

## SPECIAL THIRD DIVISION

[ G.R. No. 170583, September 12, 2007 ]

**ERNESTO M. FULLERO, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

In this Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, [1] petitioner Ernesto M. Fullero seeks to set aside the Decision [2] dated 19 October 2005 of the Court of Appeals in CA-G.R. CR. No. 28072, affirming *in toto* the Decision [3] dated 9 October 2003 of the Legazpi City Regional Trial Court (RTC), Branch 6, in Criminal Case No. 7712, finding petitioner guilty of falsification of public document as defined and penalized in paragraph 4, Article 171 of the Revised Penal Code.

In an Amended Information [4] dated 14 October 1997, petitioner was charged with falsification of public document under paragraph 4, Article 171 of the Revised Penal Code, allegedly committed as follows:

That sometime in 1988, in the City of Legazpi, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to prejudice and defraud, being then the Acting Chief Operator of Iriga City Telecommunication's Office, while acting in said capacity and taking advantage of his official function, did then and there willfully, unlawfully and feloniously falsify and/or caused to be falsified a genuine public document, that is when he prepared his CSC 212 (Personal Data Sheet) for submission to Bureau of Telecommunication Regional Office No. 5, Legazpi City, he made it appear that he passed the Civil Engineering Board Examinations given by Professional Regulation Commission on May 30 and 31, 1985 with a rating of 75.8%; however, upon verification issued by PRC, said accused took the examination in May 1984 and another one [in] May, 1985 with general ratings of 56.75% and 56.10% respectively.

When arraigned on 5 January 1998, petitioner, with the assistance of counsel *de parte*, pleaded "Not Guilty" to the charge. [5] Thereafter, trial on the merits ensued.

Culled from the records are the following facts:

In 1977, petitioner was employed as a telegraph operator at the Bureau of Telecommunications Office in Iriga City (BTO, Iriga City). In 1982, he became the Acting Chief Operator of the same office until 1994. [6]

A Personal Data Sheet (PDS) [Civil Service Form 212] dated 8 January 1988,

purportedly accomplished and signed by petitioner, states that he passed the Civil Engineering Board Examination given on 30-31 May 1985 in Manila with a rating of 75.8%.<sup>[7]</sup> It appears that he submitted the PDS to the Bureau of Telecommunications Regional Office, Legazpi City (BTO, Legazpi City).<sup>[8]</sup>

A letter dated 7 March 1988 and signed by petitioner shows that he applied for the position of either a Junior Telecommunications Engineer or Telecommunications Traffic Supervisor with the Regional Director of the Civil Service Commission (CSC), Region 5, Legazpi City.<sup>[9]</sup>

Upon inquiry made by Florenda B. Magistrado (Magistrado), a subordinate of petitioner in the BTO, Iriga City, with the Professional Regulation Commission (PRC), it was verified that petitioner never passed the board examination for civil engineering and that petitioner's name does not appear in the book of registration for civil engineers.<sup>[10]</sup>

Petitioner denied executing and submitting the subject PDS containing the statement that he passed the 30-31 May 1985 board examination for civil engineering. He likewise disowned the signature and thumbmark appearing therein. He claimed that the stroke of the signature appearing in the PDS differs from the stroke of his genuine signature.<sup>[11]</sup> He added that the letters contained in the PDS he accomplished and submitted were typewritten in capital letters since his typewriter does not have small letters. As such, the subject PDS could not be his because it had both small and capital typewritten letters.

Moreover, petitioner claimed that Magistrado had an ill motive in filing the instant case against him because he issued a memorandum against her for misbehavior in the BTO, Iriga City.<sup>[12]</sup> He further argued that the RTC had no jurisdiction to try him there being no evidence that the alleged falsification took place in Legazpi City.<sup>[13]</sup>

After trial, the Legazpi City RTC rendered a Decision dated 9 October 2003 finding petitioner guilty of the crime of falsification. Thus:

WHEREFORE, premises considered, the accused **Ernesto M. Fullero** is hereby found **guilty** beyond reasonable doubt of the crime of **Falsification** defined and penalized under Art. 171 (4) of the Revised Penal Code, and hereby sentences him to suffer the penalty of imprisonment of six (6) years of *prision correccional* maximum to ten (10) years of *prision mayor* medium as the maximum and to pay a fine of three thousand P3,000.00 Pesos. Costs against the accused.<sup>[14]</sup>

Petitioner appealed to the Court of Appeals. On 19 October 2005, the appellate court promulgated its Decision affirming *in toto* the assailed Legazpi City RTC Decision. The appellate court decreed:

In sum, the Court finds that the prosecution has successfully established all the elements of the offense of falsification of a public document and that the trial court correctly rendered a judgment of conviction against appellant.

