

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO CARAGAO, ACCUSED-APPELLANT.*G.R. No. L-28258. December 27, 1969*

Ponente: CONCEPCION, C.J.

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Petitioner Pedro Caragao seeks the review on certiorari of a decision of the Court of Appeals affirming that of the Court of First Instance of Manila, which found him guilty of the crime of estafa through falsification of a public document and sentenced him to an indeterminate penalty ranging from two (2) years and four (4) months to four (4) years, nine (9) months and eleven (11) days of prision correccional, to pay a fine of P3,000.00 and to indemnify the offended party in the sum of P3,200.00, with sub-sidiary imprisonment in case of insolvency, which shall not ex-ceed one year, as well as to pay the costs.

Pedro Caragao is one of the owners pro-indiviso of a parcel of land known as Lot No. 6181 of the Imus Estate, contain-ing an area of 24.7591 hectares, more or less, located in the Mun-icipality of Dasmariñas, Province of Cavite. His co-owners are Gregorio Bataclan, David Fajardo and Tomas Rosete. Purport-ing to act on their behalf, pursuant to Exh. B, a power of attorney in his favor, on May 5, 1958, Caragao secured from Vicente Salandanan, in Manila, a loan of P3,200.00. To guarantee its payment, Caragao executed, on said date, on his behalf and that of his co-owners, the deed of mortgage, Exhibit C, on said property. Hav-ing reached the conclusion that Exhibit B had been falsified, the Register of Deeds of Cavite refused, however, to register Exhibit C. Upon preliminary investigation, conducted in the office of the City Fiscal of Manila, co-owners Bataclan and Rosete testified and subscribed to affidavits stating that they had not authorized Caragao to mortgage the aforementioned property; that the signatures on Exhibit B purporting to be theirs are not their genuine signatures; and that they had never appeared before any notary public to acknowledge a power of attorney in favor of Caragao. On December 3, 1959, the City Fiscal of Manila filed, with the Court of First Instance thereof, an information charging petitioner with the crime of estafa through falsification of a public document, to the damage and prejudice of Vicente Salandanan in the sum of P3,200.00.

After due trial, under a plea of not guilty, said Court rendered the aforementioned decision of conviction, which was affirmed by the Court of Appeals. Hence, the present petition for review on certiorari, to which We have given due course. Petitioner Caragao maintains, in his brief, that the Court of Ap-peals has erred in not acquitting him "under the rule that convic-tion of an accused person lies only when the proof has established his guilt beyond reasonable doubt."

In this connection, the evidence for the prosecution consisted of the testimony of Tomas Rosete, Concepcion Racelis Salandanan and Pedro de Guzman, and Exhibits A to E.[1] According to Rosete, the signature on Exhibit B reading Tomas Rosete is not his signature, the genuine one being that which ap-pears in his affidavit before the office of the City Fiscal of Manila, marked Exhibit E, and he had never appeared before any notary public to acknowledge a power of attorney in favor of Caragao or authorized him to mortgage his (Rosete's) share of the property adverted to above or execute on his behalf the deed of real estate mortgage, Exhibit C. He, likewise,

stated that the signature on Exhibit B reading Gregorio Bataclan is not the latter's signature, his (Gregorio Bataclan's) true signature being that appearing on Exhibit D, which was affixed by Bataclan in his (Rosete's) presence.

Concepcion Racelis Salandanan testified that, early in May, 1958, Caragao, accompanied by Pedro de Guzman, a Mr. Malasarte and one Mr. Raymundo, went to her house at No. 458 Maganda St., Sta. Mesa, Manila, and applied from her husband Vicente Salandanan - who died in 1963 - for a loan, to be guaranteed by a mortgage on the land above-mentioned; that Caragao then produced the power of attorney, Exhibit B, purporting to attest to his authority to mortgage said land, on his behalf and that of his co-owners; that, a few days later, Vicente Salandanan agreed to lend P3,200.00, which he and said witness delivered, in their aforementioned house, to Caragao, upon the execution of the deed of real estate mortgage, Exhibit C; and that said sum of P3,200.00 has not, as yet, been paid back.

Caragao's version is as follows: On or about April 3, 1958, a son of Gregorio Bataclan, named Pio Bataclan, who wanted to buy a truck, asked him, in Silang, Cavite, to obtain a P3,000.00 loan to be guaranteed by the parcel of land above-mentioned. Caragao answered that it might be necessary to get the advice of his co-owners, whereupon Pio Bataclan replied that he would work it out with them, later to come back and let him know about the result. Before Pio had done so, or on April 5, 1958, Caragao and his co-owners, Gregorio Bataclan and Tomas Rosete, had met in the barrio of San Vicente, during the local fiesta. As he conveyed Pio's wish to them, Gregorio Bataclan and Tomas Rosete said that they had already been informed about it. About two (2) weeks later, or on April 20, 1958, while Caragao was in a barber shop, near his house, in Sabatan, Silang, Pio came, bringing with him the special power of attorney, Exhibit B, stating that his father had given it to him (Pio) and affirmed that the signatures appearing thereon are those of Gregorio Bataclan, David Fajardo and Tomas Rosete. Pio asked Caragao to accompany him to mortgage the land and then brought him to the Garcia Building in Manila, where one by the name of Malasarte, an acquaintance of Pio, had his office, stating that Malasarte would take care of mortgaging the property. This was confirmed by Malasarte, who subsequently brought them to Vicente Salandanan. Caragao asked a P4,000.00 loan from the latter, who, in turn agreed to lend the sum of P3,200.00. Of this amount, P1,800.00 was delivered to Caragao, in the presence of Pio Bataclan, to whom Caragao turned the money over. Pio, however, gave P200.00 to Caragao, by way of compensation for his services as attorney-in-fact, and kept the balance of P1,600.00.

