



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

REX SORONGON,¹
Petitioner,

G.R. No. 230669

Present:

-versus-

GESMUNDO, C.J., Chairperson,
CAGUIOA,
CARANDANG,
ZALAMEDA, and
GAERLAN, JJ.

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

JUN 16 2021

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DECISION

CAGUIOA, J.:

Before the Court is a Petition for Review on *Certiorari*² (Petition) under Rule 45 of the Rules of Court which seeks the reversal of the Decision³ dated October 25, 2016 and Resolution⁴ dated February 21, 2017 of the Court of Appeals (CA) in CA-G.R. CR No. 01887.⁵ The CA affirmed the Decision⁶ of the Regional Trial Court (RTC), Branch 65, San Miguel, Jordan, Guimaras in Criminal Case No. 06-0949 finding petitioner Rex Sorongon (petitioner) guilty of Estafa under Article 315, paragraph 1(b)⁷ of the Revised Penal Code (RPC).

The Facts

Petitioner was charged with Estafa under Article 315, paragraph 1(b) of the RPC in an Information that reads:

¹ Rex Sorongon in some parts of the *rollo*.

² *Rollo*, pp. 9-24.

³ Id. at 27-43. Penned by Associate Justice Pablito A. Perez, with Associate Justices Pamela Ann Abella Maxino and Gabriel T. Robeniol concurring.

⁴ Id. at 45-46.

⁵ Also CA-G.R. CEB-CR No. 01887 in some parts of the *rollo*.

⁶ Id. at 47-66. Dated July 25, 2011, promulgated on February 17, 2012 and penned by Judge Merlin D. Deloria.

⁷ Also Article 315 sub-paragraph 1(b), Article 315, Sub-Section 1(B), and Art. 315 Sec. 1(b) in some parts of the *rollo*.

“That on or about July 2004, in the Municipality of B[ue]navista, Province of Guimaras, Philippines, the said accused having received from Nelly Van der Bom⁸ a mixer valued at Twenty Five Thousand (P25,000.00) Pesos under express obligation of turning over said mixer upon demand and once in possession of said mixer, far from complying with his obligation with intent to gain and to defraud, the said accused, did then and there wilfully, unlawfully and feloniously, misappropriate, misapply and convert the said mixer to his own personal use and benefit to the damage and prejudice of Nelly Van der Bom, the sum of Twenty Five Thousand (P25,000.00) Pesos Phil. Currency.

CONTRARY TO LAW.”⁹

When arraigned, petitioner pleaded not guilty to the crime charged.¹⁰ Thereafter, trial on the merits ensued.

Evidence of the Prosecution

During trial, the prosecution presented the testimony of private complainant, Nelly Van der Bom¹¹ (Nelly), and those of Francisco Igpua¹² (Francisco), Arnaldo Marcasote (Arnaldo), Daren Almarquez (Daren), and Bernaros Andreos Gregorios Keultjes¹³ (Bernaros).

Nelly testified that she and her husband, Hans Peter Van der Bom¹⁴ (Hans), hired petitioner, a civil engineer, to put up a water system for their water refilling business. Sometime in July 2004, after the project was completed, petitioner asked to borrow the subject cement mixer for his project in Iloilo City. Nelly agreed to lend the cement mixer on the condition that petitioner would return it as soon as his project is completed.¹⁵ Nelly claimed that petitioner, however, failed to return her cement mixer when she demanded for it after several months had passed. She thereafter asked her lawyer to write a formal demand letter to petitioner, but the same also went unheeded.¹⁶

The prosecution also presented the testimony of Francisco, a mechanic who did maintenance work for the equipment owned by Nelly and her husband. Francisco testified that he was familiar with the subject cement mixer and that only he and petitioner can borrow it from the Van der Boms. He claimed that Nelly’s husband, Hans, told him that petitioner borrowed the cement mixer and brought it to Iloilo. Francisco admitted to not knowing whether petitioner returned it.¹⁷

⁸ Nelly Mijares Van Der Bom in some parts of the *rollo*.

