

CICERO C. JURADO AS CITY FISCAL OF ILIGAN CITY, PETITIONER, VS. SUY YAN, RESPONDENT.

G.R. No. L-30714. April 30, 1971

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This petition for certiorari filed by City Fiscal Cicero C. Jurado of Iligan City, seeks the review of the resolution dated March 24, 1969 of the Court of Appeals Special Division of Five, penned by then Presiding Justice Julio Villamor and concurred in by Justices Juan Enriquez and Jose Rodriguez, with Justices Angel Mojica and Hermogenes Concepcion, Jr. dissenting, which resolution "directs the respondent fiscal to elect and amend the information by charging petitioner and his co-accused with only one offense under paragraph 2 (a) or 2 (d) of Article 315 of the Revised Penal Code and eliminating the other".

In a decision dated September 28, 1968 penned by Associate Justice Angel Mojica of the First Division of Three of the Court of Appeals with then Presiding Justice Julio Villamor and Associate Justice Hermogenes Concepcion, Jr. concurring, the proceedings had in the Court of First Instance of Lanao del Norte were recounted thus:

"Petitioner Suy Yan alias James Yap and Chao Ce alias Co Chiongtai were charged with the crime of estafa in the Court of First Instance of Lanao del Norte in Criminal Case No. 1395. The body of the information reads as follows:

"That on or about May 9, 1967, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, representing the Davao Good Hope Marketing, cement dealer in Davao City, where accused Suy Yan alias James Yap is the manager and Chao Ce alias Chiongtai is his employee and authorized representative, conspiring and confederating together and mutually helping each other by means of false manifestations and fraudulent misrepresentations, did then and there willfully, unlawfully and feloniously defraud one Jose Dy Pico, Manager of the Dy Pico Sons, a business establishment in the City of Iligan, engaged in General Merchandise including the buy and sell of cement, in the following manner, to wit: the said accused, by falsely pretending and misrepresenting themselves to have in their possession sufficient funds in the bank to pay for every cement purchases they make with Dy Pico Sons, the said accused, knowing that they did not have sufficient funds in the bank, induced the said Dy Pico Sons to sell them 25,000 bags of cement at P4.82 per bag with a total value of P120,500 and said Dy Pico Sons deceived by the misrepresentations of the accused, sold and delivered to the accused 25,000 bags of cement, after which the said accused, paid Dy Pico Sons in the following manner, to wit: said accused, issued and made out TCBT (The Consolidated Bank and Trust Corporation) checks payable to Dy Pico Sons

TCBT Check No. 65333 - P30,000.00

TCBT Check No. 65339 - P20,000.00

TCBT Check No. 65340 - P57,668.90

Cash - P 1,500.00

Cash - P11,331.10

a total of P120,500 and gave said checks and cash money to Dy Pico, Manager of the Dy Pico Sons, in payment of the said 25,000 bags of cement purchased by them from the said Dy Pico Sons, that upon presentation of said TCBT Check No. 65339 in the amount of P20,000.00 to the bank for payment, the same was dishonored and refused payment, for the reason that the drawer thereof, the accused Suy Yan alias James Yap and Chao Ce alias Co Chiongtai, representing the Davao Good Hope Marketing, did not have sufficient funds therein, to the damage and prejudice of the said Dy Pico Sons in the aforementioned sum of P20,000.00, Philippine Currency.

'Contrary to and in violation of Article 315 2(a) and (d) of the Revised Penal Code.'

"The arraignment having been set on December 6, 1967, the petitioner, under date of December 4, 1967, filed a motion to quash the information on the ground that the said information charges more than one offense, because it clearly and expressly accused petitioner of two distinct offenses of estafa, to wit: (a) estafa under paragraph 2(a) of Article 315 of the Revised Penal Code which punishes the act of defrauding a person by using a fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits', i.e., estafa through false pretenses; and (b) estafa under paragraph 2 (d) of Article 315 of the Revised Penal Code which penalizes the act of 'postdating a check in payment of an obligation when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check'.

"On December 15, 1967, the respondent fiscal filed his answer to the motion to quash. In his said answer, Annex C, the respondent fiscal alleged that the information he filed charges only one offense because only the offense of estafa is charged and even if the information enumerates one or more means enumerated in paragraph 2 of Article 315 of the Revised Penal Code, still the crime charged in the information is only one offense and that is estafa, or swindling. In other words, said respondent alleged that although the body of the information contains a recital of the means resorted to and availed of by the accused in the perpetration or commission of the offense, the same charges only one offense -- estafa.

"On December 27, 1967, the respondent Judge issued an order denying petitioner's motion to quash (Annex D).

"On February 3, 1968, herein petitioner filed a motion for reconsideration of the order denying his motion to quash (Annex E); and in his order dated February 17, 1968, the respondent Judge denied the petitioner's motion for reconsideration (Annex "F").

"While the motion for reconsideration filed by the petitioner was pending consideration, the respondent judge set the hearing of the case for one whole week, on March 25, 26, 27, 28, and 29, 1968. Consequently, on February 27, 1968, petitioner prayed the respondent judge to cancel the hearing and to reset the same to another date after the motion for reconsideration shall have been resolved (Annex G).

"On March 7, 1968, the respondent judge issued an order (Annex H) denying 'the motion to cancel the trial of this case on March 22 to 29, 1968 xx xx unless the accused could secure an injunctive order from the proper higher court restraining this court to continue trying this case, as scheduled'. Hence, this petition for certiorari, prohibition and mandamus with preliminary injunction on the grounds (a) that the respondent judge has acted without or in excess of jurisdiction or with such grave abuse of discretion as to amount to lack or excess of jurisdiction, correctible by the present petition for certiorari, prohibition and mandamus; (b) that the petitioner has no remedy of appeal (the order denying the motion to quash being interlocutory) or any other plain, speedy, and adequate remedy in the ordinary course of law than the present petition." (pp. 60-64, rec.)

In its decision of September 28, 1968, the Division of Three of the Court of Appeals dismissed the petition, holding that after his motion to quash is denied, the accused Suy Yan's remedy was not to file certiorari,

prohibition and mandamus with preliminary injunction, but to go to trial, without prejudice to reiterating his special defenses that he had invoked in his motion to quash, and, if after trial on the merits, an adverse decision is rendered, to appeal therefrom in the manner authorized by law, since the trial court has jurisdiction over the offense charged, citing *Arches vs. Beldia, et. al.*,^[1] *Acharon vs. Purisima, et. al.*,^[2] *Chuatoco vs. Aragon, et. al.*,^[3] *People vs. Macandog*,^[4] see also *David vs. Miranda, et. al.*^[5]

On October 17, 1968, counsel for the accused Suy Yan filed a motion for reconsideration (pp. 76-82, rec.) on the ground that appeal in due course as the proper remedy against the order of the court granting or denying a motion to quash in a criminal case is no longer the hard and fast rule, citing *Lopez vs. Paras*,^[6] *Yap vs. Hon. D. Lutero, etc.*,^[7] and *Lopez vs. Alikpala*,^[8] and that the lower court acted in excess of jurisdiction and with grave abuse of discretion in denying his motion to quash and thereby denying his constitutional rights to be informed of the nature of the accusation against him and to prepare adequately for his defense.

The City Fiscal of Iligan City filed his opposition dated December 10, 1968 to the motion for reconsideration (pp. 83-87, rec.), to which Suy Yan filed his reply dated January 13, 1969 (pp. 89-98, rec.).

On March 24, 1969, three members of the Special Division of Five promulgated the aforementioned resolution reconsidering the decision of September 28, 1968 and ordering the respondent fiscal to elect and amend the information by charging the accused Suy Yan and his co-accused with only one offense under paragraph 2 (a) or 2 (d) of Article 315 of the Revised Penal Code and eliminating the other (pp. 99-103, rec.), with Justices Mojica and Concepcion, Jr. dissenting (pp. 104-110, rec.).

The City Fiscal of Iligan City filed a motion for reconsideration dated April 23, 1969 (pp. 112-116, rec.) of the said resolution of March 24, 1969 and for the re-instatement of the decision of September 28, 1968, to which the accused Suy Yan filed his opposition dated May 19, 1969 (pp. 117-118, rec.).

