

GREGORIO FURIA, PETITIONER, VS. COURT OF APPEALS, RESPONDENT.

G. R. No. L-9007. May 29, 1957

Ponente: PADILLA, J.

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PADILLA, J.:

This is an appeal by certiorari under Rule 46 to review a judgment of the Court of Appeals.

The petitioner was charged in the Court of First Instance of Manila with estafa thru falsification of a public, official and commercial document in an information filed by the Office of the City Fiscal (criminal case No. 19102). After trial the Court found him guilty of the crime defined and punished under article 166, in connection with article 315, of the Revised Penal Code, and sentenced—

* * * him to suffer an indeterminate penalty of from SIX (6) YEARS of prison correctional to EIGHT (8) YEARS and FOUR MONTHS of prison mayor", to pay a fine of P2,000, to indemnify the offended party in the amount of P384.96, without further subsidiary imprisonment in case of insolvency, and to pay one-fourth of the costs. (Annex A.)

On appeal, the Court of Appeals convicted him of estafa through falsification of an official and commercial document, as penalized in article 315, paragraph 3, subsection 2, in connection with articles 172 and 48, as amended, of the Revised Penal Code, and sentenced him to suffer—

* * * from two (2) years and four (4) months to five (5) years, two (2) months and eight (8) days of prison correctional, to pay a fine in the sum of P2,000, to indemnify the offended party in the amount of P384.96, or to suffer the corresponding- subsidiary imprisonment in case of insolvency of both fine and indemnity, to the accessories of the law and to pay in lite first instance 1/4 of the costs. (Annex B.)

The petitioner contends that the Court of Appeals committed the following errors:

1. The respondent erred in ignoring entirely the first error assigned by the 'appellant in his brief to the effect that the trial court erred in allowing the prosecution to present evidence in (b) variance with the allegations in the information over the objection of the defense;
2. The respondent erred in declaring that the amount of the check in question was paid to the supposed payee;
3. The respondent erred in holding the appellant criminally and civilly liable for an alleged misrepresentation to the witnesses, Severino Aznar and Simeon Monzon;
4. The respondent erred in finding the appellant guilty as charged;
5. The respondent erred in not imposing the minimum of the indeterminate penalty; and
6. The respondent erred in not granting the motion for reconsideration filed by the appellant.

The information filed against the petitioner and his co-defendants is as follows:

That on or about the 20th of June, 1949, in the city of Manila, Philippines, the said accused, conspiring and confederating together and helping each other, did then and there wilfully, unlawfully and feloniously defraud one Inés B. Bentoso and/or the Bureau of Posts, a government entity under the Department of Public Works

and Communications of the Republic of the Philippines in the following manner, to wit: the said accused Severino Aznar and Juana Doe, the latter with identity and whereabouts still unknown, having somehow obtained or come into possession of a United States Depository check No. 917,109 dated May 11, 1949 in the amount of P384.96 payable to said Inés B. Bentoso, which is a public, official and

commercial document in that the same is a written act of the sovereign authority of the United States, a foreign country and recognized as a negotiable instrument by the Mercantile Law, did then and there wilfully, unlawfully and feloniously write, print, imitate and forge or cause to be written, printed, imitated and forged the signature of said Inés E. Bentoso at the back of said check and the said accused Gregorio Furia and Simeon Monzon, the latter an employee in the Manila Post Office who taking advantage of his position thereat he being known to his co-employees in said office who in one way or another has something to do with the cashing of said check, signed their signatures at the back of said check as identifiers thereof, thus causing it to appear that the said Ines B. Bentoso duly signed said U. S. Depository check No. 917,109 and that she (Inés B. Bentoso) took part in the transaction, although they knew she did not, thereby making untruthful statements in the narration of facts; that as soon as said U. S. Depository check No. 917,109 had been' falsified in the manner just described, the said accused, with intent to profit thereby and in furtherance of their conspiracy introduced the said accused Juana Doe as the real Inés B, Bentoso to the teller of the Postal Savings Bank who wanted her check to be cashed, as in fact the said check was cashed for the amount of P384.96, they (all of them) knowing fully well that the said check had not been signed by the payee thereof, Inés B. Bcntoso, neither has she authorized anyone of them to act for her, and it is only a forgery; and the said accused, once in possession of said cash amount of P384.96, did then and there wilfully, unlawfully and feloniously misappropriate, misapply and convert the said amount to their own personal use and benefit, to the damage and prejudice of said Inés B. Bentoso and/or the Bureau of Posts in the aforementioned sum of P384.96, Philippine currency. (See Annex A.)

Both the trial and appellate courts found that—

Sometime on June 21, 1949, Grogorio Furia, an employee of the Investigation Section of the Manila Health Department, City Hall, Manila, approached his co-employee Severino Aznar and introduced him to a woman whom he Referred to as Ines Bentoso, allegedly a townmate of his. Furia also told Aznar that this woman was the payee of check No. 917107 (ExJis. A & A-1) and that he wanted him Aznar) to help said woman in cashing said check. Knowing somebody in the Bureau of Posts, Aznar accompanied Furia and the alleged Inés Bentoso to that bureau and there he sought Simeon Monzon, an employee of the Bureau of Posts, and introduced Furia as his officemate and the woman who went with them as Inés

Bentoso, the payee of the check. In order to convince Aznar and Monzon of the true identity of Inés Bentoso, they presented a residence certificate wherein the name "Ines Bentoso," of Agusan province, appeared. Forthwith Monzon asked Aznar to sign the back of the check and afterwards he himself signed it also and then accompanied the group to the window of the paying teller. There the full amount of the check, P384.96, was paid to the woman (Exhs. A & A-1).

