

TWENTY-SECOND DIVISION

[CA-G.R. CR NO. 00870-MIN, January 22, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GENOVEVA A. CABANA, ACCUSED-APPELLANT.**

D E C I S I O N

LOPEZ, J.:

Before Us is an Appeal from the Decision dated May 16, 2011^[1] rendered by the Regional Trial Court, Branch 26, of Medina, Misamis Oriental in Criminal Case No. 1822-M (2009), the *fallo* of which reads:

WHEREFORE, the accused is adjudged GUILTY of the crime of *estafa* and she is sentenced to suffer the indeterminate penalty of Four (4) years and Two (2) months of *prision correccional* as the minimum to Twenty (20) years of *reclusion temporal* as the maximum, and to pay the private offended party the sum of One Hundred Eighty Thousand (P180,000.00). With costs.

SO ORDERED.

The factual antecedents are as follows:

In 1999, Evelyn Abao, daughter of herein private complainant Eduardo H. Paraguya, met accused-appellant Genoveva A. Cabana while she was working at a restaurant in Gingoog City. The two became fast friends, and when Genoveva learned that Evelyn's mother, Teotema, was often sick, she offered to go visit her. Evelyn complied and took Genoveva to her parents' house in Buko, Kinoguitan, Misamis Oriental in time for the milkfish harvest. There, Genoveva was introduced to Eduardo and Teotema, and she offered her services as a healer.^[2] She informed Eduardo that she and her family were famous in their hometown of Siquijor because of their powerful healing ability and could easily administer to his wife's illness. Eduardo readily agreed and found it weird when accused-appellant asked for the substantial amount of P3,000.00 to buy a large candle (*perdon*). However, he was such in dire need of help that he dismissed the thought. Accused-Appellant became a regular guest in their house, until she and her children came to stay with them so she could continuously perform healing rituals.

When accused-appellant learned that another of Eduardo's daughter, Eva, was suffering from tonsillitis, she also offered to heal her. Despite the fact that Eva was living in Sweden, accused-appellant claimed to have been treating Eva over the internet by making massaging motions on her image on the computer monitor.^[3] During this time, accused asked for money to buy another *perdon* to use during treatments, healing oil to send to Sweden, and a cow, supposedly to fight off the evil spirits causing their sickness. She was also provided with cellphone load and credit. Evelyn made a list of all the expenses, which documents she testified to in

open court.^[4] Whenever Evelyn would ask her about the healing methods, accused-appellant would avoid the topic.

Aside from the cash given to her for healing Eduardo's wife and daughter, accused-appellant also successfully convinced them that some of the items they kept in their house were possessed of evil spirits. She persuaded him to give her the custody of some of the items from his residence for her to take to her house, all in the guise of expelling the evil spirits residing therein.^[5] Since, Eduardo was always away, the items were listed by Esther and Evelyn.^[6]

Items given to her for exorcism on June 16, 2006 were the following:

1. 130 pcs Thesaurus
2. 3 rolls white cloth (big)
3. 3 rolls white cloth (medium)
4. 3 rolls eyelet cloth (big)
5. 3 rolls eyelet cloth (medium)
6. 3 rolls yellow cloth used for skirting (big)
7. 3 rolls blue cloth used for skirting (big)
8. 1 bundle blue cloth with pink eyelet design
9. 1 bundle blue cloth with white eyelet design
10. 1 table cloth eyelet
11. 20 pcs yellow cloth curtain
12. 30 pcs blue cloth curtain
13. 30 pcs stuff toys
14. 50 pcs compact discs
15. 10 rolls dark blue cloth

On the same date, accused was also given the passports of Evelyn and Esther and the driver's license of Elecio Paraguaya. She had assured them that she could help them obtain employment overseas through her connections.

