

ROBERTO FERNANDEZ, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND THE COURT OF APPEALS, RESPONDENTS.

G.R. No. 138503. September 28, 2000

Ponente: GONZAGA-REYES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-138503/>

GONZAGA-REYES, J.:

In this petition for review on certiorari under Rule 45 of the Rules of Court, Roberto Fernandez seeks to set aside the Decision of the Court of Appeals[1] dated December 24, 1998 in CA-G.R. CR No. 18830 which affirmed in toto the Decision[2] of the Regional Trial Court, Branch 64, City of Makati in Criminal Case No. 88-538 finding petitioner and his co-accused Efren O. Olesco guilty beyond reasonable doubt of the crime of estafa through falsification of public document.

The petitioner, Roberto Fernandez (FERNANDEZ) together with Efren O. Olesco (OLESCO) and Nicanor R. Gatchalian, Jr. (GATCHALIAN) were charged with the crime of estafa through falsification of public document in an information[3] that reads as follows:

“That on or about the 14[th] day of December, 1987, in the Municipality of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, who are all private individuals, conspiring and confederating together and mutually helping and aiding one another by means of deceit and false pretenses executed prior to or simultaneously with the commission of the fraud, did then and there wilfully, unlawfully and feloniously defraud Sta. Ines Melale Forest Products, Inc., represented by Atty. Oscar P. Beltran, in the following manner, to wit: the said accused, upon their false manifestation and fraudulent representation that they have the power and capacity to secure a defendant counterbond for the lifting of a writ of preliminary attachment in the sum of P500,000.00 to be used by the said complainant in Civil Case No. 3226 of Branch V of the Regional Trial Court of Agusan Del Norte and Butuan City in which the said complainant was the party defendant and which representation and manifestation the accused knew to be false, succeeded in inducing the same complainant to give and to deliver to them the sum of P50,000.00 which is equivalent to 10% of the face value of said counterbond representing the premium thereof in consideration of Counterbond No. JCR 00300 dated December 14, 1987 purportedly issued by the First Integrated Bonding & Insurance Co., Inc. and notarized by Notary Public Benito Salandanan of Manila which the accused falsified by making it appear that the same was signed by Eduardo V. Gadi and that it was regularly issued by the said bonding and insurance company when, in truth and in fact, as accused well knew, the same was not issued by it, and the accused, once in possession of said money, did then and there wilfully, unlawfully and feloniously appropriate and use the same to their own personal use and benefit, to the damage and prejudice of the complainant Sta. Ines Melale Forest Products, Inc., represented by Atty. Oscar P. Beltran, in the aforesaid amount of P50,000.00.”[4]

On April 29, 1988, the three (3) accused were arraigned and entered a plea of not guilty with the assistance of counsel.[5] Thereafter, trial ensued. The case against GATCHALIAN was dismissed due to his death during the pendency of the trial.[6]

At the trial, the prosecution presented as its witnesses Atty. Oscar P. Beltran, President of Sta. Ines Melale Forest

Products Corporation, Manuel de Castro, Deputy Sheriff of Branch 137, Regional Trial Court of Makati, Melencio P. Cruz, a helper-assistant of insurance agent Manuel “Boy” Reyes, Consuelo San Juan, court interpreter and representative of the Clerk of Court of Branch 5, Regional Trial Court of Agusan Del Norte, Butuan City and Atty. Rogelio B. Mendoza, legal counsel of the First Integrated Bonding and Insurance Company, Inc.

The prosecution also offered in evidence Official Receipt No. 157 dated December 14, 1987 in the amount of P50,000.00 issued by Hexagon Surety Services, Inc. signed by accused Efren Olesco[7] ; Machine copy of Counter Attachment Bond No. JCR 00300 dated December 14, 1987 issued by First Integrated Bonding and Insurance Corporation with a face value of P500,000.00[8] ; another machine copy of the same Counter Attachment Bond No. JCR 00300 filed by defendant Ines Melale Corporation in Civil Case No. 3226 pending before RTC Branch 5, Butuan City[9] ; parts of the Case Records of Civil Case No. 3226 brought by witness Consuelo San Juan as part of her testimony[10] ; Sinumpaang Salaysay of witness Melencio Cruz consisting of two pages with his signature thereon[11] ; Manifestation and Motion of Atty. Rogelio Mendoza dated January 04, 1988 filed before RTC, Branch 5, Butuan City[12] ; and letter dated January 8, 1988 of Atty. Oscar Beltran to Col. Fernando Angara of the Southern Police District, Fort Bonifacio, Makati, Metro Manila requesting “police assistance in the investigation of a possible commission of the crime of Estafa Thru Falsification of Documents” [13]

After the prosecution rested its case, petitioner FERNANDEZ filed a Demurrer to Evidence which was denied by the trial court.[14] Despite such denial, both accused Roberto Fernandez and Efren Olesco opted not to present evidence for their defense.

