

TELESFORO OPENA, PETITIONER, VS. HONORABLE COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 96227. February 01, 1993

Ponente: NOCON, J.

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NOCON, J.:

This is a Petition for Review by certiorari of the decision rendered by the Court of Appeals dated January 2, 1989 in CA-G.R. CR NO. 06576, affirming in toto the judgment of conviction rendered by Branch 48 of the Regional Trial Court of Pangasinan in Criminal Case No. U-3011, entitled "People of the Philippines vs. Telesforo Opena" for falsification of public document by a private individual. In the same light, petitioner seeks to annul the order of the Court of Appeals dated November 5, 1990 issued in the same case denying their motion for reconsideration.

The facts of the case are as follows:

Spouses Julian Gotgotao and Guillerma Opena are the registered owners of Lot No. 1584-B located at Barangay Cayambanan, Urdaneta, Pangasinan, as evidenced by Transfer Certificate of Title No. 61957 duly issued by the Register of Deeds of Pangasinan, which property they mortgaged[1] to the Rural Bank of Mangaldan, Inc., for the sum of Two Thousand (P2,000.00) Pesos and which mortgage was annotated on the second page of the title.[2]

However, when spouses Gotgotao went to the Bank to check on their Certificate of Title, they got the shock of their life when the bank employees said that Telesforo Opena, the half brother of Guillerma Opena, withdrew the said Certificate of Title from the bank by presenting a Special Power of Attorney purportedly executed by the Gotgotao spouses in favor of Telesforo Opena.

Upon verification with the Register of Deeds of Pangasinan in Lingayen to check on their title, they were informed that Telesforo Opena had caused the transfer of the title in his name by presenting a Deed of Absolute Sale allegedly executed by them. They also discovered that their Transfer Certificate of Title No. 61957 had been cancelled and a new one, Transfer Certificate of Title No. 131474 had been issued in the name of Telesforo Opena, married to Carolina Sanidad.[3]

Consequently, a complaint for falsification of public documents was filed against Telesforo Opena resulting in his conviction of said crime. On appeal to the Court of Appeals, accused-appellant's conviction was affirmed in toto.

Hence, this appeal.

The errors presented by herein petitioner are the following:

1. That the appellate court and the trial court erred in not acquitting petitioner when they found him not to have forged the thumbmark of Julian Gotgotao nor is there solid evidence that petitioner forged the signature of Guillerma Opena Gotgotao.
2. That both the appellate court and the trial court erred in finding that the defense is guilty of suppression of evidence.

3. That said courts erred in not finding that spouses Julian Gotgotao and Guillerma Opena validly conveyed the land in question in favor of petitioner; and

4. In annulling the Deed of Sale dated April 10, 1978 executed by spouses Julian Gotgotao and Guillerma Opena in favor of petitioner and his wife.

We find no merit in the instant petition.

Petitioner contends that the crime of falsification of public documents has not been committed in this case, considering that the thumbmark of Julian Gotgotao on the Absolute Deed of Sale was declared to be genuine and not a forgery by Questioned Document Expert Arturo B. Marasigan of the P.C. Crime Laboratory who issued a dactyloscopy report thereon.[4]

But while this may be true with respect to Julian Gotgotao's thumbmark on the Deed of Sale, the fact remains that Guillerma Gotgotao's signature on the same document was indubitably confirmed to be counterfeit and forged, both by the testimony of Guillerma herself and by the testimony of the handwriting expert Jovito R. Gutierrez of the P.C. Crime Laboratory who examined the same.[5]

We agree with the trial court when it said:

"With respect to the questioned signature of complaining witness Guillerma Opeña, (sic) the Court believes that accused Telesforo Opeña (sic) either forged the signature himself or caused it to be forged on the questioned deed of absolute sale dated April 10, 1978 (Exh. "B" and "2").

"The said belief of the Court is based on the findings that the questioned signature of complaining witness Guillerma Opeña (sic) appearing in the questioned deed of absolute sale dated April 10, 1978 is nothing but a forgery (Questioned Document Report No. 125--82, Exh. "E"). The Court relied on the aforesaid findings of the examining handwriting expert from the Philippine Constabulary Crime Laboratory, Camp Crame, Quezon City in the light of accused Telesforo Opeña's (sic) and former Barangay Captain Esteban Valdez's testimonies that both did not see the complaining witness Guillerma Opeña (sic) sign her name on the aforesaid deed of absolute sale because she was not present during the preparation and execution of the said deed of absolute sale at the law office of Atty. Caoayan in Poblacion, Urdaneta, Pangasinan. Further, said complaining witness denied having executed a deed of absolute sale in favor of the herein accused."