⁹ *Rollo*, p. 28.

¹⁰ *Id.*

¹¹ Van Der Bom in some parts of the *rollo*.

¹² Francisco Ygpua^a in some parts of the *rollo*.

¹³ Ben in some parts of the *rollo*.

¹⁴ Hans Van der Bom in some parts of the *rollo*.

¹⁵ *Rollo*, pp. 29, 52-53.

¹⁶ *Id.* at 29, 48.

¹⁷ *Id.* at 48.

Arnaldo, an employee of the Van der Boms, also testified about knowing that petitioner borrowed the cement mixer from the couple. Petitioner allegedly told him that he would bring it to Iloilo and even asked Arnaldo to teach him and his employees how to operate the equipment.¹⁸

Another employee of Nelly and her husband, Daren, testified that she personally knew petitioner and saw him in July 2004 when he borrowed the cement mixer from the couple. She allegedly saw that the cement mixer was attached to an owner-type jeepney, to be carted to petitioner's house in Sto. Rosario. Daren also testified that the Van der Boms purchased the cement mixer from their friend, Bernaros. She also claimed petitioner did not return it to the couple.¹⁹

Finally, the prosecution presented Bernaros, the friend of Nelly and her husband from whom they purchased the cement mixer. Bernaros testified that the cement mixer was a heavy-duty equipment made in Germany and had a wider mouth compared to an ordinary mixer. He further testified that he sold it to the Van der Boms in 2000 for ₱50,000.00.²⁰

Evidence of the Defense

The defense, on the other hand, presented the testimonies of petitioner and Rudy de la Torre²¹ (Rudy), a Barangay Kagawad of Barangay Sto. Rosario, Buenavista, Guimaras.

Rudy testified that Nelly and her husband filed a complaint in the barangay against petitioner about unpaid accounts, which included a cement mixer valued at ₱40,000.00. Considering that Nelly failed to present any receipts for her claims, Rudy purportedly advised her to just settle the case amicably. Nelly eventually agreed and the parties signed an amicable settlement in March 2005.²²

Petitioner testified that he was employed by the Van der Boms from December 22, 2000 to March 2004 as the liaison officer of their water refilling business. He denied borrowing the cement mixer and was surprised when summoned to the barangay. Petitioner corroborated the testimony of Rudy that he (petitioner) and Nelly reached an amicable settlement before the barangay. Thereafter, however, he received the complaint in the instant case.²³

The amicable settlement provided that the parties agreed that thereafter, there will be no countercharges "related to this case" to be filed "in the future."²⁴ The minutes of the barangay proceedings also provided, in part:

¹⁸ Id.

¹⁹ Id. at 49.

²⁰ Id.

²¹ Id. at 50.

²² Id.

²³ Id. at 51.

²⁴ Records, p. 308.



1. Complainant alleged that the respondent borrowed (sic) from her various equipments (sic) such as cement mixer, accessories of a computer and (sic) when she demanded for the return of the same, respondent failed to do so. She also charged that certain amount in form of cash advances was not paid by the respondent.

x x x x

4. Complainant agreed to waive her ownership of properties in question in favor of the respondent provided (sic) no further case or counter charge (sic) will be filed by the respondent.²⁵

Petitioner also testified that in January 2005, he filed a labor case against the Van der Boms where he submitted the amicable settlement he and Nelly agreed to before the barangay. The National Labor Relations Commission (NLRC) allegedly took note of petitioner's indebtedness contained in the settlement agreement and deducted the same from the award it granted in his favor.²⁶

Ruling of the RTC

After trial on the merits, the RTC convicted petitioner of the crime charged in its Decision²⁷ dated July 25, 2011, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered finding the accused GUILTY beyond reasonable doubt of the crime of Estafa, defined and penalized under Article 315, paragraph 1 (B).

There being no mitigating or aggravating circumstances and applying the Indeterminate Sentence Law, accused is hereby sentence[d] to suffer a penalty of imprisonment of Three (3) years of prision correccional to Seven (7) years of prision mayor and to pay the costs.