In a resolution dated June 2, 1969, the same three members of the Special Division of Five denied the motion for reconsideration of the City Fiscal, while the two dissenting Justices voted to grant the same (p. 119, rec.).

Hence, this petition for review filed by the City Fiscal of Iligan City.

The petitioner should have been the People of the Philippines, the real party in interest, and not the City Fiscal of Iligan City, who is merely the counsel of the People. However, this formal error does not affect the resolution of the petition on the merits.

As correctly ruled by Mr. Justice Angel H. Mojica, speaking for the Division of Three Justices of the Court of Appeals in their decision dated September 28, 1968, the petition for certiorari, mandamus and prohibition with preliminary injunction filed by respondent Suy Yan before the Court of Appeals is without merit.

The Supreme Court with marked consistency has ruled that neither certiorari nor prohibition lies against an order of the court denying the motion to quash the complaint or information in a criminal case, because such an order is interlocutory and therefore not appealable as it is not a decision on the merits. The accused after such denial of his motion to quash must proceed to trial without prejudice on his part to reiterate his special defenses he invoked in his motion and if, after trial on the merits, an adverse decision is rendered, his remedy is to appeal therefrom.^[9]

The allegations in the information are clear and do not charge the accused with two offenses. As contended by the City Fiscal of Iligan City, the information accuses the defendant of only one estafa committed by false pretenses under paragraph 2 of Article 315 of the Revised Penal Code, but specifically describes the false pretenses or deceitful acts employed by the accused in perpetrating the offense, namely, his falsely pretending to possess property, credit or business under sub-paragraph (a) of the aforesaid paragraph 2 of Article 315 and by postdating

a check or issuing such check in payment of an obligation knowing that he had no sufficient funds in the bank to cover the amount of the check, without informing the payee of such circumstances, under sub-paragraph (d) of the same paragraph 2 of Article 315. It is emphasized herein that sub-paragraphs (a) and (d) of Article 315 of the Revised Penal Code are two of the five false pretenses or fraudulent acts that can be employed and were actually employed in this case by the accused to commit the one crime of estafa charged against him in the information.

In the case of *People vs. Camerino, et. al.*, this High Tribunal quoted with approval the commentary of Professor Ambrosio Padilla to the effect that the "charge is not defective for duplicity when one single crime is set forth in the different modes prescribed by law for its commission, or the felony is set forth under different counts specifying the way of its perpetration, or the acts resulted from a single criminal impulse. Neither is there duplicity when the other offense described is but an essential element of the real offense charged nor when several acts are related describing the offense".[10]

As heretofore stated, the allegations in the information falling under sub-paragraphs (a) and (d) of paragraph 2 of Article 315 of the Revised Penal Code, merely specify two of the various modes of committing the crime of estafa thru deceit, the only offense with which the accused Suy Yan is charged under the questioned information. Then again, the said two modes or ways of perpetrating the offense of estafa refer to only one transaction with one and the same offended party, viz., the purchase of 25,000 bags of cement under his fraudulent representation or false pretense that he has property or business or credit, which deceit was made more persuasive by another deceit -- his issuing three checks of P30,000, P20,000 and P57,668.90 respectively. The two fraudulent acts or false pretenses were part of only one single criminal impulse.

We reiterate the earlier jurisprudence that where an offense may be committed in any of the different modes and the offense is alleged to have been committed in two or more modes specified, the indictment is sufficient, notwithstanding the fact that the different means of committing the same offense are prohibited by separate sections of the statute. The allegation in the information of the various ways of committing the offense should be regarded as a description of only one offense[11] and the information is not thereby rendered defective on the ground of multifariousness.