The facts established by the evidence are as follows:

Sometime in December 1987, the Regional Trial Court of Agusan del Norte, Branch V, Butuan City, issued a writ of preliminary attachment against the properties of private complainant Sta. Ines Melale Forest Products, Inc. (MELALE) defendant in the therein pending Civil Case No. 3226 filed by Kalilid Wood Industries Corporation.

In order to secure the lifting or discharge of the writ, MELALE, through its President, Atty. Oscar Beltran (BELTRAN), called up his friend Mr. Manuel de Castro (DE CASTRO), Deputy Sheriff of RTC Branch 137, Makati at about 11:00 o’clock in the morning of December 14, 1987 and requested him to look for a bonding company which can issue a counter attachment bond for his company’s use in the said civil case.[15] DE CASTRO obliged and from the third floor of the Chateau Building on F. Zobel Street, Makati where he holds office, he went down to the ground floor to see Manuel “Boy” Reyes (REYES), an insurance agent. Unfortunately, REYES was not around at that time. It was Melencio Cruz (CRUZ), a compadre and helper-assistant of REYES, who attended to him and with whom DE CASTRO talked about the request of BELTRAN. CRUZ told DE CASTRO that he had to ask OLESCO, known to him as a Branch Manager of Interworld Assurance Corporation, whose office is at the second floor of the same building. When CRUZ returned to his office, he had with him an application form and indemnity agreement form for a counter attachment bond from Interworld Insurance which according to him, was given to him by OLESCO. CRUZ gave the blank form to DE CASTRO who in turn brought the form to BELTRAN who accomplished the same.[16] At around 4:45 o’clock that afternoon, DE CASTRO returned and delivered the already accomplished bond application form to CRUZ who in turn brought the same to OLESCO’s office. Twenty minutes later, OLESCO and CRUZ came down together and handed to DE CASTRO (who was then waiting at CRUZ’s office, Counterbond No. JCR 00300 dated December 14, 1987 in the amount of P500,000.00 issued by the First Integrated Bonding and Insurance Company and not by Interworld Insurance Company, signed by Eduardo V. Gadi and notarized by Notary Public Benito Salandanan of Manila.[17] In return, DE CASTRO handed OLESCO the amount of

P50,000.00 as premium payment for the bond. When asked by DE CASTRO why the Counterbond is a First Integrated Insurance Company bond and not an Interworld Insurance bond, OLESCO allegedly answered that Interworld Insurance Company branch in Butuan City was already closed. He added that in procuring the bond, “he asked the help of Roberto Fernandez and Nicanor Gatchalian, Jr. for the issuance of the bond.” OLESCO acknowledged receipt of the amount of P50,000.00 by issuing Hexagon Surety Services, Inc. Official Receipt No. 157 also dated December 14, 1987[18] which CRUZ also signed as witness that OLESCO actually received the P50,000.00[19] Thereafter, BELTRAN filed the counterbond with the RTC of Agusan del Norte, Branch V in Butuan City to support MELALE’s pending motion to quash the writ of preliminary attachment earlier issued against it.

On January 8, 1988, BELTRAN learned that Atty. Rogelio Mendoza (MENDOZA), Legal Counsel of First Integrated Bonding and Insurance Company, Inc., filed a Manifestation and Motion[20] before the said RTC denying the issuance by First Integrated Bonding and Insurance Company, Inc. of the aforementioned counterbond for the reason that the same was spurious or fake inasmuch as the First Integrated Bonding and Insurance Company, Inc. had no officer or employee by the name of Eduardo Gadi and that the counterbond does not have the letter head of the First Integrated Bonding and Insurance Company.

Immediately thereafter, BELTRAN called DE CASTRO and requested him to arrange a confrontation with OLESCO, GATCHALIAN and FERNANDEZ. During the confrontation, only OLESCO and FERNANDEZ came and allegedly assured BELTRAN that the counterbond was genuine. Prior to the confrontation, BELTRAN never met accused OLESCO and FERNANDEZ.[21] On January 8, 1988, BELTRAN also wrote then Superintendent Fernando Angara of the Southern Police District, Fort Bonifacio, Makati[22] formally requesting “for police assistance in the investigation of a possible commission of the crime of Estafa Thru Falsification of Documents” which thereafter led to the filing of the information against FERNANDEZ and OLESCO.

On September 21, 1995, the RTC found the accused guilty beyond reasonable doubt of the crime charged the dispositive portion of the decision reads:

“WHEREFORE, in view of the foregoing, this Court finds accused EFREN OLESCO and ROBERTO FERNANDEZ Guilty beyond reasonable doubt of having committed ESTAFA thru falsification of public document, and sentences them to suffer an indeterminate prison term of four (4) years and two (2) months of prison correccional medium as minimum, to nine (9) years of prison mayor medium as maximum.

Both accused are ordered to jointly and severally indemnify complainant Santa Ines Melale Forest Product Corporation in the sum of P50,000.00.

With cost against the accused.

SO ORDERED.”[23]

From the judgment of conviction, only FERNANDEZ appealed to the Court of Appeals, which affirmed the trial court’s decision.[24]

Petitioner’s motion for reconsideration was denied[25] hence the instant petition for review where the petitioner raises the following arguments for consideration:

“A.

RESPONDENT COURT OF APPEALS AFFIRMED THE CONVICTION OF PETITIONER WITHOUT TAKING INTO ACCOUNT THE FINDING OF THE COURT A QUO THAT AS OF THE DATE OF THE FILING OF THE DUMURRER TO EVIDENCE THERE WAS NO DIRECT EVIDENCE PROVING THAT PETITIONER HAD INDEED CONSPIRED IN COMMITTING THE OFFENSE.

B.

THE COURT OF APPEALS AFFIRMED THE CONVICTION OF THE ACCUSED ON THE BASIS OF MERE PRESUMPTION.

C.

THE COURT OF APPEALS AFFIRMED THE CONVICTION OF PETITIONER WITHOUT INDEPENDENTLY REVIEWING THE LEGAL BASIS FOR THE CONVICTION CONSIDERING THAT THE COURT A QUO FAILED TO SHOW THAT THE ESSENTIAL INGREDIENTS OF THE OFFENSE CHARGED HAVE BEEN SUFFICIENTLY PROVEN OR OTHERWISE STATED, THE COURT OF APPEALS AFFIRMED THE JUDGMENT OF CONVICTION WITHOUT CONSIDERING THE FOLLOWING QUESTIONS OF LAW.

- Whether or not the offense of estafa thru falsification of a public document was in fact established.
- Whether or not conspiracy attended the commission of the alleged offense.”[26]

In support of his petition, the petitioner contends that respondent Court of Appeals erred in affirming the judgment of conviction because the trial court found no direct evidence linking him to the offense charged. He claims that the Court of Appeals relied on the mere imputations of his guilt made by the private complainant BELTRAN in his testimony in violation of the res inter alios acta and the hearsay rules. Moreover, considering that there was no positive and conclusive evidence adduced by the prosecution to prove the conspiracy; the alleged conspiracy between petitioner and co-accused OLESCO was based on mere conjecture. He should consequently be acquitted of the crime charged.

The core issue involved in this case is whether or not FERNANDEZ is guilty of committing the crime of estafa through falsification of public document in conspiracy with OLESCO.

After a careful review of the case, we rule in the negative and find the petition meritorious.

FERNANDEZ is charged with the crime of estafa described under Paragraph 2 (a) of Article 315 of the Revised Penal Code, i.e. swindling or estafa committed by any person who shall defraud another by falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions or by means of other similar deceits executed prior to or simultaneously with the commission of the fraud and in this particular case, in conspiracy with two other accused as defined under Article 8, of the Revised Penal Code.[27]

To secure a conviction for this kind of estafa, the following requisites must concur, to wit:

(1)

that the accused made false pretenses or fraudulent representations as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions;

(2)

that such false pretenses or fraudulent representations were made prior to or simultaneous with the commission of the fraud;

(3)

that such false pretenses or fraudulent representations constitute the very cause which induced the offended party to part with his money or property; and

(4)

that as a result thereof, the offended party suffered damage.[28]

In convicting the petitioner, the trial court applied the rule that if a person had in his possession a falsified document, used it (uttered it), took advantage of it and profited thereby, he is, in the absence of satisfactory explanation, presumed to be the material author and the forger of the falsification.[29] We quote the trial court's ratiocination as follows:

"The unrefuted evidence for the prosecution established the fact that the counter bond with serial no. JCR 00300 under the name of First Integrated Bonding Insurance Company, Inc. is a fake bond. The complainant received the same from accused Efren Olesco and Roberto Fernandez they being the persons who secured the issuance of said bond. Being the source of said fake bond and there being no explanation from the accused how they came into possession of said fake bond, the presumption that they are the author of said fake bond attaches to them. That presumption has not been rebutted. Mere denial of their participation without supporting proof would not be sufficient to exculpate them from liability. The crime committed is Estafa thru falsification of public document. The falsification of the surety bond (Counter bond) a notarized document, was resorted to by the accused in order to defraud complainant."[30]

In affirming the decision of the trial court, the Court of Appeals adopted the trial court's reasoning and added that the petitioner's participation in the issuance of the fake counterbond was proved by the testimony of DE CASTRO and was confirmed by the testimony of BELTRAN.

We disagree.

To our mind, the evidence is not sufficient to form a basis for petitioner's conviction.

First of all, the testimonies of the prosecution witnesses linking FERNANDEZ to the commission of the crime are all hearsay in nature for they are not based on the witnesses' own personal knowledge.

Prosecution witness DE CASTRO testified that:

ATTY. BAÑARES:

"What happened when Mr. Olesco give (sic) you the First Integrated Counter attachment bond?

A:

I examined the bond and asked him if the bond is okey (sic).

ATTY. BAÑARES:

We will object to that your Honor we are asking that statement of the witness be stricken off the record because it is not responsive to the question.

FISCAL ISRAEL:

Why it is not responsive?

ATTY. BAÑARES:

The question is -what is the result and he said I examined and I asked him if the bond is okey (sic). That is no responsive to the question...

FISCAL ISRAEL:

He should conduct an examination and that is the result.

ATTY. BAÑARES:

That should be ask (sic) in the proper manner.

COURT:

Alright reform Fiscal.

Q:

When you said (sic) conducted an examination of the First Integrated Counter Attachment Bond, how did you conduct your investigation?

A:

I look (sic) at the bond and when I saw that it was issued by First Integrated Insurance Company, I asked Mr. Olesco why is it that it came from First Integrated Insurance Company while he gave me an Interworld Insurance application bond.

Q:

What was the reply of Mr. Olesco

A:

Mr. Olesco told me that their Interworld branch in Butuan was already closed and he asked the help of Mr. Roberto Fernandez and Mr. Gatchalian for the issuance of the bond.

ATTY. AGOOT:

May I moved for he striking out of the answer to the last question. Mr. Fernandez be stricken off the record.

COURT:

That is an answer to the question, that remain in the record.

Q:

Now Mr. Witness, you said that on December 14, 1987, you went to the Office of Atty. Oscar Beltran and he handed you also a P50,000.00, do you know what that P50,000.00 was that intended for?

A:

That is intended for the 10% premium of the principal amount of money.

Q:

Now what did you do with that P50,000.00 that Atty. Beltran gave you that was intended for the premium?

A:

When I came back to the Office of Mr. Melecio Cruz, I told him to tell Olesco that I have the money so that he can give me the bond.

ATTY. BAÑARES:

We are asking that the statement be stricken off the record. The question is very clear, what did you do with that P50,000.00 that Atty. Beltran gave you?

FISCAL:

After receiving the P50,000- what did you do?

A:

I bring (sic) it at (sic) Chateau building in the office of Mr. Reyes.

Q:

After that what else happened, what did you do with that P50,000.00 which you brought with you?

A:

I called Mr. Cruz that I have the money and he told Mr. Olesco that I have money for the premium.

ATTY. BAÑARES:

I object to the question your Honor, that is not the question. The question is what happened for the money that was given to you?

FISCAL:

No, what did you do?

ATTY. BAÑARES:

What did you do with the P50,000.00?

COURT:

Just a moment, there is no really direct answer. What did you do with that amount of P50,000.00?

A:

When Efren Olesco give (sic) me the counter attachment bond and after asking him the veracity of the signatories in the bond, I handed to him the P50,000.00.

ATTY. BAÑARES:

You Honor please, may we ask that the first portion of the statement of a witness be stricken off the record for being no responsive to the question. The answer should be confine on what happened to the P50,000.00.

COURT:

When Mr. Olesco give (sic) him the counter attachment bond, that is the time that he handed (sic).

ATTY. BAÑARES:

There is a statement about perusal.

FISCAL ISRAEL:

That is insofar as the counter bond..

ATTY. BAÑARES:

You give (sic) it to Olesco?

A:

Yes, sir and I handed to him.

FISCAL:

Mr. Olesco received that P50,000.00?

A:

Yes, sir.

Q:

Do you have any proof or evidence to show that Mr. Olesco received that P50,000.00?

A:

After I gave him the P50,000.00, I asked him (sic) an official receipt and he handed to me an official receipt.

Q:

I am showing to you an Official Receipt No. 157 dated December 14, 1987, will you please go over the Official Receipt if that is the receipt that you are referring to that was given by Mr. Olesco?

A:

Yes, sir.

Q:

May I request that this Official Receipt be marked as Exhibit "A" dated December 14, 1987.

Q:

Under this Exhibit which is now marked as Exhibit "A" Mr. Witness there appears a signature above the typewritten name Efren Olesco, do you know whose signature is that?

A:

That is the signature of Efren Olesco.

Q:

Why do you know that this is the signature of Efren Olesco?

A:

He signed it in front of us.

Q:

Which we request your Honor that the same be bracketed and marked as Exhibit "A-1".

COURT:

Mark it.

Q:

Now, Mr. Witness you made mentioned (sic) of Mr. Olesco having gone to one Mr. Roberto Fernandez, is that correct?

ATTY. AGOOT:

There is no mentioned (sic) about that your Honor.

COURT:

What the witness mentioned is that he asked the help of Fernandez and Gatchalian.

Q:

You said that you asked the help of ...

A:

I did not asked (sic) the help, it was Efren Olesco (sic) asked the help of Mr. Fernandez and Gatchalian.

Q:

You said that Mr. Olesco told you that he asked the help of Mr. Fernandez and Mr. Gatchalian. Now, do you know what kind of help was Mr. Melecio Cruz would ask if you know and did he tell you what kind of help would Mr. Cruz ask (sic) Mr. Fernandez and Mr. Gatchalian?

COURT:

Remove that portion Fiscal.

FISCAL ISRAEL:

Did you ask him what kind of help?

A:

He already told me that when I asked him why is it that it is the First Integrated bond while the application form that he gave us is Interworld Insurance Company?

Q:

What did he tell you?

A:

He told me that he asked the help of Fernandez and Gatchalian to secure the First Integrated bond because the Butuan branch of Inteworld was already closed.

ATTY. AGOOT:

For purposes of the record your Honor please, the answer of the witness is hearsay your Honor.

COURT:

That is what (sic) told to him.

Q:

Do you know if he was able to secure the help of Mr. Fernandez and Gatchalian?

ATTY. BAÑARES:

He was only told your Honor.

FISCAL

If he knows because he was told by Mr. Olesco to help, now, the question is- if he knows, if he was able to secure?

A:

I do not know.

Q:

Then from the Office of Mr. Melencio Cruz after Mr. Olesco told you that he would asked (sic) the help of Mr. Gatchalian and Mr. Fernandez to help him about this bond, then what else happened?

ATTY. BAÑARES:

We will object your Honor please, misleading. The witness never testify that he talk (sic) to Olesco. Witness testify (sic) that it was Melencio Cruz who told him that Olesco asked the help of Gatchalian.

ATTY. BAÑARES:

We refer to the record, first the witness testified a while ago your Honor please..

FISCAL:

Because if I can recall there was an answer from the witness.

COURT:

Fernandez and Gatchalian for the issuance of that bond, First Integrated bond.

ATTY. BAÑARES:

That was an answer for the second question your Honor. The question is that: when the witness said and testified that he asked Olesco why it was the First Integrated while the application was an Interworld..

COURT:

Yes.

ATTY. BAÑARES:

But he never testified that he conversed with Olesco who told him that Olesco will ask the help of Fernandez and Gatchalian. What the witness testify was that it was Melencio Cruz who told him that Olesco will ask the help of Gatchalian.

COURT:

No.

ATTY. BAÑARES:

I submit your Honor after all I will cross-examine the witness.

COURT:

It was Olesco who told him (sic) he asked the help of Fernandez and Gatchalian.

ATTY. BAÑARES:

That was the answer to the later question, may we just place on record our objection your Honor so that when the transcript of the stenographic notes shall have already been transcribed we can raise the same objection at the earliest possibility.[31]

In an attempt to corroborate his testimony, the prosecution presented CRUZ whose testimony reads:

“Q:

This Noel de Castro you mentioned you entertained on that December 14, 1987 can you tell the court what kind of document from the Office of Mr. Manuel Reyes he wish to get?

A:

A counter bond sir.

Q:

What did you do after Noel de Castro informed you that is in need of a counter bond?

A:

I told him that I will first ask Mr. Olesco about it.

Q:

Do you know this Mr. Olesco?

A:

Yes, sir.

Q:

Please look around Mr. Witness and tell the Court if he is here inside the court room?

A:

He is here your Honor.

INTERPRETER:

Witness pointing to a man inside the courtroom wearing a green shirt and when asked his name answered in the name of Efren Olesco.

Q:

And were you able to go to Mr. Efren Olesco on that day of December 14, 1987?

A:

Yes, sir.

Q:

What did you tell him?

A:

I told him that Mr. Noel de Castro is applying for a counter bond.

Q:

What was the reply of Mr. Olesco, if there is any?

A:

He told me to prepare some documents sir.

Q:

What document are your referring to?

A:

The application form sir.

Q:

Did you prepare this document?

A:

Yes, sir. I got it from Mr. Noel de Castro.

ATTY. AGOOT:

I moved for the striking out of the answer your honor. It is not responsive to the question.

COURT:

Strike out the last portion of the answer.

Q:

You mention of an application, application for what is this?

A:

Yes, sir. After preparing the application it would enter the bonding company and the bond will be issued.

Q:

Aside from the document required by Mr. Olesco is there any other document required?

A:

Yes, sir. After I finished preparing the document he issued the bond sir.

Q:

Can you still remember what kind of bond Mr. Olesco issued?

A:

First Integrated bond sir.

Q:

If a copy shown to you can you recognize the same?

A:

Yes, sir.

Q:

I am showing to you a xerox copy of defendant's counter bond, can you tell us what relation is this to the one you mentioned?

A:

It was Mr. Olesco who give (sic) the bond to Mr. Noel de Castro.

Q:

Did you see this given by Mr. Olesco to Mr. De Castro?

A:

Yes, sir.

Q:

I am showing to you a xerox copy of a counter bond and go over the same and tell the court if that is the copy of the one you mentioned?

A:

Yes, sir.

COURT INTERPRETER:

Witness pointing to the bond your honor.

FISCAL:

We request your honor that this be provisionally marked as Exhibit Z.

COURT:

Mark it.

Q:

Mr. Witness when this counter bond was issued by Mr. Olesco and delivered to you were there other document or other document were delivered to Mr. De Castro?

A:

The receipt sir.

Q:

Receipt for what?

A:

For the payment of the bond sir.

Q:

You mean the premium?

A:

Yes, sir.

Q:

How much is the receipt?

ATTY. AGOOT:

The receipt will answer to that question your honor.

COURT:

Let the witness answer, if he knows.

A:

Fifty thousand pesos (P50,000) sir.

Q:

From whom (sic) Mr. Olesco received the amount of fifty thousand pesos?

A:

From Mr. Manuel de Castro sir.

Q:

I am showing to you a copy of Official Receipt No. 157 please go over the same and tell the court if this is the receipt your are referring to? May I make of record your honor that this is a xerox copy?

ATTY. AGOOT:

The best evidence is the receipt your honor.

COURT:

Let the witness answer.

A:

Yes, sir.

Q:

What is the relation of this receipt to the one you mentioned?

A:

This is the receipt that I give (sic) to Mr. de Castro sir.

Q:

Below the receipt there is a signature over the name Eren Olesco, can you tell the court whose signature is this?

ATTY. AGOOT:

May we know the materiality of this your honor.

FISCAL:

As a proof your honor that Mr. Olesco received the money as payment for the bond.

COURT:

Proceed, fiscal.

FISCAL:

May we request your honor that this receipt presented to by witness may provisionally marked as Exhibit Y and the signature over the name Efren Olesco be marked as Exhibit Y-1.

COURT:

Mark it.

Q:

Mr. Witness I see here another signature below the signature you pointed as a signature of Mr. Olesco, whose signature is this?

A:

That is my signature sir.

Q:

And what is the significance of your signature here?

ATTY. AGOOT:

Objection your honor the best evidence is the receipt itself.

COURT:

Objection denied.

A:

I was directed by Mr. de Castro to sign it sir for the purpose of proving that Mr. Olesco received the money.

Q:

Mr. Witness, relative to this case do you remember if you have executed a sinumpaang salaysay?

A:

Yes, sir.

Q:

I am showing to you a sinumpaang salaysay will you go over the same and tell the court what relation is this to the one you mentioned?

A:

It is about the counter bond sir.

Q:

You go over that sinumpaang salaysay and inform the court what relation is that to the sinumpaang salaysay you mentioned?

A:

This is the sinumpaang salaysay I executed sir.

Q:

Your honor.

FISCAL:

Your honor may we request that this sinumpaang salaysay be marked as Exhibit H.

COURT:

Mark it.

FISCAL:

Your honor please may we request hat the second page of this sinumpaang salaysay be marked as Exhibit H-1.

COURT:

Mark it.

Q:

Mr. Witness there is a signature on this Exhibit H-1, please inform the court whose signature is this above the name Melencio Cruz?

A:

That is my signature sir.

INTERPRETER:

Witness your honor pointing to a signature above the name Melencio Cruz.

Q:

Again I see a signature over the word “saksi”, whose signature is this?

A:

I do not recognize whose signature are these sir.

FISCAL:

We request your honor that the signature of Melencio Andrada be marked as Exhibit H-1 a.

COURT:

Mark it.

Q:

Mr. Witness I want you to go over again Exhibit H and H-1 and examine its contents and tell the court whether you affirm the contents of this sinumpaang salaysay?

INTERPRETER:

Your honor witness is reading the document handed to him by public prosecutor.

A:

Yes, sir. This is my sinumpaang salaysay.

FISCAL:

With Exhibit H your honor we would like to confirm the testimony of the witness and we terminate our direct examination.”[32]

Section 36, Rule 130 of the Revised Rules of Court provides that “a witness can testify only to those facts which he knows of his own knowledge; that is, which are derived from his own perception x x x.” Thus, any evidence, whether oral or documentary, is hearsay if its probative value is not based on the personal knowledge of the witness but on the knowledge of some other person not on the witness stand.[33] In the present case, neither DE CASTRO nor CRUZ, the prosecution’s main witnesses, had personal knowledge that FERNANDEZ in any way helped or aided OLESCO in the facilitation or the procurement of the counter bond. In fact, DE CASTRO admitted that he did not know if OLESCO was able to secure the help of FERNANDEZ and GATCHALIAN. And even assuming that DE CASTRO could testify to the alleged statements made by OLESCO implicating FERNANDEZ in the commission of the crime, said statements may still not be utilized against FERNANDEZ, who never had the opportunity to cross-examine OLESCO, for being violative of the *res inter alios* rule which ordains that the rights of a party cannot be prejudiced by an act, declaration or omission of another.[34]

Secondly, although a conspiracy was alleged in the information, there is no evidence to prove that a conspiracy existed between FERNANDEZ and OLESCO. As a manner of incurring criminal liability, the same degree of proof necessary to establish the crime is required to establish a finding of criminal conspiracy, that is proof beyond reasonable doubt.[35] Nowhere in the decisions of the trial court and the Court of Appeals, do we find any mention in the testimonies of the witnesses, much less proof of the existence of conspiracy between OLESCO and FERNANDEZ to defraud private complainant MELALE or to commit the crime of estafa through falsification of public document nor was evidence adduced of any act of FERNANDEZ that may be construed as an overt act in the furtherance of a conspiracy. Based on the evidence on record, the prosecution failed to prove that OLESCO conspired and/or connived with the petitioner or vice versa both in the procurement, preparation and facilitation in the issuance of the spurious counterbond and in defrauding private complainant in the amount of P50,000.00.

Besides, evidence discloses that the petitioner was not present or with OLESCO during the whole day of December 14, 1987 and did not witness or participate in any of those acts or events which happened on that day starting with the negotiation conducted by DE CASTRO through CRUZ for the procurement of a counter attachment bond needed by BELTRAN; the accomplishment of the application form for the bond made by BELTRAN and the filing thereof with OLESCO made by DE CASTRO through CRUZ; the preparation and delivery by OLESCO of the bond to DE CASTRO; the payment made by DE CASTRO to OLESCO of the cash amount of P50,000.00 as premium payment therefor; and the acknowledgment by OLESCO of his actual receipt of said amount of P50,000.00 as evidenced by Hexagon Surety Services, Inc. Official Receipt No. 157 dated December 14, 1987 which OLESCO signed himself. In fact, the only evidence proffered tending to incriminate the petitioner is the testimony of DE CASTRO who stated that OLESCO informed him that the bond was issued with the help of petitioner FERNANDEZ and a certain GATCHALIAN which as previously stated, is inadmissible in evidence.[36] BELTRAN’s assertion that FERNANDEZ admitted that he delivered the counter bond and that he facilitated in procuring the same during their alleged confrontation fails to persuade us considering that this was not corroborated and was in fact contradicted by the testimony of DE CASTRO who testified that only OLESCO delivered the counter bond to him. Moreover, the mere fact that FERNANDEZ allegedly claimed that the counterbond was genuine does not establish that he had knowledge that the counterbond was spurious. Neither does it prove that he conspired with or participated in the procurement thereof or was ever in possession thereof.

The Court of Appeals therefore erroneously applied the presumption that the person in possession of the falsified document is the author thereof for the reason that there is no evidence to prove that FERNANDEZ was ever in

possession of, used, took advantage of and/or profited by the use of the fake counter bond.

In all criminal cases, mere speculation and probabilities cannot substitute for proof required to establish the guilt of an accused beyond reasonable doubt. Suspicion no matter how strong can not sway judgment.[37] Where there is reasonable doubt as to the guilt of the accused, he must be acquitted even though his innocence may be doubted since the constitutional right to be presumed innocent until proven guilty can be overthrown only by proof reasonable doubt.[38] When the guilt of the accused has not been proven with moral certainty, it is our policy of long standing that the presumption of innocence of the accused must be favored and his exoneration be granted as a matter of right.[39]

WHEREFORE, on the foregoing premises, the assailed decision of the Court of Appeals is REVERSED and SET ASIDE. Petitioner Roberto Fernandez is ACQUITTED of the crime charged on the ground of reasonable doubt.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

[1] Fifth Division composed of the ponente J. Artemon D. Luna (Chairman) and the members: J. Delilah Vidallon-Magtolis and J. Rodrigo V. Cosico concurring.

[2] Penned by Judge Delia H. Panganiban.

[3] Record, pp. 1-2.

[4] Record , pp. 1-2.

[5] Record, p. 60.

[6] Decision of the RTC p. 2.

[7] Exhs. "A" and "A-1".

[8] Exh. "B".

[9] Exh. "C".

[10] Exh. F"; "F-1" to "F-5"; Exhs. "G", "G-1" to "G-3".

[11] Exhibits "H" and "H-1".

[12] Exh. "I".

[13] Exh. "J".

[14] Order dated May 11, 1995; Records, 319-322.

[15] TSN, August 21, 1989, pp. 4-6.

[16] TSN, May 7, 1992, pp. 7-9.

[17] Exh. "B".

[18] Exh. "A".

[19] TSN, October 12, 1988, pp. 6-10; 21-22; 28-29; 34-39.

[20] Exh. "I".

[21] TSN, July 2, 1992, pp. 7-19.

[22] Exh. "J".

[23] RTC Decision, p. 3; Rollo, 49.

[24] Rollo, pp. 36-44.

[25] Rollo, p. 51.

[26] Petition for Review, pp. 8 -9; Rollo, pp. 16-17.

[27] Article 8 provides that "A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it."

[28] *People vs. Juego*, 298 SCRA 22, 33 [1998] .

[29] *Pecho vs. Sandiganbayan*, 238 SCRA 116, 138-139 [1994].

[30] Decision of the RTC, p. 3; Rollo, p. 49.

[31] TSN, October 12, 1988, pp. 26 -43.

[32] TSN, May 7, 1992, pp. 7-15.

[33] *PNOC Shipping and Transport Corporation vs. Court of Appeals*, 297 SCRA 402, 421 [1998].

[34] *People vs. Raquel*, 265 SCRA 248, 256 [1996] .

[35] *People vs. Gomez*, 270 SCRA 432, 443 [1997] ; *People vs. Viernes*, 262 SCRA 655, 657 [1996] .

[36] TSN, October 12, 1988, pp. 28-29.

[37] *People vs. Isla*, 278 SCRA 47, 52 [1997].

[38] *Pecho vs. People*, 262 SCRA 518.

[39] *Cosep vs. People*, 290 SCRA 378, 387 [1998].

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.