

BARTOLOME ALONZO, PETITIONER, VS. HON. INTERMEDIATE APPELLATE COURT AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 68624. June 30, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Upon an information which reads:

"That on or about this 30th day of October, 1974, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, (petitioner herein) being then the personnel officer of the Fire Department of Olongapo City and entrusted with the preparation, follow up and payments of payrolls, vouchers, and other papers and documents relative to the salary of the personnel and members of the Olongapo City Fire Department, with intent to defraud, did then and there wilfully, unlawfully, and feloniously prepare or cause the preparation of an official voucher which is a public document pertaining to the salary of Wilfredo Cadua for the period covering from October 1-31, 1974, for a total of P166.67 and wrote, imitated, forged, falsified the signature and signed for Wilfredo Cadua without the latter's knowledge, permission and consent, and thereafter presented the said voucher for payment and received the amount of P166.67 thus making it appear and attributing that the complaining witness Wilfredo Cadua had signed the said voucher and received the amount stated therein when in fact and in truth, as said accused well knew that he forged and falsified the signature of Wilfredo Cadua and once in possession of the said amount (P166.67), did then and there wilfully, unlawfully and feloniously misappropriate, misapply and convert to his own personal use and benefit the said amount, and despite repeated demands, the accused refused and continue to refuse to remit the above-mentioned amount, to the damage and prejudice of Wilfredo Cadua in the aforementioned amount, Philippine Currency. However, the above-named accused subsequently remitted to the complaining witness, Wilfredo Cadua the amount of P100.00, Philippine Currency." (p. 12, Rollo).

the then Court of First Instance of Zambales, Third Judicial District, Branch XXX, Olongapo City found the petitioner guilty of estafa through falsification of public document.

The dispositive portion of the decision reads as follows:

"WHEREFORE, judgment is hereby rendered finding the accused guilty beyond reasonable doubt of the crime charged in the Information and hereby sentences him to suffer an indeterminate sentence ranging from Four (4) Years, Two (2) Months and One (1) Day of prision correccional as minimum to Ten (10) Years and One (1) Day of prision mayor as maximum, to pay a fine of One Thousand Pesos (P1,000.00) with subsidiary imprisonment in case of insolvency and to suffer the accessory penalties provided for by law.

"Costs against accused." (p. 7, Rollo).

From this judgment, the petitioner appealed to the Court of Appeals. The Court of Appeals affirmed the judgment of conviction with a recommendation for executive clemency with respect to the duration of the penalty, considering that the amount involved is only P166.67. The petitioner's motion for reconsideration was denied.

Hence, the present petition was filed on the submission that:

"(a) The former Court of Appeals decided the case contrary to law, the evidence and the applicable decisions of the Supreme Court (Rule 45, Sec. 4a, Rules of Court).

"(b) Granting but without admitting that the accused Bartolome Alonzo, signed the name of the complainant Wilfredo Cadua in the voucher, the crime committed is simple Estafa under Art. 315 of the Revised Penal Code and not a complex crime under Art. 171 as ruled by the trial court and the respondent Court.

"(c) The respondent Court (Intermediate Appellate Court) gravely erred in affirming the decision of the trial court convicting the accused, the herein petitioner of the crime charged in the information when the prosecution failed to prove any crime against the accused, the herein petitioner." (p. 11, Rollo).

The following constitute the facts of the case from the viewpoint of the accused:

"The accused Bartolome G. Alonzo, was appointed as Clerk-typist in the Fire Department of Olongapo City, designated as Personnel Officer in charge of Finance. Some of his duties was (sic) to prepare payrolls, vouchers and others which are relevant to his position. Sometime on October, 1974, the accused prepared the voucher for the salary of Wilfredo Cadua for the month of October, 1974, who was employed as Firefighter in the Olongapo City Fire Department. After preparing said voucher, the accused placed the same on his table in the outgoing box as a usual practice in his office. It is the duty of the messenger-clerk Rogelio Pangilinan to see to it that all the vouchers prepared by the accused Bartolome G. Alonzo and placed in the outgoing box will be signed by those concerned and to follow it up until the vouchers will be paid.

