

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT VS. FLAVIANA TALAO PEREZ, DEFENDANT AND APPELLEE.

G.R. No. L-7448. April 11, 1956

Ponente: ENDENCIA, J.

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ENDENCIA, J.:

In the above-styled case, on November 27, 1953, after conducting the preliminary investigation required by law, Assistant Fiscal Gregorio T. Lantin of the City of Manila filed with the Court of First Instance of Manila an information for attempted estafa through falsification of a public document against Flaviana Talao Perez, worded as follows:

"The undersigned accuses Flaviana Talao Perez of the crime of attempted estafa through falsification of a public document, committed as follows:

"That on or about the 18th of May, 1940, and for sometime prior and subsequent thereto, in the City of Manila, Philippines, the said accused, having filed claims for compensation, pension and insurance benefits as a dependent and relative of the deceased veteran Delfin Perez y Orense who died on May 18, 1942 at Camp O'Donnell, Capas, Tarlac, with the Manila office of the U. S. Veterans Administration a branch or instrumentality of the United States Government for the military services and death of said Delfin Perez y Orense, did then and there wilfully, unlawfully and feloniously, with intent to defraud, falsify or cause to be falsified an affidavit which is a public document and other written statements and documents relating to said claims for compensation or pension and insurance benefits in the following manner, to wit: the said accused Flaviana Talao Perez in her desire to obtain from the Government of the United States through the Veterans Administration payment for compensation or pension and insurance benefits resulting from the death of Delfin Perez y Orense, a soldier of the Philippine Army who died in the O'Donnell Concentration Camp, Capas, Tarlac on May 18, 1942, filed with the Veterans Administration the corresponding claims or applications for compensation or pension and insurance benefits and falsely pretended and fraudulently represented herself therein to be the foster or step-mother of the said veteran and as such had taken care of and supported said veteran from May 9, 1937 to November 1941 and therefore entitled to receive such benefits and in support of such applications or claims executed an affidavit to that effect and which affidavit was duly sworn to and subscribed before Romualdo T. Saclayan, a duly appointed and qualified Notary Public for the City of Manila and acting as such and which document was registered in the Notarial Book of said Notary Public as Document No. 156, Page 55, Book 5, Series of 1949 when as said accused fully knew the same was false and untrue and made solely to secure the payment of the pension, compensation and insurance above mentioned, thus making untruthful statements in a narration of facts and that once the said applications, claims, affidavits and statements were falsified in the manner above set forth, the said accused Flaviana Talao Perez, with intent to defraud, commenced the commission of the crime of estafa directly by overt acts, to wit: the said accused Flaviana Talao Perez, falsely pretending and fraudulently representing to the personnel of the U. S. Veterans Administration that the facts in the said documents were true, filed them in the said office and demanded from the personnel of the U. S. Veterans Administration payment for the same but the said accused Flaviana Talao Perez did not perform all the acts of execution by reason of some causes other than her voluntary desistance, to wit: the fraud was discovered by the personnel of the U. S. Veterans Administration on time and so payment

was refused."

Upon motion filed by counsel for the accused on the ground that the facts, alleged in the information do not constitute the offense charged therein, the lower court, on December 19, 1953, found the motion to be well founded and dismissed the case through an order, the pertinent portions of which are as follows :

"Before arraignment, the accused, through her counsel, presented a Motion to Quash, dated December 2, 1953, on the ground that the facts charged do not constitute an offense. The prosecution, through Assistant Fiscal Gregorio T. Lantin, filed his answer to said Motion.

"Apparently the information charges the accused of attempted estafa through falsification of a public document for making untruthful statements in a narration of facts in an affidavit which was duly subscribed and sworn to before Romualdo T. Saclayan, a duly appointed and qualified Notary Public for the City of Manila. There is no allegation in the information specific enough to show the contents of the affidavit in question.

