

## **ARTURO REYES, PETITIONER, VS. THE HON. COURT OF APPEALS &#038; PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

*G.R. Nos. L-36391-92. March 09, 1989*

Ponente: GRIÑO-AQUINO, J.

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### **GRIÑO-AQUINO, J.:**

On appeal by certiorari under Rule 45 of the Rules of Court is the joint decision dated January 24, 1973 of the Court of Appeals in CA-G.R. Nos. 07689-90-CR which affirmed with modification the conviction of the petitioner Arturo Reyes for illegal possession and use of six (6) falsified American Express Company (AMEXCO) checks in violation of Article 168 of the Revised Penal Code. Two informations were filed against Arturo Reyes and Ceferino Melendez which were docketed as Criminal Cases Nos. T-903 and T-904 in the Court of First Instance of Pangasinan, Tayug, Branch VI.

On September 3, 1961, Melendez offered to sell to the complainant Rufo Saruca two AMEXCO checks which he allegedly acquired from Reyes. As Saruca was planning to travel abroad with his wife, he agreed to encash them provided two persons would guarantee their genuineness and refund his money if they were spurious. The next day, Melendez executed an affidavit before Justice of the Peace Rufino V. Buyao of San Quintin, Pangasinan, acknowledging that he received P589 from Saruca in exchange for two American Express checks (for \$100 and \$90 each) and promising to refund that amount to Saruca if the checks were not good.

On September 6, 1961, Reyes himself, accompanied by Melendez, encashed with Saruca four (4) more AMEXCO checks worth \$390. Reyes executed an affidavit before the Justice of the Peace in which he acknowledged the receipt of P600 from Saruca and promised to refund that amount if the checks were fake.

Later, Saruca learned that Melendez was mauled in Binalonan for selling a forged check (p. 73, Rollo). Suspicious, he brought Reyes to the Chief of Police Salvador Ringor and in their presence, he examined the six (6) checks he acquired from Reyes and Melendez with a magnifying glass. He found that the original figures contained blot marks, erasures, and superimpositions, confirming his fear that they were falsified or tampered with. The Chief of Police forthwith notified the PC headquarters in Tayug and requested assistance in conducting an investigation. The PC found that the figures and words below the printed word "AMOUNT" on all the checks bore erasures and superimpositions.

Saruca demanded from Reyes the return of his money but Reyes required him to return the checks. Since the checks were in the custody of the PC investigator, Reyes refused to refund Saruca's money. Reyes and Melendez were accordingly charged, arrested and tried for violation of Article 168 of the Penal Code. They pleaded not guilty.

After a joint trial, the Court of First Instance rendered judgment on March 8, 1967 acquitting Melendez, but convicting Reyes in both cases and sentenced him in each case:

"x x x to suffer the penalty from TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY, TO FOUR (4)

YEARS, NINE (9) MONTHS and ELEVEN (11) DAYS of prison correccional in its medium and maximum period, and to pay the fine of Two Hundred Pesos (P200.00), x x x." (p. 21, Rollo)

It also ordered him to indemnify Saruca in the sum of P585 in the first case and P600 in the second case.

On appeal, the Court of Appeals increased his penalty as follows:

"Considering that the altered checks in question were issued by the American Express Company, a foreign bank duly authorized to issue the same, the penalty to be imposed upon the accused-appellant in both cases should be adjusted within the range provided in Paragraph 4, Article 166 of the Revised Penal Code. Accordingly, the accused-appellant should be sentenced both cases to suffer the penalty of four (4) years, two (2) months and one (1) day of prison correccional, as minimum to six (6) years, eight (8) months and one (1) day of prison mayor, as maximum. The fine of two hundred (P200.00) pesos and the indemnity in both cases are retained. However, subsidiary imprisonment except as to the fine should not be made to apply in both cases conformably with Article 39 of the Revised Penal Code, as amended by Republic Act No. 5465." (CA-G.R. Nos. 07689-CR and 07690-CR dated January 24, 1973, p. 31, Rollo.)

The main issue raised in this petition for review is whether the Court of Appeals erred in finding the petitioner guilty as charged.

Article 168, in relation to Article 166, of the Revised Penal Code, for the violation of which the petitioner was convicted, provides:

"Art. 168. Illegal possession and use of false treasury or bank notes and other instruments of credit. - Unless the act be one of those coming under the provisions of any of the preceding articles, any person who shall knowingly use or have in his possession, with intent to use, any of the false or falsified instruments referred to in this section, shall suffer the penalty next lower in degree than that prescribed in said articles.

"Art. 166. Forging treasury or bank notes or other documents payable to bearer; importing, and uttering such false or forged notes and documents. - The forging or falsification of treasury or bank notes or certificates or other obligations and securities payable to bearer and the importation and uttering in connivance with forgers or importers of such false or forged obligations or notes, shall be punished as follows:

"xxx xxx xxx.

"4. By prison mayor in its minimum period and a fine not to exceed 2,000 pesos, when the forged or altered document is a circulating note or bill issued by a foreign bank duly authorized thereof."

The elements of the crime in Article 168 are: (1) possession with guilty knowledge that the checks were falsified (*animus possidendi*), and (2) fraudulent intent to use or utter the same.

The petitioner alleges that the Court of Appeals erred in finding that the element of *animus possidendi* was established by the prosecution. That being a factual finding of the appellate court, We may not disturb it (Sec. 2, Rule 45, Rules of Court).

In any event, the record shows that that finding is supported by substantial evidence, namely, the testimonies of Saruca and of Maj. Jose Fernandez of the PC Central Laboratory. Saruca proved that it was Reyes who uttered or passed the falsified checks to him. Maj. Fernandez testified that: (1) the amounts in the checks had been changed to reflect bigger sums; (2) the changes were not properly authenticated by the drawers; (3) the petitioner benefitted from the encashment of the falsified checks by Saruca; (4) the American Express Company dishonored the checks when presented to it for encashment; (5) all the six (6) falsified checks came from the petitioner, indicating that he was aware of their forged character and that he intended to profit from uttering them; and (6) since petitioner could not identify the persons from whom he allegedly received the tampered checks, he may be

regarded as the source of the same (Alarcon vs. CA, 19 SCRA 688).

WHEREFORE, finding that the Court of Appeals did not commit a reversible error in affirming the petitioner's conviction, the petition for review is denied with costs against the petitioner.

**SO ORDERED.**

Narvasa, (Chairman), Cruz, and Medialdea, JJ., concur.

Gancayco, J., no part.

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