

## THIRD DIVISION

[ G.R. No. 214231, September 16, 2020 ]

**MARILYN Y. GIMENEZ, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND LORAN INDUSTRIES, INCORPORATED, RESPONDENTS.**

### DECISION

**CARANDANG, J.:**

Before this Court is a Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court, assailing the Decision<sup>[2]</sup> dated March 30, 2012 and Resolution<sup>[3]</sup> dated July 15, 2014 of the Court of Appeals (CA) in CA-G.R. CR No. 01042, which affirmed with modification<sup>[4]</sup> the conviction of Marilyn Y. Gimenez (petitioner) for falsification of a public document by a private individual under Article 172(1) in relation to Article 171(2) of the Revised Penal Code (RPC) and imposed upon her the indeterminate penalty of four (4) months and one (1) day of *arresto mayor* in its maximum period to *prision correccional* in its minimum period, as the minimum term, to three (3) years, six (6) months, and twenty-one (21) days in the medium period of *prision correccional* in its medium and maximum periods, as the maximum term, with an increased fine amounting to P5,000.00.<sup>[5]</sup>

#### Facts of the Case

Private respondent Loran Industries Incorporated (Loran Industries) is a private corporation duly registered with the Securities and Exchange Commission (SEC) engaged in manufacturing, selling and exporting furniture products.<sup>[6]</sup> Loran Industries was incorporated by Antonio Quisumbing (Antonio), Lorna Quisumbing (Lorna), Teresita Bonto, Ramon Quisumbing, Montano Go (Montano), and Norberta Quisumbing, Jr. The present members of the Board of Directors are: Antonio, Lorna, Montano, Martin Antonio Quisumbing (Anton), and Paolo Marco Quisumbing (Paolo). Anton and Paolo, who are the sons of Antonio and Lorna, only hold nominal shares of stocks but are actively involved in the operations of Loran Industries.<sup>[7]</sup>

Petitioner was an employee of Loran Industries for 25 years. She started as an accounting clerk in 1979 and rose from the ranks to become the head of the company's accounting and finance departments. Petitioner was also designated as corporate secretary until her preventive suspension on October 4, 2005.<sup>[8]</sup>

On June 19, 2003, the Board of Directors of Loran Industries passed a resolution adopting a two-signatory policy wherein any two of the Directors are authorized and empowered, for and in behalf of the corporation, to sign all checks and dollar withdrawals under Allied Bank, Banilad Branch, Current Account No. 1441002818 and Dollar Account No. 1442000767 and to negotiate, enter into, execute, and deliver any instruments, agreements, and other pertinent documents thereto, effective August 1, 2003.<sup>[9]</sup>

On August 25, 2003, petitioner executed another Secretary's Certificate<sup>[10]</sup> stating that on August 15, 2003, the Board approved a resolution allowing only one of the members of the Board to sign and issue checks and dollar withdrawals against the same Allied Bank current and dollar accounts effective the very next day, or on August 26, 2003. The said Secretary's Certificate was notarized by Atty. Juan B. Astete, Jr. on August 25, 2003.<sup>[11]</sup>

As a result of the execution of the above-mentioned Secretary's Certificate, several checks bearing only one signatory were drawn against the current account of Loran Industries with Allied Bank. The said August 25, 2003 Secretary's Certificate was allegedly discovered by Lorna sometime in October 2004.<sup>[12]</sup> Consequently, Loran Industries filed a complaint before the Office of the City Prosecutor of Mandaue City. On March 31, 2005, an Information was filed against petitioner for falsification of a public document, accusing her of making it appear that the Board of Directors of Loran Industries participated in, passed, and approved a resolution designating any one of them as authorized signatory to the checking account of Loran Industries when in truth, they have not.<sup>[13]</sup>

The prosecution first presented Lorna<sup>[14]</sup> and Antonio<sup>[15]</sup> as witnesses. Lorna testified that sometime in October 2004, she saw checks drawn against the account of Loran Industries with Allied Bank bearing only one signature that were honored and paid by the bank. She was surprised because all the while, she knew that under a board resolution, checks issued by Loran Industries should be signed by any two of the authorized signatories. Because of this, she called the manager of Allied Bank and inquired about the matter. The manager informed Lorna that there was a document to support the bank's action and sent her a copy of the August 25, 2003 Secretary's Certificate. Lorna hired an auditor to conduct an audit of the company which began in September 2004. She maintained that there was no meeting or board resolution approved on August 15, 2003 contrary to what was stated in the questioned Secretary's Certificate.<sup>[16]</sup>

Antonio corroborated the claim of Lorna that there was no meeting or board resolution approved on August 15, 2003. Antonio stressed that the board resolution passed on June 19, 2003 was the real one and they never met again to change the same. He pointed out that the questioned Secretary's Certificate did not bear the signatures of the authorized signatories in contrast with the Secretary's Certificate certifying the two-signatory policy which reflected the signatures of all the authorized signatories.<sup>[17]</sup>

