

THIRD DIVISION

[G.R. No. 138503, September 28, 2000]

**ROBERTO FERNANDEZ, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES AND THE COURT OF APPEALS, RESPONDENTS.**

DECISION

GONZAGA-REYES, J.:

In this petition for review on *certiorari* under Rule 45 of the Rules of Court, Roberto Fernandez seeks to set aside the Decision of the Court of Appeals^[1] dated December 24, 1998 in CA-G.R. CR No. 18830 which affirmed in *toto* the Decision^[2] of the Regional Trial Court, Branch 64, City of Makati in Criminal Case No. 88-538 finding petitioner and his co-accused Efren O. Olesco guilty beyond reasonable doubt of the crime of estafa through falsification of public document.

The petitioner, Roberto Fernandez (FERNANDEZ) together with Efren O. Olesco (OLESCO) and Nicanor R. Gatchalian, Jr. (GATCHALIAN) were charged with the crime of estafa through falsification of public document in an information^[3] that reads as follows:

"That on or about the 14th day of December, 1987, in the Municipality of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, who are all private individuals, conspiring and confederating together and mutually helping and aiding one another by means of deceit and false pretenses executed prior to or simultaneously with the commission of the fraud, did then and there wilfully, unlawfully and feloniously defraud Sta. Ines Melale Forest Products, Inc., represented by Atty. Oscar P. Beltran, in the following manner, to wit: the said accused, upon their false manifestation and fraudulent representation that they have the power and capacity to secure a defendant counterbond for the lifting of a writ of preliminary attachment in the sum of P500,000.00 to be used by the said complainant in Civil Case No. 3226 of Branch V of the Regional Trial Court of Agusan Del Norte and Butuan City in which the said complainant was the party defendant and which representation and manifestation the accused knew to be false, succeeded in inducing the same complainant to give and to deliver to them the sum of P50,000.00 which is equivalent to 10% of the face value of said counterbond representing the premium thereof in consideration of Counterbond No. JCR 00300 dated December 14, 1987 purportedly issued by the First Integrated Bonding & Insurance Co., Inc. and notarized by Notary Public Benito Salandanan of Manila which the accused falsified by making it appear that the same was signed by Eduardo V. Gadi and that it was regularly issued by the said bonding and insurance company when, in truth and in fact, as accused well knew, the same was not issued by it, and the accused, once in possession of

said money, did then and there wilfully, unlawfully and feloniously appropriate and use the same to their own personal use and benefit, to the damage and prejudice of the complainant Sta. Ines Melale Forest Products, Inc., represented by Atty. Oscar P. Beltran, in the aforesaid amount of P50,000.00.”^[4]

On April 29, 1988, the three (3) accused were arraigned and entered a plea of not guilty with the assistance of counsel.^[5] Thereafter, trial ensued. The case against GATCHALIAN was dismissed due to his death during the pendency of the trial.^[6]

At the trial, the prosecution presented as its witnesses Atty. Oscar P. Beltran, President of Sta. Ines Melale Forest Products Corporation, Manuel de Castro, Deputy Sheriff of Branch 137, Regional Trial Court of Makati, Melencio P. Cruz, a helper-assistant of insurance agent Manuel “Boy” Reyes, Consuelo San Juan, court interpreter and representative of the Clerk of Court of Branch 5, Regional Trial Court of Agusan Del Norte, Butuan City and Atty. Rogelio B. Mendoza, legal counsel of the First Integrated Bonding and Insurance Company, Inc.

The prosecution also offered in evidence Official Receipt No. 157 dated December 14, 1987 in the amount of P50,000.00 issued by Hexagon Surety Services, Inc. signed by accused Efren Olesco^[7] ; Machine copy of Counter Attachment Bond No. JCR 00300 dated December 14, 1987 issued by First Integrated Bonding and Insurance Corporation with a face value of P500,000.00^[8] ; another machine copy of the same Counter Attachment Bond No. JCR 00300 filed by defendant Ines Melale Corporation in Civil Case No. 3226 pending before RTC Branch 5, Butuan City^[9] ; parts of the Case Records of Civil Case No. 3226 brought by witness Consuelo San Juan as part of her testimony^[10] ; Sinumpaang Salaysay of witness Melencio Cruz consisting of two pages with his signature thereon^[11] ; Manifestation and Motion of Atty. Rogelio Mendoza dated January 04, 1988 filed before RTC, Branch 5, Butuan City^[12] ; and letter dated January 8, 1988 of Atty. Oscar Beltran to Col. Fernando Angara of the Southern Police District, Fort Bonifacio, Makati, Metro Manila requesting “police assistance in the investigation of a possible commission of the crime of Estafa Thru Falsification of Documents” ^[13]

After the prosecution rested its case, petitioner FERNANDEZ filed a Demurrer to Evidence which was denied by the trial court.^[14] Despite such denial, both accused Roberto Fernandez and Efren Olesco opted not to present evidence for their defense.