The bailbond posted by the accused is ordered cancelled and the accused is ordered ARRESTED.

SO ORDERED.²⁸

In finding petitioner guilty, the RTC found that the prosecution was able to establish that the subject cement mixer was owned by Nelly and her husband and that petitioner borrowed the same. The trial court did not give weight to the bare denial of petitioner, noting that the testimony of Nelly was fully corroborated by witnesses. As such, borrowing a thing necessitates an express and implied intention to return it and demand by the owner is not required under the law. The failure to account for the thing borrowed upon demand raises the presumption that the borrower has misappropriated it.²⁹

²⁵ Id. at 310.

²⁶ *Rollo*, pp. 16, 51.

²⁷ *Supra* note 6.

²⁸ Id. at 66.

²⁹ Id. at 55-56.

In this regard, the RTC also noted the admissions made by petitioner. The first was with respect to having received Nelly's letter demanding the return of the equipment. The second was that the cement mixer was part of his and Nelly's amicable settlement before the barangay. Hence, the trial court observed: if indeed petitioner did not borrow the cement mixer, he should have objected to its inclusion in the agreement. As testified to by Rudy, this agreement was never repudiated. Petitioner, in fact, even submitted the agreement before the NLRC in relation to his labor case against the Van der Boms and allowed that its value be deducted from the award granted to him by the Commission.³⁰

The RTC, however, held that petitioner is no longer civilly liable in light of the deduction of the value of the cement mixer in the award made by the NLRC in favor of petitioner in his labor case against the Van der Boms.³¹

Ruling of the CA

In the assailed Decision³² dated October 25, 2016, the CA sustained petitioner's conviction and held that the prosecution has established his guilt beyond reasonable doubt for the crime of Estafa.

The CA held it beyond dispute that petitioner borrowed and received the subject cement mixer from Nelly. The CA further held that Nelly's act of lending the equipment gave rise to a contract of *commodatum* between her and petitioner; in which case, petitioner, as the borrower, did not acquire ownership over the thing borrowed and had the duty to return the same thing to the lender, Nelly. Corollary, the phrase "or any other obligation involving the duty to make delivery of, or to return the same" under Article 315 of the RPC applies in this case as it may refer to a contract of *commodatum*.³³

Moreover, the CA held that following case law, failure to account upon demand for funds or properties held in trust, is circumstantial evidence of misappropriation. The Court found that Nelly duly demanded for the return of the cement mixer to her, but petitioner ignored these demands. Consequently, the failure of petitioner in the case at bar to account for the cement mixer upon Nelly's demand constituted circumstantial evidence that he had misappropriated or converted the thing for his personal use. Petitioner's failure to return the cement mixer indubitably deprived Nelly the right to use the property, to her prejudice and detriment.³⁴

The CA likewise affirmed the trial court's finding that the inclusion of the value of the cement mixer in the computation of the labor arbiter of the award given in petitioner's favor bolstered the claim of the prosecution that

³⁰ Id. at 56-65.

³¹ Id. at 66.

³² Supra note 3.

³³ Id. at 33.

³⁴ Id. at 34.



he borrowed and received the cement mixer and appropriated it for his personal use.³⁵

In the same manner, the CA held that the amicable settlement between petitioner and Nelly did not exonerate him from criminal liability, as nowhere in the said settlement did Nelly relinquish her rights or interests over her claims. At any rate, the CA noted, compromise or amicable settlement entered into after the commission of a crime does not extinguish an accused's criminal liability since the offense is against the State.³⁶

Petitioner moved for reconsideration of the CA Decision, but the same was denied in the assailed Resolution³⁷ dated February 21, 2017. Hence, the instant Petition.

Issue

The sole issue for the Court's resolution is whether the lower courts erred in convicting petitioner of Estafa under Article 315, paragraph 1(b) of the RPC.

The Court's Ruling

The Petition is meritorious.

