

FELIPE FAJELGA, PETITIONER, VS. HON. ROMEO M. ESCAREL, HON. CONRADO M. MOLINA AND HON. RAMON V. JABSON, MEMBERS, SECOND DIVISION, SANDIGANBAYAN, RESPONDENTS.

G.R. Nos. 61017-18. November 14, 1988

Ponente: PADILLA, J.

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PADILLA, J.:

Petition for review on certiorari of the Sandiganbayan's decision[*], dated 18 June 1982, in Criminal Cases Nos. 3690 and 3691 finding petitioner guilty of Falsification of Public Document through reckless imprudence in the first case and Infidelity in the Custody of Documents in the second case.

The facts spanning both cases are as follows:

On 5 November 1979, Serenico Ablat signed and executed a Deed of Absolute Sale of a used Kawasaki motorcycle for Eight Thousand Five Hundred Pesos (P8,500.00) in favor of the provincial government of Batanes represented by Provincial Engineer Telesforo Castillejos. The motorcycle, how-ever, was then registered in the name of petitioner Fajelga, a driver in the Office of the Provincial Engineer, on detail as driver-messenger in the Office of the Provincial Auditor, who had bought the motorcycle in 1978 for Five Thousand Nine Hundred Pesos (P5,900.00) only. The Deed of Absolute Sale was executed pursuant to a Purchase Request signed by Provincial Engineer Castillejos, as requisitioning officer of the provincial government, for a motorcycle to be used by then Provincial Auditor Felix Balisi.

But the sale of the motorcycle to the provincial government of Batanes was not consummated because Felix Balisi resigned and the new Provincial Auditor, Elena Alcantara, deemed the motorcycle impractical for her own use. Therefore, the sale was cancelled. Mrs. Alcantara then gave the cancelled vouchers and other supporting documents related to the sale, which she had received from the Provincial Treasurer's office, to the petitioner who allegedly placed the documents in a cabinet in the Provincial Auditor's office which was subsequently burned in a fire which occurred in said office.

Petitioner, Provincial Engineer Telesforo Castillejos and Serenico Ablat were indicted for violation of Republic Act 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, for engaging in a transaction prejudicial to the government and for violating various circulars governing transactions with local government units. But they were acquitted of the graft charge as the prohibited act was not consummated. Petitioner and his co-accused were, however, convicted in Criminal Case No. 3690 of falsification of public document under paragraph (4), Art. 171 of the Revised Penal Code and each was sentenced to suffer an indeterminate penalty of 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 P3,000.00, and the proportionate costs of the proceedings. Petitioner was also held liable in Criminal Case No. 3691 for Infidelity in the Custody of Documents, under para-graph 2, Art. 226 of the Revised Penal Code and sentenced to suffer an indeterminate penalty of from three (3) months and one (1) day of arresto mayor, as minimum, to one (1) year, eight (8) months and twenty one (21) days of prision

correccional as maximum, and to pay a fine of Five Hundred Pesos (P500.00) and costs.[1]

The petitioner moved for reconsideration of the decisions[2] and on 18 June 1982, the Sandiganbayan in a resolution, modified its decision in Criminal Case No. 3690, by finding petitioner and his co-accused guilty of falsification of public document through reckless imprudence as defined and penalized under Article 171(2) in relation to Art. 365(1) of the Revised Penal Code, and reduced the penalty imposed upon them to four (4) months of arresto mayor and a fine of Five Hundred Pesos (P500.00) each. Reconsideration of the judgment of conviction in Criminal Case No. 3691 (Infidelity in the Custody of Documents) was, however, denied.[3]

Petitioner now alleges that he cannot be convicted of falsification under either paragraph (2) or paragraph (4) of Article 171 of the Revised Penal Code, as he was not a party to the questioned Deed of Absolute Sale, nor did he impersonate anybody in furtherance of the sale. He also questions his conviction under Art. 171(2) as he pleaded to, and was tried on the basis of an information charging with falsification under paragraph (4) of Art. 171. He contends that to convict him under paragraph (2) of said Article would be to deprive him of his constitutional right against double jeopardy. The motive and intent to falsify attributed to him are likewise alleged to be baseless, as there really was a contract of sale between him and Ablat executed two (2) months before the questioned sale between Ablat and the provincial government of Batanes.

Finally, petitioner contends that, even assuming that there was falsification as defined in Art. 171 of the Revised Penal Code, still, no conviction against him can lie as no material damage was caused the government by reason of non-consummation of the sale.

The Solicitor General, upon the other hand, maintains that the offense committed is falsification, defined and penalized under paragraph (4) of Art. 171 of the Revised Penal Code since the claim of the petitioner that Ablat was the owner of the motorcycle is untruthful and petitioner was an active participant in the making of the untruthful narration of facts.

After careful consideration of the facts of the case and the law, we find that petitioner is entitled to an acquittal from the charges against him. Article 171, paragraphs (2) and (4) of the Revised Penal Code provides:

"Art. 171. Falsification by public officer, employee or notary or ecclesiastic minister. - The penalty of prision mayor and a fine not to exceed P5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position shall falsify a document by committing any of the following acts:

"x x x x x x x x

"2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;

"x x x x x x x x

"4. Making untruthful statements in a narration of facts;

"x x x x x x x x."

