

JESUS ESTACIO Y ESTRELLA, PETITIONER, VS. THE HONORABLE SANDIGANBAYAN, THIRD DIVISION, RESPONDENT.

G.R. NO. 75362. March 06, 1990

Ponente: PARAS, J.

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PARAS, J.:

Petitioner Jesus Estacio y Estrella moves to reconsider Our Resolution dated January 27, 1987, dismissing for lack of merit his petition to review, set aside and reverse the Decision of respondent Sandiganbayan in Criminal No. 6603 finding him guilty beyond reasonable doubt as a co-principal of the crime of Estafa thru Falsification of Public/Commercial Documents and sentencing him to suffer an indeterminate penalty ranging from Two (2) years, Four (4) months and One (1) day of prision correccional as minimum to eight (8) years and one (1) day of prision mayor as maximum; to pay a fine of P5,000.00; to indemnify Solid Bank, Lucena Branch and/or the Central Bank of the Philippines in the sum of P648,564.70 representing the amount defrauded and to pay the proportionate costs.

The facts upon which the judgment of conviction rests are summarized by the respondent court as follows:

“The evidence for the prosecution is to the effect that on August 26, 1981, accused Romero Villasanta (still-at-large) opened a Current Account with the Lucena City Branch of the Solid Bank. In his information sheet (Exhs. A and A-1), Villasanta represented himself as engaged in the construction business. Villasanta deposited an initial amount of P1,500.00. His current account number is 37-574. His check books carried the numbers 107301 to 107325.

“As part of the sinister plot, Villasanta opened another current account with the Cubao Branch of the Solid Bank under date of August 27, 1981. Villasanta represented himself anew as a businessman and owner of the Romero Villasanta Construction located at 14 P. Tuazon Blvd., Cubao, Quezon City. Villasanta deposited initially a check for P10,000.00 and cash in the amount of P10,020.00. His Current Account Number is 115-02543-3.

“Evidence further shows that on August 25, 1981, accused Romero Villasanta opened a current account with the Traders Royal Bank, Pasig Branch. He presented himself as engaged in the construction business. He made an initial deposit in the amount of P2,000.00. His current account number is 72-700934-6. His checkbooks carried the numbers 176931 to 177000.

“After having opened three current accounts with three different banks, Villasanta and the syndicate began their insidious operations. On August 28, 1981, Villasanta deposited three checks with his Current Account No. 72-700934-6 at the Traders Royal Bank, Pasig Branch totalling P653,485.70 (Exh. T). Two of these checks were drawn against his Current Account No. 37-574 with the Solid Bank, Lucena City Branch, namely: AA-37-107302 for P269,200.00 and AA-37-107304 for P379,285.70 or a total of P648,485.70. It bears emphasizing that at the time these checks were issued, Villasanta had a mere P1,500.00 deposited with his Current Account No. 37-574 with the Solid Bank, Lucena City.

“On the same day of August 28, 1981, the deposited checks AA-37-107302 and AA-37-107304 were

forwarded to the Clearing House of the Central Bank for the standard clearing thereof. At the Central Bank Clearing House were accused Manuel Valentino (who later on became a state witness), a bookkeeper detailed at the Clearing Office, Central Bank of the Philippines and accused Jesus Estacio, janitor-messenger of the Central Bank of the Philippines who were then waiting for the demand envelope containing the checks deposited by accused Villasanta. As soon as the demand envelope arrived, Estacio got the same, placed it inside his push cart and brought the envelope inside the comfort room at the fourth floor of the Central Bank Building. Accused Estacio then waited for state witness Valentino and accused Villasanta. When state witness Valentino and Villasanta arrived, the former took the demand envelope and pulled out the checks in question and thereafter gave the same to accused Villasanta. State witness Valentino got hold of the attached bank clearing statement of Solid Bank, Lucena Branch. The amount of 'P628,564.00' under the column 'Amount Received' opposite the words 'Traders Royal Bank' was thereafter crossed out to make it appear that the same was not received while the total amount of 'P992,723.99' appearing in the clearing statement was likewise crossed out and replaced by the figures 'P344,238.29' (Exh. G).

"After the accused had altered the bank clearing statement, accused Valentino, the CB bookkeeper, prepared a Central Bank Manifest (Exh. H) and in the column 'Amount' he placed the correct figures P992,723.99 in the line opposite the Consolidated Bank and Trust Company. As soon as this Manifest was signed by prosecution witness Alfonso Magsalin, CB Chief of Division, accused Valentino superimposed thereon the amount of 'P344,238.29' thereby making it appear that such was the only amount received for Solid Bank, Lucena Branch.

