

BENJAMIN ABEJUELA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND COURT OF APPEALS, RESPONDENTS.*G.R. No. 80130. August 19, 1991*

Ponente: FERNAN, C.J.

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In this petition for review by certiorari, petitioner seeks a reversal of the decision of the Court of Appeals dated September 16, 1987 which affirmed in toto the decision of the Regional Trial Court, Branch VII of Palo, Leyte, dated January 11, 1984, convicting him as an accomplice in the complex crime of estafa thru falsification of a commercial document under Article 315, paragraph 2 (a) of the Revised Penal Code in relation to Article 172 thereof.[1]

The facts of this case are uncontroverted.

Petitioner Benjamin Abejuela, a businessman engaged in the manufacture and fabrication of hand tractors and other agricul-tural equipment, had a savings deposit with Banco Filipino, Tacloban Branch. Sometime in April or May 1978, petitioner was befriended by Glicerio Balo, Jr., an employee of Banco Filipino in the same Tacloban Branch. On several occasions, petitioner Abejuela and Balo would dine together, go to nightclubs or have drinking sprees.[2] They became close friends. Balo even became the godfather of Abejuela's daughter.[3] Moreover, Balo offered Abejuela financial assistance in the latter's welding business, claiming that he was expecting a large sum of money out of the insurance policy of his late father.

On August 3, 1978, Balo went to Abejuela's welding shop to borrow the latter's passbook. Abejuela was surprised and thought that it was not possible for Balo to use his passbook. Balo showed Abejuela some checks purporting to be the proceeds of his father's insurance policy. He wanted to deposit the checks in Abejuela's account with Banco Filipino. Abejuela then suggested that Balo open his own account. However, Balo explained that he was prohibited from opening an account with Banco Filipino since he was employed with that bank as a savings bookkeeper. Abejuela advised Balo to open an account instead with another bank but Balo insisted that he wanted the checks deposited with Banco Filipino so that he could facilitate their immediate encashment as well as avail himself of some privileges. Balo assured Abejuela that there was nothing wrong in allowing him to use his passbook and even reassured Abejuela that he would accompany him to the bank to make the deposit.

Accepting Balo's explanations and assurances, Abejuela entrusted his passbook to Balo. On August 8, 1978, Balo returned Abejuela's passbook where a deposit in the amount of P20,000.00 was already reflected. Once again, Balo assured Abejuela that there was nothing wrong with the deposit, and stated that he just deposited one of his checks. On the same day, Balo re-requested Abejuela himself to withdraw, in the former's behalf, money from his account with Banco Filipino. Again with assur-ances from Balo, Abejuela reluctantly agreed. He went to Banco Filipino and withdrew the amount of P15,000.00 which he gave to Balo at a restaurant called Felisa's Cafe.

Balo's practice of depositing and withdrawing money using Abejuela's passbook continued for quite some time. During the month of August 1978, the account of Abejuela with Banco Fili-pino reflected a total deposit of

P176,145.00 and a total with-drawal of P175,607.96.

In the meantime, Abejuela borrowed P20,000.00 from Balo, payable within 90 days from August 9, 1978. But feeling apprehensive over Balo's constant use of his passbook, Abejuela decided to pay his loan on August 31, 1978 by borrowing P10,000.00 from his father and taking the other P10,000.00 from his business profits.[4] Abejuela also closed his account with Banco Filipino by surrendering his passbook and withdrawing the balance of his deposit.

Thereafter, the bank's accountant and interest bookkeeper discovered a discrepancy between the interest reconciliation balance and the subsidiary ledger balance. The interest bookkeeper could not locate the posting reconciliation and the proof reconciliation. He also noticed that Account No. 6701-0160 in the name of Benjamin Abejuela reflected four (4) large deposits on various dates from August 3, 1978 to August 23, 1978, totalling P176,145.25, but the deposit slips thereof could not be located.

After further examination of the bank records, the manager, accountant and interest bookkeeper were convinced that the irregularities were caused by Balo who was the savings bookkeeper at that time and who had access to Abejuela's savings account ledger. They concluded that Balo was able to manipulate the ledger by posting the fictitious deposits after banking hours when the posting machine was already closed and cleared by the bank accountant.

The bank officials confronted Balo, who feigned ignorance and initially denied the accusations, but later admitted having posted the false deposits. Petitioner Abejuela was also implicated because he was the owner of the passbook used by Balo in accomplishing his fraudulent scheme. On December 5, 1978, an information was filed against Glicerio Balo, Jr. and Benjamin Abejuela for the crime of estafa thru falsification of commercial documents.[5] Separately arraigned, both pleaded "not guilty" to the crime charged.[6] Trial followed.