It also appears that Ines B. Eentoso, 38 years of age, widow, teacher and a resident of Mambalili, Agusan, was a war damage claimant with card No. 100386 of the U.S.-Phil. War Damage Commission'and that the check in question was intended by said Commission to satisfy her claim (Exh. B.) However, she did not receive the check and neither did she affix her signature thereon or authorized anyone to do so for her, and she is positive that she does not know Severino Aznar nor Simeon Monzon.

Because of these facts Severino Aznarj Gregorio Furia, Simeon Monzon and Juana Doe were accused of estafa through falsification of a public and commercial document before the Court of First Instance of Manila, but upon motion of the Fiscal, Severino Aznar and Simeon Monzon were discharged from the information to be utilized as witnesses for the State. And as Juana Doe was never arrested nor identified, the case proceeded only as against Gregorio Furia who, after proper proceedings, "was found guilty of the crime charged in the

information and sentenced to suffer the indeterminate penalty of from 6 years of prison correctional to 8 years and 4 months of prison mayor, to pay a fine of P2,000, to indemnify the offended party in the amount of P384.96, without subsidiary imprisonment in case of insolvency, and to pay 'A' of the costs-.

Not satisfied with this decision Gregorio Furia brought the matter up to us on appeal and in this instance his counsel assigns numerous errors as committed by the trial court, all of which having to do either with the appreciation of the evidence against appellant or in finding him guilty and sentencing him to the penalty aforementioned instead of acquitting him at least on reasonable doubt.

There is no dispute that the check for P384.96 (Exhs. A & A-1) was intended for Mrs. Ines B. Bentoso in payment of her aforementioned war damage claim, and there is no question either that she has not signed, nor authorized anybody to sign said check and collect for her the amount represented therein, nor in any way intervened in the cashing of said check. The only facts subject of controversy are appellant's denial of having accompanied the woman posing herself as Ines Bentoso to the Manila Post Office in cashing the check, and of having assured Severino Aznar and Simeon Monzon that the woman with him, whose signature appears at the back of check No. 917107, was Inés Bentoso. He contends that on June 20, 1949, a townmate of his, by the name of Venancio, Sianteng, approached him in his office together with a woman who was introduced to him as Inés Bentoso; that Sianteng requested him to help them so that his woman companion would cash her check; that he, in turn, accompanied them to Severino Aznar, an officemate of appellant, and asked the former to extend to Sianteng and the woman a helping hand; that Aznar promised him that he would try his best, after which the trio left for the Bureau of Posts

After due consideration of the evidence produced, We find that the version of the case, as narrated by appellant, is utterly untenable. It appears on record that before contacting Aznar appellant had already accompanied the supposed payee to the Bureau of Posts but was not able to cash the check in question because he did not know anybody in said office, and appellant's bare statement cannot prevail over the testimony of Simeon Monzon and Severino Aznar who declared that appellant was present in the Bureau of Posts when the check in question was cashed. If appellant's contention about the intervention of Sianteng were true, it would be strange that he would not have presented this man as a witness in his behalf, or made him to be called by the authorities, and We entertain no doubt that appellant was the mastermind who engineered the whole scheme to defraud either Inés E. Bentoso or the Government. Consequently, We cannot declare that the lower court committed any error in finding appellant guilty of the crime he is charged with in the information.

True, contrary to what is alleged in the information, the trial and the appellate courts found that the petitioner did not sign on the back of the check in question to identify the signature of the fictitious woman as payee, but that he approached his co-employee Severino Aznar, introduced to him the fictitious woman as the payee of the check, and enlisted Aznar a help to cash the check, who introduced her to Simeon Monzon, an employee of the Bureau of Posts, who in turn accompanied her to the window of the paying teller. It was Monzon and Aznar who signed the check to identify the signature of the payee upon the petitioner's assurance that the fictitious woman was the payee and that the signature written on the check was hers.

Nevertheless, although the evidence for the prosecution is at variance with the fact alleged in the information that the petitioner together with Simeon Monzon signed on the back of the check to identify the signature of the fictitious payee, yet as the information charges conspiracy between the defendants to commit the crime, the evidence for the prosecution to show and prove such conspiracy could not be objected to and the overruling of the objection is not a reversible error. Had it not been for the introduction by the petitioner of the fictitious woman to his officemate Severino Aznar who was assured by the petitioner that the fictitious woman was Inés B. Bentoso and the payee of the check, neither Aznar nor Monzon would have signed on the back of the check to identify the signature of the fictitious woman as payee. The identification of the latter and of her signature made possible the cashing of the check and the misappropriation of the amount by the petitioner and the fictitious woman other than

the real payee.

The crime committed is the complex crime of estafa by means of falsification of an official and commercial document denned and penalized in articles 315 and 172 of the Revised Penal Code. The penalty provided for the more serious crime is prision correctional in its medium and maximum periods which must be imposed in its maximum period pursuant to article 48 of the Revised Penal Code, as amended, or from 4 years, 9 months and 11 days to 6 years of prision correctional; and applying the Indeterminate Sentence Law the petitioner is sentenced to suffer a minimum of 4 months and 1 day of arresto mayor and a maximum of 6 years of prison correctional. Modified as to penalty only the rest of the judgment appealed from is affirmed, with costs against the petitioner.

Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Conception, Reyes, J. B. L., and Endencia, JJ., concur.

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