Preliminarily, determination of guilt is fundamentally a factual issue which the Court generally does not entertain in a Rule 45 petition. Settled is the rule that factual findings of the trial court are accorded great weight and respect on appeal, especially when such findings are supported by substantial evidence on record. There are recognized exceptions to this rule, however, and one of which is where there has been a misapprehension of facts by the lower courts.³⁸ This exception applies in this case.

The trial court and the CA failed to appreciate the fact that the parties had entered into an amicable settlement prior to the filing of the Information against petitioner. Following jurisprudence on the effect of novation and compromise in Estafa cases under Article 315, paragraph 1(b), the amicable settlement between the parties in this case had effectively prevented the incipient criminal liability of petitioner. Petitioner may have not assigned this as an error in his petition before the Court, but this is of no moment. The well-settled rule is that an appeal in a criminal case throws the whole case wide open for review and that it becomes the duty of the Court to correct such errors

³⁵ Id. at 36.

³⁶ Id at 37.

³⁷ Supra note 4.

³⁸ See *Macayan, Jr. v. People*, G.R. No. 175842, March 18, 2015, 753 SCRA 445, 458-459.



as may be found in the judgment appealed from, whether they are assigned as errors or not.³⁹

Indeed, the long-standing general rule is that criminal liability for Estafa is not affected by payment, indemnification, reimbursement of or compromise as to the amounts misappropriated, or by the novation of the contract. This is because Estafa is a public offense which must be prosecuted and punished by the State on its own motion even though complete reparation should have been made of the damage suffered by the offended party.⁴⁰ Since it is committed against the State, the private offended party may not waive or extinguish the criminal liability that the law imposes for the commission of the crime.⁴¹

Nevertheless, in cases involving the type of Estafa under Article 315, paragraph 1(b), where there is an underlying contractual relationship or bilateral agreement between the parties which they can modify or alter,⁴² the Court has consistently acknowledged at the same time the possible effects of novation. The Court held that in these cases, novation may serve 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 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.⁴³ The prevention of the rise of criminal liability happens when there is novation before an Information is filed in court. As the Court first held in *People v. Nery*⁴⁴ (*Nery*):

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).⁴⁵

In *Nery*, the complainant entrusted diamond rings to the accused to be sold by her on commission. The accused, however, neither turned over any

³⁹ *Lapi v. People*, G.R. No. 210731, February 13, 2019, 892 SCRA 680, 688, citing *Ferrer v. People*, 518 Phil. 196, 220 (2006).

⁴⁰ See *Metropolitan Bank and Trust Company v. Reynado*, G.R. No. 164538, August 9, 2010, 627 SCRA 88, 98-99, citing *Firaza v. People*, G.R. No. 154721, March 22, 2007, 518 SCRA 681, 694; *Recuerdo v. People*, G.R. No. 168217, June 27, 2006, 493 SCRA 517, 536; *People v. Moreno*, 373 Phil. 336, 349 (1999); and *People v. Ladera*, 398 Phil. 588, 602 (2000).

⁴¹ *Tamayo v. People*, G.R. No. 174698, July 28, 2008, 560 SCRA 312, 324.

⁴² See *People v. Tanjutco*, No. L-23924, April 29, 1968, 23 SCRA 361, 373.

⁴³ *Degaños v. People*, G.R. No. 162826, October 14, 2013, 707 SCRA 438, 451-452, citing *People v. Nery*, No. L-19567, February 5, 1964, 10 SCRA 244, 247.

⁴⁴ *Id.*

⁴⁵ *Id.* at 247.

proceeds of the sale of the items nor returned them. During the pendency of the case before the trial court, the accused executed a deed in favor of the complainant. The deed contained the promise of accused to pay her debt and committing that in the event that she failed to comply with the said compromise, the case filed against her by the private complainant would push through. When the accused later raised the defense of novation, therefore, the Court rejected the same on the ground that the purported novation occurred after the criminal case had already been instituted and while it was already pending trial.

