

ALFREDO R. CORNEJO, SR., PETITIONER, VS. THE HON. SANDIGANBAYAN, RESPONDENT.*G.R. No. 58831. July 31, 1987*

Ponente: FERNAN, J.

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Petitioner Alfredo R. Cornejo, Sr. seeks a review on certiorari of the decision dated September 9, 1981 of the Sandiganbayan in Criminal Case No. 2495 entitled "People of the Philippines, Plain-tiff, vs. Alfredo Cornejo, Sr. and Rogelio Alzate Cornejo*, Accused", finding him "guilty beyond reasonable doubt as principal of the crime of Estafa [Swindling] as defined and penalized under Article 315, paragraph 4th, sub-paragraph 2-(a), in relation to Article 214, both of the Revised Penal Code; and, appreciating against him the aggravating circumstance of advantage of public position, without any mitigating circumstance in offset; x x x [and] sentencing him to Four (4) months and Twenty-One (21) Days of arresto mayor, with the accessories provided by law; to suffer perpetual special disqualification, to indemnify the complainant, Beth Chua, in the amount of One Hundred Pesos [P100.00], and to pay his proportionate share of the costs." [1]

The facts of the case, as found by the trial court, are as follows:

"For already more than 14 years, complainant Beth Chua had been renting the premises at 105 Moana Street, Pasay City, owned by one Crisanto Bautista, which she devoted as a residence and a sari-sari store. In the morning of December 11, 1979, accused Alfredo R. Cornejo, Sr. [hereinafter referred to as accused Engineer], then a City Public Works Supervisor in Pasay City, called at the store of complainant looking for a woman who supposedly called him up from there. In the course of his conversations with complainant, during which he introduced himself to be connected with the City Engineer's Office, accused Engineer represented to complainant that he was empowered to inspect private buildings and that, pursuant to the Building Code, the Metro Manila Commission requires that the floor area of all houses be measured, a service for which a fee of P3.00 per square meter is charged, but that, if said service is undertaken by him, the charge would be only P0.50 per square meter. In addition, said accused assured complainant that, while her premises were under investigation, she could not be ejected despite the pending ejectment suit against her. Although she initially entertained doubts about the personality of accused Engineer, complainant eventually believed him not only because he talked nicely but also because he warned her that unless she complies with said requirements, she could be liable for the penal sanctions under the Building Code. Complainant was thus prevailed upon to agree that the required service be undertaken by accused Engineer for which she would pay from P300.00 to P400.00 and, since the entire procedure had to be done step by step, she would have to initially pay P150.00 for the measurement and the preparation of the Floor plan of the house. As agreed with accused Engineer, at 3:00 o'clock in the afternoon of that day, accused Rogelio Alzate Cornejo [hereinafter referred to as accused Draftsman], nephew of accused Engineer, together with one Conrado Ocampo, showed up at Complainant's place and made measurements therein. However, because complainant was short of funds, she was able to deliver to accused Draftsman only P100.00 out of the P150.00 agreed upon with accused Engineer. For that amount, accused Draftsman issued complainant a receipt [Exh. A] and at the same time asked her to sign a bunch of blank forms and other papers which he took back.

"The following morning, December 12, 1979, because complainant saw accused Engineer go to the house of her neighbor, a Mrs. Dalisay Bernal, complainant asked the latter what said accused was there for and she was told that he went there also for the same purpose. Since Mrs. Bernal shared the doubts previously entertained by her, the two of them decided to see Barangay Captain Carmen Robles about the matter. With the Barangay Captain, complainant and Mrs. Bernal then went to the Pasay City Hall where they saw City Engineer Jesus I. Reyna who told them that accused Engineer was not authorized to conduct inspection and investigation of privately-owned buildings - a fact later confirmed by a certification issued to that effect by said City Engineer [Exhibit B]. With this discovery, the matter was reported to the Intelligence and Special Operations Group, Pasay City Police. It developed that in the morning of December 14, 1979, Conrado Ocampo called on complainant at the instance of accused Engineer to collect the balance of P50.00 but complainant did not then pay him. Instead, she asked that accused Engineer be the one to pick up the money that afternoon because she wanted to ask him something. This was brought to the attention of Captain Manuel Malonzo of the ISOG who caused the statement of complainant to be taken by then Police Sergeant Nicanor del Rosario [Exhibit C] and an entrapment was planned.