Even assuming arguendo that Julian Gotgotao's thumbmark on the subject document is genuine, still the counterfeit signature of Guillerma Gotgotao invalidates the whole instrument, since her signature thereon is essential to the validity of the alleged deed of sale, as warranted by Article 165 and 166 of the Civil Code which provides:

"Article 165 - The husband is the administrator of the conjugal partnership."

Article 166 - Unless the wife has been declared a non compos mentis or spendthrift, or is under civil interdiction or is confined in a leprosarium, the husband cannot alienate or encumber any real property of the conjugal partnership without the wife's consent. If she refuses unreasonably to give her consent, the court may compel her to grant the same."

Petitioner's argument that the prosecution failed to establish the counterfeit nature of Guillerma Gotgotao's signature in the Deed of Absolute Sale, because she "could not identify and recognize her signature in said exhibit because she "could not read and she had a poor and defective eyesight" had already been disposed off correctly by the trial court, as follows:

"The Court finds the said objection bereft of merit. There is no need for the complaining witness Guillerma Opeña (sic) to identify her forged signature appearing in the questioned deed of absolute sale because her denial of not

having executed the said deed of absolute sale in favor of Telesforo Opeña (sic) goes to show that she did not affix her signature in the said document."[6]

As aptly found by the Court of Appeals:

"The signature used as 'standards' are compared with the questioned signature of appellee Guillerma Opeña (sic) in the Deed of Absolute Sale were her voter's I.D. Card, Promissory Note to the Letter of the Land Bank, Discount and Computation Slip issued by the Rural Bank of Mangaldan, Residence Certificate, and a long bond paper containing her signatures 1 to 25. These signatures are admitted by appellee as hers and were used by her in her business transactions and her transactions with the government. This case thus falls squarely within the third method referred to by the High Tribunal.

"Appellant, moreover, did not rebut the testimony of expert witness Jovito Gutierrez and likewise did not impeach him. In fact, appellant and his witnesses hewed their testimonies to his findings by admitting that they did not see appellee Guillerma Opeña (sic) sign the questioned document. Hence, the trial court correctly gave credence to the expert witness and his findings that the signature of Guillerma Opeña (sic) is a forgery."[7]

As to the claim that the trial court and the Court of Appeals erred in stating that his counsel suppressed evidence which would otherwise have been material to his defense, We find nothing in the records to justify the same.

The trial court ruled:

"Noteworthy is the dispensation by the defense of the testimony of Atty. Anastacio Caoayan, the Notary Public of the questioned deed of absolute sale dated April 10, 1978 despite the issuance of several subpoena duces tecum issued upon him, on November 4, 1983, December 12, 1983, December 21, 1983, February 15, 1984, April 10, 1984, May 28, 1984, July 18, 1984 and August 8, 1984. The unexplained facts leads to the presumption that the defense's counsel suppressed evidence which is detrimental to his client's cause."[8]

Atty. Caoayan's testimony could have weighed heavily in favor of the petitioner's defense, if petitioner is to be believed, since Atty. Caoayan was ostensibly the lawyer who notarized the alleged deed of absolute sale, and could therefore have validated petitioner's claim that Guillerma Gotgotao's signature on the said document was genuine. Thus, petitioner's failure to present this material witness creates the presumption that if such testimony had been given, it would have been adverse to the petitioner's claim.

Likewise, the Court of Appeals concurred with the trial court's assessment of the situation, to wit:

"The trial court was justified in holding the appellant as having suppressed evidence when it dispensed with the testimony of the notary public who notarized the questioned Deed of Sale (Exh. "2", "B"). It appears that Atty. Anastacio Caoayan was subpoenaed no less than eight times (November 14, 1983; December 12, 1983; December 21, 1983; February 15, 1984; April 10, 1984; May 28, 1984; July 18, 1984 and August 8, 1984). At the hearing on April 5, 1984, indications that the defense was not really interested in presenting Atty. Caoayan was shown, thus:

"Atty. Sevilleja:

Yes, Your Honor. Your Honor, may we request that a subpoena be issued to Emilio Latore of Poblacion, Villasis, Pangasinan?

"Court:

What about Atty. Caoayan. There as a subpoena issued to him. He comes here every now and then. He should be punished for contempt of court for his failure to come despite subpoena duly served to him.

"Atty. Sevilleja:

We just subpoena him in the next hearing. In fact I talked with him only this morning.

"Court:

As if you do not want to present him anymore. It is up to you.

"Atty. Sevilleja:

No. Your honor, We will just subpoena him, Your Honor."[9]

However, on August 7, 1984, when by coincidence Atty. Caoayan happened to be in the sala of the judge hearing the falsification case and the judge called the attention of appellant's counsel to present him as a witness, the latter refused. Thus:

"Court:

You will present Atty. Caoayan? He is here finally.

"Atty. Sevilleja:

We will present the other witness from Villasis, Emilio Latore, Your Honor.