In the case of *People vs. Quasha*,[4] the Court said:

"Commenting on the above provisions, Justice Albert, in his well-known work on the Revised Penal Code (new edition, pp. 407-408), observes, on the authority of *U.S. vs. Reyes*, (1 Phil., 341), that the perversion of truth in the narration of fact must be made with the wrongful intent of injuring a third person; and on the authority of *U.S. vs. Lopez* (15 Phil., 515), the same author further maintains that even if such wrongful intent is proven, still the untruthful statement will not constitute the crime of falsification if there is no legal obligation on the part of the narrator to disclose the truth. Wrongful intent to injure a third person and obligation on the part of the narrator to disclose the truth are thus essential to a conviction for the crime of

falsification under the above articles of the Revised Penal Code."

In the instant case, the deed of absolute sale executed by Ablat was adjudged to be a falsified document because it conveyed the impression that Ablat was the owner of the motorcycle, subject matter of the transaction, when such was not the case, as the petitioner Fajelga is the true and registered owner of the said motorcycle, thereby making an untruthful narration of facts.

It should be noted, however, that the statement that Ablat was the owner of the motorcycle in question is not altogether untruthful since the petitioner Fajelga had pre-viously sold the motorcycle to him. While the deed of sale may not have been registered with the Bureau of Land Transportation, Ablat nevertheless became the owner thereof before its aborted sale to the provincial government of Batanes.

Besides, malicious intent to injure a third person is absent. In fact, neither the government nor any third person incurred any loss by reason of the "untruthful" narration.

But, most importantly, as Justice Albert says: "in the falsification of public or official document under Art. 171 of the Revised Penal Code, it is not enough that the falsification be committed by a public officer; it is also necessary that it should be committed by a public officer with abuse of his office, that is, in deeds, instruments, indentures, certificates, etc., in the execution of which he participates by reason of his office." [5]

In the instant case, however, the information filed against the petitioner and his co-accused alleged that the petitioner, although a public officer, acted in his private and personal capacity. Hence, there was no abuse of official position. Besides, the petitioner Fajelga could not have abused his position, as driver, in falsifying the document adverted to. In view thereof, the petitioner cannot be convicted of falsification under Art. 171 of the Revised Penal Code.

As for petitioner's conviction for infidelity in the custody of documents, he alleges that his acts did not constitute said crime of infidelity as he was not officially entrusted with the documents allegedly lost, and that the documents even if entrusted to him, were mere scraps of paper, the transaction they reflect having been cancelled.

Petitioner's above arguments are meritorious. The elements of the offense of infidelity in the custody of documents are: 1) that the offender be a public officer; 2) that there be a document abstracted, destroyed or concealed; 3) that the document destroyed or abstracted be entrusted to such public officer by reason of his office, and 4) that damage or prejudice to the public interest or to that of a third person be caused by the removal, destruction or concealment of such document. [6]

Not all four (4) elements of the offense are present in this case. While petitioner is a public officer as defined in Art. 203 of the Revised Penal Code, [7] and while vouchers and supporting papers of the aborted sale were given to him - documents he was later unable to produce - it is doubtful whether such papers were required to be officially kept and, further, whether they were entrusted to him by reason of his office or position. The Provincial Auditor, Elena Alcantara, admitted as follows:

"Q.

Once a voucher has been cancelled, what is the status of that voucher, is it just scrap of paper?

A.

Yes, Your Honor.

Q.

And a cancelled voucher did not have to be officially kept for record purposes?

A.

No, sir."

[T.s.n., p. 122, 16 Feb. 1982]

Moreover, the cancelled documents and papers were given to petitioner without any instruction as to what to do with them - whether to keep them or to bring them to a specific entity or office - as Mrs. Alcantara's testimony also shows:

"Q.

Mrs. Witness, after you had cancelled the voucher and delivered that cancelled voucher with the supporting documents to Mr. Fajelga, you did not tell Mr. Fajelga to deliver those documents to anybody else?

A.

I did not, Your Honor.

Q.

You just delivered to him without any instructions to what to do with them?

A.

I did not."

[T.s.n., p. 122, 16 Feb. 1982]

Petitioner's act or omission, not having met all the requisites for the offense of infidelity in the custody of documents to exist, he cannot be held liable therefor. It must be noted, however, in passing that petitioner's allegation that there was no damage to public interest, the sale evidenced by the lost documents having been aborted, is an argument not really accurate or impressive, because destruction of documents which could hinder prosecution of an illegal transaction or an anomalous sale involving misrepresentation and falsification, results in damage to public interest.[8]

WHEREFORE, the judgment appealed from is hereby REVERSED and SET ASIDE and the petitioner is ACQUITTED of the two (2) charges filed against him. With costs de oficio.

SO ORDERED.

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

[*] Penned by Justice Romeo M. Escareal with the concurrence of Justices Conrado M. Molina and Ramon V.

Jabson.

[1] Rollo, p. 129

[2] Id., p. 61

[3] Id., p. 20

[4] G.R. No. L-6055, June 12, 1953, 93 Phil., 333-337

[5] Albert, Revised Penal Code, 1946 ed., p. 399

[6] U.S. v. Tobias, 20 Phil. 105 (1911)

[7] "Art. 203. Who are public officers. - [A] For the purpose of applying the provisions of this and the pre-ceding titles of this book, any person who, by direct provision of the law, popular election or appointment by competent authority, shall take part in the performance of public functions in the Government of the Philippine Islands, or shall perform in said Government or in any of its branches public duties as an employee, agent or subordinate official of any rank or class, shall be deemed to be a public officer.

[8] People v. Paloma, February 19, 1941, 40 O.G. No. 10, p. 2087

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