"With money consisting of two 20-pesos bill and one 10 peso bill previously xerox-copied to be used by complainant as pay-off money [Exhibits E and E-1], an ISOG team composed of Sgt. Del Rosario, Sgt. Pablo Canlas and Pfc. Anacleto Lacad and Pascual de la Cruz, repaired to the vicinity of complainant's store. At about 1:00 o'clock that afternoon, accused Engineer showed up at complainant's store and, there, complainant handed to him an envelope containing the pay-off money which he received. As said accused was in the act of placing the envelope in his attache case, the police accosted him and took the money from him. Thereafter, said accused was taken to the Police Headquarters, together with complainant whose supplementary statement [Exhibit D] was taken. In due course, with the evidence gathered, as well as the statements of accused Engineer, the police officers and other witnesses, the case was referred to the City Fiscal of Pasay City. [Exhibit F]"[2]

The judgment of conviction was based on the findings of the trial court that petitioner Cornejo employed criminal deceit in falsely holding him-self out as duly authorized by reason of his office to inspect and investigate privately-owned build-ings, by which misrepresentation he was able to inveigle complainant to agree to have the floor area of her house and store measured and to have a plan thereof drawn by the petitioner for a fee less than that supposedly officially charged for said service.

In his main petition, petitioner contends that the respondent court committed grave abuse of discretion in:

- a] considering only that part of the testimony of the private complainant which favored the prosecution and ignoring completely those which excul-pated the petitioner;
- b] admitting in evidence Exhibit B [Certification of Pasay City Engineer Jesus Reyna] without the author thereof taking the witness stand and thereby depriving the petitioner of his constitution right of confrontation;
- c] finding that petitioner had no authority to conduct ins-pection and investigation privately-owned buildings and in concluding that the element of deceit was sufficiently proved to make the latter liable estafa; and,
- d] in holding that the arrest of petitioner in the afternoon December 14, 1979 was the result of an entrapment when the prosecution evidence clearly showed that the latter was set up by the complainant and the police.

Petitioner likewise filed a supplemental petition with a special prayer for the remand of the case to the court a quo on the ground that he was deprived of his constitutional right to due process as 1] there was no preliminary investiga-tion actually conducted by the Tanodbayan Special Prosecutor; 2] the Sandiganbayan should have granted his motion for reconsideration which is allegedly highly meritorious; 3] the Information is utterly defective; 4] the prosecution is politically-moti-vated and stage-managed to ease him out as a pos-sible mayoralty candidate against the son of then Pasay City Mayor Pablo Cuneta; and, 5] the pen-dency of Civil Case

No. 6302-P before the CFI of Rizal, Pasay City, a petition filed by petitioner to have his duties as City Public Works Supervisor defined, constitutes a prejudicial question to the case at bar.[3]

In support of his first contention, petitioner points to certain portions of the testimony of the complainant Beth Chua as containing exculpatory evidence, thus:

"Q: All these 14 years, did you receive any notice from the Metro Manila Commission requiring you to have those measurements?

A: Never.

Q: You were never approached by any person from the Metro Manila Commission telling you that your premises needed measuring?

A: None, sir.

Q: And this is the first time there is such a thing as a Metro Manila Commission requirement as you explained now as told to you by Engr. Cornejo?

A: Yes, sir.

Q: So it was not for that purpose that you gave that P150.00; it was for the services for Rogelio Alzate Cornejo who prepared for you a plan which you testified is still in their possession, is this not correct?

A: Yes, sir.

Q: So that money was for the services of Rogelio Cornejo, as a matter of fact, you even signed that sketch that Rogelio prepared, is this not correct?

A: Yes, sir."[4]

and,

"Justice Kallos:

Q: But you admitted to Atty. Villa in his question that you agreed to pay the sum of P150.00 for the preparation of a plan and sketch to this other accused, Rogelio Alzate y Cornejo. In other words, the P/150.00 which you agreed to pay was in payment of Rogelio Alzate's work in preparing the plan?

A: I do not know whether the amount of P/150.00 would go to Rogelio Alzate because we agreed to the entire amount.

Q: But the fact of the matter is that the P/150.00 which you agree to pay first was intended as payment for the preparation of the plan?

A: Yes, your Honor.

Q: And in fact, you admitted to Atty. Villa that you even signed the sketch?

A: Yes, sir."[5]

From the above testimony of complainant Beth Chua, petitioner would conclude that the gravamen of the charge was not proved because the person sought to be defrauded did not fall prey to the alleged fraudulent acts or misrepresentations and that the money was in fact paid for services rendered by Rogelio Alzate Cornejo.

