

ALFONSO VALLARTA, PETITIONER, VS. THE HONORABLE COURT OF APPEALS; AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.*G.R. No. L-36543. July 27, 1988*

Ponente: PADILLA, J.

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Before the Court is a petition for review on certiorari of the decision[*] of the Court of Appeals dated 27 February 1973 in CA-G.R. No. 11427 entitled "The People of the Philippines, plaintiff-appellee vs. Alfonso Vallarta, accused-appellant" which affirmed the decision[**] of the Court of First Instance of Nueva Ecija dated 11 February 1969 finding the accused guilty of the crime of malversation and sentencing him to suffer imprisonment of six (6) years and one (1) day to twelve (12) years, and to pay a fine of P11,109.70 without subsidiary imprisonment in case of insolvency and to pay the costs.

Adopting the findings of the Court of Appeals, it appears that the accused-appellant was appointed on 17 January 1955 as warehouseman-cashier in the National Rice and Corn Corporation (NARIC, for short) at Jaen, Nueva Ecija agency; that he continued in said position until 21 December 1956; that on or about 8 April 1957, the property and money accountability of the accused, as agent-in-charge and cashier of the NARIC at Jaen, Nueva Ecija, was audited by NARIC Auditor Lucas Estrella; that at the time of the audit, the accused was found short of P253.18 in cash, 353 cavans and 50 kilos of rice valued at P7,044.90, 5 cavans and 36 kilos of palay valued at P51.62, and 6,161 empty sacks valued, at P3,760.10 (P0.61 each), or for a total of P11,109.70; that in computing the net stock of rice and palay under the charge and custody of the accused, he was credited with a shrinkage allowance of 4% of the stock received; and that Auditor Estrella demanded of the accused to produce the shortage but the latter failed to do so.[1]

Being the agent-in-charge and disbursing officer of the NARIC and, as such, accountable for property and funds of the corporation, Alfonso Vallarta was charged with the crime of malversation under Art. 217 of the Revised Penal Code in the Court of First Instance of Nueva Ecija, docketed as Criminal Case No. GP-6.[2] The information was filed by the Assistant Provincial Fiscal on 18 October 1961. In a decision dated 11 February 1969, the trial court found the accused guilty as charged.

A motion for new trial was filed by the accused, alleging that errors of law or irregularities were committed during the trial prejudicial to his substantial rights. On 22 October 1969, the trial court denied the motion. The accused elevated the case to the Court of Appeals.

Despite its exclusion of the Solicitor General's brief for late filing, the Court of Appeals affirmed the trial court's decision. Accused-appellant (now petitioner) filed a Motion for Reconsideration which was also denied by the respondent appellate court on 20 March 1973. Hence, the present recourse.

The Court's resolution of 26 April 1973 required petitioner to implead the People of the Philippines as a party respondent. Thereafter, the court, in the resolution of 17 May 1973, dismissed the amended petition for lack of merit. A motion for reconsideration was filed on 5 June 1973. On 17 July 1973, the Court reconsidered the

dismissal and gave due course to the amended petition.

Petitioner cites several errors allegedly committed by the Court of Appeals in affirming his conviction, which may be summarized as follows:

- insufficient evidence to prove guilt beyond reasonable doubt,
- unwarranted repudiation and gross misappreciation of documentary evidence duly admitted, without objection by the prosecution,
- finding, that the lower court did not commit a reversible error in denying petitioner's motion for new trial.[3]

Upon submission of the respective briefs of the parties, the Court resolved to consider the case submitted for decision, without petitioner's reply brief.

The only question to be resolved is whether or not the trial court and the Court of Appeals committed reversible error in their appreciation of the evidence leading to the conviction of the accused.

Save for the appellate court's reference to (and continued reliance on) the Solicitor General's brief, which was earlier expunged from the record for late filing, the Court finds no irregularity in the findings of the trial court and the appellate court.

In the petitioner's motion for new trial before the trial court, he sought to present, as additional evidence, the testimonies of Messrs. Pedro Esquivel and Pedro Perez, to rebut the claim of missing 6,000 empty sacks.[4] The trial court, on this matter, stated:

"The statement of Pedro Esquivel submitted to this court is not signed; consequently, the same could not be considered by it, because, upon the face of the instrument, the due execution thereof has not been established. More than this, the two affidavits could not be relied upon by this court for the same are hearsay. Unless and until the two supposed affiants of said instruments are presented in this court, their testimony as to the contents of their sworn statements are inadmissible in evidence. The accused having failed to present the said two persons, although they were available, the court could not entertain said affidavits." [5]

To the trial court's findings, the Court of Appeals decision of 27 February 1973 added that, "Even the affidavits of Perez and Esquivel attached to the motion for new trial of the accused does (sic) not show that they borrowed a total of 6,162 empty sacks. The trial court gave the accused full opportunity to substantiate his allegations in the motion for new trial. It appears from the record that the motion for new trial was set for hearing and oral argument." [6]

