

DANILO HERNANDEZ, PETITIONER, VS. THE COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 104874. December 14, 1993

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for review on certiorari under Rule 45 of the Revised Rules of Court seeking to set aside the Decision of the Court of Appeals in CA-G.R. CR No. 05877, the dispositive portion of which reads as follows:

"WHEREFORE, FINDING the decision appealed from to be in accordance with law and the evidence, the same is hereby AFFIRMED except as to Criminal Case No. 21-87 where, for reasons above discussed, the accused-appellant is ACQUITTED" (Rollo, p. 33).

CA-G.R. CR No. 05877 was an appeal by petitioner from the decision of the Regional Trial Court, Branch 17, Cavite City in Criminal Cases Nos. 21-87 to 29-87, the dispositive portion of which reads as follows:

"WHEREFORE, in view of the foregoing, the Court finds Danilo Hernandez guilty beyond reasonable doubt in the following cases: Crim. Case No. 21-87, for Estafa and he is hereby ordered sentenced to an indeterminate prison term of from Twelve (12) years and one (1) day of reclusion temporal, as minimum to Twenty (20) years of reclusion temporal, as maximum and to pay the offended party Remedios de Leon in the amount of P150,000.00 corresponding to the value of jewelries embezzled and unreturned and to pay the costs; Crim. Case No. 22-87, for Estafa, he is hereby ordered sentenced to an indeterminate prison term of from Twelve (12) years and one (1) day of reclusion temporal, as minimum to Twenty (20) years of reclusion temporal, as maximum and to pay the offended party Remedios de Leon in the amount of P100,000.00 for the value of the jewelries embezzled and to pay the costs; Crim. Case No. 23-87, Violation of BP 22, he is hereby sentenced to eight (8) months of prision correccional and to pay the costs; Crim. Case No. 24-87, for Viol. of BP 22, he is hereby sentenced to eight (8) months of prision correccional and to pay the costs; Crim. Case No. 25-87, for Estafa, he is hereby sentenced to an indeterminate prison term of from Twelve (12) years and one (1) day of reclusion temporal, as minimum to twenty (20) years of reclusion temporal, as maximum and to pay the offended party Remedios de Leon in the amount of P250,000.00 for the value of the jewelries embezzled and to pay the costs; Crim. Case No. 26--87, for Viol. of BP 22, he is hereby sentenced to eight (8) months of prision correccional and to pay the costs; Crim. Case No. 27-87, for Estafa, he is hereby sentenced to an indeterminate prison term of from Twelve (12) years and one (1) day of reclusion temporal, as minimum to twenty (20) years of reclusion temporal, as maximum and to pay the offended party Remedios de Leon in the amount of P280,000.00 for the value of the jewelries embezzled and to pay the costs; Crim. Case No. 28--87, for Estafa, he is hereby sentenced to an indeterminate prison term of from twelve (12) years and one (1) day of reclusion temporal, as minimum to twenty (20) years of reclusion temporal, as maximum and to pay the offended party Remedios de Leon in the amount of P100,000.00 value of the jewelries embezzled and to pay the costs; Crim. Case No. 29-87, for Viol. of BP 22, he is hereby sentenced to eight (8) months of prision correccional, and to pay the costs" (Rollo, pp. 49-50).

It appears that sometime in August 1986, petitioner was introduced to Remedios de Leon by his aunt, as one engaged in the business of buying and selling jewelry (TSN, March 17, 1987, pp. 18, 20).

In their first transaction, petitioner paid in cash the several pieces of jewelry which he bought from de Leon. In their subsequent dealings, petitioner either paid in cash or by way of postdated checks (TSN, March 17, 1987, pp. 22-23). On one occasion, petitioner issued post-dated checks with the aggregate amount of P275,000.00. These checks bounced. However, upon notice of dishonor by the drawee banks concerned, petitioner paid de Leon cash in exchange for the dishonored checks. Some checks were likewise exchanged with cash even prior to their due date (TSN, March 17, 1987, pp. 33, 37).