Carlos de los Reyes, a barber, would have us believe that, while he was cutting the hair of Caragao, in his (De los Reyes') barber shop, sometime in March or April, 1958, Pio Bataclan came; that Caragao inquired from Pio whether everything was alright; that Pio answered that "all the documents were already prepared," and then handed to Caragao three (3) sheets of paper; and that, on top thereof was Exhibit B, on which he noticed the signatures of Gregorio Bataclan and Tomas Rosete.

Testifying in rebuttal, Pedro de Guzman declared that he did not know Caragao until he was brought to his (De Guzman's) house by Cirilo Raymundo and Malasarte; that they said their purpose was to obtain a P4,000.00 loan, guaranteed by a mortgage on the property above referred to, the title to which was brought by Caragao; that he (De Guzman) approached therefor Vicente Salandanan, who eventually agreed to lend P3,200.00; that Salandanan first delivered P650.00, then P850.00, later P350.00, and lastly P1,350.00, in his house, in Manila; that in Cavite City, where the deed of mortgage was sought to be registered, they were told that this could not be done because the power of attorney Exhibit B "was falsified"; and that, upon his (De Guzman's) return to Manila, Salandanan informed him that the last payment of P1,350.00 had been made to Caragao, who had told him that the mortgage was already registered.

After going over the evidence, the trial Judge, Honorable Luis B. Reyes, found Caragao guilty, beyond reasonable

doubt, of the crime charged and rendered judgment against him as stated at the beginning of this decision. This judgment was affirmed by a special division of the Court of Appeals. Hence, the present petition for review on certiorari.

Caragao maintains that the decision appealed from is erroneous because the alleged forgery of the signatures of Tomas Rosete and Gregorio Bataclan, on Exhibit B, has not been duly established, inasmuch as: (1) the prosecution had not introduced the testimony of the latter or that of Rosete's wife, Jovita Belarde, notwithstanding the fact that what purports to be her signature appears in said document, to indicate her consent thereto; and (2) the uncorroborated testimony of Tomas Rosete is insufficient to offset the presumption of regularity in the execution of Exhibit B, arising from the circumstance that the same appears to have been notarized. We are not impressed by this argument.

The question whether Rosete's supposed signature on Exhibit B has been forged or not is mainly a physical fact, which does not depend upon the existence of testimonial evidence in corroboration of that of Rosete himself. Indeed, if the signature in question were actually that of Rosete, no amount of such corroboration could alter this fact. Neither would any testimonial evidence to the contrary, which would merely prove the lack of veracity of the witnesses who had given such evidence.

Secondly, the samples of the signature of Tomas Rosete, appearing on Exhibit E, the genuineness of which samples is not contested, corroborate his testimony to the effect that the signature on Exhibit B, purporting to be that of said witness, is not his true signature.

Thirdly, the deed of mortgage Exhibit C has not been registered in the office of the Register of Deeds of Cavite, for the reason that said Exhibit B had been found to be counterfeit or falsified.

Fourthly, the failure to introduce the testimony of Mrs. Rosete, and that of the other persons who purportedly participated in the execution of Exhibit B, should not be taken against the prosecution, not only because that testimony would be corroborative in nature, but, also, because said witnesses were, likewise, available to the defense, which could have, and would have surely, called them to the witness stand had it expected them to testify in favor of Caragao.

Fifthly, although Exhibit B purports to have been notarized, the defense has not even tried to prove that it has really been attested to by a notary public. Caragao has neither identified the latter's supposed signature nor introduced his testimony, or that of any person, regarding the acknowledgment of said instrument. Hence, the presumption of due execution of a public document has not attached thereto.

Lastly, the determination of this case in the court of first instance, as well as in the Court of Appeals, was mainly dependent upon the credence given and the weight attached to the evidence introduced by both parties. The nature of said evidence is such, however, that, if the court did not believe that of the defense, the conviction of Caragao would follow necessarily, which is exactly what happened in the Court of Appeals. Indeed, the majority of the members of its special division that affirmed the decision of the trial court found themselves unable to accept defendant's story as truthful, because:

(1) During the investigation, in the office of the City Fiscal of Manila, before the filing of the information in this case, Caragao did not say that Exhibit B had been merely delivered to him by Pio Bataclan, already signed by its supposed makers and attested to by a notary public, as testified to by him (Caragao) in the trial court. Neither did he cause Pio Bataclan to be summoned to said office, to testify on his (Caragao's) behalf. Again, when the chief of police of Silang, Cavite, arrested him in connection with this case, Caragao did not inform said official of the intervention he now claims Pio Bataclan had in securing Exhibit B and the mortgage evidenced by Exhibit C.