On May 29, 1979, acting on an application by Banco Filipino, the trial court issued an order of preliminary attachment against all the properties of accused Glicerio Balo, Jr. and Benjamin Abejuela not exceeding P176,145.25 in value, the amount alleged-ly embezzled or misappropriated. On September 4, 1979, the Deputy Sheriff of Palo, Leyte, filed a return of service and submitted an inventory of the goods taken from the two accused and which goods were placed in the custody of the National Bureau of Investigation. While the refrigerator and television set taken from the residence of Abejuela would not command a good price on account of their poor condition, the goods seized from Balo were appraised at P62,295.00.[7]

In the meantime, accused Glicerio Balo, Jr. was reportedly killed by members of the New People's Army in the mountains of Mat-i, Balangkayan, Eastern Samar, on suspicion that he was a PC informer and a collaborator. This information came from a rattan gatherer and former NPA member whose testimony before the court a quo was never impeached. Consequently, on February 25, 1981, the trial court dismissed the case against Glicerio Balo, Jr., pursuant to Article 89 of the Revised Penal Code, but without prejudice to a civil action for recovery of damages arising from the offense which may be instituted by Banco Filipino and without prejudice also to the reinstatement of the instant criminal action in the event the accused would turn out to be alive.[8] On September 7, 1981, Banco Filipino filed a motion praying for the forfeiture in its favor of the goods seized from the accused which were in the custody of the National Bureau of Investigation. On November 5, 1981, the trial court, thru District Judge Auxencio C. Dacuycuy, granted the motion and ordered the National Bureau of Investigation to deliver the seized goods to Banco Filipino. In addition, the bank was authorized to withdraw the savings deposit of Glicerio Balo, Jr. for eventual reversion to said bank.[9]

Thereafter, trial continued with respect to petitioner Abejuela. On January 11, 1984, the lower court adjudged petitioner Abejuela guilty. The dispositive portion of the decision reads:

"WHEREFORE, the court finds the accused Benjamin Abejuela guilty beyond reasonable doubt as accomplice of the complex crime of estafa thru falsification of a commercial document under Art. 315, par. 2(a) of the Revised Penal Code in relation to Art. 172 thereof and as the amount involved is more than P22,000 he is hereby sentenced to an indeterminate penalty of not less than fifteen (15) years, three months and 11 days to not more than sixteen (16) years, eight months and 21 days of reclusion temporal, to indemnify Banco Filipino, Tacloban Branch, in the sum of One Hundred Seventy Six Thousand One Hundred Forty Five Pesos and Twenty Five Centavos (P176,145.25), without subsidiary imprisonment in case of insolvency, and to pay one half of the costs.

"On May 29, 1979, the court issued a writ of preliminary attachment of the properties of defendants Glicerio Balo, Jr. and Benjamin Abejuela. This Attachment is hereby made permanent." [10]

Abejuela appealed to the Court of Appeals. On September 16, 1987, the Appellate Court affirmed the decision of the trial court.[11] A motion for reconsideration filed by petitioner was denied in a resolution dated October 7, 1987. Hence the instant appeal.

Petitioner Abejuela contends that the Appellate Court erred in not acquitting him for the following reasons:

"(1) Accused-petitioner has no knowledge of the criminal intent of his co-accused, Glicerio Balo, Jr., hence, there being no conspiracy, he cannot be convicted as principal, neither as accomplice, nor did he benefit from the effects of the crime, hence, he cannot be convicted even as an accessory.

"(2) The lending of the accused-petitioner of his passbook was made in good faith, and after he was deceived by co-accused Glicerio Balo, Jr. that it is necessary because as employee of Banco Filipino he cannot deposit in the said bank.

"(3) The presumption of innocence and the 'equipoise rule' apply in favor of accused-petitioner." [12]

Respondents, in their comment, maintain that petitioner Abejuela had knowledge of the fraudulent acts of Glicerio Balo, Jr. They asseverate that petitioner is an intelligent individual who can take care of his concerns, considering that he is a businessman who finished third (3rd) year college (commerce).[13]

Respondents also point out that Abejuela should not only have been convicted as an accomplice but as a principal by indispensable cooperation, because without the withdrawal slips which he executed allegedly in spite of his many doubts and apprehensions, Glicerio Balo, Jr. could not have succeeded in his scheme.

Petitioner, on the other hand, claims that he had no knowledge at all of the fraudulent machinations of Balo, and that his act of lending his passbook was done in good faith.

