

FIRST DIVISION

[G.R. No. 164443, June 18, 2010]

**ERIBERTO S. MASANGKAY, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

Every criminal conviction must draw its strength from the prosecution's evidence. The evidence must be such that the constitutional presumption of innocence is overthrown and guilt is established beyond reasonable doubt. The prosecutorial burden is not met when the circumstances can yield to different inferences. Such equivocation betrays a lack of moral certainty to support a judgment of conviction.

This Petition for Review^[1] assails the March 16, 2004 Decision^[2] and the July 9, 2004 Resolution^[3] of the Court of Appeals (CA) in CA-G.R. CR No. 25775. The dispositive portion of the assailed Decision reads:

WHEREFORE, the petition is DENIED, and the appealed Decision is AFFIRMED with the MODIFICATION that Eriberto Masangkay is instead meted the penalty of imprisonment for a term of Six (6) months and One (1) day of *prision correccional* minimum.

SO ORDERED.^[4]

Factual Antecedents

Petitioner Eriberto Masangkay (Eriberto), his common-law wife Magdalena Ricaros (Magdalena), Cesar Masangkay (Cesar) and his wife Elizabeth Masangkay (Elizabeth), and Eric Dullano were the incorporators and directors of Megatel Factors, Inc. (MFI) which was incorporated in June 1990.^[5]

On December 29, 1993 Eriberto filed with the Securities and Exchange Commission (SEC) a Petition for the Involuntary Dissolution^[6] of MFI for violation of Section 6 of Presidential Decree (PD) No. 902-A. The named respondents were MFI, Cesar and Elizabeth.^[7] The said petition was made under oath before a notary public, and alleged among others:

3. At or around September 1, 1993, respondent Elizabeth A. Masangkay prepared or caused to be prepared a Secretary's Certificate which states:

That at a special meeting of the Board of Directors of the said corporation held at its principal office on December 5, 1992, the following resolution by unanimous votes of the directors present at

said meeting and constituting a quorum was approved and adopted:

RESOLVED, as it is hereby resolved that Lot No. 2069-A-2 situated at Bo. Canlalay, Biñan, Laguna containing an area of 3,014 square meters covered by Transfer Certificate of Title No. T-210746 be exchanged with 3,700 shares of stock of the corporation worth or valued at P370,000.00 by way of a "Deed of Exchange with Cancellation of Usufruct".

x x x x

4. Said secretary's certificate is *absolutely fictitious and simulated* because the alleged meeting of the Board of Directors held on December 5, 1992 *did not actually materialize*.

x x x x

5. Using the said falsified and spurious document, x x x respondents executed another *fictitious* document known as the "Deed of Exchange with Cancellation of Usufruct".

The contract purporting to be a transfer of 3,700 shares of stock of MFI in return for a piece of a land (Lot No. 2064-A-2) located at Canlalay, Biñan, Laguna and owned by minor child Gilberto Ricaros Masangkay is void.

Article 1409 of the New Civil Code states:

"Art. 1409. The following contracts are inexistent and void from the beginning.

x x x x

(2) Those which are absolutely simulated or fictitious;

(3) Those whose cause or object did not exist at the time of the transaction;

x x x x

These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived."

The aforementioned *contract is indeed simulated and fictitious* because they defrauded minor child Gilberto Ricaros Masangkay and deprived him of his own property without any consideration at all.

Records of the MFI revealed that minor child Gilberto Ricaros Masangkay [or] his alleged guardian Magdalena S. Ricaros never became a stockholder at any point in time of MFI.

x x x x^[8]

The case remains pending to date.^[9]

Claiming that Eriberto lied under oath when he said that there was no meeting of the Board held on December 5, 1992 and that the Deed of Exchange with Cancellation of Usufruct is a fictitious instrument, the respondent in the SEC case, Cesar, filed a complaint for perjury^[10] against Eriberto before the Office of the Provincial Prosecutor of Rizal.

