellant to look for a man's ring and dangling earrings.

"On that same day of September 22 when the appellant relayed Amelia Bote's requests to the complainant at her store, the latter agreed to give the lady's ring to her (Bote) for P28,000.00 and to show her the additional jewelries, namely: one (1) dangling earrings (sic) and one (1) man's ring valued at P3,000.00 and P4,500.00, respectively. The appellant then signed the subject receipt (Exhibit "A"), as requested by the complainant, for the three (3) jewelries she received. The appellant insisted, though, that she did not read the contents of said receipt when she signed it.

"Still on that same day of September 22, 1978, the appellant went to see Amelia Bote and offered her the man's ring and dangling earrings. She also informed Bote that the complainant agreed to sell the lady's ring for P28,000.00. Amelia Bote returned the dangling earrings only and told the appellant that she would pay on the weekend. The appellant left all the three jewelries with Bote and then proceeded to see the complainant who, when informed of what transpired, agreed to the transaction.

"On September 25, 1978, Amelia Bote gave the complainant a postdated check in the amount of P20,000.00 (Exhibit 3; According to the appellant, this check bounced when she presented it to the bank for payment [Exhs. '3-B': & '3-C']) in payment for the ring with single stone. x x x

"On September 30, 1978, Amelia Bote and the appellant went again to the complainant's store where she (Bote) paid the complainant another P10,000.00 in check as additional payment for the lady's ring and man's ring. It was also at this instance that Amelia Bote returned to the complainant the dangling earrings, after which she (Bote) was made to sign the receipt (Exhibit "4") evidencing that the two jewelries were in her possession. In that same receipt, the appellant signed as 'Guarantor'.

"In short, the appellant further explained: 'This Exh. 'A' was prepared when she (the complainant) gave me the jewelries for delivery to Amelia Bote; and this Exhibit '4' was executed by Amelia Bote, considering that the jewelries were already in the possession of Amelia Bote.' The appellant clarified, though, that when she signed Exhibit '4' as guarantor, it was to guarantee that the jewelries were already in Amelia Bote's possession. The appellant also stated that when she signed Exhibit 4 she asked the complainant where Exhibit A was, and the latter told her that she (appellant) had nothing to do with it.

"Moreover, the appellant admitted in her testimony having received the demand letter sent to her by the complainant's lawyer relative to the three (3) jewelries which she got from the complainant on September 22, 1978, and that after such receipt she immediately went to see Amelia Bote to ask the latter about the demand letter but failed to see her. The appellant did not see the complainant anymore because her (appellant's) mother was then seriously ill and had no companion at home." (Rollo, pp. 38--41)

After trial the lower court inferred that the documents, Exhibit "A" and Exhibit "4" had no relation to each other and that these do not support the defense of continuity between the accused-petitioner's transactions with

complainant initiated on September 22, 1978 in which she signed as agent and on September 30, 1978 in which she signed as guarantor to the obligation assumed by Mrs. Bote to sell in behalf of the complainant. Finding that the jewelries contained in Exhibits "A" and "4" are distinct from each other, it held accused-petitioner guilty of estafa for failure to return the jewelries stated in Exhibit "A". The trial court stated that the defense failed to controvert the prosecution evidence, on the following facts: (1) that the accused-petitioner was entrusted with the jewelries with an express obligation to sell them within three (3) days and to turn over the proceeds thereof and/or to return them if not sold; (2) that the accused-appellant denied such receipt; (3) that accused-petitioner converted the entrusted jewelries for her personal use by her failure to return them or to turn over the proceeds of the sale; (4) that the complainant was damaged in the amount of P38,500.00; and (5) that complainant demanded compliance from accused-petitioner who still failed to comply.

The dispositive portion of the trial court decision reads:

"WHEREFORE, this Court finds accused Candida Mariano GUILTY beyond reasonable doubt of the crime of Estafa, defined and penalized under Subsection (b), paragraph 1, Article 315 of the Revised Penal Code, and hereby sentences her:

1. - To suffer the penalty of from FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of prision correccional as minimum, to NINE (9) YEARS of prision mayor as maximum;
2. - To indemnify Antonia M. Santos, the private complainant, the amount of P38,500.00;
3. - To indemnify Antonia M. Santos the amounts of:
 - (a) P2,000.00 for attorney's fees; and
 - (b) P5,000.00 for litigation expenses; and
4. - To pay the costs of the suit." (Original Records, pp. 514-515)

On appeal, the conviction for estafa was affirmed in toto. Hence, this petition in which the accused-petitioner raised the following issues:

"WHETHER THE COURT OF APPEALS IS CORRECT IN EXTENDING LIABILITY OF A PRINCIPAL TO THAT OF GUARANTOR.