For the defense, Cleofe Camilo<sup>[18]</sup> (Camilo) and petitioner were first presented as witnesses. According to Camilo, she was a co-employee of petitioner who was employed by Loran Industries from 1984 to 2004. Before her resignation, Camilo was the marketing assistant and the one in charge of shipping. As such, Camilo encountered problems in purchasing materials when Loran Industries adopted the two-signatory policy because it resulted in the delay in release of checks since some of the signatories were not always present in the office. The delay in purchasing materials resulted in delay in the shipment or delivery of the orders of the clients of Loran Industries. Hence, she brought her concern to petitioner. Camilo and petitioner went to Paolo to discuss the problem. Paolo told them that he would bring the matter to the Board. She admitted that she does not have knowledge of what

happened next. However, after such discussion, she saw checks bearing only one signature being issued.<sup>[19]</sup>

Petitioner, for her part, testified that aside from being the accounting and finance head, she also acted as Loran Industries' corporate secretary but without any formal appointment nor additional compensation therefor. She attested that as corporate secretary, she just signed resolutions the Board wanted her to make and that actual meetings or elections of the Board of Directors never happened. According to her, Paolo told her that the reason why Loran Industries introduced the two-signatory policy in the issuance of checks is to regulate the cash advances made by the owners of the company.<sup>[20]</sup>

Petitioner seconded the claim of Camilo that the two-signatory policy resulted in the delay in the shipment and procurement of raw materials because the checks were not ready for encashment without the second signatory. She averred that the company experienced difficulty in processing the checks because most of the time, only Paolo is in the office while the other members of the Board either come in late in the afternoon or were busy with their other commitments. Because of these concerns, petitioner decided to discuss the matter with Paolo whom she regarded as her supervisor being the son of the owners of the company. Petitioner recalled that she and Camilo approached Paolo about the problems they encountered when the two signatory policy took effect. Paolo told them that he would bring the matter to the Board. Thereafter, petitioner saw Paolo talking over the phone with the members of the family and discussing with them the problems being faced by the corporation regarding the two-signatory policy. After hanging up the phone, Paolo told her to make a board resolution allowing the issuance of checks with only one signatory.<sup>[21]</sup>

Even with the Secretary's Certificate allowing the issuance of checks with only one signatory, petitioner admitted that Loran Industries still issued checks bearing two signatures. She clarified that if the signatories were present and available, she would let the two of them sign.<sup>[22]</sup>

Petitioner presented a list of the checks<sup>[23]</sup> which bore one signature and which were used to pay the personal obligations of the Quisumbing family. She presented the list to prove that the members of the Board knew that they can issue checks with only one signature because they themselves are the beneficiaries of the said checks. Particularly, she pointed to the following checks, among others, *viz*:

1. Check No. 8385879 dated August 18, 2004 for P221,232.77 signed by Paolo who was also the payee and the one who encashed the check himself;
2. Check No. 7378260 dated March 15, 2004 payable to Myra's Pension for the payment of the space rental of Bamboo Spa, a business owned by Paolo;
3. Check No. 7378571 dated April 5, 2004 for P15,267.00 pay to cash to cover the post-dated check issued as payment for the car of Anton;
4. Check No. 7378857 dated April 26, 2004 for P8,286.00 pay to cash for the insurance premium of Antonio with Caritas Health Shield;
5. Check No. 7911492 dated May 6, 2004 for P6,000.00 for payment of the credit card of Yvonne Quisumbing with Citi Bank Master Card;
6. Check No. 7911491 dated May 6, 2004 for P25,000.00 for payment of credit card of Lorna with Citi Bank;
7. Check No. 7911496 dated May 12, 2004 for P10,000.00 as payment for the BPI Card Express of Miguel Quisumbing.<sup>[24]</sup>

On rebuttal, Paolo and Anton were presented by the prosecution as witnesses. According to Anton, the Board holds meetings regularly at home or at the office but not as formal as it could be.<sup>[25]</sup>

For his part, Paolo denied that he talked by phone to the other members of his family and thereafter instructed petitioner to come up with a board resolution amending the two-signatory policy in order to allow the issuance of checks bearing only one signature. He asserted that if the signatories were outside the office, it was easy for petitioner to send a messenger to their residence and have the checks signed by a second signatory. He explained that the two-signatory policy was adopted as a security measure and to prevent irregularities and fraudulent transactions. Further, it was their understanding that after signing a check, petitioner would secure the signature of a second signatory.<sup>[26]</sup>

Trinidad Astillero<sup>[27]</sup> (Astillero) and Veneranda Sarol<sup>[28]</sup> (Sarol) were presented by the defense as sur-rebuttal witnesses. Astillero testified that she was a former employee of Loran Industries who resigned sometime in 1997. In 2004, she was contacted by petitioner to borrow money to infuse cash for the operations of the company. She delivered the cash to petitioner in the presence of Anton and Paolo. To cover the payments for the cash that the company borrowed from her, petitioner prepared and gave her two post-dated checks which were signed by Anton only even though Paolo was also present when the check was issued.<sup>[29]</sup>

