



Republic of the Philippines
Supreme Court
 Manila

SECOND DIVISION

LUIS T. ARRIOLA,
 Petitioner,

G.R. No. 199975

Present:

PERLAS-BERNABE, J.,
Chairperson,

versus

REYES, A. JR.,
 HERNANDO,
 INTING, and
 DELOS SANTOS, J.J.

**PEOPLE OF THE
 PHILIPPINES,**
 Respondent.

Promulgated:

24 FEB 2020

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DECISION

HERNANDO, J.:

This Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court assails the August 5, 2011 Decision² and the January 3, 2012 Resolution³ of the Court of Appeals (CA) in CA-G.R. CR No. 31338.

The Antecedents

Luis T. Arriola (Arriola) was charged with *Estafa* under Section 315, Paragraph 2(a) of the Revised Penal Code (RPC) before the Regional Trial Court (RTC), Branch 146 of Makati City. The February 11, 2003 Information⁴ against him reads:

¹ *Rollo*, pp. 8-24.

² *Id.* at 26-39, penned by Associate Justice Antonio L. Villamor and concurred in by Associate Justices Jose C. Reyes, Jr. (now a Member of this Court) and Ramon A. Cruz.

³ *Id.* at 41-42.

⁴ Records, p. 1.

That on or about and during the period covering April up to June 2001, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously defraud one Ingeborg De Venecia Del Rosario, in the following manner, to wit: the said accused by means of false manifestation and fraudulent representations he made to the complainant to the effect that he was the authorized real estate broker of one Pasencia G. Candelaria, thus, had the authority to sell and [receive] payments in selling a parcel of land located in Tagaytay City owned by Pasencia G. Candelaria and could facilitate the issuance of a new Transfer Certificate of Title in the name [of] complainant Ingeborg De Venecia Del Rosario, and by means of other deceit of similar import, induced and succeeded in inducing complainant to give and deliver and in fact the latter gave and delivered to said accused the total amount of ₱437,000.00 representing full payment for the land of Pasencia Candelaria in Tagaytay City on the strength of said manifestation and representations, the accused knowing fully well that the same were false and fraudulent and were made only to obtain, as in fact he obtained the total amount of ₱437,000.00 which amount the accused applied and used for his own benefit, to the damage and prejudice of the said complainant, Ingeborg De Venecia Del Rosario.

CONTRARY TO LAW.

When arraigned, Arriola entered a plea of not guilty.⁵ The trial court denied his Motion to Quash for lack of merit.⁶ Trial ensued following pre-trial.⁷ The prosecution presented private complainant Ingeborg De Venecia Del Rosario (Del Rosario) and Atty. Mary Ann B. Roa (Roa) as its witnesses.

The prosecution alleged that sometime in 2001, Del Rosario met Arriola, a real estate broker of real properties located in Tagaytay City. At that time, Del Rosario had already bought a lot in Tagaytay City owned by one Ernesto Marcelo (Marcelo). Arriola informed Del Rosario that the lot adjacent to Marcelo's land was also for sale. He showed her a letter purportedly from the subject lot owner, Paciencia⁸ G. Candelaria (Candelaria), authorizing him to sell it in her stead. Del Rosario became interested in Candelaria's lot, as she planned to construct a therapy center thereon for women.

Del Rosario decided to buy Candelaria's lot and gave Arriola ₱100,000.00 as earnest money. Aside from the Authorization Letter, Arriola also showed Del Rosario a certified copy of Transfer Certificate of Title (TCT) No. 33184 proving that the lot was in Candelaria's name, and a fax transmittal from Candelaria, who allegedly was then in Australia, authorizing Arriola to transact and receive the purchase price in her behalf. Del Rosario paid the balance of the purchase price in the amount of ₱337,000.00, for which Arriola issued her a Receipt of Payment dated June 28, 2001.⁹ Del Rosario signed a

⁵ *Id.* at 128.

⁶ *Id.* at 170-171; penned by Pairing Judge Cesar D. Santamaria.

⁷ *Id.* at 195-196.

⁸ Also spelled as "Pasencia" in some parts of the records.

⁹ Records, p. 238.

Deed of Absolute Sale (Deed)¹⁰ prepared by Arriola and purportedly signed by Candelaria and one Sister Adela Arabia of the Order of St. Benedict as her witness.