The Court further emphasized in *Nery* that in order for novation to effectively prevent the incipience of criminal liability, its concept under the Civil Code has to be followed as well. Thus:

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 x x x all or part of the amount misapplied does not obliterate the criminal offense (*Camus vs. Court of Appeals*, 48 Off. Gaz. 3898).⁴⁶

Novation in the Civil Code is found in Article 1291, which provides that novation arises when there is a substitution of an obligation by a subsequent one that extinguishes the first, either by changing the object or the principal conditions, or by substituting the person of the debtor, or by subrogating a third person in the rights of the creditor.⁴⁷ For a valid novation to take place, there must therefore be: (a) a previous valid obligation; (b) an agreement of the parties to make a new contract; (c) an extinguishment of the old contract; and (d) a valid new contract.⁴⁸

Novation, likewise, is never presumed. For it to be effective, 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. In case of only slight modifications, the old obligation would still prevail.⁴⁹ The Court, in *Quinto v. People*⁵⁰ (*Quinto*), has so elaborated:

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.

⁴⁶ Id. at 247-248.

⁴⁷ *Heirs of Servando Franco v. Gonzales*, G.R. No. 159709, June 27, 2012, 675 SCRA 96, 106-107.

⁴⁸ Id. at 107.

⁴⁹ See *Degaños v. People*, supra note 43, at 449-450.

⁵⁰ G.R. No. 126712, April 14, 1999, 305 SCRA 708.

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 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.⁵¹ (*Italics in the original*)

Quinto also involved the receipt of jewelry by the accused from the complainant for the purpose of selling the same on commission basis and with the express obligation on the part of the accused to turn over the proceeds of the sale thereof, or to return the said jewelry, if not sold. The accused interposed the defense that the agreement between her and the complainant was effectively novated when the latter consented to receive payment on installments directly from the buyers of the jewelry. The Court disagreed, concluding that there has never been any *animus novandi* between or among the parties. It explained that the changes alluded to by the accused consisted only in the manner of payment. There was really no substitution of debtors since the complainant merely acquiesced to the payment but did not give her consent to enter into a new contract.

Also, in *Metropolitan Bank and Trust Company v. Reynado*,⁵² the respondents were charged with Estafa under Article 315, paragraph 1(b) for conniving with the bank's client, Universal Converter Philippines, Inc. (Universal), to make huge withdrawals against uncleared regional check deposits and without prior approval of the bank's head office. Before the Information was filed in court, however, the bank and Universal entered into a Debt Settlement Agreement. Thus, the issue that confronted the Court was whether the execution of the Debt Settlement Agreement precluded the bank from holding respondents liable to stand trial for Estafa under Article 315, paragraph 1(b). In ruling in the negative, the Court held that the execution of the Debt Settlement Agreement did not prevent the incipience of the criminal liability of respondents.⁵³ It explained:

⁵¹ Id. at 715-716.

⁵² Supra note 40.

⁵³ The Court in this case upheld the general rule that a compromise or settlement entered into after the commission of the crime does not extinguish accused's liability for Estafa. The Court cited several cases to support its holding, to wit:

x x x In *Firaza v. People* and *Recuerdo v. People*, this Court ruled that in a crime of Estafa, reimbursement or belated payment to the offended party of the money swindled by the accused does not extinguish the criminal liability of the latter. We also held in *People v. Moreno* and in *People v. Ladera* 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." Similarly in the case of *Metropolitan Bank and Trust Company v. Tonda* cited by petitioner, we held that in a crime of *estafa*, reimbursement of or compromise as to the amount misappropriated, after the commission of the crime, affects only the civil liability of the offender, and not his criminal liability. (Id. at 98-99.)



Even if the instant case is viewed from the standpoint of the law on contracts, the disposition absolving the respondents from criminal liability because of novation is still erroneous.

Under Article 1311 of the Civil Code, “contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law.” The civil law principle of relativity of contracts provides that “contracts can only bind the parties who entered into it, and it cannot favor or prejudice a third person, even if he is aware of such contract and has acted with knowledge thereof.”