It has been held that the allegation of the falsification of two documents at the same time and between the same parties resulting in the offense of estafa is but a recital of the facts that concur in the commission of the same.[12]

The case of *Lopez vs. Paras*,[13] where We held that the general rule that the Court will not issue a writ of certiorari to restrain an order of the lower court denying a motion to quash and upon such denial defendant should enter his plea of not guilty and, if convicted, raise an appeal on the same legal questions covered by his motion to quash, is no longer the hard and fast rule; because certiorari and prohibition were issued to restrain the court from further proceedings in a criminal case where it appears that the offense charged in the information is not within its jurisdiction, does not apply to the case at bar. In the *Lopez* case, the crime of falsification of a private document charged in the information was not within the jurisdiction of the city court of Angeles City as the two private documents allegedly falsified by the accused therein were signed by the accused in Makati and in Quezon City, both within the province of Rizal and therefore outside the territorial jurisdiction of the city court of Angeles City. In the instant case, there is no dispute as to the fact that on the face of the information the crime of estafa with which the accused Suy Yan is charged, was committed within the territorial jurisdiction of Iligan City.

Neither is the 1960 case of *Esguerra vs. People*[14] decisive of the case at bar. Even the majority of the three Justices of the Special Division of Five of the Court of Appeals whose resolution is the one presently under review, concur with the opinion of Justices Angel Mojica and Hermogenes Concepcion, Jr. in their dissent that the *Esguerra* case is not on all fours with the instant case (p. 30, resolution dated March 24, 1969, p. 101, rec.; p. 5 of

dissenting opinion of Justices Mojica and Concepcion, Jr., p. 109, rec.).

Mr. Justice Mojica correctly distinguished the Esguerra case from the case at bar thus:

"In the case of *Esguerra vs. People*, G.R. No. L-14313, July 26, 1960, cited by petitioner in his reply to 'opposition to motion for reconsideration', the Fiscal accused Esguerra of the crime of estafa. The first paragraph of the information 'specifically refers to the 3rd paragraph (b) of Art. 315 of the Revised Penal Code' as the provision under which Esguerra was being prosecuted. Said particular paragraph refers to estafa committed by resorting to some fraudulent practice to insure success in a gambling game. On the other hand, 'that part of the information referring to representations that Esguerra had copras ready for delivery, would seem to imply that the estafa charge is that defined and penalized under paragraph 2 (a) -- by falsely pretending to possess xx xx property xx xx business, etc. The succeeding portion, however, of the same information which alleges failure to deliver the copra or return the money on the dates agreed, charges the accused of misappropriation and conversion under paragraph 1 (b) of the same Article 315.' In view of such ambiguity in the information, a motion to quash was filed by the accused. At the hearing of the motion, 'the fiscal and the private prosecutor both manifested that there was a clerical error in the first paragraph of the information and stated and assured that the accused was being charged under paragraph 1 (b) of Article 315. The trial court admitted the correction and the accused went to trial with that understanding and assurance.' After trial, the court a quo found the accused guilty as charged under Article 315, paragraph 1 (b) and sentenced him accordingly. However, on appeal to the Court of Appeals where the accused 'questioned the correctness of the judgment of conviction under the information as corrected and on the facts proven', the Court of Appeals held the appellant Esguerra guilty of estafa not under Article 315, paragraph 1 (b) but under paragraph 3(2-a) of Article 315. The issue in the Esguerra case was 'whether after denial of a motion to quash, precisely on the vagueness of the information, upon assurance by the fiscal and the private prosecutor and accepted by the court that the offense for which the accused was being prosecuted is that of misappropriation defined in paragraph 1 (b) of Article 315, involving unfaithfulness or abuse of confidence and under which the accused entered trial, the latter could, on appeal, be convicted of an entirely different offense with different elements, that of false pretenses of possessing property or business made prior to or simultaneous with the commission of the fraud.' The Supreme Court held that Esguerra could not be held guilty of an entirely different offense with different elements when such offense is not adequately alleged in the information. Needless to state that the Esguerra case is not in point and on all fours with the case under consideration." (pp. 107-109, rec.)

The allegations in the information are not ambiguous. Couched in a language devoid of any technical or cryptic jargon, the information particularizes and specifies the false pretenses employed by the accused in committing the crime of estafa. It does not deceive the accused as to the nature of the accusation against him, much less as to the fact that the same charges him with only one offense. Consequently, the accused can adequately prepare for his defense.

