NOE S. ANDAYA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 168486. June 27, 2006

Ponente: YNARES-SANTIAGO, J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-no-168486/

YNARES-SANTIAGO, J.:

This is a petition for review on certiorari from the September 29, 2004 Decision[1] of the Court of Appeals in CA-G.R. CR No. 26556, affirming the January 29, 2002 Decision[2] of the Regional Trial Court, Branch 104 of Quezon City in Criminal Case No. 92-36145, convicting petitioner Noe S. Andaya of falsification of private document, and the April 26, 2005 Resolution[3] denying the motion for reconsideration.

Complainant Armed Forces and Police Savings and Loan Association, Inc. (AFPSLAI) is a non-stock and non-profit association authorized to engage in savings and loan transactions. In 1986, petitioner Noe S. Andaya was elected as president and general manager of AFPSLAI. During his term, he sought to increase the capitalization of AFPSLAI to boost its lending capacity to its members. Consequently, on June 1, 1988, the Board of Trustees of AFPSLAI passed and approved Resolution No. RS-88-006-048 setting up a Finder's Fee Program whereby any officer, member or employee, except investment counselors, of AFPSLAI who could solicit an investment of not less than P100,000.00 would be entitled to a finder's fee equivalent to one percent of the amount solicited.

In a letter[4] dated September 1991, the Central Bank wrote Gen. Lisandro C. Abadia, then Chairman of the Board of Trustees, regarding the precarious financial position of AFPSLAI due to its alleged flawed management. As a result, Gen. Abadia requested the National Bureau of Investigation (NBI) to conduct an investigation on alleged irregularities in the operations of AFPSLAI which led to the filing of several criminal cases against petitioner, one of which is the instant case based on the alleged fraudulent implementation of the Finder's Fee Program.

On October 5, 1992, an information for estafa through falsification of commercial document was filed against petitioner, to wit:

> The undersigned accuses NOE S. ANDAYA of the crime of Estafa thru Falsification of Commercial Document, committed as follows:
>
> That on or about the 8[th] day of April, 1991 in Quezon City, Philippines, the above-named accused, with intent to gain, by means of deceit, false pretenses and falsification of commercial document, did then and there, wilfully, unlawfully and feloniously defraud the ARMED FORCES AND POLICE SAVINGS AND LOAN ASSOCIATION, INC., represented by its Chairman of the Board of Director[s], Gen. Lisandro C. Abadia, AFP, in the following manner, to wit: on the date and in the place aforementioned the said accused being then the President and General Manager of the Armed Forces and Police Savings and Loan Association, Inc., caused and approved the disbursement of the sum of P21,000.00, Philippine Currency, from the funds of the association, by then and there making it appear in Disbursement Voucher No. 58380 that said amount represented the 1% finder's fee of one DIOSDADO J. GUILLAS [Guilas]; when in truth and in fact accused

> knew fully well that there was no such payment to be made by the association as finder's fee; that by virtue of said falsification, said accused was able to encashed (sic) and received (sic) MBTC Check No. 583768 in the sum of P21,000.00, which amount once in his possession, misapplied, misappropriated and converted to his own personal use and benefit, to the damage and prejudice of the said offended party in the aforesaid sum of P21,000.00, Philippine Currency.
>
> CONTRARY TO LAW.[5] (Emphasis supplied)

The case was raffled to Branch 104 of the Regional Trial Court of Quezon City and docketed as Criminal Case No. 92-36145. On May 30, 1994, petitioner was arraigned[6] and pleaded not guilty to the charge, after which trial on the merits ensued.

The prosecution presented two witnesses, namely, Diosdado Guilas and Judy Balangue.

Guilas, a general clerk of AFPSLAI's Time Deposit Section, testified that on April 8, 1991, he was informed by Tini Gabriel and Julie Alabansa of the Treasury Department that there was a finder's fee in the amount of P21,000.00 in his name. Subsequently, Judy Balangue, an investment clerk of the Time Deposit Section, told him that the finder's fee was for petitioner. When Guilas went to petitioner's office to inform him about the finder's fee in his (Guilas') name, petitioner instructed him to collect the P21,000.00 and turn over the same to the latter. Guilas returned to the Treasury Department and signed Disbursement Voucher No. 58380[7] afterwhich he was issued Metrobank Check No. 683768[8] for P21,000.00. After encashing the check, he turned over the proceeds to petitioner. On cross-examination, Guilas admitted that there was no prohibition in placing the finder's fee under the name of a person who did not actually solicit the investment.

