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Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

SPOUSES ISIDRO DULAY III\* and G.R. No. 215132  
ELENA DULAY,

*Petitioners,*

Present:

PERLAS-BERNABE, J.,  
*Chairperson,*

HERNANDO,  
CARANDANG,\*\*  
GAERLAN, and  
ROSARIO,\*\*\* JJ.

- versus -

PEOPLE OF THE PHILIPPINES,

Promulgated:

*Respondent.*

SEP 13 2021

X-----X

DECISION

**HERNANDO, J.:**

Deceit is rarely simple and far from cut and dried. Although ostensibly uncomplicated, deception in various forms of dissembling, suppression of truth, concealment and misrepresentation, once established beyond reasonable doubt will give rise to criminal liability.

This is a Petition for Review on *Certiorari*<sup>1</sup> assailing the April 29, 2014 Decision<sup>2</sup> and October 15, 2014 Resolution<sup>3</sup> of the Court of Appeals (CA) in

\* Also referred to as Isidro Dulay in some parts of the records.  
\*\* Designated as additional Member per Raffle dated July 12, 2021 vice *J. Inting* who recused; his sister, *J. Socorro B. Inting*, had participation in the Court of Appeals.  
\*\*\* Designated as additional Member per Special Order No. 2835 dated July 15, 2021.  
<sup>1</sup> *Rollo*, pp. 12-20.  
<sup>2</sup> *Id.* at 34-47; penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Florito S. Macalino and Socorro B. Inting.  
<sup>3</sup> *Id.* at 49.

CA-G.R. CR No. 33777 which affirmed with modification the September 14, 2010 Decision<sup>4</sup> of the Regional Trial Court (RTC) of Agoo, La Union, Branch 32, in Criminal Case No. A-5180. The lower courts uniformly convicted petitioners spouses Isidro (Isidro) and Elena Dulay (Elena; spouses Dulay/petitioners collectively), of *Estafa* under Article 315 paragraph 2(a) of the Revised Penal Code (RPC).

Claiming to be the actual owners of a 450-square meter lot in Baguio City (subject property), petitioners sold it to private complainants, the spouses Isabelo and Hilaria Dulos (Hilaria; collectively as spouses Dulos); hence, petitioners were charged with *estafa* under Article 315 2(a) of the RPC. The Information against petitioners reads:

That sometime in the month of February 1999 and sometime subsequent thereto in the Municipality of Agoo, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding each other, with intent to defraud, and by means of false pretenses and fraudulent acts which they made to spouses Isabelo L. Dulos and Hilaria C. Dulos prior to or simultaneously with the commission of fraud, to the effect that they are the owners of a parcel of land in Baguio City when in truth and in fact they are not, succeed in inducing the said spouses to deliver to them the aggregate sum of SEVEN HUNDRED SEVEN THOUSAND PESOS (₱707,000.00) as partial or advance payment for the aforesaid parcel of land and then once in possession of the said sum of money did then and there willfully, unlawfully and feloniously convert and misappropriate the said sum of money to their own personal use and benefit and then despite demand, fail or refuse and continue to fail or refuse to return the sum of ₱707,000.00 they took from spouses Isabelo L. Dulos and Hilaria C. Dulos to the damage and prejudice of the said spouses in the said amount and other consequential damages.

CONTRARY TO LAW.<sup>5</sup>

Before the arraignment, petitioners filed a Motion to Quash which was denied by the RTC in its December 19, 2007 Order.<sup>6</sup> The RTC ruled that: (1) the trial court has jurisdiction to try the case for *estafa* under Article 315 2(a) of the RPC, and (2) there is no other pending criminal case before the first level courts of Agoo, La Union which constitutes as *litis pendentia*. Thus, at the arraignment, petitioners pleaded not guilty.<sup>7</sup>

During trial, the prosecution presented four (4) witnesses, namely: (1) Marilou Dulos (Marilou); (2) Hilaria; (3) Dr. Prospera Garcia; and (4) Carmencita Montes (Carmencita), while petitioners testified for the defense.<sup>8</sup>

<sup>4</sup> Id. at 52-61; penned by Judge Jennifer Pilar.

<sup>5</sup> Id. at 34-35; Records p. 51.

<sup>6</sup> Records, pp. 128-129.

<sup>7</sup> Id. at 90.

<sup>8</sup> Id. at 95-96.

Accordingly, the following facts were established.