Sarol is another former employee of Loran Industries. According to her, in June 2004, she went to Loran Industries to collect the payment for the loan obtained by the company from her friend, Mary Ann Ricardel. She was able to talk to Anton who issued replacement checks because the company could not pay the loan yet. Anton alone signed the checks in his office and gave the same to her.<sup>[30]</sup>

### **Ruling of the MTCC**

On November 29, 2006,<sup>[31]</sup> the Municipal Trial Court in Cities (MTCC) of Mandaue City, Branch 2, found petitioner guilty beyond reasonable doubt of falsification of public document and imposed upon her the indeterminate penalty of four (4) months and one (1) day of *arresto mayor* in its maximum period to *prision correccional* in its minimum period, as the minimum term, to three (3) years, six (6) months, and twenty one (21) days in the medium period of *prision correccional* in its medium and maximum periods, as the maximum term and a fine of P3,000.00.<sup>[32]</sup>

The MTCC cited a criminal law author in stating that criminal intent is presumed to exist on the part of the person who executes an act which the law punishes, unless the contrary shall appear.<sup>[33]</sup> Hence, the burden to prove the absence of intent or criminal malice is on petitioner. Unfortunately, as found by the MTCC, petitioner failed to overcome the presumption of the existence of criminal intent.<sup>[34]</sup> The MTCC was convinced that given the educational background of petitioner as a college graduate and her work experience, she knew fully well that she had no authority to issue a Secretary's Certificate for a meeting that never transpired or for a resolution that was never approved. She cannot hide under the claim that she was only instructed by Paolo, who denied the same. Additionally, the MTCC is perplexed as to why petitioner did not confirm from the other members of the Board if indeed Paolo secured their approval to allow the issuance of checks bearing only one signature.<sup>[35]</sup>

The MTCC inferred that even if petitioner denies that she profited from the execution of the Secretary's Certificate allowing the issuance of checks bearing only one signature and that no benefit inured to her, it cannot discount the possibility that petitioner helped herself to the cookie jar.<sup>[36]</sup>

### **Ruling of the RTC**

Insisting on her innocence, petitioner filed an appeal to the Regional Trial Court (RTC) of Mandaue City, Branch 55, which rendered its Decision<sup>[37]</sup> on September 17, 2007 affirming the ruling of the MTCC *in toto*. In agreeing with the MTCC, the RTC nearly copied verbatim the disquisition of the former. The RTC only added that in corporation law, the corporation acts through its Board of Directors.<sup>[38]</sup> Therefore, when petitioner executed the Secretary's Certificate without the authority and knowledge of the Board, then it was not an act of the Board or the Corporation.<sup>[39]</sup> The RTC added that in falsification of a public document, mere falsification is enough because what is punished is the violation of public faith and destruction of truth as therein solemnly proclaimed. The RTC ruled that wrongful intent to injure a third person is not an element of falsification of public document.<sup>[40]</sup>

The RTC denied petitioner's motion for reconsideration.<sup>[41]</sup>

### **Ruling of the CA**

Still aggrieved, petitioner elevated the case to the CA which, on March 30, 2012,<sup>[42]</sup> affirmed with modification<sup>[43]</sup> the rulings of both the MTCC and RTC but only increased the fine to P5,000.00.<sup>[44]</sup> The CA concurred with the MTCC and RTC in concluding that petitioner was not able to overcome the presumption of criminal intent in the execution of the Secretary's Certificate.<sup>[45]</sup> The CA also affirmed that the element of gain or benefit on the part of the offender or prejudice to a third party is not an element of the crime of falsification of public documents.<sup>[46]</sup>

Petitioner moved for reconsideration of the Decision of the CA, which was denied through a Resolution<sup>[47]</sup> dated July 15, 2014.

Undeterred, petitioner filed before this Court a Petition for Review on *Certiorari*<sup>[48]</sup> and argues that her job as corporate secretary is only limited to signing prepared secretary's certificates and board resolutions needed by the bank and submitting reports which are required by the SEC. She did not attend any board meetings nor did she prepare minutes because no actual meetings were held.<sup>[49]</sup> She maintains that the corporation became the source of funds to pay for the personal expenses of spouses Antonio and Lorna and their children.<sup>[50]</sup>

Petitioner insists that the MTCC, RTC and CA failed to consider her defense of lack of criminal intent in falsifying the August 25, 2003 Secretary's Certificate.<sup>[51]</sup> Petitioner points out that before preparing the Secretary's Certificate, she sought the advice of Paolo whom she considers as her immediate superior about the problems hounding the corporation when the two-signatory policy became effective.<sup>[52]</sup> Paolo cannot deny the fact that petitioner talked to him before the issuance of the subject Secretary's Certificate because this is inconsistent with the fact that he was the sole