"The demand envelope for Solid Bank, Lucena Branch, together with the altered Central Bank Manifest and the altered bank clearing statement, were thereafter sent to the Regional Central Bank Clearing house at Lucena City. The Regional Central Bank Clearing House official, Adriano Valenzena, testified that he noticed nothing irregular when he received the demand envelope for Solid Bank, Lucena, including the banking clearing statement and the Central Bank Manifest. He explained that he saw the alteration but did not consider the same unusual because the balances in the bank clearing statement and in the Central Bank Manifest are the same.

"CB rules and regulations provide that out of town checks are cleared within three working days from date of presentation. Accordingly, the Traders Royal Bank, Pasig Branch, considered as regular the deposits made by accused Villasanta in his Account No. 37-574 drawn against his current account with Solid Bank, Lucena Branch, because no objection or notice of refusal was received by Traders Royal Bank from Solid Bank, Lucena Branch, within the prescribed time, and understandably so, as there were no checks received by the Solid Bank, Lucena Branch. Account No. 37-574 in the name of Romero Villasanta was accordingly credited with the amount of P653,485.70. This represents the amount of the two (2) checks in the total sum of P648,564.70, while the P500,000.00 represented the third check deposited by accused Villasanta with Traders Royal Bank on August 28, 1981.

"Under date of September 4, 1981, accused Villasanta issued TRB Check No. 176954 in the amount of P500,000.00 and made payable to cash. This check was deposited with his Current Account No. 115-02543-3 with Solid Bank, Cubao Branch. This amount of P500,000.00 was drawn against current account of Villasanta with the Traders Royal Bank, Pasig. As of September 4, 1981, the balance of Account No. 72-700934-6 of Romero Villasanta with Traders Troyal Bank, after deducting the said P500,000.00 was P184,485.70.

"On September 7, 1981, Villasanta encashed with the Traders Royal Bank, Pasig Branch, TRB Check No. 176958 in the amount of P69,000.00. The following day, he encashed with the Traders Royal Bank, Pasig Branch, TRB Check No. 176958 in the Amount of P84,500.00.

"After accused Villasanta deposited the earlier mentioned TRB Check No. 176954 for P500,000.00 with his Current Account No. 115-02543-2 with Solid Bank, Cubao, his balance as stated in his ledger was P500,512.02 (Exh. M-1). Subsequently, Villasanta encashed the following Solid Bank Checks, to wit:

‘1.

Solid Bank Check No. 81230 dated 9/8/81 for P4,500.00 (Exh. M-3)

‘2.

Solid Bank Check No. 81231 dated 9/8/81 for P420,000.00 (Exh. N-4)

‘3.

Solid Bank Check No. 81232 dated 9/8/81 for P79,500.00 (Exh. N-5)’

“After the foregoing withdrawals and/or encashment, the balance of Account No. 115-02543-3 of accused Villasanta with the Solid Bank, Cubao Branch as of September 8, 1981 was P1,012.04 (Exh. M-1).

“All told, the syndicate was able to defraud the Solid Bank, Lucena City Branch and/or the Central in the total amount of P648,564.70. This syndicate was able to achieve by falsifying the Central Bank Manifest of August 28, 1981 (Exh. H) and the clearing statement for Solid Bank, Lucena, dated August 28, 1981 (Exh. G). (pp. 25-30, Rollo)

In seeking a reconsideration of Our aforesaid Resolution, petitioner claims that:

a)

his extra-judicial statements dated May 4 and 5, 1982 (Exhs. E and E-1) are inadmissible in evidence as he was not properly informed of his constitutional rights, and there was no valid waiver on his part of such rights prior to the taking of those statements; that the statements were extracted through force and intimidation;

b)

the evidence adduced by the prosecution did not link him to the conspiracy.

In the alternative, petitioner asserts that if he was indeed guilty, his criminal liability should only be as an accessory or an accomplice; and he should be credited with the mitigating circumstance of voluntary surrender.

The foregoing grounds now relied upon by petitioner were the same grounds of his petition which We had already considered when We issued our subject Resolution. Re-examination of the evidence has yielded nothing to impel the Court to reconsider its previous dismissal of the petition.