Sometime in January 1999, Marilou, the daughter-in-law of the spouses Dulos met petitioner Elena who proposed to sell the subject property to either Marilou or her in laws.<sup>9</sup>

During a meeting at the Dulos' house in San Nicolas, Agoo, La Union, petitioners presented a photocopy of Transfer Certificate of Title (TCT) No. T-2135 registered in the names of Isidro and Virginia Dulay covering the subject property. When complainants inquired why a different name was indicated in the title, *i.e.*, Virginia Dulay instead of Elena, the latter explained that she and Virginia are one and the same person. Consequently, the spouses Dulos confirmed their interest to purchase the subject property, subject to inspection prior to finalizing the sale.<sup>10</sup>

Subsequently, the parties agreed on the terms of sale: purchase price of ₱950,000.00; a down payment of ₱150,000.00 and the balance to be paid on a monthly installment of ₱30,000.00 within a two-year period. The parties further agreed that the spouses Dulay will hand over title to the subject property once the spouses Dulos' monthly payments have reached half the amount of the purchase price, *i.e.*, ₱450,000.00.<sup>11</sup>

The spouses Dulay issued a receipt to the spouses Dulos which reads:

February 19, 1999

Received the amount of One-hundred fifty thousand pesos only (₱150,000.00) from Mr. Isabelo L. Dulos and Mrs. Hilaria C. Dulos residing at San Nicolas Central, Agoo, La Union as **partial payment** for the lot located at Brgy. Andres de Bonifacio along Subd. Road 150 mts. From Avelino St., Baguio City with a total land area of Four hundred fifty square meters (450 sq. m.) more or less. Owned by Mr. Isidro D. Dulay and Mrs. Elena D. Dulay residing at #23 M. Dulay St., Poblacion Aringay, La Union, with a monthly payment of Thirty thousand pesos only (₱30,000.00) for two (2) years starting May 1999.<sup>12</sup>

When the spouses Dulos' monthly payments reached the total amount of ₱707,000.00 without receiving the promised title or a copy thereof from petitioners, they made further inquiries on the subject property and learned that: (1) the registered owners indicated in TCT No. T-2135, *i.e.*, Isidro and Virginia Dulay, are different persons from petitioners; (2) the Isidro Dulay named in TCT No. T-2135 is petitioner Isidro's uncle and namesake; and (3) the long deceased spouses Isidro and Virginia Dulay has a daughter, Carmencita. Forthwith, the spouses Dulos stopped paying the monthly installments.<sup>13</sup>

<sup>9</sup> *Rollo*, p. 35.

<sup>10</sup> *Id.* at 35-36.

<sup>11</sup> TSN, March 24, 2008, pp. 19-26.

<sup>12</sup> Records, p. 246; Formal Offer of Exhibits, Exhibit "A".

<sup>13</sup> TSN, May 22, 2008, pp. 41-44.

In refutation, petitioners avowed varying defenses regarding their alleged ownership over the subject property. On the title thereto, petitioners vacillated in their assertions: (1) the title remained under reconstitution and has yet to be transferred in their names which thus precluded them from handing over title to the complainants, and (2) petitioner Isidro Dulay is the lawful owner of the subject property as he is the adopted son of Maria Dulay (Maria), the predecessor-in-interest of the spouses Isidro and Virginia Dulay.<sup>14</sup>

For good measure, petitioners asserted that Maria had donated the subject property to Isidro and Virginia Dulay but subsequently revoked the donation. Petitioners maintained that at the time of sale, they owned the subject property (*via* donation or succession) and were awaiting the facilitation of the transfer of title to their names which was made known to the complainants.<sup>15</sup>

Petitioners insisted that the spouses Dulos, including Marilou, knew of the difficulty they were encountering in registering the property in their own names and transferring title in the names of the spouses Dulos. In all, petitioners completely denied deceit in their sale of the subject property.<sup>16</sup>

As an affirmative defense, petitioners reiterated the contention in their motion to quash that the trial court is without jurisdiction over the offense charged in the Information which actually falls under Article 316, paragraph 1 of the RPC carrying a lower penalty. Petitioners prayed for either the dismissal of the case or the imposition of a lower penalty for the lesser offense under Article 316 (1) of the RPC.<sup>17</sup>

### **Ruling of the Regional Trial Court:**

The RTC found petitioners guilty of *Estafa* under Article 315, (2)(a) of the RPC, to wit:

**WHEREFORE**, the foregoing considered, accused Isidro Dulay and Elena Dulay are hereby found guilty beyond reasonable doubt of the crime of *estafa* by means of false pretenses and fraudulent representations and are sentenced to suffer an indeterminate penalty of four (4) years and two (2) months of *prision correccional* as minimum to twenty (20) years of *reclusion temporal* as maximum.

SO ORDERED.<sup>18</sup>

The trial court ruled that all the elements of *estafa* by deceit under Article 315 (2)(a) of the RPC were established and proven by the prosecution beyond reasonable doubt. Petitioners, through false pretenses and fraudulent acts of

<sup>14</sup> TSN, September 22, 2008, pp. 182-186.

<sup>15</sup> TSN, October 8, 2009, pp. 6-17; see also TSN, February 23, 2010, pp. 3-25.

<sup>16</sup> *Id.*; *id.*

<sup>17</sup> Records, pp. 109-112.