"WHETHER THE COURT OF APPEALS IS CORRECT IN ITS APPRECIATION OF THE EVIDENCE ON RECORD.

"ASSUMING ARGUENDO THAT ACCUSED IS GUILTY, WHETHER THE COURT OF APPEALS APPLIED THE PROPER PENALTY TAKING INTO CONSIDERATION THE MITIGATING CIRCUMSTANCES." (Rollo, p. 10)

The accused-petitioner basically hinges the present petition on the assertion that the appellate court erred in the appreciation of the evidence. The accused-petitioner gives emphasis to the fact that Exhibit "A" was superseded and novated by Exhibit "4", which contained precisely the same items of jewelry mentioned in the former document and which "though conspicuously coaxed (should be couched) in terms slightly different, depict accurately the transition of events and the real relationship between petitioner and private complainant." (Memorandum for Petitioner in Rollo, p. 127) This being so, the accused-petitioner intimates that Exhibit "A" ceased to have effect seven days after its execution when the same subject matter of the contract of agency in Exhibit "A" became the object of a new contract of agency, this time, between Mrs. Bote as agent and complainant as principal vendor, together with the accused-petitioner as guarantor.

As if nearly but not actually resigned to the assumption that the finding of her guilt would be affirmed, the accused-petitioner prays that her lack of familiarity with or her ignorance in the jewelry business, which accounted for her imprudence in appreciating the import of Exhibit "A", be considered as a mitigating circumstance in her favor.

This Court has on several occasions applied the well-established rule that the findings of fact of the lower court shall not be disturbed but will be accorded great weight and respect, because the trial judge had the first hand opportunity to hear the witnesses and to observe their deportment and manner of testifying during trial in order that a decision may be properly arrived at. (People v. Delfin Molina and Adolfo Molina, G.R. No. 59436, August 28, 1992)

Moreover, the findings of the Court of Appeals are also given the same treatment on appeal before us because it has at its disposal the power to review whether or not the conclusions of the trial court are in accordance with the facts and the relevant laws. (Adolfo Caubang v. People of the Philippines, G.R. No. 62634, June 26, 1992)

The above rulings, albeit often applied, admit, however, of the exception where "substantial errors have been committed or determinative facts have been overlooked and which otherwise would have dictated a different conclusion or verdict." (People v. Roger Montilla, et al., G.R. No. 95048, July 3, 1992)

In the case at bar, we find compelling reasons to review the facts on record, it appearing that there were significant matters that were overlooked and disregarded, but which rivet the attention of the Court and dictate a contrary conclusion as to the sufficiency of the evidence to prove the guilt of the accused.

The crime of estafa with unfaithfulness or abuse of confidence as defined in Article 315, par. 1 (b) is committed:

X X X X X X X X

"(b) By misappropriating or converting to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission or for administration, or under any obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

X X X X X X X X

From the above provision, the following elements concur: (1) receipt of items in trust or under an obligation to return them or the proceeds of an authorized transaction; (2) misappropriation, conversion for personal benefit or denial of such receipt; (3) entrustor or owner was prejudiced; and (4) demand was made by the offended party.

The facts show that the accused-petitioner admitted having received the three pieces of jewelry mentioned in Exhibit "A" on September 22, 1978 under an obligation to look for a buyer for the complainant. (TSN, July 3, 1984, p. 3; October 8, 1982, pp. 5 & 8) Thus, there is no truth to the finding of the trial court as affirmed on appeal that accused-petitioner denied her receipt of the same items as well as her assumption of a responsibility as agent under Exhibit "A".