"Considering that the essence of the charge is dependent upon the supposed affidavit which was subscribed and sworn to by the accused before a Notary Public of Manila, this Court believes that the contents thereof showing untruthful statements in a narration of facts must have to be asserted with sufficient clarity that the accused might be appraised of the nature of the accusation against her.

"The information as worded, charges the accused of falsification of a public documents but at the same time, mentions not only one affidavit but a series of documents and papers wherein the accused supposedly represented herself as the foster or stepmother. The allegation in the information that she "falsely pretended and fraudulently represented herself and 'thus making untruthful statements in a narration of facts' is a conclusion of law. The accused should be informed of facts under which she is indicted not of conclusions made by the prosecutor as to her culpability in a given set of unidentified circumstances.

"As to the attempted estafa charged, this Court notes that no amount whatsoever is mentioned in the information. The element of 'damage' is required by law in cases of estafa to enable the Court to determine what penalty it shall impose, considering that estafa is punished according to the amount involved, like in theft. It is the considered opinion of this court that in the absence of any amount of damage, a case of estafa must have to fail by its own weight as no penalty can possibly be meted out to the accused."

Thereafter, the Assistant City Fiscal asked the court to reconsider the aforequoted order but in vain. Hence, the present appeal.

It is now contended by the Solicitor General that the lower court erred: (1) in holding that the allegations in the information were not specific enough to describe the crime charged; (2) in holding that the accused Flaviana Talao Perez is not guilty of falsification of public documents because she had no legal obligation to make a narration of facts in the document in question; and (3) in holding that the failure to specify the amount of damage, in the information was a fatal defect.

Upon a careful examination of the aforequoted information, we find that although its language is not clear and simple and that it is repetitious, yet in essence it clearly charges the appellee with having falsified an application filed with the U. S. Veterans Administration to claim for compensation, pension and insurance benefits resulting from the death of Delfin Perez y Orense and with having executed an affidavit stating therein that she is the foster mother of said Perez, but that said Flaviana Talao Perez failed to obtain such pension or insurance benefits because it was timely discovered by the personnel of the U. S. Veterans Administration that the application as well as its supporting documents and affidavit were false.

The lower court also found the information defective in that there is no specific allegation as to the contents of the affidavit in question but, as correctly pointed out by the Solicitor General, in the information, there is the

following allegation:

"* * * the said accused filed with the Veterans Administration the corresponding claims or applications for such compensation or pension and insurance benefits and falsely pretended and fraudulently represented herself therein to be the foster or stepmother of the said veteran and as such, had taken care of and supported said veteran from May 9, 1937 to November 19, 1941, and therefore, entitled to receive such benefits, and in support of said applications 'or claims executed an affidavit to that effect."

from which it could be clearly gathered that the contents of the affidavit in question but, as correctly pointed out to wit: that Flaviana Talao Perez falsely pretended to be the foster or stepmother of Delfin Perez y Orense and that she had taken care of and supported the latter when in fact all these are false.

The lower court likewise found the information in question defective because no amount of damage is mentioned therein, but it is clearly alleged therein that Flaviana Talao Perez has falsified an application and its supporting affidavits and filed them all with the U. S. Veterans Administration to demand payment of the pension and insurance benefits for the death of Delfin Perez y Orense but was not able to obtain said payment because the fraud was discovered by the personnel of the U. S. Veterans Administration on time. This defect, however, is not so fatal that will warrant the dismissal of the case because it can be cured by amendment of the information in accordance with paragraph 2 of section 2, Rule 113 of the Rules of Court, which provides that:

"If the motion to quash is based on an alleged defect in the complaint or information which can be cured by amendment the court shall order the amendment to be made and shall overrule the motion."

Accordingly, even granting that the information in question is defective, as pointed out by the accused, it appearing that the defects thereof can be cured by amendment, the lower court should not have dismissed the case but should have ordered the Fiscal to amend the information.

Wherefore, finding the disputed order of dismissal to be erroneous, the same is hereby reversed and the record of the case remanded to the lower court for further proceedings in accordance with law.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion, and Reyes, J. B. L., JJ., concur.

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