Eriberto raised the defense of primary jurisdiction. He argued that what is involved is primarily an intra-corporate controversy; hence, jurisdiction lies with the SEC pursuant to Section 6 of PD 902-A, as amended by PD No. 1758. He also insisted that there was a prejudicial question because the truth of the allegations contained in his petition for involuntary dissolution has yet to be determined by the SEC. These defenses were sustained by the assistant provincial prosecutor and the complaint for perjury was dismissed for lack of merit.^[11]

It was however reinstated upon petition for review^[12] before the Department of Justice.^[13] Chief State Prosecutor Zenon L. De Guia held that the petition for involuntary dissolution is an administrative case only and thus cannot possibly constitute a prejudicial question to the criminal case. He also rejected the claim that the SEC has exclusive authority over the case. The Chief State Prosecutor explained that the prosecution and enforcement department of the SEC has jurisdiction only over criminal and civil cases involving a violation of a law, rule, or regulation that is administered and enforced by the SEC. Perjury, penalized under Article 183 of the Revised Penal Code (RPC), is not within the SEC's authority.^[14] Thus, he ordered the conduct of a preliminary investigation, which eventually resulted in the filing of the following information:

That sometime in the month of December 1992,^[15] in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously commit acts of perjury in his Petition for Involuntary Dissolution of Megatel Factors, Inc. based on violation of Section 6 of Presidential Decree 902-A against Megatel Factors, Inc., Cesar Masangkay, Jr. and Elizabeth Masangkay which he made under oath before a notary authorized to receive and administer oath and filed with the Securities and Exchange Commission, wherein he made willful and deliberate assertion of a falsehood on a material matter when he declared the following, to wit: a) the secretary certificate dated September 1, 1993, proposed by Elizabeth Masangkay is fictitious and simulated because the alleged December 5, 1992, meeting *never took place*; and, b) the Deed of Exchange with Cancellation of Usufruct *is a fictitious document*, whereby the respondents defrauded the minor child Gilberto Ricaros Masangkay, by exchanging the child's 3,014 square meters lot with 3,700 shares of stock of the corporation, when in fact no consideration for the transfer was made as Gilberto Ricaros Masangkay or his guardian Magdalena Ricaros has never been a stockholder of the Corporation at any point in time, when in truth and in fact the accused well knew that the same statements he made in his petition and which he

reaffirmed and made use as part of his evidence in the Securities and Exchange Commission (SEC) are false.^[16]

The information was docketed as Criminal Case No. 56495 and raffled to the Metropolitan Trial Court (MeTC) of Mandaluyong City, Branch 59.

Eriberto filed a motion to quash,^[17] insisting that it is the SEC which has primary jurisdiction over the case. He also argued that the truth of the allegations contained in the information is still pending resolution in SEC Case No. 12-93-4650, thereby constituting a prejudicial question to the perjury case.

The MeTC denied the motion to quash for lack of merit.^[18] It held that the fact that the parties to the criminal case are mostly stockholders of the same corporation does not automatically make the case an intra-corporate dispute that is within the SEC jurisdiction. It likewise held that the fact that the parties are stockholders is merely incidental and that the subject of the case is a criminal act and hence within the general jurisdiction of the MeTC. As regards the issue of prejudicial question, the MeTC ruled that the petition before the SEC has nothing to do with the criminal case. The truth of the statements for which he is being indicted is a matter of defense which the defendant may raise in the criminal case.