Several days before October 20, 1986, petitioner told de Leon that he was interested in buying some more pieces of jewelry (TSN, March 17, 1987, p. 60). On that date, at around 10:00 A.M., petitioner, together with his common-law wife, Rosemarie Rodriguez, and two other companions, went to the house of de Leon in Cavite City (TSN, March 17, 1987, p. 70). Petitioner selected a pair of 2-carat diamond earrings worth P150,000.00 for which he issued BPI Check No. 798246 payable to "cash" in the said amount and post-dated it to October 26, 1986. The amount of the check was filled in by Rosemarie Rodriguez and petitioner affixed his signature as drawer (TSN, March 17, 1987, p. 69).

Petitioner and Rodriguez returned to de Leon's house at about 7:00 P.M. and bought one choker with 20 diamond stones and one bracelet with 16 diamond stones, for which he issued BPI Check No. 798247 payable to "cash" in the amount of P250,000.00 and postdated it to October 27, 1986. Petitioner specifically instructed de Leon to give him one week to confer with his buyer before de Leon negotiates the check. The check was also prepared by Rodriguez and signed by petitioner (TSN, March 17, 1987, pp. 73-79).

In the evening of October 22, 1986, petitioner again went to the house of de Leon and bought one heart-shaped diamond set. In payment thereof, he issued BPI Check No. 798248 payable to "cash" in the amount of P280,000.00 and post-dated it to November 9, 1986 (TSN, March 17, 1987, pp. 84-89).

On October 23, 1983, petitioner made a long-distance call to de Leon and inquired whether she still had jewelry for sale. When she said that she did, petitioner made an appointment with her. Petitioner arrived at de Leon's house at around 2:30 P.M. The two went to a restaurant, where petitioner selected a set of earrings and a ring, each piece with a 1-carat diamond (TSN, March 31, 1987, pp. 15-16). In payment for the set, petitioner issued to de Leon BPI Check No. 798250 payable to "cash" in the amount of P100,000.00 and dated that same day (October 23, 1992). Petitioner told de Leon that the check was funded and that she could even withdraw the amount on that day. De Leon did not encash the check for the bank was closed (TSN, March 31, 1987, pp. 16, 19).

In the evening of October 24, 1986, petitioner with Rodriguez went to de Leon's house and bought a 5-carat diamond piece. In payment thereof, petitioner indorsed to de Leon ASB Check No. 245964 in the amount of P150,000.00 post--dated to November 10, 1986 and issued by one Enrique Araneta (TSN, March 31, 1987, pp. 21-26).

BPI Checks Nos. 798246, 798247 and 798250 were drawn against insufficient funds, while BPI Check No. 798248 and ASB Check No. 245964 were drawn against a closed account.

Petitioner was charged in nine informations with estafa and violation of B.P. Blg. 22.

At his arraignment, petitioner pleaded not guilty to the charges (Rollo, pp. 16-17).

After a joint trial, petitioner was convicted of the nine charges in a joint decision.

On appeal to the Court of Appeals, the conviction of petitioner was affirmed as to Criminal Cases Nos. 22-87, 23--87, 24-87, 25-87, 26-87, 27-87, 28-87, and 29-87, and reversed as to Criminal Case No. 21-87.

In this petition, petitioner claims that his conviction of nine distinct offenses subject of nine separate informations in a single judgment is reversible error. This contention is untenable.

The case of *United States v. Tanjuatco*, 1 Phil. 116, relied upon by petitioner, is distinguishable from the instant case. In *Tanjuatco*, we held that the trial court improperly rendered a single judgment for two offenses in one of the two criminal cases, in the absence of a consolidation of the two cases. In the case at bench, the trial court rendered a judgment for each of the nine separate informations, albeit in the same decision.

