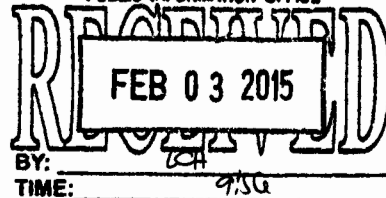




Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE



NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **January 14, 2015**, which reads as follows:

“G.R. No. 199774 (*Agapita E. Gonzaga vs. People of the Philippines*). – Before this Court is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the May 26, 2011 Decision¹ and November 29, 2011 Resolution² of the Court of Appeals (CA) in CA-G.R. CR No. 31989. The CA had affirmed with modification the September 3, 2008 judgment³ of the Regional Trial Court (RTC), Branch 132, of Makati City and found petitioner Agapita E. Gonzaga guilty beyond reasonable doubt of *Estafa*⁴ complexed with the crime of Falsification of public document under Article 172, paragraph (1) of the Revised Penal Code, as amended (RPC).

The antecedents of the case follow:

On December 4, 2002, petitioner and private complainant Maria Rosario M. Andres (Andres) executed a deed of real estate mortgage whereby petitioner mortgaged one room of her residential house located in Barangay Rizal, Makati City as security for the loan of ₱50,000 obtained by petitioner from Andres. It was stated in the mortgage document that said mortgaged room is “free from liens and encumbrances.” It was further agreed that during the period that the mortgaged room is not redeemed, the mortgagee may have the rooms rented and shall be entitled to collect the rentals thereon.⁵

When petitioner failed to comply with her obligations under the deed of real estate mortgage, Andres lodged a complaint before the *barangay* where the dispute was amicably settled. Petitioner, however, again failed to comply with the amicable settlement prompting Andres to request from the

¹ *Rollo*, pp. 24-39. Penned by Associate Justice Franchito N. Diamante with Associate Justices Josefina Guevara-Salonga and Mariflor P. Punzalan Castillo concurring.

² *Id.* at 40-42.

³ *Records*, pp. 292-300. Penned by Judge Rommel O. Baybay.

⁴ Punishable under Article 316, paragraph 2 of the Revised Penal Code, as amended.

⁵ *Records*, p. 10.

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barangay a Certificate to File Action⁶ which the latter issued. It was also then that Andres discovered that the house and lot where the mortgaged room is located had been previously mortgaged to other persons as shown by four separate contracts⁷ of real estate mortgage executed by petitioner as mortgagor.

Petitioner was charged with *estafa* through falsification of a public document before the Makati City RTC. The Information⁸ alleged that petitioner falsified a deed of real estate mortgage, a public document, by making untruthful statements in the narration of facts to the effect that it is free from liens and encumbrances when in truth it is not since it has already been previously mortgaged, and that said falsification induced Andres to deliver to petitioner ₱50,000 to her damage and prejudice to the extent of the said amount.

The RTC found petitioner guilty beyond reasonable doubt of the crime of *estafa* through fraud under Article 315, paragraph 2(a) of the RPC in relation to Articles 171 (Falsification by public officer, employee or notary or ecclesiastical minister) and 172 (Falsification by private individuals and use of falsified documents) of the same Code. It found that all the elements of *estafa* and falsification of public document are present in the instant case. Petitioner was sentenced to suffer the indeterminate prison term of 10 months of *prision correccional*, as minimum, to 10 years of *prision mayor*, as maximum. She was likewise ordered to pay Andres ₱50,000 as actual damages.

On appeal, the CA affirmed with modification the RTC decision. The CA found petitioner guilty beyond reasonable doubt of *estafa* under Article 316, paragraph 2 of the RPC, complexed with the crime of falsification of public document under Article 172, paragraph 1 of the same Code and not Article 315, paragraph 2(a). It sentenced her to suffer the indeterminate penalty of 4 months and 1 day of *arresto mayor* as minimum, to 4 years, 9 months and 11 days of *prision correccional*, as maximum. The CA likewise ordered her to pay a fine of ₱5,000 and to pay Andres ₱50,000 as actual damages. The CA held that the elements of *estafa* under Article 316, paragraph 2 are present in the instant case. The CA likewise held that the crime of falsification of public document can be appreciated as a necessary means of committing *estafa* and it found all the elements of falsification of public document present in the instant case. It further ruled that the untruthful statement in the notarized deed of real estate mortgage declaring that the property in question is free from liens and encumbrances was a necessary means in deceiving Andres to lend ₱50,000 to petitioner as this led Andres to believe that the loan was secured adequately by the mortgage.

⁶ Id. at 17.

⁷ Id. at 11-15.

⁸ Id. at 1.

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After a careful review of the records of the case and the submissions of the parties, the Court finds the petition unmeritorious. As found by the appellate court, all the elements of *estafa* under Article 316, paragraph 2 of the RPC are present in the instant case, namely, (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.⁹ First, the term "dispose" includes encumbering and mortgaging and clearly, the thing disposed of is real property. Second, petitioner knew that the room mortgaged to Andres is part of a property that she already mortgaged to several other persons as evidenced by several previously executed deeds of mortgage. Third, there was an express representation by petitioner that the mortgaged room in the subject deed of real estate mortgage is free from liens and encumbrances. Fourth, petitioner's act of mortgaging of the property to Andres caused damage to the latter since the execution of the mortgage caused Andres to part with her money thinking that the loan is secured when in fact it is not. We disagree with petitioner's argument that Andres's right to enforce the mortgage was not proven to have been compromised since petitioner failed to present proof that all the prior mortgages were already discharged and the loans that said mortgages guaranteed have already been settled.

This Court also agrees with the CA that the crime of falsification of a public document can be appreciated in the instant case as a necessary means of committing the *estafa*. The elements of falsification of public document under Article 172, paragraph 1 of the RPC are as follows: (1) the offender is a private individual or a public officer or employee who did not take advantage of his official position; (2) the offender committed any of the acts of falsification enumerated in Article 171; and (3) the falsification was committed in a public or official or commercial document.¹⁰ Under Article 171, paragraph 4 of the RPC, the following elements must concur for a conviction for falsification of a public document: (1) the offender makes in a public document untruthful statements in a narration of facts; (2) he has a legal obligation to disclose the truth of the facts narrated by him; and (3) the facts narrated by him are absolutely false.¹¹ Clearly, all the foregoing elements are present in the instant case. Petitioner stated in the deed of mortgage, a public document, that the property mortgaged to Andres is free from liens and encumbrances, which statement, she is legally obliged to disclose. However, petitioner knew that said statement was absolutely false. Undoubtedly, the falsification committed by petitioner facilitated the commission of *estafa* against Andres.

WHEREFORE, the instant petition is **DENIED** for lack of merit. The May 26, 2011 Decision and November 29, 2011 Resolution of the Court

⁹ *Llamas v. Court of Appeals*, G.R. No. 149588, August 16, 2010, 628 SCRA 302, 309.


¹⁰ *Guillergan v. People*, G.R. No. 185493, February 2, 2011, 641 SCRA 511, 516.

¹¹ *Galeos v. People*, G.R. Nos. 174730-37 & 174845-52, February 9, 2011, 642 SCRA 485, 505-506.

of Appeals in CA-G.R. CR No. 31989 are **AFFIRMED**. (**Jardeleza, J.**, no part, due to his prior action as Solicitor General; **Carpio, J.**, designated Member per Raffle dated January 7, 2015.)

SO ORDERED.”

Very truly yours,


WILFREDO V. LARTIAN
Division Clerk of Court *1/14/15*

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The Presiding Judge
REGIONAL TRIAL COURT
Branch 132, Makati City
(Crim. Case No. 04-3769)

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