On October 29, 2006, she also obtained custody of the following goods also for "healing":

1. Fishpond sketch plan
2. Chain saw
3. Microwave oven
4. Vacuum cleaner
5. Samsonite bags with wheels
6. 2 rolls wall carpet (small)
7. 2 rolls wall carpet (big)
8. Framed crosstitch (big)
9. 1 set big doorknob
10. 1 gallon water based adhesive
11. 59 pcs cabinet doors with cross design
12. 30 pcs v-cut lumber 12"
13. 20 pcs baluster
14. 8 pcs door holder
15. 10 pcs door chain
16. 15 pcs *banda* orchids

The following year, she also brought the following from Eduardo's house to hers:

January 7, 2007 – 6 boxes vinyl tiles
January 8, 2007 – 15 pcs *G-melina* lumber 2x2x16
February 10, 2007 – 12 pcs Tugas lumber 2x2x6
March 2007 – 1 lactating sow
March 26, 2007 – 12 pcs *G-melina* lumber 2x2x8
May 28, 2007 – 15 pcs giant *Ipil-Ipil* lumber
June 2007 – 3 pieces cut lumber

The total value of these items was pegged at P188,655.00.^[7]

Aside from the personal properties entrusted to accused-appellant, Eduardo also gave her Original Certificate of Title (OCT) P-3707 covering a parcel of land located in Gusa, Cagayan de Oro City. She had confided in him that as a personal friend of Cynthia Villar, a well-known realty developer, accused-appellant was interested in building a condominium on the property.^[8]

Upon taking of these items, accused guaranteed to Eduardo that the healing procedure would take about six months. When the period expired, Eduardo expected Teotema and Eva's full recovery, along with the return of his properties cleansed of the spirits residing therein. After waiting in vain, Eduardo made various demands on Genoveva which were not followed.

This incessant refusal led Eduardo to file a criminal complaint for Estafa before the Prosecutor's Office and the National Bureau of Investigation (NBI). Accused then returned some of the items, including Original Certificate of Title (OCT) No. 3707, the title to Eduardo's 3.7 hectare property in Gusa, Cagayan de Oro. This title was entrusted to her along with a Special Power of Attorney in her favor after accused revealed that she was a friend of Cynthia Villar, a big time realtor, who would develop the property.

The unreturned items as of the time of hearing were 31 pieces of the Thesaurus, baluster, cabinet doors, door holders, door chains, several pieces of lumber, and the boxes of vinyl tiles which were found to have already been installed in accused's newly-constructed house.

Other than the items listed, accused was also given by Evelyn a total of P200,000.00 for processing of documents for work abroad. They were never deployed abroad despite her promise and they eventually filed a complaint for illegal recruitment against accused.

A preliminary investigation was conducted by the Office of the Provincial Prosecutor of Misamis Oriental,^[9] and on January 13, 2009, an Information for Estafa^[10] was filed against accused, to wit:

The undersigned Assistant Provincial Prosecutor accuses GENOVEVA A. CABANA for the crime of ESTAFA, committed as follows:

That on or about May 2006, to January 7, 2007, at Buko, Kinoguitan, Misamis Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused by falsely pretending to possess power and influence, did then and there willfully, unlawfully and feloniously defraud

EDUARDO H. PARAGUYA by which the accused have pretended to cast out evil spirits supposedly inhabiting the house of said Eduardo H. Paraguya and in consideration thereof, took some of his personal properties and cash of One Hundred Eighty Thousand (P180,000.00) pesos, and the so-called evil spirits have still remained in the house thereof, consequently he demanded the return of his personal properties including the money taken from him but, said accused willfully and feloniously refuses to return despite demand instead accused have misapplied, misappropriated and converted the amount into his personal use and benefit, to the damage and prejudice to said Eduardo H. Paraguya.

CONTRARY TO LAW and in violation of Article 315 par. 2, sub paragraph (a) of the Revised Penal Code.

