

CHUA GIOK ONG, PETITIONER, VS. HON. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. Nos. L-41689-90. April 08, 1987

Ponente: NARVASA, J.

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NARVASA, J.:

The attempted conversion of two (2) checks is the gravamen of the felony which both the Manila Court of First Instance[1] and the Court of Appeals[2] adjudged had been committed by petitioner Chua Giok Ong. One check, in the amount of P635.00, was issued by William A. Greenwalt, Jr. in favor of Rattan Art.[3] The other, in the amount of P695.20, was issued by Tidewater Oil Company in favor of Shell Company of the Philippines.[4] Both these checks were sent to the respective payees by mail but were never received by either of them.

Somehow (it is not now certain precisely how this happened), the checks found their way into the hands of Ng Bun Seng. One theory was that Ng Bun Seng, together with petitioner Chua Giok Ong and two others, Co Tee and Nicolas Sy, had stolen the checks from the mail. This theory was attempted to be substantiated in a criminal case for qualified theft filed in the same Manila Court of First Instance against the gentlemen above named;[5] but the accused were acquitted for insufficiency of evidence.

What is certain is that a day or so after the checks had been mailed, Ng Bun Seng brought said two (2) checks to his friend of more than 10 years, Chua Giok Ong, and asked him to deposit them in his current account with the China Banking Corporation. At that time, alterations were plainly observable upon the faces of the checks: (1) in the first check, the payee's name, Rattan Art, had been changed to "Rattanio Artacio"; and the amount thereof, P635.00, had been altered to "P1,635.00;" and (2) in the second, the payee's name, Shell Company of the Philippines, Ltd., had been crossed out and in its place had been written the word, "cash". Chua looked at the checks and asked from whom they came. Ng said they came from a friend whom Chua did not know. Chua then signed the backs of the checks and filled up a deposit slip for them. The following day, the checks were deposited by Ng at the China Bank to Chua's current account, and were in due course sent out for clearing.

As might be expected, the checks were very shortly returned to China Bank, attention being called to the suspicious alterations that they bore.

Some 4 days after their first meeting, Ng told Chua he wanted to withdraw the amount of the two checks. Chua forthwith issued two checks, his own, with amounts exactly corresponding to those first deposited. When Ng tried to encash Chua's checks at the China Bank, he was arrested by NBI agents who were sent for by the bank employees.

Thereafter, Ng and Chua, and Nicolas Sy and Co Tee were, as already intimated, charged in court as co-conspirators with (a) the crime of qualified theft, for having supposedly stolen the checks from employees of the Post Office,[6] and also with (b) two (2) offenses of attempted estafa thru falsification of a commercial document (under two separate indictments)[7]. The cases were tried jointly, and resulted in the acquittal of all the accused of the crime of qualified theft, as earlier stated, but their conviction in both cases of attempted estafa thru

falsification of a commercial document (under Articles 315 and 172, in relation to Articles 48 and 51 of the Revised Penal Code). Two (2) separate, identical penalties were imposed on each of them, to wit: to suffer "FOUR (4) MONTHS of arresto mayor and to pay a fine of P500.00, with subsidiary imprisonment in case of insolvency not exceeding one-third of the principal term, and to pay costs."

Chua Giok Ong, Ng Bun Seng and Nicolas Sy appealed to the Court of Appeals. But for failure to file their respective briefs, the appeals of Ng and Sy were dismissed[8] The Appellate Court affirmed the conviction of Chua Giok Ong and the penalties meted out to him, but increased the fine in each of the two (2) cases from P500.00 to P1,000.00.[9]

Chua has invoked this Court's appellate jurisdiction to review the Appellate Court's judgment of affirmance, accusing that Court of having "acted with grave abuse of discretion amounting to lack of jurisdiction" in not finding that —

1) "he had no knowledge, much less any participation in the alteration or falsification of the checks * * * in question"; and

2) there was no evidence adequately establishing his complicity in the conspiracy to defraud the bank.[10]

As will at once be observed, the assailed findings are factual in nature; and this circumstance justifies outright rejection by this Court of petitioner's invocation of its appellate jurisdiction since it is axiomatic that such findings are not reviewable by this Court[11] unless the case falls within any recognized exception to the rule,[12] which is not the situation here.

It bears stressing that except in "criminal cases in which the penalty imposed is reclusion perpetua or higher[13] which may be appealed by writ of error,[14] all appeals to this Court are "not a matter of right but of sound judicial discretion," and may be taken by filing a petition for review on certiorari which may raise "only questions of law" to be "distinctly set forth" in the petition.[15]

"Under * * the Constitution of the Philippines, as well as our Rules of Court, final judgments and decrees of inferior or lower courts may be reviewed by this Court by appeal, writ of error, or certiorari. By appeal the appellate court reviews all the findings of law and of, fact of the court a quo as in special proceedings (Rule 105,[16] Rules of Court). By writ of error the appellate court reviews only the findings of law or fact of the lower court assigned in the assignment of errors of the appellant, as in ordinary civil actions (section 19, Rule 48[17]) And by certiorari the appellate or superior Court can only review questions or errors of law decided or committed by the lower court, as provided in Rules 43, 44 and 46 of the Rules of Court.[18] Questions or findings of fact of the inferior tribunal can not be reviewed on certiorari. 'Evidence which is made a part of the record can not be examined to determinilne whether or not it justifies the finding on which the decision or judgment was made.' (See the following rule.)

