

## TWELFTH DIVISION

[ CA-G.R. CR. No. 33840, April 23, 2014 ]

**FLORINDA V. ESTRADA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND NORBERTO LUNA, RESPONDENTS.**

### DECISION

**ELBINIAS, J.:**

Addressed here is a Petition for Review<sup>[1]</sup> filed under Rule 42 of the Rules of Court. The Petition assails the Decision<sup>[2]</sup> dated March 25, 2010 of the Regional Trial Court ("RTC" for brevity) of Caloocan City, Branch 123, in CRIM. CASE NO. C-82554, which affirmed the Decision<sup>[3]</sup> dated August 28, 2009 of the Metropolitan Trial Court ("MeTC" for brevity) of Caloocan City, Branch 51, for "Estafa under Art. 316 par. 2 of the Revised Penal Code".<sup>[4]</sup> The Petition also questions the RTC's Order<sup>[5]</sup> dated September 21, 2010, which denied petitioner's eventual Motion for Reconsideration<sup>[6]</sup>.

The salient facts are those as stated in the RTC's Decision<sup>[7]</sup> dated March 25, 2010, as follows:

**"On October 9, 1998, the accused Florinda Estrada (*petitioner here*) executed in favor of the private complainant Norberto Luna (*private respondent here*) a Deed of Absolute Sale over a parcel of land covered by TCT No. 8224-R of the Registry of Deeds of San Juan for a consideration of Php 1,800,000.00. On the same day, the private complainant Norberto Luna (*private respondent*) and his wife gave the accused (*petitioner*) the 'Option to Buy' said property for the same stated consideration plus interest for a period of one (1) year. It was agreed between the parties that the Deed of Absolute Sale will not be registered unless said 'Option to Buy' is not exercised within that one year period. Verily, their true intention was for the accused to borrow, Php 1,800,000.00 from the private complainant and the Deed of Absolute Sale was executed only to assure payment of the loan. Thus, the loan agreed upon was but a loan-mortgage agreement because of the so called sale under pacto de retro and the same was not registered, and the accused (*petitioner*) remained in possession of the property. There was stipulation on the payment of interest and the expenses of the sale was charged to the accused (*petitioner*).**

**After the expiration of [the] one year period to buy back the property elapsed, the accused (*petitioner*) asked for an extension of one (1) month which was granted. When the accused (*petitioner*) failed to repurchase the property, the private complainant (*private respondent*) went to the Register of Deeds of San Juan to register the sale. He (*private respondent*) was informed**

that an Adverse Claim dated October 28, 1999 filed and registered by one Perla Castor on the title subject of a Deed of Absolute Sale dated October 4, 1999 between him and the accused (*petitioner*). It came to his mind that the intention of the accused (*petitioner*) in requesting for a one month extension to redeem the property was just a ploy so she (*petitioner*) could have time to find ways to prevent the transfer of the property in his (*private respondent's*) name. The strategy employed by the accused (*petitioner*) was a clear act of deceit that caused damage and injury to the private complainant (*private respondent*)."<sup>[8]</sup> (*Emphasis Supplied*)

On June 18, 2004, private respondent Norberto Luna ("private respondent" for brevity) filed a Complaint for Estafa against petitioner Florinda Estrada ("petitioner" for brevity) before the Office of the City Prosecutor of Caloocan<sup>[9]</sup>.

The rest of the facts are continued in the RTC's Decision<sup>[10]</sup> dated March 25, 2010, as follows:

**"Accused Florinda Estrada (*petitioner*) xxx before she (*petitioner*) made the contract with Spouses Castor, she (*petitioner*) made known to them that the property was encumbered to herein private complainant (*private respondent*). It was the agreement between the accused (*petitioner*) and the Spouses Castor that the latter will redeem the property from herein private complainant (*private respondent*) but they did not comply with the agreement. Consequently, herein accused (*petitioner*) returned the amount of Php7,500,000.00 in (*sic*) August 2003 as evidenced by an Acknowledgment Receipt signed by Perla Castor. The payment was made ahead of the filing of the instant case in court on February 2005. xxx She (*petitioner*) argued that **the alleged acts complained of do not constitute any of the offenses charged by the complainant (*private respondent*). She (*petitioner*) alleged further that [t]he private complainant (*private respondent*) is not the proper party and has no legal standing for any of the offenses charged in the complaint-affidavit. Since the transaction between herein complainant (*private respondent*) and the accused (*petitioner*) over the subject property is in reality a loan-mortgage agreement, the accused (*petitioner*) remained owner therefor after the mortgage and therefrom can still exercise the right of ownership over the property. Thus, the subsequent sale of the mortgaged property to Perla Castor did not in anyway diminish much less extinguished, the security of the loan which the accused (*petitioner*) obtained from the private complainant (*private respondent*). No damage or prejudice has been caused to the private complainant (*private respondent*) by subsequent sale of the property to Perla Castor."**<sup>[11]</sup> (*Emphasis Supplied*)**

On August 28, 2009, the MeTC rendered a Decision<sup>[12]</sup> finding petitioner guilty beyond reasonable doubt of the crime of Estafa under Article 316, paragraph 2 of the Revised Penal Code. The dispositive portion of the MeTC Decision<sup>[13]</sup> read:

"**WHEREFORE**, accused FLORINDA ESTRADA y VALDERAMA is hereby declared **GUILTY** beyond reasonable doubt of the crime of Estafa under Art. 316, paragraph 2 of the Revised Penal Code and she is hereby sentenced to suffer two (2) months of imprisonment and to pay a fine of One Million Eight Hundred Thousand Pesos (Php 1,800,000.00) or subsidiary imprisonment in case of insolvency.

