

## THIRD DIVISION

[ G.R. No. 103065, August 16, 1999 ]

**JUAN DE CARLOS, PETITIONER, VS. THE COURT OF APPEALS  
AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

### D E C I S I O N

**PURISIMA, J.:**

At bar is a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court to annul and set aside the decision of the Court of Appeals<sup>[1]</sup> which affirmed the decision of Branch 147 of the Regional Trial Court of Makati, convicting petitioner Juan de Carlos and two others (Sy It San and Mariano R. Bajarias) of estafa through falsification of public documents and sentencing them to an indeterminate penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum.

The antecedent facts are as follows:

Sy It San, proprietor of the business establishment, Halcon Sugar Food Products, at No. 26, Sto. Tomas Street, Galas, Quezon City, secured three fire insurance policies from FGU Insurance Corporation through its General Agent Kim Kee Chua Yu and Co., Inc. Covering all the stocks, building and the furnitures and fixtures therein, Policy No. F-014180 was for P150,000.00, Policy No. F-18568 was for P800,000.00, and Policy No. F-18569 was for P100,000.00 and were valid until the year 1980. Premiums therefore were paid by Sy It San, through Elmo Ching, an insurance agent of Kim Kee Chua Yu & Co., Inc.

On October 26, 1979, a fire was reported to have occurred at the premises of Halcon Sugar Food Products. A claim for fire indemnity was then filed by its owner Sy It San with FGU Insurance, which claim was assigned by Juan de Carlos, Vice-President of FGU Insurance, to the Philippine Adjustment Corporation (PAC), an accredited insurance adjuster of FGU whose president was Mariano Bajarias, one of the three accused,

Sometime in November 1979, Zenaida Romano, Claims Assistant II of FGU Insurance, found on her table an Adjuster's Advance Report on Sy It San's claim. The said report was prepared and submitted by PAC as approved and signed by Bajarias. Two more advance reports covering the two other fire insurance policies followed. The reports confirmed the occurrence of the fire and stated that "the insured risk is a total loss with salvage".<sup>[2]</sup>

Thereafter, Mrs. Romano opened three separate folders for Sy It San's claims. The three folders contained two preliminary reports dated November 21, 1979 on Policy Nos. F-01480 and F-18568 covering the stocks, and dated November 28, 1979, on Policy No. F-18569 covering the building and the fixtures therein. The said reports,

signed by Bajarias of PAC and submitted to FGU, confirmed the occurrence of the alleged fire and attributed the cause thereof to "faulty electrical wiring installation, which started from the ceiling of the assured in the warehouse portion at about 8:30 p.m. on October 26, 1979."<sup>[3]</sup> Attached to the reports were the claimant's supporting documents such as the fire claim, income tax returns, purchase invoices, pictures, sworn statement of loss, and list of fittings, furniture and fixtures.

Three final reports prepared by PAC and also signed by Bajarias were submitted to FGU Insurance recommending settlement of all the three claims of Sy It San, in the amount of P86,404.60 under Policy No. F-18569; P127,703.05 under Policy No. F-014180; and P681, 082.94 under Policy No. F-18568.

Witness for the prosecution, Mr. Ruben Enesio, testified that the first two claims were alleged to have been approved by de Carlos, while the third claim was recommended by the latter for the approval of Mssrs. Cornelio Obesa and Ernesto Martinez, Vice-President and Senior Vice-President of FGU Insurance Corporation respectively.

Acting upon the said recommendations, FGU Insurance issued Bank of Philippine Islands (BPI) Check No. B-02900 dated December 2, 1979, in the amount of P 808,795.99, and BPI Check No. 02900 dated November 7, 1979, in the amount of P86,404.60, in settlement of Sy It San's claims. According to Sy It San, the said checks were brought to his residence by Elmo Ching on December 14, 1979, on which occasion, Ching forced him to issue three checks in the amounts of P200,000.00, P134,250.00 and P247,500.00, purportedly for those who helped in processing the claim.

On October 19, 1981, almost two years later, FGU Insurance Corporation, through a letter complaint, requested the National Bureau of Investigation (NBI) to conduct an investigation on the insurance fraud allegedly perpetrated by the herein petitioner, Juan de Carlos, Vice-President of FGU Insurance, and Mariano R. Bajarias, President of Philippine Adjustment Corporation (PAC), an accredited insurance adjuster of FGU Insurance. FGU theorized that similar to a previous case of a fraudulent claim, docketed as Criminal Case No. 3873 for estafa through falsification of public documents against the two above-named and a certain Joven Madamba, it was again defrauded of a substantial amount through a fictitious fire claim, this time involving Sy It San, owner of Halcon Sugar Food Products.

