

## **FIRST DIVISION**

**[ G.R. NO. 151912, September 26, 2005 ]**

**PHILIPPINE SAVINGS BANK, PETITIONER, VS. SPOUSES  
PEDRITO BERMOY AND GLORIA BERMOY, RESPONDENTS.**

### **DECISION**

**CARPIO, J.**

#### **The Case**

This is a petition for review<sup>[1]</sup> of the Decision<sup>[2]</sup> dated 14 November 2001 of the Court of Appeals denying the petition for certiorari filed by petitioner and its Resolution dated 24 January 2002 denying reconsideration.

#### **The Facts**

Based on a complaint filed by petitioner Philippine Savings Bank ("petitioner"), respondents Pedrito and Gloria Bermoy ("respondent spouses") were charged with estafa thru falsification of a public document in the Regional Trial Court, Manila, Branch 38 ("trial court"). The Information, docketed as Criminal Case No. 96-154193, alleged:

That on or about May 11, 1994, and for sometime prior and subsequent thereto, in the City of Manila, Philippines, the said accused, being then private individuals, conspiring and confederating together and mutually helping each other, did then and there willfully, unlawfully and feloniously defraud the Philippine Savings Bank a banking institution, duly organized and existing under Philippine Laws xxx, thru falsification of a public document in the following manner, to wit: the said accused prepared, forged and falsified or caused to be prepared, forged and falsified an owner's copy of Transfer Certificate of Title No. 207434, which is an imitation of, and similar to the Transfer Certificate of Title No. 207434 issued by the Regist[er] of Deeds for the City of Manila, and therefore, a public document, by then and there typing on the blank spaces thereon the title no., description of a parcel of land containing an area of 350 square meters, located in Malate, this City, the names of the accused as the registered owners thereof, and then signing, falsifying and simulating the signature of "ALICIA D. GANZON", Register of Deeds, appearing on the lower right hand portion of the 1st page of said document; the name "EDGARDO C. CASTRO", Actg. Deputy, appearing on the right hand middle portion of the 3<sup>rd</sup> page, and imprinting thereon several entries purportedly showing that the annotation thereon was a mortgage in favor A. C. Aguila and Sons, which was cancelled on February 17, 1994, thereby making it appear, as it did appear, that accused are the registered owners of the said property, under said TCT No. 207434 which purportedly is the owner's copy of said title, when in truth and in fact, as

the said accused fully well knew, the same is an outright forgery, as the owner's duplicate copy of said Transfer Certificate of Title No. 207434 is in possession of the spouses EDGAR and ELVIRA ALAMO by reason of the previous mortgage of the said property in favor of the latter since February 17, 1994 and which was later sold to them on June 19, 1995; that once the said document has been forged and falsified in the manner above set forth, the said accused presented the same to the Philippine Savings Bank and used the said title as collateral in obtaining, as in fact, they did obtain a loan in the sum of P1,000,000.00 from the said bank, and once in possession of the said amount of P1,000,000.00 with intent to defraud, they willfully, unlawfully and feloniously misappropriated, misapplied and converted the same to their own personal use and benefit, to the damage and prejudice of the said Philippine Savings Bank in the aforesaid amount of P1,000,000.00, Philippine Currency.<sup>[3]</sup>

Upon arraignment, respondent spouses pleaded "not guilty" to the charge.

The trial court set the pre-trial on 11 June 1997. After the hearing on that day, the trial court issued the following Order ("11 June 1997 Order"):

When the case was called for hearing, Atty. Maria Concepcion Puruganan, who entered her appearance as private prosecutor and Atty. Albino Achas, defense counsel, appeared and upon their stipulation, they admitted the jurisdiction of the Court and the identities of the accused.

Upon motion of Atty. Puruganan, private prosecutor, joined by public prosecutor Antonio Israel, without objection from Atty. Achas, let the initial hearing for the reception of the evidence for the prosecution be set on June 18, 1997 at 8:30 a.m., as previously scheduled.<sup>[4]</sup> (Emphasis supplied)

The minutes of the hearing, which respondent spouses signed, bore the following handwritten notation under the heading "remarks": "Postponed. Upon joint agreement of counsels."<sup>[5]</sup> This was the only notation made under "remarks." Nowhere in the one-page minutes of the hearing did it state that any of the accused made any stipulation or admission.

