

ISAGANI SABINIANO, PETITIONER, VS. THE HON. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 76490. October 06, 1995

Ponente: VITUG, J.

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VITUG, J.:

These two petitions for review on certiorari, consolidated pursuant to this Court's resolution of 17 May 1995,[1] were spawned by the 26th August 1986 decision[2] of the Court of Appeals affirming in toto the judgment of the then Court of First Instance of Rizal, Branch XVIII, in Quezon City,[3] disposing of Criminal Case No. Q-2655 thereat in this wise:

"WHEREFORE, the Court finds the accused Delfin Mamboyo, Vedasto Martinez, Isagani Sabiniano, Pedro Velasco and Rodolfo Martinez, guilty beyond reasonable doubt of the crime of Estafa thru Falsification of Public Document, and there being neither mitigating nor aggravating circumstances, sentences each of the accused to an indeterminate penalty of TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of Prison Correccional as MINIMUM to TEN (10) YEARS and ONE (1) DAY of Prison Mayor as MAXIMUM, to pay a fine of P5,000.00 each, and to indemnify the Republic of the Philippines the amount of P9,775.00, with interest at the legal rate, and to pay the costs. Without subsidiary imprisonment.

"SO ORDERED." [4] (*Italics supplied.*)

Petitioners Isagani Sabiniano (in G.R. No. 76490) and Rodolfo Martinez (in G.R. No. 76558) were charged, along with Delfin Mamboyo, Vedasto Martinez and Pedro Velasco, with the crime of malversation of public funds through falsification of public document in an information that read:

"That in or about and during the period comprising the month of July 1968 and/or immediately thereafter, in Quezon City, Philippines, accused Delfin Mamboyo, Vedasto Martinez, Isagani Sabiniano and Rodolfo Martinez, then employed as Chief Accountant, Auditor, Chief Budget and Fiscal Division, and Casual Employee, respectively, of the Bureau of Lands, conspiring and confederating with their co-accused, Pedro Velasco, a public officer then employed as Cashier III of the Bureau of Lands, who by reason of the duties of his office is accountable for public funds, did then and there, wilfully, unlawfully and feloniously, with intent of gain, falsify two (2) vouchers in the total amount of P9,775.00 in favor of one EUTQUIO HEDROSELLO, purportedly for expenses incurred for surveillance work, making it appear that such work and the expenses were duly authorized, said accused knowing fully well that EUTQUIO HEDROSELLO had no such authority nor such amount actually expended, and said accused, pursuant to their conspiracy, prepared and approved the corresponding Treasury Warrants in payment of said amount, and thereafter encashed said Treasury Warrants, misappropriating and converting the amount they received for their own personal use and benefit, to the damage and prejudice of the Republic of the Philippines in the aforesaid amount, Philippine Currency.

"CONTRARY TO LAW." [5]

Condensed hereunder are the material facts of the case found by the trial court.

On 18 July 1968, the Bureau of Lands processed two traveling expense vouchers in the amounts of P4,890.00 and

P4,885.00 for surveillance work that was said to have been undertaken by a certain Eutiquio Hedrosello. The vouchers indicated that due approval for payment was given by Laureano Romero, confidential aide of then Vice-President and, concurrently, Secretary of Agriculture and Natural Resources Fernando Lopez, and Cresencio Balasbas, the Assistant Chief of the Administrative Services of the Bureau. The vouchers described the character of the expenses to be in -

"Payment of expenses incurred as under cover work from April 1 to May 15, 1967 for the surveillance conducted by one as per instruction from the office of the Secretary regarding land anomalies in the Bureau of Lands in hiring private car or jeepney while the suspect is under surveillance in every places (sic) the latter goes and treating witnesses in the amount of(Exh. `A')." [6]

The accounting division accordingly prepared Treasury Warrant No. B02.285.701 in the sum of P9,775.00. The treasury warrant was signed by Vedasto Martinez, as auditor, and petitioner Sabiniano, as chief of the budget and fiscal division. Petitioner Rodolfo Martinez, a casual employee of the Bureau of Lands, approached Pedro Velasco, the Bureau's cashier in its office at the Casman Building in Quezon City, and asked the latter to encash the treasury warrant. Since Velasco had then no available cash, his help was instead sought by petitioner Martinez to have the treasury warrant encashed at the Bureau of Treasury. Velasco agreed but, not knowing the payee (Eutiquio Hedrosello) personally, he asked petitioner Martinez to endorse the warrant. Velasco then introduced petitioner Martinez to the teller who, in turn, asked Velasco to likewise endorse the warrant.[7] The warrant was thereupon encashed.