The facts established by the evidence are as follows:

Sometime in December 1987, the Regional Trial Court of Agusan del Norte, Branch V, Butuan City, issued a writ of preliminary attachment against the properties of private complainant Sta. Ines Melale Forest Products, Inc. (MELALE) defendant in the therein pending Civil Case No. 3226 filed by Kalilid Wood Industries Corporation.

In order to secure the lifting or discharge of the writ, MELALE, through its President, Atty. Oscar Beltran (BELTRAN), called up his friend Mr. Manuel de Castro (DE CASTRO), Deputy Sheriff of RTC Branch 137, Makati at about 11:00 o’clock in the morning of December 14, 1987 and requested him to look for a bonding company which can issue a counter attachment bond for his company’s use in the said civil

case.^[15] DE CASTRO obliged and from the third floor of the Chateau Building on F. Zobel Street, Makati where he holds office, he went down to the ground floor to see Manuel "Boy" Reyes (REYES), an insurance agent. Unfortunately, REYES was not around at that time. It was Melencio Cruz (CRUZ), a compadre and helper-assistant of REYES, who attended to him and with whom DE CASTRO talked about the request of BELTRAN. CRUZ told DE CASTRO that he had to ask OLESCO, known to him as a Branch Manager of Interworld Assurance Corporation, whose office is at the second floor of the same building. When CRUZ returned to his office, he had with him an application form and indemnity agreement form for a counter attachment bond from Interworld Insurance which according to him, was given to him by OLESCO. CRUZ gave the blank form to DE CASTRO who in turn brought the form to BELTRAN who accomplished the same.^[16] At around 4:45 o'clock that afternoon, DE CASTRO returned and delivered the already accomplished bond application form to CRUZ who in turn brought the same to OLESCO's office. Twenty minutes later, OLESCO and CRUZ came down together and handed to DE CASTRO (who was then waiting at CRUZ's office, Counterbond No. JCR 00300 dated December 14, 1987 in the amount of P500,000.00 issued by the First Integrated Bonding and Insurance Company and not by Interworld Insurance Company, signed by Eduardo V. Gadi and notarized by Notary Public Benito Salandanan of Manila.^[17] In return, DE CASTRO handed OLESCO the amount of P50,000.00 as premium payment for the bond. When asked by DE CASTRO why the Counterbond is a First Integrated Insurance Company bond and not an Interworld Insurance bond, OLESCO allegedly answered that Interworld Insurance Company branch in Butuan City was already closed. He added that in procuring the bond, "he asked the help of Roberto Fernandez and Nicanor Gatchalian, Jr. for the issuance of the bond." OLESCO acknowledged receipt of the amount of P50,000.00 by issuing Hexagon Surety Services, Inc. Official Receipt No. 157 also dated December 14, 1987^[18] which CRUZ also signed as witness that OLESCO actually received the P50,000.00^[19] Thereafter, BELTRAN filed the counterbond with the RTC of Agusan del Norte, Branch V in Butuan City to support MELALE's pending motion to quash the writ of preliminary attachment earlier issued against it.

On January 8, 1988, BELTRAN learned that Atty. Rogelio Mendoza (MENDOZA), Legal Counsel of First Integrated Bonding and Insurance Company, Inc., filed a Manifestation and Motion^[20] before the said RTC denying the issuance by First Integrated Bonding and Insurance Company, Inc. of the aforementioned counterbond for the reason that the same was spurious or fake inasmuch as the First Integrated Bonding and Insurance Company, Inc. had no officer or employee by the name of Eduardo Gadi and that the counterbond does not have the letter head of the First Integrated Bonding and Insurance Company.

Immediately thereafter, BELTRAN called DE CASTRO and requested him to arrange a confrontation with OLESCO, GATCHALIAN and FERNANDEZ. During the confrontation, only OLESCO and FERNANDEZ came and allegedly assured BELTRAN that the counterbond was genuine. Prior to the confrontation, BELTRAN never met accused OLESCO and FERNANDEZ.^[21] On January 8, 1988, BELTRAN also wrote then Superintendent Fernando Angara of the Southern Police District, Fort Bonifacio, Makati^[22] formally requesting "for police assistance in the investigation of a possible commission of the crime of Estafa Thru Falsification of Documents" which thereafter led to the filing of the information against FERNANDEZ and OLESCO.

