

**MELY NIERVA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,
RESPONDENT. D E C I S I O N***G.R. NO. 153133. September 26, 2006*

Ponente: GARCIA, J.

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Under consideration is this petition for review on certiorari under Rule 45 of the Rules of Court assailing the Decision[1] dated April 16, 2002 of the Court of Appeals (CA) in CA-G.R. CR No. 19817 which affirmed in toto that of the Regional Trial Court of Baguio City, Branch 6,[2] in Criminal Case No. 7555-R finding the herein petitioner Mely Nierva guilty beyond reasonable doubt of the crime of Falsification of Public Document defined and penalized under Article 172, paragraph 1 in relation to Article 171, paragraphs 1 and 2 of the Revised Penal Code, in conspiracy with two (2) of her co-accused therein, namely, Purita Llorente and Aida Reyes.

As culled from the records, the material facts are:

Petitioner Mely Nierva was the owner of a one-storey house on a parcel of unregistered land at Km. 4-5, Asin Road, Baguio City and covered by Tax Declaration No. 50047[3] in her name.

On May 16, 1987, the petitioner, using her aforementioned property as collateral, obtained a loan of P50,000.00 from a lending company, Angeniz and Co., Inc. (ANGENIZ), through its representative, Ines Chan (Chan). The mortgage was annotated on Tax Declaration No. 50047.[4]

On May 29, 1989, after settling her first loan, petitioner secured a new loan from the same lending company, this time in the amount of P350,000.00 for which she again executed a Real Estate Mortgage[5] over her same property, which mortgage was likewise annotated on her Tax Declaration No. 50047[6] and registered with the Register of Deeds as well as with the City Assessor's Office, Baguio City. The mortgage document contained a prohibition against the alienation or encumbrance of the mortgaged property without ANGENIZ' consent.[7]

On August 22, 1989, while her latest loan from ANGENIZ was still subsisting, the petitioner executed a second Real Estate Mortgage[8] over the same property in favor of Purita Llorente to collateralize a loan of P160,000.00 she obtained from the latter. This second deed of mortgage was notarized on the same date by Atty. Daniel Fariñas.

Also, on August 22, 1989, one Aida Reyes had a document - a Release of Real Estate Mortgage[9] - notarized by Atty. Amado Orden. Said document was apparently signed by Ines Chan acknowledging her receipt of P350,000.00 from the petitioner and releasing the latter's mortgage obligation to ANGENIZ. The release document likewise bears the signatures of Reyes and the petitioner's maid Editha Solomon as witnesses. After the notarization of this release instrument, Reyes registered the same with the City Assessor's Office of Baguio City. Consequently, the earlier mortgage in favor of ANGENIZ as annotated on Tax Declaration No. 50047 was cancelled.[10]

On August 24, 1989, two (2) documents both dated August 22, 1989 with one purportedly executed by Ines Chan

were received for registration at the Register of Deeds of Baguio City. The two documents are: a Release of Real Estate Mortgage in favor of the herein petitioner Mely Nierva purportedly signed by Chan, and a Real Estate Mortgage in favor of Purita Llorente. Both documents, however, were apparently withdrawn by Llorente on August 31, 1989 as revealed by the entries made in the Register of Deeds' Daybook for Registration of Documents Relative To Land Not Recorded Under The Land Registration Act.[11]

On September 8, 1989, after having borrowed another P160,000.00 from Llorente, thereby bringing her total obligation to the latter in the amount of P320,000.00, the petitioner executed a new Real Estate Mortgage over her same property, thus replacing the previous real estate mortgage she executed in Llorente's favor on August 22, 1989.[12]

Meanwhile, with the petitioner having failed to pay the balance of her existing loan obligation to ANGENIZ, the latter, through Chan, proceeded to foreclose the mortgaged property. It was at this time that Chan learned of the existence of a second mortgage dated August 22, 1989 over the same property in favor of Llorente and of a Release of Real Estate Mortgage purportedly signed by her discharging petitioner's mortgage indebtedness to ANGENIZ. Chan was able to see a copy of the document at the office of Atty. Amado Orden, the lawyer who notarized the release instrument.