Vice-President Lopez meanwhile had heard about rampant anomalies in the incurrence of "travel expenses" in the Bureau of Lands which prompted him to request the National Bureau of Investigation to look into the matter. The investigation ultimately triggered, among other things, the filing of charges against the several accused in Criminal Case No. Q--2655.

The issues, according to the trial court, could be seen to focus on the following questions: "(1) Were the vouchers (Exhs. `A' and `B'), including the originals which disappeared, falsified? (2) Was there conspiracy among the accused in this case? (3) What crime was committed - malversation thru falsification or only estafa thru falsification?" [8]

Responding to the issues in seriatim, the trial court, after noting the disappearance of the originals of the vouchers, held that the vouchers had indeed been falsified and that the signature of Romero and Balasbas were forgeries. In concluding that all the accused should be held equally guilty, the trial court felt that the evident "inclination of Vedasto Martinez, Sabiniano and Mamboyo to hurriedly process the vouchers in the face of irregularities, and the cooperation extended by Velasco to encash the warrant" sufficed to indicate that they were all in conspiracy with one another. It would be difficult, observed the court, to perceive how Rodolfo Martinez, a mere casual employee, "could have engineered such an operation without the cooperation of his co-accused."

The trial court ruled that the crime committed was estafa thru falsification of public document, instead of malversation thru falsification of a public document, because "misappropriation of funds for which a public official is not accountable constitutes estafa rather than malversation." [9]

An appeal was interposed by all the accused to the Court of Appeals which affirmed, in due course, the decision of the trial court.[10] Petitioners Isagani Sabiniano and Rodolfo Martinez are now before this Court seeking a further review of their conviction.

G. R. No. 76490

Petitioner Sabiniano, in praying for his acquittal, avers that his alleged participation, i.e., affixing his signature on

the treasury warrant, was part of his official duties and one that he had to perform in this case particularly in obedience to an order issued by a superior. He asserts that there was no other evidence on record that could possibly link him to a conspiracy with his co-accused.

There is merit in petitioner's plea.

Apart from petitioner's signature on the treasury warrant, nothing else of real substance was submitted to show petitioner's alleged complicity in the crime. A mere signature or approval appearing on a voucher, check or warrant is not enough to sustain a finding of conspiracy among public officials and employees charged with defraudation. Proof, not mere conjectures or assumptions, should be proffered to indicate that the accused had taken part in, to use this Court's words in *Arias vs. Sandiganbayan*, the "planning, preparation and perpetration of the alleged conspiracy to defraud the government" for, otherwise, any "careless use of the conspiracy theory (can) sweep into jail even innocent persons who may have (only) been made unwitting tools by the criminal minds" really responsible for that irregularity.[11] In the recent case of *Magsuci v. Sandiganbayan*,[12] involving an accusation for estafa through falsification of public documents, where the accused not only co-signed a check but also noted an accomplishment report and signed the disbursement voucher with the usual certification on the lawful incurrence of the expenses to be paid, the Court held:

"Fairly evident, however, is the fact that the actions taken by Magsuci involved the very functions he had to discharge in the performance of his official duties. There has been no intimation at all that he had foreknowledge of any irregularity committed by either or both Engr. Enriquez and Ancla. Petitioner might have indeed been lax and administratively remiss in placing too much reliance on the official reports submitted by his subordinate (Engineer Enriquez), but for conspiracy to exist, it is essential that there must be a conscious design to commit an offense. Conspiracy is not the product of negligence but of intentionality on the part of cohorts." (Italics supplied.)

Here, in fact, the two vouchers supporting the treasury warrant bore what appeared to petitioner to be the legitimate signatures of both Cresencio T. Balasbas, the Assistant Chief of the Administrative Services Division of the Bureau of Lands,[13] and Laureano Romero, in the office of the Secretary of Agriculture and Natural Resources.[14] Petitioner had no reason to doubt the authenticity of the authorization given by two senior officials imprinted on the vouchers. Conformably with Lands Memorandum Order No. 261-5 on the routing of vouchers for payment either by cash, PNB check or treasury warrant,[15] he signed the warrant after the chief accountant and the auditor had affixed their own signatures.

Petitioner's helplessness in the situation could be gleaned from his testimony; hence -

"Q.

So you did not inquire upon the position of Eutiquio Hedrosillo (sic) at the time you signed Exh. C?

"A.

I did not inquire on the position of Eutiquio Hedrosillo (sic) already at that time because in the face of the voucher it says he was an undercover agent of the office of the Secretary and that it was already certified no less than by four officials who are duty-bound to scrutinize and to process all the legalities of the claim itself as embodied in the voucher.

