

FIRST DIVISION

[G.R. NOS. 171322-24, November 30, 2006]

MARIANITO S. VICTORIANO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

YNARES-SANTIAGO, J.:

These consolidated petitions for review on *certiorari* assail the Decision^[1] dated October 11, 2005 of the Sandiganbayan disposing of Criminal Case Nos. 18868 to 18870 as follows:

WHEREFORE:

x x x x

II. In Criminal Case Nos. 18868, 18869 and 18870, this Court finds accused Marianito Victoriano and Raymond Ilustre, both GUILTY, beyond reasonable doubt, for violation of Sec.3 (e) of R.A. 3019, and are hereby sentenced to suffer the penalty of imprisonment of, after applying the Indeterminate Sentence Law:

(A) In Crim. Case No. 18868, six years and one month as minimum, up to ten years as maximum;

(B) In Crim. Case No. 18869, six years and one month as minimum, up to ten years, as maximum;

(C) In Crim. Case No. 18870, six years and one month as minimum, up to ten years, as maximum;

(D) Perpetual Disqualification from Public Office; and,

(E) Accused Marianito Victoriano and accused Raymond Ilustre are ordered to reimburse, jointly and severally, the amount of P103,592.25 to Esteves Ent.

SO ORDERED.^[2]

The Sandiganbayan's January 16, 2006 Resolution^[3] denying petitioner's motion for reconsideration is likewise assailed.

On February 24, 1993, three Informations^[4] for violation of Section 3(e) of Republic Act (R.A.) No. 3019(1960)^[5] were filed against petitioner Marianito Victoriano and Raymond Ilustre before the Sandiganbayan. The informations were similarly worded

except for the alleged dates of commission of the crime charged, the check numbers, the corresponding dates thereof, and the amounts misappropriated, to wit:

That on or about (February 20, 1991 in Criminal Case No. 18868, March 12, 1991 in Criminal Case No. 18869 and March 13, 1991 in Criminal Case No. 18870), in Mati, Davao Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Marianito Victoriano, a public officer being then the Manager of the Philippine National Bank, Mati, Davao Oriental Branch, through manifest partiality and evident bad faith in the performance of his official functions and conspiring with accused Raymund Ilustre, a private individual, did then and there, willfully, unlawfully and criminally cause undue injury against Vicente L. Esteves, Jr., and give unwarranted benefits to accused Raymund Ilustre by allowing the latter to encash (PNB Check No. 076836 dated February 19, 1991 in Crim. Case No. 18868, PNB Check No. 065889 dated March 12, 1991 in Crim. Case No. 18869 and PNB Check No. 065888 dated March 12, 1991 in Crim. Case No. 18870) payable to Esteves Enterprises owned by said Vicente L. Esteves, Jr., on the basis of a falsified indorsement of said Vicente L. Esteves, Jr., when accused fully well knew that payee Vicente L. Esteves, Jr., never indorsed said checks or authorized Raymund Ilustre to encash the same, and thereafter, Raymund Ilustre received the proceeds of said checks in the amount of (P31, 810.00 in Crim. Case No. 18868, P12,871.00 in Crim. Case No. 18869 and P58,991.25 in Crim. Case No. 18870), and converted the same to his personal use and benefit to the damage and prejudice of Vicente L. Esteves, Jr., in the aforesaid sum(s).

CONTRARY TO LAW.

On February 26, 1993, three Informations for the complex crime of Estafa thru Falsification of Commercial Documents were also filed against Victoriano and Ilustre before the Sandiganbayan, thus:

That on or about (February 20, 1991 in Crim. Case No. 18867, March 13, 1991 in Crim. Case No. 18871 and March 20, 1991 in Crim. Case No. 18872) in the Municipality of Mati, Province of Davao Oriental, Philippines, and within the jurisdiction of this Honorable Court, above-named private accused Raymund Ilustre, did then and there willfully, unlawfully and feloniously falsify or cause to be falsified the signature of one Vicente L. Esteves, Jr., at the dorsal side of (PNB Check No. 076836 dated February 19, 1991 in the amount of P31,810.00 in Crim. Case No. 18867; PNB Check No. 065888 dated March 12, 1991 in the amount of P58,911.25 in Crim. Case No. 18871 and PNB Check No. 065889 dated March 12, 1991 in the amount of P12,871.00 in Crim. Case No. 18872) payable to Esteves Enterprises owned by said Vicente L. Esteves, Jr., to make it appear that the latter indorsed said checks for encashment when in truth and in fact, he did not and thereafter, by means of said falsified signature and with deliberate intent to defraud, accused Raymund Ilustre, in conspiracy with and through the indispensable cooperation of accused public officer Marianito Victoriano who approved the encashment of said checks in his capacity as the Manager of Philippine National Bank at its branch in Mati, Davao Oriental, did then and there actually collect

and receive the proceeds of said checks from said bank in the aforesaid amounts when both accused fully well knew that payee Vicente L. Esteves, Jr., never indorsed said checks nor authorized accused Raymund Ilustre to encash the same and once in the possession of the said amounts of (P31,810.00 in Crim. Case No. 18867, P58,911.25 in Crim. Case No. 18871 and P12,871.00 in Crim. Case No. 18872) accused Ilustre converted the same to his personal use and benefit, to the damage and prejudice of Vicente Esteves, Jr.

