

FELIZARDO S. OBANDO AND JUAN S. OBANDO, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 138696. July 07, 2010

Ponente: PERALTA, J.

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PERALTA, J.:

Before us is a petition for review on certiorari filed by petitioners Felizardo and Juan Obando seeking to annul and set aside the Decision[1] dated August 13, 1998 and the Resolution[2] dated May 17, 1999 of the Court of Appeals (CA) in CA-G.R. CR No. 20187.

The antecedent facts are as follows:

Sometime in 1964, Alegria Strebel Vda. de Figueras (Alegria), together with Eduardo and Francisco Figueras, sons of her husband Jose Figueras by previous marriage, filed a petition for the intestate proceedings of the estate of Jose Figueras, docketed as Special Proceedings No. 61567. Alegria was named administratrix of Jose's estate without opposition from her stepsons.

While the settlement of Jose's estate was still pending considerations in the Regional Trial Court (RTC), Alegria died in May 1979. Eduardo was issued new Letters of Administration with the duty to administer both Jose's and Alegria's estates. Fritz Strebel, as brother of Alegria, came forth claiming part of Alegria's estate as Alegria died without issue which the Figueras brothers made no opposition.

Subsequently, the Figueras brothers and Fritz Strebel were served with copies of a Petition for Probate of the alleged last will and testament of Alegria filed by petitioner Felizardo Obando, which petition was docketed as Special Proceeding No. 123948. In his petition, petitioner Felizardo asked to be named as executor of Alegria's last will and testament, which bequeathed Alegria's rights and interest in the real properties left by the Figueras couple, as well as personal properties, including all her pieces of jewelry to petitioners Felizardo and Juan, and their families. The Figueras brothers opposed the probate of the alleged will, as well as petitioner Felizardo's prayer for the issuance of a letter of administration, on the ground that the alleged will was done either under duress or the same was a forgery.

Later, both Special Proceeding Nos. 61567 and 123948 were consolidated under Branch 17 of the RTC of Manila which, after hearing, denied petitioner Felizardo's prayer to be named as executor. Petitioner Felizardo appealed the matter to the CA which partially reversed the RTC by appointing Eduardo and petitioner Felizardo as co-administrators of the joint estates of Jose and Alegria Figueras.

Eduardo and Fritz still opposed the probate of the alleged Alegria's will, insisting that the will was a forgery. Subsequently, these conflicting parties agreed to submit the alleged will to the National Bureau of Investigation (NBI) for examination and comparison with the common standard signatures of Alegria.[3]

After the examination and comparison of the submitted documents, NBI Document Examiner Zenaida Torres submitted her report[4] dated March 26, 1990, with the findings that the questioned and standard sample

signatures of Alegria S. Vda. de Figueras were NOT written by one and same person.

By reason of the forged will which was the basis of the CA in appointing Felizardo as co-administrator of the Figueras estates, petitioners had taken possession of the pieces of jewelry, furniture and other personal properties enumerated in the alleged will, as well as the rentals of the Figueras residence in Gilmore Street, Quezon City being leased to the Community of Learners.

Eduardo and Fritz questioned these acts of petitioner Felizardo and, since the latter could not account for these properties which were under his possession when the probate court required him to do so, they sued him for Estafa thru Falsification of Public Document since the alleged will which petitioner Felizardo submitted for probate was found to be forged.

On July 26, 1990, an Information was filed with the RTC of Manila, charging petitioners Felizardo S. Obando and Juan S. Obando, together with the persons who signed in the alleged will, namely, Cipriano C. Farrales, Mercedes B. Santos, Victorino Cruz, and Franklin A. Cordon, with the crime of estafa thru falsification of public document, committed as follows:

That on or about November 11, 1978, and for sometime prior or subsequent thereto, in the City of Manila, Philippines, the said accused Felizardo S. Obando, Juan S. Obando, Mercedes B. Santos, [Victorino] Cruz and Franklin A. Cordon, being then private individuals, and accused Cipriano C. Farrales, a Notary Public, conspiring and confederating together and helping one another, did then and there willfully, unlawfully and feloniously defraud Eduardo F. Figueras thru falsification of public document in the following manner, to wit: the said accused forged and falsified or caused to be forged and falsified, a document denominated as the Last Will and Testament of Alegria Strebel Vda. de Figueras, dated November 11, 1978, duly notarized by accused Cipriano C. Farrales and, therefore, a public document, by stating in said Last Will and Testament, among others, that the said Alegria Strebel Vda. de Figueras had bequeathed to her nephews, herein accused Felizardo S. Obando and Juan S. Obando, all her rights and interests over all her jewelries (sic), except those given to her other relatives, with an aggregate total value of P2,000,000.00, that she had appointed accused Felizardo S. Obando as the sole executor of her Last Will and Testament and the exclusive administrator of her estate, and thereafter, feigning, simulating and counterfeiting or causing to be feigned, simulated and counterfeited the signature of the said Alegria Strebel Vda. de Figueras appearing on the left hand margin of pages 1 and 2 and over the typewritten name Alegria Strebel Vda. de Figueras on page 3 of said document, thus making it appear, as it did appear, that the said Alegria Strebel Vda. de Figueras had, in fact, bequeathed all her rights and interests over the said jewelries (sic) to accused Felizardo S. Obando and Juan S. Obando, and that she had appointed the said Felizardo S. Obando as the sole executor of her Last Will and Testament and the exclusive Administrator of her estate, and causing it to appear further that the said Alegria Strebel Vda. de Figueras participated and intervened in the signing of said document when in truth and in fact as the said accused well knew, such was not the case in that the said Last Will and Testament is an outright forgery; that the late Alegria Strebel Vda. de Figueras did not bequeath all her rights or interests over the aforementioned jewelries to accused Felizardo S. Obando and Juan S. Obando, that she did not appoint accused Felizardo S. Obando as the sole executor of her Last Will and Testament and the exclusive Administrator of her estate, and that she did not participate and intervene in the signing of said document, much less did she authorize the said accused, or anybody else, to sign her name or affix her signature thereon; that once the said document has been forged and falsified in the manner above set forth, the said accused Felizardo S. Obando and Juan S. Obando presented the same for probate with the Regional Trial Court of Manila wherein an ensuing litigation which ultimately reached the Court of Appeals, said accused Felizardo S. Obando was appointed co-administrator of said Eduardo F. Figueras, and who, as such co-administrator, forthwith took possession of the jewelries mentioned above which the said accused subsequently, with intent to defraud, misappropriated, misapplied and converted to their own personal use and benefit to the damage and prejudice of the said Eduardo F. Figueras in the aforesaid amount of P2,000,000.00, Philippine currency.

Contrary to law.[5]

Notary Public Farrales asked for a re-investigation claiming innocence and good faith and was, subsequently, deleted from the Information.

When arraigned, all the accused, with the exception of Franklin Cordon who is at-large, assisted by counsel de parte, pleaded not guilty to the charge. They posted bail for their temporary liberty.

Trial thereafter ensued.

In its Order dated October 10, 1992, the RTC stated that the parties stipulated that whatever testimony of witnesses utilized in the intestate and probate proceedings of the will, as well as the documentary evidence submitted therein, shall be utilized in the criminal case in toto subject to further cross of the defense lawyer only on matters not touched in the former proceedings.[6]

On October 7, 1996, the RTC rendered its Decision,[7] the dispositive portion of which reads, thus:

WHEREFORE, PREMISES CONSIDERED, this Court holds accused FELIZARDO S. OBANDO and JUAN S. OBANDO GUILTY of violating Article 315, paragraph 1, sub-paragraph (b) of the Revised Penal Code, in relation to Article 172, paragraph 1, Revised Penal Code, their culpability having been proven beyond reasonable doubt and are hereby sentenced to suffer the penalty of reclusion temporal in its maximum period, from seventeen (17) years, four (4) months, and one (1) day to twenty (20) years. Finding no evidence of culpability in their persons, accused MERCEDES B. SANTOS and VICTORINO CRUZ are hereby ACQUITTED.