We further stated in *Tanjuatco* that the trial court violated "an essential right of the accused, inasmuch as he is entitled, although accused of two offenses, to a trial in each of the two cases upon the proofs adduced in each individual case, and upon the allegations set forth in each information. It is not permissible to take into account or consider in one case the facts proved in the other, and vice versa" (at pp. 117-118).

The trial of the nine criminal cases was conducted jointly without any objection from petitioner. Even had he signified his opposition to the joint trial, such opposition would have been unavailing. A consolidation of trials, at the court's discretion, is allowed in "charges for offenses founded on the same facts, or forming part of a series of offenses of similar character" (1985 Rules on Criminal Procedure, Rule 119, Sec. 14).

Petitioner also complains that while he assigned eight errors, the Court of Appeals did not make a complete findings of fact as to the last two assigned errors (Rollo, pp. 11-12).

In the last two assigned errors, petitioner claims that the trial court erred:

VII

"IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT IN CRIMINAL CASES NOS. 21-87 TO 29-87 NOTWITHSTANDING ABSENCE OF INCUPLATORY EVIDENCE AND PRESENCE OF NUMEROUS PROOFS NEGATING THE SOUNDNESS OF SUCH VERDICT.

VIII

IN PRONOUNCING THE ACCUSED, THROUGH A SINGLE JUDGMENT, GUILTY OF ALL THE NINE DISTINCT OFFENSES COVERED BY THE NINE SEPARATE INFORMATIONS SUBJECT MATTER OF CRIMINAL CASES NOS. 21-87 TO 29-87, INCLUSIVE" (Rollo, p. 56).

Obviously, the Court of Appeals did not deem it necessary to make a separate findings of fact for said assigned errors, because they were just the necessary consequences of the previous, assigned errors.

Petitioner next questions: (i) as violative of the constitutional mandate that decisions shall contain the facts and the law on which they are based (1987 Constitution, Art. VIII, Sec. 14, par. 1), the decision of the Court of Appeals which merely adopted the statement of facts of the Solicitor General in the appellee's brief, and (ii) as violative of the constitutional mandate requiring that any denial of a motion for reconsideration must state the legal basis thereof (1987 Constitution, Art. VIII, Sec. 14, par. 2), the denial of his motion for reconsideration on the basis of a comparison of said motion with the "comment thereon" (Rollo, pp. 10-12).

In its decision the Court of Appeals merely stated: "The facts of the case as summarized in the Appellee's Brief are as follows:" and then quoted in full the statement of facts of the Solicitor General (Rollo, p. 20). According to petitioner, the Court of Appeals did not make its own "independent judicial opinion" by such act of adopting the statement of facts made by the advance party (Rollo, p. 11).

What the Court of Appeals, in effect, said was that it found the facts as presented by the Solicitor General as supported by the evidence. The constitutional mandate only requires that the decision should state the facts on

which it is based. There is no proscription against the court's adoption of the narration of facts made in the briefs or memoranda of the parties, instead of rewriting the same in its own words.

Precisely, briefs or memoranda are required in order to aid the courts in the writing of decisions.

We note that aside from adopting the statement of facts of the Solicitor General, the Court of Appeals also made findings of fact in the course of its discussion of the assignment of errors.

As to the denial of the motion for reconsideration, the Court of Appeals stated in its Resolution dated March 30, 1992:

"Acting on the motion for reconsideration filed by the accused-appellant of the decision dated December 13, 1991 and the comment thereon of the Solicitor General, the court finds no cogent reason that could justify a modification or reversal of the decision sought to be reconsidered.

Accordingly, the instant motion for reconsideration is hereby DENIED for lack of merit" (Rollo, p. 35).

The denial, therefore, was based on the ground that the Court of Appeals did not find any "cogent reason that could justify a modification or reversal of the decision sought to be reconsidered."

Petitioner claims that the decision of the trial court is not supported by the evidence, which is contrary to the findings of the Court of Appeals that said decision is "in accordance with law and the evidence" (Rollo, p. 12). He points out that the appellate court should not have believed the trial court's conclusion that "the sole testimony of the offended party would have sufficed to sustain her assertions" (Rollo, p. 47). He claims that self-serving declarations of a party favorable to himself are not admissible and that none of the alleged witnesses to the transactions were presented.

The common objection known as "self-serving" is not correct because almost all testimonies are self-serving. The proper basis for objection is "hearsay" (Wenke, Making and Meeting Objections, 69).

Petitioner fails to take into account the distinction between self-serving statements and testimonies made in court. Self-serving statements are those made by a party out of court advocating his own interest; they do not include a party's testimony as a witness in court (National Development Co. v. Workmen's Compensation Commission, 19 SCRA 861 [1967]).

Self-serving statements are inadmissible because the adverse party is not given the opportunity for cross-examination, and their admission would encourage fabrication of testimony. This cannot be said of a party's testimony in court made under oath, with full opportunity on the part of the opposing party for cross-examination.

It is not true that none of the alleged witnesses to the transactions was presented in court (Rollo, p. 13). Yolanda Dela Rosa, an eye-witness to some of the transactions, testified for the prosecution. Assuming that Dela Rosa was not presented as a witness, the testimony of de Leon sufficed to sustain the conviction of petitioner. The conviction of an accused may be on the basis of the testimony of a single witness (People v. Rumeral, 200 SCRA 194 [1991]). In determining the value and credibility of evidence, witnesses are to be weighed, not counted (People v. Villalobos, 209 SCRA 304 [1992]).

Petitioner also contends that while he was condemned by the trial court to pay civil indemnity, no evidence was actually presented in court to prove the existence, ownership and worth of the pieces of jewelry other than the checks (Rollo, p. 14).

The existence of the jewelry was established by de Leon herself, who testified that petitioner even selected the pieces of jewelry before buying them.

As to the ownership of the jewelry, we held in *People v. Dy*, 109 SCRA 400 (1981) that:

"Ownership is not a necessary element of the crime of estafa. xxx In estafa, the person prejudiced or the immediate victim of the fraud need not be the owner of the goods. Thus, Article 315 of the Revised Penal Code provides that 'Any person who shall defraud another (it does not say 'owner') by any means mentioned herein below shall be punished xxx.' All that is necessary is that the loss should have fallen on someone other than the perpetrators of the crime. x x x" (at p. 408).

The trial court based the civil indemnity on the actual price of the jewelry as agreed upon by petitioner and de Leon at the time of the transactions and this is reflected by the face value of the checks.

Petitioner further contends that the trial court erred in admitting the checks in evidence without the prosecution first proving that his signatures on the checks were authentic (Rollo, pp. 13-14). If petitioner claims that his signatures on the checks were forged, the burden is on him to prove such fact. He who alleges must prove his allegations.

In the trial court, petitioner presented a certification issued by the San Juan Police Station to the effect that he reported as lost several blank checks, to wit: BPI Checks Nos. 798246, 798247, 798248, 798249, and 798250, and AB Check No. 245964. We agree with the trial court when it gave little weight to the certification. Like the trial court, we wonder why petitioner never filed a criminal case against de Leon, if said checks were really stolen.

Lastly, petitioner contends that because "the amounts covered by the checks were deposited by the offended party in her savings account with the Prudential Bank, it becomes the liability of the bank by its acceptance to pay for the amounts of the checks" (Rollo, pp. 14-15).

The case of *Banco de Oro v. Equitable Banking Corporation*, 157 SCRA 188 (1988) cited by petitioner as authority, dealt with the negligence of a collecting bank which facilitated the payment by the drawee bank of the value of a check with a forged endorsement and signature of the payee. No such issue is involved in the case at bench.

WHEREFORE, the petition is DENIED and the decision of the Court of Appeals is AFFIRMED. Costs de oficio.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., and Bellosillo, JJ., concur.

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