<sup>18</sup> *Rolla*, pp. 60-61.

ostensible ownership of the subject property, deceived the spouses Dulos into buying the property and paying the total amount of ₱707,000.00.<sup>19</sup>

### **Ruling of the Court of Appeals:**

On appeal,<sup>20</sup> the appellate court affirmed petitioners' conviction and modified their liability for civil damages to include payment of interest:

**WHEREFORE**, premises considered, the instant appeal is hereby **DENIED**. The assailed Decision dated September 14, 2010 of the RTC of Agoo, La Union, Branch 32 is hereby **AFFIRMED with MODIFICATION** in that appellants are further ordered to pay interest of 6% per *annum* on the awarded actual damages, reckoned from the finality of this decision until full payment thereof.

The aforesaid Decision is hereby affirmed in all other respects.<sup>21</sup>

The lower courts uniformly found that petitioners sold the subject property to the spouses Dulos under false pretenses of ownership. Petitioners misrepresented to the spouses Dulos that they were the Isidro and Virginia Dulay indicated as registered owners in TCT No. T-2315. In the belief that petitioners were the owners, the spouses Dulos purchased the subject property on installment. Overall, the CA ruled that the misrepresentations and false pretenses of petitioners were made prior to or simultaneous with the commission of fraud which impelled the spouses Dulos to part with the total amount of ₱707,000.00.<sup>22</sup>

### **Issues**

Hence, this appeal by *certiorari* raising the following issues:

1. WHETHER OR NOT PETITIONERS ARE GUILTY OF THE CRIME OF ESTAFA WHEN PRIVATE COMPLAINANTS WERE AWARE THAT [THE] SUBJECT PROPERTY WAS NOT IN THEIR NAMES AT THE TIME OF THE TRANSACTION.

2. ASSUMING THAT THEY EMPLOYED DECEITS, WHETHER OR NOT THE PETITIONERS WERE CORRECTLY CONVICTED [OF] THE CRIME OF ESTAFA UNDER ARTICLE 315, PARAGRAPH 2(A), INSTEAD OF ESTAFA UNDER ARTICLE 316, PARAGRAPH 1 OF THE REVISED PENAL CODE.<sup>23</sup>

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<sup>19</sup> Records, pp. 355-359.

<sup>20</sup> Id. at 363-364.

<sup>21</sup> *Rollo*, p. 46.

<sup>22</sup> Id. at 37-46.

<sup>23</sup> Id. at 20.

**Petitioners' Arguments:**

To disclaim any sort of liability, petitioners insist that they did not conceal from the spouses Dulos the status of the transfer of title to the subject property; the spouses Dulos knew that the title was still not in petitioners' names. They never made false pretenses to the spouses Dulos as they truly own the subject property except that the title thereto is not yet registered in their names which fact was known to the spouses Dulos when they made numerous payments totaling ₱707,000.00. Petitioners maintain that the sales transaction between them and complainants had simply gone awry since the transfer of title to the former, and subsequently to the latter, could not be effected.<sup>24</sup>

Petitioners argue that to give rise to criminal liability, the false statement or representation constitutes the very cause or the only motive which induced the offended party to part with his money. Petitioners contend that, in this case, the spouses Dulos knew that title to the property was not yet registered to the spouses Dulay when they initially paid ₱150,000.00, expressly agreeing to wait for petitioners' processing of the transfer of titles. Ultimately, petitioners did not defraud complainants into parting with their money. At most, petitioners were simply liable for the return of the amount of ₱707,000.00, the total payments of the spouses Dulos for the subject property.<sup>25</sup>

**Our Ruling**

There is no merit in petitioners' appeal.

As found by the lower courts, petitioners are not the owners, more so registered owners, of the subject property. Yet, they brazenly sold the property to the spouses Dulos which they do not own under any color of title. In fact, petitioners' deceit is emphasized by the vacillating defenses they invoked.

Article 315(2)(a) of the RPC provides:

Art. 315. *Swindling (estafa)*. — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

x x x x

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using a fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; or by means of other similar deceits.

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<sup>24</sup> Id. at 20-23.

<sup>25</sup> Id. at 23-25.

X X X X

Jurisprudence has long established the elements of *Estafa* by means of deceit as defined under Article 315(2)(a) of the RPC:

- (1) that there must be a false pretense, fraudulent act or fraudulent means;
- (2) that such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud;
- (3) that the offended party must have relied on the false pretense, fraudulent act or fraudulent means, that is, he was induced to part with his money or property because of the false pretense, fraudulent act or fraudulent means; and
- (4) that as a result thereof, the offended party suffered damage.<sup>26</sup>

We abide by the uniform factual findings of the lower courts which establish petitioners' commission of estafa by deceit through false pretenses and fraudulent misrepresentation.

