

SECOND DIVISION

[G.R. No. 188726, January 25, 2012]

**CRESENCIO C. MILLA, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES AND MARKET PURSUITS, INC. REPRESENTED BY
CARLO V. LOPEZ, RESPONDENTS.**

D E C I S I O N

SERENO, J.:

This is a Petition for Certiorari assailing the 22 April 2009 Decision^[1] and 8 July 2009 Resolution^[2] of the Court of Appeals, affirming the Decision of the trial court finding petitioner Cresencio C. Milla (Milla) guilty of two counts of *estafa* through falsification of public documents.

Respondent Carlo Lopez (Lopez) was the Financial Officer of private respondent, Market Pursuits, Inc. (MPI). In March 2003, Milla represented himself as a real estate developer from Ines Anderson Development Corporation, which was engaged in selling business properties in Makati, and offered to sell MPI a property therein located. For this purpose, he showed Lopez a photocopy of Transfer Certificate of Title (TCT) No. 216445 registered in the name of spouses Farley and Jocelyn Handog (Sps. Handog), as well as a Special Power of Attorney purportedly executed by the spouses in favor of Milla.^[3] Lopez verified with the Registry of Deeds of Makati and confirmed that the property was indeed registered under the names of Sps. Handog. Since Lopez was convinced by Milla's authority, MPI purchased the property for P2 million, issuing Security Bank and Trust Co. (SBTC) Check No. 154670 in the amount of P1.6 million. After receiving the check, Milla gave Lopez (1) a notarized Deed of Absolute Sale dated 25 March 2003 executed by Sps. Handog in favor of MPI and (2) an original Owner's Duplicate Copy of TCT No. 216445.^[4]

Milla then gave Regino Acosta (Acosta), Lopez's partner, a copy of the new Certificate of Title to the property, TCT No. 218777, registered in the name of MPI. Thereafter, it tendered in favor of Milla SBTC Check No. 15467111 in the amount of P400,000 as payment for the balance.^[5]

Milla turned over TCT No. 218777 to Acosta, but did not furnish the latter with the receipts for the transfer taxes and other costs incurred in the transfer of the property. This failure to turn over the receipts prompted Lopez to check with the Register of Deeds, where he discovered that (1) the Certificate of Title given to them by Milla could not be found therein; (2) there was no transfer of the property from Sps. Handog to MPI; and (3) TCT No. 218777 was registered in the name of a certain Matilde M. Tolentino.^[6]

Consequently, Lopez demanded the return of the amount of P2 million from Milla, who then issued Equitable PCI Check Nos. 188954 and 188955 dated 20 and 23 May

2003, respectively, in the amount of P1 million each. However, these checks were dishonored for having been drawn against insufficient funds. When Milla ignored the demand letter sent by Lopez, the latter, by virtue of the authority vested in him by the MPI Board of Directors, filed a Complaint against the former on 4 August 2003. On 27 and 29 October 2003, two Informations for *Estafa* Thru Falsification of Public Documents were filed against Milla and were raffled to the Regional Trial Court, National Capital Judicial Region, Makati City, Branch 146 (RTC Br. 146).^[7] Milla was accused of having committed *estafa* through the falsification of the notarized Deed of Absolute Sale and TCT No. 218777 purportedly issued by the Register of Deeds of Makati, viz:

CRIMINAL CASE NO. 034167

That on or about the 25th day of March 2003, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, a private individual, did then and there, wilfully, unlawfully and feloniously falsify a document denominated as "Deed of Absolute Sale", duly notarized by Atty. Lope M. Velasco, a Notary Public for and in the City of Makati, denominated as Doc. No. 297, Page No. 61, Book No. 69, Series of 2003 in his Notarial Register, hence, a public document, by causing it to appear that the registered owners of the property covered by TCT No. 216445 have sold their land to complainant Market Pursuits, Inc. when in truth and in fact the said Deed of Absolute Sale was not executed by the owners thereof and after the document was falsified, accused, with intent to defraud complainant Market Pursuits, Inc. presented the falsified Deed of Sale to complainant, herein represented by Carlo V. Lopez, and complainant believing in the genuineness of the Deed of Absolute Sale paid accused the amount of P1,600,000.00 as partial payment for the property, to the damage and prejudice of complainant in the aforementioned amount of P1,600,000.00

CONTRARY TO LAW.