SO ORDERED."<sup>[14]</sup> (*Emphasis was made in the original*)

Upon her judgment of conviction by the MeTC, petitioner appealed to the RTC. In turn, the RTC rendered the assailed Decision<sup>[15]</sup> of March 25, 2010 affirming *in toto*<sup>[16]</sup> the MeTC's Decision<sup>[17]</sup>.

After petitioner's Motion for Reconsideration<sup>[18]</sup> was denied by the RTC in its assailed Order<sup>[19]</sup> dated September 21, 2010, petitioner filed the Petition<sup>[20]</sup> at bench praying that:

"WHEREFORE, all the foregoing premises considered, it is most respectfully prayed of this Honorable Court that:

1. The instant petition be given due course;
2. After deliberation on the merits of the instant petition as well as of the subsequent pleadings and other papers that the petitioner and the respondents may be required to file, judgment be rendered:

(a) REVERSING the following issuances of the Regional Trial Court of Caloocan City, Branch 123, in Criminal Case No, C-82554, to wit:

- (1) Decision dated March 25, 2010; and
- (2) Order dated September 21, 2010;

(b) ACQUITTING the petitioner of the crime charged, which is Estafa under Art. 316 (b) of the Revised Penal Code.

All other reliefs and remedies just and equitable in the premises are likewise prayed for."<sup>[21]</sup> (*Underlining was made in the original*)

Petitioner raised this sole assignment of error:

"THE REGIONAL TRIAL COURT OF CALOOCAN CITY, BRANCH 123, COMMITTED REVERSIBLE ERRORS, BOTH FACTUAL AND LEGAL, IN AFFIRMING *IN TOTO* THE ERRONEOUS DECISION OF THE METROPOLITAN TRIAL COURT OF CALOOCAN CITY, BRANCH 51."<sup>[22]</sup> (*Italics was made in the original*)

Contrary to petitioner's arguments in her *sole assigned error*, the RTC properly affirmed the findings of the MeTC.

Petitioner had argued as follows:

"Now, who is the offended party in the instant case for estafa insofar as the allegations in the Complaint-Affidavit xxx are concerned?

xxx the offended party is PERLA CASTOR because ***she is the person to whom the encumbered property was disposed of by the petitioner through the latter's alleged express representation that the same was free from encumbrance.*** The private complainant, NORBERTO LUNA, who claims to have suffered damage or prejudice as a result of the subject transaction between Castor and the petitioner, is not the offended party but a third person upon whom 'the alleged loss has fallen' xxx

xxx

xxx deceit or fraud and its effects are ***personal*** to the person allegedly deceived or defrauded. Thus, it is only that person who can claim with competence that he has been deceived or defrauded by another. No other person can do that. In other words, it is only Castor, the offended party, who can prove that she was deceived or defrauded by the petitioner. xxx

xxx

In view of the prior knowledge of Castor that the subject real property was encumbered to private complainant Luna before she entered into the subject pacto de retro sale with petitioner, it is thus very clear that no fraud or deceit was employed by the petitioner in the transaction.

xxx

So clearly, the prosecution miserably failed to prove all the elements of the crime charged.

xxx

It is therefore clear that the Metropolitan Trial Court of Caloocan City, Branch 51, erred in convicting the petitioner of the crime of [E]stafa under Article 316, paragraph 2, Revised Penal Code. Needless to say, in affirming *in toto* the erroneous decision of the Metropolitan Trial Court, the Regional Trial Court of Caloocan City, Branch 123, committed a grave, reversible error."<sup>[23]</sup> (*Emphasis, Italics and Underlining were made in the original*)

Overwhelming petitioner's arguments however, is that as the records showed, the prosecution was able to establish all the elements of the crime of Estafa<sup>[24]</sup> under Article 316, paragraph 2 of the Revised Penal Code, as follows: 1.) That the thing disposed of be real property; 2.) That the offender knew that the real property was encumbered, whether the encumbrance is recorded or not; 3.) That there must be express representation by the offender that the real property is free from encumbrance; and, 4.) That the act of disposing of the real property be made to the damage of another.<sup>[25]</sup>

In ***Orlando P. Naya vs. Spouses Abraham and Guillerma Abing and People of the Philippines***<sup>[26]</sup>, the Supreme Court pronounced that the gravamen of Estafa under Article 316, paragraph 2 of the Revised Penal Code is "the disposition of legally encumbered real property by the offender under the express representation