

**PINEDA & AMPIL MANUFACTURING CO. AND ISAAC AMPIL,
PETITIONERS, VS. ARSENIO BARTOLOME, MANUEL BARTOLOME
AND COURT OF APPEALS, RESPONDENTS.**

G.R. No. L-6904. September 30, 1954

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a petition for review of a decision of the Court of Appeals granting the writ of certiorari applied for and ordering the court of origin to quash the amended information filed against the accused on the ground that while said amended information does not charge two separate offenses of estafa, nor the crime of malicious mischief, as contended by the lat ter, nevertheless, it charges the crime of falsification of private document as an offense separate and distinct from that of estafa and, therefore, it should be quashed on that ground.

On September 4, 1951, an information for estafa was filed in the Court of First Instance of Manila against Arsenio Bartolome and Manuel Bartolome, which was later on amended on October 18, 1951. Before said accused entered their plea upon the information, they filed a motion to quash on the ground that it charges four distinct and separate offenses punishable under four different and separate provisions of the Revised Penal Code.

Counsel for private prosecution vigorously opposed the motion contending that the amended information does not charge multiple offenses in the manner pointed out by the defense because, while apparently two offenses of estafa are charged therein, they may not be considered as two distinct offenses which call for different punishment for the reason that there is only one subject matter, one offended party and a series of fraudulent acts committed with one criminal intent; nor does it charge separately an offense of falsification of private documents for it lacks an essential element characterizing such offense which-consists in the alteration or falsity of a private document; and that neither does it charge an offense of malicious mischief because the destruction of the books, papers, and documents alleged therein was not made with a feeling of hate but merely with intent to defraud.

On November 9, 1951, the court denied the motion to quash, and the motion for reconsideration interposed thereto having been denied, the accused filed a petition for certiorari with the Court of Appeals imputing lack or excess of jurisdiction, or grave abuse of discretion to the lower court, in failing to quash the information on the ground of "duplicity of offense."

The Court of Appeals gave due course to the petition for certiorari and, after hearing, it rendered decision overruling accused's contention in part and sustaining it in part, the court holding that while the amended information does not charge two separate offenses of estafa nor the crime of malicious mischief, punishable under different provisions of the Revised Penal Code, it nevertheless charges the crime of falsification as an offense separate and distinct from estafa, and ordered that said information be quashed. In due time, counsel for private prosecution filed a motion for reconsideration, and this motion having been denied, counsel filed the present petition for review.

The first issue posed by petitioners refers to a question of jurisdiction. They contend that respondent Court of

Appeals erred in taking cognizance of the certiorari case interposed by the accused instead of inhibiting itself from acting thereon on the ground that it has no jurisdiction over the subject matter involved in the petition, citing in favor of their contention section 17 of Republic Act 296 otherwise known as the Judiciary Act of 1948.

There is no merit in this contention. Section 17 of Republic Act 296, it is true, confers upon the Supreme Court exclusive jurisdiction to review final judgments or decrees of inferior courts in all cases in which only errors and questions of law are involved, but this is so only in cases where an appeal is taken "by certiorari or writ of error." The rule differs when the relief applied for is a special civil action of certiorari. In such a case, as in cases of mandamus, prohibition, and injunction, the Court of Appeals has original jurisdiction to issue the writ when that is sought in aid of its appellate jurisdiction. (Section 30, Republic Act 296). And so it has been held that, "Where a criminal case has not yet been decided the basis in determining what court has original jurisdiction over a petition for certiorari founded upon questions arising from said criminal case, should be the penalty fixed by law for the offense charged in the information." (Roldan vs. Villaroman, 69 Phil., 12.) And as a supplement to this ruling, it was also held that a petition for certiorari may be entertained by the Court of Appeals if it appears from the allegations in the petition, complaint, or information that the parties have a right to appeal, according to law, from any final order or decision of the lower court to the Court of Appeals (Breslin vs. Luzon Stevedoring Co., 47 Off. Gaz., 1170; 84 Phil., 618.)