Meanwhile, the complainant did not repudiate the fact that she knew that the accused-petitioner had already delivered the jewelries to a prospective buyer within the three (3) day period from September 22, 1978. This bolsters the defense testimony that accused-petitioner did inform the complainant that she left the lady's ring with Mrs. Bote who bargained to take it at P28,000.00 prior to her delivery of the two other pieces of jewelry but, without demanding a receipt. (TSN, October 8, 1982, pp. 7-8; September 24, 1984, pp. 17-18)

The complainant testified that on September 25, 1978, when she demanded the payment of the jewelries or their return, the accused-petitioner told her that they were already in the possession of the buyer but the cash was not

yet available. She said she was assured by the accused-petitioner of payment by the buyer on or before October 2, 1978 (TSN, October 24, 1979, pp. 14-15), which was one week from September 25, 1978.

Her testimony also shows that the complainant had two transactions with the accused-petitioner in September, 1978.

x x x x x x x x

Q. Now Mrs. Santos, as businesswoman at Divisoria for the last 14 years, is it not a fact that after the alleged transaction on September 22, 1978 as embodied in Exhibit "A", you had another transaction with Candida Mariano on September 30, 1978?

A. Yes sir.

x x x x x x x x

Q. x x x. How many transactions have you had with Candida Mariano?

A. "2", Sir.

Q. You are sure of that?

A. Yes, sir.

(TSN, October 24, 1978, pp. 16-17; Underscoring ours)

The introduction by the accused-petitioner of Amelia Francisco Bote to complainant on September 30, 1978 is also undisputed. This is revealed in the cross-examination of complainant Santos.

Q. x x x Now, do you know Amelia Francisco Bote?

A. I do not know her very well, Sir.

Q. But you have met her once in your lifetime?

A. Yes, Sir.

Q. When did you meet her for the first time?

A. She was with Candida Mariano, Sir.

Q. When was that?

A. September 30, Sir.

COURT:

Q. What year?

A. 1978, Your Honor. (TSN, March 12, 1980, pp. 12-13; Underscoring ours)

The contents of Exhibit "2" which was admitted by the trial court and which is a transcript of stenographic notes on complainant's testimony in Criminal Case No. 2957-M for estafa (simultaneously filed against the same accused-appellant based on the undertaking dated September 30, 1978) were not rebutted by the complainant.

In the September 30, 1978 transaction, accused Mariano guaranteed the trustworthiness of Amelia Francisco Bote, who committed to sell one lady's ring with two (2) karats costing P29,000.00 and one man's ring with two (2) stones worth P3,500.00. (See Original Records, pp. 372-401) The complainant admitted during the trial that she

had earlier testified in Criminal Case No. 2957-M as to the occurrence and nature of the September 30, 1978 transaction. (TSN, March 12, 1980, pp. 9-11) Proof of this second transaction entered into between complainant on the one hand and accused-petitioner and Ms. Bote on the other hand on September 30, 1978 was admitted in evidence by the court a quo in the present case as Exhibit "4".

When further asked on cross-examination in the present case, the complainant confessed that she and the accused-petitioner had preliminary talks on September 25, 1978 (the day when she inquired from the accused-petitioner about the sale of the three (3) pieces of jewelry entrusted on September 22, 1978) before they executed Exhibit "4" which contained a new contract of agency to sell with Ms. Bote as agent and accused-petitioner as guarantor. (TSN, March 12, 1980, p. 21)

The records also show that as of September 25, 1978, the complainant had not yet lost the confidence she reposed on the accused-petitioner on the date she entrusted the sale of her personal jewelries. (Ibid.) Hence, we can safely surmise that from the very first agreement with the accused on September 22, 1978, the complainant had persevered in waiting for the final disposal by way of sale of her jewelries and the consequent liquidation into cash which she needed to use as capital for her textile business.

The Court notes the testimony of the prosecution witness to the effect that she was not engaged in the business of selling jewelries. This can only mean that she was at that time selling her own limited personal collection of valuables on account of an urgent need for cash. We find it hard to believe, absent any proof to the contrary, that what the complainant offered to the accused-petitioner in Exhibit "A" for sale to third persons and those offered to Ms. Amelia Francisco Bote with the accused-petitioner as guarantor in Exhibit "4", also for sale to third persons could entirely be distinct from each other.

It is the contention of the defense that Exhibit "4" deals with precisely the same pieces of jewelry, save for the minor discrepancies in the sketchy descriptions, as well as the exclusion of the dangling earrings that were alleged by the accused-petitioner to have been personally returned by Ms. Bote to the complainant. The prosecution was, thus, faced with the challenge of proving the difference between the items in Exhibit "A" and those in Exhibit "4". However, the prosecution did not bother to establish whether or not Exhibit "A" was indeed an isolated undertaking which the accused-petitioner allegedly had violated.