*First.* Petitioners made false pretenses and fraudulent misrepresentations to complainants, the spouses Dulos, consisting of the following untruthful claims: (1) that they owned the subject property which they could sell, and consequently transfer title, to the buyers; (2) that they are processing the reconstitution of TCT No. T-2135, title to the subject property; (3) that they are the Isidro and Virginia Dulay, the registered owners of the property, mentioned in TCT No. T-2315; (4) that Virginia and Elena (Dulay) are one and the same person; (5) in the alternative to the third and fourth claims, that Isidro and Virginia Dulay's title is defective since Maria, from whom Isidro and Virginia trace their registered title, revoked the donation of the subject property; and (6) that their predecessor-in-interest to the property, Maria, is the adoptive mother of petitioner Isidro Dulay who therefore validly succeeds to the property.<sup>27</sup>

The testimonies of the prosecution witnesses all converge on the totality of petitioners' false claims and pretenses that they were the registered owners of the subject property who could validly alienate it.

We have long held that factual findings of the trial court on the credibility of witnesses, especially when affirmed by the appellate court, are accorded utmost respect for it is the trial court which is able to observe that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying.<sup>28</sup> We have consistently refrained deviating from the lower courts'

<sup>26</sup> *Arriola v. People*, G.R. No. 199975, February 24, 2020, *People v. Aquino*, G.R. No. 234818, November 5, 2018; *Gabionza v. Court of Appeals*, 586 Phil. 606 (2008),

<sup>27</sup> TSN, March 17, 2009, pp. 11-19.

<sup>28</sup> *Alberto v. Court of Appeals*, 711 Phil. 530, 557-558 (2013).

findings and have only done so in exceptional circumstances which are not present herein.<sup>29</sup>

On several occasions, we have defined deceit as the false representation of a matter of fact whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury.<sup>30</sup>

Here, petitioners employed a scheme of dissembling against the spouses Dulos by withholding from the latter the true registered owners of the subject property under TCT No. T-2135. Petitioners took advantage of the demise of the real registered owners, the spouses Isidro and Virginia Dulay and more importantly, the similarity in the names of the two Isidros who are related and share the exact same name, *i.e.*, Isidro Dulay.

Petitioners' deceit is illustrated by their inconsistent and conflicting claims (a) that title to the subject property is simply being reconstituted to reflect their names, (b) that they are the same persons as Isidro and Virginia Dulay, and (c) that petitioner Isidro is a putative heir of Maria, the purported registered owner of the subject property prior to the registered owners reflected in TCT No. T-2135.<sup>31</sup>

Reconstitution of title refers to a specific procedure under Republic Act No. (RA) 26<sup>32</sup> for lost or destroyed Torrens Certificates of Title. Reconstitution of title is the re-issuance of a new certificate of title lost or destroyed in its original form and condition.<sup>33</sup> It presupposes that petitioners are the registered owners of the subject property. On this score alone, it is apparent that petitioners falsely misrepresented their ownership of the subject property to complainants.

Petitioners' convoluted claim that petitioner Isidro inherited the subject property from his adoptive mother, Maria, who purportedly is the prior registered owner thereof, is totally without legal basis since petitioner Isidro's status does not arise simply by invocation. Reconstitution of title does not pass upon the ownership of the land covered by the lost or destroyed title. Any change in the ownership of the property must be the subject of a separate suit. A separate proceeding is necessary to thresh out the issue of ownership of the land.<sup>34</sup> Curiously, petitioners do not even pretend to have filed suit to transfer the property in their names or establish their claim of ownership on the subject property.

<sup>29</sup> *Cancio v. Performance Foreign Exchange Corporation*, 832 Phil. 212, 229-230 (2018).

<sup>30</sup> *Alcantara v. Court of Appeals*, 462 Phil. 72, 89 (2003).

<sup>31</sup> TSN, September 22, 2008, pp. 182-186.

<sup>32</sup> Entitled An Act Providing A Special Procedure For The Reconstitution Of Torrens Certificates Of Title Lost Or Destroyed.

<sup>33</sup> Republic Act No. 26, Sections 2 and 3.

<sup>34</sup> *Lee v. Republic*, 418 Phil. 793, 803 (2001).

Besides, petitioners claim of reconstitution of TCT No. T-2135 was under the pretext that they are the same persons as Isidro and Virginia Dulay, the real registered owners of the subject property who, if that were so, could reconstitute a lost or destroyed title.

On the whole, petitioners falsely pretended to the spouses Dulos that they owned the subject property and dissembled a supposed transfer or reconstitution of title thereto. Petitioners simply did not own the subject property, not as registered owners or under any claim of title. Clearly, the first element of the offense, *i.e.* existence of false pretense, is present.

*Second.* As found by the lower courts, the second, third and fourth elements of the offense are likewise present.

Petitioners' false pretense of ownership which could transfer valid title to the subject property, was committed prior to and simultaneous with the commission of the fraud. Private complainants' reliance on this false pretense induced and impelled them to purchase the subject property from sham owners who do not hold any color of title and pay them the total amount of ₱707,000.00.

In denying their culpability for deceit and criminal fraud, petitioners insist that private complainants knew that title to the subject property was yet to be transferred to petitioners' names. Hence, the initial payment of ₱150,000.00 to facilitate the transfer of title.