Inasmuch as the case involved is a special civil action of certiorari, and not an appeal by certiorari or writ of error, wherein lack or excess of jurisdiction, or grave abuse of discretion is imputed to an inferior court, it follows that respondent Court of Appeals acted rightly in taking cognizance of said special action of certiorari.

The next issue, posed by petitioners refers to the finding of the respondent Court of Appeals to the effect that the amended information charges falsification as an offense separate and distinct from estafa, and, therefore, it should be quashed on that ground. In other words, petitioners assails the following finding of respondent Court of Appeals:

"The contention, however, that the amended information charges falsification as an offense separate and distinct from estafa, appears to be very well taken. It is one thing to commit the crime of estafa, and an entirely different matter to commit falsification so as to conceal a defraudation already accomplished by the same or different means. The first is estafa complexed by falsification, and to allege these separate acts in a single information is permissible, falling as it does, within the excepting clause of the rule against duplicity of charges (Rule 106, section 12., Rules of Court). The second is a case of two separate and distinct offenses of estafa and falsification, and both may not validly be charged in the same information. .

It is contended that, in order that a given information may be assailed as alleging duplicity of charge, it is necessary to show that the elements of each charge be recited in the information, or the recital of such separate charge be complete and sufficient in itself such that, if the accused is found guilty, a conviction could be had thereon. In the instant case, petitioners aver, the crime of falsification allegedly punishable under article 171, paragraph 4, in relation to article 172, paragraph 2, of the Revised Penal Code, does not appear sufficiently described in the information for it does not allege (1) that the accused had a legal obligation to make a "narration of facts" and (2) if they had such obligation, that they made false or untruthful statement in a narration of facts as required by law. These two elements not being present, petitioners contend that the charge of falsification does not appear sufficiently recited in the information.

A cursory reading of the information would disclose no basis for this contention. While the amended information does not allege in so many words that the accused have a legal obligation or duty to make any narration of facts, it does however allege that Arsenio Bartolome was the treasurer and Manuel Bartolome the accountant, and that the former was under obligation "to make or cause to be made necessary entries therefor in the books of said

corporation" which recital constitutes a substantial compliance with the law. It is also true that the amended information does not literally allege that the accused made a false or untruthful narration of facts; however, it does appear in the information that the accused "failed and neglected to make and record the corresponding entries or otherwise manipulated the proper keeping of the books of accounts," in order to conceal the misappropriation. The word manipulated is broad enough to imply tampering or falsification of the books or entries made therein. This is also a substantial compliance with the law. So, it may therefore be said that the two elements of the offense of falsification are present, and coupled with the statement that they were done with intent to cause damage to the corporation, in our opinion, those averments are sufficient to sustain a conviction on that charge. And it cannot be contended, as petitioners do, that those averments were inserted merely to make a complete narration of facts constituting the crime of estafa, or to show the different means by which the same may be committed, it appearing that the alleged manipulation was committed in order to conceal the misappropriation. It cannot, therefore, be said that the crime of falsification was committed merely as a means to commit estafa, for in fact two separate offenses are charged in the information.

In arriving at the conclusion that the amended information charges two separate offenses of estafa and falsification of which the accused can be convicted if found guilty, respondent Court of Appeals invoked in support thereof the cases of *U.S. vs. Geta*, 43 Phil., 1009, *People vs. Dizon*, 47 Phil., 350, and *People vs. Bersabal*, 48 Phil., 439. Their applicability is now disputed by petitioners on the ground that the facts and findings made therein are not on all fours to the present case. We have gone over and examined the cases thus invoked and we are satisfied that the conclusion reached by the Court of Appeals is correct.

A collateral issue raised by petitioners is that the respondent Court of Appeals erred in taking cognizance of the petition for certiorari despite their contention that, if the lower court had committed an error in denying the motion to quash or in holding that the amended information does not contain duplicity of charge, such error cannot be corrected by a petition for certiorari but by appeal, and, therefore, the respondent court should have dismissed the petition on that ground.