Eriberto filed a petition for *certiorari* before Branch 158 of the Pasig City Regional Trial Court (RTC) to assail the denial of his motion to quash. The denial was affirmed.^[19] He then filed a petition for *certiorari* before the CA, which was denied for being a wrong mode of appeal.^[20]

Failing to suspend the criminal proceedings, Eriberto entered a plea of not guilty during arraignment.^[21] He then waived the conduct of a pre-trial conference.^[22]

During trial, the prosecution presented the private complainant Cesar as its sole witness.^[23] He testified that on December 5, 1992, a meeting of the Board of Directors was held at 9:00 o'clock in the morning at the office of MFI in Canlalay, Biñan, Laguna. He presented the minutes of the alleged meeting and reiterated the details contained therein indicating that the Board unanimously approved Magdalena's proposal to exchange her son's (Gilberto Masangkay [Gilberto]) property with MFI shares of stock.^[24] The prosecution established that one of the signatures appearing in the minutes belongs to Eriberto.^[25] This allegedly belies Eriberto's statement that the December 5, 1992 meeting "did not actually materialize," and shows that he knew his statement to be false because he had attended the meeting and signed the minutes thereof. The prosecution also pointed out that in the proceedings before the guardianship court to obtain approval for the exchange of properties, Eriberto had testified in support of the exchange.^[26] The guardianship court subsequently approved the proposed transaction.^[27] The resulting Deed of Exchange contained Eriberto's signature as first party.^[28]

As for Eriberto's statement that the Deed of Exchange was simulated, the prosecution disputed this by again using the minutes of the December 5, 1992 meeting, which states that the property of Gilberto will be exchanged for 3,700 MFI shares.

For his defense, Eriberto asserted that the December 5, 1992 meeting did not actually take place. While he admitted signing, reading and understanding the minutes of the alleged meeting, he explained that the minutes were only brought by Cesar and Elizabeth to his house for signing, but there was no actual meeting.^[29]

To support the claim that no meeting took place in 1992, the defense presented Elizabeth, the MFI corporate secretary, who could not remember with certainty if she had sent out any notice for the December 5, 1992 meeting and could not produce any copy thereof.

The defense also presented a notice of meeting dated *October 19, 1993*, which called for the MFI board's *initial* meeting "since its business operations started," to be held on November 9, 1993. Emphasizing the words "initial meeting," Eriberto argued that this proves that prior to November 9, 1993, no meeting (including the December 5, 1992 meeting) had ever taken place.

As for the charge that he perjured himself when he stated that the Deed of Exchange was fictitious and simulated for lack of consideration, Eriberto explained that MFI never issued stock certificates in favor of his son Gilberto. Corporate secretary Elizabeth corroborated this statement and admitted that stock certificates were never issued to Gilberto or any of the stockholders.^[30]

While he admitted supporting the proposed exchange and seeking its approval by the guardianship court, Eriberto maintained that he did so because he was convinced by private complainant Cesar that the exchange would benefit his son Gilberto. He however reiterated that, to date, Gilberto is not a stockholder of MFI, thus has not received any consideration for the exchange.

On rebuttal, the prosecution refuted Eriberto's claim that the board had its first actual meeting only on November 9, 1993. It explained that the November 9, 1993 meeting was the initial meeting "since business operations began", because MFI obtained permit to conduct business only in 1993. But the November 9, 1993 meeting was not the first meeting *ever held* by the board of directors. The prosecution presented the secretary's certificates of board meetings held on April 6, 1992^[31] and September 5, 1992^[32] -- both before November 9, 1993 and both signed by Eriberto.^[33] At this time, business operations have not yet begun because the company's hotel building was still under construction. The said secretary's certificates in fact show that MFI was still sourcing additional funds for the construction of its hotel.^[34]

Ruling of the Metropolitan Trial Court

On October 18, 2000, the MeTC rendered a judgment^[35] holding that the prosecution was able to prove that the December 5, 1992 meeting actually took place and that petitioner attended the same as evidenced by his signature in the minutes thereof. As for Eriberto's statement that the Deed of Exchange was "fictitious," the MeTC held that his participation in the approval and execution of the document, as well as his avowals before the guardianship court regarding the proposed exchange all militate against his previous statement. Petitioner was thus found guilty as charged and sentenced to imprisonment of two months of *arresto*