



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NARCISO DEGAÑOS,¹
Petitioner,

G.R. No. 162826

Present:

- versus -

SERENO, C.J.,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, JJ.

Promulgated:

PEOPLE OF THE PHILIPPINES,
Respondent.

OCT 14 2013

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DECISION

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:

¹ Also spelled as Deganos in the original records.

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 ₱438,702.00, 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 ₱438,702.00.

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 ₱725,463.98 as actual and consequential damages plus interest and attorney's fees in the amount of ₱10,000.00. On the other hand, Brigida Luz alias Aida Luz was ordered to pay the amount of ₱21,483.00, 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,

² CA rollo, p. 17.

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 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 ₱725,000.00.

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 ₱122,673.00

as principal and ₱21,483.00 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 ₱53,307.00. Included in the said partial payments is the amount of ₱20,000.00 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

³ Rollo, pp. 13-16.

⁴ CA rollo, pp. 27-28.

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;

⁵ Id. at 49.

⁶ *Rollo*, pp. 12-22, penned by Associate Justice Delilah Vidallon-Magtolis (retired), with the concurrence of Associate Justice Jose L Sabio, Jr. (retired/deceased) and Associate Justice Hakim S. Abdulwahid.

⁷ Bold underscoring is in the original text.

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.

The text and tenor of the relevant *Kasunduan at Katibayan* follow:

KASUNDUAN AT KATIBAYAN

X X X X

Akong nakalagda sa ibaba nito ay nagpapatunay na tinanggap ko kay Ginang LYDIA BORDADOR ng Calvario, Meycauayan, Bulacan ang mga hiyas (jewelries) [sic] na natatala sa ibaba nito upang ipagbili ko sa kapakanan ng nasabing Ginang. Ang pagbibilhan ko sa nasabing mga hiyas ay aking ibibigay sa nasabing Ginang, sa loob ng _____ araw at ang hindi mabili ay aking isasauli sa kanya sa loob din ng nasabing taning na panahon sa mabuting kalagayan katulad ng aking tanggapin. Ang bilang kabayaran o pabuya sa akin ay ano mang halaga na aking mapalabis na mga halagang nakatala sa ibaba nito. Ako ay walang karapatang magpautang o kaya ay magpalako sa ibang tao ng nasabing mga hiyas.⁹

X X X X

Based on the express terms and tenor of the *Kasunduan at Katibayan*, Degaños received and accepted the items under the obligation to sell them in behalf of the complainants (“*ang mga hiyas (jewelries) na natatala sa ibaba nito upang ipagbili ko sa kapakanan ng nasabing Ginang*”), and he would be compensated with the overprice as his commission (“*Ang bilang*

⁸ *Rollo*, p. 6.

⁹ Original Records, Volume I, pp. 378-393.

kabayaran o pabuya sa akin ay ano mang halaga na aking mapalabis na mga halagang nakatala sa ibaba nito.”). Plainly, the transaction was a consignment under the obligation to account for the proceeds of sale, or to return the unsold items. As such, he was the agent of the complainants in the sale to others of the items listed in the *Kasunduan at Katibayan*.

In contrast, according the first paragraph of Article 1458 of the *Civil Code*, one of the contracting parties in a contract of sale obligates himself to transfer the ownership of and to deliver a determinate thing, while the other party obligates himself to pay therefor a price certain in money or its equivalent. Contrary to the contention of Degaños, there was no sale on credit to him because the ownership of the items did not pass to him.

II.

Novation did not transpire as to prevent the incipient criminal liability from arising

Degaños claims that his partial payments to the complainants novated his contract with them from agency to loan, thereby converting his liability from criminal to civil. He insists that his failure to complete his payments prior to the filing of the complaint-affidavit by the complainants notwithstanding, the fact that the complainants later required him to make a formal proposal before the *barangay* authorities on the payment of the balance of his outstanding obligations confirmed that novation had occurred.

The CA rejected the claim of Degaños, opining as follows:

Likewise untenable is the accused-appellant’s argument that novation took place when the private complainants accepted his partial payments before the criminal information was filed in court and therefore, his criminal liability was extinguished.