While a denial of a motion to dismiss for lack of jurisdiction was held not to be a proper basis for a petition for certiorari [*Nico vs. Blanco*, 46 Off. Gaz., Supp. (1) 88; 81 Phil., 213], or an appeal and not certiorari is the proper remedy for correcting an error which a lower court may commit in denying a motion to set aside a judgment, or in setting aside an order of dismissal, [*Rios vs. Ros, et al.*, 45 Off. Gaz. (No. 3) 1265; 79 Phil., 243; *Santos vs. Pecson*, 45 Off. Gaz., (No. 3), 1278; 79 Phil., 754] however, in some instances, the Supreme Court has departed from the general rule and has entertained the writ notwithstanding the existence of an appeal. Thus, in one case the Supreme Court took cognizance of a petition for certiorari notwithstanding the fact that the accused could have appealed in due time when it found that the action was necessary to promote public welfare and public policy (*People vs. Zulueta*, 89 Phil., 880). In another case, a petition for certiorari to annul an order of the trial judge admitting an amended information was entertained although the accused had an adequate remedy by appeal "inasmuch as the Surplus Property cases have attracted nationwide attention, making it essential to proceed with dispatch in the consideration thereof." (*People v.s. Zulueta*, supra. Citing *Arevalo vs. Nepomuceno*, 63 Phil., 627.) And still in another case, the writ was entertained where the appeal was found not to be adequate remedy, as where the order which is sought to be reviewed is merely of interlocutory or peremptory character and the appeal therefrom can be interposed only after final judgment and may therefore be of no avail. (*Rocha vs. Crossfield*, 6 Phil., 355; *Leung Ben vs. O'Brien*, 38 Phil., 182. See also *Mendoza vs. Paruñgao*, 49 Phil., 271; *Dais vs. Court of First Instance*, 51 Phil., 36).

For analogous reasons it may be said that the petition for certiorari interposed by the accused against the order of the court a quo denying the motion to quash may be entertained, not only because it was rendered in a criminal

case, but because it was rendered, as claimed, with grave abuse of discretion, as found by the Court of Appeals. It would be indeed unfair and unjust, if not derogatory of their constitutional right, to force the accused to go to trial under an information which, in their opinion, as was found, accuses them of multiple offenses in contravention of law. And so, in our opinion, the respondent court did not err in entertaining the petition for certiorari instead of dismissing it, as claimed.

It only remains for us to consider respondents' plea that we review the decision appealed from with a view to securing its modification by stating that it charges not only one offense of estafa but two contrary to the finding of the respondent Court of Appeals. Counsel for respondent argue that this Court can make this review in spite of the fact that they have not appealed from the decision because the modification, if any, would not have the effect of changing its dispositive part.

We disagree with this contention. While an appellee may on appeal be permitted to make counter-assignment of errors when the purpose is merely to defend himself against the errors imputed by appellant to the court a quo such is allowed merely to sustain the judgment in his favor but not to seek a modification or reversal of said judgment, for in such a case there is need for him to appeal from the judgment. This is what we said in a recent case.^[1] For us to change the ratio decidendi of the decision to suit the theory of respondents would be to infringe this ruling, and this we are not prepared to do.

Wherefore, the decision appealed from is affirmed, without prejudice on the part of the fiscal to amend the information discarding therefrom the objectionable features as found by the Court of Appeals, with costs.

Paras, C.J., Pablo, Montemayor, Reyes, A., Jugo, Concepcion and Reyes, J.B.L., JJ., concur.

[1] "Appellee, who is not appellant, may assign errors in his brief where his purpose is to maintain the judgment on other grounds, but he may not do so if his purpose is to have the judgment modified or reversed, for, in such case, he must appeal. (Saenz vs. Mitchell, 60 Phil., 69, 80; Mendoza vs. Mendiola. 53 Phil., 267; Villavert vs. Lim, 62 Phil., 178; Balajadia vs. Eusala, G. R. No. 42579). "(Bunge Corporation and Universal Agencies vs. Elena Camenforte & Co., 91 Phil., 861.)

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