CRIMINAL CASE NO. 034168

That on or about the 3rd day of April 2003, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, a private individual, did then and there wilfully, unlawfully and feloniously falsify a document denominated as Transfer Certificate of Title No. 218777 purportedly issued by the Register of Deeds of Makati City, hence, a public document, by causing it to appear that the lot covered by TCT No. 218777 was already registered in the name of complainant Market Pursuits, Inc., herein represented by Carlo V. Lopez, when in truth and in fact, as said accused well knew that the Register of Deeds of Makati did not issue TCT No. 218777 in the name of Market Pursuits Inc., and after the document was falsified, accused with intent to defraud complainant and complainant believing in the genuineness of Transfer Certificate of Title No. 218777 paid accused the amount of P400,000.00, to the damage and prejudice of complainant in the aforementioned amount of P400,000.00 (sic).

CONTRARY TO LAW.^[8]

After the prosecution rested its case, Milla filed, with leave of court, his Demurrer to Evidence.^[9] In its Order dated 26 January 2006, RTC Br. 146 denied the demurrer and ordered him to present evidence, but he failed to do so despite having been granted ample opportunity.^[10] Though the court considered his right to present evidence to have been consequently waived, it nevertheless allowed him to file a memorandum.^[11]

In its Joint Decision dated 28 November 2006,^[12] RTC Br. 146 found Milla guilty beyond reasonable doubt of two counts of *estafa* through falsification of public documents, thus:

WHEREFORE, judgment is rendered finding the accused Cresencio Milla guilty beyond reasonable doubt of two (2) counts of *estafa* through falsification of public documents. Applying the indeterminate sentence law and considering that the amount involved is more than P22,000.00 this Court should apply the provision that an additional one (1) year should be imposed for every ten thousand (P10,000.00) pesos in excess of P22,000.00, thus, this Court is constrained to impose the Indeterminate (sic) penalty of four (4) years, two (2) months one (1) day of prision correccional as minimum to twenty (20) years of reclusion temporal as maximum for each count.

Accused is adjudged to be civilly liable to the private complainant and is ordered pay (sic) complainant the total amount of TWO MILLION (P2,000,000.00) PESOS with legal rate of interest from the filing of the Information until the same is fully paid and to pay the costs. He is further ordered to pay attorney's fees equivalent to ten (10%) of the total amount due as and for attorney's fees. A lien on the monetary award is constituted in favor of the government, the private complainant not having paid the required docket fee prior to the filing of the Information.

SO ORDERED.^[13]

On appeal, the Court of Appeals, in the assailed Decision dated 22 April 2009, affirmed the findings of the trial court.^[14] In its assailed Resolution dated 8 July 2009, it also denied Milla's subsequent Motion for Reconsideration.^[15]

In the instant Petition, Milla alleges that the Decision and the Resolution of the Court of Appeals were not in accordance with law and jurisprudence. He raises the following issues:

- I. Whether the case should be reopened on the ground of negligence of counsel;
- II. Whether the principle of novation is applicable;

- III. Whether the principle of simple loan is applicable;
- IV. Whether the Secretary's Certificate presented by the prosecution is admissible in evidence;
- V. Whether the supposed inconsistent statements of prosecution witnesses cast a doubt on the guilt of petitioner.^[16]

In its Comment, MPI argues that (1) Milla was not deprived of due process on the ground of gross negligence of counsel; (2) under the Revised Penal Code, novation is not one of the grounds for the extinction of criminal liability for *estafa*; and (3) factual findings of the trial court, when affirmed by the Court of Appeals, are final and conclusive.^[17]

On the other hand, in its Comment, the Office of the Solicitor General contends that (1) Milla was accorded due process of law; (2) the elements of the crime charged against him were established during trial; (3) novation is not a ground for extinction of criminal liability for *estafa*; (4) the money received by Milla from Lopez was not in the nature of a simple loan or cash advance; and (5) Lopez was duly authorized by MPI to institute the action.^[18]