The Court, therefore, rules that the transaction on which the present action is based was continued in the transaction with Amelia Francisco Bote. If it was true that the complainant wanted to hold the accused criminally liable under the first transaction for her failure to deliver the proceeds of the expected sale of jewelries or to return the jewelries, why did she have to wait until October 2, 1978, which was past the three (3) day period agreed upon in Exhibit "A", before sending a formal demand? There can be no logical explanation for this delay other than that the complainant actually hoped that the accused-petitioner could do something for her until October 2, 1978 or until seven (7) more days after the accused-petitioner's deadline on September 25, 1978 to ultimately dispose of her jewelry in exchange for cash. It was unfortunate that her hopes were met by a sudden and unexpected turn of events, i.e., the fraudulent payment by Ms. Bote with two (2) post-dated checks, one of which when encashed showed that she had no funds at all. With the virtual failure of Ms. Bote to comply with the obligation guaranteed by the accused-petitioner, the complainant thought it wise to resort to the filing of two separate criminal actions for estafa against the accused-petitioner. The action from which this petition arose was based on the September 22, 1978 transaction while the other one was based on the September 30, 1978 transaction.

With the above facts taken from the records, the Court is constrained to rule that the evidence for the prosecution failed to pass the test of credibility. It is incongruous to rule that with the subsequent transaction confirmed by the complainant herself regarding the sale of the same jewelries (except the pair of dangling earrings), the first

document, Exhibit "A" remained effective and unchanged. In the second transaction, the role of one of the parties was changed. Henceforth, it was Ms. Bote who became the agent of complainant Santos while the accused-petitioner was made not a primary party to the contract but merely a guarantor in case Ms. Bote failed to deliver the price or return the jewelries if not sold. As guarantor, the accused-petitioner was released from her former obligation. In case a civil action was filed against her based on the second contract, she could claim the benefit of excussion. (Article 2058, Civil Code) If sued on an alleged criminal liability for estafa, there must be clear proof of conspiracy with Ms. Bote.

There was effectively a novation of the September 22, 1978 agreement wherein petitioner Candida Mariano was initially obliged to sell in behalf of the complainant. The complainant was shown to have acceded instead to the new arrangement in which Ms. Bote would be her agent.

The novation occurred through a substitution of the person of the agent and the assumption by the accused of an obligation of a guarantor. (Article 1291, New Civil Code) Incidentally, the corresponding change in the cost of each of the jewelries offered to the new agent according to this novation provides the explanation for the discrepancy in the amounts contained in the two contracts. The obligation of the accused under the September 22, 1978 transaction was extinguished by the September 30, 1978 transaction which substituted the first since the two contracts are shown to have been on every point incompatible with each other. (Article 1292, Civil Code) The novation prevented the rise of liability under the old contract. Upon this novation, the first obligation had lost all its force and effect and only the subsequent obligation can be the basis of any action. (*De Borja v. Mariano*, 66 Phil. 393 [1938])

Therefore, the complainant cannot stubbornly contradict her own decision to alter her relationship with the accused-petitioner by arguing that Exhibit "A" still subsists. The accused-petitioner could no longer be prosecuted for violation of the contract evidenced by Exhibit "A," on which the present criminal action was based. It is an elementary rule that no action may be filed on a contract which has no more force and effect. There can be no cause of action upon an inexistent contract. No criminal or civil liability may arise from an extinguished contract such as Exhibit "A."

The prosecution evidence is certainly bereft of the required quantum sufficient to prove the guilt of the accused. The element of misappropriation or conversion which is the essence of estafa punished under Article 315, par. 1 (b) of the Revised Penal Code, was not at all established. The Court has defined the most vital terms in that provision, thus:

"The words 'convert' and 'misappropriated' connote an act of using or disposing of another's property as if it were one's own, or of devoting it to a purpose or use different from that agreed upon. To misappropriate for one's own use includes, not only conversion to one's personal advantage, but every attempt to dispose of the property of another without right (*U.S. v. Panes*, 37 Phil. 118)." (*Amorsolo v. People*, 154 SCRA 556 [1987])