Confronted by Chan, the petitioner admitted having executed a second mortgage on her property in favor of Llorente but denied any participation in the execution of the Release of Real Estate Mortgage and instead pointed to Llorente as the one solely responsible therefor.[13] She then requested the suspension of the foreclosure proceedings against her property and promised Chan the payment of her loan balance with ANGENIZ as she would first borrow money from Llorente.[14]

As it turned out, the petitioner sold her property to Llorente for P320,000.00 under a Deed of Absolute Sale[15] dated February 6, 1990.

Later, Llorente talked to Chan and told the latter that she will pay the petitioner's loan balance with ANGENIZ in the amount of P100,000.00 in cash on condition that a release of the petitioner's mortgage would be executed.[16] Chan refused the offer saying that the petitioner's indebtedness with ANGENIZ amounted to P167,000.00, not P100,000.00.[17] Consequently, no compromise was reached by the parties.

On March 20, 1990, Llorente, on the basis of the aforementioned Deed of Absolute Sale, caused the cancellation of the petitioner's Tax Declaration No. 50047 and the issuance of Tax Declaration No. 1314[18] in her own name.

Eventually, ANGENIZ was able to successfully foreclose the subject property and, being the highest bidder at the resulting public auction thereof, was issued the corresponding Sheriff's Certificate of Sale[19] therefor on April 10, 1990.

Such was the state of things when ANGENIZ lodged a criminal complaint against the petitioner for falsification of a public document relative to the same Release of Real Estate Mortgage earlier adverted to. On the basis of said complaint, an Information[20] was filed with the Regional Trial Court (RTC) of Baguio City charging the petitioner with the crime of Falsification of Public Document under Article 172, paragraph 1, in relation to paragraphs 1 and 2, Article 171 of the Revised Penal Code. After a reinvestigation was conducted at the instance of the petitioner herself, an Amended Information[21] was subsequently filed, thereunder impleading Aida Reyes, Purita Llorente and one Edwin Olivas as additional accused in the crime charged, allegedly committed as follows:

That on or about the 22nd day of August, 1989, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, did then and there willfully, unlawfully and feloniously falsify the signature of INES L. CHAN in the Release

of Real Estate Mortgage dated August 22, 1989 acknowledged before Notary Public Amado C. Orden in the City of Baguio and docketed in his Register as Doc. No. 301, Page No. 62, Book No. XLIV, Series of 1989., causing it to appear that Ines L. Chan signed the said deed, when in truth and in fact, said complainant did not so participate whatsoever in the signing of the said Release of Real Estate Mortgage, to the damage and prejudice of ANGENIZ & CO., INC., represented by Ines L. Chan in the amount of ONE HUNDRED SIXTY SEVEN THOUSAND PESOS AND NINE HUNDRED NINETY PESOS AND 35/100 CENTAVOS (P167,990.35), Philippine Currency.

Docketed in the RTC as Criminal Case No. 7555-R, the Information, as amended, was raffled to Branch 6 of the court.

On arraignment, all four (4) accused entered a plea of "Not guilty."

In a decision[22] dated January 2, 1996, the trial court acquitted accused Edwin Olivas but convicted of the crime charged all the remaining three, namely, petitioner Mely Nierva, Purita Llorente and Aida Reyes, and accordingly sentenced them, thus:

WHEREFORE, the Court Finds the accused Mely Nierva, Purita Llorente and Aida Reyes GUILTY beyond reasonable doubt of Violation of Article 172 paragraph 1 in relation to Article 171 paragraphs 1 and 2 of the Revised Penal Code for Falsification of Public Document as confederates and conspirators as charged in the information and hereby sentences each of them, applying the Indeterminate Sentence Law, to an imprisonment ranging from 4 months and 1 day of arresto mayor as Minimum to 3 years 6 months and 21 days of prision correctional as Maximum and to pay a Fine of P5,000.00 with subsidiary imprisonment in case of insolvency at the rate of P8.00 a day but not exceeding one third of the principal penalty and to pay the costs.