With respect to accused FRANKLIN A. CORDON, who remains at-large up to the present, this case against him is hereby ordered ARCHIVED, to be revived upon his apprehension. Let an Alias Warrant of Arrest be issued against accused Franklin A. Cordon for his immediate apprehension.

SO ORDERED.[8]

In so ruling, the RTC found that: the fact of damage was sufficiently established with the testimonies of Felizardo and Juan that Alegria's rights and interests in the real and personal properties of the Figueras couple were to go to them, and that they already gave the pieces of jewelry to their sister, to Juan's wife and his two daughters, and Felizardo's daughter which showed that they had already profited from the estate of the Figueras couple even before the same was brought to the court for settlement. As to the matter of forgery, the RTC gave more credence to the findings of NBI Document Examiner Zenaida Torres than that of PNP Document Section Chief Francisco Cruz, since (1) Torres was the common choice of all the parties, thus by which act, petitioners became bound to the results of said findings; (2) Torres was definite in her conclusion that the question and standard/ sample signatures of Alegria S. Vda. de Figueras were not written by one and same person unlike Cruz's report stating that no definite conclusion can be made due to the limited amount of appropriate standard signatures for comparison; and (3) Torres was not paid for her services and, therefore, impartial while Cruz received honorarium from Juan Obando; that while petitioners presented copies of pictures showing Alegria allegedly signing the will in the presence of Mercedes Santos Cruz, Victorino Cruz and Franklin Cordon, nothing would establish what document was being held by them.

The RTC found petitioners to have conspired to commit forgery as established by the following evidence, to wit: (a) Felizardo admitted that the last will and testament which Alegria voiced out to him was dictated by him to a certain Atty. Alcantara; (b) that Felizardo retained the services of Atty. Alcantara and Atty. Farrales who notarized the alleged will; (c) Juan was the one who enticed Mercedes Santos Cruz, his sister-in-law, and Victorino Cruz into acting as attesting witnesses and Juan's taking pictures of the entire signing ceremony which

was a sign of evil intention because it was an expectancy of future rift or trouble; (d) Felizardo held and kept the alleged will from the time of alleged signing up to Alegria's death which possession and control lasted for several months; (e) the testimony of Torres that the first two pages of Exhibit "A," which contained the dispositions of the properties of the Figueras estates, as well as the forged signatures were substitutes for the originals; and (g) that petitioners and their respective families gained enormously by reason of said will.

The RTC said that even if the alleged will was found to be authentic, it will still be contested as the dispositions made therein were contrary to law most particularly that portion bequeathing to petitioners the whole residential property of the spouses Jose and Alegria Figueras, which was conjugal, to the exclusion of Eduardo and Francisco Figueras and Fritz Strebel who are forced heirs; that because of such disposition, the RTC was convinced that the alleged will was not that of Alegria but of petitioners, since Alegria being the administratrix of the estate of her husband Jose would be the last person to give this property outside of the Figueras family. Mercedes Santos and Victorino Cruz were acquitted for lack of evidence.

Petitioners filed their appeal with the CA.

On August 13, 1988, the CA issued its assailed Decision affirming in toto the decision of the RTC.

Petitioners' motion for reconsideration was denied in a Resolution dated May 17, 1999.

Hence, this petition for review filed by petitioners on the following grounds:

A. THE HONORABLE COURT OF APPEALS HAD OVERLOOKED AND FAILED TO CONSIDER THE SIGNIFICANT FACTS AND CIRCUMSTANCES OF THIS CASE WHICH, IF PROPERLY CONSIDERED, SHOULD HAVE DRAWN A DIFFERENT CONCLUSION AND WHICH SHALL CONSIDERABLY AFFECT THE RESULT OF THIS CASE.