WHEREFORE, the appeal at bench is DISMISSED for lack of merit and the appealed 09 October 2003 decision is affirmed.<sup>[15]</sup>

On 21 November 2005, petitioner lodged the instant petition before us citing as errors the following:

I.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN SUSTAINING THE JUDGMENT OF THE REGIONAL TRIAL COURT DESPITE THE FACT THAT SAID LOWER COURT CONVICTED THE ACCUSED IN THE ABSENCE OF SUFFICIENT EVIDENCE I.E., PROOF TO SHOW THAT THE ACCUSED ACTUALLY PERFORMED THE ACT OF FALSIFICATION HE IS ACCUSED OF;

II.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN SUSTAINING THE JUDGMENT OF THE REGIONAL TRIAL COURT DESPITE THE FACT THAT, EVEN ON THE ASSUMPTION THAT ACCUSED FILLED UP THE PERSONAL DATA SHEET (PDS) INCLUDING THE STATEMENT THAT HE IS A LICENSED ENGINEER, ACCUSED WAS UNDER NO OBLIGATION TO STATE SAID DATA AND NO CRIMINAL INTENT WAS SHOWN.

III.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN SUSTAINING THE JUDGMENT OF THE REGIONAL TRIAL COURT DESPITE THE FACT THAT SAID RTC ADMITTED EVIDENCES NOT PROPERLY IDENTIFIED AND THEREAFTER CONSIDERED THE SAME IN DETERMINING THE ALLEGED GUILT OF THE ACCUSED;

IV.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN SUSTAINING THE JUDGMENT OF THE REGIONAL TRIAL COURT DESPITE THE FACT THAT THE LOWER COURT HAD NO JURISDICTION BECAUSE THE VENUE SHOULD HAVE BEEN IN THE REGIONAL TRIAL COURT OF IRIGA CITY, WHERE THE ALLEGED PERSONAL DATA SHEET WAS ACCOMPLISHED NOT IN THE RTC OF LEGAZPI CITY.

*Apropos* the first issue, petitioner maintained that none of the prosecution witnesses actually saw him accomplish and sign the PDS; that the prosecution failed to establish that he took advantage of his position in falsifying the PDS; that a person need not be an Acting Chief Operator to be able to falsify a PDS; that he never became the custodian of the PDS nor did he have any special access to it by reason of his office; and that the identity of the person who falsified the PDS has not been established by the prosecution.<sup>[16]</sup>

In establishing its charge of falsification against petitioner, the prosecution presented the following witnesses, namely: Magistrado, Joaquin C. Atayza (Atayza), Romeo Brizo (Brizo), Emma Francisco (Francisco) and Edith C. Avenir (Avenir).

**Magistrado**, a subordinate of petitioner at the BTO, Iriga City, testified that prior to the filing of the instant case against petitioner, she sued the petitioner for unjust vexation as the latter kissed her on one occasion. While the case for unjust vexation was pending, her lawyer, Atty. Mariano Baranda, Jr. (Atty. Baranda), asked her if petitioner was indeed a licensed civil engineer since some persons simply referred to petitioner as "Mr. Fullero" whereas in the BTO, Iriga City, petitioner was known as "Engineer Fullero." Suspicious of the true status of petitioner, she went to the Records Office of the BTO, Legazpi City, and requested therein if she can see petitioner's PDS. Upon being shown petitioner's PDS, she observed that, under Item No. 18 thereof, petitioner appears to be a licensed civil engineer having passed the board examination for civil engineering given on 30-31 May 1985. Unconvinced of the veracity of petitioner's statement in the PDS that he is a licensed civil engineer, she sought the advice of Atty. Baranda. Atty. Baranda then proceeded to the main office of the PRC in Manila to check the records of petitioner. Subsequently, Atty. Baranda obtained a certification from the PRC attesting that petitioner never passed the board examination for civil engineering. Atty. Baranda showed the said certification to her. Thereafter, she instituted the instant case against petitioner.<sup>[17]</sup>

**Atayza**, Regional Director of the PRC in Legazpi City, testified that petitioner is not registered as a board passer for the civil engineering examination given on 30-31 May 1985.<sup>[18]</sup>

