

SPECIAL EIGHTH DIVISION

[CA-G.R. CR NO. 34878, May 08, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EMELITA CERVAS Y ABALOS, ACCUSED-APPELLANT.**

D E C I S I O N

REYES, JR., J.C., J.:

On appeal is the Decision dated January 30, 2012 of the Regional Trial Court (RTC) Branch 41 of Dagupan City in Crim. Case No. 2006-0440-D which found Emelita Cervas (Emelita) guilty of estafa for which she was sentenced to suffer twenty (20) years of reclusion temporal, and ordered to pay P300,000.00 plus attorney's fees and cost of suit.

The Information dated July 2, 2006 charged Emelita of Estafa under Article 315, par. 2 (a) of the Revised Penal Code, as follows:

"That sometime in March, 2004, in the municipality of Mangaldan, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to defraud by means of deceit, did then and there, willfully, unlawfully and feloniously defraud the private complainants, CHITO R. CERVAS and MARIA LAIDA S. NAJIMA (sic), as follows, to wit: that said accused under false and fraudulent representations which she made to said private complainants, by way of inducing the latter to buy, as in fact, the private complainants bought one-half (½) portion of a certain parcel of land located in Brgy. Gueguesangen, Mangaldan, Pangasinan, with an area of 449 square meters, covered by Tax Declaration No. 012-09557, in the amount of THREE HUNDRED THOUSAND PESOS (P300,000.00), Philippine currency, wherein a portion of said amount will be used by the said accused in redeeming the property and to execute the necessary Deed of Absolute Sale, but once in possession of the amount of Three Hundred Thousand Pesos (P300,000.00), willfully, unlawfully and feloniously misappropriated, misapplied and converted the said amount to her own personal use and benefit, as there was no Deed of Absolute Sale that was executed by accused and that the subject property was not redeemed, to the damage and prejudice of the private complainants, represented by their Attorney-in-Fact, MARIA CRISTINA TOLENTINO.

Contrary to Art. 315, par. 2(a) of the Revised Penal Code." (Records, p. 1).

Emelita pleaded "not guilty" at her arraignment on September 8, 2006. (Records, p. 54).

Trial proceeded and on January 30, 2012, the RTC rendered the herein assailed Decision disposing:

"WHEREFORE, premises considered, judgment is hereby rendered finding accused Emelita Cervas *GUILTY* beyond reasonable doubt of the crime of Estafa penalized under Article 315, par. 2(a) of the Revised Penal Code, and pursuant thereto, she is sentenced to suffer the penalty of imprisonment of Twenty (20) years of Reclusion Temporal, and she is ordered to pay to the complainants the amount of P300,000.00 plus the amount of P20,000.00 as attorney's fee, and to pay the cost of suit.

SO ORDERED." (Rollo, p. 73).

In finding Emelita guilty of estafa, the trial court held that:

"...there is no question that accused received the amount of P300,000.00 from the complainants as payment of the purchase price of the portion of her land which she sold to the complainants. The prosecution's evidence has shown that as represented by the accused, she sold the property to, and received the amount of P300,000.00 which she will use in redeeming her property from the Bank. Because of the said representation by the accused, the complainants agreed to purchase the property and parted with their money in the amount of P300,000.00 as the purchase price. However, the accused did not redeem the property from the bank so the mortgage was foreclosed by the bank.

It is clear that accused falsely represented to the complainants that she will redeem the property from the bank which she sold to them out of the money she received from the complainants but she did not do so. Complainants then demanded for the return of the money paid to her but despite the said demand, she did not return the money received by her. The act of the accused of deliberately and misrepresenting to the complainants that she will use the money received by her in redeeming the property she sold to the complainants but in fact she did not redeem and deliver the same to the complainant, and her failure to return the amount received by her despite demand constitute the crime of estafa penalized under Article 315, par. 2(a) of the Revised Penal Code." (Rollo, pp. 72-73).

Emelita is now before the Court claiming that:

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF ESTAFA DESPITE THE PROSECUTION'S FAILURE TO PROVE HER GUILT BEYOND REASONABLE DOUBT. (Rollo, p. 59).

