

SECOND DIVISION

[G.R. No. 184320, July 29, 2015]

CLARITA ESTRELLADO-MAINAR PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

BRION, J.:

Before this Court is the Petition for Review on *Certiorari*^[1] filed by petitioner Clarita Estrellado-Mainar assailing the resolutions of the Court of Appeals (CA) dated November 28, 2007,^[2] and July 29, 2008,^[3] respectively, in CA-G.R.CR No. 00429.

ANTECEDENT FACTS

Sometime in February 2005, the petitioner offered for sale to Eric Naval (*Naval*) portions of land located in Matina Aplaya, Davao City. During the negotiations for this sale, the petitioner told Naval that the title to the land she was selling had no problems. The petitioner also informed Naval that the area subject of the proposed sale would "still be segregated from the mother title."^[4]

On March 24, 2003, the parties executed an *Agreement to Buy and Sell*^[5] where the petitioner agreed to sell to Naval a 200-square meter portion of the land covered by Transfer Certificate of Title (TCT) No. T-19932 representing a portion of the petitioner's share in the estate of her deceased father, Nicolas Estrellado.^[6] Naval paid a down payment totaling P100,000.00,^[7] and then asked permission from the petitioner if he could construct his house on the land he bought. After the petitioner issued an *Authorization* dated March 24, 2003, Naval built his house on the subject land.

On June 3, 2005, representatives from JS Francisco & Sons, Inc. (*JS Francisco*) demolished Naval's house. It was only then that Naval discovered that the lot sold to him had been the subject of a dispute between the petitioner's family and JS Francisco. Naval demanded from the petitioner the return of the amount he paid for the land, as well as to pay the value of the house demolished, but the latter refused to heed these demands.

The prosecution charged the petitioner with the crime of other forms of swindling under **Article 316, paragraph 1** of the Revised Penal Code, as amended, before the Municipal Trial Court in Cities (*MTCC*), Branch 2, Davao City^[8] in an Information that provides:

That sometime in February 2005, in the city of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, with deceit and intent to defraud, pretending to be the lawful

owner of a two hundred (200) square meters lot portion of a lot covered by TCT-19932 located at Cogon, Matina Aplaya, this City, with deceit and intent to gain, wilfully, unlawfully and feloniously succeeded in selling the same to one Eric C. Naval for which the said Eric C. Naval paid to the accused the total amount of P123,000.00, as partial payment of the said lot when in truth and in fact and despite her knowledge that the entire property covered by TCT No. 19931 [sic] had been sold and was already owned by JS Francisco and Sons, Inc., thereby defrauding the said Eric C. Naval in the aforesaid amount of P123,000.00.

CONTRARY TO LAW.^[9]

In its decision^[10] dated December 27, 2006, the MTCC found the petitioner guilty beyond reasonable doubt of other forms of swindling under **Article 316, paragraph 2** of the Revised Penal Code, as amended, and sentenced her to suffer the penalty of imprisonment of two (2) months and one (1) day of *arresto mayor*.

The MTCC essentially ruled that the petitioner "represented to the complainant that the property is free from lien and encumbrance."^[11] It added that Naval relied on the first page of the title that had been shown to him, and that the petitioner deliberately did not inform him of the fact that she (petitioner) no longer owned the area sold.

Accordingly, the MTCC directed the petitioner to pay the following amounts to the offended party: (a) P123,000.00 fine with subsidiary imprisonment in case of insolvency; (b) P123,000.00 civil indemnity; (c) P65,755.45 as actual expenses incurred and proven; (d) P10,000.00 attorney's fees; and (e) P10,000.00 moral damages.

On appeal, the Regional Trial Court (RTC), Branch 16, Davao City, affirmed the MTCC decision *in toto*.^[12] The RTC essentially adopted the factual findings and the conclusions of the MTCC.

The petitioner moved to reconsider this decision, but the RTC denied her motion in its Order of May 29, 2007.