In the case at bar, it is beyond cavil that respondents are not parties to the agreement. The intention of the parties thereto not to include them is evident either in the onerous or in the beneficent provisions of said agreement. They are not assigns or heirs of either of the parties. Not being parties to the agreement, respondents cannot take refuge therefrom to bar their anticipated trial for the crime they committed. It may do well for respondents to remember that the criminal action commenced by petitioner had its genesis from the alleged fraud, unfaithfulness, and abuse of confidence perpetrated by them in relation to their positions as responsible bank officers. It did not arise from a contractual dispute or matters strictly between petitioner and Universal. **This being so, respondents cannot rely on subject settlement agreement to preclude prosecution of the offense already committed to the end of extinguishing their criminal liability or prevent the incipience of any liability that may arise from the criminal offense.** This only demonstrates that the execution of the agreement between petitioner and Universal has no bearing on the innocence or guilt of the respondents.⁵⁴ (Emphasis supplied)

Simply put, there was no attempt to compromise, settle, or novate the criminal liability of the respondents in the above case at any point in time. The Debt Settlement Agreement, while executed before the Information against respondents was filed in court, did not include them as parties. Consequently, respondents cannot benefit therefrom and the original trust relations between them and the bank remained unchanged.

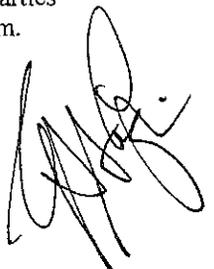
In yet another case involving a violation under Article 315, paragraph 1(b), *Degaños v. People*,⁵⁵ the accused was charged with Estafa for

Notably, however, the above-cited cases, save for *Tonda*, did not involve the kind of Estafa in Article 315 paragraph 1(b), where there is an underlying original obligation which can be novated. *Firaza* and *Recuerdo* involved violations under Article 315 paragraph 2(d), particularly on issuing checks despite full knowledge that they were worthless. In the same vein, *Moreno*, and *Ladera* both involved violations under Article 315 paragraph 2(a) for employing false pretenses in undertaking recruitment of others for employment abroad.

Tonda, on the other hand, did involve a violation under Article 315 paragraph 1(b) in relation to the Trust Receipts Law. The parties attempted to enter into a loan restructuring agreement which entailed the respondents opening a savings account and depositing checks therein to pay the entire principal obligation of the outstanding trust receipts account. The Court found that the parties failed to reach a settlement because they failed to agree on the terms of the loan restructuring agreement. The bank’s purported acknowledgment of its receipt of the checks made no reference to the trust receipt obligations of the parties, and the Court said that it cannot be presumed to be anything more than an ordinary bank deposit. Clearly, in this case, the underlying original contractual obligation of the parties was not effectively modified so as to extinguish any incipient criminal culpability arising therefrom.

⁵⁴ *Metropolitan Bank and Trust Company v. Reynado*, supra note 40, at 100-101.

⁵⁵ Supra note 43.



misappropriating the pieces of jewelries entrusted to her by the complainants to be sold on commission. The accused argued 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 insisted 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 Court disagreed with the argument of the accused, expounding once again on the nature and role of novation in a criminal prosecution. It so held that 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 in the said case, for the partial payments and the proposal to pay the balance the accused made during the barangay proceedings were not at all incompatible with his 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.

Applying the foregoing discussion to the case at bar, the Court finds that the original contract of *commodatum* between the herein parties was effectively novated when they entered into an amicable settlement before the barangay in March 2005, which amicable settlement came about before the Information for Estafa against petitioner was filed in January 2006.⁵⁶ To reiterate, the subject of the amicable settlement were the unpaid accounts which petitioner supposedly owed Nelly and her husband. The purpose of the proceedings, in other words, was to settle these monetary or civil liabilities of petitioner to the spouses Van der Bom. These unpaid accounts included the value of the cement mixer and some other personal properties, as well as alleged loans and cash advances which petitioner and his wife had borrowed from the couple.⁵⁷

