

SECOND DIVISION

[G.R. No. 113218, November 22, 2001]

**ALEJANDRO TECSON, PETITIONER, VS. HON. COURT OF APPEALS
AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

DECISION

DE LEON, JR., J.:

Before us on appeal by certiorari is the Decision^[1] of the Court of Appeals in CA-G.R. No. 11744 promulgated on August 31, 1993, and its Resolution dated December 23, 1993, denying petitioner's motion for reconsideration.

This case stemmed from a charge of illegal possession and use of counterfeit US dollar notes, as defined and penalized under Article 168 of the Revised Penal Code, against herein petitioner Alejandro Tecson y Florencio. The Information reads:

That on or about April 28, 1990, in the City of Manila, Philippines, the said accused did then and there wilfully, unlawfully, feloniously and knowingly have in his possession and under his custody and control, with intent to use and pass, as in fact he did use and pass ten (10) pieces of 100-US dollar notes of the Federal Reserve Note, or a sum of \$1,000.00 (US Dollar) to Pedro C. Labita, a confidential assistant of the Central Bank of the Philippines, which bills were in the resemblance and similitude of the dollar bills issued by the United States Government, the said accused knowing, as he did, that the said US dollar bills were forged and falsified.

Contrary to law.

Upon being arraigned on July 20, 1990, the petitioner entered the plea of "Not guilty" to the charge.

After trial on the merits, the trial court rendered a Decision^[2] dated May 6, 1991, the dispositive portion of which reads:

WHEREFORE, the Court finds and declares accused ALEJANDRO F. TECSON, GUILTY beyond reasonable doubt of the offense as defined in Art. 168 and penalized in Art. 166 paragraph 1 of the Revised Penal Code; and hereby sentenced him to suffer an indeterminate penalty of from EIGHT (8) YEARS and ONE (1) DAY of *prision mayor* in its medium period as minimum to TEN (10) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of *prision mayor* in its medium period as maximum; to pay a fine of P5,000.00; and to pay the cost.

The Branch Clerk of Court is directed to burn the ten (10) pieces of 100 US dollar notes subject of the offense.

SO ORDERED.

Aggrieved by the decision of the trial court, the petitioner filed an appeal with the Court of Appeals which affirmed the judgment of the trial court *in toto* on August 31, 1993. Petitioner sought a reconsideration of the decision of the appellate court but it was denied on December 23, 1993.^[3]

Hence, the instant petition.

From the evidence adduced by the prosecution, it appears that a civilian informer personally informed the Cash Department of the Central Bank of the Philippines that a certain Mang Andy was involved in a syndicate engaging in the business of counterfeit US dollar notes. On April 26, 1990 a test-buy operation was ordered by Atty. Pio Chan, Jr., Chief of the Investigation Staff of the Central Bank, which resulted in the purchase from Mang Andy of one (1) US dollar note for Two Hundred Pesos (P200.00) that was found to be counterfeit by the Currency Analysis and Redemption Division of the Central Bank. Consequently, Atty. Chan formed a team to conduct a buy-bust operation composed of prosecution witnesses Pedro Labita, Confidential Assistant of the Investigation Staff of the Central Bank, and Cpl. Johnny Marqueta, a representative of the US Secret Service, together with William Pasive, Warren Castillo and Carlos Toralde, Jr. also of the Investigation Staff of the Central Bank.^[4]

On April 28, 1990, at about 11:30 o'clock in the morning, the team proceeded to the Jollibee restaurant in Rizal Ave., Sta. Cruz, Manila. Three (3) members of the team namely: William Pasive, Carlos Toralde, Jr., and Warren Castillo positioned themselves outside the Jollibee restaurant while Pedro Labita and Johnny Marqueta proceeded inside. Subsequently, the civilian informer arrived inside the restaurant and approached a man who was seated two (2) tables away from where Labita and Marqueta were positioned. The informer introduced to Mang Andy the said Pedro Labita and Johnny Marqueta as the persons interested in buying US dollar notes. Apparently convinced, the man drew ten (10) pieces of US \$100 dollar notes from his wallet. At that moment, and upon a pre-arranged signal from the informer, Labita and Marqueta introduced themselves as Central Bank operatives and apprehended the man called Mang Andy whom they later identified as the herein petitioner Alejandro Tecson.^[5]

During the investigation at the Central Bank, the petitioner affixed his initial on the dorsal portion of each of the ten (10) pieces of US \$100 dollar notes^[6] and signed the corresponding receipt^[7] for the said US dollar notes seized from him. He also executed a "Pagpapatunay"^[8] attesting to the proper conduct of the investigation by the Central Bank operatives on the petitioner. Subsequent examination by the Currency Analysis and Redemption Division of the Central Bank shows that the ten (10) pieces of US \$100 dollar notes confiscated from the petitioner are indeed counterfeit.^[9]

The defense denied any liability of the petitioner for the crime of illegal possession and use of counterfeit US dollar notes. Petitioner testified that he was inside the Jollibee restaurant in Sta. Cruz, Manila on April 28, 1990 to meet a certain Nora Dizon, wife of his friend, Reynaldo de Guzman, who previously sought his assistance

in securing insurance payment bond. After Nora's arrival at the restaurant, she handed to him a sealed envelope which he accepted thinking that it contained the documents pertaining to the insurance payment bond. Upon receipt of the sealed envelope, however, two (2) male persons approached and immediately handcuffed him. They dragged him outside the restaurant where three (3) other persons were waiting. After boarding a taxi, they blindfolded the petitioner and took him to the Central Bank building in F. B. Harrison St., Manila where he was investigated.^[10]

