

SECOND DIVISION

[G.R. No. 161651, June 01, 2011]

**ELVIRA LATEO Y ELEAZAR, FRANCISCO ELCA Y ARCAS, AND
BARTOLOME BALDEMOR Y MADRIGAL, PETITIONERS, VS.
PEOPLE OF THE PHILIPPINES, RESPONDENT.**

D E C I S I O N

NACHURA, J.:

On appeal is the August 7, 2003 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR No. 23240, which affirmed with modification the March 17, 1998^[2] decision of the Regional Trial Court (RTC) of Pasay City, Branch 109, convicting Elvira Lateo (Lateo), Francisco Elca (Elca), and Bartolome Baldemor (Baldemor) of attempted *estafa*.

On April 28, 1995, Lateo, Elca, and Baldemor (petitioners), along with Orlando Lalota (Lalota) and Nolasco de Guzman (De Guzman), were charged with *estafa* in an information, which reads:

That on or about April 27, 1995, in Pasay City, Metro Manila and within the jurisdiction of this Honorable Court, accused ELVIRA LATEO y ELEAZAR, conspiring and confederating with FRANCISCO ELCA y ARCAS, BARTOLOME BALDEMOR y MADRIGAL, ORLANDO LALOTA and NOLASCO DE GUZMAN, and mutually helping one another, acting in common accord, by means of deceit, that is, by falsely representing themselves to be the true and [lawful] owner of a piece of land located in the province of Cavite, and possessing power, influence, qualification, property, credit, agency, business, or imaginary transactions and by means of other similar deceits, did then and there, willfully, unlawfully and feloniously induce ELEONOR LUCERO to part with her money in the amount of TWO MILLION (P2,000,000.00) PESOS, Philippine Currency, as indeed she parted only with the amount of Two Hundred Thousand (P200,000.00) PESOS, Philippine Currency, which said accused actually received in marked Philippine Currency, to the damage and prejudice of said ELEONOR LUCERO in the aforestated amount of Two Hundred Thousand Pesos (P200,000.00) PESOS Philippine Currency.

CONTRARY TO LAW. ^[3]

When arraigned on May 31, 1995, petitioners, with the assistance of their counsel, entered their respective pleas of not guilty. Accused Lalota and De Guzman remained at large.

Trial on the merits then ensued. The prosecution's version of the facts is summarized by the CA in this wise:

Sometime in 1994, [petitioners] Lateo and Elca proposed that [Lucero] finance the titling of the 122 hectares of land located in Muntinlupa allegedly owned by [petitioner] Elca as the sole heir of Gregorio Elca. Title to the property had not been transferred to [petitioner] Elca's name because of a certain discrepancy between the Deed of Sale and TCT No. 77730. [Petitioner] Elca offered to assign to [Lucero] 70 hectares of said land. She was then introduced to [petitioner] Baldemor, Orlando Lalota and Nolasco de Guzman.

[Lucero] released to [petitioners] about P4.7 million in staggered amounts. [Petitioner] Elca told [Lucero] that certain portions of the property will first be put in the name of [petitioner] Lateo and would later be assigned to her. [Lucero] was given a Deed of Sale dated March 27, 1987. [Petitioner] Elca likewise executed an irrevocable Special Power of Attorney in favor of [Lucero]. Later, she was presented certified true copies of three (3) titles, TCT Nos. 195550, 195551 and 195552 issued by the Register of Deeds of Makati City in the name of [petitioner] Lateo covering approximately twenty-seven (27) hectares of Plan A-7 of the Muntinlupa Estate, situated in Barrio Magdaong, Poblacion, Muntinlupa. However, [in] December 1994, when [Lucero] verified with the Registry of Deeds of Makati, she discovered that the aforesaid titles of the property were actually registered in the names of Marc Oliver R. Singson, Mary Jeanne S. Go and Feliza C. Torrigoza.

[Lucero] confronted [petitioners] and demanded from them [the] return of the money. She was told that they did not have any money to return. They instead offered a five (5) hectare property identified as Lot 10140 of Plan Sgs 04213-000441 located at Bacoar, Cavite allegedly owned by [petitioner] Elca. [Petitioner] Elca, however, demanded an additional P2 million for the transfer of title.

When [Lucero] verified with the Land Management Bureau (LMB), she discovered that [petitioner] Elca only had a pending application for the sales patent over a four (4)[-hectare] area of the subject land. These misrepresentations prompted her to file a complaint with the Task Force Kamagong, PACC, Manila.