We first pass upon the question of whether or not petitioner’s extra-judicial confession (Exh. E) is admissible in evidence.

The extra-judicial statement of petitioner starts with the following questions and answers:

“01. Question

“We are informing you that you are under investigation in connection with the complaint of the Consolidated Bank & Trust Corporation and the Central Bank for alleged Estate Falsification committed at the Central Bank of the Philippines. But before we ask you any question, you must understand your legal rights. You have the right to remain silent. You have the right not to give any statement if you do not wish to. Anything you say may be used as evidence against you in any proceeding. You are entitled to the assistance of counsel of your own choice. If you cannot afford a lawyer and you want one, a lawyer will be appointed for you before we ask you any question. Now, after having been informed of your rights, are you still willing to give a free and voluntary statement and swear to tell the truth in this investigation?

“Answer:

“Yes, sir.

“02. Question:

“Are you willing to sign a waiver of your rights?

“Answer:

“Yes, sir.” (p. 11, Rollo)

The foregoing clearly shows that the investigator had advised petitioner of his constitutional rights.

Relying very heavily on the case of *People v. Galit*, (135 SCRA 465) petitioner now contends that there was no valid waiver of his right to remain silent and to counsel because the same was not made with the assistance of counsel.

We agree with the petitioner that the prevailing rule is still that laid down by this Court in the said *Galit* case as follows:

“This Court, in the case of *Morales v. Ponce Enrile*, laid down the correct procedure for peace officers to follow when making an arrest and in conducting a custodial investigation, and which we reiterate:

“At the time the person is arrested, it shall be the duty of the arresting officer to inform him of the reason for the arrest and he must show the warrant of arrest, if any. He shall be informed of his constitutional rights to remain silent and to counsel, and that any statement he might make could be used against him. The person arrested shall have the right to communicate with his lawyer, a relative or any one who chooses by the most expedient means -- by telephone if possible -- or by letter or messenger. It shall be the responsibility of the arresting officer to see to it that this is accomplished. No custodial investigation shall be conducted unless it be in the presence of counsel engaged by the person arrested by any person in his behalf, or appointed by the court upon petition either of the detainee himself or by any one on his behalf. The right to counsel may be waived but the waiver shall not be valid unless made with the assistance of counsel. Any statement obtained in violation of the procedure herein laid down, whether exculpatory or inculpatory, in whole or in part shall be inadmissible in evidence.”

But while it is true that petitioner’s waiver of his right to remain silent and to assistance by counsel was not made in the presence of counsel, the defect was cured and the requirement laid down in the *Galit* case was substantially complied with when Estacio’s lawyer, one Atty. Madarietta, arrived at the closing stage of the interrogation, read the statement and talked to Estacio before the latter signed it.

“Q -

After signing the statement?

“A -

I would like to emphasize the fact that the accused Jesus Estacio signed the statement in the presence of his counsel here. Exactly, he arrived before the closing stage of the statement taken.

“Q -

You are referring to?

“A -

This representation (Atty. Madarietta).

CHAIRMAN

“Q -

And before Estacio signed, was the lawyer of Jesus Estacio whom you pointed to as Atty. Madarietta given the opportunity to read the statement before Estacio signed?

“A -

Because that is the condition of the affiant, he will not sign the statement before his lawyer reads the statement.

“ATTY. MADARIETTA:

May I manifest for the record that I was able to talk with Estacio before he signed this statement marked as Exhibit E, Your Honor. (underscoring supplied) (t.s.n., testimony of NBI Agent Salvador Ranin, page 15, hearing of January 17, 1985).

As respondent court aptly ruled, if the accused had not voluntarily waived his constitutional rights prior to the investigation or had wanted to change his mind by availing of his right to remain silent after his counsel arrived and read the statement before the accused signed it, he could easily have refused to sign the same and demand possession of the unsigned statement.

The repudiation by petitioner of his confession on the ground that it was extracted through force and intimidation is negated by the fact that the confession contained details which only petitioner could have known. Thus the petitioner narrates his actual participation, as follows:

“A -

I remember that sometime during the middle part of August, 1981, Manuel Valentino contacted me and told me that we were going to have a meeting with Felipe Salamanca at the Ramada Hotel that night. I went with Manuel Valentino to Ramada Hotel that night, and upon reaching thereat, Felipe Salamanca was already there, together with a person whom I know as Romeo Villasanta (real name Romeo Portugal). We occupied a room at the said hotel. When we were already inside the room, Felipe Salamanca discussed with us a plan to defraud the Solid Bank, Lucena.

xxx xxx xxx

“Q -

How did you know that at the meeting at the Ramada Hotel, the plan discussed thereat was to defraud the Solid Bank, Lucena?