The investigators inquired from the petitioner about the source of the fake US dollar notes. Petitioner vehemently denied having possession nor any knowledge as to the source of the fake US dollar notes and claimed that the same were merely planted by the arresting officers. Petitioner also claimed that he was tortured into initialing the dorsal portions of the ten (10) counterfeit US \$100 dollar notes and into signing the Receipt and Inventory for Property/Articles Seized as well as the "Pagpapatunay".^[11]

The instant appeal by *certiorari*^[12] reveals the following assignment of errors:

I

RESPONDENT COURT OF APPEALS FAILED TO FIND THAT THE PROSECUTION'S EVIDENCE IS NOT SUFFICIENT TO SUPPORT PETITIONER'S CONVICTION OF THE CRIME CHARGED.

II

RESPONDENT COURT OF APPEALS GRAVELY ERRED IN NOT FINDING THAT THE EVIDENCE PRESENTED BY THE PROSECUTION IS NOT ADMISSIBLE IN LAW.

In essence, petitioner claimed that no buy-bust operation took place inside the Jollibee restaurant in Rizal Ave., Sta. Cruz, Manila on April 28, 1990 inasmuch as there was no haggling as to the price between him and the poseur buyers, and that no money changed hands. He was merely framed up by the Central Bank operatives by planting fake US dollar notes inside the envelope which was handed to him by the wife of his friend who earlier asked for his assistance regarding insurance payment bond. He accepted the envelope thinking that it contained the documents pertaining to the insurance payment bond.

Assuming *arguendo* that a buy-bust operation was conducted, the petitioner claimed that the testimony of prosecution witness Pedro Labita to the effect that the civilian informer had to convince the petitioner negated any alleged intent on his part to sell counterfeit US dollar notes to the poseur buyers. In addition, he averred that prosecution witnesses Labita and Marqueta had no personal knowledge as to petitioner's alleged possession of counterfeit US dollar notes as they merely relied on the predetermined signal of the civilian informer before making the arrest. Hence, the ten (10) counterfeit US \$100 dollar notes allegedly confiscated from him (petitioner) incidental to his arrest are inadmissible in evidence. Likewise, his initial on the dorsal portion of the said US dollar notes and his signature on the "Pagpapatunay" are inadmissible for having been obtained without the aid of counsel. That is the version of the petitioner.

The respondents, represented by the Office of the Solicitor General (OSG), countered in their Comment that the absence of haggling among the parties to the buy-bust operation did not negate petitioner's actual possession and use of the ten (10) counterfeit US \$100 dollar notes, which fact of possession is punishable by law. Prosecution witnesses Pedro Labita and Johnny Marqueta, who acted as poseur buyers, testified that they saw the petitioner drew the subject fake US dollar notes from his wallet^[13] in order to sell the same to them.

While respondents, through counsel, conceded that the "Pagpapatunay" and the "Receipt and Inventory for Property/Articles Seized" which were signed by the petitioner during his custodial investigation are inadmissible in evidence for having been obtained in the absence of his counsel, they maintained that there are sufficient independent evidence on record to prove his guilt beyond reasonable doubt.^[14]

By way of reply,^[15] the petitioner, who is now 70 years of age,^[16] contends that possession should be coupled with intent to use the counterfeit US dollar bills in order to hold him liable under the provision of Article 168 of the Revised Penal Code.

Article 168 of the Revised Penal Code provides that:

ART. 168. *Illegal possession and use of false treasury or bank notes and other instruments of credit.*--Unless the act be one of those coming under the provisions of any of the preceding articles, any person who shall knowingly use or have in his possession, with intent to use any of the false or falsified instruments referred to in this section, shall suffer the penalty next lower in degree than that prescribed in said articles.

The elements of the crime charged for violation of Article 168 of the Revised Penal Code, are: 1) that any treasury or bank note or certificate or other obligation and security payable to bearer, or any instrument payable to order or other document of credit not payable to bearer is forged or falsified by another person; 2) that the offender knows that any of the said instruments is forged or falsified; and 3) that he either used or *possessed with intent to use* any of such forged or falsified instruments.^[17] Hence, possession of fake dollar notes must be coupled with the act of using or at least with intent to use the same as shown by a clear and deliberate overt act in order to constitute a crime,^[18] as was sufficiently proven in the case at bar.

We find no cogent reason to overturn the decision of respondent Court of Appeals which affirmed the judgment of the trial court finding the petitioner guilty beyond reasonable doubt of the crime charged in the case at bar. The prosecution established, through the testimonies of Pedro Labita and Johnny Marqueta, that a buy-bust operation was conducted by the combined agents of the Central Bank of the Philippines and the US Secret Service, and that the petitioner was therein caught in *flagrante delicto* in the possession of and in the act of offering to sell counterfeit US dollar notes. During the buy-bust operation, prosecution witnesses Labita and Marqueta were introduced by the civilian informer to the petitioner as interested buyers of fake US dollar notes. When the petitioner was in the act of drawing the ten (10) pieces of fake US \$100 dollar notes from his wallet, he was immediately placed under arrest by Labita and his team.