During the hearings of 18 June 1997 and 3 September 1997, the prosecution presented the testimonies of Felisa Crisostomo ("Crisostomo"), manager of petitioner's Libertad Manila Branch, and one Hermenigildo Caluag ("Caluag"), also an employee of petitioner. Crisostomo testified that she came to know respondent spouses when they applied for a loan in February 1994. Crisostomo stated that respondent spouses presented to her Transfer Certificate Title No. 207434 ("TCT No. 207434") issued in their name over a parcel of land in Malate, Manila ("Malate lot") which they offered as collateral for the loan. Crisostomo further stated after the approval of respondent spouses' loan application, respondent spouses executed in her presence a real estate mortgage of the Malate lot in favor of petitioner as security for their loan. Caluag testified that he was tasked to register petitioner's certificate of sale over the Malate lot<sup>[6]</sup> with the Register of Deeds of Manila but the latter refused to do so because the Malate lot had been mortgaged and sold to the spouses Edgar and Elvira Alamo.<sup>[7]</sup>

After presenting the testimonies of Crisostomo and Caluag, the prosecution rested its case.

Instead of presenting its evidence, the defense filed, with leave of court, a demurrer to evidence on the ground that the prosecution failed to identify respondent spouses as the accused in Criminal Case No. 96-154193. The prosecution, through the private prosecutor, opposed the motion claiming that Crisostomo and Calang had identified respondent spouses. The prosecution also pointed out that as borne by the 11 June 1997 Order, respondent spouses stipulated on their identity during the pre-trial.<sup>[8]</sup>

### **The Ruling of the Trial Court**

In its Order of 21 April 1998 ("21 April 1998 Order"), the trial court granted respondent spouses' motion, dismissed Criminal Case No. 96-154193, and acquitted respondent spouses. The 21 April 1998 Order reads:

The basic issues to resolve here boils down on (sic) the determination of whether the accused were identified by the prosecution witnesses as the perpetrators of the act complained of during the trial of the case and whether they admitted their identities as the accused named in the information.

After carefully going over the length and breadth of the testimonies of the two prosecution witnesses, there is nothing in the transcript which would slightly indicate that they identified the accused as the persons who obtained a loan from the Philippine Savings Bank and executed the corresponding documents. The identification of an accused [by the witness] may be made by pointing to him directly in open court xxx or [by] stepping down from the stand and tapping his shoulder. If the accused is not present during the trial, his identification may be effected through his pictures attached to the bail bond or some other means. The identification of an accused as the perpetrator of an offense is essential in the successful prosecution of criminal cases. By the accused's entering a negative plea to the allegations in the information, he denies that he committed the offense. He cannot even be compelled to give his name during the arraignment and for which the Court may enter a plea of not guilty for him.

As to the stipulation of facts regarding the admission of the jurisdiction of the court and the identities of the accused, a cursory reading of the Order of June 11, 1997 reveals that their express conformity to the stipulation of facts entered into by their counsel with the private prosecutor was never asked of them. Considering that the admission of the identities of the accused as the perpetrators of the crime here charged is a matter which adversely affects their substantial rights, such admission must have to involve their express concurrence or consent thereto. This consent is manifested in their signing the pre-trial order containing such admissions. As to the minutes of the proceedings of June 11, 1997, suffice it to state that there is nothing to it (sic) which would even hint that a stipulation of facts ever took place.

WHEREFORE, for insufficiency of evidence, let this case be, as the same is hereby, DISMISSED and accused Pedrito Bermoy and Gloria Visconde [Bermoy] are, as they are hereby, acquitted of the crime charged, with costs de oficio.<sup>[9]</sup>

The prosecution, again through the private prosecutor, sought reconsideration but the trial court denied its motion in the Order of 28 May 1998.

Petitioner filed a petition for certiorari with the Court of Appeals. The Solicitor General joined the petition.