After carefully weighing the arguments of both parties as well as taking into consideration the evidence on record, we are inclined to believe that petitioner Abejuela was completely unaware of the malevolent scheme of Balo. From Balo's own admissions, it was he who deceived Abejuela through sweet talk, assurances, drinking sprees and parties and cajoled him into giving in to his requests. Furthermore, during that time, nobody would have questioned Balo's source of money since he had a perfect alibi, i. e. the insurance proceeds of his late father. When Balo showed Abejuela some checks purporting to be his father's insurance proceeds, Abejuela was hoodwinked into believing that Balo indeed had money. Balo's request to borrow Abejuela's passbook in order to facilitate the encashment of the checks seemed reasonable enough, considering that they were close friends and "compadres" Abejuela's acquiescence to Balo's overtures is understandable.

Furthermore, the court takes judicial notice of the practice of banks in allowing anybody to deposit in an account even with-out the owner's passbook, as long as the account number is known. Thus, even without Abejuela's passbook, the false deposits could still have been posted by Balo in the savings account ledger of Abejuela. After

all, the ledger is the record of the bank reflecting the transactions of the depositor, while the passbook is the record of the depositor. More often than not, it is the ledger which is more accurate and up-to-date. This is the reason why depositors have their passbooks updated for unrecord-ed transactions like interests, checks deposited beyond clearance cut-off time and bank charges.

In the instant case, the evidence of the prosecution clearly points at Balo as the one who had posted the bogus deposits in Abejuela's ledger. He was also the one who wisely manipulated petitioner Abejuela in order that the fictitious deposits could be placed at his (Balo) disposal. Thus, when Balo requested Abejuela to withdraw the amount he had earlier placed in the latter's account, Abejuela had no choice but to give in. He actually believed that the money was really owned by Balo and he did not want Balo to think that he was interested in it. Thus, the prosecution miserably failed to prove beyond reasonable doubt that Abejuela had knowledge of the fraudulent scheme of Balo. The most that could be attributed to Abejuela was his negligence in lending his passbook and his utter gullibility.

Knowledge of the criminal intent of the principal (in this case, Glicerio Balo, Jr.) is essential in order that petitioner Abejuela can be convicted as an accomplice in the crime of estafa thru falsification of commercial document. To be convicted as an accomplice, there must be cooperation in the execution of the offense by previous or simultaneous acts. However, the cooperation which the law punishes is the assistance rendered knowingly or intentionally, which assistance cannot be said to exist without the prior cognizance of the offense intended to be committed.

In a number of cases decided by this Court, it has been held that knowledge of the criminal intention of the principal is indispensable in order to hold a person liable as an accomplice. Thus:

"It appearing that the accused who drove the taxicab in which the other accused rode did not actually take part in the conspiracy to commit the crime of robbery but only furnished the means through which the robbery could be perpetrated, with knowledge of the said criminal design, he is not guilty as principal of the crime of robbery with homicide but is an accomplice therein." [14]

"There is no evidence that appellant had conspired with the malefactors, nor that he actually participated in the commission of the crime. He cannot, therefore, be considered as a principal. But in going with them, knowing their criminal intention and in staying outside of the house with them while the others went inside the store to rob and kill, appellant effectively supplied the criminals with material and moral aid, making him guilty as an accomplice." [15]

It is axiomatic that in criminal proceedings, proof beyond reasonable doubt is necessary before a judgment of conviction can be rendered. Not an iota of doubt must cloud the Court's mind. A conviction of a criminal offense must be based on clear and positive evidence and not on mere assumptions. [16]

In the light of the facts and the evidence on record, we believe that the guilt of petitioner Abejuela has not been established beyond a reasonable doubt for which reason he must be acquitted. The question that must be resolved now is the effect of Abejuela's acquittal on his civil liability.

The Rules provide: "The extinction of the penal action does not carry with it extinction of the civil, unless the extinction proceeds from a declaration in a final judgment that the fact from which the civil might arise did not exist. In other cases, the person entitled to the civil action may institute it in the jurisdiction and in the manner provided by law against the person who may be liable for restitution of the thing and reparation or indemnity for the damage suffered." [17]

We decree the acquittal of Abejuela because we seriously doubt whether he had knowledge of the plan of Balo to defraud Banco Filipino by means of posting false deposits and withdrawing these later. Because of this doubt,

however, his exoneration will not extinguish his civil liability. Thus, the civil liability is not extinguished by acquittal where the same is based on reasonable doubt as only preponderance of evidence is required in civil cases, or where the court has expressly declared that the liability of the accused is not criminal but only civil in nature.[18]

In *Banal vs. Tadeo, Jr.*,[19] we declared:

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"While an act or omission is felonious because it is punishable by law, it gives rise to civil liability not so much because it is a crime but because it caused damage to another. Viewing things pragmatically, we can readily see that what gives rise to the civil liability is really the obligation and moral duty of everyone to repair or make whole the damage caused to another by reason of his own act or omission, done intentionally or negligently, whether or not the same be punishable by law."