"Court:

Latore?

"Atty. Sevilleja:

Yes, Your Honor.

"Court:

You are dispensing with the testimony of Atty. Caoayan? He is finally here because this is in a coincidence he has a case.

"Atty. Sevilleja:

I will talk with him first, Your Honor.

"Court:

The court has issued several subpoena duces tecum. Now he is here, take the chance.

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"Atty. Sevilleja:

Your Honor, after minutely studying the case and our documentary evidence which are voluminous, we can prove the innocence of the accused without the testimony of Atty. Caoayan, Your Honor.

"Court:

So, you are now dispensing his testimony?

"Atty. Sevilleja:

We are now dispensing the testimony of Atty. Caoayan, Your Honor."[10]

Furthermore, the Court of Appeals likewise correctly concluded that even Julian Gotgotao's admittedly genuine thumbmark appearing on the questioned Deed is questionable, thus:

"[E]ven granting hypothetically, that Julian Gotgotao may have had some knowledge of the forgery, we do not believe he has the required cunning to, by himself and without appellant's instigation and active participation, develop the idea and proceed to have his wife's signature forged, considering the level of his intelligence as demonstrated in his testimony at the trial. (T.S.N., August 13, 1987, September 15, 1987) We are convinced, as was the trial court, that it was appellant himself, the one who used, took advantage, and profited by the forged signature who authored the same. Besides, while the finding is that Julian Gotgotao's thumbmark is genuine, he denied having knowingly thumbmarked any document selling their land." [11]

The Court of Appeals observed further:

"It is likewise alleged that the appellee did not dispute or deny the contract of sale dated November 5, 1976 (Exh. "11") allegedly thumbmarked by Julian Gotgotao and the receipt dated June 20, 1977 (Exh. "12"). In fact, the prosecution witnesses have denied these documents when appellees and their witnesses asserted that they never borrowed money from the accused-appellant in 1976 or in 1977 (T.S.N., April 11, 1983, p. 10; October 22, 1986, pp. 15-18; December 9, 1987, pp. 21-23; June 25, 1987, pp. 3-5; August 13, 1987, p. 4), when Julian Gotgotao denied that there ever was a time he agreed to sell the land to accused (T.S.N., August 13, 1987, p. 12) or that he delivered a deed of sale on April 11, 1978 to appellant in his house for which the alleged borrowings were part of the consideration (T.S.N., September 15, 1978, p. 2); and when appellee Guillerma Opeña testified that appellant had no right and had no authority to take the owner's copy of the title to the land in question from the bank (T.S.N., April 11, 1983, pp. 7-8)." [12]

Finally, petitioner's claim that spouses Gotgotao conveyed the subject property in his favor in view of previous loans extended to them has been resolved by the trial court in this wise, to which We concur:

"In an effort to justify the due execution of the deed of sale dated April 10, 1978, the accused Telesforo Opeña (sic) claimed that the consideration in the amount of P18,000.00 represents the total borrowings of the Gotgotao family from him. However, the aggregate amount shelled out by the herein accused (P6,370.00. Exh. 11; P12,300.00, Exh. 12; P4,700.00 given after the execution of the said deed of absolute sale and P2,138.10, Exh. 13 or a total of P25,508.10) is more than what the herein accused bargained with the Gotgotao family at P3.00 per square meter of the said lot in dispute containing an area of 6,190 square meters and 6,190 multiplied by P3.00 amounts to P18,570.00. The conflicting amounts of money testified to by the herein accused gives truth to the saying that 'No falsification is perfect in all its parts'. Further, 'defense evidence which is replete with inconsistencies does not inspire belief' (People vs. Radomes, 141 SCRA 548) 'Contradictory and inconsistent on material points render testimonies doubtful.' (People vs. Quison, 142 SCRA 362).

WHEREFORE, there being no reversible error in the decision appealed herefrom, the same is hereby **AFFIRMED** in toto. Costs against appellant.

SO ORDERED.

Narvasa, C.J., (Chairman), Feliciano, Regalado, and Campos, Jr., JJ., concur.

[1] Exhibit "D", Records, p. 241.

[2] Exhibit "A-1", Records, p. 74.

[3] Exhibit "C", Records, pp. 76-77.

[4] Exhibit "6", Records, p. 260.

[5] Exhibit "E", Records, p. 243.

[6] RTC Decision, p. 8.

[7] Court of Appeals Decision, p. 12; Rollo, p. 69.

[8] RTC Decision, p. 9.

[9] Court of Appeals Decision, pp. 14-15; Rollo, pp. 71-72.

[10] Court of Appeals Decision, pp. 15-16; Rollo, pp. 72-73.

[11] Court of Appeals Decision, p. 13, Rollo, p. 70.

[12] Ibid.

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