On April 26, 1995, the task force conducted an entrapment at Furosato Restaurant. [Petitioners] were apprehended in possession of marked 100-peso bills amounting to P100,000.00, supposedly in exchange for the Deed of Assignment prepared by [Lucero] for their transaction. ^[4]

Petitioners' version, on the other hand, is summed up as follows:

Sometime in 1994, [Lucero], [petitioner] Lateo, Oscar Lalota met with [petitioner] Elca in Muntinlupa to discuss the proposal of [Lucero] to finance the titling of [petitioner] Elca's land.

On June 28, 1994, in a meeting called by [Lucero], she laid down the terms and conditions regarding her plans to finance the titling of [petitioner] Elca's land. She proposed that 22 out of the 122 hectares of the land would be given to the old tenants of the property, the 30 hectares would be titled in the name of [petitioner] Elca as his retained share and the other 70 hectares would be her profit as financier of the

transaction. [Lucero] would also pay P10.00 for every square meter of the 70 hectares or a total amount of P7 million. All the expenses for the titling and management of the land would be deducted from P7 million. The remaining balance would then be given to [petitioners].

[Lucero] assigned Oscar Lalota to work for the titling of the land and to prepare all documents necessary thereto. [Petitioner] Baldemor would act as overseer of the transaction as [Lucero's] attorney-in-fact. [Petitioner] Lateo would serve as secretary and assistant of [Lucero]. [Petitioner] Elca would guard the property to keep off squatters. He and his wife were instructed to sign all documents prepared by Oscar Lalota.

In December 1994, [Lucero] told [petitioner] Elca that upon verification from the Registry of Deeds of Makati City, she found out that all the documents submitted by Oscar Lalota pertaining to their transaction were falsified. Oscar Lalota disappeared after getting the money.

In order to recover her losses from the anomalous transaction, [Lucero] offered to purchase [petitioner] Elca's property in Cavite. [Petitioner] Elca agreed to sell 2 hectares of his property at a price of P100.00 per square meter. [Petitioner] Elca informed [Lucero] that the land was not yet titled although the documents had already been completed. [Lucero] agreed to pay in advance the amount of P200,000.00 for the immediate titling of the land.

On December 21, 1994, however, [Lucero] gave no advance payment. [Petitioner] Elca was made to return [in] January 1995. On that date still [Lucero] made no payment.

On [April] 25, 1995, [Lucero] promised to give the P200,000.00 advance payment at Furosato Restaurant [on] Roxas Boulevard, Pasay City. Having failed to contact his lawyer, on [April] 26, 1995, [petitioner] Elca went alone to Furosato Restaurant. Because of the absence of [petitioner] Lateo, [Lucero] postponed their meeting to [April] 27, 1995.

When [petitioner] Elca arrived at Furosato Restaurant on [April] 27, 1995, [Lucero] and her lawyer Atty. Velasquez, [petitioners] Lateo and Baldemor and Atty. Ambrosio were already there. Atty. Velasquez, upon the order of [Lucero], produced a document entitled "Contract to Sell" outlining their agreement over the 2 hectares of land in Bacoar, Cavite. Atty. Ambrosio examined the contract to find out if it contains the terms and conditions agreed upon. Attys. Velasquez and Ambrosio made their own handwritten corrections in the contract including the change of the title from "Contract to Sell" to "Deed of Assignment," after which, both of them signed the document. [Petitioner] Elca and [Lucero] signed the document as parties while [petitioners] Lateo and Baldemor signed as witnesses.

After the signing of the Deed of Assignment, [Lucero] brought out the P200,000.00 as the promised payment for the land. While [petitioner] Baldemor was counting the money, Atty. Velasquez and [Lucero] went to the comfort room. Thereafter, several agents of the PACC approached them. They were arrested and brought to the NBI Headquarters. [5]

After trial, the RTC rendered a decision^[6] dated March 17, 1998, viz.:

It should be noted that the transaction over the Cavite property was a continuation of and is somehow related to their first transaction. The same was offered to [Lucero] in lieu of the Muntinlupa property with Francisco Elca telling [Lucero] just to add another two million (P2,000,000.00) pesos plus expenses for titling and the property can be transferred to her.

