

SECOND DIVISION

[CA-G.R. SP. NO. 134740, March 16, 2015]

NELSON G. MENDOZA, PETITIONER, VS. HON. LORNA NAVARRO-DOMINGO AS PRESIDING JUDGE OF [THE] REGIONAL TRIAL COURT, BRANCH 201, LAS PIÑAS CITY, AND VIOLETA DELA CRUZ, RESPONDENTS.

D E C I S I O N

SALAZAR-FERNANDO, J.:

Before this Court is a Petition for Certiorari^[1] under Rule 65 of the 1997 Revised Rules of Civil Procedure assailing the Orders dated October 1, 2013^[2] and December 10, 2013^[3] of the Regional Trial Court (RTC), National Capital Judicial Region, Branch 201, Las Piñas City in Criminal Case No. 09-0660 for Estafa under Article 315(1)(b) of the Revised Penal Code, entitled "People of the Philippines, *Plaintiff*, vs. Violeta Dela Cruz, *Accused*.", the dispositive portions of which read:

Order dated October 1, 2013:

"**WHEREFORE**, considering that the element of demand is lacking, the Motion for Leave to File Demurrer to Evidence is hereby **GRANTED**. Let this case be dismissed with prejudice.

SO ORDERED.^[4]"

Order dated December 10, 2013:

"In view thereof, the Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.^[5]"

The facts are:

Private respondent Violeta Dela Cruz (Dela Cruz for brevity) was charged^[6] for Estafa under Article 315, No. 1 paragraph (b) of the Revised Penal Code (RPC), the accusatory portion of which reads:

"xxx That sometime in the month of June 2006 and subsequent thereto, in the City of Las Piñas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with abuse of confidence and intent to defraud, falsely represented to complainant **NELSON G. MENDOZA** that she can cause the transfer of the registration of the property covered by Transfer Certificate of Title No. T-44872 in his name, and the complainant, after relying on said representation made by the

accused, gave to the accused the amount of Three Hundred Thousand Pesos (Php 300,000.00) as well as the owner's duplicate copy of TCT No. T-44872, deed of sale and other pertinent documents, for the specific purpose of transferring the registration of said property in his name; but the accused, once in possession of the money and the above-said documents misappropriated, misapplied and converted the same for her personal use and benefit, and notwithstanding demand, failed and refused to pay the said amount of Three Hundred Thousand Pesos (Php 300,000.00) and to return the above-said documents, to the damage and prejudice of the complainant in the aforementioned amount. xxx”

After arraignment, trial ensued. With the termination of the presentation of evidence by the prosecution, private respondent Dela Cruz filed a Motion for Leave to File Demurrer to Evidence^[7] and attached her demurrer.^[8] In her Motion, she asserted that the evidence presented by the prosecution was insufficient because the element of prior demand, which is essential in the prosecution of the crime of Estafa under Article 315, No. 1, paragraph (b) of the RPC, was not established. She explained that this insufficiency of evidence occurred when the lower court, in its Order dated July 9, 2013, rejected as admissible evidence, the demand letters to prove such fact. Without documentary proof that prior demand was made by the offended party upon the offender, the case for estafa would not prosper.

In opposing^[9] the motion, petitioner Nelson G. Mendoza (Mendoza for brevity) mainly argued that the same was improper because it failed to state the specific grounds relied upon to justify the grant of leave of court to file demurrer to evidence as required under the Rules.^[10]

On October 1, 2013, the lower court issued the assailed Order which granted the motion and dismissed the case with prejudice.^[11] Aggrieved, petitioner Mendoza moved for reconsideration but the same was denied by the lower court.^[12]

Hence, this petition based on the following grounds:^[13]

I.

PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ACTED ON THE MOTION FOR LEAVE TO FILE DEMURRER TO EVIDENCE WHICH WAS FILED BY THE ACCUSED BEYOND THE PERIOD ALLOWED BY THE RULES.

II.

PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ACTING ON THE DEMURRER TO EVIDENCE FILED BY THE ACCUSED WITHOUT FIRST GRANTING LEAVE OF COURT FOR THE FILING OF THE DEMURRER TO EVIDENCE, WHICH IS A CLEAR VIOLATION OF THE RULES OF COURT.

III.

PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION

AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ACTING ON THE DEMURRER TO EVIDENCE FILED BY THE ACCUSED WITHOUT FIRST ACTING ON THE MOTION FOR LEAVE TO FILE DEMURRER TO EVIDENCE CONSIDERING THAT THE DEMURRER TO EVIDENCE WAS MERELY ATTACHED TO THE MOTION AND THAT ITS ADMISSION WAS NOT SOUGHT IN THE MOTION, WHICH IS A CLEAR VIOLATION OF THE RULES OF COURT.

IV.

PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT GRANTED THE DEMURRER TO EVIDENCE WITHOUT FIRST RESOLVING THE MOTION FOR LEAVE TO FILE DEMURRER TO EVIDENCE.

The petition is not meritorious.

A reading of the petition shows that the contentions stated therein mainly questioned the criminal aspect of the case which is the propriety of the lower court's order to grant the demurrer to evidence which resulted in the dismissal of the case with prejudice. This is not allowed. It is doctrinal that in criminal cases, any appeal involving the acquittal of the accused or the dismissal of the case against him should be brought at the instance of the Solicitor General, acting on behalf of the State.^[14] This doctrine is explained in the case of Lito Bautista and Jimmy Alcantara vs. Sharon G. Cuneta-Pangilinan^[15], to wit:

"xxx The authority to represent the State in appeals of criminal cases before the Supreme Court and the CA is solely vested in the Office of the Solicitor General (OSG). Section 35 (1), Chapter 12, Title III, Book IV of the 1987 Administrative Code explicitly provides that the OSG shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. It shall have specific powers and functions to represent the Government and its officers in the Supreme Court and the CA, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party. The OSG is the law office of the Government.

To be sure, in criminal cases, the acquittal of the accused or the dismissal of the case against him can only be appealed by the Solicitor General, acting on behalf of the State. The private complainant or the offended party may question such acquittal or dismissal only insofar as the civil liability of the accused is concerned.

xxx
xxx

xxx

Worthy of note is the case of *People v. Santiago*, wherein the Court had the occasion to bring this issue to rest. The Court elucidated:

'It is well-settled that in criminal cases where the offended party is the