"In the afternoon of October 30, 1974, Rogelio Pangilinan informed the accused that he has already converted the voucher into cash and handed to the accused Bartolome G. Alonzo the amount of P166.67 appearing in the voucher of Wilfredo Cadua informing him (Alonzo) that he was in a hurry. Some of his (Alonzo) officemates including the Administrative Officer was (sic) present when Rogelio Pangilinan handed to him the P166.67 and because Wilfredo Cadua was not around at the time, he looked for him in the office and when he saw Cadua, he handed to him the full amount appearing in the voucher in the amount of P166.67. The accused informed Wilfredo Cadua that he is badly in need for money for his X-ray and asked a loan of P66.00 from Cadua which the latter consented. No receipt was signed for the loan since they worked in the office 'through trust and confidence'.

"The following morning, Cadua and the accused had a confrontation in the presence of the Fire Chief. The Fire Chief inquired from Alonzo why Cadua received less than what he expected to receive and after the accused explained the circumstances about the loan, the Fire Chief advised the accused to return the amount loaned (t.s.n., pp. 2-12, hearing of December 7, 1977; Decision, Crim. Case No. 2526, p. 35 hereof).

"A week after or on November 10, 1974, the accused Bartolome G. Alonzo returned the amount of P66.00 which he loaned from Wilfredo Cadua in the presence of their Fire Chief but the accused did not ask Cadua to issue receipt for the return of his loan since it was in the presence of their Fire Chief. (t.s.n., p. 114, id.)

"Sometime on March 1975, or four months after payment of the loan of P66.00, Wilfredo Cadua filed a criminal complaint against Bartolome G. Alonzo as a consequence of the loan of P66.00 but which was already paid on November 10, 1974. And as a result, an Information for Estafa through Falsification of Public Documents was filed against the accused, and the lower court convicted the accused of the crime charged in the information.

"In short, these were in synthesis, the basic facts of this unfortunate case of the herein accused Bartolome G. Alonzo which were clearly and conclusively established during the brief trial of this criminal case. And this Honorable Court shall have that opportunity now to fathom the noble dignity of our proofs tested in this regard for we are confident that there is no room to hold the memory of 'Wrong Judgment' in the hall of this Honorable Court, presided by jurists whose appointments were a real credit to the Philippine Judiciary."

(Appellant's brief in the Court of Appeals, pp. 4-8; Rollo, pp. 31-33).

On the other hand, the prosecution's version is as follows:

"Appellant was a clerk-typist in the Olongapo Fire Department. He was designated as its finance officer. Among his duties was the preparation of Vouchers and payrolls. Complainant Wilfredo Cadua was employed as a fireman from March 1, 1973 to July 31, 1975 with a monthly salary of P250.00.

"Sometime in October 1974, appellant prepared a voucher (Exh. A) for the salary of complainant for that month. He gave it to the office messenger, Rogelio Pangilinan, for the signature of those whose approval of the voucher is required. When Pangilinan first received the voucher from appellant, Certification No. 1 bore a signature (Exh. A-6), purportedly that of complainant. Certification No. 2 also was already signed by the Fire Department Chief and was correspondingly initialed by complainant. After taking the voucher to the city treasurer and city auditor for their signatures, Pangilinan returned the voucher to appellant. A few minutes later, appellant called for Pangilinan, gave him back the voucher and told him to get the money at the treasurer's office. This time, a signature (Exh. A-8) purportedly that of complainant appeared on the receipt of payment portion of the voucher.

"On October 30, 1974, Pangilinan presented the voucher to the treasurer's office. The paymaster, Aida Clark-Pineda, upon noting the signatures of the auditor and the complainant, gave the proceeds of P166.67 to Pangilinan, whom she knew to be a messenger in the fire department. Pangilinan signed the voucher as a witness. Pangilinan returned to the fire department and gave the amount to appellant.

"At about 4:45 p.m., that same day, appellant gave complainant only P100.00. Complainant inquired about his voucher and appellant showed him a voucher which amounted only to P100.00. Wondering how appellant was able to cash his voucher without his signing it, complainant immediately went to the treasurer's office. He discovered that his signature had been forged on the voucher and that the amount he was entitled to receive was P166.67, not P100.00. He then realized that the voucher showed him by appellant was different.

"Complainant then demanded the return of the balance. Since appellant refused, complainant reported the matter to the fire department chief who formed a fact-finding committee to look into the case. However, the committee failed to render any report. Appellant paid back the amount he withheld from complainant three weeks later. He had used the money to pay for his x-ray.