In his Consolidated Reply, Milla reiterates that the negligence of his former counsel warrants a reopening of the case, wherein he can present evidence to prove that his transaction with MPI was in the nature of a simple loan.^[19]

In the disposition of this case, the following issues must be resolved:

- I. Whether the negligence of counsel deprived Milla of due process of law
- II. Whether the principle of novation can exculpate Milla from criminal liability
- III. Whether the factual findings of the trial court, as affirmed by the appellate court, should be reviewed on appeal

We resolve to deny the Petition.

Milla was not deprived of due process.

Milla argues that the negligence of his former counsel, Atty. Manuel V. Mendoza (Atty. Mendoza), deprived him of due process. Specifically, he states that after the prosecution had rested its case, Atty. Mendoza filed a Demurrer to Evidence, and that the former was never advised by the latter of the demurrer. Thus, Milla was purportedly surprised to discover that RTC Br. 146 had already rendered judgment finding him guilty, and that it had issued a warrant for his arrest. Atty. Mendoza filed an Omnibus Motion for Leave to File Motion for New Trial, which Milla claims to have been denied by the trial court for being an inappropriate remedy, thus, demonstrating his counsel's negligence. These contentions cannot be given any merit.

The general rule is that the mistake of a counsel binds the client, and it is only in instances wherein the negligence is so gross or palpable that courts must step in to

grant relief to the aggrieved client.^[20] In this case, Milla was able to file a Demurrer to Evidence, and upon the trial court's denial thereof, was allowed to present evidence.^[21] Because of his failure to do so, RTC Br. 146 was justified in considering that he had waived his right thereto. Nevertheless, the trial court still allowed him to submit a memorandum in the interest of justice. Further, contrary to his assertion that RTC Br. 146 denied the Motion to Recall Warrant of Arrest thereafter filed by his former counsel, a reading of the 2 August 2007 Order of RTC Br. 146 reveals that it partially denied the Omnibus Motion for New Trial and Recall of Warrant of Arrest, but granted the Motion for Leave of Court to Avail of Remedies under the Rules of Court, allowing him to file an appeal and lifting his warrant of arrest.^[22]

It can be gleaned from the foregoing circumstances that Milla was given opportunities to defend his case and was granted concomitant reliefs. Thus, it cannot be said that the mistake and negligence of his former counsel were so gross and palpable to have deprived him of due process.

The principle of novation cannot be applied to the case at bar.

Milla contends that his issuance of Equitable PCI Check Nos. 188954 and 188955 before the institution of the criminal complaint against him novated his obligation to MPI, thereby enabling him to avoid any incipient criminal liability and converting his obligation into a purely civil one. This argument does not persuade.

The principles of novation cannot apply to the present case as to extinguish his criminal liability. Milla cites *People v. Nery*^[23] to support his

contention that his issuance of the Equitable PCI checks prior to the filing of the criminal complaint averted his incipient criminal liability. However, it must be clarified that mere payment of an obligation before the institution of a criminal complaint does not, on its own, constitute novation that may prevent criminal liability. This Court's ruling in *Nery* in fact warned:

It may be observed in this regard that novation is not one of the means recognized by the Penal Code whereby criminal liability can be extinguished; hence, the role of novation may only be to either prevent the rise of criminal liability or to cast doubt on the true nature of the original petition, whether or not it was such that its breach would not give rise to penal responsibility, as when money loaned is made to appear as a deposit, or other similar disguise is resorted to (cf. *Abeto vs. People*, 90 Phil. 581; *Villareal*, 27 Phil. 481).

Even in Civil Law the acceptance of partial payments, without further change in the original relation between the complainant and the accused, can not produce novation. For the latter to exist, there must be proof of intent to extinguish the original relationship, and such intent can not be inferred from the mere acceptance of payments on account of what is totally due. Much less can it be said that the acceptance of partial satisfaction can effect the nullification of a criminal liability that is fully matured, and already in