Balangue also testified that on April 3, 1991, petitioner instructed him to prepare Certificate of Capital Contribution Monthly No. 52178[9] in the name of Rosario Mercader for an investment in AFPSLAI in the amount of P2,100,000.00 and to inform Guilas that the finder's fee for the aforesaid investment will be placed in the latter's name. On cross-examination, Balangue confirmed that a P2,100,000.00 worth of investment from Rosario Mercader was deposited in AFPSLAI. He further acknowledged that the Finder's Fee Program did not prohibit the placing of another person's name as payee of the finder's fee.

The defense presented three witnesses, namely, Emerita Arevalo, Ernesto Hernandez and petitioner.

Arevalo, secretary of petitioner in AFPSLAI, explained that the finder's fee was for the P2,100,000.00 investment solicited by Ernesto Hernandez from Rosario Mercader. The finder's fee was placed in the name of Guilas upon request of Hernandez so that the same would not be reflected in his (Hernandez's) income tax return. She alleged that Guilas consented to the arrangement of placing the finder's fee in his (Guilas') name. She also claimed that there was no prohibition in the Finder's Fee Program regarding the substitution of the name of the solicitor as long as there was no double claim for the finder's fee over the same investment.

Hernandez, an associate member of AFPSLAI and vice president of Philippine Educational Trust Plan, Inc. (PETP Plans), testified that sometime in 1991, he was able to solicit from Rosario Mercader an investment of P2,100,000.00 in AFPSLAI. He also asked petitioner to place the finder's fee in the name of one of his employees so that he (Hernandez) would not have to report a higher tax base in his income tax return. On April 8, 1991, petitioner handed to him the finder's fee in the amount of P21,000.00.

Petitioner denied all the charges against him. He claimed that the P21,000.00 finder's fee was in fact payable by AFPSLAI because of the P2,100,000.00 investment of Rosario Mercader solicited by Ernesto Hernandez. He denied misappropriating the P21,000.00 finder's fee for his personal benefit as the same was turned over to Ernesto Hernandez who was the true solicitor of the aforementioned investment. Since the finder's fee was in fact

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

owed by AFPSLAI, then no damage was done to the association. The finder's fee was placed in the name of Guilas as requested by Hernandez in order to reduce the tax obligation of the latter. According to petitioner, Guilas consented to the whole setup.

Petitioner also claimed that Hernandez was an associate member of AFPSLAI because his application for membership was approved by the membership committee and the Board of Trustees and was in fact issued an I.D. There was no prohibition under the rules and regulation of the Finder's Fee Program regarding the substitution of the name of the solicitor with the name of another person. On cross-examination, petitioner claimed that he merely approved the substitution of the name of Hernandez with that of Guilas in the disbursement voucher upon the request of Hernandez. He brushed aside the imputation of condoning tax evasion by claiming that the issue in the instant proceedings was whether he defrauded AFPSLAI and not his alleged complicity in tax evasion.

After the defense rested its case, the prosecution presented two rebuttal witnesses, namely, Ma. Victoria Maigue and Ma. Fe Moreno.

Maigue, membership affairs office supervisor of AFPSLAI, testified that Hernandez was ineligible to become a member of AFPSLAI under sections 1 and 2 of Article II of the association's by-laws. However, she admitted that the application of Hernandez as member was approved by the membership committee.

Moreno, legal officer of AFPSLAI at the time of her testimony on January 25, 2000, stated that there are eight criminal cases pending against the petitioner in various branches of the Regional Trial Court of Quezon City. In one case decided by Judge Bacalla of Branch 216, petitioner was convicted of estafa through falsification involving similar facts as the instant case. She further stated that Hernandez was not a member of AFPSLAI under sections 1 and 2 of Article II of the by-laws. On cross-examination, she admitted that the case decided by Judge Bacalla convicting petitioner was on appeal with the Court of Appeals.

The defense dispensed with the presentation of Mercader in view of the stipulation of the prosecution on the fact that Mercader was a depositor of AFPSLAI and that she was convinced to invest in the association by Ernesto Hernandez.[10]

On June 20, 2001, the trial court rendered a Decision[11] convicting petitioner of falsification of private document. On July 5, 2001, petitioner filed a motion for new trial.[12] In an Order[13] dated December 20, 2001, the trial court ruled that the evidence submitted by petitioner in support of his motion was inadequate to conduct a new trial, however, in the interest of substantial justice, the case should still be reopened pursuant to Section 24,[14] Rule 119 of the Rules of Court in order to avoid a miscarriage of justice.

Petitioner proceeded to submit documentary evidence consisting of the financial statements of AFPSLAI from 1996 to 1999 to show that AFPSLAI did not suffer any damage from the payment of the P21,000.00 finder's fee. He likewise offered the testimony of Paterno Madet, senior vice president of AFPSLAI, who testified that he was personally aware that Rosario Mercader invested P2,100,000.00 in AFPSLAI; that Hernandez was a member of AFPSLAI and was the one who convinced Mercader to invest; that the finder's fee was placed in the name of Guilas; that petitioner called him to grant the request of Hernandez for the finder's fee to be placed in the name of one of the employees of AFPSLAI; that there was no policy which prohibits the placing of the name of the solicitor of the investment in the name of another person; that the substitution of the name of Hernandez with that of Guilas was approved by petitioner but he (Madet) was the one who approved the release of the disbursement voucher.

On January 29, 2002, the trial court rendered the assailed Decision convicting petitioner of falsification of private document based on the following findings of fact: Hernandez solicited from Rosario Mercader an investment of

P2,100,000.00 for AFPSLAI; Hernandez requested petitioner to place the finder's fee in the name of another person; petitioner caused it to appear in the disbursement voucher that Guilas solicited the aforesaid investment; the voucher served as the basis for the issuance of the check for P21,000.00 representing the finder's fee for the investment of Mercader; and Guilas encashed the check and turned over the money to petitioner who in turn gave it to Hernandez.

The trial court ruled that all the elements of falsification of private document were present. First, petitioner caused it to appear in the disbursement voucher, a private document, that Guilas, instead of Hernandez, was entitled to a P21,000.00 finder's fee. Second, the falsification of the voucher was done with criminal intent to cause damage to the government because it was meant to lower the tax base of Hernandez and, thus, evade payment of taxes on the finder's fee.

Petitioner moved for reconsideration but was denied by the trial court in an Order[15] dated May 13, 2002. On appeal, the Court of Appeals affirmed in toto the decision of the trial court and denied petitioner's motion for reconsideration; hence, the instant petition challenging the validity of his conviction for the crime of falsification of private document.

Preliminarily, petitioner contends that the Court of Appeals contradicted the ruling of the trial court. He claims that the Court of Appeals stated in certain portions of its decision that petitioner was guilty of estafa through falsification of commercial document whereas in the trial court's decision petitioner was convicted of falsification of private document.

A close reading of the Court of Appeals' decision shows that the alleged points of contradiction were the result of inadvertence in the drafting of the same. Read in its entirety, the decision of the Court of Appeals affirmed in toto the decision of the trial court and, necessarily, it affirmed the conviction of petitioner for the crime of falsification of private document and not of estafa through falsification of commercial document.

In the main, petitioner implores this Court to review the pleadings he filed before the lower courts as well as the evidence on record on the belief that a review of the same will prove his innocence. However, he failed to specify what aspects of the factual and legal bases of his conviction should be reversed.

Time honored is the principle that an appeal in a criminal case opens the whole action for review on any question including those not raised by the parties.[16] After a careful and thorough review of the records, we are convinced that petitioner should be acquitted based on reasonable doubt.

The elements of falsification of private document under Article 172, paragraph 2[17] in relation to Article 171[18] of the Revised Penal Code are: (1) the offender committed any of the acts of falsification under Article 171 which, in the case at bar, falls under paragraph 2 of Article 171, i.e., causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate; (2) the falsification was committed on a private document; and (3) the falsification caused damage or was committed with intent to cause damage to a third party.

Although the public prosecutor designated the offense charged in the information as estafa through falsification of commercial document, petitioner could be convicted of falsification of private document, had it been proper, under the well-settled rule that it is the allegations in the information that determines the nature of the offense and not the technical name given by the public prosecutor in the preamble of the information. We explained this principle in the case of U.S. v. Lim San[19] in this wise:

> From a legal point of view, and in a very real sense, it is of no concern to the accused what is the technical name of the crime of which he stands charged. It in no way aids him in a defense on the merits. x x x That to which his attention should be directed, and in which he, above all things else, should be most interested, are the

> facts alleged. The real question is not did he commit a crime given in the law some technical and specific name, but did he perform the acts alleged in the body of the information in the manner therein set forth. x x x The real and important question to him is, "Did you perform the acts alleged in the manner alleged?" not, "Did you commit a crime named murder?" If he performed the acts alleged, in the manner stated, the law determines what the name of the crime is and fixes the penalty therefor. x x x If the accused performed the acts alleged in the manner alleged, then he ought to be punished and punished adequately, whatever may be the name of the crime which those acts constitute.[20]

The facts alleged in the information are sufficient to constitute the crime of falsification of private document. Specifically, the allegations in the information can be broken down into the three aforestated essential elements of this offense as follows: (1) petitioner caused it to appear in Disbursement Voucher No. 58380 that Diosdado Guillas was entitled to a finder's fee from AFPSLAI in the amount of P21,000.00 when in truth and in fact no finder's fee was due to him; (2) the falsification was committed on Disbursement Voucher No. 58380; and (3) the falsification caused damage to AFPSLAI in the amount of P21,000.00.

The first element of the offense charged in the information was proven by the prosecution. The testimonies of the prosecution witnesses, namely, Diosdado Guilas and Judy Balangue, as well as the presentation of Disbursement Voucher No. 58380 established that petitioner caused the preparation of the voucher in the name of Guilas despite knowledge that Guilas was not entitled to the finder's fee. Significantly, petitioner admitted his participation in falsifying the voucher when he testified that he authorized the release of the voucher in the name of Guilas upon the request of Ernesto Hernandez. While petitioner did not personally prepare the voucher, he could be considered a principal by induction, had his conviction been proper, since he was the president and general manager of AFPSLAI at the time so that his employees merely followed his instructions in preparing the falsified voucher.

The second element of the offense charged in the information, i.e., the falsification was committed in Disbursement Voucher No. 58380, a private document, is likewise present. It appears that the public prosecutor erroneously characterized the disbursement voucher as a commercial document so that he designated the offense as estafa through falsification of commercial document in the preamble of the information. However, as correctly ruled by the trial court,[21] the subject voucher is a private document only; it is not a commercial document because it is not a document used by merchants or businessmen to promote or facilitate trade or credit transactions[22] nor is it defined and regulated by the Code of Commerce or other commercial law.[23] Rather, it is a private document, which has been defined as a deed or instrument executed by a private person without the intervention of a public notary or of other person legally authorized, by which some disposition or agreement is proved, evidenced or set forth,[24] because it acted as the authorization for the release of the P21,000.00 finder's fee to Guilas and as the receipt evidencing the payment of this finder's fee.

While the first and second elements of the offense charged in the information were satisfactorily established by the prosecution, it is the third element which is decisive in the instant case. In the information, it was alleged that petitioner caused damage in the amount of P21,000.00 to AFPSLAI because he caused it to appear in the disbursement voucher that Diosdado Guilas was entitled to a P21,000.00 finder's fee when in truth and in fact AFPSLAI owed no such sum to him. However, contrary to these allegations in the information, petitioner was able to prove that AFPSLAI owed a finder's fee in the amount of P21,000.00 although not to Guilas but to Ernesto Hernandez.

It was positively shown that Hernandez was able to solicit a P2,100,000.00 worth of investment for AFPSLAI from Rosario Mercader which entitled him to a finder's fee equivalent to one percent of the amount solicited (i.e., P21,000.00) under the Finder's Fee Program. The documentary evidence consisting of the Certificate of Capital Contribution Monthly No. 52178[25] which was presented by the prosecution categorically stated that Rosario

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

Mercader deposited P2,100,000.00 worth of investment in AFPSLAI. In fact, Rosario Mercader was no longer presented as a defense witness in view of the stipulation by the prosecution on the fact that Mercader was a depositor of AFPSLAI and that Hernandez was the one who convinced her to make such deposit.[26] Moreover, the defense showed that the disbursement voucher was merely placed in the name of Guilas upon the request of Hernandez so that he would have a lower tax base. Thus, after Guilas received the P21,000.00 from AFPSLAI, he gave the money to petitioner who in turn surrendered the amount to Hernandez.

It was further established that Hernandez was an associate member of AFPSLAI and, thus, covered by the Finder's Fee Program. The prosecution tried to cast doubt on the validity of Hernandez's membership in the association but it merely relied on the unsubstantiated claims of its two rebuttal witnesses, namely, Ma. Victoria Maigue, membership affairs office supervisor of AFPSLAI and Ma. Fe Moreno, legal officer of AFPSLAI, who claimed that Hernandez was disqualified from being an associate member under AFPSLAI's by-laws. However, except for a recital of certain provisions of the by-laws, they failed to support their claims with documentary evidence clearly showing that Hernandez was disqualified from being an associate member. Significantly, Maigue admitted on cross-examination that Hernandez's membership was approved by AFPSLAI's membership committee and was issued an AFPSLAI I.D. card.[27] Documentary evidence consisting of Hernandez's I.D. card as well as the oral testimonies of petitioner, Arevalo and Hernandez, and the admission of Maigue on cross-examination, support the claim of the defense that Hernandez was an associate member of AFPSLAI.

Considering that Hernandez was able to solicit a P2,100,000.00 investment from Mercader, it follows that he was entitled to receive the finder's fee in the amount of P21,000.00. AFPSLAI suffered no damage because it really owed the P21,000.00 finder's fee to Hernandez albeit the sum was initially paid to Guilas and only later turned over to Hernandez. Clearly then, the third essential element of the offense as alleged in the information, i.e., the falsification caused damage to AFPSLAI in the amount of P21,000.00, was not proven by the prosecution.

In all criminal prosecutions, the burden of proof is on the prosecution to establish the guilt of the accused beyond reasonable doubt.[28] It has the duty to prove each and every element of the crime charged in the information to warrant a finding of guilt for the said crime or for any other crime necessarily included therein. However, in the case at bar, the prosecution failed to prove the third essential element of the crime charged in the information. Thus, petitioner should be acquitted due to insufficiency of evidence.

The trial court convicted petitioner of falsification of private document, while conceding that AFPSLAI suffered no damage, however, the court reasoned that the third essential element of falsification of private document was present because the falsification of the voucher was done with criminal intent to cause damage to the government considering that its purpose was to lower the tax base of Hernandez and, thus, allow him to evade payment of taxes on the finder's fee.

We find ourselves unable to agree with this ratiocination of the trial court because it violates the constitutional right[29] of petitioner to be informed of the nature and cause of the accusation against him. As early as the 1904 case of U.S. v. Karelsen,[30] the rationale of this fundamental right of the accused was already explained in this wise:

> The object of this written accusation was – First. To furnish the accused with such a description of the charge against him as will enable him to make his defense; and second, to avail himself of his conviction or acquittal for protection against a further prosecution for the same cause; and third, to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had. (United States vs. Cruikshank, 92 U.S. 542.) In order that this requirement may be satisfied, facts must be stated, not conclusions of law. Every crime is made up of certain acts and intent; these must be set forth in the complaint with reasonable particularity of time, place, names (plaintiff and defendant), and circumstances. In

> short, the complaint must contain a specific allegation of every fact and circumstances necessary to constitute the crime charged.[31] (Emphasis supplied)

It is fundamental that every element constituting the offense must be alleged in the information. The main purpose of requiring the various elements of a crime to be set out in the information is to enable the accused to suitably prepare his defense because he is presumed to have no independent knowledge of the facts that constitute the offense.[32] The allegations of facts constituting the offense charged are substantial matters and an accused's right to question his conviction based on facts not alleged in the information cannot be waived.[33] No matter how conclusive and convincing the evidence of guilt may be, an accused cannot be convicted of any offense unless it is charged in the information on which he is tried or is necessarily included therein.[34] To convict him of a ground not alleged while he is concentrating his defense against the ground alleged would plainly be unfair and underhanded.[35] The rule is that a variance between the allegation in the information and proof adduced during trial shall be fatal to the criminal case if it is material and prejudicial to the accused so much so that it affects his substantial rights.[36]

Thus, in Alonto v. People,[37] Dico v. Court of Appeals[38] and Ongson v. People,[39] we acquitted the accused for violation of Batas Pambansa Bilang 22 ("The Bouncing Checks Law") because there was a variance between the identity and date of issuance of the check alleged in the information and the check proved by the prosecution during trial:

> This Court notes, however, that under the third count, the information alleged that petitioner issued a check dated May 14, 1992 whereas the documentary evidence presented and duly marked as Exhibit "I" was BPI Check No. 831258 in the amount of P25,000 dated April 5, 1992. Prosecution witness Fernando Sardes confirmed petitioner's issuance of the three BPI checks (Exhibits "G," "H," and "I"), but categorically stated that the third check (BPI Check No. 831258) was dated May 14, 1992, which was contrary to that testified to by private complainant Violeta Tizon, i.e., BPI check No. 831258 dated April 5, 1992. In view of this variance, the conviction of petitioner on the third count (Criminal Case No. Q-93-41751) cannot be sustained. It is on this ground that petitioner's fourth assignment of error is tenable, in that the prosecution's exhibit, i.e., Exhibit "I" (BPI Check No. 831258 dated April 5, 1992 in the amount of P25,000) is excluded by the law and the rules on evidence. Since the identity of the check enters into the first essential element of the offense under Section 1 of B.P. 22, that is, that a person makes, draws or issues a check on account or for value, and the date thereof involves its second element, namely, that at the time of issue the maker, drawer or issuer knew that he or she did not have sufficient funds to cover the same, there is a violation of petitioner's constitutional right to be informed of the nature of the offense charged in view of the aforesaid variance, thereby rendering the conviction for the third count fatally defective.[40] (Underscoring supplied)

Similarly, in the case of Burgos v. Sandiganbayan,[41] we upheld the constitutional right of the accused to be informed of the accusation against him in a case involving a variance between the means of committing the violation of Section 3(e) of R.A. 3019 alleged in the information and the means found by the Sandiganbayan:

> Common and foremost among the issues raised by petitioners is the argument that the Sandiganbayan erred in convicting them on a finding of fact that was not alleged in the information. They contend that the information charged them with having allowed payment of P83,850 to Ricardo Castañeda despite being aware and knowing fully well that the surveying instruments were not actually repaired and rendered functional/operational. However, their conviction by the Sandiganbayan was based on the finding that the surveying instruments were not repaired in accordance with the specifications contained in the job orders.
>
> x x x x
>
> In criminal cases, where the life and liberty of the accused is at stake, due process requires that the accused be informed of the nature and cause of the accusation against him. An accused cannot be convicted of an offense

> unless it is clearly charged in the complaint or information. To convict him of an offense other than that charged in the complaint or information would be a violation of this constitutional right.
>
> The important end to be accomplished is to describe the act with sufficient certainty in order that the accused may be appraised of the nature of the charge against him and to avoid any possible surprise that may lead to injustice. Otherwise, the accused would be left in the unenviable state of speculating why he is made the object of a prosecution.
>
> x x x x
>
> There is no question that the manner of commission alleged in the information and the act the Sandiganbayan found to have been committed are both violations of Section 3(e) of R.A. 3019. Nonetheless, they are and remain two different means of execution and, even if reference to Section 3(e) of R.A. 3019 has been made in the information, appellants' conviction should only be based on that which was charged, or included, in the information. Otherwise, there would be a violation of their constitutional right to be informed of the nature of the accusation against them.
>
> In Evangelista v. People, a judgment of conviction by the Sandiganbayan, for violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act, was reversed by the Court on the ground that accused was made liable for acts different from those described in the information. The accused therein was convicted on the finding that she failed to identify with certainty in her certification the kinds of taxes paid by Tanduay Distillery, Inc., although the information charged her with falsifying said certificate. The Court said that, constitutionally, the accused has a right to be informed of the nature and cause of the accusation against her. To convict her of an offense other than that charged in the complaint or information would be a violation of this constitutional right.
>
> Contrary to the stand of the prosecution, the allegations contained in the information and the findings stated in the Sandiganbayan decision are not synonymous. This is clearly apparent from the mere fact that the defenses applicable for each one are different. To counter the allegations contained in the information, petitioners only had to prove that the instruments were repaired and rendered functional/operational. Under the findings stated in the Sandiganbayan decision, petitioners' defense would have been to show not only that the instruments were repaired, but were repaired in accordance with the job order.
>
> x x x x
>
> This is not to say that petitioners cannot be convicted under the information charged. The information in itself is valid. It is only that the Sandiganbayan erred in convicting them for an act that was not alleged therein. x x x.[42] (Underscoring supplied)

As in the Burgos case, the information in the case at bar is valid, however, there is a variance between the allegation in the information and proof adduced during trial with respect to the third essential element of falsification of private document, i.e., the falsification caused damage or was committed with intent to cause damage to a third party. To reiterate, petitioner was charged in the information with causing damage to AFPSLAI in the amount of P21,000.00 because he caused it to appear in the disbursement voucher that Guilas was entitled to a P21,000.00 finder's fee when in truth and in fact AFPSLAI owed no such amount to Guilas. However, he was convicted by the trial court of falsifying the voucher with criminal intent to cause damage to the government because the trial court found that petitioner's acts were designed to lower the tax base of Hernandez and aid the latter in evading payment of taxes on the finder's fee.

We find this variance material and prejudicial to petitioner which, perforce, is fatal to his conviction in the instant case. By the clear and unequivocal terms of the information, the prosecution endeavored to prove that the falsification of the voucher by petitioner caused damage to AFPSLAI in the amount of P21,000.00 and not that the falsification of the voucher was done with intent to cause damage to the government. It is apparent that this

variance not merely goes to the identity of the third party but, more importantly, to the nature and extent of the damage done to the third party. Needless to state, the defense applicable for each is different.

More to the point, petitioner prepared his defense based precisely on the allegations in the information. A review of the records shows that petitioner concentrated on disproving that AFPSLAI suffered damage for this was the charge in the information which he had to refute to prove his innocence. As previously discussed, petitioner proved that AFPSLAI suffered no damage inasmuch as it really owed the finder's fee in the amount of P21,000.00 to Hernandez but the same was placed in the name of Guilas upon Hernandez's request. If we were to convict petitioner now based on his intent to cause damage to the government, we would be riding roughshod over his constitutional right to be informed of the accusation because he was not forewarned that he was being prosecuted for intent to cause damage to the government. It would be simply unfair and underhanded to convict petitioner on this ground not alleged while he was concentrating his defense against the ground alleged.

The surprise and injustice visited upon petitioner becomes more evident if we take into consideration that the prosecution never sought to establish that petitioner's acts were done with intent to cause damage to the government in that it purportedly aided Hernandez in evading the payment of taxes on the finder's fee. The Bureau of Internal Revenue was never made a party to this case. The income tax return of Hernandez was, likewise, never presented to show the extent, if any, of the actual damage to the government of the supposed under declaration of income by Hernandez. Actually, the prosecution never tried to establish actual damage, much less intent to cause damage, to the government in the form of lost income taxes. There was here no opportunity for petitioner to object to the evidence presented by the prosecution on the ground that the evidence did not conform to the allegations in the information for the simple reason that no such evidence was presented by the prosecution to begin with.

Instead, what the trial court did was to deduce intent to cause damage to the government from the testimony of petitioner and his three other witnesses, namely, Arevalo, Hernandez and Madet, that the substitution of the names in the voucher was intended to lower the tax base of Hernandez to avoid payment of taxes on the finder's fee. In other words, the trial court used part of the defense of petitioner in establishing the third essential element of the offense which was entirely different from that alleged in the information. Under these circumstances, petitioner obviously had no opportunity to defend himself with respect to the charge that he committed the acts with intent to cause damage to the government because this was part of his defense when he explained the reason for the substitution of the names in the voucher with the end goal of establishing that no actual damage was done to AFPSLAI. If we were to approve of the method employed by the trial court in convicting petitioner, then we would be sanctioning the surprise and injustice that the accused's constitutional right to be informed of the nature and cause of the accusation against him precisely seeks to prevent. It would be plain denial of due process.

In view of the foregoing, we rule that it was error to convict petitioner for acts which purportedly constituted the third essential element of the crime but which were entirely different from the acts alleged in the information because it violates in no uncertain terms petitioner's constitutional right to be informed of the nature and cause of the accusation against him.

No doubt tax evasion is a deplorable act because it deprives the government of much needed funds in delivering basic services to the people. However, the culpability of petitioner should have been established under the proper information and with an opportunity for him to adequately prepare his defense. It is worth mentioning that the public prosecutor has been apprised of petitioner's defense in the counter-affidavit[43] that he filed before the NBI. He claimed there that AFPSLAI really owed the P21,000.00 finder's fee not to Guilas but to Hernandez and that the finder's fee was placed in the name of Guilas under a purported financial arrangement between petitioner and Guilas. Yet in his Resolution[44] dated September 14, 1992, the public prosecutor disregarded petitioner's

defense and proceeded to file the information based on the alleged damage that petitioner caused to AFPSLAI in the amount of P21,000.00 representing unwarranted payment of finde's fee.[45] During the trial proper, the prosecution was again alerted to the fact that AFPSLAI suffered no actual damage and that the substitution of the names in the voucher was designed to aid Hernandez in evading the payment of taxes on the finder's fee. This was shown by no less than the prosecution's own documentary evidence – the Certificate of Capital Contribution Monthly No. 52178 in the amount of P2,100,000.00 issued to Rosario Mercader which was prepared and identified by the prosecution witness, Judy Balangue. Later on, the testimonies of the defense witnesses, Arevalo, Hernandez, Madet and petitioner, clearly set forth the reasons for the substitution of the names in the disbursement voucher. However, the prosecution did not take steps to seek the dismissal of the instant case and charge petitioner and his cohorts with the proper information before judgment by the trial court as expressly allowed under Section 19,[46] Rule 119 of the Rules of Court.[47] Instead, the prosecution proceeded to try petitioner under the original information even though he had an adequate defense against the offense charged in the information. Regrettably, these mistakes of the prosecution can only benefit petitioner.

In closing, it is an opportune time to remind public prosecutors of their important duty to carefully study the evidence on record before filing the corresponding information in our courts of law and to be vigilant in identifying and rectifying errors made. Mistakes in filing the proper information and in the ensuing prosecution of the case serve only to frustrate the State's interest in enforcing its criminal laws and adversely affect the administration of justice.

WHEREFORE, the petition is GRANTED. The September 29, 2004 Decision and April 26, 2005 Resolution of the Court Appeals in CA-G.R. CR No. 26556 are REVERSED and SET ASIDE. Petitioner is ACQUITTED based on reasonable doubt. The Bail Bond is CANCELLED.

SO ORDERED.

Panganiban, C.J., (Chairperson), Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

---

[1] Rollo, pp. 82-100. Penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Roberto A. Barrios and Vicente S.E. Veloso.

[2] Id. at 25-61. Penned by Judge Thelma A. Ponferrada.

[3] Id. at 16-18.

[4] Records, pp. 44-47.

[5] Id. at 1-2.

[6] Id. at 116.

[7] Id. at 181.

[8] Id. at 182.

[9] Id. at 186.

[10] Id. at 320.

[11] Id. at 389-407. Penned by Judge Thelma A. Ponferrada.

[12] Id. at 411-413.

[13] Id. at 460-461.

[14] SEC. 24. Reopening. At any time before finality of the judgment of conviction, the judge may, motu proprio or upon motion, with hearing in either case, reopen the proceedings to avoid a miscarriage of justice. The proceedings shall be terminated within thirty (30) days from the order granting it.

[15] Rollo, pp. 520-521.

[16] People v. Yam-id, 368 Phil. 131, 137 (1999).

[17] Art. 172. Falsification by private individuals and use of falsified documents. The penalty of prisión correccional in its medium and maximum periods and a fine of not more than 5,000 pesos shall be imposed upon:

> x x x x
>
> 2. Any person who, to the damage of a third party, or with the intent to cause such damage, shall in any private document commit any of the acts of falsification enumerated in the next preceding article.
>
> x x x x.

[18] Art. 171. Falsification by public officer, employee or notary or ecclesiastic minister. — The penalty of prisión mayor and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

- Counterfeiting or imitating any handwriting, signature or rubric;

- Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;

- Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them;

- Making untruthful statements in a narration of facts;

- Altering true dates;

- Making any alteration or intercalation in a genuine document which changes its meaning;

- Issuing in an authenticated form a document purporting to be a copy of an original document when no such original exits, or including in such copy a statement contrary to, or different from, that of the genuine original; or

- Intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book.

The same penalty shall be imposed upon any ecclesiastical minister who shall commit any of the offenses enumerated in the preceding paragraph of this article, with respect to any record or document of such character that its falsification may affect the civil status of persons.

[19] 17 Phil. 273 (1910).

[20] Id. at 278-279.

[21] Citing People v. Francisco, C.A. No. 05130-41-CR, August 23, 1966, 64 O.G. 537, 541, cited in Luis B. Reyes, THE REVISED PENAL CODE, Book II (14[th] ed., 1998), p. 234. In People v. Francisco, the Court of Appeals ruled that "the cash disbursement vouchers here in question are not negotiable instruments nor are they defined and regulated by the Code of Commerce. They are nothing more than receipts evidencing payment to borrowers of the loans extended to them and as such are private documents only."

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

[22] Monteverde v. People, 435 Phil. 906, 921 (2002), citing Luis B. Reyes, THE REVISED PENAL CODE, Book II (14[th] ed., 1998), p. 236, citing People v. Lizares, C.A., 65 O.G. 7174.

[23] Luis B. Reyes, THE REVISED PENAL CODE, Book II (14[th] ed., 1998), p. 235, citing People v. Co Beng, C.A., 40 O.G. 1913.

[24] U.S. v. Orera, 11 Phil. 596, 597 (1907).

[25] Records, p. 186.

[26] Id. at 320.

[27] TSN, July 20, 1999, pp. 12-13, 16.

[28] People v. Caiñgat, 426 Phil. 782, 792 (2002).

[29] CONSTITUTION, Article III, Section 14(2).

[30] 3 Phil. 223 (1904).

[31] Id. at 226.

[32] Balitaan v. Court of First Instance of Batangas, Branch 11, 201 Phil. 311, 323 (1982).

[33] Burgos v. Sandiganbayan, 459 Phil. 794, 810 (2003).

[34] U.S. v. Campo, 23 Phil. 368, 371 (1912).

[35] People v. Pailano, G.R. No. 43602, January 31, 1989, 169 SCRA 649, 654.

[36] 41 Am Jur 2d § 259, pp. 863-864.

[37] G.R. No. 140078, December 9, 2004, 445 SCRA 624.

[38] G.R. No. 141669, February 28, 2005, 452 SCRA 441, 454-456.

[39] G.R. No. 156169, August 12, 2005, 466 SCRA 656, 669-671.

[40] Alonto v. People, supra at 640-641.

[41] Supra note 34.

[42] Id. at 804-810.

[43] Records, pp. 19-20.

[44] Id. at 3-7.

[45] The public prosecutor reasoned thus: "We cannot give credence to the protestation of witness for respondent[,] Hernandez[,] that he was able to convince and solicit money from Mrs. Rosario Mercader. We may still believe this if it were a transaction done singly or a couple of times, but the records show that this has become a plan, a scheme through deceitful means to obtain money thus through the years caused a drain to AFPSLAI of its much needed funding. Because of this, Central Bank of the AFPSLAI commenting adversely upon respondent's actuations in allowing the dissipation of the Association's assets thus resulting in a few years of its total collapse. Mrs. Mercader was not called upon to explain if she really was an investor. In cases where corroboration is required, it must be done, otherwise the party will lose his cause where the testimony of a witness is contradicted and the fact sought to be proved is important, corroboration is necessary x x x."

Study hands-free: podcast-style lessons with read-along highlighting - batas.org

[46] SEC. 19. When mistake has been made in charging the proper offense. — When it becomes manifest at any time before judgment that a mistake has been made in charging the proper offense and the accused cannot be convicted of the offense charged or of any other offense necessarily included therein, the accused shall not be discharged if there appears to be good cause to detain him. In such case, the court shall commit the accused to answer for the proper offense and dismiss the original case upon the filing of the proper information.

[47] See People v. Uba, 99 Phil. 134 (1956).

Turn this case into an audio lecture - facts, issues, ruling and doctrine - at batas.org

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.