Arriola told Del Rosario that since the contract still had to be notarized, he would give her only photocopies of the Deed and the TCT. After repeated requests to deliver the original documents, Del Rosario received only a notarized copy of the Deed and copies of tax receipts appended to Arriola's letter dated September 22, 2001. Exasperated, Del Rosario asked Arriola to return the money if he could not give her the copy of the TCT of Candelaria's lot. In a letter dated December 17, 2001, Arriola replied to and promised Del Rosario that he would return the total amount of ₱437,000.00 on January 7, 2002, plus interest at 16% per *annum* from July 1, 2001.

Arriola, however, reneged on his promise. On May 28, 2002, Arriola issued Del Rosario a check dated June 20, 2002 covering the purchase price of the lot plus interest. The check, however, was dishonored for having been drawn from a closed account. Del Rosario tried contacting Candelaria but discovered that the latter's number indicated in her purported fax transmittal was an invalid number. Undeterred, Del Rosario found Candelaria's number in the White Pages Telephone Directory of Brisbane, Australia. Candelaria told Del Rosario that she was not selling the subject property, nor had she authorized Arriola to sell it. On July 11, 2002, Arriola issued Del Rosario another check in the amount of ₱524,000.00 plus ₱5,000.00 cash. Again, the check was dishonored, this time due to insufficient funds. Del Rosario thus filed the *Estafa* case against Arriola.

Arriola's direct examination was stricken off the record and his right to present evidence was deemed waived after he consistently failed to appear for cross-examination.¹¹

Ruling of the Regional Trial Court

The RTC issued its April 17, 2007 Decision¹² convicting Arriola of the crime charged. It found that the prosecution sufficiently discharged its burden of proving Arriola's guilt beyond reasonable doubt. The RTC concluded that through Arriola's fraudulent representations and false pretenses, Del Rosario parted with her hard-earned money and paid him the amount of ₱437,000.00 as the agreed consideration for the purchase of Candelaria's lot, which Arriola represented to be for sale and that he was duly authorized by its owner to sell. Arriola also admitted having received Del Rosario's money. The evidence presented by the prosecution was undisputed, as Arriola failed to rebut the same despite several opportunities given to him to do so. The dispositive portion of the RTC Decision reads:

¹⁰ *Id.* at 251-252.

¹¹ *Id.* at 527.

¹² *CA rollo*, pp. 42-45; penned by Presiding Judge Encarnacion Jaja G. Moya.

WHEREFORE, in view of the foregoing judgment is hereby rendered declaring the accused LUIS T. ARRIOLA, guilty beyond reasonable doubt of the Crime of Estafa defined and penalized under article 315, paragraph 2 (a) of the Revised Penal Code. Considering that the amount involved exceeds the amount of Php 22,0000.00, pursuant to Article 315 (1) of the Revised Penal Code, the penalty imposed should be x x x in its maximum period, adding one year for each additional Php 10,000.00, but the total penalty shall not exceed twenty years.

Accordingly the accused is hereby sentenced to suffer an indeterminate penalty of four (4) years and two (2) months and one (1) day of *prision correccional*, as minimum to twenty (20) years of *reclusion temporal* as maximum, and he is ordered to return the amount of Php 437,000.00 that the accused received from the offended party, Ingeborg De Venecia del Rosario.

SO ORDERED.¹³

On October 15, 2007, Arriola paid Del Rosario the amount of P437,000.00.¹⁴

On June 11, 2008, Arriola filed his appeal before the CA. He claimed that the RTC convicted him solely on the basis of hearsay evidence. He argued that he was deprived of due process as the records were allegedly bereft of any showing that he fully participated in the proceedings, even at the time the complaint was filed before the prosecutor. Arriola maintained that there was no deceit and his guilt was not proven beyond reasonable doubt. He also asserted that there was no damage, since the money had already been returned to Del Rosario.

Ruling of the Court of Appeals

The CA denied Arriola's appeal. It found that the RTC correctly found that the elements of *Estafa* by means of deceit were all present and that the subsequent payment did not exculpate Arriola from criminal liability. It deemed the representations by Arriola to Del Rosario as fake, e.g., his authority to sell the subject property, his correspondences with Candelaria, the authorization letter, the faxed letter, and the Deed of Absolute Sale. It also declared that the prosecution's evidence anent the phone call to Candelaria was not pure hearsay, since it did not consider Del Rosario's testimony in isolation but in consonance with other proof, which consisted of telephone records,¹⁵ Brisbane White Pages,¹⁶ and the Statutory Declaration of one Cecilia Elicanal Villanueva¹⁷ that the copy of the Brisbane White Pages came from the Brisbane White Pages issue of 2002-2003. Arriola also cannot decry lack of due process since the records showed that he had actively participated in the proceedings before the RTC and that he had been fairly notified and

¹³ *Id.* at 45.