B. THE NON-PRODUCTION AND/OR NON-PRESENTATION OF THE ORIGINAL COPY OF THE ALLEGED FALSIFIED LAST WILL AND TESTAMENT OF ALEGRIA STREBEL VDA. DE FIGUERAS BEFORE THE TRIAL COURT IS A FATAL DEFECT WHICH ENTITLES HEREIN APPELLANTS TO ACQUITTAL.

C. THERE IS ABSOLUTELY NO CONSPIRACY TO WARRANT CONVICTION OF FELIZARDO AND [JUAN] OBANDO.

D. THE WILL OF ALEGRIA STREBEL VDA. DE FIGUERAS DISPOSES ONLY OF HER RIGHTS AND INTERESTS OVER THE PROPERTIES BEQUEATHED TO FELIZARDO AND JUAN OBANDO.

E. CONFLICTING EXPERT TESTIMONIES, COUPLED WITH THE POSITIVE EVIDENCE AS TO THE DUE EXECUTION AND AUTHENTICITY OF THE WILL SHOULD FAVOR APPELLANTS.

F. THE ABSENCE IN THE NBI FINDINGS (EXHIBIT "D-1") AS TO THE GENUINENESS AND/OR FALSITY OF THE SIGNATURES OF MERCEDES SANTOS CRUZ, VICTORINO CRUZ AND ATTY. FRANKLIN CORDON ON THE "LAST WILL AND TESTAMENT" (EXHIBIT "A"), NEGATES THE FALSIFICATION AND/OR SUBSTITUTION OF THE FIRST AND SECOND PAGES OF THE SAID "LAST WILL AND TESTAMENT OF DOÑA ALEGRIA STREBEL VDA. DE FIGUERAS."

G. THERE IS NO ESTAFA COMMITTED BY APPELLANTS, NEITHER DID THE PROSECUTION PROVE THE COMPLEX CRIME OF ESTAFA THROUGH FALSIFICATION OF PUBLIC DOCUMENT.[9]

Petitioners contend that the non-presentation of the original copy of the alleged falsified will before the RTC was a fatal defect which entitles them to an acquittal.

We are not persuaded.

We note that during the trial of this case, petitioners did not raise any objection when the alleged will was presented and testified to by NBI Document Examiner Torres. We also note that in the Offer of Prosecution Evidence,[10] where the machine copy of the alleged will was marked as Exhibit "A," the prosecution, in the last paragraph of such offer, stated that "all these (documents) form the bulk of evidence in Special Proceeding Nos. 123948 and 61567 and were simply reproduced here as agreed upon by the parties. We are compelled to mention this so that the accused will have no reason for questioning their authenticity." [11] In their Comment/Objection to the Offer of Prosecution Evidence,[12] petitioners merely stated that: "If this particular document is the original copy of the Last Will and Testament of Doña Alegria Strebel Vda. de Figueras, which was marked as Exhibits "J," "J-1" to "J-17" in Special Proceedings Nos. 61567 and 123948, then the accused admits not only of its existence but also its validity, authenticity and due execution of said Last Will and Testament," but nowhere did they object to such submission of the machine copy. In fact, petitioners never sought reconsideration when the RTC admitted the machine copy of the alleged will.

More importantly, we note that a duplicate original copy of the alleged will was formally offered in evidence[13] as one of petitioners' documentary evidence and the same was already admitted by the RTC. Thus, a duplicate original copy of the alleged will was already admitted in the records of the case which the RTC used for comparison of the questioned signatures with that of the standard signatures of Alegria.

Petitioners fault the RTC and the CA for giving more weight to the findings of NBI Document Examiner Torres that the signature in the alleged will was forged as against the findings of PNP Document Examination Chief Cruz that the questioned signature was genuine.

The rule is that the findings of fact of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect if not conclusive effect. This is more true if such findings were affirmed by the appellate court. When the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon this Court unless when that determination is clearly without evidentiary support on record, or when the judgment is based on misapprehension of facts or overlooked certain relevant facts which, if properly considered, would justify a different conclusion,[14] which we do not find in this case.

In examining the questioned signatures of Alegria, Torres used the standard specimen signatures submitted by petitioners, Eduardo and Fritz, the parties in the probate proceedings. Torres found that the questioned and standard/sample signatures of Alegria were not written by one and the same person. However, as petitioners did not agree with such findings, petitioners moved for another examination of the same documents together with three additional documents to be conducted by the PNP. PNP Document Examiner Chief Francisco Cruz submitted his report where he found that the questioned signatures and the standard signatures executed in 1978 indicated that they were written by one person. Both Torres and Cruz testified in court.

Torres, in her direct and cross-examinations, thoroughly explained her findings by establishing the fundamental differences in the writing characteristics and habits existing in the questioned and standard signatures.

First, in the alignment characteristics, i.e., the relationship of the letters in the name with the base line or where the letters rest. She pointed out that in the standard signatures, all the letters in the name were written in an even straight base notwithstanding that some of the standard signatures were written without the horizontal line. In the questioned signatures, the name Alegria S. Vda. de Figueras was written either in a going up or going down direction, i.e., there was no even placement of the letters.[15]

Second, in the arrangement characteristics, i.e., the position of the written signature in relation to the typewritten name. Torres found that the one who wrote the questioned signatures had the habit of affixing the signatures across and covering the entire typewritten name. While in the standard signatures, the writer affixed the signatures above the typewritten name and there was no instance where the signature crossed the typewritten name. Torres intimated that such arrangement characteristic in handwriting identification was very significant, because it was considered to be an inconspicuous characteristic which meant that even the writers themselves would not notice that manner of signing.[16]

Third, the slight but consistent difference in the slant of the letter "g" in the name Alegria. Torres stated that slant meant the slope of the letter in relation to the base line. She found that in the standard signatures, the slopes of the letter "g" in Alegria formed an angle of less than 90 degrees; that the letter "g" was slanting to the right. While in the questioned signatures, the slopes of letter "g" formed an angle of more than 90 degrees.[17]

Fourth, the proportion characteristic which meant the relationship of one letter to the next letter.[18]

Fifth, the manner of execution of the questioned signatures was different from that of the standard signatures. Torres found that in the questioned signatures, there were presence of hesitations, tremors, slow drawing movement, and consciousness which were not found in the standard signatures, which she had explained in details in her testimony.

On the other hand, PNP Document Examiner Cruz stated that there was a wide range of variations existing between the questioned signatures made in 1978 and the standard signatures executed in 1974, 1976 and 1978, indicating that there was a radical change in the physical condition of the writer wherein the muscle and nerves were affected resulting in the loss of muscular control. He also stated that while the questioned signatures and the standard signatures were dissimilar in the manner of execution, quality of lines, alignment and size of letter, no definite conclusion can be reached in view of the wide gap of execution. He then stated that the questioned signatures executed on November 11, 1978 and the standard signature executed in December 1978, which was most contemporaneous to the date of the execution of the questioned signatures, he found they were similar and showed that they were written by one person.[19]

We note that Cruz's findings as to the loss of muscular control in Alegria's hand allegedly due to her physical condition was contradicted by Torres' testimony that the standard signature executed by Alegria in December 1978, i.e., one month after the alleged will was executed, showed that she was in good physical condition, because her signature was smooth with flowing strokes with an even alignment which indicated that Alegria had good muscular control and coordination.[20] Notably, Dr. Elena Cariaso, the doctor who was tasked by the probate court to examine the physical and mental condition of Alegria in December 1978, testified that Alegria was physically and mentally fit with only a weakness in her lower extremities; thus, corroborating Torres' finding that Alegria's hand had good muscular control and coordination. In fact, Torres established that the standard signatures written in 1966, 1974, 1976 and in December 1978, all showed that the signatures were made in a continuous, spontaneous and unconscious manner[21] unlike that of the questioned signatures.

Expert opinions are not ordinarily conclusive. They are generally regarded as purely advisory in character. The courts may place whatever weight they choose upon and may reject them, if they find them inconsistent with the facts in the case or otherwise unreasonable. When faced with conflicting expert opinions, as in this case, courts give more weight and credence to that which is more complete, thorough, and scientific.[22] The value of the opinion of a handwriting expert depends not upon his mere statements of whether a writing is genuine or false, but upon the assistance he may afford in pointing out distinguishing marks, characteristics and discrepancies in and between genuine and false specimens of writing which would ordinarily escape notice or detection from an

unpracticed observer.[23]

We agree with the RTC and the CA in giving more weight and credence to the testimony of Torres as the examination conducted by Torres was complete, thorough and scientific. We find that the RTC had the opportunity to examine the relevant documents and make comparisons thereof. In fact, upon our own comparison of the questioned signatures and the standard signatures taking into consideration inconspicuous differences noted by Torres on the questioned and standard signatures, we find that the questioned signatures showed substantial differences with that of the standard signatures of Alegria.

Petitioner claims that the testimonies of the notary public, as well as the two attesting witnesses that they saw Alegria sign the will in their presence, should have outweighed the testimony of Torres.

We are not persuaded.

In his testimony, Notary Public Farrales testified that when he, together with another lawyer, Atty. Cordon, went inside the room of Alegria who was in bed, he presented to her copies of the will which he brought from his office;[24] that Alegria read the same and called in petitioner Felizardo to bring some small board where she could write; after Felizardo handed the same, he again left the room. Farrales said that Alegria signed the will in his presence, as well as in the presence of Atty. Cordon and the other attesting witnesses, Mercedes and Victorino; that petitioner Felizardo was just outside the room when the signing was on-going;[25] that Farrales was the one who assisted Alegria in turning the pages of the documents and was the one who pointed to her the portion where she was to affix her signatures;[26] and that after the signing and notarization of the will, Alegria requested them to call on petitioner Felizardo and once Felizardo was inside the room, Alegria gave the documents to the latter who placed the will in an envelope.[27]

On the other hand, Mercedes testified that when she and Victorino entered Alegria's room, she saw Alegria, Felizardo, Attys. Farrales and Cordon; that Alegria instructed petitioner Felizardo to read aloud the will which Felizardo did;[28] and that Alegria and the other witnesses signed the will in the presence of each other and was duly notarized; and that she saw Felizardo keep the will inside the vault. [29]

Victorino testified that when he and Mercedes entered Alegria's room, he saw Atty. Farrales, Cordon, Felizardo and Alegria who was in a reclined position in her bed; that Alegria asked Felizardo to get the sealed document from a cabinet;[30] that Alegria told petitioner Felizardo to give each one of them a copy of the document and instructed petitioner Felizardo to read the contents of the will aloud;[31] and that he saw Alegria signed the will in their presence.

Notably, their testimonies showed material inconsistencies which affected their credibilities. Farrales testified that the copies of the alleged will came from his office and he was the one who gave the same to Alegria which, however, was contrary to Victorino's claim that petitioner Felizardo got the alleged will from the cabinet. Farrales testified that petitioner Felizardo was not inside the room when the signing was ongoing which was again contrary to the claims of both Mercedes and Victorino that petitioner Felizardo was inside the room while the signing was on-going; and that Alegria even instructed Felizardo to read aloud the contents of the same to them. Notably, Farrales testified that he was the one who turned the pages of the will and was also the one who pointed to Alegria the portion where to affix her signatures and that no other person rendered such assistance except him.[32] However, in petitioner Felizardo's testimony, he said that he was present when the will was being signed by Alegria.[33] In fact, petitioner Felizardo submitted photographs which were admittedly taken by co-petitioner Juan to prove the former's presence during the signing and to show that he was the one assisting Alegria in signing the will.

Such contradictory statements coming from persons who allegedly were present when the will was executed render doubtful the genuineness of the alleged forged will. Thus, we find no error committed by the RTC in not giving credence to their testimonies.

We find the elements of falsification of public document present in this case. Essentially, the elements of the crime of Falsification of Public Document under Article 172 (1) of the Revised Penal Code (RPC) are: (1) that the offender is a private individual; (2) that the offender committed any of the acts of falsification enumerated under Article 171; and (3) that the act of falsification is committed in a public document. Under paragraph 2 of Article 171, a person may commit falsification of a public document by causing it to appear in a document that a person or persons participated in an act or proceeding, when such person or persons did not, in fact, so participate in the act or proceeding.

In this case, petitioners are private individuals who presented the alleged will to the probate court and made it appear that Alegria signed the alleged will disposing of her rights and interest in the real properties, as well as all of her personal properties to petitioners when in fact petitioners knew that Alegria never signed such alleged will as her signatures therein were forged.

We find apropos the findings of the RTC that petitioners conspired to perpetuate such forgery, to wit:

- The so-called Will and Testament was admitted by Felizardo S. Obando in open hearing to have been dictated by him to a certain Atty. Alcantara allegedly as voiced out to him by Alegria;
- He said he procured the service of said lawyer and the very notary public, one Atty. C. Farrales to notarize it;
- Juanito Obando enticed the couple Mercedes B. Santos and Victorino Cruz into acting as witnesses, Mercedes being his sister-in-law, and his taking pictures of the entire ceremony of signing such document. This taking of such pictures is itself a sign of evil intention, because it is an expectancy of future rift or trouble;
- Felizardo held and kept the questioned document with him from its inception to its alleged signing and up to Alegria's death which possession and complete control lasted for several months;
- Felizardo and Juanito Obando and their respective families again by their joint admissions, gained enormously and by reason of said will.

The crime of falsification of public document was the means for petitioners to commit estafa. The elements of estafa under Article 315, par. 1 (b) of the RPC[34] are as follows: (1) that money, goods or other personal property is received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same; (2) that there be misappropriation or conversion of such money or property by the offender or denial on his part of such receipt; and (3) that such misappropriation or conversion or denial is to the prejudice of another.

Petitioner Felizardo argued that he already had in his possession the personal properties of Alegria which included the pieces of jewelry by virtue of an alleged general power of attorney executed by Alegria in his favor. However, as correctly argued by the Solicitor General, such agency between Alegria and petitioner Felizardo, was terminated upon Alegria's death; thus, he had no basis for taking possession and custody of Alegria's properties after her death. However, by virtue of the falsified will which petitioners presented for probate, and by which petitioner Felizardo became a co-administrator of the estate of the Figueras couple, and had gained possession of the jewelry, he was not able to account for the same when ordered to do so by the probate court.

On the other hand, co-petitioner Juan admitted that the pieces of jewelry went to his daughters and nieces, while the real properties were already sold even while the intestate and probate proceedings were still pending in court.

Petitioners' misappropriation of the jewelry was to the prejudice of Eduardo Figueras who also has the right to Alegria's jewelry in general which were part of the declared conjugal estate of his father Jose and Alegria Figueras. Notably, Alegria, as administratrix of the estate of Jose, submitted in 1966 an inventory of the conjugal real and personal properties of the Figueras couple and one of those listed under conjugal personal properties was jewelry in the amount of P2,150.00. Such inventory was contained in the Order dated September 10, 1980 of the probate court and which was submitted in evidence by petitioners.

The crime committed was estafa through falsification of public document. Being a complex crime, the penalty for the most serious crime shall be imposed in its maximum period.[35] While we sustain the conviction of petitioners of the crime charged, we found, however, that the penalty imposed by the trial court and affirmed by the Court of Appeals was not proper.

The amount of damages is the basis of the penalty for estafa. However, we note that the prosecution failed to satisfactorily show that the amount of jewelry misappropriated was indeed two million pesos. The only evidence on record which would establish the amount of the jewelry was the inventory submitted in 1966 by Alegria where she listed the jewelry in the amount of P2,150.00.

Since the amount misappropriated by petitioners was established to be only in the amount of P2,150.00, the applicable provision is paragraph (3) of Article 315 of the Revised Penal Code, which imposes the penalty of arresto mayor in its maximum period to prision correccional in its minimum period, where the amount defrauded is over P200.00 but does not exceed P6,000.00. Thus, in this case, it appears that the most serious crime, which should be the basis of penalty for the complex crime of estafa through falsification of public document, would be the falsification and, under Article 172 of the Revised Penal Code, the penalty is prision correccional in its medium and maximum periods and a fine of not more than P5,000.00.

Thus, the maximum penalty to be imposed in this case is the medium period of prision correccional in its medium and maximum periods, there being no mitigating or aggravating circumstances. Applying the Indeterminate Sentence Law, the minimum penalty should be taken from the penalty next lower in degree which is arresto mayor maximum to prision correccional minimum in any of its period.

WHEREFORE, the petition is DENIED. The Decision dated August 13, 1998 and the Resolution dated May 17, 1999 of the Court of Appeals are AFFIRMED with MODIFICATION as to the penalty imposable. Petitioners are hereby sentenced to suffer the penalty of one (1) year and one (1) day of prision correccional, as minimum, to four (4) years, nine (9) months and ten (10) days of prision correccional, as the maximum, and to pay a fine of P5,000.00.

SO ORDERED.

Carpio, (Chairperson), Nachura, Abad, and Mendoza, JJ., concur.

[1] Penned by Associate Justice Teodoro P. Regino, with Associate Justices Quirino D. Abad Santos, Jr. and Conrado M. Vasquez, Jr., concurring; rollo, pp. 411-438.

[2] Id. at 440.

[3] Consolidated Submission of Standard Specimen Signatures signed by the parties' counsels.

[4] Id. at 104-105.

[5] Id. at 79-80.

- [6] Records, p. 149.
- [7] Rollo, pp. 402-409.
- [8] Id. at 409.
- [9] Id. at 27 -30.
- [10] Id. at 86-89.
- [11] Id. at 89.
- [12] Id. at 303-309.
- [13] Petitioners' Exhibit "4;" records , pp. 1911-1913; rollo, p. 314.
- [14] G.R. No. 168437.
- [15] TSN, August 16, 1990, pp. 30-32.
- [16] Id. at 32-34.
- [17] TSN, October 8, 1990, pp. 5-6.
- [18] Id. at 7.
- [19] TSN, January 29, 1996.
- [20] TSN, December 15, 1978, p. 27.
- [21] Id. at 29.
- [22] G.R. No. 173192.
- [23] Id.
- [24] November 11, 1978, p. 6.
- [25] Id. at 8.
- [26] Id.
- [27] Id. at 12.
- [28] TSN, September 20, 1995, p. 13.
- [29] Id. at 15.
- [30] TSN, March 4, 1996, p. 26.
- [31] Id. at 28.
- [32] TSN , November 11, 1978, p. 8.
- [33] Id. at 5.
- [34] Article 315(1)(b) of the Revised Penal Code punishes estafa committed as follows:
1. With unfaithfulness or abuse of confidence, namely:
- x x x x

(b)By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

[35] Art. 48 of the Revised Penal Code provides:

Art. 48. Penalty for complex crimes. - When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period. (As amended by Act No. 4000).

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