In connection with FGU's request for investigation, an ocular inspection of the premises of Halcon Sugar Food Product's was conducted by an NBI agent, Atty. Emitterio Manalo. The investigation thus conducted by the NBI disclosed that, contrary to the report that subject building was completely razed by fire, the same building was still in existence. He reported that the said building appeared relatively old, that no alarm was sounded concerning the occurrence of fire thereat, which fact was affirmed by the Station Commander of the Quezon City Fire Station, Mr. Arturo Torres, and that no disconnection/ reconnection of electrical facilities due to fire was done in the premises of accused San on October 26, 1976. The basis of such findings, the NBI agent concluded that no fire took place in the said premises as claimed by accused San.<sup>[4]</sup>

The three checks issued by Sy It San to Elmo Ching were traced by the NBI agent as

follows: (a) China Banking Corporation (CBC) Check No. BVD 005865, dated December 14, 1979, in the amount of P134, 250.00, was endorsed by Juan de Carlos in favor of a certain Virgilio del Rosario and Roberto A. del Rosario; (2) CBC Check No. BVD 005862 dated December 14, 1979 for P247,000.00 was deposited by a certain Manuel Jasminez to his account at the United Coconut Planters Bank, Makati, Extension Office; and (3) Pacific Banking Corporation Check No. 034651 dated December 14, 1979 for P200,000.00 was deposited to an unknown account by an unknown individual.<sup>[5]</sup>

Thereafter, petitioner Juan de Carlos, Sy It San and Mariano R. Bajarias were charged with the crime of estafa through falsification of public document, in an Information filed on December 17, 1982, docketed as Criminal Case No. 3138 before the Regional Trial Court of Makati, Branch 147. The said Information alleged:

"That on or about and during the period comprised between November 6, 1979 to December 1979, in the Municipality of Makati, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused SY IT SAN being the owner of Halcon Sugar Food Products insured with FGU Insurance Corporation, MARIANO R. BAJARIAS as President of Adjustment Corporation of the Philippines, JUAN DE CARLOS as Vice-President of FGU Insurance Corporation and In-Charge of Fire Claims Department, respectively, conspiring and confederating together and mutually helping and aiding one another, did then and there wilfully, unlawfully and feloniously with intent to prejudice and defraud FGU Insurance Corporation; Sy It San filed a fire claim under oath, on November 9, 1979 to the FGU Insurance Corporation for the fire that allegedly gutted and razed the building and the stocks of Halcon Sugar Food Products which was ordered investigated by accused Mariano R. Bajarias and thereafter submitted a report that the 'insured risk is a total loss with salvage' and recommending the full and final settlement of the claim of Sy It San; that the recommendation of Mariano Bajarias was approved by his co-accused Juan de Carlos as Vice-President and In-Charge of the Claims Department of the FGU Insurance Corporation, thus making it appear that the building and the stocks thereof were actually burned and totally razed down, when in truth and in fact as the accused well knew the said building and the contents thereof were not in fact burned; that by virtue of said falsified fire claim, the FGU Insurance Corporation paid the accused Sy It San the total amount of P895,190.59 which the accused wilfully, unlawfully and feloniously appropriated and converted to their own personal use and benefit, to the damage and prejudice of said FGU Insurance Corporation in the total amount of P895,190.59.

Contrary to law."

With the three accused pleading "not guilty" upon arraignment, trial ensued. While the case was being tried, accused Mariano R. Bajarias jumped bail but trial in *absentia* proceeded against him.

After the prosecution rested the case, accused Juan de Carlos presented a Demurrer to Evidence dated October 27, 1987, which was opposed by the prosecution on June 8, 1988. But the trial court, did not immediately resolve the Demurrer to Evidence.

It continued reception of evidence for accused Sy It San and deferred resolution on petitioner's demurrer to evidence until after accused San rested his case.

On October 18, 1989, the Regional Trial Court of origin came out with its decision convicting all the three accused of the crime charged. Resolution on the demurrer to evidence was embodied in the decision. The demurrer to evidence was, in effect, denied and the herein petitioner, Juan de Carlos, was found guilty. The dispositive portion of the judgment of conviction, read:

"WHEREFORE, in view of all the foregoing, the Court, finding accused Sy It San, Mariano Bajarias and Juan de Carlos guilty beyond reasonable doubt of the crime charged, hereby sentences each of them to suffer an indeterminate sentence of eight (8) years and one (1) day of prision mayor as the minimum to twenty (20) years of reclusion temporal as the maximum to indemnify the FGU Insurance Corporation of the sum of P895,190.59. With costs.

SO ORDERED."

Sy It San and Juan de Carlos interposed separate appeals to the Court of Appeals, which appeals were consolidated and docketed as CA-G.R. No. 08756.

On August 29, 1991, the Court of Appeals rendered judgment affirming the decision appealed from, and disposing as follows:

"CONFORMABLY TO THE FOREGOING, the guilt of all accused-appellants having been proven beyond reasonable doubt as regards the crime charged, the Decision appealed from is hereby AFFIRMED *in toto*. Costs against appellants.

SO ORDERED."

Not satisfied with the aforesaid disposition by the Court of Appeals, petitioner found his way to this court via the present petition raising as issues:

I. Whether or not, in resolving a demurrer to evidence which then constituted a waiver of the right to present evidence, the court should rely exclusively on the evidence for the prosecution, as provided by the rules, or may consider evidence presented by a co-defendant who opted to put up his defense, as done in this case; and

II. Whether or not, given the evidence on record herein, the conclusion arrived at by respondent court that conspiracy between the accused herein had been sufficiently established.

Petitioner contends that it was erroneous for the trial court not to have immediately acted upon his demurrer to evidence and to have allowed instead, his co-accused, Sy It San, to adduce evidence. It is theorized that the trial court erred on deferring resolution on subject demurrer to evidence because the pertinent rules mandate that the demurrer be resolved solely on the basis of the evidence for the prosecution. It is petitioner's submission that in continuing to hear Sy It San's evidence, the trial court, in effect, resolved the demurrer to evidence not only on the basis of the evidence for the prosecution but also on the evidence adduced by