“A -

I came to know this, because as they were discussing the plan, Felipe Salamanca was writing the name of the bank to be victimized and I read it as Solid Bank, Lucena Branch. But after the conference, this paper was burned by Felipe Salamanca. Besides, Manuel Valentino told me that our operation was against the Solid Bank, Lucena

Branch.

xxx xxx xxx

“Q -

Will you please continue with your narration?

“A -

If I remember right, it was August 21, 1981 (Friday) when Manuel Valentino asked me to work overtime at the Clearing House because the check which Pepe Salamanca deposited was due to arrive at the Clearing Office that day and that if the check would arrive, Manuel Valentino would give me a signal. At about 5:00 o'clock in the afternoon of that day, Manuel Valentino gave the signal to me, indicating the check was already there. Upon receipt of the signal from Manuel Valentino, I brought in my pushcart to the Clearing House and immediately, Manuel Valentino loaded the brown envelope, which was actually the demand envelope for Solid Bank, Lucena, and as soon as it was loaded I brought it to the comfort room at the 4th floor. Later, Manuel Valentino was already inside the comfort room, he got the demand envelope for Solid Bank, Lucena, and then I went out to act as lookout while Valentino was doing something inside. After a lapse of about 15 minutes, he went out of the comfort room and returned the demand envelope for Solid Bank, Lucena Branch, then he proceeded to his office at the Clearing House. Then I followed him there and brought in my pushcart, where he got the demand envelope for Solid Bank, Lucena Branch which he placed in the rack intended for Central Bank Clearing House Lucena. Thereafter, I went out and performed my duties doing overtime work.

In *People v. Tintero*, 111 SCRA 714, We ruled:

“x x x According to our jurisprudence, details disclosed in the confession which could have been known only by the declarant indicate the voluntariness in executing the same (*People v. Bautista*, 92 SCRA 465). Voluntariness in the execution of and details narrated in the extra-judicial confession render the claim by the appellant of duress in its execution incredible. (*People v. Lmoso*, 91 SCRA 364). And in *People v. Villa*, 93 SCRA 716, We held that the confessions of the accused cannot be totally ignored even if they repudiated all of them on the ground of alleged extraction by force and intimidation, because the narrations contained in them coincide with the narration given by the eye witnesses. And where the narration of the defendant tends to explain his conduct or shift the blame to others, this is a circumstance that may be demonstrative of voluntariness rather than of compulsion (*People v. Santalani*, 93 SCRA 313; See also *People v. Nillos*, 127 SCRA 207 [1984]; Emphasis supplied.)”

Thus, the respondent Sandiganbayan aptly ruled:

“With the foregoing as backdrop, We find it difficult to give credit to Estacio’s assertion that his statement given to the NBI was taken under duress, compulsion, force or intimidation. The statement of Estacio contained intimate details of the conspiracy and the syndicate’s operations which could only have been known to him alone and which could not have been known to his interrogator. This is not to mention that the same contained exculpatory statements in certain portions thereof which are indicative of voluntariness and freedom of expression (*People v. Balana*, 123 SCRA 614).” (pp. 36-37, Rollo)

Be this as it may, the point sought to be made by petitioner is of no moment. Even without the extra-judicial confession, the evidence on record is sufficient to sustain petitioner’s culpability as a co-conspirator in the defraudation of the bank.

Manuel Valentino, petitioner’s co-accused turned state witness, positively and categorically testified on the knowledge and participation of petitioner in the felonious act, to wit:

“Q -

Do you know also the other accused here, Mr. Romeo Villasanta?

A -

Yes, Sir.

Q -

Would you tell us how you came to know him?

A -

I came to know him sometime in May 1981.

Q -

Where did you meet each other?

A -

I was met by Mr. Salamanca in front of the Central Bank, sir. Harrizon Plaza.

Q -

Did you proceed anywhere else after that?

A -

After the meeting, we proceeded to the Ramada Hotel lobby.

Q -

Who were with you during the time that you were in Ramada Hotel?

A -

We were four.

Q -

Who were they?

A -

Salamanca, Villasanta, Estacio and myself.