"On August 4, 1975, complainant submitted an Affidavit (Exh. D) as basis for his charge of estafa through falsification of a public document against appellant. After preliminary investigation was conducted, a prima facie case was established, and so an information was filed on February 20, 1976 charging appellant of the aforementioned offense (tsn., pp. 4-28, October 11, 1976; pp. 2-12, November 9, 1977; p. 13, December 7, 1977; pp. 12-13, May 17, 1978)" (Emphasis supplied; pp. 26-28, Rollo).

The question is whether or not the petitioner misappropriated P66.67 by forging another person's signature on the salary voucher.

The information alleges that accused Bartolome G. Alonzo - (1) with intent to defraud, did then and there wilfully, unlawfully and feloniously prepare or cause the preparation of an official voucher pertaining to the salary of Wilfredo Cadua for a total of P166.67; (2) that he wrote, imitated, forged, falsified the signature, and signed for Wilfredo Cadua without the latter's knowledge, permission and consent; (3) that he presented the said voucher for payment and received the amount of P166.67; (4) once in possession of the said amount (P166.67), that he then and there wilfully, unlawfully and feloniously misappropriate, misapply and convert to his own personal use and benefit the said amount; and (5) that, despite repeated demands, the accused refused and continued to refuse to remit the above-mentioned amount.

On the other hand, the prosecution evidence tends to show that - (1) the accused was designated as finance officer

of the Olongapo City Fire Department and among his duties was the preparation of vouchers and payrolls; (2) on a date not specified in the records, the accused gave their office messenger, Rogelio Pangilinan, a voucher for the salary of Wilfredo Cadua for the month of October, 1974 so that the messenger could have it signed by all those having a hand in the approval of vouchers; (3) after the voucher was approved, Pangilinan returned the voucher to the accused who instructed him to encash the voucher; (4) Paymaster Aida Pineda of Olongapo City paid the proceeds of the voucher to Pangilinan who presented the voucher for payment after she required Pangilinan to sign as witness to the payment; (6) Aida Pineda gave Pangilinan the full amount of P166.67; (7) after he received the proceeds of the voucher from the paymaster, Pangilinan gave the entire amount of P166.67 to the accused in the presence of his co-employees in the afternoon of October 30, 1974 (Decision of the trial court, pp. 30-32, appellant's brief).

From the above, it can be seen that the petitioner could not possibly be guilty of wilfully, unlawfully, and feloniously preparing the complainant's voucher, considering that it was his official duty to do so. He prepared the voucher of Wilfredo Cadua in the amount of P166.67 for the month of October. There was no alteration made in the amount stated in the voucher because the stated amount is the correct salary of the complainant for that period. It was not the petitioner who presented the voucher for payment but their office messenger, Pangilinan. The appellant did not misappropriate the full amount of P166.67 nor did he refuse or continue to refuse to remit the amount. In fact, he handed to Wilfredo Cadua the amount of P100.00 on that same day while, at the same time informing Cadua that he was borrowing the amount of P66.67 for his x-ray expense. On November 10, 1974, the appellant paid the complaining witness the amount of P66.67 upon the advise of the chief of the Olongapo City Fire Department.

The evidence adduced by the prosecution is, therefore, entirely different from what the information alleges.

In the instant case, there is no direct evidence showing that Bartolome G. Alonzo himself forged Cadua's signature on the original voucher. Nobody actually saw him affix the alleged signature (See *Ranon v. Court of Appeals*, 135 SCRA 495; and *Cesar v. Sandiganbayan*, 134 SCRA 105). Even Rogelio Pangilinan, who was responsible for routing the voucher to all those who had a hand in approving the same could not categorically state that he saw the accused forged complainant's signature. We quote Pangilinan's testimony:

"Q When he gave this voucher, was Exhibit A-6 already present?

"A Yes, sir.

"Q How about Exhibit A-8? (Fiscal referring to the signature of Wilfredo Cadua)?

"A None yet sir, because this voucher cannot be released if that is already signed. (t.s.n., page 4, hearing of Nov. 9, 1977).

"Q When he gave it back to you, was the receipt portion already signed, referring to Exhibit A-B, was this already signed?

"A Yes, sir.

"Q Do you know who signed this particular portion?

"A No, sir. (t.s.n., page 5 id).

"Q How about A-8, when it was affixed, were you present?