The right of the accused to be informed of the nature and cause of the accusation against him is satisfied as long as the language employed in the information is sufficiently clear to a person of ordinary intelligence^[15] and as long as all the material facts that constitute the offense are alleged in the information.^[16] In the instant case, all the essential elements of estafa thru deceit are categorically alleged in the information. And, to repeat, the City Fiscal stressed the assurance that only one crime of estafa is charged therein, although perpetrated by two deceitful acts on the part of the accused, falling under paragraph 2 (a and d) of Article 315 of the Revised Penal Code, as amended.

Because We find that the allegations in the information are clear and adequately inform the accused of the accusation against him so that he can properly prepare for his defense, accused Suy Yan is not denied any constitutional right and the remedy of certiorari and prohibition will not lie, thus precluding the applicability of the ruling in the cases of *Yap vs. the Honorable H. Lutero*, etc.,^[17] *People vs. Ferrer*,^[18] and *Lopez vs.*

Alikpala.[19]

It is interesting to note that the other accused Chao Ce alias Co Chiongtai did not join the accused Suy Yan alias James Yap in his motion to quash nor in his petition for certiorari, prohibition and mandamus with preliminary injunction before the Court of Appeals, giving the impression that to the accused Chao Ce alias Co Chiongtai the questioned information charges him with only one crime of estafa and that the allegations therein are so sufficiently clear as to inform him of the nature and cause of the accusation against him.

We have no alternative but to reverse and set aside, as We hereby reverse and set aside the majority resolution of the Special Division of Five of the Court of Appeals dated March 24, 1969 and hereby direct that Criminal Case No. 1395 entitled "People of the Philippines vs. Suy Yan alias James Yap and Chao Ce alias Co Chiongtai" of the Court of First Instance of Lanao del Norte in Iligan City shall proceed to trial after the defendants have been duly arraigned and have duly entered their plea. With costs against respondent Suy Yan alias James Yap.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Fernando, Teehankee, and Barredo, JJ., concur.

Villamor, J., took no part.

[1] L-2414, May 27, 1949.

[2] L-23731, Jan. 26, 1965.

[3] L-20316, Jan. 30, 1968.

[4] L-18601-02, Jan. 31, 1963.

[5] L-6215, Sept. 28, 1954.

[6] L-25795, Oct. 29, 1966.

[7] L-12669, April 30, 1959.

[8] CA-GR 364-F, Oct. 28, 1965.

[9] People vs. Doriquez, L-24444-45, July 29, 1968, 24 SCRA 163, 165-6; Chuatoco vs. Aragon, et. al., L-20316, Jan. 30, 1968, 22 SCRA 346, 351; Acharon vs. Purisima, L-23731, Feb. 26, 1965, 13 SCRA 309, 311-12; Mill vs. Yatco, L-10427, May 27, 1957, Vol. 101 Phil. 599, 605-606.

[10] People vs. Camerino, et. al., L-13484, May 20, 1960, citing Padilla, Criminal Procedure, Annotated, 1959 Ed., p. 101, or 1965 Ed., p. 110; see also Justice Martin, Rules of Court Annotated, 1969 Ed., p. 107.

[11] People vs. Bienviaje, 47 Phil., 536; U.S. vs. Tolentino, 5 Phil., 628; U.S. vs. Douglas, 2 Phil., 461; U.S. vs. Poh, 20 Phil. 140; Justice Martin, Rules of Court Annotated, Vol. 4, 1969 Ed., pp. 107-108.

[12] U.S. vs. Ferrer, 34 Phil., 277; see also Guinto vs. Veluz, 77 Phil., 798; People vs. Pacheco, 93 Phil. 521; Justice Martin, Rules of Court Annotated, Vol. 4, 1969 Ed., p. 109.

[13] L-25795, Oct. 29, 1966, 18 SCRA 616, 621-22.

[14] L-14313, July 26, 1960, 108 Phil. 1078.

[15] Paraiso vs. U.S., 207 U.S. 368.

[16] People vs. Bandojo, 63 Phil., 1053; People vs. Arnault, L-4288, Nov. 20, 1952.

[17] L-12669, April 30, 1959.

[18] L-8957, April 29, 1957.

[19] CA-GR No. 36124-R, Oct. 28, 1965.

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