CONTRARY TO LAW.

Petitioner pleaded not guilty^[6] to the crimes charged.

During trial, the prosecution offered the testimonies of private complainant Vicente L. Esteves, Jr., manager of V.L. Esteves Enterprises, and Quirino Aragon, Jr., a cashier at the Philippine National Bank's (PNB) Mati Branch.

Esteves^[7] alleged that sometime in 1991, the company entered into contract with the Sub-District Office of the Department of Public Works and Highways (DPWH) in Baganga, Davao Oriental for the supply of construction materials. As payment for the same, the DPWH issued three checks in Esteves' name in the total amount of P103, 592.25, drawn against the PNB-Mati Branch, with the following particulars:

Check No.	Date of Check	Amount
1. AD-076836	February 19, 1991	P 31,810.00
2. AD-065888	March 12, 1991	P 58,911.25
3. AD-065889	March 12, 1991	P 12, 871.00
	TOTAL	P 103,592.25

Esteves claimed that without his knowledge and authority, accused Ilustre collected the checks from DPWH and thereafter forged his signature and encashed them with PNB-Mati through the assistance of petitioner.^[8]

Aragon corroborated Esteves' allegations. He claimed that he initially refused to entertain Ilustre because the latter did not present a Special Power of Attorney (SPA) from Esteves, the payee of the subject checks^[9] but petitioner who was then the bank manager prevailed upon him and authorized the encashment.

Petitioner testified that he was the Manager of PNB-Mati in 1991, and as such, he supervises banking operations and approves all banking transactions like check encashments. He related that as a matter of practice, checks are initially verified by the bank bookkeeper to determine its completeness, authenticity and whether or not it is funded.^[10] In cases when the person cashing or indorsing a check is not the payee or the drawer thereof, the bank requires additional documents such as SPA, registration papers, business permits and other related documents as proof that the indorsement indeed belonged to such payee. But in this particular case, petitioner admitted that he dispensed with the usual requirements as the checks were released by DPWH Special Disbursing Officer Nenita C. Bijis to Ilustre who was also present at the bank when Ilustre was cashing the checks.^[11]

Petitioner stated that he was not familiar with the signature of Esteves as the latter

had no account with PNB-Mati and that it was not his duty to verify the signatures of the previous indorsers with respect to the encashment of second indorsed checks, his concern being limited to the last indorser only. He alleged that while standard banking practice requires a second indorser to produce documents proving the authenticity of the first indorser's signature, as bank manager, he has the discretion to approve or disapprove the encashment of checks.^[12]

The Sandiganbayan acquitted petitioner of the charge of the complex crime of estafa through falsification of commercial documents. However, he was found liable for violation of Section 3(e) of R.A. No. 3019.

On January 16, 2006 the Sandiganbayan denied petitioner's motion for reconsideration hence, the instant petitions for review on *certiorari*.

The issues for resolution are: a) whether petitioner was denied his right to due process; and b) whether petitioner's conviction is contrary to law and prevailing jurisprudence.

In its comment,^[13] the Office of the Special Prosecutor (OSP) asserts that petitioner was not denied due process as he was actually accorded an opportunity to be heard. He even took the witness stand and testified for himself on November 29, 1994, after which he was given the chance to file a memorandum. The OSP also maintains that petitioner was not denied his right to cross-examine the witnesses because he was given a chance to do so but his counsel waived the conduct of such cross-examination because he was not prepared allegedly due to petitioner's uncooperative attitude.

On the other hand, petitioner maintains that he was denied his right to due process and that he did not waive his right to participate in the trial or to cross-examine the witnesses presented by the prosecution. He also claims that the Sandiganbayan erred when it denied the introduction of the Affidavit of Desistance subsequently executed by Esteves which amounted to newly discovered evidence.^[14]

The consolidated petitions are without merit.

Records show that petitioner was properly accorded his right to due process. During the pre-trial held on February 3, 1994, petitioner was present together with his counsel but the latter waived the conduct of pre-trial. Petitioner did not question the waiver hence, he is deemed to have impliedly approved the same. We see nothing irregular in the Sandiganbayan's holding of a trial on June 29, 1994. Petitioner was duly notified of said hearing but he failed to appear.

As regards the right to confront and cross-examine the opposing party's witnesses, the same is indeed a fundamental right which is part of due process. However, the right is a personal one which may be waived expressly or impliedly by conduct amounting to a renunciation of the right of cross-examination. Thus, where a party has had the opportunity to cross-examine a witness but failed to avail himself of it, he necessarily forfeits the right to cross-examine and the testimony given on direct examination of the witness will be received or allowed to remain in the record.^[15] In the instant case, petitioner's counsel did not cross-examine the opposing party's witnesses due to his failure to cooperate in preparing his defense. In fact, records