The testimonies of Marilou and Hilaria on the dissembling, misrepresentations and lies of petitioners were consistent even on cross-examination and questioning by the trial court:

ATTY. HIDALGO:<sup>35</sup>

Q Madam Witness, is it not that upon payment of that ₱150,000.00, there were conditions imposed by both of them, am I correct?

A Yes, sir.

Q That ₱150,000.00 will be used to transfer the property in their names, am I correct?

A Yes, sir.

Q Madam Witness and after payment of one-half (1/2) of the total consideration or in the amount of ₱450,000.00, madam witness, the title will be transferred to your in-laws, the buyer of the property?

A Yes, sir.

Q And after paying ₱450,000.00 Madam Witness, is it not that you will require the accused to deliver to you the title?

A Yes, sir.

<sup>35</sup> TSN, October 8, 2008, pp. 6-15.

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Q Now Madam Witness, will you please extend your patience and tell to this Honorable Court that despite payment of more than ₱450,000.00 you still paid despite of none delivery to you the title?

A Yes, sir.

Q And at the time you know that the conditions were not complied anymore for the accused to transfer the property in their names?

A Yes, sir.

Q **Madam Witness, is it not that when the transactions [took place] between your father-in-law and the accused, the title which was shown to you was still in the name of Isidro Dulay and Virginia Dulay?**

A Yes, sir.

Q **Is it not Madam Witness that one of the conditions why that ₱150,000.00 was paid is for the accused to transfer the title in the name of Isidro Dulay and Elena Dulay?**

A **They said it was lost title so they have to secure another title sir.**

Q But there was an agreement to that effect Madam am I correct that they will transfer the property in the name of Isidro Dulay and Elena Dulay, am I correct?

COURT:

Do not mislead the witness.

xxx

COURT:

**The witness answered that it was a lost title and the next question is there an agreement to transfer. So reform. Be attentive and object if there is need to object. Proceed.**

ATTY. HIDALGO:

Yes, Your Honor.

Q Madam Witness, when the title was shown to you, it was still in the name of Isidro Dulay and Virginia Dulay am I correct?

PROSECUTOR LACHICA:

Already Answered.

COURT QUESTION:

Q Madam Witness, when you saw the title in the name of Isidro Dulay and Virginia Dulay, who is this Isidro Dulay?

A That one sir. (The witness is pointing a person inside the court room wearing yellow shirt and when asked he identified himself as Isidro Dulay.)

Q How about this Virginia?

A They claimed before Your Honor that Virginia and Elena are the same person.

x x x x

ATTY. HIDALGO:

Q Madam Witness, and since they claim that Virginia and Elena is the same person, is it not that they made a condition that they will transfer the title in the name of Isidro and Elena Dulay.

ATTY. ARCHOG:

That would be misleading Your Honor.

COURT:

Sustained.

x x x x

COURT:

**There is a testimony that Elena and Virginia are one and the same person. That is a representation. So don't talk about the transfer.**

ATTY. HIDALGO:

Yes, Your Honor.

Q Madam Witness, have you met Isidro Dulay before January 1999?

A It was only Elena, sir.

Q Whom you met?

A Yes, sir.

Q And when you transacted that you buy a lot at Baguio City (*sic*), Madam Witness, that was only the time that you met Isidro Dulay?

A Yes, sir.

Q And they showed you a title which was marked as Exhibit "G and F" for the prosecution?

A Yes, sir.

Q **Madam Witness, when they showed that title to you in the name of [Isidro Dulay and Virginia Dulay], did you not ask them that it should be in the name of Isidro Dulay and Elena Dulay?**

ATTY ARCHOG:

**We object Your Honor. It was already stated by the witness that Elena and Virginia referred to one and the same person?**

COURT:

**Sustained.**

ATTY. HIDALGO:

Q Madam Witness, before the sale...

COURT:

Excuse me Atty. Hidalgo

x x x x

COURT QUESTION:

Q You said that it was Isidro Dulay who transacted [with] you?

A Yes, Your Honor.

Q Was Isidro Dulay alone when he transacted [with] you?

A He was with Madam Elena Your Honor.

x x x x

ATTY. HIDALGO:

Q Madam Witness, is it not that when you paid that more than Four Hundred Fifty Thousand Pesos (P450,000.00) already, you went to Baguio City to verify the title?

A Yes, sir.

Q When in fact that verification that was by reason of the statement made by the accused that they are processing the title?

A Yes sir.

Q And that is also the very reason why you made the initial payment of One Hundred Fifty Thousand (P150,000.00) Pesos, am I correct?

ATTY. ARCHOG:

Objection Your Honor. The counsel is misleading the witness. He is already asking on the reason of the verification after payment of P450,000.00. He is going back again to P150,000.00.

ATTY. HIDALGO:

They just went back to Baguio.

ATTY. ACHOG:

Confusing Your Honor. He is confusing the witness Your Honor.