The record shows [7] a signed affidavit of Pedro Esquivel dated 20 February 1959. There appears to be no reason why this same affidavit was not presented before the trial court. Obviously, the execution of the document appended to the petition filed before this Court is an after thought not really worth considering. Affidavits are not considered the best evidence, if the affiants are available as witnesses. The use of affidavits should be regulated by the hearsay rule [8] to safeguard every opportunity to cross examine the affiants with regard to their contents and due execution. [9]

In a motion for reconsideration based on fraud, accident, mistake or excusable negligence, the circumstances must be such that ordinary prudence could not have guarded against them, and by reason of which, the party applying to set aside a judgment has probably been impaired in his rights. [10] Where the defendants filed a motion for new

trial under Section 1(a), Rule 37 of the Rules of Court, and the evidence they allegedly failed to present is so unsubstantial and futile that it cannot have the effect of altering the nature of the decision, the motion for new trial could be denied.[11]

Petitioner assails the denial of his motion for new trial by the trial court but he fails to take note that the information against him was filed as early as 18 October 1961 and the trial court's decision rendered on 11 February 1969. If the affidavits were indeed voluntarily executed by their affiants as 20 February 1959, what then was the reason for the delay in presenting these documents? We are constrained to agree with the trial Court's statement in its decision that these affidavits are mere cloaks designed to cover misappropriation.[12]

Likewise assailed by the petitioner as erroneous is the respondent court's appreciation of exhibit 2, the charge order of one Flavio Vasquez for 353 cavans and 50 kilos of rice worth P8,171.68, exhibit 3, complaint filed in Civil Case No. 45882 in the Court of First Instance of Manila for collection of P8,171.68, and exhibit 4, the order dismissing the complaint in said case.

Both the trial court and the Court of Appeals found that Exhibit 2 was not signed and duly authenticated; it is a mere carbon copy and no explanation was given why Flavio Vasquez was not presented as a witness.[13]

A signed carbon copy or duplicate of a document executed at the same time as the original is known as a duplicate original and maybe introduced in evidence without accounting for the non-production of the original.[14] But an unsigned and uncertified document purporting to be a carbon copy is not competent evidence. It is because there is no public officer acknowledging the accuracy of the copy.[15]

The charge order submitted is at best secondary evidence and is not admissible, unless it is made manifest that the primary evidence is unavailable, as where it is shown that it has been lost or destroyed, is beyond the jurisdiction of the court or is in the hands of the opposite party who, on due notice, fails to produce it.[16] Petitioner-movant here had access to a certified or a true copy of the charge order, as it was allegedly presented as an exhibit during the reinvestigation of the case before the office of the Provincial Fiscal of Nueva Ecija and there marked as "exhibit 4, reinvestigation", and submitted to that office on 5 February 1962,[17] yet, the accused did not request for a copy and exhibit the same before the trial court. The non-production by the accused of the original document, unless justified under the exceptions in Section 2, Rule 130 of the Rules of Court, gives rise to the presumption of suppression of evidence[18] adverse to him (the accused). Besides, the charge order in question has a total price of P8,171.68, while the misappropriated amount of 353 cavans and 50 kilos of rice is P7,044.90, and the amount of 5 cavans and 36 kilos of palay is 109.80, or a total of P7,154.70. Counsel for the accused appears to be confused, as he claims that the value of the rice in the charge order is P7,044.90.[19] instead of P8,171.68 which actually appears thereon.[20]

The trial and appellate courts correctly disregarded exhibits 8 & 4, the complaint for collection in Civil Case No. 45882. Court of First Instance of Manila and the order for its dismissal[21] because the latter was not based on the merits but for failure to prosecute; and it is erroneous for herein petitioner to claim that the allegations in said complaint (exhibit 3 proved the sale of rice on credit to Flavio Vasquez. It could be improper for the trial court, in this case, to pass upon the truth or falsity of the allegation in a complaint filed in another Court.

Another factual issue raised by petitioner pertains to two (2) uncollected vouchers for P845.51 which he claims must be offset with the cash shortage of P253.18. Here, the Court of Appeals erroneously considered arguments contained in the Solicitor General's brief[22] which it had earlier expunged for late filing; nonetheless, exhibit 1,[23] the receipt signed by Mr. Jose Sarte, NARIC Branch Manager, acknowledging presentation of the vouchers, is dated 3 February 1960, or almost 3 years after the expenditures were incurred.

