

SECOND DIVISION

[G.R. No. 146770, February 27, 2003]

**ORLANDO P. NAYA, PETITIONER, VS. SPS. ABRAHAM AND
GUILLERMA ABING AND PEOPLE OF THE PHILIPPINES,
RESPONDENTS.**

D E C I S I O N

CALLEJO, SR., J.:

Before us is a Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, of the decision rendered by the Court of Appeals^[1] affirming the decision^[2] of the Regional Trial Court of Cebu City, Branch 15 convicting Orlando P. Naya of *estafa* under Article 316, paragraph 2 of the Revised Penal Code.

The Antecedents

Orlando P. Naya was the owner in fee simple of a parcel of residential land located in Talisay, Cebu province identified as Lot 2049-B of the Tal-Ming Estate, with an area of 485 square meters covered by Transfer Certificate of Title No. 65042 issued by the Register of Deeds.^[3]

On December 14, 1987, Orlando, as seller, and Abraham and Guillerma Abing, as buyers, entered into a Contract to Sell,^[4] two parcels of land with an area of 400 square meters for the total price of Sixty Thousand Pesos (P60,000.00). Under the terms of the Contract to Sell, Orlando, as seller, agreed that –

- (1) After the spouses Abing have paid the amount of TWENTY THOUSAND PESOS (P20,000.00), the balance of FORTY THOUSAND PESOS (P40,000.00) payable in monthly installments of ONE THOUSAND FIFTEEN AND 74/100 PESOS (P1,015.74), for five (5) years to start on June 30, 1988 and for every 30th of the month thereafter.
- (2) He shall be at liberty to sell the lots to other persons if the buyers, spouses Abing fail to make payment of any of the installments within sixty (60) days from its due date;

He also bound himself to execute a first deed of sale over the said property and deliver title to the vendees over said property free from encumbrance and liens upon full payment of the purchase price of the property.

- (3) Upon full payment of purchase price, he shall deliver to the buyer, spouses Abing, a final Deed of Sale and Certificate of Title in their names free of encumbrance.

Guillerma Abing remitted to Orlando the amount of P20,000.00 as downpayment and the amount of P2,000.00 a month, even in excess of the monthly amount of P1,015.74 agreed upon in the Contract to Sell. The following monthly installment payments were received by Orlando Naya and his agent Loreta Bacaltos:

<u>Exhibit Number</u>	<u>Date</u>	<u>Amount</u>
Exhibit "B"	dated June 25, 1988	P 2,000.00
Exhibit "B-2"	dated July 30, 1988	2,000.00
Exhibit "B-3"	dated Sept. 3, 1988	2,000.00
Exhibit "B-4"	dated Oct. 1, 1988	2,000.00
Exhibit "B-5"	dated Nov. 5, 1988	2,000.00
Exhibit "B-6"	dated Dec. 3, 1988	2,000.00
Exhibit "B-7"	dated Jan. 7, 1989	2,000.00

Unknown to Guillerma Abing, Orlando Naya executed on January 13, 1989 a Deed of Absolute Sale over Lot 2049-B and his other lots in favor of William Po for the price of P200,000.00, receipt of which Orlando Naya acknowledged.^[5] Orlando represented in said deed that he was the lawful owner of the properties, free from all taxes and encumbrances and that the properties were untenanted. Said deed was registered with the Register of Deeds on December 5, 1989 and on said date, Transfer Certificate of Title No. 67775 was issued by the Register of Deeds in favor and under the name of William Po, as vendee.

However, Orlando never told the Spouses of said sale to William Po. Nevertheless, Guillerma Abing continued remitting to Orlando amounts in partial payments of the purchase price of the lots for which he issued receipts:

Exhibit "B-8"	dated Jan. 23, 1989	5,000.00
Exhibit "B-9"	dated April 3, 1989	4,000.00
Exhibit "B-10"	dated June 3, 1989	2,000.00
Exhibit "B-11"	dated June 23, 1989	2,000.00
Exhibit "B-12"	dated Sept. 1, 1989	4,000.00
Exhibit "B-13"	dated Dec. 24, 1989	<u>3,000.00</u>
		P34,000.00

Guillerma Abing had paid Orlando Naya the total amount of Fifty-Four Thousand Pesos (P54,000.00) inclusive of the Twenty Thousand Pesos (P20,000.00) which she had paid upon the signing of the Contract to Sell.

On December 27, 1989, Orlando consented to the construction by Abraham Abing, the husband of Guillerma Abing, of a fence and a residential house or warehouse in the subject lots. The Spouses purchased hollow blocks for their fence for the price of P40,000.00.

The Spouses were flabbergasted when during the construction of the fence, William Po evicted them. The construction materials for the house of the couple remained unused.

The Spouses Abing subsequently learned that Orlando, on January 13, 1989, had sold the subject lots to William Po for the amount of Two Hundred Thousand Pesos (P200,000.00) and that the latter had already secured a title over the property under his name.^[6]

On February 28, 1992, Guillerma Abing executed an affidavit and, through her counsel, filed a criminal-complaint for *estafa* against Orlando and Loreta Bacaltos with the Office of the Provincial Prosecutor.

On March 17, 1992, Loreta Bacaltos filed her counter-affidavit alleging, *inter alia*, that she was not the proper party liable to private respondent Abing as she was not the owner of the subject property, and that she only acted as an agent of seller Orlando Naya; more, she had no knowledge of the properties covered by the Contract to Sell.

After the requisite preliminary investigation, an Information was filed against Orlando with the Regional Trial Court for *estafa* which reads:

The undersigned accuses Orlando Naya of the crime of Estafa, under Article 316, paragraph 2, of the Revised Penal Code, committed as follows:

That sometime in the month of November 1989, more or less, in the Municipality of Talisay, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to defraud, knowing that Lot 2049-B (Lot 5 and 6) which is a portion of Lot No. 2049, under Transfer Certificate of Title No. 65042, of a subdivision plan, located at Tabunok, Talisay, Cebu, with a total area of 400 square meters, were already encumbered, did then and there willfully, unlawfully and feloniously sell, cede, transfer and convey or dispose of the same real properties to Mr. William Po, to the damage and prejudice of Guillerma Abing in the total amount of P92,000.00 Pesos, Philippine Currency.

CONTRARY TO LAW.^[7]

After the prosecution had adduced its testimonial evidence, it filed on September 2, 1993 its Formal Offer of Evidence. The accused did not offer any objection to the documentary evidence of the prosecution. On February 4, 1994, the trial court issued an order admitting all the documentary evidence of the prosecution. The trial court set the case for continuation of trial for Orlando Naya to adduce his evidence on March 23, 1994 at 8:30 a.m. However, on said date and time, his counsel failed to appear. The trial court issued an order declaring that accused had waived his right to adduce evidence in his behalf.

On June 23, 1994, the trial court rendered judgment finding the accused guilty beyond reasonable doubt of *estafa* defined and penalized in Article 316, paragraph 2 of the Revised Penal Code, the decretal portion of which reads: