



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

CLARITA ESTRELLADO-MAINAR
Petitioner,

G.R. No. 184320

Present:

- versus -

CARPIO, J., *Chairperson*,
BRION,
MENDOZA,
PERLAS-BERNABE,* and
LEONEN, JJ.

Promulgated:

PEOPLE OF THE PHILIPPINES,
Respondent.

29 JUL 2015

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DECISION

BRION, J.:

Before this Court is the Petition for Review on *Certiorari*¹ filed by petitioner Clarita Estrellado-Mainar assailing the resolutions of the Court of Appeals (CA) dated November 28, 2007,² and July 29, 2008,³ respectively, in CA-G.R. CR No. 00429.

ANTECEDENT FACTS

Sometime in February 2005, the petitioner offered for sale to Eric Naval (*Naval*) portions of land located in Matina Aplaya, Davao City. During the negotiations for this sale, the petitioner told Naval that the title to the land she was selling had no problems. The petitioner also informed

* Designated as Acting Member in lieu of Associate Justice Mariano C. Del Castillo per Special Order No. 2115 dated July 22, 2015.

¹ Under Rule 45 of the Rules of Court.

² Penned by Associate Justice Rodrigo F. Lim, Jr., and concurred in by Associate Justices Teresita Dy-Liaco Flores and Michael P. Elbinias; *rollo*, pp. 219-221.

³ Penned by Associate Justice Rodrigo F. Lim, Jr., and concurred in by Associate Justices Michael P. Elbinias and Elihu Ybañez; *id.* at 151-153.

Naval that the area subject of the proposed sale would “still be segregated from the mother title.”⁴

On March 24, 2003, the parties executed an *Agreement to Buy and Sell*⁵ where the petitioner agreed to sell to Naval a 200-square meter portion of the land covered by Transfer Certificate of Title (TCT) No. T-19932 representing a portion of the petitioner’s share in the estate of her deceased father, Nicolas Estrellado.⁶ Naval paid a down payment totaling ₱100,000.00,⁷ and then asked permission from the petitioner if he could construct his house on the land he bought. After the petitioner issued an *Authorization* dated March 24, 2003, Naval built his house on the subject land.

On June 3, 2005, representatives from JS Francisco & Sons, Inc. (*JS Francisco*) demolished Naval’s house. It was only then that Naval discovered that the lot sold to him had been the subject of a dispute between the petitioner’s family and JS Francisco. Naval demanded from the petitioner the return of the amount he paid for the land, as well as to pay the value of the house demolished, but the latter refused to heed these demands.

The prosecution charged the petitioner with the crime of other forms of swindling under **Article 316, paragraph 1** of the Revised Penal Code, as amended, before the Municipal Trial Court in Cities (*MTCC*), Branch 2, Davao City⁸ in an Information that provides:

That sometime in February 2005, in the city of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, with deceit and intent to defraud, pretending to be the lawful owner of a two hundred (200) square meters lot portion of a lot covered by TCT-19932 located at Cogon, Matina Aplaya, this City, with deceit and intent to gain, wilfully, unlawfully and feloniously succeeded in selling the same to one Eric C. Naval for which the said Eric C. Naval paid to the accused the total amount of ₱123,000.00, as partial payment of the said lot when in truth and in fact and despite her knowledge that the entire property covered by TCT No. 19931 [sic] had been sold and was already owned by JS Francisco and Sons, Inc., thereby defrauding the said Eric C. Naval in the aforesaid amount of ₱123,000.00.

CONTRARY TO LAW.⁹

In its decision¹⁰ dated December 27, 2006, the MTCC found the petitioner guilty beyond reasonable doubt of other forms of swindling under **Article 316, paragraph 2** of the Revised Penal Code, as amended, and sentenced her to suffer the penalty of imprisonment of two (2) months and one (1) day of *arresto mayor*.

⁴ Id. at 74.

⁵ Id. at 77-78.

⁶ Nicolas Estrellado died on March 18, 2003.

⁷ In two payments – P20,000.00 and P80,000.00, respectively.

⁸ Criminal Case No. 123,834-B-06.

⁹ Records, p. 1.

¹⁰ *Rollo*, pp. 44-51.

The MTCC essentially ruled that the petitioner “represented to the complainant that the property is free from lien and encumbrance.”¹¹ It added that Naval relied on the first page of the title that had been shown to him, and that the petitioner deliberately did not inform him of the fact that she (petitioner) no longer owned the area sold.

Accordingly, the MTCC directed the petitioner to pay the following amounts to the offended party: (a) ₱123,000.00 fine with subsidiary imprisonment in case of insolvency; (b) ₱123,000.00 civil indemnity; (c) ₱65,755.45 as actual expenses incurred and proven; (d) ₱10,000.00 attorney’s fees; and (e) ₱10,000.00 moral damages.

On appeal, the Regional Trial Court (RTC), Branch 16, Davao City, affirmed the MTCC decision *in toto*.¹² The RTC essentially adopted the factual findings and the conclusions of the MTCC.

The petitioner moved to reconsider this decision, but the RTC denied her motion in its Order of May 29, 2007.

The petitioner challenged the RTC rulings before the CA via a petition for review, docketed as CA-G.R. CR No. 00429. In its resolution¹³ dated August 16, 2007, the CA directed the petitioner to “show cause why the petition should not be dismissed for its failure to: (1) allege the date of receipt of the assailed decision in the petition; (2) allege the date of receipt of the denial of the petitioner’s motion for reconsideration with the court *a quo*; and (3) attach Exhibits “03” to “05” referred to on pages 8 and 9 of the petition.”

In her *Compliance and Manifestation*,¹⁴ the petitioner specified the date when her counsel’s messenger received the assailed RTC decision and order. She, however, manifested that her petition for review bore no Exhibits “03” to “05” on pages 8-9.

In its resolution of November 28, 2007,¹⁵ the CA dismissed the petition for the petitioner’s failure to attach the exhibits that would support the allegations of her petition in violation of Section 2, Rule 42 of the Rules of Court.

The petitioner moved to reconsider this decision, but the CA denied her motion in its resolution dated July 29, 2008.

¹¹ Id at. 49.

¹² Decision dated April 30, 2007; penned by Presiding Judge Emmanuel Carpio.

¹³ CA *rollo*, pp. 83-84.

¹⁴ Id. at 85-88.

¹⁵ Id. at 103-105.

THE PETITION FOR REVIEW ON CERTIORARI

In the present petition,¹⁶ the petitioner claimed that the CA erred in dismissing her petition for review on mere technicalities. She further argued that the courts *a quo* erred in convicting her of violation of Article 316, paragraph 2 of the Revised Penal Code because the Information charged her with violation of paragraph 1 of the same article. The petitioner also maintained that she did not misrepresent the subject land to be free from any lien or encumbrance.

OUR RULING

After due consideration, we resolve to **grant** the petition.

Noncompliance with Section 2, Rule 42 of the Rules of Court

The right to appeal is not a natural right and is not part of due process, but merely a statutory privilege to be exercised only in accordance with the law. As the appealing party, the petitioner must comply with the requirements of the relevant rules; otherwise, she loses the statutory right to appeal. We emphasize that the procedures regulating appeals as laid down in the Rules of Court must be followed because strict compliance with them is indispensable for the orderly and speedy disposition of justice.¹⁷

Section 2, Rule 42 of the Rules of Court provides:

Section 2. *Form and contents.* – The petition shall be filed in seven (7) legible copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full names of the parties to the case, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the specific material dates showing that it was filed on time; (c) set forth concisely a statement of the matters involved, the issues raised, the specification of errors of fact or law, or both, allegedly committed by the Regional Trial Court, and the reasons or arguments relied upon for the allowance of the appeal; (d) **be accompanied by clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, certified correct by the clerk of court of the Regional Trial Court, the requisite number of plain copies thereof and of the pleadings and other material portions of the record as would support the allegations of the petition.** (emphasis ours)

Corollarily, Section 3 of this Rule states that, “[t]he failure of the petitioner to comply with any of the foregoing requirements regarding, among others, the contents of **and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.**”

¹⁶ Rollo, pp. 10-34.

¹⁷ See *Juanita Magsino v. Elena De Ocampo and Ramon Guico*, G.R. No. 166944, August 18, 2014.

We note that the CA exercised liberality in its treatment of the petitioner's petition for review when – instead of dismissing it outright – it still directed her to show cause why her petition should not be dismissed for failing to strictly comply with Section 2 of Rule 42, particularly for failure to: (1) allege the date of receipt of the assailed decision in the petition; (2) allege the date of receipt of the denial of petitioner's motion for reconsideration; and (3) attach exhibits "03" to "05" referred to on pages 8 and 9 of the petition.¹⁸

Instead of complying with the third directive, however, the petitioner stated that the petition had no exhibits "03" and "05" on pages 8-9. An examination of the records revealed that, indeed, exhibits "03" to "05" were stated on pages 4 to 5. The CA itself admitted that it inadvertently stated in its directive that exhibits "03" to "05" were on pages 8 and 9, instead of on pages 4 to 5.

Notwithstanding the CA's inadvertence, the petitioner ought to have complied with the latter's third directive, considering that there could have been no other exhibits "03" to "05" referred to other than those mentioned on pages 4 and 5 of the petition, namely TCT No. T-364319 (Exh. "03"); Extrajudicial Settlement of Estate with Renunciation of Shares, Donation and Deed of Absolute Sale (Exh. "04"); and Agreement to Buy and Sell (Exh. "05").

Without doubt, these documents would have supported the material allegations in the petitioner's petition for review. The petitioner should have been more prudent and vigilant in pursuing her petition, instead of capitalizing on the CA's misquotation of the pages. The CA already gave the petitioner the opportunity to rectify the procedural infirmities in her petition, but the latter did not take advantage of this liberality by exerting utmost diligence to comply with the CA's directives.

The records likewise showed that the petitioner did attach Exhibits "03" to "05" in her motion for reconsideration before the CA. The CA, nonetheless, disregarded these annexes due to the petitioner's failure to offer any explanation why she did not attach these documents to her petition. While the CA could have stretched the limits of its liberality a bit more, we could not fault it for ruling the way it did at that point since the petitioner did not even bother to offer any explanation why she did not attach these relevant documents to her petition. As the CA held:

Despite petitioner's second attempt to rectify the procedural infirmities in the motion for reconsideration by attaching therein the exhibits, yet, petitioner did not even proffer any explanation why she failed in the first instance to attach the same in the petition.

X X X X

¹⁸ Resolution dated August 16, 2007; CA *rollo*, pp. 83-84.

Finally, concomitant to petitioner's plea for liberal application of the rules of procedure is her obligation to exert her utmost to comply therewith. Sadly, petitioner is wanting of the traits that could qualify her to invoke liberality in the application of the Rules.¹⁹

What constitutes a good and sufficient cause that will merit a reconsideration of the dismissal of the petition is a discretionary call by the CA, and the Court will not interfere with the exercise of this prerogative unless there has been a grave abuse of discretion. Following the clear provisions of Section 2, in relation with Section 3, of Rule 42, we hold that the CA did not act in a whimsical, arbitrary, or capricious manner that amounted to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law.

**The petitioner's improper conviction
under Article 316, paragraph 2 of the RPC**

Notwithstanding the petitioner's noncompliance with Section 2, Rule 42, we resolve the substantive issue raised by the petitioner in the interest of justice. This Court has, on occasion, suspended the application of technical rules of procedure where matters of life, liberty, honor or property, among other instances, are at stake. It has allowed some meritorious cases to proceed despite inherent procedural defects and lapses on the principle that rules of procedure are mere tools designed to facilitate the attainment of justice. The strict and rigid application of rules that tends to frustrate rather than promote substantial justice must always be avoided.²⁰

Section 14(2) of Article III of the 1987 Constitution provides that an accused has the right to be informed of the nature and cause of the accusation against him. Indeed, Section 6, Rule 110 of the Revised Rules of Criminal Procedure requires that the acts or omissions complained of as constituting the offense must be alleged in the Information. Section 8 of said rule provides that the Information shall state the designation of the offense given by the statute and aver the acts or omissions constituting the offense. The real nature of the crime charged is determined by the facts alleged in the Information and not by the title or designation of the offense contained in the caption of the Information. It is fundamental that every element of which the offense is comprised must be alleged in the Information.²¹

To recall, the prosecution charged the petitioner with the crime of other forms of swindling under Article 316, paragraph 1 of the Revised Penal Code, as amended, which punishes "[a]ny person who, pretending to be the owner of any real property, shall convey, sell, encumber, or mortgage the same."

¹⁹ Rollo, p. 152.

²⁰ See *Llamas v. Court of Appeals*, G.R. No. 149588, August 16, 2010, 628 SCRA 302, 307 (citations omitted).

²¹ See *Garcia v. People*, 457 Phil. 713, 719-720 (2003).

The trial courts, however, convicted the petitioner under Article 316, paragraph 2 which punishes the act of any person who, knowing that real property is encumbered, shall dispose of the same, although such encumbrance is not recorded.

The elements of other forms of swindling under Article 316, paragraph 2 of the Revised Penal Code are as follows: (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.²²

The Information in the present case, aside from expressly indicating in its caption that it is charging the petitioner under Article 316, paragraph 1 of the Revised Penal Code, alleged that the petitioner “with deceit and intent to defraud,” pretended to be the lawful owner of a 200-square meter portion of a lot covered by TCT No. T-19932 despite her knowledge that the entire property had already been sold and was owned by JS Francisco. Notably, it had not been alleged that the petitioner *expressly represented* to Naval that the subject property was free from any encumbrance.

In *Naya v. Abing*,²³ the Court set aside the petitioner’s conviction for estafa under Article 316(2) of the Revised Penal Code since there had been no allegation in the Information that he (petitioner) expressly represented in the sale of the subject property to William Po that the said property was free from any encumbrance. We explained that the gravamen of the crime is the disposition of legally encumbered real property by the offender under the *express representation that there is no encumbrance thereon*; and that the accused must make an express representation in the deed of conveyance that the property sold or disposed of is free from any encumbrance for one to be criminally liable. The Court explained that:

x x x there is no allegation in the Information that petitioner expressly represented in the sale of the subject property to William Po that the said property was free from any encumbrance. Irrefragably, then, petitioner was not charged with *estafa* under Article 316, paragraph 2 of the Revised Penal Code. Hence, the trial court committed a reversible error in finding petitioner guilty beyond reasonable doubt of *estafa* under said provision and that the Court of Appeals likewise erred in affirming the decision of the trial court on appeal.²⁴

We reiterate that the Information in the present case did not allege that the petitioner made an express representation that the property sold is free from any encumbrance. This Information was crafted in such a way that only one particular crime was charged (*i.e.*, Article 316, paragraph 1), and

²² *Supra* note 20, at 309.

²³ 446 Phil. 484 (2003).

²⁴ *Id.* at 495.

the alleged manner through which such offense was committed (that is, by pretending to be the lawful owner x x x) did not constitute ground for conviction under paragraph 2, which may be committed *even by the owner of the property*.

Significantly, the *Agreement to Buy and Sell* between the petitioner and Naval also did not contain any representation by the petitioner that the property being sold was free from any encumbrance.

It is not disputed that TCT No. T-19932 bore the following annotations:

X X X X

Entry No. 1131326 – AFFIDAVIT OF ADVERSE CLAIM – filed by J.S. Francisco and Sons, Inc. represented by Joselito Francisco affecting the property covered by this Certificate of Title which is the subject of Deed of Sale executed between the said corporation and the registered owner. This instrument was executed before Notary Public of Davao City Francis Arnold de Vera, as Doc No. x x x

Date of instrument : Oct. 28, 1998;
Date of inscription : Oct. 29, 1998 at 8:10 a.m.

At any rate, paragraph 2 of Article 316 does not prohibit the sale of an encumbered property; the vendor must have represented to the buyer that the property was free from encumbrance.²⁵ What brings about criminal liability is the deceit in selling the property. Corollarily, the deed must have a statement of warranty that is false in order to commit the offense.²⁶ The petitioner's passive attitude regarding the presence of an adverse claim (she assumed that Naval became aware of this inscription after showing to him a copy of TCT No. T-19932 and "never complained") is not sufficient to constitute fraud within the meaning of the law. The fraud and/or deceit by misrepresentation contemplated by law must be the result of overt acts; they cannot be implied or presumed.

In the light of these considerations, we hold that the trial courts erroneously convicted the petitioner of other forms of swindling under Article 316, paragraph 2 of the Revised Penal Code. To uphold the petitioner's conviction for an offense other than that charged in the Information would be a violation of her right to be informed of the nature and cause of the accusation against her.

²⁵ In *Naya v. Abing*, the Court explained that [t]he law was taken from Article 455 of the Spanish Penal Code of 1850 which reads:

En la misma pena incurrirá el que dispusiere de una cosa como libre, sabiendo que estaba gravada.

Although the words "*como libre*" meaning "free from encumbrance" do not appear in the English text of the Revised Penal Code, nonetheless, the same are deemed incorporated in the Revised Penal Code.

²⁶ See Leonor D. Boado, Notes and Cases on the Revised Penal Code and Special Penal Laws, 2008 ed., p. 890.

**Violation of Article 316, paragraph 1
of the Revised Penal Code not proven**

The presented pieces of evidence do not also warrant a conviction for the crime for which the petitioner had been charged, that is, Article 316, paragraph 1 of the Revised Penal Code.

For a successful prosecution of the crime of swindling under Article 316, paragraph 1 of the Revised Penal Code, the following essential elements of this crime must be established: (1) that the thing be immovable, such as a parcel of land or a building; (2) that the offender who is not the owner of said property should represent that he is the owner thereof; (3) that the offender should have executed an act of ownership, *e.g.*, selling, leasing, encumbering, or mortgaging the property; and (4) that the act be made to the prejudice of the owner or a third person.²⁷

The presence of the first and third elements are beyond question, as the parties admitted that the petitioner *sold* to Naval a 200-square meter *parcel of land* located in Matina Aplaya, Davao City. The fourth element is likewise settled, as the petitioner did not deny that Naval paid her a total of ₱123,000.00. The fact of destruction of Naval's house by the representatives of JS Francisco is also not disputed.

With regard to the second element, we hold that the prosecution failed to prove the allegation in the Information that the petitioner *pretended* to be the lawful owner of a 200-square meter portion of a lot covered by TCT No. 19932.

It is not disputed that the petitioner was one of the nine (9) children of Nicolas and Narcisa, who was the registered owner of TCT No. T-19932 entered at the Registry of Deeds of Davao City on October 31, 1967. The Register of Deeds of Davao City eventually cancelled TCT No. T-19932 and issued a new title (TCT No. T-364319) in the name of "Nicolas Estrellado, married to Narcisa Trono, both of legal age, Filipinos and residents of Davao City, Philippines."²⁸

Naval's court testimony showed that he **was aware that the title to the land being sold to him was still under the name of Nicolas**, thus:

ATTY. PERCY JANE ABIAN-FUÑE:

Q: Mr. Naraval (sic), how long have you known the accused Clarita Mainar?

ERIC NAVAL:

A: We knew each other in 1999 for three years.

²⁷ Luis B. Reyes, *The Revised Penal Code (Book Two)*, 17th edition, 2008, p. 846.
²⁸ *Rollo*, p. 44.

- Q: And you personally know that she is the daughter of the late Mr. Nicolas Estrellado?
- A: Yes, ma'am.
- Q: And that you approached sometime in February, you said you approached her and made known your intent to buy the property?
- A: Yes, ma'am.
- Q: **And that you knew that the property that you are buying will still be segregated from the mother title?**
- A: **Yes, ma'am.**
- Q: **And at that time the accused had shown you copy of the owner's duplicate of title?**
- A: **Correct.**
- Q: **Under the name of the late Nicolas Estrellado?**
- A: **Yes, ma'am.**
- Q: **And at that time you knew you were buying a titled property, right?**
- A: **Correct.**
- Q: And at that time you did not verify with the Register of Deeds?
- A: Yes, I did not.
- Q: Because you have already seen the duplicate copy of the title, right?
- A: I just seen [sic] the front page of the title.
- Q: And knowing that you have only seen the front title, you did not check with the Register of Deeds?
- A: I did not.
- Q: And did you find any other burden on the property other than what is stated in the title?
- A: None.²⁹

X X X X

In Naval's own complaint-affidavit, he stated that the petitioner informed him during the negotiations for the sale "that the area that I will

²⁹ TSN, September 22, 2006, pp. 5-6.



buy would still be segregated from the mother title.”³⁰ In this same complaint-affidavit, Naval also stated that he caused the property to be surveyed in order to determine the boundaries of the area he bought, and to separate it from the mother title. These statements were corroborated by Naval’s wife, Josephine, who stated in her own affidavit that the petitioner told her and Naval that the subject property was still part of the mother title. In addition, stipulation no. 3 of the Agreement to Buy and Sell provides that “*xxx the SELLER shall cause the subdivision of the title and take out two hundred (200) square meters portion of the BUYER from the SELLER’s nine hundred thirty six (936) square meters share.*”

Under these circumstances, it is clear that the petitioner **did not pretend to be the owner** of the property sold. From the very start, the petitioner made it clear to Naval that the subject property was still under the name of her (petitioner’s) father; and that the area subject of the sale would still be segregated from the mother title. Naval also admitted that he saw the front page of the land’s title showing Nicolas to be its registered owner. The element of deceit – central to prosecutions for swindling – is therefore wanting. We additionally point out that Nicolas’ heirs (Narcisa and his nine legitimate children) eventually executed an *Extrajudicial Settlement of Estate with Renunciation of Shares, Donation and Deed of Absolute Sale*³¹ where they agreed, among others, to give a portion (totalling 1,236-square meters) of the land covered by TCT No. T-364319 to the petitioner.

In the light of these considerations, we cannot hold the petitioner liable for other forms of swindling under Article 316, paragraph 1 of the Revised Penal Code absent a finding that she employed fraud or deceit in the form of false pretenses with regard to her ownership of the real property sold.

We are aware that a decision³² (attached to the records) had been issued by the MTCC, Branch 3, Davao City, on April 26, 1999, in Civil Case No. 6, 297-C-98, where the trial court ruled in favor of JS Francisco (plaintiff) against Nicolas Estrellado and Narcisa Trono-Estrellado (Estrellado spouses). In this case, the MTCC ordered the Estrellado spouses, their successors-in-interest, and other persons acting on their behalf, to immediately vacate Lot 377-A-1-B-4-B (LRC) Psd-78004 (covered by TCT No. T-19932) and to restore its peaceful possession to the plaintiff.

This MTCC decision, however, bears no relevance on the issue whether the petitioner misrepresented to be the owner of the property covered by TCT No. T-19932. We point out that this case arose from an action for *forcible entry* filed by J.S. Francisco against the petitioner’s parents, the Estrellado spouses. The issue in an ejectment case is the right to physical possession of the premises or possession *de facto*, and the court may pass upon such issue but only to determine the question of

³⁰ Records, p. 35-c.

³¹ CA *rollo*, pp. 121-125.

³² Records, p. 48-x.

possession especially if the former is inseparably linked with the latter. Corollarily, a party who can prove prior possession *de facto* may recover the possession *even from the owner himself*, since such cases proceed independently of any claim of ownership.

In its April 26, 1999 decision in Civil Case No. 6, 297-C-98, the MTCC merely resolved the issue of prior physical possession or possession *de facto*, and did not resolve the issue of ownership of the disputed property. The MTCC, in fact, recognized that the title (TCT No. T-19932) to the disputed property was registered under the name of Nicolas.

We also point out that the petitioner sought the assistance of the Office of the Ombudsman-Mindanao to require the Register of Deeds of Davao City to produce the deed of absolute sale between Nicolas and JS Francisco referred to in the affidavit of adverse claim. While the Register of Deeds could not yet certify with finality as to the nonexistence of this deed,³³ the petitioner's act of seeking the aid of the Ombudsman shows her honest and earnest desire to protect her family's interest over the subject property (she claims that the deed of sale between her father and JS Francisco was spurious), and that she had no intention to deceive Naval. Naval and Josephine, in fact, lived on the subject property for two years, more or less,

³³ Pertinent portions of the Dispositive Report dated February 24, 2006 of the Office of the Ombudsman-Mindanao reads:

THIS PERTAINS to the letter of the requesters asking this Office to assist them in requesting from the Registry of Deeds, Davao City to produce the copy of Seed of Absolute Sale executed between Nicolas Estrellado and JS Francisco and Sons and if the same cannot be produced, to issue a Certificate on Non-Availability of Records of Deed of Sale.

x x x x

On February 9, 2006, this Office received a letter dated 30 January 2006 from Atty. Asteria E. Cruzabra, stating among others, to wit:

"Please be informed that an Affidavit of Adverse Claim was filed by JS Francisco and Sons, Inc., represented by Joselito Francisco was duly annotated on Transfer of Certificate of Title Nos. T-19928, T-19930 and T-19932 on October 29, 1998. However, the document referring to the Deed of Sale was not entered although a Deed of Sale was indicated in said Adverse Claim. Hence, we cannot simply certify the fact that the alleged Deed of Sale if ever attached to the Adverse Claim cannot be considered an official record of this office in the Absence of any evidence as to its entry in our entry book.

For the moment, what we can state for the record is the fact of entry of an adverse claim which made reference to the Deed of Sale being made the basis for such claim.

Thus, until this Office would be able to retrieve the copy of the adverse claim from the archive, it is only then that we would be able to certify with finality as to whether or not the requested Deed of Sale is available.

Attached is a sample of a certification which this office can possibly issue if the party is amenable to it."

WHEREFORE, PREMISES CONSIDERED, let the letter of Atty. Cruzabra and the attached sample certification be transmitted to the requesters for their information and guidance. This request assistance is now considered closed and terminated.

before their house was destroyed by the representatives of JS Francisco. Josephine even intimated that she had been hoping that the petitioner's family would be able to settle the dispute with JS Francisco over the subject property while she (Josephine) and Naval were living there.


On a final note, we stress that it is the prosecution who determines the charges to be filed and how the legal and factual elements in the case shall be utilized as components of the information. Fairness demands that the petitioner should not be convicted of a crime which she has not been charged with or which is not necessarily included therein.

WHEREFORE, in the light of these considerations, we **GRANT** the petition, and **SET ASIDE** the resolutions of the Court of Appeals dated November 28, 2007, and July 29, 2008, respectively, in CA-G.R. CR No. 00429. Accordingly, we **ACQUIT** petitioner Clarita Estrellado-Mainar of the crime of other forms of swindling under Article 316 of the Revised Penal Code, as amended.


SO ORDERED.


ARTURO D. BRION
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson

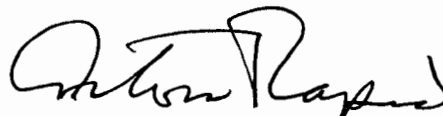

JOSE CATRAL MENDOZA
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice


MARVIC M.V.F. LEONEN
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.



ANTONIO T. CARPIO
Acting Chief Justice