The petitioner challenged the RTC rulings before the CA via a petition for review, docketed as CA-G.R. CR No. 00429. In its resolution^[13] dated August 16, 2007, the CA directed the petitioner to "show cause why the petition should not be dismissed for its failure to: (1) allege the date of receipt of the assailed decision in the petition; (2) allege the date of receipt of the denial of the petitioner's motion for reconsideration with the court *a quo*; and (3) attach Exhibits "03" to "05" referred to on pages 8 and 9 of the petition."

In her *Compliance and Manifestation*,^[14] the petitioner specified the date when her counsel's messenger received the assailed RTC decision and order. She, however, manifested that her petition for review bore no Exhibits "'03" to "05" on pages 8-9.

In its resolution of November 28, 2007,^[15] the CA dismissed the petition for the petitioner's failure to attach the exhibits that would support the allegations of her petition in violation of Section 2, Rule 42 of the Rules of Court.

The petitioner moved to reconsider this decision, but the CA denied her motion in its resolution dated July 29, 2008.

THE PETITION FOR REVIEW ON CERTIORARI

In the present petition,^[16] the petitioner claimed that the CA erred in dismissing her petition for review on mere technicalities. She further argued that the courts *a quo* erred in convicting her of violation of Article 316, paragraph 2 of the Revised Penal Code because the Information charged her with violation of paragraph 1 of the same article. The petitioner also maintained that she did not misrepresent the subject land to be free from any lien or encumbrance.

OUR RULING

After due consideration, we resolve to **grant** the petition.

Noncompliance with Section 2, Rule 42 of the Rules of Court

The right to appeal is not a natural right and is not part of due process, but merely a statutory privilege to be exercised only in accordance with the law. As the appealing party, the petitioner must comply with the requirements of the relevant rules; otherwise, she loses the statutory right to appeal. We emphasize that the procedures regulating appeals as laid down in the Rules of Court must be followed because strict compliance with them is indispensable for the orderly and speedy disposition of justice.^[17]

Section 2, Rule 42 of the Rules of Court provides:

Section 2. *Form and contents.* - The petition shall be filed in seven (7) legible copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full names of the parties to the case, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the specific material dates showing that it was filed on time; (c) set forth concisely a statement of the matters involved, the issues raised, the specification of errors of fact or law, or both, allegedly committed by the Regional Trial Court, and the reasons or arguments relied upon for the allowance of the appeal; (d) **be accompanied by clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, certified correct by the clerk of court of the Regional Trial Court, the requisite number of plain copies thereof and of the pleadings and other material portions of the record as would support the allegations of the petition.** (emphasis ours)

Corollarily, Section 3 of this Rule states that, "[t]he failure of the petitioner to comply with any of the foregoing requirements regarding, among others, the contents of **and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.**"

We note that the CA exercised liberality in its treatment of the petitioner's petition for review when - instead of dismissing it outright - it still directed her to show

cause why her petition should not be dismissed for failing to strictly comply with Section 2 of Rule 42, particularly for failure to: (1) allege the date of receipt of the assailed decision in the petition; (2) allege the date of receipt of the denial of petitioner's motion for reconsideration; and (3) attach exhibits "03" to "05" referred to on pages 8 and 9 of the petition.^[18]

Instead of complying with the third directive, however, the petitioner stated that the petition had no exhibits "03" and "05" on pages 8-9. An examination of the records revealed that, indeed, exhibits "03" to "05" were stated on pages 4 to 5. The CA itself admitted that it inadvertently stated in its directive that exhibits "03" to "05" were on pages 8 and 9, instead of on pages 4 to 5.

Notwithstanding the CA's inadvertence, the petitioner ought to have complied with the latter's third directive, considering that there could have been no other exhibits "03" to "05" referred to other than those mentioned on pages 4 and 5 of the petition, namely TCT No. T-364319 (Exh. "03"); Extrajudicial Settlement of Estate with Renunciation of Shares, Donation and Deed of Absolute Sale (Exh. "04"); and Agreement to Buy and Sell (Exh. "05").

Without doubt, these documents would have supported the material allegations in the petitioner's petition for review. The petitioner should have been more prudent and vigilant in pursuing her petition, instead of capitalizing on the CA's misquotation of the pages. The CA already gave the petitioner the opportunity to rectify the procedural infirmities in her petition, but the latter did not take advantage of this liberality by exerting utmost diligence to comply with the CA's directives.

