

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
WILLIAM H. QUASHA, DEFENDANT AND APPELLANT.***G. R. No. L-6055. June 12, 1953*

Ponente: REYES, J.

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William H. Quasha, a member of the Philippine bar, was charged in the Court of First Instance of Manila with the crime of falsification of a public and commercial document in that, having been entrusted with the preparation and registration of the articles of incorporation of the Pacific Airways Corporation, a domestic corporation organized for the purpose of engaging in business as a common carrier, he caused it to appear in said articles of incorporation that one Arsenio Baylon, a Filipino citizen, had subscribed to and was the owner of 60.005 per cent of the subscribed capital stock of the corporation when in reality, as the accused well knew, such was not the case, the truth being that the owners of the portion of the capital stock subscribed to by Baylon and the money paid thereon were American citizens whose names did not appear in the articles of incorporation, and that the purpose for making this false statement was to circumvent the constitutional mandate that no corporation shall be authorized to operate as a public utility in the Philippines unless 60 per cent of its capital stock is owned by Filipinos.

Found guilty after trial and sentenced to a term of imprisonment and a fine, the accused has appealed to this Court.

The essential facts are not in dispute. On November 4, 1946, the Pacific Airways Corporation registered its articles of incorporation with the Securities and Exchange Commission. The articles were prepared and the registration was effected by the accused, who was in fact the organizer of the corporation. The articles stated that the primary purpose of the corporation was to carry on the business of a common carrier by air, land or water; that its capital stock was P1,000,000, represented by 9,000 preferred and 100,000 common shares, each preferred share being of the par value of P100 and entitled to 1/3 vote and each common share, of the par value of P1 and entitled to one vote; that the amount of capital stock actually subscribed was P200,000, and the names of the subscribers were Arsenio Baylon, Eruin E. Shannahan, Albert W. Onstott, James O'Bannon, Denzel J. Cavin, and William H. Quasha, the first being a Filipino and the other five all Americans; that Baylon's subscription was for 1,145 preferred shares, of the total value of P114,500, and for 6,500 common shares, of the total par value of P6,500, while the aggregate subscriptions of the American subscribers were for 200 preferred shares, of the total par value of P20,000, and 59,000 common shares, of the total par value of P59,000; and that Baylon and the American subscribers had already paid 25 per cent of their respective subscriptions. Ostensibly the owner of, or subscriber to, 60.005 per cent of the subscribed capital stock of the corporation, Baylon nevertheless did not have the controlling vote because of the difference in voting power between the preferred shares and the common shares. Still, with the capital structure as it was, the articles of incorporation were accepted for registration and a certificate of incorporation was issued by the Securities and Exchange Commission.

There is no question that Baylon actually subscribed to 60.005 per cent of the subscribed capital stock of the

corporation. But it is admitted that the money paid on his subscription did not belong to him but to the American subscribers to the corporate stock. In explanation, the accused testified, without contradiction, that in the process of organization Baylon was made a trustee for the American incorporators, and that the reason for making Baylon such trustee was as follows:

"Q. According to this articles of incorporation Arsenio Baylon subscribed to 1,135 preferred shares with a total value of P1,135. Do you know how that came to be?

"A. Yes.

The people who were desirous of forming the corporation, whose names are listed on page 7 of this certified copy came to my house, Messrs. Shannahan, Onstott, O'Bannon, Caven, Perry and Anastasakas one evening. There was considerable difficulty to get them all together at one time because they were pilots. They had difficulty in deciding what their respective share holdings would be. Onstott had invested a certain amount of money in airplane surplus property and they had obtained a considerable amount of money on those planes and as I recall they were desirous of getting a corporation formed right away. And they wanted to have their respective share holdings resolved at a later date. They stated that they could get together but they feel that they had no time to settle their respective share holdings. We discussed the matter and finally it was decided that the best way to handle the thing was not to put the shares in the name of anyone of the interested parties and to have someone act as trustee for their respective share holdings. So we looked around for a trustee. And he said 'Is there anybody in particular whom you trust?' And I said 'There are a lot of people whom I trust.' He said, 'Is there someone around whom we could get right away?' I said, 'There is Arsenio. He was my boy during the liberation and he cared for me when I was sick and I said I consider him my friend.' So they said 'Well make him our trustee.' 'You can do that', I said. They all knew Arsenio. He is a very kind man and that was what was done. That is how it came about."

Defendant is accused under article 172, paragraph 1, in connection with article 171, paragraph 4, of the Revised Penal Code, which read:

"ART. 171. Falsification by public officer, employee or notary or ecclesiastic minister.—The penalty of prison mayor and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

* * * * *

"4. Making untruthful statements in a narration of facts."

"ART. 172. Falsification by private individuals and use of falsified documents.—The penalty of prison correccional in its medium and maximum periods and a fine of not more than 5,000 pesos shall be imposed upon:

* * * * *

"1. Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document or letter of exchange or any other kind of commercial document."