This conclusion drawn by petitioner is unwarranted. The testimony of complainant Beth Chua should be taken in its entirety. Not to be overlooked is her categorical statement that although she initially entertained doubts as to

the personality of the petitioner and the veracity of his representations, she finally believed him because he talked nicely and also because he warned her that unless she complied with the purported requirements of the Metro Manila Commission, she could be liable for the penal sanctions under the Building Code. She further stated that she believed petitioner's statement that having her store measured and a plan thereof made would prevent her eviction from the subject premises.[6] This portion of the testimony of Beth Chua was accorded full weight and credence by the trial court and We find no cogent reason to disturb such assessment, particularly where the veracity of said statements was demonstrated by complainant's own act of agreeing to have her store measured and a plan thereof sketched as per advice of petitioner. Complainant had no reason to have such work undertaken and in the process, incur expenses, other than her belief in and reliance on petitioner's misrepresentations. Otherwise stated, if complainant did not believe petitioner's misrepresentations, she would not have agreed to said advice. Thus, it was precisely petitioner's misrepresentations that induced complainant to part with her money. That actual services were performed cannot exculpate petitioner because said services rendered were an integral part of the modus operandi, without which petitioner would have no reason to obtain money from the complainant. These services likewise served as a smokescreen to prevent the complainant from realizing that she was being swindled.

Anent petitioner's objection to the admissibility of Exhibit B, the certification issued by Pasay City Engineer Jesus Reyna to the effect that petitioner was not authorized to inspect and investigate privately-owned buildings, We find no reversible error, much less grave abuse of discretion on the part of the trial court in admitting the same. It must be noted that Exhibit B was not presented as an independent evidence to prove the want of authority of petitioner to inspect and investigate privately-owned buildings, but merely as part of the testimony of the complainant that such certification was issued in her presence and the declaration of Assistant Pasay City Engineer Ceasar Contreras that the signature appearing thereon was that of Engineer Reyna. Where the statement or writings attributed to a person who is not on the witness stand are being offered not to prove the truth of the facts stated therein but only to prove that such statements were actually made or such writings were executed, such evidence is not covered by the hearsay rule.[7]

Besides, the finding of the trial court that petitioner had no authority to conduct inspections and investigations of privately-owned buildings was reached, not solely on the basis of Exhibit B, but principally from a consideration and study of Section 18 of R.A. No. 5185, the law which first allowed the city governments to create the position of City Public Works Supervisor, in relation to P.D. No. 549, which placed the city public works supervisors under the supervision of the city engineers.

Of course, petitioner would likewise find fault in this conclusion [third assignment of error]. However, rather than overturn the trial court in this regard as petitioner would pray of Us, We find ourselves in complete agreement with the trial court's observations and conclusion that:

"x x x Easily, the authority claimed should be a matter of law or regulation. To begin with, the position of City Public Works Supervisor, which is admittedly the position held by accused Engineer, was first allowed to be created by City Governments pursuant to Section 18 of Republic Act No. 5185, which expressly confined the functions thereof to 'public works and public highways projects financed out of local funds'. Nowhere in that statute was any authority granted to city public works supervisors relative to privately-owned buildings. Later, with the advent of Presidential Decree No. 549, on September 5, 1974, city public works supervisors were placed under the direct supervision of the City Engineer, although, by virtue of Letter of Instruction No. 789, dated December 26, 1978, as further implemented by Ministry of Order No. 3-79, Ministry of Finance, dated January 23, 1979, the officials therein mentioned were?

" 'x x x enjoined to abolish the Office of the City Public Works Supervisor, return all personnel to the Department of Engineering and Public Works of the City without reduction in salaries, place City Public Works Supervisors

under the direct control and supervision of City Engineers and for City Engineers to carry out all public works constructions, repairs and improvements of the City financed by City Funds, pursuant to the respective charters of the Cities.'

"Clearly, then as of December, 1979, when the offense here charged is alleged to have been perpetrated, accused Engineer's position as City Public Works Supervisor could not have subsisted and, although he re-mained in office, he was then placed under the direct control and supervision of the City Engineer, performing functions confined to 'public works and public highways projects financed out of local funds', As such, he had no authority to conduct inspection or investigation of privately-owned buildings - a fact duly certified by Pasay City Engineer Jesus L. Reyna [Exhibit B] and confirmed on the witness stand by Pasay City Assistant City Engineer Ceasar C. Contreras. In this posture, the basic representation of accused Engineer that he was authorized to conduct inspection and investigation of privately-owned buildings was an outright falsehood.

"Accused Engineer's insistent claim that he had that authority is futile. As aforesaid, the pertinent law is explicit that the functions of a city public works supervisor, as the title of the office clearly suggests, refer only to the supervi-sion of public works and, for this purpose, this means 'public works and public highways projects financed out of local funds'. This statutory specification of duties can not be varied by the mere certification presented by said accused that he 'is a duly accredited employee of this Office [of the City Engineer] and is entitled to all assistance and courtesies in the performance of his duties' [Exhibit 10]. Much less could the notation under the column 'Remarks' in his Daily Time Records [Exhibits 11, 11-A to 11--C], to wit, 'Overseeing PW-BUILDING INVESTIGATION' or 'Bldg. Investigations', be accorded the force of an investi-ture of authority for that purpose. At best, said notations are only self-serving statements made by said accused and the mere fact that the daily time records aforesaid are approved by the City Engineer cannot add an iota of probative force thereto as proof of any authority to inspect and investigate privately-owned buildings." [8]

Petitioner further attempts to convince Us that he was induced and instigated by complainant and the police to commit the crime charged. The facts of the case do not support such assertion. When petitioner returned to complainant's house on the day he was arrested, he had already committed the deceit punished by law and had effectively defrauded complainant of her money. His act of going to com-plainant's house was a mere continuation of the un-lawful scheme, already consummated within the con-templation of the law, so that the strategy employed by the police in affecting his arrest was a clear case of entrapment, which is recognized as a law-ful means of law enforcement.[9]

Worthy of note is the fact that except for a fleeting reference to the pendency of Civil Case No. 6302-P of the then CFI of Rizal, Pasay City as constituting a prejudicial question to the present prosecution, the other grounds cited in petitioner's supplemental petition were neither discussed nor elaborated on in his brief. Suffice it to say then that the other grounds cited by petitioner in his supplemental petition deserve scant consideration for they either do not have any relevance to the pe-tition at bar [such as petitioner's allegation that the prosecution is politically-motivated] or could not alter the result of the case, such as petitioner's bare allegation of lack of preliminary investigation, which cannot overcome the presumption of regularity in the performance of official duties [Sec. 5(m), Rule 131, Rules of Court]; the complaint about the Information* which We do not find defective; and the matter of prejudicial question which must be raised after the Information has been filed in the trial court, but not at this late stage.[10]

Finding no reversible error nor grave abuse of discretion to have been committed by the trial court, and convinced beyond reasonable doubt that petitioner is guilty of the offense charged, the decision of the trial court is affirmed.

WHEREFORE, the instant petition is hereby denied for lack of merit. The decision of the San-diganbayan in

Criminal Case No. 2495 is affirmed en toto. Costs against petitioner.

SO ORDERED.

Teehankee, C.J., Yap, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, and Cortes, JJ., concur.

* Petitioner's co-accused Rogelio Alzate Cornejo was acquitted on the ground of reasonable doubt.

[1] p. 43, Rollo

[2] pp. 25-29, Rollo

[3] pp. 75-79, Rollo

[4] TSN, pp. 47-48, June 1, 1981

[5] TSN, pp. 50-51, June 1, 1981

[6] TSN, pp. 3-4, 5-9, 12-13, 15-16, June 1, 1981

[7] *People v. Cusi*, 14 SCRA 944

[8] Decision, pp. 33-35, Rollo

[9] *People v. Luz Chua, et al.*, 56 Phil. 53

* The Information in Criminal Case No. 2495 reads:

"That on or about the 11th day of December, 1979, in Pasay City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, Engr. Alfredo Cornejo, Sr., a public officer being then a City Public Works Supervisor of the Pasay City Engineer's Office, and Rogelio Alzate Cornejo, a private individual, by means of deceit, false pretenses and fraudulent manifestations, the former taking advantage of his position and committing said offense in relation to his office, conspiring and confederating and mutually helping and aiding one another, did then and there wilfully, unlawfully and feloniously inform and misrepresent to Beth Chua that as per instruction of the Metro Manila Commission, the floor area of the apartment occupied by Beth Chua has to be measured, inspected and investigated and that at the same time, structural plan of the said apartment must be prepared, for which the latter would allegedly pay P3.00 per square meter to the Metro Manila Commission if said work would be done by the latter office, but if they would be the one to do the job, it would only cost P0.50 per sq. meter, when in truth and in fact, accused Engr. Alfredo R. Cornejo, Sr., as per certification issued by the Pasay City Engineer's Office, has no authority to conduct inspection and investigation of privately-owned houses or buildings and accused Rogelio Alzate Cornejo is not even connected with the Local City Engineer's Office, that complainant Beth Chua, believing the representations of the said accused to be true, did in fact give and deliver to the accused the total amount of P150.00 which amount accused misappropriated and misapplied to their own use and benefit, to the damage and prejudice of said Beth Chua in the aforesaid amount of P150.00." [pp. 24-25, Rollo]

[10] *Estrella v. Orendain, et al.*, 37 SCRA 640; *Isip, et al. v. Gonzales* 39 SCRA 255.

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