On September 21, 1995, the RTC found the accused guilty beyond reasonable doubt of the crime charged the dispositive portion of the decision reads:

“WHEREFORE, in view of the foregoing, this Court finds accused EFREN OLESCO and ROBERTO FERNANDEZ Guilty beyond reasonable doubt of having committed ESTAFA thru falsification of public document, and sentences them to suffer an indeterminate prison term of four (4) years and two (2) months of *prision correccional* medium as minimum, to nine (9) years of prision mayor medium as maximum.

Both accused are ordered to jointly and severally indemnify complainant Santa Ines Melale Forest Product Corporation in the sum of P50,000.00.

With cost against the accused.

SO ORDERED.”^[23]

From the judgment of conviction, only FERNANDEZ appealed to the Court of Appeals, which affirmed the trial court’s decision.^[24]

Petitioner’s motion for reconsideration was denied^[25] hence the instant petition for review where the petitioner raises the following arguments for consideration:

“A. RESPONDENT COURT OF APPEALS AFFIRMED THE CONVICTION OF PETITIONER WITHOUT TAKING INTO ACCOUNT THE FINDING OF THE COURT A QUO THAT AS OF THE DATE OF THE FILING OF THE DUMURRER TO EVIDENCE THERE WAS NO DIRECT EVIDENCE PROVING THAT PETITIONER HAD INDEED CONSPIRED IN COMMITTING THE OFFENSE.

B. THE COURT OF APPEALS AFFIRMED THE CONVICTION OF THE ACCUSED ON THE BASIS OF MERE PRESUMPTION.

C. THE COURT OF APPEALS AFFIRMED THE CONVICTION OF PETITIONER WTHOUT INDEPENDENTLY REVIEWING THE LEGAL BASIS FOR THE CONVICTION CONSIDERING THAT THE COURT A QUO FAILED TO SHOW THAT THE ESSENTIAL INGREDIENTS OF THE OFFENSE CHARGED HAVE BEEN SUFFICIENTLY PROVEN OR OTHERWISE STATED, THE COURT OF APPEALS AFFIRMED THE JUDGMENT OF CONVICTION WITHOUT CONSIDERING THE FOLLOWING QUESTIONS OF LAW.

1. Whether or not the offense of estafa thru falsification of a public document was in fact established.

2. Whether or not conspiracy attended the commission of the alleged offense.”^[26]

In support of his petition, the petitioner contends that respondent Court of Appeals erred in affirming the judgment of conviction because the trial court found no direct

evidence linking him to the offense charged. He claims that the Court of Appeals relied on the mere imputations of his guilt made by the private complainant BELTRAN in his testimony in violation of the *res inter alios acta* and the hearsay rules. Moreover, considering that there was no positive and conclusive evidence adduced by the prosecution to prove the conspiracy; the alleged conspiracy between petitioner and co-accused OLESCO was based on mere conjecture. He should consequently be acquitted of the crime charged.

The core issue involved in this case is whether or not FERNANDEZ is guilty of committing the crime of estafa through falsification of public document in conspiracy with OLESCO.

After a careful review of the case, we rule in the negative and find the petition meritorious.

FERNANDEZ is charged with the crime of estafa described under Paragraph 2 (a) of Article 315 of the Revised Penal Code, i.e. swindling or estafa committed by any person who shall defraud another by falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions or by means of other similar deceits executed prior to or simultaneously with the commission of the fraud and in this particular case, in conspiracy with two other accused as defined under Article 8, of the Revised Penal Code.^[27]

To secure a conviction for this kind of estafa, the following requisites must concur, to wit:

- (1) that the accused made false pretenses or fraudulent representations as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions;
- (2) that such false pretenses or fraudulent representations were made prior to or simultaneous with the commission of the fraud;
- (3) that such false pretenses or fraudulent representations constitute the very cause which induced the offended party to part with his money or property; and
- (4) that as a result thereof, the offended party suffered damage.

^[28]

In convicting the petitioner, the trial court applied the rule that if a person had in his possession a falsified document, used it (uttered it), took advantage of it and profited thereby, he is, in the absence of satisfactory explanation, presumed to be the material author and the forger of the falsification.^[29] We quote the trial court's ratiocination as follows:

"The unrefuted evidence for the prosecution established the fact that the counter bond with serial no. JCR 00300 under the name of First Integrated Bonding Insurance Company, Inc. is a fake bond. The complainant received the same from accused Efren Olesco and Roberto Fernandez they being the persons who secured the issuance of said bond. Being the source of said fake bond and there being no explanation from the accused how they came into possession of said fake bond, the presumption that they are the author of said fake bond attaches to them. That presumption has not been rebutted. Mere denial of their