Correlatively, in January 2005 or prior to the barangay proceedings in March 2005, the lawyer of the Van der Boms wrote a demand letter to petitioner about the supposed monetary liabilities which he incurred from the couple. The amount of ₱25,000.00 representing the amount of the cement mixer which petitioner obtained from the couple in 2004 was among those listed, along with other sums which were all included in the unpaid accounts made subject of the barangay proceedings.⁵⁸ Also, in his testimony before the trial court, the Pangkat Chairman, Rudy de la Torre, affirmed that the cement mixer was included as a subject matter before the barangay proceedings.⁵⁹

The amicable settlement stipulated, in no uncertain terms, that the parties agreed that they would desist from filing countercharges in the future.⁶⁰

⁵⁶ *Rollo*, p. 11.

⁵⁷ TSN, August 18, 2009, p. 6.

⁵⁸ Records, p. 16; Annex A of Demand Letter; Exhibit B; Exhibit 7.

⁵⁹ TSN, August 18, 2009, p. 24.

⁶⁰ *Supra* note 24.

Contrary to the findings of the CA, as well, the minutes of the proceedings further revealed that Nelly agreed to waive her ownership of the properties subject of their dispute in favor of petitioner. Unmistakably, one of these properties was the cement mixer. Again, the pertinent portions of the minutes of the barangay proceedings provide:

1. Complainant alleged that the respondent borrowed (sic) from her various equipments (sic) **such as cement mixer**, accessories of a computer and (sic) when she demanded for the return of the same, respondent failed to do so. She also charged that certain amount in form of cash advances was not paid by the respondent.

x x x x

4. **Complainant agreed to waive her ownership of properties in question in favor of the respondent** provided (sic) no further case or counter charge (sic) will be filed by the respondent.⁶¹ (Emphasis supplied)

Moreover, the waiver made by Nelly was on the condition that petitioner would not file any case or countercharge against Nelly in the future.⁶² Petitioner kept to his end of this bargain. The labor case which he filed against the couple was not a violation of the agreement since it was filed in January 2005, or prior to the barangay proceedings in March 2005.

With Nelly waiving her ownership over the cement mixer in favor of petitioner in exchange for the concession that he would refrain from filing any case against her in the future, there was clearly an implied novation of the original contract of *commodatum* between her and petitioner.⁶³ The waiver effectively extinguished the original contract of petitioner and Nelly and, in its stead, a new contract in the form of the amicable settlement they executed before the barangay, emerged. The intention to extinguish the old obligation might not have been done expressly, but considering that the new contract of the parties was, by all accounts, incompatible with their original contract of *commodatum*, novation had effectively occurred. The incompatibility was far from being merely incidental or modificatory as the original bailor-bailee relationship between the parties was altogether severed. While ownership by the bailor over the thing loaned is not an indispensable requirement in *commodatum* as Article 1938 of the Civil Code very well provides that the bailor in *commodatum* need not be the owner of the thing loaned, it is important to note in this case, however, that the waiver over the ownership of the property, which was the very object of the original contract of the parties, was made *in favor* of petitioner. This went against a well-established concept in *commodatum* that ownership of the thing loaned does not pass to the borrower.⁶⁴

⁶¹ Supra note 25.

⁶² Id.

⁶³ Art. 1933 of the Civil Code provides that in *commodatum*, the bailor retains the ownership of the thing loaned. One cannot lend a thing he does not own.

⁶⁴ See CIVIL CODE, Art. 1933 which provides:

ART. 1933. By the contract of loan, one of the parties delivers to another, either something not consumable so that the latter may use the same for a certain time and return it, in which case the contract is called a *commodatum*; or money or other consumable thing,

In plain terms, prior to the filing of the Information in court, Nelly had already renounced or relinquished her ownership over the property subject of the criminal case in favor of petitioner. Consequently, therefore, the elements of the crime of Estafa under Article 315, paragraph 1(b) of the RPC became nonexistent. These elements are:

- (1) the offender receives the money, goods or other personal property in trust, or on commission, or for administration, or under any other obligation involving the duty to deliver, or to return, the same;
- (2) the offender misappropriates or converts such money or property or denies receiving such money or property;
- (3) the misappropriation or conversion or denial is to the prejudice of another; and
- (4) the offended party demands that the offender return the money or property.