ATTY. HIDALGO:

I am not confusing Your Honor. I am asking Your Honor the reason for the payment of P150,000.00.

ATTY. ARCHOG:

That was already answered Your Honor P150,000.00.

COURT:

Atty. Hidalgo, you do your questioning in a manner that is clear.

ATTY. HIDALGO:

I will Your Honor. Only one last question Your Honor.

**Q Is it not a fact Madam Witness that before you parted P150,000.00, it was promised to you by the accused that they will transfer the title in their names before you will make the full payment am I correct?**

**ATTY. ARCHOG:**

We object again Your Honor. How can they transfer. The persons already indicated in the title are the accused, referring to the accused Your Honor.

**COURT:**

Sustained.

**COURT QUESTION:**

**Q** Madam Witness, what was that ₱150,000.00 for?

**A** Down payment for the lot they are selling to us Your Honor.

**Q** You testified a while ago that there was an agreement about the transfer?

**A** Only the title Your Honor.

**Q** What was the agreement about the transfer?

**A** Upon paying the ₱450,000.00 Your Honor of the said lot, they will deliver [to] us the title and a conditional deed of sale but they did not give us [the title].

**Q** So, what was the transfer. Transfer from whom and to whom?

**A** Because the title was lost, they provide the title Your Honor.

**Q** That's why the question is: To whom that the property should be transferred. That's my question.

**A** To my parents-in-law Your Honor. (Emphasis supplied)

Plainly, petitioners deceived private complainants and misrepresented to them that: (a) TCT No. T-2135 covering the subject property is registered in their names; (b) the Virginia indicated in TCT No. T-2135 is the same person as petitioner Elena; and (c) they are simply reconstituting their lost title, TCT No. T-2135.

Petitioners maintain that their liability to the spouses Dulos is only civil in nature, *i.e.*, to return the total amount of ₱707,000.00 the latter paid for the subject property. Petitioners insist that complainants knew of their problem in reconstituting or transferring title to the subject property. Thus, they cannot be held liable for simply failing to transfer title to the subject property.

Petitioners' arguments fall by the wayside since TCT No. T-2135 was never issued in their names. Perforce, they were not reconstituting title to the subject property as they claimed when complainants made a down payment of ₱150,000.00. The fact that a supposed fixer in the Registry of Deeds disappeared on petitioners will not exculpate them from criminal liability for their deceit.

Undoubtedly, petitioners were aware of the falsity of their representation to complainants that they are the registered owners Isidro and Virginia Dulay indicated in TCT No. T-2135. This is precisely the crux of their deceit. They falsely pretended to own the subject property and sold it to the unwitting victims who relied on the false representation and parted with their money to purchase property in Baguio.

We note that private complainants do not appear to have conducted due diligence in ascertaining actual ownership of the property. However, private complainants' failure to conduct due diligence does not negate petitioners' fraud in pretending to own the subject property and gain by selling it to gullible buyers. In short, the *estafa* by deceit was consummated when petitioners received payments for the subject property knowing that they were not the registered owners who could validly transfer title thereto. Time and again we have ruled that the one induced, who must be ignorant of the falsity of the representations, must have relied on the truth thereof and, as a consequence, sustained injury.<sup>36</sup>

In *Virata v. Ng Wee*,<sup>37</sup> we defined "fraud" as the voluntary execution of a wrongful act, or a willful omission, knowing and intending the effects which naturally and necessarily arise from such act or omission. In its general sense, fraud is deemed to comprise anything calculated to deceive, including all acts and omissions and concealment involving a breach of legal or ethical duty, trust, or confidence justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another. Fraud is also described as embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling, and any unfair way by which another is cheated.

Jurisprudence further distinguishes criminal fraud from civil fraud. *People v. Aquino*<sup>38</sup> instructs:

[T]he gravamen of the [crime of *Estafa*] is the employment of fraud or deceit to the damage or prejudice of another. When fraud pertains to the means of committing a crime or the classes of crimes under Chapter Three, Title Four, Book Two and Chapter Three, Title Seven, Book Two of the RPC, criminal liability may arise; otherwise, if fraud merely causes loss or injury to another, without being an element of a crime, then it may only be classified as civil fraud from which an action for damages may arise.

As demonstrated herein, petitioners committed *estafa* by deceit under Article 315 paragraph 2(a) of the RPC.

<sup>36</sup> *Galvez v. Court of Appeals*, 686 Phil. 924, 936 (2012).

<sup>37</sup> 813 Phil. 252, 355 (2017).

<sup>38</sup> G.R. No. 234818, November 5, 2018.