Emelita, through the Public Attorney's Office, argues that the testimony of the prosecution witness, Maria Cristina Tolentino (Tolentino), cannot be give credence for being inconsistent and hearsay. When the agreement to sell the subject land was arrived at, and when the payments were allegedly given to her (Emelita), Tolentino was out of the country. Tolentino also gave inconsistent and incredible declarations as to who handed the money for the payment of the purchase price to Emelita. Tolentino on direct examination claimed that she personally gave the money intended for the payment of the property to Emelita. During cross examination however she admitted that when the alleged payments were made, she (Tolentino) was not around as she was in Taiwan.(Rollo, pp. 60-62)

Emelita further argues that not all the elements of estafa were adequately established by the prosecution. The letters allegedly written by her to private complainants were not offered to prove that she made fraudulent representation. The private complainants also did not testify in court to substantiate the claim of deceit. Emelita was consistent in her declaration that she sold a portion of the property for the subsistence of her children and their schooling. She did not falsely represent to private complainants that she would use the proceeds of the sale to redeem the property or employ deceit to convince them to part with their money. (Rollo, pp. 63-64).

Finally, Emelita asserts that while denial is regarded as a weak defense, it gains strength where the prosecution fails to overturn the constitutional presumption of innocence of the accused. (Rollo, p. 65).

The People, through the Office of the Solicitor General, meanwhile asserts that the trial court was correct in finding Emelita guilty of estafa since she induced the private complainants to part with their money without having any intention to fulfill her end of the bargain. In her testimony, Emelita admitted that she sold the property to the private complainants and even issued receipts in the total sum of P300,000.00 therefor, even though the property was already foreclosed. (Rollo, pp. 94-95).

The Court finds NO MERIT in the appeal.

Emelita was charged with estafa under Article 315, paragraph 2 (a) of the Revised Penal Code, which provides:

Swindling (estafa). — Any person who shall defraud another . . .

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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 crime's constitutive elements are:

- (1) The accused used fictitious name or false pretense that he possesses (a) power, (b) influence, (c) qualifications, (d) property, (e) credit, (f) agency, (g) business or (h) imaginary transaction, or other similar deceits;
- (2) The accused used such deceitful means prior to or simultaneous with the execution of the fraud;
- (3) The offended party relied on such deceitful means to part with his money or property; and
- (4) The offended party suffered damage.

Estafa under Article 315 (2) (a) of the Revised Penal Code, is committed by any person who shall defraud another by, among others, false pretenses or fraudulent acts executed prior to or simultaneous with the commission of fraud, i.e., by using a

fictitious name, falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; or by means of other similar deceptions. (*Galvez v. Court of Appeals*, 691 SCRA 455, 463 [2013]).

Emelita is now before the Court assailing the credibility of the prosecution witness, Tolentino.

It is settled in criminal jurisprudence however that where the issue is one of credibility of witnesses, appellate courts generally do not disturb the findings of trial courts considering that the latter were in better positions to settle said issues. Trial courts have the advantage of hearing the witnesses and observing their conduct during trials, circumstances which carry a great weight in appreciating their credibility. Trial courts' findings are accorded finality, unless there appears in the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated and which, if properly considered, would alter the result of the case. (*Ortega v. People*, 575 SCRA 519, 528-529 [2008]).

Here, the Court finds no reason to depart from the trial court's findings.

Tolentino was authorized by private complainants Chito Rivera Cervas and Maria Laida Solayao Nakajima to represent them in filing the case and perform all tasks necessary for the prosecution thereof. (Exhs. "A" and "B"). Whether it was Tolentino who personally gave the money to the accused or she merely had knowledge thereof, is immaterial in view of the admissions made by Emelita herself:

"Q ...you will agree with me Mrs. Cervas you executed acknowledgment receipt receiving the amount of P300,000.00 which is for the consideration of the property you sold to Chito Cervas, am I correct?

A Yes, madam." (TSN, February 8, 2010, p. 9).

The prosecution presented Acknowledgment Receipts dated June 22, 2005, August 1, 2005, September 7, 2005 and September 20, 2005 signed by Emelita as vendor stating that she received from the private complainants the amounts of P70,000.00, P40,000.00, P75,000.00, and P300,000.00 as payment of the purchase price of Emelita's land in Gueguesangen, Mangaldan, Pangasinan covered by Tax Declaration No. 012-29557. (Exhs. "E", "F", "G", and "H", Folder of Exhibits for the Prosecution, pp. 11-14).

She admitted executing the said receipts, claiming only that she did so without receiving the full amount stated therein. (TSN, November 18, 2009, p. 13).

Denial is a weak defense which can be buttressed only by strong evidence of non-culpability to merit credence. (*Ortega v. People*, *supra*, p. 530).

Emelita's claim that she did not employ deceit in her dealings with private complainants is not supported by the transcripts on record.

At first, Emelita testified that she has already discharged the mortgage on the property:

"Q ...in fact that letter you wrote to Chito and Myla that you