¹⁴ *Rollo*, p. 35.

¹⁵ Records, pp. 264-266.

¹⁶ *Id.*, Exh. "Q."

¹⁷ *Id.* at 267.

warned of the consequences of his continued non-appearance in court. Finding however that Arriola had already paid the subject amount owing to Del Rosario, the CA deleted the amount of ₱437,000.00 granted as indemnity to Arriola. It disposed of the appeal *via* its assailed August 5, 2011 Decision,¹⁸ *viz.*:

WHEREFORE, premises considered, the instant appeal is **DENIED**. The assailed decision of the Regional Trial Court, Branch 146 of Makati City, dated April 17, 2007, is **AFFIRMED** with the **MODIFICATION** that the portion of the Decision ordering appellant to pay complainant the amount of ₱470,000.00 is deleted.

SO ORDERED.¹⁹

In its January 3, 2012 Resolution,²⁰ the CA denied Arriola's Motion for Reconsideration of its August 5, 2011 Decision. Thus, this present Petition for Review on *Certiorari*.

The Assignment of Errors

Arriola raises the following errors for Our review:

I

THE COURT OF APPEALS X X X ERRED IN GIVING CREDENCE TO THE HEARSAY EVIDENCE OF THE PROSECUTION.

II

THE COURT OF APPEALS ERRED IN NOT FINDING GOOD FAITH ON THE PART OF THE PETITIONER WHEN HE ASSUMED TO RETURN THE PURCHASE PRICE PLUS INTEREST AND ACTUALLY PAID THE PRIVATE COMPLAINANT X X X THE AMOUNT DEMANDED TO HIM BY THE TRIAL COURT.

III

THE COURT OF APPEALS X X X ERRED IN FAILING TO GIVE CREDENCE TO THE DEFENSE OF THE PETITIONER UNDER THE EQUIPOISE DOCTRINE.²¹

The Court's Ruling

We sustain Arriola's conviction with modifications on the penalty imposed.

The courts below held Arriola criminally liable for *Estafa* by false deceits under Article 315, Paragraph 2(a) of the RPC, which provides:

¹⁸ *Rollo*, pp. 26-39.

¹⁹ *Id.* at 39.

²⁰ *Id.* at 41-42.

²¹ *Id.* at 12.

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Article 315. *Swindling (estafa)*. - Any person who shall defraud another by any of the means mentioned hereinbelow x x x:

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 transactions, or by means of other similar deceits.

Ordinarily, this Court desists from trifling with the findings of facts by the courts below. Findings by trial courts are generally accorded with great respect by the appellate courts, more so that the Supreme Court is not a trier of facts but of questions of law.

For this case, however, We defer to one of the prevailing exceptions listed by jurisprudence, that is, when the findings of fact by the trial court were conclusions without citation of specific evidence on which they are based.²² The courts below correctly convicted Arriola, but not much substantial discussion was made on the falsity of his representations and the documentary evidence thereof, which We now address.

The totality of circumstantial evidence sufficiently established Arriola's guilt for *Estafa* by means of deceit

Aiming to be exonerated, Arriola asserts that the sole evidence presented by the prosecution showing his alleged deceit was only the phone conversation that transpired between Del Rosario and Candelaria, and thus, rested on mere hearsay evidence which should not have been admitted by the trial court.

Arriola's argument fails to convince.

Section 36, Rule 130 of the Rules of Court does declare hearsay as generally inadmissible testimonial evidence:

Section 36. *Testimony generally confined to personal knowledge; hearsay excluded.* — A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception x x x

Evidence is called hearsay when its probative force depends, in whole or in part, on the competency and credibility of some persons other than the witness by whom it is sought to produce it.²³ A person who introduces a

²² *Medina v. Asistio, Jr.*, 269 Phil. 225, 232 (1990).

²³ *People v. Umapas*, 807 Phil. 975, 989 (2017).

hearsay statement is not obliged to enter into any particular stipulation, to answer any question, to solve any difficulties, to reconcile any contradictions, to explain any obscurities, to remove any ambiguities; and that he/she entrenches himself/herself in the simple assertion that he/she was told so, and leaves the burden entirely upon the dead or absent author. For this reason, the rule against hearsay testimony rests mainly on the ground that there was no opportunity to cross-examine the declarant.²⁴

The hearsay rule, however, does not apply to independently relevant statements. *People v. Umapas*²⁵ is instructive on the matter:

[W]hile the testimony of a witness regarding a statement made by another person given for the purpose of establishing the truth of the fact asserted in the statement is clearly hearsay evidence, it is otherwise if the purpose of placing the statement on the record is merely to establish the fact that the statement, or the tenor of such statement, was made. **Regardless of the truth or falsity of a statement, when what is relevant is the fact that such statement has been made, the hearsay rule does not apply and the statement may be shown. As a matter of fact, evidence as to the making of the statement is not secondary but primary, for the statement itself may constitute a fact in issue or is circumstantially relevant as to the existence of such a fact.** This is the doctrine of independently relevant statements x x x²⁶ (Emphasis supplied)

Del Rosario's testimony can and will be admitted as evidence only for the purpose of proving that such statements regarding Arriola's lack of authority to sell the subject property were, in fact, made and uttered by Candelaria. This is circumstantially relevant to the instant case and within the competence of Del Rosario to confirm. Also, her perception on the conversation in question was adequately tested when she took the witness stand and was cross-examined by Arriola's counsel in open court. Hence, Del Rosario's account as to the fact of her conversation with Candelaria and the latter's stand against Arriola's authority to sell, irrespective of its veracity, is considered as an independently relevant statement that may properly be received as evidence against Arriola.

Nonetheless, the truth of such declarations by Candelaria, as heard by Del Rosario, is easily discernible from the evidence on record. Assessed with other established circumstances, Arriola's fraud is evident. As defined in *People v. Balasa*:²⁷

Fraud, in its general sense, is deemed to comprise anything calculated to deceive, **including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust, or confidence justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another.** It is a generic term

²⁴ *Patula v. People*, 685 Phil. 376, 393-394 (2012).

²⁵ *Supra* note 23.

²⁶ *Id.* at 989.

²⁷ 356 Phil. 362, 382-383 (1998).

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. On the other hand, **deceit** is 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**. (Emphasis supplied)

The deceit and false pretenses committed by Arriola prior to the transfer of money, laid out by Del Rosario in open court, are as follows:

First, Arriola held himself out to Del Rosario as a duly authorized person to sell Candelaria's lot and showed her a letter apparently signed by Candelaria to that effect. However, Candelaria's alleged Authorization²⁸ in favor of Arriola only stated the following:

A U T H O R I Z A T I O N

This is to authorize MR. LUIS T. ARRIOLA to **receive for in my behalf any amount** [from] MS. INGEBORG V. DEL ROSARIO pertaining to her purchase of my lot in Tag[ay]tay City covered by TCT No. 33184.

Done this 9th day of May, 2001 at Las Piñas City.

PACIENCIA G. CANDELARIA
(Emphasis supplied)

When the sale of a piece of land or any interest thereon is through an agent, the authority of the latter shall be in writing; otherwise, the sale shall be void.²⁹

This authority must be contained in a special power of attorney, that is, a specific written grant of authority in favor of an agent to sell a piece of land belonging to the principal. This is so because a special power of attorney is necessary to enter into any contract by which the ownership of an immovable is transmitted or acquired either gratuitously or for a valuable consideration.³⁰ For the principal to confer the right upon an agent to sell real estate, a power of attorney must so express the powers of the agent in clear and unmistakable language. When there is any reasonable doubt that the language so used conveys such power, no such construction shall be given the document.³¹

The Authorization contained no such authority in favor of Arriola to sell Candelaria's lot. Assuming that the Authorization was genuine, its wordings gave Arriola nothing more than an authority to receive the payment for the

²⁸ Records, p. 239.

²⁹ Civil Code, Article 1874.

³⁰ Civil Code, Article 1878(5).

³¹ *Alcantara v. Nido*, 632 Phil. 343, 352 (2010), citing *Dizon v. Court of Appeals*, 444 Phil. 161, 166 (2003).

supposed sale of Candelaria's lot. There was no explicit mention of any sale to be facilitated by Arriola. Despite such a patently defective Authorization, Arriola still volunteered information to Del Rosario that he was also the broker of Candelaria's lot and could negotiate the sale of the property.³²

An authority to receive the payment cannot be impliedly construed as an authority to sell a piece of real property. Here, the Authorization was not in any way the special power of attorney contemplated and required by law. Being a real estate broker by profession, Arriola should be well-equipped with the basic knowledge on the technicalities in conveyances of real property for another person. This pretense can only be perceived as misleading, false, and fraudulent, as Arriola acted before Del Rosario as though there was an express grant of authority to sell Candelaria's lot in his name, when in fact there was none.

Second, Arriola also presented to Del Rosario a fax transmission allegedly from Candelaria addressed to him simultaneous to the full payment of the supposed purchase price. The said fax transmission³³ dated June 27, 2001 stated:

Dear Louie:

I have asked my brother Bong to place the original TCT bank to my safe deposit box us the bank [*sic*] two weeks ago before he followed here in Brisbane.

Since the original Deed of Absolute Sale and the authorization to receive payment are with you, **you can already go ahead with the documentation of the sale** with Ms. Ingeburg del Rosario.

By the time you are thru with the payment of Capital Gain Tax and the getting of the Certificate of Authority to Register from the BIR, I should be here already to surrender the TCT to the Register of Deeds for the change necessary.

Please relay to Ms. Del Rosario that I undertake to have [t]his done on or before July 12, 2001.

With the signed documents, I believe she is amply secured. Pls. Call me ASAP for development.

NING CANDELARIA
(Emphasis supplied)

As with the semantics of the Authorization, the fax transmission was likewise bereft of any indication that Arriola, or anyone else, had been particularly entrusted with the sale of Candelaria's property, other than the processing of its alleged documentation and the pertinent government transactions.

³² TSN, June 14, 2004, pp. 11-12.

³³ Records, p. 262.

Third, Arriola presented to Del Rosario a ready-made Deed of Absolute Sale with Candelaria's signature already affixed thereto.³⁴ Nothing else attested to the genuineness of this document aside from the compelling assurances by Arriola to Del Rosario. These assurances having successfully blocked any doubt on the Deed of Absolute Sale, Del Rosario signed it on June 28, 2001³⁵ and Arriola had it notarized on August 2, 2001.³⁶ It is curious, however, that while it is established that Candelaria resided in Australia, there was no indication or testimony that Candelaria was actually present in the Philippines to sign the Authorization or appear before the notary public for the notarization of the Deed of Absolute Sale.

With this in view, the Court thus takes the liberty of conducting a closer inspection of the three documents presented by Arriola to Del Rosario. Glaring differences are readily observable between the purported signatures of Candelaria on the Authorization, fax transmission, and the Deed of Absolute Sale. The said signatures are reproduced below:


PACIENCIA G. CANDELARIA

Authorization³⁷


PACIENCIA G. CANDELARIA

Fax Transmission³⁸


PACIENCIA G. CANDELARIA
VENDOR

Deed of Absolute Sale³⁹

The differences between the signatures are too blatant to further require the assessment of a handwriting expert. The "P" at the beginning of the signature on the Authorization is boxy and seem to have been drawn with a hesitant hand; slanting, triangular, and terminating beyond the intersection of the lower and upper loops in the fax transmission; and then rounded and surprisingly upright in the Deed of Absolute Sale. The "g" in the Authorization is small and slides to the lower loop without closing the upper loop; large, elongated, and indented upper loop before proceeding to the equally-large second loop in the fax transmission; full unindented first loop while still rounded and upright in the Deed of Absolute Sale. While the copy of the fax transmission appended in the records is too blurred to further make out the "Candelaria" in the signature thereon, the same parts in the Authorization and

³⁴ *Id.* at 251-252.

³⁵ TSN, June 15, 2004, p. 4.

³⁶ Records, p. 256.

³⁷ *Id.* at 239.

³⁸ *Id.* at 262.

³⁹ *Id.* at 256.

the Deed of Absolute Sale remain decipherable. A *prima facie* evaluation thereof, even by an untrained eye, reveals discrepancies that are too dubious to be simply ignored.

There is no means at this point to positively determine which of the above was genuinely executed by Candelaria, or if any of them was even genuine at all. In any case, the variances in all three signatures are definitely not negligible. The evidence on hand sufficiently demonstrates that these signatures do not appear to have been affixed by one and the same person, rendering the documents highly suspect.

Even so, the three phone calls between Atty. Roa and Candelaria that transpired on July 7, 2002,⁴⁰ aside from bolstering the truth of the conversation between the latter and Del Rosario, convinces Us of the spuriousness of Candelaria's signatures on the documents in question. The second phone call was most significant:

ATTY. BAUZON

Now, Ms. Witness, you called Ms. Candelaria, Paciencia Candelaria. And what was the nature of your conversation with her?

x x x x

- A The second call was longer than the first call because during the second call, I discussed with Ms. Paciencia Candelaria, I informed her that Mr. Luis Arriola informed Ms. Del Rosario that the land of Paciencia Candelaria which Ms. Del Rosario already paid for in full and over which an absolute Deed [of] Sale has been executed, I informed her that what Mr. Luis Arriola conveyed to my client, Ms. Del Rosario, that the title could not be transferred because now Ms. Paciencia Candelaria wanted a higher purchase price, which is not acceptable to my client.