*Third.* Petitioners continue to argue, as they did before the lower courts, that pursuant to the doctrine of *pro reo* and lenity, they ought to be penalized under Article 316, paragraph 1 of the RPC. The provision states:

**ART. 316.** *Other forms of swindling.* – The penalty of *arresto mayor* in its minimum and medium periods and a fine of not less than the value of the damage caused and not more than three times such value, shall be imposed upon:

1. Any person, who, pretending to be the owner of any real property, shall convey, sell, encumber, or mortgage the same;

We have applied the doctrine of *pro reo* and the correlative rule on lenity when there is doubt as to the applicability of various penalties under different amended or repealed laws.<sup>39</sup>

In this case, however, there is no doubt as to the applicability of Article 315(2)(a) of the RPC: the constitutive offense of *estafa* by deceit under Article 315(2)(a) was specifically charged in the Information,<sup>40</sup> established and proven beyond reasonable doubt,<sup>41</sup> and affirmed on appeal by the appellate court.<sup>42</sup> We therefore find no need to apply lenity and the doctrine of *pro reo*, and ignore the specific provision of law and the penalty prescribed thereunder.

Moreover, the following essential elements of Article 316 of the RPC must be established: (1) that the thing be immovable, such as a parcel of land or a building; (2) that the offender who is not the owner of said property should represent that he is the owner thereof; (3) that the offender should have executed an act of ownership, e.g., selling, leasing, encumbering, or mortgaging the property; and (4) that the act be made to the prejudice of the owner or a third person.<sup>43</sup>

In this case, while the subject of the *estafa* involves real property, the offense committed does not automatically pertain to Article 316 (1) of the RPC. In the old case of *People v. Suratos*,<sup>44</sup> the Court had occasion to distinguish between *estafa* under Article 315(2)(a) of the RPC and other forms of swindling under Article 316 (1) of the same code:

The machinery remains classified as immovable while it stays installed for the purpose of the industry or work. But once the property is removed from its installation, as was to be inspected in the case at bar if the sale was to be made, it ceases to be a real property but returns to its original classification as personal property. By this, we do not mean, however, that Art. 315 par. 2(a) covers only cases where the property involved is real property. Both personal and real property may be the subject of the crime under the law. But although Art. 316,

<sup>39</sup> See *Ient v. Tullet Prebon*, 803 Phil. 163, 186 (2017).

<sup>40</sup> *Rollo*, pp. 34-35. Records, 61. See also Sections 4 and 8 Rule 110 of the Rules of Court.

<sup>41</sup> See Section 2, Rule 133 of the Rules of Court.

<sup>42</sup> *Rollo*, pp. 37-46.

<sup>43</sup> *Estrellado-Mainar v. People*, 765 Phil. 21, 33-34 (2015).

<sup>44</sup> C.A., 62 O.G. 1963 cited in Reyes, *The Revised Penal Code Criminal Law*, 14<sup>th</sup> Edition, 1998, p. 798.

par. 1 refers only to real property, its violation is confined to certain instances not common with those of Art. 315, par. 2 (a). As we see it, Art. 316, par. 1 covers a specific situation where the offended *exercises or executes*, as part of the false representation, some *act of dominion or ownership over the property to the damage and prejudice of the real owner of the thing*. On the other hand, this circumstance need not be present for a crime to be committed under Art. 315, par. 2 (a). In the case at bar, the evidence does not disclose that the appellant had exercised certain acts of ownership or dominion beyond his *mere pointing of the property to the offender party and his claim that he was the owner thereof*. This is, therefore, a proper case for the application of Art. 315, par. 2 (a). (Emphasis supplied)

Here, petitioners did not exercise acts of dominion or ownership over the property other than their false pretense and claim that they owned it. Petitioners proffered a nominal claim of ownership by showing a copy of TCT No. T-2135 and pretending to be the same persons indicated therein as registered owners of the subject property. The fraudulent acts of petitioners in pretending to own the real property and selling it is not equivalent to an exercise of an act of dominion or ownership which damaged and prejudiced the real owner of the thing, Carmencita, the daughter of Isidro and Virginia Dulay.<sup>45</sup>

We note that at the time of the prosecution of this case until the succeeding appeals before the CA and this Court, RA 10951,<sup>46</sup> which adjusted the amount or the value of property or damage on which a penalty or fine is based, had yet to be enacted. We will discuss the new law next as we lay down the correct imposable penalty on petitioners.

*Fourth.* With the advent of RA 10951, the penalty for *estafa* under Article 315(2)(a) of the RPC has been reduced, to wit:

SECTION 85. Article 315 of the same Act, as amended by Republic Act No. 4885, Presidential Decree No. 1689, and Presidential Decree No. 818, is hereby further amended to read as follows:

ART. 315. *Swindling* (estafa) – Any person who shall defraud another by any means mentioned herein below shall be punished by:

x x x x

3rd. The penalty of *arresto mayor* in its maximum period to *prisión correccional* in its minimum period, if such amount is over Forty thousand pesos (P40,000) but does not exceed One million two hundred thousand pesos (P1,200,000).

x x x x

<sup>45</sup> Putative heir under Article 799 of the Civil Code and had executed an affidavit stating her relationship to the registered owners of the subject property covered by TCT No. 2315.