For failure of the prosecution to prove his guilt beyond reasonable doubt, the accused Edwin Olivas is hereby acquitted of the offense of falsification charged.

Costs de oficio.

The cash bond of accused Edwin Olivas is hereby cancelled and discharged and ordered released to him upon proper receipt thereof.

SO ORDERED.

In its judgment of conviction, the trial court found that Ines Chan's signature on the subject Release of Real Estate Mortgage was a forgery. In concluding that there was conspiracy among the three convicted accused, the trial court took into consideration the following circumstances: (1) the existence of the falsified Release of Real Estate Mortgage dated August 22, 1989; (2) the benefit which each of them obtained from the execution thereof, to wit: the petitioner's mortgage obligation to ANGENIZ was cancelled resulting in her obtaining a loan from Llorente, the latter taking a collateral free from any encumbrance, and Reyes getting her commission from the loan she brokered between the petitioner and Llorente; (3) the petitioner's presence in Baguio City on August 22, 1989 as testified to by Atty. Daniel Fariñas who notarized the second real estate mortgage document likewise dated August 22, 1989; (4) petitioner, more than Reyes, must necessarily be interested in the release of the mortgage on her property, she being its owner; (5) the claim of Llorente that she had no knowledge of the earlier mortgage of the property to ANGENIZ cannot be believed because of the annotation appearing on Tax Declaration No. 50047; (6) the testimony of Reyes that she was the one who presented the subject Release of Real Estate Mortgage for notarization was a declaration against her interest; (7) the choice of different lawyers to notarize the falsified Release of Real Estate Mortgage and the second Real Estate Mortgage in favor of Llorente; (8) Llorente presented the falsified document of release to the Register of Deeds for registration on August 22, 1989 and later withdrew the same on August 24, 1989; (9) the petitioner's maid Editha Solomon signed as a witness to the subject Release

of Real Estate Mortgage; and (10) the petitioner sold the property to Llorente despite the prohibition in her mortgage contract with ANGENIZ and the nonpayment of her indebtedness to the latter.

Of the three (3) convicted accused, only the petitioner and Llorente appealed to the CA in CA-G.R. CR No. 19817.

As stated at the outset hereof, the CA, in its assailed decision[23] of April 16, 2002, affirmed that of the trial court. Ruled the appellate court:

In fine, the Court finds that the prosecution has established the guilt of appellants beyond reasonable doubt of the crime of Falsification of Public Document defined under Article 171 of the Revised Penal Code and penalized under Article 172 thereof, with the penalty of prision correccional in its medium and maximum periods and a fine of not more than P5,000.00. We therefore find that the court a quo imposed the proper penalty after applying the Indeterminate Sentence Law.

Unable to accept her conviction, the petitioner has come to this Court via this petition for review, contending that the CA erred -

1

xxx in affirming the decision of the Trial Court in Criminal Case 7555-R;

2

xxx in failing to properly appreciate the facts of the case.

For her part, on May 10, 2002, Purita Llorente moved for a reconsideration of the CA decision. On account thereof, the Office of the Solicitor General (OSG), when asked to comment on this petition, stated that the assailed CA decision has not yet attained finality and accordingly prayed for the petition's dismissal on ground of prematurity. Upon the other hand, private complainant Inez Chan, through counsel, merely asked that the proceedings hereon be simply suspended or deferred.[24]

In her Manifestation[25] of September 6, 2002, the petitioner expressed conformity to the deferment of action on this petition. Subsequently, replying to the OSG's comment, the petitioner informed the Court that the pending motion for reconsideration of Llorente with the CA was denied by said court on September 12, 2002,[26] adding that Llorente has filed with this Court a Motion For Extension of Time to file Petition for Certiorari. A check, however, with the Docket Division of the Court reveals that no such motion for extension was filed by Llorente.

Hence, in our December 5, 2002 Resolution,[27] we merely noted the petitioner's reply to the OSG's comment. With no pleading having been filed by Llorente who evidently lost interest in contesting the CA decision, we shall now proceed to address the merit or lack of it of the instant petition.

Given the fact that the falsified character of the subject Release of Real Estate Mortgage is a non-issue in this case, the only question to be resolved herein is whether the petitioner is guilty of the crime charged in conspiracy with Purita Llorente and Aida Reyes, or, to be more precise, whether conspiracy was duly proven with respect to the petitioner.

We rule in the affirmative.

Prefaratorily, it must be emphasized that findings of facts of the appellate court are conclusive in this proceeding and it is on the basis thereof that this petition must be viewed.

Here, an examination of the CA's findings and of the records show that conspiracy has been duly established between the petitioner and the two other accused Llorente and Reyes in the commission of the offense charged.

We concur with the CA that conspiracy existed between the three (3), as shown by the following circumstances, to wit:

- There was a Release of Real Estate Mortgage dated August 22, 1989 which was never signed by Inez Chan, neither did she give her consent thereto;
- The said Release of Real Estate Mortgage was also signed by the maid of the petitioner in the person of Editha Solomon as witness to the execution of the document, and this fact clearly shows that the petitioner had something to do with the subject falsified document;
- The said Release of Real Estate Mortgage was presented by co-accused Aida Reyes to Atty. Amado Orden for notarization upon instructions of accused Purita Llorente, with co-accused Aida Reyes signing the same document as a witness thereto;
- Accused Aida Reyes admitted that Ines Chan was not present and she was the only one who presented the document for notarization;
- The said Release of Real Estate Mortgage was presented to the Assessor's Office by accused Aida Reyes, and consequently, the annotation on Tax Declaration No. 50047 was cancelled and a new Tax Declaration was issued in the name of accused Purita Llorente;
- As shown in the entries in the Daybook for Registration of Documents, the Register of Deeds of Baguio City received for registration two (2) documents both dated August 22, 1989, namely, Release of Real Estate Mortgage executed purportedly by Ines Chan in favor of the petitioner under Entry No. 5107, and a Mortgage executed by the petitioner in favor of accused Llorente under Entry No. 5108 and both documents were registered by accused Purita Llorente on August 31, 1989;
- The falsified Release of Real Estate Mortgage consequently benefited both the petitioner and accused Purita Llorente;
- Despite the petitioner's failure to pay ANGENIZ, she nevertheless sold the same property to accused Purita Llorente on February 6, 1990 without the consent of Angeniz & Co.;
- All the three accused admitted to have fraudulently undervalued the consideration of the property in the Deed of Sale between the petitioner and accused Llorente to reduce payment of the capital gains tax;
- Accused Purita Llorente offered to pay Inez Chan the amount of P100,000.00 in exchange for the release of the mortgage over the same property.[28]

Petitioner posits, however, that the CA grossly misappreciated facts and circumstances which otherwise would have elicited a conclusion that she was not a part of the conspiracy. Thus, the petitioner faults the CA as follows: (1) in overlooking the fact that notwithstanding the falsified Release of Real Estate Mortgage, her obligation to ANGENIZ still existed and she has never denied the same as she even negotiated with Chan for payment thereof as per Chan's testimony; (2) in failing to appreciate the fact that the civil case[29] she has filed for the rescission of the deed of absolute sale she executed in Llorente's favor on account of the latter's failure to comply with their collateral agreement regarding the payment of her (petitioner) remaining indebtedness with ANGENIZ, was ruled upon by the RTC of Baguio City, Branch 5,[30] in her (petitioner's) favor; (3) in citing as a fact that the petitioner sold the subject property to Llorente without the knowledge and consent of ANGENIZ contrary to the testimony of Chan herself during the hearing on January 23, 1992[31] that the latter already knew of and has ratified said sale; and (4) in disbelieving Reyes' testimony that the petitioner was not in Baguio City on August 22, 1989 simply because Reyes is a biased witness as she was the petitioner's wedding godmother, which is not true.

Petitioner submits that by reason of the foregoing, and since the evidence against her is purely circumstantial and

based on presumptions, she cannot be held liable as a participis criminis in the falsification of the subject Release of Real Estate Mortgage.

We are not persuaded.

To begin with, as the owner of the property subject of the falsified document, the petitioner clearly benefited therefrom. First, when she was able to obtain a loan from Llorente using said property as collateral without any encumbrance. To quote from the decision of the trial court:

x x x, by virtue of the falsified Release of Mortgage, [petitioner's] mortgage of her subject property to Angeniz was cancelled, and [she] was able to get a new loan from Llorente with the subject property as a collateral as Llorente was willing to lend if there was a collateral. The release of Mortgage benefited [the petitioner] therefore. (Words in brackets added.)

Indeed, the petitioner's request on Chan for a suspension of the foreclosure proceedings on the pretext that she will soon pay her loan with ANGENIZ is obviously understandable considering that she cannot anymore further alienate, encumber or mortgage her property once foreclosed; and Second, when the petitioner eventually sold the same property to Llorente receiving yet another sizeable amount from the latter. It is well to note at this point that the petitioner, despite receiving substantial sums of money on two instances from Llorente, still failed to pay her loan obligation with ANGENIZ

Apropos in this regard is the rule that in the absence of satisfactory explanation, one who is found in possession of, and who has used, a forged document is the forger and therefore, guilty of falsification.[32] Undoubtedly, the fact that the petitioner benefited and even profited from the falsified notarized Release of Real Estate Mortgage are strong indications that she participated in the falsification of the same document.

Besides, it cannot be said that the petitioner was totally innocent of or unaware of the falsification considering that, as shown by the evidence on record, she controlled every transaction regarding her property, like the mortgages she executed relative thereto and her subsequent sale thereof to Llorente. The circumstance that she prevailed in her civil suit against Llorente for the rescission of that sale does not necessarily mean that the petitioner had no hand in the execution of the falsified release of mortgage because the sale and the release were separate and distinct transactions. Likewise, even if Chan knew of the sale of the property to Llorente, such does not detract from the fact that the petitioner, Llorente and Reyes conspired to falsify Chan's signature in the same Release of Real Estate Mortgage, obviously to make it appear that Chan discharged the petitioner from her mortgage indebtedness to ANGENIZ.

As well, it is irrelevant whether or not Reyes was the petitioner's godmother. In disbelieving Reyes' testimony that the petitioner was not in Baguio City on August 22, 1989 when the subject Release of Real Estate Mortgage was executed, the two courts below gave more credence, and rightly so, to the testimony of Atty. Daniel Fariñas who notarized the second real estate mortgage, also dated August 22, 1989, that the petitioner and Llorente were in Baguio City on that date.

Then, too, the fact stands unrefuted that Editha Solomon who signed as a witness to the falsified document was a maid of the petitioner. It strains credulity to believe that a maid would be presented with such a document involving her employer's property and signed the same as a witness without the petitioner's knowledge and/or consent.

In any event, it is not correct for the petitioner to say that since there is no direct evidence linking her to the falsification, she cannot be held liable therefor. It is axiomatic that conspiracy may be shown through circumstantial evidence deduced from the mode and manner in which the offense was perpetrated or inferred from

the acts of the accused pointing to a joint purpose and design, a concerted action, and a community of interest.[33]

Here, the individual acts of the petitioner, Llorente and Reyes, when taken together as whole, showed that they were all acting in concert to achieve a common criminal design. Consider that the petitioner first mortgaged her property to ANGENIZ and despite the restriction against further encumbering the same without the latter's consent, she mortgaged it again to Llorente who would not accept it unless the prior existing mortgage is cancelled or released. Thus, the need to execute the fake Release of Real Estate Mortgage by falsifying Chan's signature thereon. Then, to make it appear that the petitioner and Llorente had no participation in the falsification, they engaged the services of Reyes whom they both know as in fact it was Reyes who introduced them to each other,[34] to have the falsified document notarized and recorded at the City Assessor's Office to effect the cancellation of the annotated existing prior mortgage to ANGENIZ. And to further eliminate any perceived participation on their part as to the falsification, the petitioner and Llorente intentionally timed the notarization and registration of the falsified document by Reyes on the same date, August 22, 1989, the very date they would be executing the second real estate mortgage conveniently at different places with different lawyers notarizing each document. Definitely, from the foregoing, the petitioner, Llorente and Reyes had one purpose: to fraudulently release the property from the existing mortgage in favor of ANGENIZ, thereby facilitating its subsequent mortgage and absolute sale to Llorente free from any existing incumbrance.

It may be so that there may not be any direct showing of linkage between the acts of the petitioner, Llorente and those of Reyes in having the falsified document notarized and registered. But the absence of linkage is more apparent than real. The very essence of conspiracy is that it exists where the separate acts committed, taken collectively, emanate from a concerted and associated action, albeit each circumstance, if considered separately, may not show confabulation. But where the apparent separate acts are linked together, the separate isolated acts can well conjure to a common design geared towards a common criminal purpose,[35] as in this case.

All told, we are convinced that the petitioner's guilt, in conspiracy with the two other accused, Reyes and Llorente, has been established beyond reasonable doubt.

WHEREFORE, the petition is DENIED and assailed CA decision is AFFIRMED.

Costs against the petitioner.

SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez, Corona and Azcuna, JJ., concur.

[1] Penned by Justice Josefina Guevara-Salonga and concurred in by Associate Justices Godardo A. Jacinto (ret.) and Eloy R. Bello, Jr. (ret.); Rollo, pp. 84-101.

[2] Original Records, pp. 560-583.

[3] Folder of Exhibits, Exh. "B," p. 203.

[4] Id. Exh. "B-2."

[5] Id. Exh. "A," pp. 199-201.

[6] Id. Exh. "B-3," p. 203.

[7] Id. par. 3, Exh. "A," p. 200.

[8] Id. Exh. "2," p. 377.

- [9] Id. Exh. "D," p. 263.
- [10] Id. Exhs. "P," p. 239.
- [11] Id. Exh. "O," p. 238.
- [12] Id. Exh. "R," pp. 241-242.
- [13] TSN, Jan. 16, 1992, p. 7.
- [14] Ibid.
- [15] Folder of Exhibits, Exh. "N," pp. 236-237.
- [16] TSN, Jan. 16, pp. 9-10.
- [17] Ibid.
- [18] Folder of Exhibits Exh. "8," p. 381.
- [19] Id. Exh. "E," p. 205.
- [20] Id. "D," pp. 375-376.
- [21] Original Record, p. 35.
- [22] Original Records, p. 583.
- [23] Rollo, pp. 100-101.
- [24] Id. at 153.
- [25] Id. at 174-175.
- [26] Id. at 180-181.
- [27] Id at last page.
- [28] Id. at 58-59.
- [29] Civil Case No. 2037-R.
- [30] Folder of Exhibits, Exh. "W."
- [31] TSN, p. 16.
- [32] *Sabiniano v. CA*, G.R. No. 76490, October 6, 1995, 249 SCRA 24, 34.
- [33] *People v. Ibanez*, G.R. No. 148627, April 28, 2004, 428 SCRA 146, 161.
- [34] TSN, Oct. 7, 1992, p. 4.
- [35] *Bagasao v. Sandiganbayan and the People of the Philippines*, G.R. Nos. L-53813-53818, Oct. 28, 1987, 155 SCRA 154.

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