Novation is not one of the grounds prescribed by the Revised Penal Code for the extinguishment of criminal liability. It is well settled that criminal liability for estafa is not affected by compromise or novation of contract, for it is a public offense which must be prosecuted and punished by the Government on its own motion even though complete reparation should have been made of the damage suffered by the offended party. A criminal offense is committed against the People and the offended party may not waive or extinguish the criminal liability that the law imposes for the commission of the offense. The criminal liability for estafa already committed is not affected by the subsequent novation of the contract.¹⁰

We sustain the CA.

¹⁰ *Rollo*, pp. 18-19.

Degaños' claim was again factually unwarranted and legally devoid of basis, because the partial payments he made and his purported agreement to pay the remaining obligations did not equate to a novation of the original contractual relationship of agency to one of sale. As we see it, he misunderstands the nature and the role of novation in a criminal prosecution.

Novation is the extinguishment of an obligation by the substitution or change of the obligation by a subsequent one that terminates the first, either by (a) changing the object or principal conditions; or (b) substituting the person of the debtor; or (c) subrogating a third person in the rights of the creditor. In order that an obligation may be extinguished by another that substitutes the former, it is imperative that the extinguishment be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other.¹¹ Obviously, in case of only slight modifications, the old obligation still prevails.¹²

The Court has further pointed out in *Quinto v. People*:¹³

Novation is never presumed, and the *animus novandi*, whether totally or partially, must appear by express agreement of the parties, or by their acts that are too clear and unequivocal to be mistaken.

The extinguishment of the old obligation by the new one is necessary element of novation which may be effected either expressly or impliedly. The term "expressly" means that the contracting parties incontrovertibly disclose that their object in executing the new contract is to extinguish the old one. Upon the other hand, no specific form is required for an implied novation, and all that is prescribed by law would be an incompatibility between the two contracts. While there is really no hard and fast rule to determine what might constitute to be a sufficient change that can bring about novation, the touchstone for contrariness, however would be an irreconcilable incompatibility between the old and the new obligations.

There are two ways which could indicate, in fine, the presence of novation and thereby produce the effect of extinguishing an obligation by another which substitutes the same. The *first* is when novation has been explicitly stated and declared in unequivocal terms. The *second* is when the old and the new obligations are incompatible on every point. The test of incompatibility is whether or not the two obligations can stand together, each one having its independent existence. If they cannot, they are incompatible and the latter obligation novates the first. Corollarily, changes that breed incompatibility must be essential in nature and not

¹¹ *Gammon Philippines, Inc. v. Metro Rail Transit Development Corporation*, G. R. No. 144792, January 31, 2006, 481 SCRA 209, 221.

¹² *Heirs of Servando Franco v. Gonzales*, G.R. No. 159709, June 27, 2012, 675 SCRA 96, 97.

¹³ G.R. No. 126712, April 14, 1999, 305 SCRA 708.

merely accidental. The incompatibility must take place in any of the essential elements of the obligation, such as its object, cause or principal conditions thereof; otherwise, the change would be merely modificatory in nature and insufficient to extinguish the original obligation.

The changes alluded to by petitioner consists only in the manner of payment. There was really no substitution of debtors since private complainant merely acquiesced to the payment but did not give her consent to enter into a new contract.¹⁴ x x x

The legal effects of novation on criminal liability were explained by the Court, through Justice J.B.L. Reyes, in *People v. Nery*,¹⁵ viz:

The novation theory may perhaps apply prior to the filing of the criminal information in court by the state prosecutors because up to that time the original trust relation may be converted by the parties into an ordinary creditor-debtor situation, thereby placing the complainant in estoppel to insist on the original trust. But after the justice authorities have taken cognizance of the crime and instituted action in court, the offended party may no longer divest the prosecution of its power to exact the criminal liability, as distinguished from the civil. The crime being an offense against the state, only the latter can renounce it (*People vs. Gervacio*, 54 Off. Gaz. 2898; *People vs. Velasco*, 42 Phil. 76; *U.S. vs. Montañes*, 8 Phil. 620).

It may be observed in this regard that novation is not one of the means recognized by the Penal Code whereby criminal liability can be extinguished; hence, the role of novation may only be to either prevent the rise of criminal liability or to cast doubt on the true nature of the original basic transaction, whether or not it was such that its breach would not give rise to penal responsibility, as when money loaned is made to appear as a deposit, or other similar disguise is resorted to (cf. *Abeto vs. People*, 90 Phil. 581; *U.S. vs. Villareal*, 27 Phil. 481).