Commenting on the above provisions, Justice Albert, in his well-known work on the Revised Penal Code (new edition, pp. 407-408), observes, on the authority of *U. S. vs. Reyes*, (1 Phil., 341), that the perversion of truth in the narration of fact must be made with the wrongful intent of injuring a third person; and on the authority of *U. S. vs. Lopez* (15 Phil., 515), the same author further maintains that even if such wrongful intent is proven, still the untruthful statement will not constitute the crime of falsification if there is no legal obligation on the part of the narrator to disclose the truth. Wrongful intent to injure a third person and obligation on the part of the narrator to

disclose the truth are thus essential to a conviction for the crime of falsification under the above articles of the Revised Penal Code.

Now, as we see it, the falsification imputed to the accused in the present case consists in not disclosing in the articles of incorporation that Baylon was a mere trustee (or dummy as the prosecution chooses to call him) of his American co-incorporators, thus giving the impression that Baylon was the owner of the shares subscribed to by him which, as above stated, amount to 60.005 per cent of the subscribed capital stock. This, in the opinion of the trial court, is a malicious perversion of the truth made with the wrongful intent of circumventing section 8, Article XIV of the Constitution, which provides that "no franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or other entities organized under the laws of the Philippines, sixty per centum of the capital of which is owned by citizens of the Philippines * * *." Plausible though it may appear at first glance, this opinion loses validity once it is noted that it is predicated on the erroneous assumption that the constitutional provision just quoted was meant to prohibit the mere formation of a public utility corporation without 60 per cent of its capital being owned by Filipinos, a mistaken belief which has induced the lower court to conclude that the accused was under obligation to disclose the whole truth about the nationality of the subscribed capital stock of the corporation by revealing that Baylon was a mere trustee or dummy of his American co-incorporators, and that in not making such disclosure defendant's intention was to circumvent the Constitution to the detriment of the public interests. Contrary to the lower court's assumption, the Constitution does not prohibit the mere formation of a public utility corporation without the required proportion of Filipino capital. What it does prohibit is the granting of a franchise or other form of authorization for the operation of a public utility to a corporation already in existence but without the requisite proportion of Filipino capital. This is obvious from the context, for the constitutional provision in question qualifies the terms "franchise", "certificate" or "any other form of authorization" with the phrase "for the operation of a public utility," thereby making it clear that the franchise meant is not the "primary franchise" that invests a body of men with corporate existence but the "secondary franchise" or the privilege to operate as a public utility after the corporation has already come into being.

If the Constitution does not prohibit the mere formation of a public utility corporation with alien capital, then how could the accused be charged with having wrongfully intended to circumvent that fundamental law by not revealing in the articles of incorporation that Baylon was a mere trustee of his American co-incorporators and that for that reason the subscribed capital stock of the corporation was wholly American? For the mere formation of the corporation such revelation was not essential, and the Corporation Law does not require it. Defendant was, therefore, under no obligation to make it. In the absence of such obligation and of the alleged wrongful intent, defendant cannot be legally convicted of the crime with which he is charged.

It is urged, however, that the formation of the corporation with 60 per cent of its subscribed capital stock appearing in the name of Baylon was an indispensable preparatory step to the subversion of the constitutional prohibition and the laws implementing the policy expressed therein. This view is not correct. For a corporation to be entitled to operate a public utility it is not necessary that it be organized with 60 per cent of its capital owned by Filipinos from the start. A corporation formed with capital that is entirely alien may subsequently change the nationality of its capital through transfer of shares to Filipino citizens. Conversely, a corporation originally formed with Filipino capital may subsequently change the national status of said capital thru transfers of shares to foreigners. What need is there then for a corporation that intends to operate a public utility to have, at the time of its formation, 60 per cent of its capital owned by Filipinos alone? That condition may at any time be attained thru the necessary transfers of stocks. The moment for determining whether a corporation is entitled to operate as a public utility is when it applies for a franchise, certificate, or any other form of authorization for that purpose. And that can only be done after the corporation has already come into being and not while it is still being formed. And

at that moment, the corporation must show that it has complied not only with the requirement of the Constitution as to the nationality of its capital, but also with the requirements of the Civil Aviation Law if it is a common carrier by air, the Revised Administrative Code if it is a common carrier by water, and the Public Service Law if it is a common carrier by land or other kind of public service.

Equally untenable is the suggestion that defendant should at least be held guilty of an "impossible crime" under article 59 of the Revised Penal Code. It not being possible to suppose that defendant had intended to commit a crime for the simple reason that the alleged constitutional prohibition which he is charged with having tried to circumvent does not exist, conviction under that article is out of the question.

The foregoing considerations can not but lead to the conclusion that the defendant can not be held guilty of the crime charged. The majority of the court, however, are also of the opinion that, even supposing that the act imputed to the defendant constituted falsification at the time it was perpetrated, still with the approval of the Parity Amendment to the Constitution in March, 1947, which placed Americans on the same footing as Filipino citizens with respect to the right to operate public utilities in the Philippines, thus doing away with the prohibition in section 8, Article XIV of the Constitution in so far as American citizens are concerned, the said act has ceased to be an offense within the meaning of the law, so that defendant can no longer be held criminally liable therefor.

In view of the foregoing, the judgment appealed from is reversed and the defendant William H. Quasha acquitted, with costs de oficio.

Paras, C. J., Pablo, Bengzon, Padilla, Tuason, Jugo, Bautista Angelo and Labrador, JJ., concur.

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