Thus, the alleged participation of Pio Bataclan therein was not revealed by Caragao to anybody, until he took the witness stand, in the court of first instance, during the trial of this case in 1964. This fact acquires added importance when we consider that Pio Bataclan died in 1963. In other words, Caragao did not implicate Pio Bataclan until after death had sealed his lips, or about four (4) years subsequently to the institution of the present case. Thus, the record suggests strongly that Caragao's present version is but an eleventh hour device resorted to, taking advantage of the fact that Pio Bataclan is no longer in a position to contradict him (Caragao).

(2) The testimony of Caragao shows that Malasarte, the broker who placed them in contact with Pedro de Guzman, who, in turn, knew the money lender, was not his (Caragao's) acquaintance, but that of Pio Bataclan. Indeed, Pio said, according to Caragao, that Malasarte would "take care" of securing the mortgage loan. Such being the case, there was no reason why Caragao had to be made the attorney-in-fact of his co-owners, instead of Pio Bataclan, or his own father, Gregorio Bataclan.

(3) The testimonies of Concepcion Salandanan and Pedro de Guzman have established the fact that, contrary to petitioner's testimony, Pio Bataclan was not present when the Salandanans delivered the money to Caragao and that the latter was then accompanied by Malasarte, Guzman and Raymundo.

It is thus apparent that the refusal of the Court of Appeals to give credence to the theory of the defense is substantially supported by the surrounding circumstances and the evidence on record. Besides, this being a petition for review on certiorari of a decision of the Court of Appeals, rendered in the exercise of its exclusive appellate jurisdiction over the decision of the trial court, said decision of the Court of Appeals is "final," subject only to our power of review on questions of law.² The question of credibility of testimonial evidence is not such a question of law, and, hence, the finding thereon of the Court of Appeals is not reviewable by Us.

Moreover, the testimony of defense witness, Carlos de los Reyes, is so artificial as to reveal clearly his lack of veracity. Again, as His Honor, the trial Judge, had correctly pointed out in his decision, having used the forged document, Exhibit B, Caragao is presumed to be its forger.³

WHEREFORE, the appealed decision of the Court of Appeals is hereby affirmed, with costs against petitioner Pedro Caragao.

IT IS SO ORDERED.

Reyes, Dizon, Makalintal, Zaldivar, Sanchez, Fernando, and Teehankee, JJ., concur.

Ruiz Castro, J., in the result.

Barredo, J., did not participate.

[1] Exh. A is TCT No. 287 to the land in question; Exh. B, the "Power-of-Attorney" in issue; Exh. C, the Deed of Mortgage; Exh. D, the affidavit of Gregorio Bataclan; and Exh. E, the affidavit of Tomas Rosete.

² Sec. 29, R.A. 296; *Filipinas Compañia de Seguros v. Tan Chauco*, 85 Phil. 379, 388; *Cabrera v. Lopez*, 84 Phil. 834, 837; *Cristobal v. People*, 84 Phil. 473, 476; *De Ralla v. Director of Lands*, 83 Phil. 491, 498; *Tan Si Kiok v. Tiacho*, 79 Phil. 696; *De Castro v. Tamparong*, 78 Phil. 804, 807; *De las Alas v. People*, 78 Phil. 868, 870; *Zubiri v. Quijano*, 74 Phil. 47, 48; *De Luna v. Linatoc*, 74 Phil. 15; *Garcia de Ramos v. Yatco*, 71 Phil. 178, 179-180; *Gerio v. Gerio*, 71 Phil. 106, 107; *Onglengco v. Ozaeta*, 70 Phil. 43, 47; *Meneses v. Commonwealth*, 69 Phil. 647, 649; *Roldan v. Villaroman*, 69 Phil. 12, 22; *Mora Electric Co. v. Matic*, 68 Phil. 356, 358; *Hodges v. People*, 68 Phil. 178, 185; *Mamuyac v. Abena*, 67 Phil. 289; *Mateo v. Collector of Customs*, 63 Phil. 470, 471; *Guico v. Mayuga*, 63 Phil. 328, 331; *Hodges v. People*, 40 O.G. (1st Supplement) 227, 234.

3 U.S. v. Vilorio, 1 Phil. 682; U.S. v. Castillo, 6 Phil. 453; People v. De Lara, 45 Phil. 754; People v. Domingo, 49 Phil. 28, 33-34; People v. Cu Unjieng, 61 Phil. 906; People v. Manansala, G.R. No. L-13142, Jan. 30, 1959.

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