ATTY. BAUZON

And so what did Ms. Candelaria tell you after you have narrated that to her?

- A She informed me that **she was not aware of the sale of her property in Tagaytay**. She informed me that **she never authorized Luis Arriola to sell that property**. In fact she told me that **she did not sign any Deed of Absolute Sale for the sale of that land to Ms. Del Rosario**. She also told me that **she did not have any intention in fact of selling that land because she intends to retire there**, and she also told me that **she was not home in Manila at any time, prior to or close to December 17** to have given notice to the alleged improvements that [were] being used as the basis according to Mr. Arriola for asking for a higher purchase price because she never [s]old that land.⁴¹ (Emphasis supplied)

⁴⁰ TSN, August 23, 2004, p. 22; TSN, June 9, 2005, p. 21.

⁴¹ TSN, August 23, 2004, pp. 22-24.

These, again, are to be treated as independently relevant statements of Candelaria, as heard this time by Atty. Roa. By themselves, and as so declared by the trial court, these cannot prove the truth or falsity of what has been conversed upon by Atty. Roa and Candelaria, but limited to the fact that such conversation by telephone has been made.⁴²

Even so, Atty. Roa's testimony holds circumstantial relevance to the issue at bar. During that phone call on June 7, 2002, Candelaria allegedly declared that she was not in Manila "at any time prior or close to December 17."⁴³ Taken together with the other circumstances, it comes to light that Candelaria was truly not in the country when the signatures were affixed on the Authorization dated May 9, 2001 and the Deed of Absolute Sale notarized on August 2, 2001.

It was also to the great detriment of Arriola's case that he did not faithfully attend the trial hearings. We list the following dates scheduled by the court for the conduct of his cross-examination and the correlative reasons for their postponement:

Date of Hearing Set for Arriola's Cross-Examination	Reason for Postponement
June 20, 2006	Presiding Judge on leave ⁴⁴
September 5, 2006	Accused indisposed due to illness ⁴⁵
November 7, 2006	Accused failed to appear despite notice ⁴⁶

When cross-examination is not and cannot be done or completed due to causes attributable to the party offering the witness, the uncompleted testimony is thereby rendered incompetent and inadmissible in evidence.⁴⁷ From the record, Arriola had been granted sufficient opportunities to complete his cross-examination. He had been fairly warned and notified in the September 5, 2006 Order⁴⁸ of the RTC that his cross-examination shall be reset for the last time, and that another failure to appear for cross-examination shall be cause for the striking off of his direct testimony. Due to causes known only to Arriola, he failed to even begin the same. Add to this that prior to his cross-examination, Arriola was already remiss in his attendance for various reasons in the hearings before the trial court.⁴⁹

⁴² TSN, June 9, 2005, p. 23.

⁴³ TSN, August 23, 2004, p. 24.

⁴⁴ Records, p. 517.

⁴⁵ *Id.* at 521 and 524.

⁴⁶ *Id.* at 527.

⁴⁷ *People v. Señeris*, 187 Phil. 558, 565 (1980).

⁴⁸ Records, p. 521.

⁴⁹ Per records, the hearings on the following matters were postponed at least once to multiple times at the instance and due to the absence of Arriola: (1) Motion to Hold in Abeyance Arraignment; (2) Arraignment; (3) Motion to Lift Warrant of Arrest; and (4) Pre-trial Conference. Arriola likewise waived his appearance throughout the presentation of the prosecution evidence (Records, p. 185).

Thus, the totality of these precedents, lumped together with the ensuing phone calls between Del Rosario, Atty. Roa, and Candelaria, only solidifies the veracity of their respective but similar conversations that Arriola indeed had not been authorized to sell Candelaria's land. Despite full knowledge of such fact, Arriola still proceeded to represent himself as a duly authorized seller of the said lot. The falsity of Arriola's pretenses is palpable in the records, and this establishes the first element of *Estafa* by misrepresentation.

All the other elements of the crime also are undisputed. As laid down by jurisprudence, the elements of *Estafa* by means of deceit under Article 315, Paragraph 2(a) of the RPC are as follows:

(1) That there must be a false pretense or fraudulent representation as to the offender's power, influence, qualifications, property, credit, agency, business, or imaginary transactions;

(2) That such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud;

(3) That the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money or property; and

(4) That, as a result thereof, the offended party suffered damage.⁵⁰

The first and second elements are already extant from the records. Anent the third and fourth elements, the CA succinctly concluded the same in the following manner:

Convinced of [Arriola]'s authority to sell the subject property, [Del Rosario] was induced by [Arriola]'s false pretenses to continue with the sale transaction though she had never met Candelaria personally. [Del Rosario] trusted [Arriola], prompting her to part with her money. She also signed the Deed of Absolute Sale, secure in the belief that she was engaged in an honest deal brokered by appellant on behalf of his principal, Candelaria.

As a result of the fraudulent transaction, [Del Rosario] lost a total amount of ₱437,000.00. x x x⁵¹

Case law instructs that "the gravamen of the [crime of *Estafa*] is the employment of fraud or deceit to the damage or prejudice of another."⁵² With the foregoing, Arriola's actuations toward Del Rosario snugly encapsulated this description.

⁵⁰ *People v. Baladjay*, G.R. No. 220458, July 26, 2017, 833 SCRA 264, 274.

⁵¹ *Rollo*, pp. 34-35.

⁵² *People v. Aquino*, G.R. No. 234818, November 5, 2018, citing *People v. Baladjay*, *supra* note 50 at 278.

Return of the amount owed to Del Rosario will not cancel Arriola's criminal liability for *Estafa*

Arriola insists that he manifested good faith when he returned Del Rosario's money, and that good faith is a defense against a charge for *Estafa*. Citing this Court's ruling in *Salazar v. People*,⁵³ he also maintains that the transaction between Del Rosario and Candelaria was that of a sale, and his failure to deliver the title of the property in question only gave rise to a civil liability. We disagree.

The return by the accused of money belonging to the private complainant will not reverse a consummated act of *Estafa*. Quite the contrary, such action may even uphold a conviction. Section 27, Rule 130 of the Rules of Court states that in criminal cases, except those involving quasi-offenses or criminal negligence or those allowed by law to be compromised, an offer of compromise by the accused may be received in evidence as an implied admission of guilt. In this case, Arriola's initial attempts to reimburse Del Rosario through checks, coupled with the actual return of the latter's money after the RTC issued its judgment of conviction, may all be considered as unequivocal gestures to compromise and which can be measured against Arriola as his implied admission of guilt.

Moreover, *Salazar v. People*,⁵⁴ which exonerated accused therein upon reconsideration and contemplated *Estafa* by misappropriation under Article 315, paragraph 1(b) of the RPC, finds no application here, as the present case involves *Estafa* by false pretenses under Article 315, paragraph 2(a) of the same law.

Even if so similarly situated, *Salazar v. People*⁵⁵ declared that the transaction between the parties therein was simply that of sale, and a delay in the performance by a party to the contract entailed only a civil obligation to return the advance payment made by the other. No such sale of a piece of land transpired in this case due to Arriola's lack of authority to sell. There was no contract in the first place. Also, unlike in *Salazar v. People*, evidence of false pretenses and the resultant damage to Del Rosario clearly obtains against Arriola. This creates not just a civil obligation on Arriola to return Del Rosario's money, but also a correlative criminal liability for the perpetration of fraud on Del Rosario.

⁵³ 480 Phil. 444 (2004).

⁵⁴ *Id.*

⁵⁵ *Id.*

Good faith is “an elusive idea, taking on different meanings and emphases as we move from one context to another.”⁵⁶ It is, in general, a state of mind consisting in honesty in belief or purpose, faithfulness to one’s duty or obligation, observance of reasonable commercial standards of fair dealing in a given trade or business, absence of intent to defraud or seek unconscionable advantage,⁵⁷ or a belief in one’s legal title or right.⁵⁸ Being *malum in se*, and depending on the proven circumstances, good faith and lack of criminal intent are indeed available defenses against a prosecution for *Estafa*.

However, all-encompassing this definition is, good faith still cannot be appreciated in favor of Arriola. As earlier expounded, Arriola, a real estate broker, presented to Del Rosario an Authorization and a fax transmission clearly conveying mere permission from Candelaria to receive payment from Del Rosario. Despite knowledge of such information, and even going so far as to disclose the same to Del Rosario, Arriola continued to wield his *ultra vires* power to sell Candelaria’s lot. This smacks of overt thoughtlessness, gross negligence, and fraudulent intentions in his professional dealings, imperiling the welfare of both his principal and the latter’s client and culminating in the actual damage to Del Rosario. To attribute good faith to Arriola under these facts is to uphold injustice.

The equipoise rule is inapplicable in this case

Arriola maintains that he possessed a valid authority to sell the subject lot, which Candelaria denied. While hearsay, Arriola asserts his position that Candelaria only withheld such authority because they had a subsequent disagreement. There being a conflict between the versions of the prosecution and the defense, Arriola insists that the courts should have favored that of the latter, citing the equipoise rule.⁵⁹ We differ.

The equipoise rule is inapplicable here. This criminal law principle is explained in brief in *Tin v. People*,⁶⁰ a case relied on by Arriola:

⁵⁶ Black’s Law Dictionary, Eighth Edition (2004).

⁵⁷ *Id.*

⁵⁸ Webster’s Third New International Dictionary of the English Language, Unabridged (1993).

⁵⁹ *Rollo*, p. 18.

⁶⁰ 415 Phil. 1 (2001).

Under this rule, where the evidence on an issue of fact is in equipoise or there is doubt on which side the evidence preponderates, the party having the burden of proof loses. **The equipoise rule finds application if the inculpatory facts and circumstances are capable of two or more explanations**, one of which is consistent with the innocence of the accused and the other consistent with his guilt, for then the evidence does not fulfill the test of moral certainty, and does not suffice to produce a conviction. Briefly stated, the needed quantum of proof to convict the accused of the crime charged is found lacking. x x x⁶¹

Conviction rests not on the frailty of the defense but on the strength and sufficiency of the evidence of the prosecution. In this case, however, the scales of the evidence had already tilted heavily against the defense. We perceive no conflicting versions, as Arriola technically failed to set forth his own version in the first place. His guilt was finely established with the required quantum of proof, which is proof beyond reasonable doubt.

More importantly, this factual argument by Arriola is too bare and was raised too belatedly to be considered at this point. To recall, Arriola's direct testimony was stricken off the record for his consistent absences at the scheduled dates for his cross-examination. It was not even tendered as excluded evidence. Only on appeal that he advanced this argument. Even if time and procedure permitted it, Arriola, by his own admission, grounded his case solely and purely on hearsay. This is wholly insufficient to counter the already-compelling evidence presented against him by the prosecution.

Penalty modifications

Republic Act No. 10951 (RA 10951) adjusted the amount or value of the property and damage upon which the penalties for crimes and offenses are based, and the fines imposed therefor. Section 85 thereof specifically provides for violations of Article 315, Paragraph 2(a) of the RPC:

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 of the means mentioned hereinbelow 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).

⁶¹ *Id.* at 11-12 (2001).

*Seguritan v. People*⁶² and *People v. Dejolde, Jr.*⁶³ involved the application of RA 10951 on the third paragraph of Article 315, as amended. Both meted out the following penalty:

[I]n view of the recent enactment of RA 10951, there is a need to modify the penalties imposed by the CA insofar as the two counts of estafa, docketed as Criminal Case Nos. 27592-R and 27602-R, are concerned. For committing estafa involving the amounts of ₱440,000.00 and ₱350,000.00, Article 315 of the RPC, as amended by RA 10951, now provides that 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. **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, the range of which is one (1) month and one (1) day to four (4) months. Thus, **the indeterminate penalty for each count of estafa should be 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.**


The RTC held Arriola criminally liable for *Estafa* under Article 315, Paragraph 2(a) for the amount of ₱437,000.00 and initially imposed the indeterminate penalty of four (4) years, two (2) months, and one (1) day of *prision correccional*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum. In light of RA 10951 and the aforementioned recent pronouncements, Arriola's penalty is hereby modified to *arresto mayor* in its minimum period to *prision correccional* in its minimum period, further narrowed down to an indeterminate penalty 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.

WHEREFORE, the Petition is **DENIED**. The assailed August 5, 2011 Decision and January 3, 2012 Resolution of the Court of Appeals in CA-G.R. CR No. 31338 are **AFFIRMED** with **MODIFICATIONS**. Petitioner Luis T. Arriola is **ORDERED** to suffer the indeterminate penalty 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.

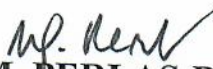
⁶² G.R. No. 236499, April 10, 2019.

⁶³ G.R. No. 219238, January 31, 2018, 853 SCRA 554, 563-564.


SO ORDERED.



RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson



ANDRES B. REYES, JR.
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice


EDGARDO L. DELOS SANTOS
Associate Justice

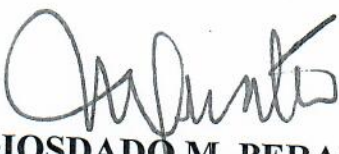
ATTESTATION

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. PERLAS-BERNABE
Associate Justice
Chairperson, Third Division

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.


DIOSDADO M. PERALTA
Chief Justice