The second transaction which covers the Bacoor property was again an attempt to defraud [Lucero] when Francisco Elca again represented himself as the owner of the said property when in truth and in fact his right was merely derived from his application to purchase Friar Lands dated June 25, 1992 which at the time of the transaction was still being protested as shown by the Investigation Report of Rogelio N. Bruno, Special Investigator II, DENR, Land Management Bureau (Exhibit "LLLL") hence accused has no right and/or authority to deliver or transfer the ownership over said parcel of land to [Lucero].

In the case of Celino vs. CA 163 SCRA 97, it was held that "Estafa under Art. 315 (2) (a) of the Revised Penal Code is committed by means of using fictitious name or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transaction or by means of other similar deceits. Further, in the case of Villaflor vs. CA 192 SCRA 680, the Supreme Court held: what is material is the fact that appellant was guilty of fraudulent misrepresentation when knowing that the car was then owned by the Northern Motors, Inc., still he told the private complainant that the car was actually owned by him for purposes of and at the time he obtained the loan from the latter. Indubitably, the accused was in bad faith in obtaining the loan under such circumstance.

The attempt to defraud the complainant did not materialize due to the timely intervention of the Task Force Kamagong operatives.

Art. 6, par. 3 of the Revised Penal Code provides that "there is an attempt when the offender convinces (sic) the commission of a felony directly by overt acts and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance." The entrapment thus prevented the consummation of the transaction over the Cavite property.

x x x [I]n the case of Koh Tieck Heng vs. People 192 SCRA 533, the Court held [that] "although one of the essential elements of Estafa is damage or prejudice to the offended party, in the absence of proof thereof, the offender would x x x be guilty of attempted *estafa*." Appellant commenced the commission of the crime of *estafa* but he failed to perform all the acts of execution which would produce the crime not by reason of [their] spontaneous desistance but because of his apprehension of the authorities before they could obtain the amount. Since only the intent to cause damage and not the damage itself has been shown respondent court correctly convicted appellant of attempted *estafa*.

The culpability of x x x the accused is strengthened by the transfer of his rights over the same subject land in Cavite in favor of Leticia Ramirez (Exhibit "NNNN") thus clearly influencing his intention to defraud herein complainant as the same shows his lack of intent to transfer his rights and/or ownership to complainant.

The representations made by Francisco Elca that he owns the property in Bacoar, Cavite, his having offered the same again to the complainant in lieu of the aborted deal in the Muntinlupa property their constant follow-up of complainant's decision over the matter convincing the complainant to accept the offer and their persona[l] presence at the place of entrapment and their receipt of the P100,000.00 marked money which they even counted one after the other, thus making all of them positive of the presence of fluorescent powder. Those among others indicate strongly that all three accused Francisco Elca, Elvira Lateo and Bartolome Baldemor attempted to deceive and defraud complainant Eleanor Lucero.

[7]

The RTC decreed that:

IN VIEW OF ALL THE FOREGOING, the Court finds all accused Francisco Elca, Elvira Lateo and Bartolome Baldemor guilty beyond reasonable doubt of attempted Estafa and is hereby sentenced to imprisonment of Ten (10) years and One (1) Day to Twelve (12) Years.

SO ORDERED. [8]

Petitioners filed a motion for reconsideration^[9], but the RTC denied it on December 28, 1998. ^[10]

Petitioners appealed to the CA, assigning in their brief the following errors allegedly committed by the trial court:

I. That with due respect to the Honorable Court, it is respectfully submitted that it erred in finding that THEY ARE GUILTY OF THE CRIME OF ATTEMPTED ESTAFA UNDER ARTICLE 315 PAR. 2(a) OF THE REVISED PENAL CODE.

II. That the basis of the findings of the Honorable Court that they (three accused) are guilty of attempted *estafa* is not in accordance with the evidence on record.

III. That the Honorable Court erred in the imposition of the appropriate penalty based on its findings assuming without admitting that they (three accused) are guilty of attempted estafa. ^[11]

The CA was not at all persuaded by petitioners' arguments and sustained petitioners' conviction, although with modification as to the penalty imposed. The decretal portion of the CA Decision reads:

WHEREFORE, premises considered, the assailed decision is hereby **AFFIRMED** with **MODIFICATION** as to the penalty imposed. [Petitioners] Elvira E. Lateo, Francisco A. Elca and Bartolome M. Baldemor are hereby sentenced to suffer an indeterminate penalty of *six*