It has been satisfactorily established that Banco Filipino suffered damage in the amount of P176,145.25 representing the fictitious deposits posted Glicerio Balo, Jr. and systematically withdrawn through the passbook of petitioner Abejuela. Although Abejuela was unaware of the criminal workings in the mind of Balo, he nevertheless unwittingly contributed to their eventual consummation by recklessly entrusting his passbook to Balo and by signing the withdrawal slips. Abejuela failed to exercise prudence and care. Therefore, he must be held civilly accountable.

WHEREFORE, on reasonable doubt, Benjamin Abejuela is hereby ACQUITTED of the complex crime of estafa thru falsification of commercial documents. However, the writ of preliminary attachment issued by the Regional Trial Court of Leyte on May 29, 1979 against petitioner's properties and those of his co-accused Glicerio Balo, Jr. to satisfy their civil obligation in the amount of P176,145.25 and which was subsequently made permanent by the said court stands. No pronouncement as to costs.

SO ORDERED.

Gutierrez, Jr., and Davide, Jr., JJ., concur.

Feliciano, J., see concurring and dissenting opinion.

Bidin, J., in the result.

[1] Criminal Case No. 3272.

[2] TSN, p. 7, July 26, 1983.

[3] TSN, p. 17, July 26, 1983; p. 5, August 17, 1983.

[4] TSN, pp. 3-4, 6 and 24, July 26, 1983.

[5] Original Record, pp. 1-10.

[6] *Ibid*, pp. 94 and 106.

[7] Original Record, pp. 287-288.

[8] Original Record, pp. 235-236.

[9] Original Record, pp. 296-302.

[10] Original Record, pp. 480-481.

[11] Rollo, pp. 118-125.

[12] Rollo, p. 178.

[13] Rollo, p. 134.

[14] *People vs. Lingad*, 51 O.G. p. 6191; Emphasis supplied.

[15] *People vs. Balili*, No. L-14044, August 5, 1966, 17 SCRA 892, 898; Emphasis supplied.

[16] *Gaerlan vs. Court of Appeals, et al.* G.R. No. 57876, November 6, 1989, 179 SCRA 20.

[17] Rule 111, Sec. 2(c).

[18] *Padilla vs. Court of Appeals*, No. L-39999, May 31, 1984, 129 SCRA 558, citing *PNB vs. Catipon*, 98 Phil. 286 and *De Guzman vs. Alvia*, 96 Phil. 558.

[19] G.R. Nos 78911-25, December 11, 1987, 156 SCRA 325, 330.

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Concurring and Dissenting OPINION

Feliciano, J.:

I quite agree with the holding of the Chief Justice's ponencia that Benjamin Abejuela must be held civilly accountable and making permanent the writ of preliminary injunction issued by the trial court against Abejuela's properties and those of his co-accused Glicerio Balo, Jr. to satisfy their civil obligation in the amount of P176,145.25.

At the same time, I submit, with respect, that Abejuela should not be completely exonerated of criminal liability. The facts in this case appear so similar as to be practically on all fours with the facts in *Samson v. Court of Appeals* (103 Phil. 277 [1958]). In *Samson*, the Court held the accused guilty of "estafa through falsification of commercial documents by reckless negligence." Two (2) out of ten (10) members of the Court dissented: Reyes, J.B.L., J. and Concepcion, J. As far as I can determine, however, *Samson* has not been overruled, expressly or impliedly. Upon the other hand, the doctrine in *Samson* was explicitly followed in *People v. Rodis, et al.* (105 Phil. 1294 [1959]), where the Court held that the accused could be held liable for the crime of "malversation of public funds through falsification of a public document by reckless negligence." Much the same doctrine has been applied in both earlier and subsequent cases: *U.S. v. Malesa, et al.* (14 Phil. 468 [1909]) (Falsification of documents through reckless negligence); *People v. Blancas* (56 Phil. 801 [1931]) (Unpublished) (Falsification of public document through reckless negligence); *People v. Leopando (C.A.)* 36 O.G. 2937 (1938) (Falsification of public document through reckless negligence); *Sarep v. Sandiganbayan* (177 SCRA 440 [1989]) (Falsification of public document through reckless imprudence).

Finally, it might be noted that the ponencia explicitly found Abejuela to have acted with reckless negligence:

"x x x although Abejuela was unaware of the criminal workings in the mind of Balo, he nevertheless unwittingly contributed to their eventual consummation by recklessly entrusting his passbook to Balo and by

signing the withdrawal slips. Abejuela failed to exercise prudence and care. Therefore, he must be held civilly accountable." (Underscoring supplied)

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