Even in Civil Law the acceptance of partial payments, without further change in the original relation between the complainant and the accused, can not produce novation. For the latter to exist, there must be proof of intent to extinguish the original relationship, and such intent can not be inferred from the mere acceptance of payments on account of what is totally due. Much less can it be said that the acceptance of partial satisfaction can effect the nullification of a criminal liability that is fully matured, and already in the process of enforcement. Thus, this Court has ruled that the offended party's acceptance of a promissory note for all or part of the amount misapplied does not obliterate the criminal offense (*Camus vs. Court of Appeals*, 48 Off. Gaz. 3898).

¹⁴ Id. at 714-716, as cited in *Milla v. People*, G.R. No. 188726, January 25, 2012, 664 SCRA 309, 318-319.

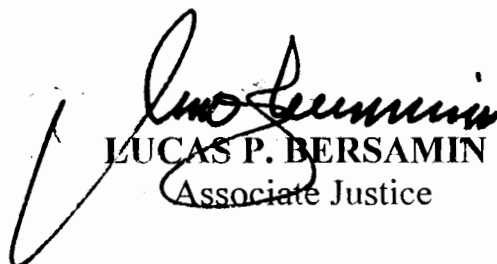
¹⁵ No. L-19567, February 5, 1964, 10 SCRA 244, 247-248.

Novation is not a ground under the law to extinguish criminal liability. Article 89 (on total extinguishment)¹⁶ and Article 94 (on partial extinguishment)¹⁷ of the *Revised Penal Code* list down the various grounds for the extinguishment of criminal liability. Not being included in the list, novation is limited in its effect only to the civil aspect of the liability, and, for that reason, is not an efficient defense in *estafa*. This is because only the State may validly waive the criminal action against an accused.¹⁸ The role of novation may only be either to prevent the rise of criminal liability, or to cast doubt on the true nature of the original basic transaction, whether or not it was such that the breach of the obligation would not give rise to penal responsibility, as when money loaned is made to appear as a deposit, or other similar disguise is resorted to.¹⁹

Although the novation of a contract of agency to make it one of sale may relieve an offender from an incipient criminal liability, that did not happen here, for the partial payments and the proposal to pay the balance the accused made during the *barangay* proceedings were not at all incompatible with Degaños' liability under the agency that had already attached. Rather than converting the agency to sale, therefore, he even thereby confirmed his liability as the sales agent of the complainants.

WHEREFORE, the Court **AFFIRMS** the decision of the Court of Appeals promulgated on September 23, 2003; and **ORDERS** petitioner to pay the costs of suit.

SO ORDERED.


LUCAS P. BERSAMIN
Associate Justice

¹⁶ Article 89. *How criminal liability is totally extinguished.* — Criminal liability is totally extinguished:
1. By the death of the convict, as to the personal penalties and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment.

2. By service of the sentence;

3. By amnesty, which completely extinguishes the penalty and all its effects;

4. By absolute pardon;

5. By prescription of the crime;

6. By prescription of the penalty;

7. By the marriage of the offended woman, as provided in Article 344 of this Code.

¹⁷ Article 94. *Partial extinction of criminal liability.* — Criminal liability is extinguished partially:

1. By conditional pardon;

2. By commutation of the sentence; and

3. For good conduct allowances which the culprit may earn while he is serving his sentence.

¹⁸ The *Civil Code* provides:

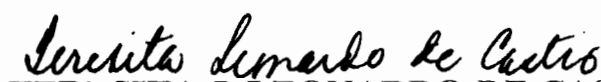
Article 2034. There may be a compromise upon the civil liability arising from an offense; but such compromise shall not extinguish the public action for the imposition of the legal penalty. (1813)

¹⁹ *People v. Nery*, supra note 15, at 247.

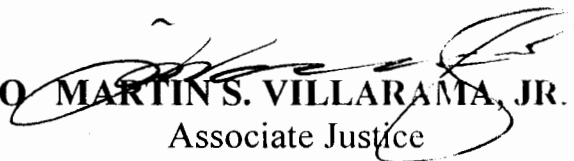
WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice



TERESITA J. LEONARDO-DE CASTRO
Associate Justice



MARTIN S. VILLARAMA, JR.
Associate Justice



BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.



MARIA LOURDES P. A. SERENO
Chief Justice