In the present case, the complainant delivered her jewelries to the accused-petitioner, who was a former schoolmate in their younger days and a close associate in the textile business, trusting that the latter will help her find a buyer. When the accused-petitioner offered the jewelries for sale to Ms. Bote, who later negotiated as to the price of the lady's ring and decided to take the lady's ring and the man's ring only, the accused-petitioner acted in accordance with the authority and trust reposed on her. The accused-petitioner did not commit an abuse of confidence. That complainant was repeatedly informed of the delivery of the items to Ms. Bote and was asked as to the last price she was willing to charge the latter, negates the allegations made by the prosecution that the accused-petitioner appropriated the jewelries to her own benefit, use and enjoyment and that she exercised without authority a right of ownership over the same items to the exclusion of the owner's rights. (*Saddul, Jr. v. Court of Appeals*, 192 SCRA 277 [1990])

This Court has ruled that estafa thru misappropriation, and the conspiracy to commit the same is not established by the mere receipt of the jewelries from the complainant. There must be further evidence of intentional commission or participation in the transaction in question. (Gomez v. Intermediate Appellate Court, 135 SCRA 620 [1985])

If the accused really converted the jewelries for some purpose other than that for which they were intended, the question may be asked: why did complainant have to deal with the accused for the second time in another transaction which the complainant admitted to have entered into?

In view of our findings after an in-depth scrutiny into the records, the Court finds reversible error in the conclusion of the trial court as affirmed on appeal that the defense failed to destroy the prosecution evidence. We reiterate that Exhibit "A" was no longer actionable at the time the instant case (Criminal Case No. 2966-M) was filed. No other evidence could strengthen the proposition of guilt of the accused of estafa based on a document that has lost its value in court under the substantive and evidentiary rules.

The prosecution actually failed to show a single proof strong enough to establish the commission by the accused of the crime charged. Indeed, there was no prosecution evidence that the defense needed to destroy. There exists a huge cloud of doubt upon the theory of guilt which triggers the Court's skepticism as to the real motive of the complainant in filing a baseless accusation.

The Court has time and again upheld the basic rule that an accused must be presumed innocent until his guilt is established by proof beyond reasonable doubt. (Section 2, Rule 133, Revised Rules of Court) Since accusation is not synonymous with guilt, the verdict should be guided by this requirement:

"x x x Only if the judge below and the appellate tribunal could arrive at a conclusion that the crime had been committed precisely by the person on trial under such an exacting test should the sentence be one of conviction. It is thus required that every circumstance favoring his innocence be duly taken into account. The proof against him must survive the test of reason; the strongest suspicion must not be permitted to sway judgment. The conscience must be satisfied that on the defendant could be laid the responsibility for the offense charged, that not only did he perpetrate the act but that it amounted to a crime. What is required then is moral certainty." (People v. Dramayo, 42 SCRA 59 [1971]; See also People v. Bania, 134 SCRA 347 [1985]; People v. Lucero, 197 SCRA 717 [1991]; People v. Teresita del Mar, et al., G.R. No. 95542, June 26, 1992)

The burden of proving the guilt of an accused lies on the prosecution. It is not for the accused to prove the fact of his innocence. Conviction must rest on the strength of the prosecution evidence rather than on the weakness of the defense. (People v. Capilitan, 182 SCRA 313 [1990]; People v. Lim, 190 SCRA 706 [1990])

There being facts that were ignored or disregarded by the trial court and the appellate court that would substantially alter the judgment, the Court finds that the accused-petitioner cannot be held liable for violating the agreement under Exhibit "A".

The Court is convinced that the obligation of the accused under the said document has been removed. If at all, any other liability whether criminal or civil arising from the subsequent transaction can be properly determined only in another proceeding where such other transaction is made the basis of a cause of action.

It is not for this Court to discuss nor review in this decision the determination already made by another court in Criminal Case No. 2957-M in which the same accused-petitioner was charged and acquitted of estafa on the basis of the September 30, 1978 transaction.

WHEREFORE, the decision sought to be reviewed is REVERSED and SET ASIDE and the accused-petitioner CANDIDA MARIANO is hereby ACQUITTED on the ground that no crime has arisen from a contract which has

lost its force and effect through novation.

SO ORDERED.

Bidin, Davide, Jr., Romero, and Melo, JJ., concur.

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