"The general rule is that, in the absence of statute or local practice otherwise, questions or findings of fact in the inferior tribunal, are not reviewable on certiorari and that evidence which is made a part of the record cannot be examined to determine whether or not it justified the findings on which the decision or judgment was made; nor will rulings on questions of fact, within the inferior tribunal's jurisdiction, be reviewed." (14 Corpus Juris Secundum, p. 311, 312.) (Italics supplied.)' "[19]

In fine, it is this Court's prerogative under the law to determine whether or not it shall consent to exercise its appellate jurisdiction in any given case; it has plenary discretion to accept or refuse invocations of that appellate jurisdiction; it will refuse to accept appeals which are "without merit, or ** prosecuted manifestly for delay," or which raise questions "too unsubstantial to require consideration";[20] and it will grant review "only when there are special and important reasons therefor".[21] Stated otherwise, it is the burden of every party seeking review of any decision of the Court of Appeals or other lower tribunal to persuade this Court not only of the existence of

questions of law fairly and logically arising therefrom, which he must distinctly set forth in his petition for review, but also that those questions are substantial enough to merit consideration, or that there are special and important reasons warranting the review that he seeks. Quite evidently, if these be not shown *prima facie* in his petition, with sufficient persuasiveness, the Court will be justified in giving the petition short shrift, in summarily spurning it, as too lacking in merit to require further proceedings.

In any event, far from being tainted by grave abuse of discretion, the impugned findings of fact are consistent with the recorded evidence. The Appellate Court refused to accept petitioner's pretensions of ignorance of the alteration of the checks because as evinced by his own declarations, he was a man of sufficient intelligence, being a real estate agent and an occasional private tutor by occupation, with no little familiarity with the opening and workings of checking accounts, and consequently, a person who, in the very nature of things, could not have failed to immediately notice the plain and patent alterations on the checks exhibited to him by his friend, Ng Bun Seng, and who could not but have become wary of the latter's story of how he had come by the check, and why he wanted to have the checks, bearing the obvious and palpable alterations already mentioned, deposited in his (Chua's) current account.[22] These circumstances, his singular omission to take note of the apparent alterations of the checks, his ready and indiscriminating acceptance of Ng Bun Seng's request that the checks be deposited in his current account, in addition to his having given China Batik an incorrect address, and his attempt to subsequently withdraw the amount of the spurious checks deposited to his current account at China Bank by Ng by issuing two (2) of his personal checks in amounts precisely corresponding to the amounts set out in the former, were the foundations for the conclusion by the Appellate Court of his participation in the conspiracy to defraud the China Bank through the encashment of the falsified checks.[23] These findings of the Court of Appeals may not in the premises be said to be whimsical or capricious, or devoid of adequate evidentiary basis. They are therefore not reviewable, much less reversible in an appeal by certiorari. And since no other error of law been shown by the petitioner to be present in the decision sought to be reviewed and reversed, his appeal must fail.

WHEREFORE, the petitioner's appeal is denied for lack of merit, and the Decision of the Court of Appeals subject thereof, being entirely in accord with the evidence and the law, is affirmed in toto.

Yap, (Chairman), Cruz, Feliciano, Gancayco, and Sarmiento, JJ., concur.
Melencio-Herrera, J., no part.

[1] Criminal Cases No. 76916 & 76917; judgment of conviction rendered on June 21, 1968

[2] CA-G.R. Nos. 08960-CR & 08961-CR; judgment promulgated June 6, 1975

[3] Hongkong & Shanghai Banking Corp Check No. 080246 dated Sept. 29, 1964

[4] Bank of America Check No. 454

[5] Criminal Case No. 76915, tried jointly with Criminal Cases No. 76916 & 76917

[6] SEE preceding footnote and related text

[7] SEE footnote No. 1

[8] Rollo, pp. 40-41; petitioner observes that both "must have fully served their sentence by now", and that Co Tee "jumped his bail", (rollo, p. 7)

[9] Rollo, p. 51; see footnote No. 2

[10] Rollo, pp. 13-14. These are exactly the same errors assigned by him in his brief before the Court of Appeals

and which that Court adjudged to be untenable

[11] Tolentino v. de Jesus, 56 SCRA 167, and cases cited therein Cesar v. Sandiganbayan, 134 SCRA 105, 121, People v. Traya, G.R. No. L-48064, January 29, 1987

[12] Id.

[13] Art. VIII, Sec. 5, (2), (d), 1987 Constitution

[14] SEE Rule 122; Sec. 7, Rule 124 in relation to Sec. 16, Rule 46 and Sec 1 Rule 125, Rules of Court

[15] Secs. 1, 2, and 4, Rule 45, Rules of Court

[16] Now Rule 109

[17] Now Sec. 18, Rule 46

[18] Now Rules 43 and 45

[19] Sotto v. Commission on Elections, 76 Phil., 516, 520-521

[20] Sec. 3, Rule 45

[21] As where, for instance, the Court of Appeals has decided a question or substance, not theretofore determined by the Supreme Court, or has decided it in a way probably not in accord with law or with the applicable decisions of the Supreme Court, or so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such departure by a lower court, as to call for an exercise of the power of supervision. Sec. 4, Rule 45.

[22] Rollo, pp 44-46

[23] Id., pp. 46-49

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