Compensation or offset takes place by operation of law when two (2) persons, in their own right, are creditor and debtor of each other.[24] for compensation to take place, a distinction must be made between a debt and a mere claim. A debt is a claim which has been formally passed upon by the highest authority to which it can in law be submitted and has been declared to be a debt. A claim, on the other hand, is a debt in embryo. It is mere evidence of a debt and must pass thru the process prescribed by law before it develops into what is properly called a debt.[25]

In *Compania General de Tabacos vs. French and Unson*,[26] this Court held that Section 624 of the Revised Administrative Code, beyond doubt, authorizes the Insular Auditor, when it appears that a creditor of the government is also indebted to the government, to offset one debt against another.[27] But, this does not necessarily imply that respondents may not, under said Section 624, settle money claims which are contested and unliquidated if, upon the admitted facts, the indebtedness of the government appears to be certain and can be sustained without extraneous proof or its exact amount which, though not fixed, is readily determinable by the ordinary process of accounting.[28]

Why the two (2) vouchers remained uncollected is not for this Court to look into, but the cash shortage of P253.18 incurred on 8 April 1957 is undisputed and three (3) years lapsed before any voucher was presented to offset liability. In the cases of *The United States vs. Francisco Licas*,[29] *The United States vs. Pedro Reyes*[30] and *The United States vs. Jose Feliciano*,[31] the failure of an accountable public officer to produce public funds upon demand of the auditor is prima facie evidence that the missing funds or property had been utilized for personal use and were therefore misappropriated; consequently, the subsequent act of reimbursement cannot in any way affect the existence of the crime of malversation already committed.

Finally, the allowance to the accused of a 4% shrinkage in stocks is an administrative procedure adapted by NARIC which the Court is bound to respect. Whether or not accused should be allowed more or less than 4% can not be a subject of inquiry in this petition.

While the documents presented by the accused have been admitted without objection from the prosecution, the appreciation of such documents is still subject to the rules on weight and sufficiency of evidence.

This is a case, therefore, where the trial court, after hearing and observing the witnesses testify, and weighing what was said by them, chose to believe the prosecution rather than the defense. For such a finding to be overturned, there must be a showing that the trial court overlooked a material fact or circumstance or misinterpreted its significance.[32]

Where the issues raised are basically factual and essentially involve an appreciation of evidence of the parties, respondent appellate court's findings thereon are in turn binding on this Court in the absence of a misapprehension of facts or grave abuse of discretion.[33]

WHEREFORE, finding no reversible error in the respondent court's findings of fact and conclusions of law, the petition for review on certiorari is DENIED. The decision of the Court of Appeals, appealed from, is AFFIRMED. Without pronouncement as to costs.

SO ORDERED.

Melencio-Herrera (Chairman), Paras and Sarmiento, JJ., concur.

[*] Penned by Justice Ramon C. Fernandez, with the concurrence of Justices Hermogenes Concepcion, Jr. and Emilio A. Gancayco.

[**] Written by Judge Mariano V. Benedicto.

[1] Decision, Court of Appeals, Rollo, pp. 25-26.

[2] Rollo, pp. 23-24.

[3] Rollo. pp. 64-67.

[4] Rollo, p. 96.

[5] Appellant's Brief, Rollo. p. 57.

[6] Rollo. pp. 23-24.

[7] Rollo. p. 55.

[8] Rule 130, Rules of Court, Sec. 30.

[9] Dizon v. Board of Liquidation, L-8416, February 17, 1956, p. 27.

[10] Sunico vs. Villapando, 14 Phil. 352.

[11] Vda. de Miranda vs. Legaspi, et al., 48 O.G., No. 11, p. 4819.

[12] Brief for Accused-Appellant - Court of Appeals, Rollo at 57.

[13] Rollo, p. 26.

[14] Mahilum, et. al vs. CA, et al., No. L-17970, June 30, 1966, 64 OG 4017.

[15] US v. Zapanta, 33 Phil. 567.

[16] 20 Am. Inc. Evidence, Sec. 403, 404, pp. 364, 365, cited in Kneedler vs. Paterno, 85 Phil. 183.

[17] Motion for New Trial, p. 3, Rollo at 95.

[18] Rule 131, Sec. 5, Rules of Court.

[19] Rollo at 88.

[20] Rollo at 48.

[21] Rollo at 50 and 52.

[22] Par. 2, p. 4, CA Decision, Rollo at 26.

[23] Rollo at 54

[24] Art. 1278, New Civil Code

[25] State Audit Code of the Philippines annotated Justice Francisco Tantuico, COA Research and Development Foundation, Inc., SAAC, Quezon City, p. 240

[26] 39 Phil. 34

[27] Art. 1278, 1279, Civil Code; Luenggo vs. Herrera. 17 Phil. 29 [1910]

[28] State Audit Code of the Philippines annotated, Justice Francisco Tantuico, COA Research and Development Foundation, Inc., SAAC, Quezon City, p. 248

[29] G.R. No. 2052, April 25, 1905, 4 Phil. 458

[30] G.R. No. 5141, January 10, 1910, 14 Phil. 718

[31] G.R. No. 5623, February 3, 1910, 15 Phil. 142

[32] People vs. Berame, No. L-27606, July 13, 1976, 72 SCRA 184; People vs. Rualo No. L-70287, July 1987, 152 SCRA 635

[33] Gimeno v. CA, No. L-22747, Dec. 29, 1977. 80 SCRA 623; Vallarta v. IAC. No. L-74957. June 30, 1987. 151 SCRA 679

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