

FIRST DIVISION

[G.R. No. 162826, October 14, 2013]

**NARCISO DEGAÑOS,^[1] PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

BERSAMIN, J.:

Novation is not a mode of extinguishing criminal liability under the penal laws of the country. Only the State may validly waive the criminal action against an accused. Novation is relevant only to determine if the parties have meanwhile altered the nature of the obligation prior to the commencement of the criminal prosecution in order to prevent the incipient criminal liability of the accused.

Antecedents

In an amended information dated March 23, 1994, the Office of the Provincial Prosecutor of Bulacan charged Brigida D. Luz, *alias* Aida Luz, and Narciso Degaños in the Regional Trial Court in Malolos, Bulacan with *estafa* under Article 315 paragraph 1(b) of the *Revised Penal Code*, allegedly committed as follows:

That on or about the 27th day of April, 1987 until July 20, 1987, in the municipality of Meycauayan, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and helping one another, received from Spouses Atty. Jose Bordador and Lydia Bordador gold and pieces of jewelry worth P438,702.00, under express obligation to sell the same on commission and remit the proceeds thereof or return the unsold gold and pieces of jewelry, but the said accused, once in possession of the said merchandise and far from complying with their aforesaid obligation, inspite of repeated demands for compliance therewith, did then and there willfully, unlawfully and feloniously, with intent of gain and grave abuse of confidence misapply, misappropriate and convert to their own use and benefit the said merchandise and/or the proceeds thereof, to the damage and prejudice of said Sps. Atty. Jose Bordador and Lydia Bordador in the said amount of P438,702.00.

Contrary to law.^[2]

The decision of the Court of Appeals (CA) summarized the evidence of the parties as follows:

Prior to the institution of the instant case, a separate civil action for the recovery of sum of money was filed on June 25, 1990 by the private complainants spouses Jose and Lydia Bordador against accused Brigida D. Luz alias Aida D. Luz and Narciso Degaños. In an amended complaint dated November 29, 1993, Ernesto Luz, husband of Brigida Luz, was impleaded as party defendant. The case docketed as Civil Case No. 412-M-90 was raffled to Branch 15, RTC of Malolos, Bulacan. On June 23, 1995, the said court found Narciso Degaños liable and ordered him to pay the sum of P725,463.98 as actual and consequential damages plus interest and attorney's fees in the amount of P10,000.00. On the other hand, Brigida Luz alias Aida Luz was ordered to pay the amount of P21,483.00, representing interest on her personal loan. The case against Ernesto Luz was dismissed for insufficiency of evidence. Both parties appealed to the Court of Appeals. On July 9, 1997, this Court affirmed the aforesaid decision. On further appeal, the Supreme Court on December 15, 1997 sustained the Court of Appeals. Sometime in 1994, while the said civil case was pending, the private complainants instituted the present case against the accused.

EVIDENCE FOR THE PROSECUTION

The prosecution evidence consists of the testimonies of the private complainants-spouses, Jose and Lydia Bordador.

Private complainant Lydia Bordador, a jeweler, testified that accused Narciso Degaños and Brigida/Aida Luz are brother and sister. She knew them because they are the relatives of her husband and their Kumpadre/kumadre. Brigida/Aida Luz was the one who gave instructions to Narciso Degaños to get gold and jewelry from Lydia for them to sell. Lydia came to know Narciso Degaños because the latter frequently visited their house selling religious articles and books. While in their house, Narciso Degaños saw her counting pieces of jewelry and he asked her if he could show the said pieces of jewelry to his sister, Brigida/Aida Luz, to which she agreed. Thereafter, Narciso Degaños returned the jewelry and Aida/Brigida Luz called her to ask if she could trust Narciso Degaños to get the pieces of jewelry from her for Aida/Brigida Luz to sell. Lydia agreed on the condition that if they could not pay it in cash, they should pay it after one month or return the unsold jewelry within the said period. She delivered the said jewelry starting sometime in 1986 as evidenced by several documents entitled "Katibayan at Kasunduan", the earliest of which is dated March 16, 1986. Everytime Narciso Degaños got jewelry from her, he signed the receipts in her presence. They were able to pay only up to a certain point. However, receipt nos. 614 to 745 dated from April 27, 1987 up to July 20, 1987 (Exhs. "A"- "O") were no longer paid and the accused failed to return the jewelry covered by such receipts. Despite oral and written demands, the accused failed and refused to pay and return the subject jewelry. As of October 1998, the total obligation of the accused amounted to P725,000.00.

Private complainant Atty. Jose Bordador corroborated the testimony of his wife, Lydia. He confirmed that their usual business practice with the accused was for Narciso Degaños to receive the jewelry and gold items

for and in behalf of Brigida/Aida Luz and for Narciso Degaños to sign the "Kasunduan at Katibayan" receipts while Brigida/Aida Luz will pay for the price later on. The subject items were usually given to Narciso Degaños only upon instruction from Brigida/Aida Luz through telephone calls or letters. For the last one year, the "Kasunduan at Katibayan" receipts were signed in his presence. Said business arrangement went on for quite sometime since Narciso Degaños and Brigida/Aida Luz had been paying religiously. When the accused defaulted in their payment, they sent demand letters. It was the accused's sister, Julie dela Rosa, who responded, seeking an extension of time for the accused to settle their obligation.