"A No, sir. (t.s.n., p. 8, id). (p. 40, Rollo).

More important, from the facts of the case as stated in the People's brief below, the forgery is supposed to be on a

voucher showing the amount of P100.00. It was this voucher which was allegedly shown to the complainant. This second voucher had nothing to do with the original voucher used to collect the salary. If there was such a second voucher, it was a non-official voucher used to lull the complainant into believing his salary was only P100.00. However, this story of a supposed forged document does not explain how the complainant could have been hoodwinked because the original voucher for P166.67 carried his correct salary.

The fact that the petitioner prepared the voucher, considering it was his official duty to prepare the payroll, vouchers, and other documents assigned to him is not a sufficient reason for the respondent court to conclude that "there is no doubt that the forgery or falsification was effected by the appellant". Unfortunately, the respondent court mistakenly applied the rule that: "one found in possession of and who used a forged document is the forger or the one who caused the forgery and, therefore, is guilty of falsification (See *Alarcon v. Court of Appeals*, 19 SCRA 688). The accused is entitled to the constitutional presumption of innocence especially where the evidence on the alleged forged voucher is extremely doubtful. As held in the case of *People v. Clores*, (125 SCRA 67):

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"x x x Every circumstance against guilt, and in favor of innocence must be considered. Suspicion no matter how strong should not sway judgment, for well-established is the rule that the prosecution must rely on the strength of its evidence and not on the weakness of the defense; that appellants need not prove their innocence because that is presumed; that the presumption of innocence is a conclusion of law in favor of the accused, whereby his innocence is not only established but continues until sufficient evidence is introduced to overcome the proof which the law has created -- that is, his innocence; 'that conscience must be satisfied that defendant has been proven guilty of the offense charged. Only by proof beyond reasonable doubt which requires moral certainty, 'a certainty that convinces and satisfies the reason and conscience of those who are to act upon it' may the presumption of innocence be overcome.' (*People v. Inguito*, 117 SCRA 641, 649)." (at p. 75).

Furthermore, Cadua's intention in filing a complaint against the petitioner was to get even against the chief of their Fire Department.

The records disclose that at around 7 o'clock in the evening of October 30, 1974, Wilfredo Cadua approached the Fire Chief and complained that he received less than what appeared in the voucher. He actually never complained why his signature was falsified nor did he complain that the accused falsified his signature. Much less was any mention made about another voucher with only P100.00 entered as the amount. The next morning, Cadua and the accused had a confrontation in the presence of the Fire Chief. After explaining the circumstances of the loan, the Fire Chief advised the accused to return the amount loaned. On November 10, 1974, the accused returned the amount to Cadua in the presence of the Fire Chief. It was only four months after this incident that Wilfredo Cadua filed a complaint against the accused. The reason why he filed the case is clearly manifested in his cross-examination which we quote hereunder:

"ATTY. DANTE:

"Q When you filed this case in the Fiscal's Office was the P66.67 already paid?

"A Yes, sir.

"Q Why did you still file if you were already paid?

"A Because I wanted to file a case against him.

"Q Or you want to file a case because you were dismissed and the accused is related to Chief Magbutay?

"A Yes. (t.s.n., p. 39, testimony of Wilfredo Cadua, hearing of October 11, 1976). Italics supplied." (Appellant's brief, p. 16).

With the above admission it is clear that the filing of the complaint was merely an afterthought arising from the non-renewal of the complainant's appointment by the Fire Chief who is related to the accused. When the accused informed the complainant that he had nothing to do with the non-renewal of the latter's appointment, the complainant executed an affidavit of desistance. It is true that an affidavit of desistance by the complainant is not looked upon with favor. It may, however, create serious doubts as to the liability of the accused (*Gomez v. Intermediate Appellate Court*, 135 SCRA 620). In this particular case, it corroborates the appellant's explanation about the filing of the criminal charges.

Considering all the foregoing, we are constrained to rule that the evidence on record cannot sustain a verdict of guilt beyond reasonable doubt.

WHEREFORE, the petition is hereby GRANTED. The judgment of the respondent court is REVERSED and SET ASIDE. The petitioner is ACQUITTED on grounds of reasonable doubt.

SO ORDERED.

Fernan, (Chairman), Padilla, Bidin and Cortes, JJ., concur.

Paras, J., no part, was ponente of decision under review.

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