### **The Ruling of the Court of Appeals**

In its Decision dated 14 November 2001, the Court of Appeals, as earlier stated, denied the petition. It held:

In support of the demurrer to evidence, the defense counsel argued that neither of the witnesses presented by the prosecution was able to identify the accused as allegedly those who committed the crime they were prosecuted for.

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Petitioner, however, argues that the testimonies of the two witnesses they presented identified the accused spouses as the perpetrators of the crime. xxx

We are not convinced. The xxx testimony proves only one thing: that a couple purporting to be the Bermoy spouses presented themselves to the Bank and obtained the loan. Whether they are the same husband and wife accused in this case for Estafa is a different story. The failure of the prosecution to point in open court to the persons of the accused as the same persons who presented themselves to the Bank is a fatal omission. They could be impostors who, armed with the fake title, presented themselves to the Bank as the persons named in the title. The prosecution goofed. Had the witnesses been asked to point to the two accused as the same couple who appeared before the Bank to obtain the loan, there would have been no doubt on their criminal liability.

Petitioner further argued that the law itself does not prescribe the ways to identify the accused, xxx [.]

True, there is no standard form provided by law [for] identifying the accused. Jurisprudence and trial practice show that the accused is usually identified by the witnesses, prompted by the counsel, by either pointing at him or stepping down the witness' stand and tapping him on the shoulder, or by means of photographs. The trial court correctly pointed this out. How else can identification be done, it may be asked.

The petitioner also argues that "the identities of private [respondents] were clearly established as a result of the stipulation by and between the prosecution (thru the private prosecutor) and the defense." It insists

that the Order dated June 11, 1997, is sufficient admission by the accused as to their identities, and [was] allegedly signed by them and their counsel as required under Section 2 of Rule 118 of the Rules on Criminal Procedure. There is no merit to this argument. If ever stipulations were made on June 11, 1997, these must be made in writing, which must be signed by the accused and counsel as their conformity to such stipulations. The records, however, show that the Order dated June 11, 1997, merely stated what transpired during that particular hearing and what the counsels signed was the minutes for the same hearing. Hence, the identities of the accused were not stipulated upon for failure to comply with the requirements under the Rules of Court. The trial court correctly ruled that "there [was] nothing xxx which would even hint that a stipulation of facts ever took place."

xxx

In fine, we are more than convinced that the trial court was correct in granting the demurrer to evidence for insufficiency of evidence on account of lack of proper identification of the accused. But even assuming that the trial court erred, the acquittal of the accused can no longer be reviewed either on appeal or on petition for certiorari for it would violate the right of the accused against double jeopardy. xxx

In the case at bench, it is clear that this petition seeks to review the judgment of the trial court, which already had jurisdiction over the subject matter and of the persons of this case. The trial court had jurisdiction to resolve the demurrer to evidence filed by the accused, either by denying it or by dismissing the case for lack of sufficient evidence. If the demurrer is granted, resulting [in] the dismissal of the criminal case and the acquittal of the accused, this can no longer be reviewed unless it can be shown that the trial court committed grave abuse of discretion amounting to excess or lack of jurisdiction. In this case, assuming the trial court committed an error, the petitioner has not shown that it committed grave abuse of discretion amounting to lack [or] excess xxx of jurisdiction. The error, if any, is merely an error of judgment.<sup>[10]</sup>

Petitioner sought reconsideration claiming that the Court of Appeals contradicted itself when it held, on one hand, that the trial court's error did not amount to grave abuse of discretion and stated, on the other hand, that any error committed by the trial court can no longer be reviewed without violating respondent spouses' right against double jeopardy. Petitioner also contended, for the first time, that it is the trial court's duty to insure that the accused sign the pre-trial order or agreement embodying respondent spouses' admissions and that its failure to do so should not be taken against the prosecution.

The Court of Appeals denied petitioner's motion in the Resolution of 24 January 2002 which reads:

The petitioner seems to have misunderstood our ruling regarding the issue on double jeopardy in connection with [the] petition for certiorari. Petitioner argues that our ruling has been contradictory for saying on one