EVIDENCE FOR THE DEFENSE

The defense presented accused Brigida/Aida Luz, who testified that she started transacting business of selling gold bars and jewelry with the private complainants sometime in 1986 through her brother, Narciso Degaños. It was the usual business practice for Narciso Degaños to get the gold bars and pieces of jewelry from the private complainants after she placed orders through telephone calls to the private complainants, although sometimes she personally went to the private complainants' house to get the said items. The gold bars and pieces of jewelry delivered to her by Narciso Degaños were usually accompanied by a pink receipt which she would sign and after which she would make the payments to the private complainants through Narciso Degaños, which payments are in the form of postdated checks usually with a thirty-day period. In return, the private complainants would give the original white receipts to Narciso Degaños for him to sign. Thereafter, as soon as the postdated checks were honored by the drawee bank, the said white receipts were stamped "paid" by Lydia Bordador, after which the same would be delivered to her by Narciso Degaños.

On September 2, 1987, she sent a letter to private complainant Lydia Bordador requesting for an accounting of her indebtedness. Lydia Bordador made an accounting which contained the amount of P122,673.00 as principal and P21,483.00 as interest. Thereafter, she paid the principal amount through checks. She did not pay the interest because the same was allegedly excessive. In 1998, private complainant Atty. Jose Bordador brought a ledger to her and asked her to sign the same. The said ledger contains a list of her supposed indebtedness to the private complainants. She refused to sign the same because the contents thereof are not her indebtedness but that of his brother, Narciso Degaños. She even asked the private complainants why they gave so many pieces of jewelry and gold bars to Narciso Degaños without her permission, and told them that she has no participation in the transactions covered by the subject "Kasunduan at Katibayan" receipts.

Co-accused Narciso Degaños testified that he came to know the private complainants when he went to the latter's house in 1986 to sell some Bible books. Two days later he returned to their house and was initially given a gold bracelet and necklace to sell. He was able to sell the same and paid the private complainants with the proceeds thereof. Since then

he started conducting similar business transactions with the private complainants. Said transactions are usually covered by receipts denominated as "Kasunduan at Katibayan". All the "Kasunduan at Katibayan" receipts were issued by the private complainants and was signed by him. The phrase "for Brigida Luz" and for "Evelyn Aquino" were written on the receipts so that in case he fails to pay for the items covered therein, the private complainants would have someone to collect from. He categorically admitted that he is the only one who was indebted to the private complainants and out of his indebtedness, he already made partial payments in the amount of P53,307.00. Included in the said partial payments is the amount of P20,000.00 which was contributed by his brothers and sisters who helped him and which amount was delivered by Brigida Luz to the private complainants.^[3]

Ruling of the RTC

On June 23, 1999, the RTC found Degaños guilty as charged but acquitted Luz for insufficiency of evidence, imposing on Degaños twenty years of *reclusion temporal*, viz:

WHEREFORE, judgment is hereby rendered as follows:

1. finding accused Narciso Degaños GUILTY beyond reasonable doubt of the crime of estafa penalized under Article 315, Subsection 1, paragraph (b) of the Revised Penal code and hereby sentences him to suffer the penalty of TWENTY YEARS (20) of reclusion temporal;
2. finding accused Brigida Luz NOT GUILTY and is hereby ACQUITTED on the ground of insufficiency of evidence.

SO ORDERED.^[4]

Decision of the CA

On appeal, Degaños assailed his conviction upon the following grounds, to wit:

I

THE HONORABLE COURT A QUO ERRED IN NOT FINDING THAT THE AGREEMENT BETWEEN THE PRIVATE COMPLAINANT LYDIA BORDADOR AND THE ACCUSED WAS ONE OF SALE ON CREDIT.

II

THE HONORABLE COURT A QUO ERRED IN NOT FINDING THAT NOVATION HAD CONVERTED THE LIABILITY OF THE ACCUSED INTO A CIVIL ONE.

III

THE HONORABLE COURT ERRED IN NOT APPLYING THE INDETERMINATE SENTENCE LAW.^[5]

On September 23, 2003, however, the CA affirmed the conviction of Degaños but modified the prescribed penalty,^[6] thusly:

WHEREFORE, the appealed Decision finding the accused-appellant Narciso Degaños guilty beyond reasonable doubt of the crime of Estafa under Article 315 (1) par. *b* of the Revised Penal code is hereby **AFFIRMED** with the **modification** that the accused-appellant is sentenced to suffer **an indeterminate penalty of imprisonment of four (4) years and two (2) months of prision correccional in its medium period, as the minimum, to twenty (20) years of reclusion temporal as maximum.**

SO ORDERED.^[7]

Issues

Hence, Degaños has appealed, again submitting that:

I.

THE HONORABLE COURT A QUO ERRED IN NOT FINDING THAT THE AGREEMENT BETWEEN THE PRIVATE COMPLAINANT LYDIA BORDADOR AND THE ACCUSED WAS ONE OF SALE ON CREDIT;

II.

THE HONORABLE COURT A QUO ERRED IN NOT FINDING THAT NOVATION HAD CONVERTED THE LIABILITY OF THE ACCUSED INTO A CIVIL ONE.^[8]

Ruling

The appeal lacks merit.

I.

Transaction was an agency, not a sale on credit

Degaños contends that his agreement with the complainants relative to the items of jewelry and gold subject of the amended information as embodied in the relevant *Kasunduan at Katibayan* was a sale on credit, not a consignment to sell on commission basis.

The contention of Degaños is devoid of factual and legal bases.