Q -

What if any did you talk about?

A -

They told me that they have a plan, to defraud a bank in Lucena City.

Q -

Do you recall the name of this particular bank in Lucena City?

A -

It was about the Solid Bank.

Q -

What were you supposed to do in defrauding the bank in Lucena City?

A -

They told me about the pilferage scheme.

Q -

Will you tell us what is the pilferage scheme?

A -

Pilferage scheme, we will get the check from the demand envelope, then change the corresponding bank statement and subtract that certain amount to the total of the Manifest. That's all sir.

Q -

During the meeting was any assignment given to Mr. Estacio, the accused?

A -

He is only charged in bringing out the demand envelope, sir. (TSN, April 18, 1985, pp. 8-9)

Q -

What happened during the target date of August 28, 1981?

A -

I was amazed that time because I saw that Villasanta was there at the clearing operations division.

Q -

What time?

A -

Between 3:00 to 4:00 o'clock p.m.

Q -

So as soon as you saw Villasanta, what did you do?

A -

He approached me and told me that they have already deposited the subject check.

Q -

What did you do when you were told about that?

A -

I have signalled Estacio to bring out the demand envelope.

Q -

What did Estacio do?

A -

He brought out the demand envelope and proceeded to the 4th Floor of the 5-storey building of the Central Bank.

Q -

Who was with Mr. Estacio when he brought the demand envelope to the 4th floor?

A -

Romeo Villasanta.

Q -

How about you?

A -

I was busy preparing my proof sheet, then after that, I followed them.

Q -

Did you catch up with Villasanta and Jesus Estacio at the 4th floor?

A -

Yes, sir.

Q -

What happened?

A -

I saw the demand envelope was already opened and the subject check was already pilfered by Villasanta and the corresponding bank statement was already changed by him. (TSN, April 18, 1985, pp. 11-12).

Q -

What happened as soon as Mr. Villasanta was able to get the checks and altered the figures which you identified?

A -

Villasanta then left the bank with the check already.

Q -

How about you, what did you do?

A -

I proceeded to my work in the clearing operations division.

Q -

How about Mr. Estacio, what did he do?

A -

He brought that demand envelope back to the rack where he took it earlier. (TSN, pp. 14-15)

Anent petitioner's claim that respondent Sandiganbayan erred when it held that he (Estacio) was part of the conspiracy, suffice it to say that petitioner's culpability as a co-conspirator in the defraudation of the bank was amply demonstrated and established by the evidence on record. His presence at the Ramada Hotel where he and his co-conspirators discussed the mechanics of their sinister plot and each conspirator's role defined, and his execution of his role thereafter, unquestionably demonstrates his conspiratorial designs.

We held in *People v. Dalusag*, 133 SCRA 15, that:

"There is conspiracy where several accused by their acts aimed at the same object, one performing one part and another performing another part so as to complete it with a view to the attainment of the same object, and their acts, through apparently independent are in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of petitioners." (Cited in *People v. Petenia*, 143 SCRA 361)

Finally, petitioner's claim of voluntary surrender, was correctly disregarded by the court a quo. We held in *People v. Hanasan*, 29 SCRA 534 that the mitigating circumstance of voluntary surrender may properly be appreciated in favor of the accused when the following requisites concur: (a) the offender has not been actually arrested; (b) the offender surrendered himself to a person in authority or to an agent of a person in authority; and (c) the surrender was voluntary. (*People v. Canamo*, 138 SCRA 141).

The foregoing requisites are not present in the case at bar. The evidence on record discloses that petitioner went to the National Bureau of Investigation (NBI) on February 16, 1982 upon the instruction of his superior and not of his own accord. Neither did he go to the NBI to place himself at the disposal of the authorities.

Indeed, on this point the respondent Sandiganbayan correctly ruled that:

“Estacio cannot invoke the mitigating circumstance of voluntary surrender. When he went to the NBI on February 16, 1982, it was in obedience to the order of his superior, Atty. Agapito Fajardo, the then officer-in-charge of the Anti-Bank Fraud Unit of the Central Bank. In other words, he went there not spontaneously with intent to submit himself unconditionally to the authorities because he acknowledged his guilt or wished to save the authorities the time and trouble of searching for him.”

IN VIEW OF THE FOREGOING, petitioner’s Motion for Reconsideration is hereby DENIED with FINALITY.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Grino-Aquino, Medialdea, and Regalado, JJ., concur.

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