

ENGR. ISAGANI MERCADO, PETITIONER, VS. THE COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 108802. July 12, 1994

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition to review on certiorari the decision of the Court of Appeals, affirming the conviction by the Regional Trial Court of the petitioner, Isagani Mercado, for estafa under art. 315, par. 2(a) of the Revised Penal Code.

Five prosecution witnesses testified at the trial that they and six others each gave P5,000 to the petitioner on the latter's representation that he would help them find jobs overseas; that they gave the money to him on November 5, 1984, at around 9:00 a.m., in the house of Julian Garcia, Sr. in Lumban, Laguna; that they knew and trusted him because he was their townmate and some of them were even related by blood to him; that for the entire amount of P55,000.00 petitioner issued only one receipt which was signed by him in front of them; and that the promises of the petitioner that they would be able to travel and work abroad never materialized.

Petitioner claimed that he could not have been in Lumban, Laguna at 9:00 a.m. on November 5, 1984, because he had been admitted as a patient of the Manila Sanitarium in Pasay City at 4:00 a.m. on that day for PTB minimal reaction and acute bronchitis, and was confined there for four days until November 9, 1984. To prove this, he produced a certification from the Manila Sanitarium which he later admitted was issued only on September 14, 1987.

A medical records employee of the hospital, Jeremiah Lovenaria, testified that, based on the Radiological Report, Physician Notes, Urinalysis, and Hermatology Report of the petitioner, as well as the certification issued by his department head, Dr. Pacita Timonera, on April 18, 1990, petitioner was confined at the Manila Sanitarium from November 5-9, 1984. On cross examination, the witness testified that his records did not show the time petitioner was confined.

The RTC rejected petitioner's alibi because it was not shown that it was impossible for petitioner to be in Lumban, Laguna at 9:00 o'clock on the morning of November 5, 1984. Even if he was admitted to the hospital at 4:00 o'clock in the morning of that day, this fact would not prevent him from being in Lumban, Laguna at 9:00 o'clock, as it would take only one and 1/2 hours to travel from Manila to Lumban. Petitioner could have gone out of the hospital on a pass and later returned, as he was not shown to be seriously ill.

The court also noted that the petitioner did not question the genuineness of his signature on the receipt given to the witnesses. He did not deny the claim of witnesses, made in his presence, that he signed the receipt himself. This was deemed by the RTC to be an admission. The RTC, therefore, found him guilty beyond reasonable doubt of estafa.

The Court of Appeals affirmed the decision, finding that the petitioner's claim that he had been admitted to the

hospital at 4:00 o'clock in the morning of November 5, 1984 was not supported by hospital records, as the time of admission was not indicated therein. It took into account the fact that five prosecution witnesses gave similar versions of what transpired on November 5, 1984 in the house of Julian Garcia, Sr. The appellate court considered inconsistencies in their testimonies to be minor lapses which did not affect their credibility. The Court of Appeals affirmed the decision of the trial court, with the modification that the minimum of the indeterminate sentence was reduced from 5 years, 2 months, and 11 days to 4 months and 2 days.

Petitioner seeks a reversal of the decision of the Court of Appeals based on the following assignment of errors:

I

FIRST ASSIGNMENT OF ERROR

THAT THE HONORABLE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN RELYING ON THE DECISIONS CITED BY THE OFFICE OF THE SOLICITOR GENERAL (PAGE 6 AND 7 DECISION) REFERRING TO THE CASE OF PEOPLE OF THE PHILIPPINES VS. ABAYA 188 SCRA 419 WHICH ALLEGED AS FOLLOWS:

"Taken as a whole, the prosecution witnesses were consistent in their narration as to how the crime of estafa was committed by appellant. Minor lapses in the testimony of the witnesses do not necessarily brand them as liars as long as their testimonies are in whole consistent and believable."

WHICH CITATION IS NOT APPLICABLE IN THIS CASE. HENCE, THE HONORABLE COURT OF APPEALS MANIFESTLY OVERLOOKED CERTAIN RELEVANT FACTS WHICH WERE NOT DISPUTED BY THE PARTIES, WHICH IF PROPERLY CONSIDERED, WOULD JUSTIFY A DIFFERENT CONCLUSION.

II

SECOND ASSIGNMENT OF ERROR

THE HONORABLE COURT OF APPEALS MANIFESTLY OVERLOOKED THE CERTIFICATION OF A WELL KNOWN PRACTISING DOCTOR, DR. PACITA TIMONERA OF THE MANILA SANITARIUM AND HOSPITAL WHO CERTIFIED AMONG OTHERS THAT THE ACCUSED-APPELLANT ISAGANI MERCADO'S PERIOD OF CONFINEMENT FROM NOVEMBER 5, 1984 TO NOVEMBER 9, 1984, WHICH FACT WAS NEVER DISPUTED BY THE PROSECUTION.

III

THIRD ASSIGNMENT OF ERROR

THAT THE FINDINGS OF FACTS OF THE REGIONAL TRIAL COURT AND THE COURT OF APPEALS ARE CONFLICTING.

Anent the first assignment of error, we do not believe that the testimonies of the witnesses suffer from any major discrepancies. What is important is that all of the prosecution witnesses positively identified petitioner as the person to whom they paid money. They could not be mistaken as to his identity because he is well-known to them being their town-mate who is even related to some of them. Any inconsistencies in the testimonies of the witnesses are the understandable result of natural differences in perception of the same set of facts.

On the second assignment of error, it appears that the only evidence supporting petitioner's alibi that he was

confined in the Manila Sanitarium at 9:00 a.m. when the crime was committed is his own self-serving testimony. This alone is not enough to over-turn the overwhelming evidence against him.

On the third assignment of error, the RTC held that petitioner did not question the genuineness of the signature on the receipt and, therefore, he is deemed to have admitted the same. However, according to petitioner, the appellate court found that he did question the authenticity of the signature on the receipt. There are thus conflicting findings, according to him.

The conflict is more apparent than real. As the appellate court explained, at the suggestion of petitioner, the receipt was submitted to the NBI for determination of the authenticity of the signature. Accordingly, the judge suspended the proceedings. Later, however, the petitioner's counsel withdrew from the case and his new counsel proceeded with the trial without waiting for the results of the NBI examination. In addition the NBI needed five genuine signatures of petitioner but the latter did not comply with this request.

Indeed, the appellate court found that what the petitioner was questioning was what appeared on top of the signature, which he alleged was only superimposed on the receipt, and therefore, not the signature itself.

We find, therefore, no reversible error warranting reversal of the appealed decision. The questions are factual and the rule is that factual findings of the appellate court will not be disturbed unless shown to be contrary to the evidence on the record, which petitioner has not shown in this case.

Upon further consideration, therefore, the Court RESOLVED to RECONSIDER its resolution of February 23, 1994 giving due course to the petition for review on certiorari in this case and to DENY the petition for review.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Puno, JJ., concur.

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