In particular, there is no longer any duty or obligation on the part of petitioner to deliver or return the cement mixer to Nelly or to any other person for that matter because the ownership thereof had already been transferred to petitioner by Nelly's waiver and renunciation in his favor. It follows, too, that there is no longer any prejudice caused to another.

Perforce, with the new obligation under the amicable settlement between Nelly and petitioner having the effect of novating their old obligation, Nelly is now estopped from insisting on the latter. Accordingly, any incipient criminal liability of petitioner involving his failure to return the cement mixer was effectively averted.

WHEREFORE, the Petition for Review on *Certiorari* is **GRANTED**. The assailed October 25, 2016 Decision and February 21, 2017 Resolution of the Court of Appeals in CA-G.R. CR No. 01887, which affirmed the July 25, 2011 Decision of the Regional Trial Court, Branch 65, San Miguel, Jordan, Guimaras in Criminal Case No. 06-0949 finding petitioner Rex Sorongon guilty beyond reasonable doubt of Estafa, are **REVERSED** and **SET ASIDE**. Petitioner Rex Sorongon is hereby **ACQUITTED** of the crime charged against him. Let an entry of judgment be issued immediately.

upon the condition that the same amount of the same kind and quality shall be paid, in which case the contract is simply called a loan or mutuum.

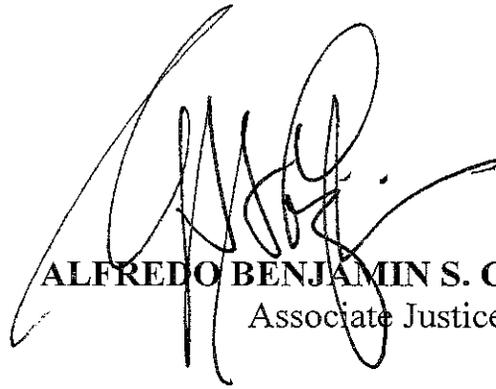
Commodatum is essentially gratuitous.

Simple loan may be gratuitous or with a stipulation to pay interest.

In *commodatum* the bailor retains the ownership of the thing loaned, while in simple loan, ownership passes to the borrower.



SO ORDERED.

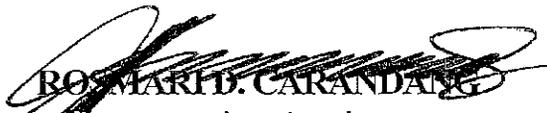


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

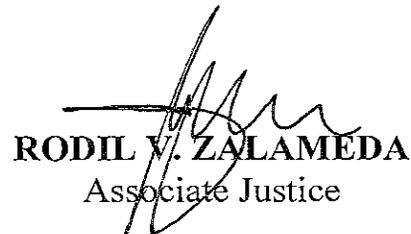
WE CONCUR:



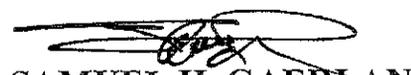
ALEXANDER G. GESMUNDO
Chief Justice
Chairperson



ROSMARID. CARANDANG
Associate Justice



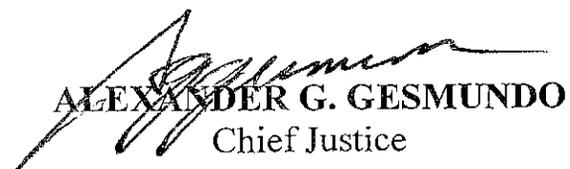
RODIL V. ZALAMEDA
Associate Justice



SAMUEL H. GAERLAN
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.



ALEXANDER G. GESMUNDO
Chief Justice