The records likewise showed that the petitioner did attach Exhibits "03" to "05" in her motion for reconsideration before the CA. The CA, nonetheless, disregarded these annexes due to the petitioner's failure to offer any explanation why she did not attach these documents to her petition. While the CA could have stretched the limits of its liberality a bit more, we could not fault it for ruling the way it did at that point since the petitioner did not even bother to offer any explanation why she did not attach these relevant documents to her petition. As the CA held:

Despite petitioner's second attempt to rectify the procedural infirmities in the motion for reconsideration by attaching therein the exhibits, yet, petitioner did not even proffer any explanation why she failed in the first instance to attach the same in the petition.

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Finally, concomitant to petitioner's plea for liberal application of the rules of procedure is her obligation to exert her utmost to comply therewith. Sadly, petitioner is wanting of the traits that could qualify her to invoke liberality in the application of the Rules.^[19]

What constitutes a good and sufficient cause that will merit a reconsideration of the dismissal of the petition is a discretionary call by the CA, and the Court will not interfere with the exercise of this prerogative unless there has been a grave abuse of discretion. Following the clear provisions of Section 2, in relation with Section 3, of Rule 42, we hold that the CA did not act in a whimsical, arbitrary, or capricious manner that amounted to an evasion or refusal to perform a positive duty enjoined

by law or to act at all in contemplation of law.

The petitioner's improper conviction under Article 316, paragraph 2 of the RPC

Notwithstanding the petitioner's noncompliance with Section 2, Rule 42, we resolve the substantive issue raised by the petitioner in the interest of justice. This Court has, on occasion, suspended the application of technical rules of procedure where matters of life, liberty, honor or property, among other instances, are at stake. It has allowed some meritorious cases to proceed despite inherent procedural defects and lapses on the principle that rules of procedure are mere tools designed to facilitate the attainment of justice. The strict and rigid application of rules that tends to frustrate rather than promote substantial justice must always be avoided.^[20]

Section 14(2) of Article III of the 1987 Constitution provides that an accused has the right to be informed of the nature and cause of the accusation against him. Indeed, Section 6, Rule 110 of the Revised Rules of Criminal Procedure requires that the acts or omissions complained of as constituting the offense must be alleged in the Information. Section 8 of said rule provides that the Information shall state the designation of the offense given by the statute and aver the acts or omissions constituting the offense. The real nature of the crime charged is determined by the facts alleged in the Information and not by the title or designation of the offense contained in the caption of the Information. It is fundamental that every element of which the offense is comprised must be alleged in the Information.^[21]

To recall, the prosecution charged the petitioner with the crime of other forms of swindling under Article 316, paragraph 1 of the Revised Penal Code, as amended, which punishes "[a]ny person who, pretending to be the owner of any real property, shall convey, sell, encumber, or mortgage the same."

The trial courts, however, convicted the petitioner under Article 316, paragraph 2 which punishes the act of any person who, knowing that real property is encumbered, shall dispose of the same, although such encumbrance is not recorded.

The elements of other forms of swindling under Article 316, paragraph 2 of the Revised Penal Code are as follows: (1) that the thing disposed of be real property; (2) that the offender knew that the real property was encumbered, whether the encumbrance is recorded or not; (3) that there must be express representation by the offender that the real property is free from encumbrance; and (4) that the act of disposing of the real property be made to the damage of another.^[22]

The Information in the present case, aside from expressly indicating in its caption that it is charging the petitioner under Article 316, paragraph 1 of the Revised Penal Code, alleged that the petitioner "with deceit and intent to defraud," pretended to be the lawful owner of a 200-square meter portion of a lot covered by TCT No. T-19932 despite her knowledge that the entire property had already been sold and was owned by JS Francisco. Notably, it had not been alleged that the petitioner *expressly represented* to Naval that the subject property was free from any encumbrance.

In *Nay a v. Abing*,^[23] the Court set aside the petitioner's conviction for *estafa* under