"Q.

But would you not agree with me as a prudent accountable officer you would investigate or inquire upon the position of Eutiquio Hedrosillo (sic)?

"A.

In fact, when the voucher came to ...

"Q.

Did you not inquire?

"A.

I did not inquire anymore because inquiry would only be misunderstood in that they may say I am asking for something also.

"xxx xxx xxx.

"Q.

Attorney, your authority to sign treasury warrant came from the Director of Lands?

"A.

Yes, sir.

"Q.

And that the authority states that it is in the interest of the public?

"A.

Yes.

"Q.

That interest of the public means that you safeguard the funds or properties of the Bureau of Lands, is it not? I withdraw that. That you can refuse to have your name be placed on the face of the treasury warrant?

"A.

When the accounting department has already certified as to the availability of funds, together with other points, and the auditor has already allowed in audit that everything is proper and legal, the only instance where I will not sign the warrant is if it does not correspond to the voucher either in the name or in the amount.

"Q.

You mean to say your signature appears as ministerial?

"A.

There is no other meaning of that, your honor, even if you will read my authority to sign. Other officials in the bureau had already made the proper examination as even to the supporting vouchers and to do so again to make everything that will require the same examination would be translated that I am trying to ask something from the claimant."[16]

Given all the circumstances, we find for petitioner Isagani Sabiniano and, accordingly, must decree his acquittal.
G. R. No. 76558

Prefatorily, petitioner Rodolfo Martinez and his co-accused filed a motion for the reconsideration of the decision of the appellate court. After its denial, they filed with this Court a motion for an extension of thirty days within which to file a petition for review on certiorari. On 05 January 1987, the Court granted the motion with a warning that no further extension would be granted.[17] Due to the death of their counsel, Atty. Juan B. Soliven, the Court granted them a new thirty-day period.[18] The period expired without a petition for review being filed. The Court

thus issued on 21 September 1987 a resolution declaring that the judgment sought to be reviewed had so become, as to them, final and executory.[19]

Petitioner Martinez forthwith filed a motion for the reconsideration of the 21 September 1987 resolution.[20] The motion was granted.[21] On 11 February 1988, said petitioner interposed the instant petition for review on certiorari.[22]

Petitioner contends that the Court of Appeals erred: (a) in adopting the conclusion of the trial court of his being the forger of the questioned traveling expense vouchers; (b) in not considering his having acted in good faith and merely in obedience to an order of a superior; (c) in holding the alleged conspiracy among the accused to have been established by clear and positive evidence; and (d) in affirming his conviction for the complex crime of estafa through falsification of public documents instead of acquitting him for lack of proof beyond reasonable doubt.

We find no merit in the petition.

Enough evidence has been adduced by the prosecution to warrant petitioner's conviction. Assessing the evidence, the trial court stated:

"It is undisputed that the vouchers were presented to the accounting office by Rodolfo Martinez, a brother of Vedasto Martinez. The possession by Rodolfo Martinez of the falsified voucher gives rise to the presumption of his authorship of the falsification where it was made to appear that Hedrosello, Romero and Balasbas affixed their signatures thereon. Balasbas was not produced in Court as he is now deceased, but when investigated by the NBI, he denied having signed the vouchers in question (Exh. `Q'). At that investigation Rodolfo Martinez declined to give any statement, but when Balasbas was no longer available, Rodolfo Martinez now conveniently points to Balasbas as the person who handed the vouchers to him, who asked him to accompany Hedrosello to the National Treasury and to ask Velasco to assist in the encashment of the warrant. The version of Martinez that it was Balasbas who introduced Hedrosello to him who asked him to bring the vouchers to Casman Building, and later instructed him to encash the warrant appear incredible. Rodolfo Martinez was not employed directly under the office of Balasbas. He was rather detailed to the office of the NBI Assistant Director Tandoc. He has never performed that task before for Balasbas. Martinez does not claim that the persons introduced to him as Hedrosello is the very same Hedrosello who testified in Court. Martinez would therefore in effect impute the criminal act to Balasbas. Yet in the investigation conducted by the NBI, Martinez remained silent. The fact that Martinez was in possession of the treasury warrant raises the presumption that he was the author of the falsified vouchers which were the basis for the issuance of Exhibit `C'. Thus, the unexplained possession of a counterfeit note gives rise to the presumption that the possessor was guilty of the counterfeiting of notes (Peo. vs. Co Pao, 58 Phil. 545). The possessor of stolen property is presumed to be the principal (U.S. vs. Soriano, 9 Phil. 441)."[23]

The Court of Appeals, seconding the findings of the trial court, held:

"As to Rodolfo Martinez, the unrefuted evidence points to him as the one who brought the two forged vouchers to the Accounting Division of the Bureau of Lands, had them processed and the corresponding treasury warrant issued and finally encashed the same with the connivance of the Bureau of Lands cashier, Pedro Velasco. How he figured in the anomaly, Martinez points to his superior Cresencio Balasbas who allegedly instructed him to follow up the invalid vouchers or treasury warrant. This defense is, however, hardly plausible since the record reveals that his superior was not Balasbas, but Mr. Tandoc, the Deputy Director of the NBI who was then working for the Director of the Bureau of Lands (tsn, Feb. 24, 1977, p. 19). Martinez' testimony further shows that his messengerial task was confined between the NBI and the Bureau of Lands offices only (tsn, id., p. 16); in other words, external, not internal, office communications. What Martinez also had failed to satisfactorily explain is his role in the encashment of the treasury warrant. If, as alleged, Hedrosillo (sic) was present in the encashment of his treasury warrant at the National Treasury and the PNB, why did Martinez and

Velasco intervene in the process? Was Martinez (sic) incompetent in encashing his treasury warrant? Evidence is devoid in this regard. And, why was the proceeds of the treasury warrant not delivered to Hedrosillo (sic), after all, he was the payee therein and was allegedly present at the time of the encashment?"[24]

It is settled that in the absence of satisfactory explanation, one who is found in possession of, and who has used, a forged document is the forger and therefore guilty of falsification.[25] Petitioner's self-serving allegation that, after encashing the warrant, he turned the money over to Balasbas,[26] has not been corroborated, let alone independently established.

The courts below correctly convicted petitioner of estafa thru falsification of public documents instead of malversation thru falsification of public documents, the crime for which he was charged in the information. Estafa is included as a less serious offense than, and cognate to, malversation.[27] There being no proof of any mitigating or aggravating circumstance, the penalty decreed by the courts below is within the statutory range.

WHEREFORE, (a) in G.R. No. 76490, the conviction of petitioner Isagani Sabiniano is REVERSED AND SET ASIDE, and he is ACQUITTED of the crime charged, with costs de oficio; and in G.R. No. 76558, the questioned decision of the Court of Appeals is AFFIRMED, with costs against petitioner Rodolfo Martinez.

SO ORDERED.

Feliciano, (Chairman), and Romero, JJ., concur.
Melo, J., on leave.

[1] Rollo of G.R. No. 76558, p. 130.

[2] Penned by Associate Justice Jorge R. Coquia and concurred in by Associate Justices Bienvenido C. Ejercito and Antonio M. Martinez.

[3] Presided by Judge Ermani Cruz Paño.

[4] Records, p. 39.

[5] Records, pp. 4-5.

[6] Records, p. 22.

[7] Exh. C-3.

[8] Records, pp. 28-29.

[9] Records, p. 37.

[10] Records, pp. 395, 405, 417, 418 and 434.

[11] *Arias v. Sandiganbayan*, 180 SCRA 309, 316, 312-313.

[12] 240 SCRA 13.

[13] According to petitioner Sabiniano, he signed the vouchers for the Director of Lands (TSN, January 14, 1976, p. 15.).

[14] Exhs. A and B.

[15] Exh. 8.

[16] TSN, 14 January 1976, pp. 16-23.

[17] Rollo of G.R. No. 76558, p. 5.

[18] Ibid., p. 9.

[19] Ibid., p. 13.

[20] Ibid., p. 16.

[21] Ibid., p. 18.

[22] His brother, Auditor Vedasto Martinez, filed his own petition for review on certiorari which was docketed as G.R. No. 76559. On 22 January 1987, the petition was denied by the Court it appearing that the petition did not raise any question of law but sought merely the "review and reversal of the factual conclusions of the Court of Appeals and the Trial Court" and that no argument of substance had been adduced therein to warrant reversal of the appellate court's judgment. Petitioner Vedasto Martinez moved for the reconsideration of the 22 January 1987 Resolution but on 06 October 1987, the Court denied the same. Hence, on 29 October 1987, the questioned decision became final and executory as to petitioner Vedasto Martinez.

[23] Records, pp. 29-31.

[24] Rollo of G.R. No. 76558, pp. 42-43.

[25] *Pecho v. Sandiganbayan*, 238 SCRA 116, 138 citing *People v. Sendaydiego*, 81 SCRA 120 and *Alarcon v. Court of Appeals*, 19 SCRA 688.

[26] TSN, February 24, 1977, pp. 5-14.

[27] *Delfin v. Court of Appeals*, 13 SCRA 366, 369.

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