<sup>46</sup> AN ACT ADJUSTING THE AMOUNT OR THE VALUE OF PROPERTY AND DAMAGE ON WHICH A PENALTY IS BASED, AND THE FINES IMPOSED UNDER THE REVISED PENAL CODE, AMENDING FOR THE PURPOSE ACT NO. 3815, OTHERWISE KNOWN AS "THE REVISED PENAL CODE," AS AMENDED Enacted on August 29, 2017.

In this case, the defrauded amount is ₱707,000.00 and thus the RTC initially imposed the indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum. The appellate court affirmed the ruling but further ordered petitioners to pay interest of six percent (6%) *per annum* on the award of actual damages from the finality of this Decision until full payment thereof.

Applying Article 315 of the RPC, as amended by RA 10951, the penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period shall be imposed if the amount involved is over ₱40,000.00 but does not exceed ₱1,200,000.00. Following recent jurisprudence,<sup>47</sup> **there being no mitigating and aggravating circumstance, the maximum penalty should be one (1) year and one (1) day of *prision correccional*.** Applying the Indeterminate Sentence Law, the minimum term of the indeterminate sentence is *arresto mayor* in its minimum and medium periods, ranging from one (1) month and one (1) day to four (4) months. Thus, **the indeterminate penalty for Isidro and Elena Dulay's estafa is modified to a prison term of two (2) months and one (1) day of *arresto mayor*, as minimum, to one (1) year and one (1) day of *prision correccional*, as maximum.**

We likewise modify the appellate court's imposition of interest to the award of ₱707,000.00 as actual damages. The award of ₱707,000.00 shall earn interest of twelve percent (12%) *per annum* from the filing of the Information on March 9, 2005<sup>48</sup> until June 30, 2013, and six percent (6%) from July 1, 2013 until finality of this Decision. The total amount of the foregoing shall, in turn, earn interest at the rate of six percent (6%) *per annum* from finality of this Decision until full satisfaction thereof.<sup>49</sup>

**WHEREFORE**, the appeal is **DISMISSED**. The assailed April 29, 2014 Decision and October 15, 2014 Resolution of the Court of Appeals in CA-G.R. CR No. 33777 are **AFFIRMED** with **MODIFICATIONS**. Petitioners Isidro and Elena Dulay are **SENTENCED** to suffer the indeterminate penalty of imprisonment of two (2) months and one (1) day of *arresto mayor*, as minimum, to one (1) year and one (1) day of *prision correccional*, as maximum. They are further **ORDERED** to **PAY** interest on the amount of ₱707,000.00 as actual damages computed as follows:

(a) Twelve percent (12%) *per annum* from the filing of the Information on March 9, 2005 until June 30, 2013, and six percent (6%) from July 1, 2013 until finality of this Decision; and

(b) The total amount of paragraph (a) shall earn six percent (6%) interest *per annum* from the finality of this Decision until full payment thereof.

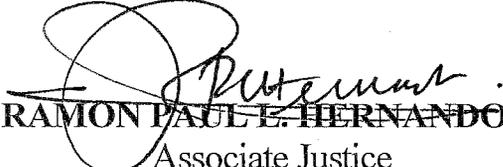
<sup>47</sup> *Arriola v. People of the Philippines*, supra note 26, citing *Seguritan v. People*, G.R. No. 236499, April 10, 2019 and *People v. Dejolde, Jr.*, G.R. No. 219238, January 31, 2018, 853 SCRA 554, 563-564.

<sup>48</sup> *Rollo*, pp. 34-35; Records, p. 51.

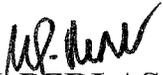
<sup>49</sup> See *Rivera v. Spouses Chua*, 750 Phil. 663, 682 (2015); *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

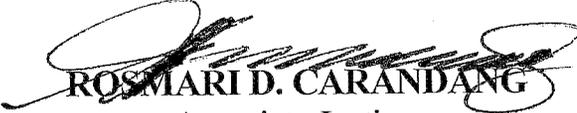
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**SO ORDERED.**

  
**RAMON PAUL E. HERNANDO**  
Associate Justice

WE CONCUR:

  
**ESTELA M. PERLAS-BERNABE**  
Senior Associate Justice  
Chairperson

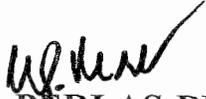
  
**ROSMARI D. CARANDANG**  
Associate Justice

  
**SAMUEL H. GAERLAN**  
Associate Justice

  
**RICARDO R. ROSARIO**  
Associate Justice

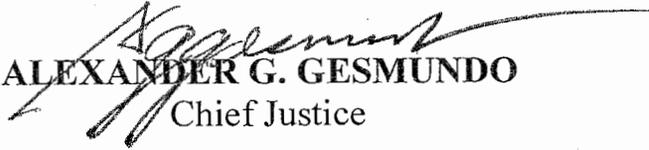
**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ESTELA M. PIRLAS-BERNABE**  
Senior Associate Justice  
Chairperson

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ALEXANDER G. GESMUNDO**  
Chief Justice