The case was raffled to the Regional Trial Court, Branch 26, of Medina, Misamis Oriental (hereafter, RTC-Branch 26) on February 6, 2006.^[11] Upon finding of probable cause to issue a warrant of arrest, the Presiding Judge issued an Order^[12] for a Warrant of Arrest.^[13] Bail was fixed at P40,000.00.

Accused voluntarily surrendered on March 9, 2009 and was ordered committed at the Medina, Misamis Oriental Municipal Jail.^[14] Upon the grant of her Motion For Reduction of Bailbond,^[15] she filed the required amount and was released per Order dated March 13, 2009^[16] of the RTC-Branch 26.

Accused pleaded Not Guilty during her arraignment on March 27, 2009.^[17] Trial ensued thereafter.

In her defense, accused gave this account:

In February 2006, accused, together with Evelyn, went to private complainant's house in order to buy milkfish. Upon learning that she was a businesswoman, Eduardo offered to put up businesses with her, with himself as financier and accused as industrial partner. In fact, private complainant was very insistent that they become business partners that he even went to her house twice to convince her.^[18] The businesses were supposed to be located on his property in Gusa, Cagayan de Oro and, to persuade her, he promptly executed a Special Power of Attorney in her favor so she could start developing the property. The plan did not push through, however, because informal settlers had already occupied the lot. Instead, Eduardo decided to put up the piggery and poultry businesses and a *sari-sari* store in Buko. A business permit was issued for the piggery and poultry businesses^[19] by the *punong barangay* of Buko, Kinoguitan and business taxes were paid to the Kinoguitan Municipal Treasurer.^[20] A furniture business,^[21] registered under the name of Eduardo and accused's husband, was also put up.^[22] In the course of preparation, accused purchased construction supplies and hardware materials.^[23] The construction halted only because private complainant filed the *estafa* complaint against her.

In the course of their business partnership, Evelyn was asked to decorate accused-appellant's new house so some items were brought there.^[24] These items have long

been returned when the disagreement between private complainant and accused-appellant began.^[25] Accused-appellant also admitted while she did send to Eduardo's daughter in Sweden some items, these were Chinese house decorations, not healing oil as claimed by him. Asked pointblank if she believed in paranormal activities, she responded in the negative.

On May 6, 2011, the RTC-Branch ^[26], Medina rendered the herein assailed Decision finding accused-appellant guilty as charged.²⁶

Accused-appellant filed her Notice of Appeal^[27] which was granted on June 22, 2011.^[28]

In a Resolution dated July 17, 2012, the Appeal was deemed submitted for decision.^[29]

ISSUES:

I. WHETHER OR NOT THE PROSECUTION HAS PRESENTED COMPETENT EVIDENCE ESTABLISHING THE NECESSARY ELEMENTS OF ESTAFA TO BE PRESENT IN THE CASE AT BAR;

II. WHETHER OR NOT THE ACCUSED HAS DEFRAUDED THE PRIVATE COMPLAINANT WHEN HE DELIVERED THE PROPERTIES TO THE ACCUSED;

III. WHETHER OR NOT THE EVIDENCE OFFERED BY THE PROSECUTION HAS SUFFICIENTLY OVERCOME THE PRESUMPTION OF INNOCENCE ON THE PART OF ACCUSED, OR HAS ESTABLISHED THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.

RULING:

Accused-Appellant bewails her conviction despite what she perceived was insufficiency of evidence to support it. She points out that it was unlikely for an educated person like private complainant to fall victim to a clear hoax. She laments that because their business relations had gone sour, accused-appellant is now trying to pin her for something she is innocent of.

We find the Appeal bereft of merit.

The cumulative acts subject of this complaint are penalized under Article 315, paragraph 2(a) of the RPC, wherein *estafa* is committed by any person who shall defraud another by false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud. It is committed by using fictitious name, or by pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.^[30] Succinctly, she was convicted by the court *a quo* of *estafa* by means of deceit after it found that these requisites were present:

- a) that there must be a false pretense or fraudulent representation as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions;