

JOSEPH HELMUTH, JR., PETITIONER, VS. PEOPLE OF THE PHILIP-PINES AND SANDIGANBAYAN, RESPONDENTS.

G.R. No. 57068. March 15, 1982

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

In his petition, JOSEPH HELMUTH, JR. prays that the March 27, 1981, decision of the Sandiganbayan convicting him of falsification of public documents be set aside and that he be acquitted.

Helmuth together with FERNANDO HERBUELA and SILVERIO VILLAMOR were charged in the Sandiganbayan for the crime of falsification of public documents in an information which reads as follows:

"That in or about and during the period comprised between January 18, 1977 to January 20, 1977, both dates inclusive, in the City of Manila, Philippines, the said accused Joseph Helmuth, Jr., being then the Superintendent of the Manila South Cemetery and, therefore, an official/employee of the City Government of Manila, taking advantage of his said official position which carried with it the duty, among others, of allocating burial lots in the Manila South Cemetery in accordance with the pro-visions of City ordinances and pertinent rules and regulations on the matter, conspiring and confederating with the accused Fernando Herbuela and Silverio Villamor, who are private individuals, and two other unidenti-fied persons, whose true names and where-about are still unknown, and mutually help-ing one another, with intent to prejudice one Aquilina Reyes Vda. de Ibarra, did then and there wilfully, unlawfully, and felon-iously commit acts of falsification on an 'Application for Permit to Disinter' together with an 'Affidavit of Transfer of Rights' over a burial lot, more specifically described as Grave 8, Special Section 12, Lot 39 in the Manila South Cemetery, which documents were submitted to and now form part of the public records in the files of the Manila South Cemetery and, therefore, public and/or official documents, by then and there affixing, forging and falsifying, or causing to be affixed, forged and falsified the sig-nature of Aquilina Reyes Vda. de Ibarra on the aforesaid documents, thereby making it appear, as in fact it did appear that the said Aquilina Reyes Vda. de Ibarra had executed and affixed her signature on the said 'Application for Permit to Disinter' and 'Affidavit of Transfer of Rights', or otherwise intervened and/or participated in the execution and signing of said documents, when in truth and in fact, as the accused very well knew, the said Aquilina Reyes Vda. de Ibarra never executed and signed the said documents, neither did she authorize the said accused, or anybody else, to execute and/or sign her name thereon; that once the said documents were falsified in the manner above setforth, the said accused submitted the same with the Office of the Manila South Cemetery, consequently resulting in the cancellation of the proprietary rights of said Aquilina Reyes Vda. de Ibarra over Grave 8, Special Section 12, Lot 39 in the Manila South Cemetery where the remains of her late husband, Silvestre Ibarra, had been interred, to the pre-judice of said Aquilina Reyes Vda. de Ibarra and to public interests."

When Helmuth was tried, only Silverio Villamor was tried with him; Fernando Herbuela was then at large.

In a decision penned by Presiding Justice Manuel R. Pamaran, Silverio Villamor was ACQUITTED but Helmuth was CONVICTED on purely circumstantial evidence. In the words of the decision: "The record is concededly

devoid of evidence directly pointing to anyone of the three accused — Helmuth, Herbuela and Villamor — as the author or authors of the forgeries."

Thus the petitioner would have the judgment against him set aside because, "The circumstantial evidence relied upon by the respondent court in convicting the petitioner are in variance with the facts on record and immaterial to the issue, hence, insufficient to support conviction." (p. 10, Rollo.)

Commenting on the petition, the Solicitor General recommends that it be dismissed for lack of merit.

Before We could act on Helmuth's petition, he filed a supplemental petition wherein he submitted two (2) affidavits of Fernando Herbuela who was at large when Helmuth and Villamor were tried. The affidavits are dated October 1, 1980, and November 6, 1981; they exculpate Helmuth of the crime for which he was convicted. Helmuth prays that the affidavits be considered in granting his prayer for acquittal.

We asked the Solicitor General to comment on the supplemental petition and that officer correctly states that: "the affidavits of Herbuela do not in any way improve the situation of petitioner because said affidavits have no probative value for being hearsay evidence. They were not duly authenticated and the affiant was not subjected to cross-examination to test his credibility and observe his demeanor. Furthermore, said affidavits were not presented during the trial and therefore cannot be accorded admissibility." (p. 96, Rollo.)

The last pleading in the Rollo is a motion to admit a decision of the Sandiganbayan ACQUITTING Fernando Herbuela of the charge levelled against him "on reasonable doubt and/or insufficiency of evidence." Thus petitioner Helmuth is the only one of the three who has been found guilty and on the basis of circumstantial evidence only.

We believe that the affidavits of Herbuela are sufficiently significant and could result in the acquittal of Helmuth if they are submitted in the proper proceedings. Petitioner's counsel who does not appear very experienced has urged Us to consider the affidavits in order to reverse the judgment of conviction. This We cannot do for the reasons given by the Solicitor General. But We can brush aside technicalities and consider the supplemental petition as a motion for new trial. Herbuela's affidavit of November 6, 1981, was executed after Helmuth was convicted and obviously was not available during his trial; the other affidavit although dated October 1, 1980, does not appear to have been available during the trial because the affiant was at large.

WHEREFORE, in the interest of justice, the decision of the Sandiganbayan convicting the petitioner is hereby set aside; the court a quo is ordered to hold a new trial on the newly discovered and such other evidence as it may allow, and together with the evidence already on record shall render another decision. No costs.

SO ORDERED.

Barredo, Makasiar, Aquino, Concepcion, Jr., Fernandez, Guerrero, De Castro, Melencio-Herrera, Plana, and Escolin, JJ., concur.

Fernando, C.J., concurs with J. Teehankee's vote.

Ericta, J., no part.

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