**Brizo**, Human Resource Management Officer and Acting Records Officer of the BTO, Legazpi City, testified that his duty as acting records officer was to safeguard the records and files of the BTO, Iriga City, and BTO, Legazpi City. He said he personally knows the petitioner and is familiar with the latter's signature because he regularly received petitioner's daily time records and other documents bearing petitioner's signature. He confirmed that the signature appearing in petitioner's PDS was the signature of petitioner.<sup>[19]</sup>

**Francisco** was the Officer-In-Charge of the Records Section of the PRC, Manila. She declared that petitioner's name was included in the master list of examinees in the May 1984 civil engineering licensure examination where petitioner obtained a failing grade of 56.75%. She affirmed that petitioner's name also appears in the list of examinees for the 30-31 May 1985 and May 1990 civil engineering licensure examinations where he got failing marks.<sup>[20]</sup>

**Avenir** was the Special Investigator III in the Legal Affairs Division of the CSC, Regional Office No. 5, Legazpi City. As the duly authorized representative of the Regional Director of the said office, Avenir brought to the court the letter of petitioner applying for the position of either Junior Telecommunications Engineer or Telecommunications Traffic Supervisor, and a certification submitted by the petitioner stating that the latter is a licensed civil engineer. Avenir stated that the letter and the certification were taken from the records of their office and that these documents were being kept as part of the records of an administrative case of petitioner with the said office.<sup>[21]</sup>

The prosecution also presented documentary evidence to bolster the foregoing testimonies of the prosecution witnesses, to wit: (1) a certification issued by Jose A. Arriola, Director II, PRC, Manila, attesting that petitioner's name is not registered in

the book of registry for licensed civil engineers; (2) certifications issued by Francisco affirming that petitioner failed in the 30-31 May **1985** board examination for civil engineering;<sup>[22]</sup> (3) the PDS where petitioner stated that he passed the 30-31 May 1985 board examination for civil engineering with a rating of 75.8% and which was signed by him;<sup>[23]</sup> (4) certifications issued by Francisco attesting that petitioner failed the May **1990** board examination for civil engineering;<sup>[24]</sup> (5) transcript of stenographic notes in the perjury case filed by petitioner against Magistrado which states that, during the trial thereof, petitioner affirmed before the court hearing the case that he is a licensed civil engineer;<sup>[25]</sup> (6) a letter signed and submitted by petitioner to the Regional Director of the CSC, Regional Office No. 5, Legazpi City, claiming to be a licensed civil engineer and applying for the position of either a Junior Telecommunications Engineer or Telecommunications Traffic Supervisor;<sup>[26]</sup> (7) an Order dated 20 December 2001 of the CSC, Regional Office No. 5, finding petitioner administratively liable for conduct prejudicial to the best interest of the service and imposing upon him a penalty of six months suspension for falsifying his PDS which is also the subject matter of the instant case;<sup>[27]</sup> (8) a certification submitted by the petitioner to the CSC, Regional Office No. 5, Legazpi City, showing that he is a licensed civil engineer;<sup>[28]</sup> (9) the daily time records of Magistrado signed by petitioner as the former's superior;<sup>[29]</sup> and (10) other documents bearing the signature of petitioner in blue ballpen.<sup>[30]</sup>

On the other hand, the defense presented petitioner as its sole witness. No documentary evidence was proffered.

Petitioner interposed denials and alibi to support his contentions. Petitioner denied that he executed and submitted the subject PDS containing the statement that he passed the board examinations for civil engineering. He likewise disowned the signature and thumbmark appearing therein. He averred that the PDS he accomplished and submitted was typewritten in capital letters since his typewriter does not have small letters; thus, the subject PDS could not be his since the letters were typewritten in small and capital letters; that the stroke of the signature appearing in the PDS differs from the stroke of his genuine signature; that Magistrado had an ill motive in filing the instant case against him since he issued a memorandum against her for the latter's misbehavior in the BTO, Iriga City; that he is not a licensed civil engineer; and that he accomplished a different PDS in the BTO, Iriga City.

Petitioner testified that he cannot recall the exact date when he issued the alleged memorandum against Magistrado<sup>[31]</sup> and when during the trial of his perjury case against Magistrado, he claimed that he is a licensed civil engineer.<sup>[32]</sup> He cannot also remember if he submitted a letter to the CSC, Regional Office No. 5, Legazpi City, applying for the position of either a Junior Telecommunications Engineer or Telecommunications Traffic Supervisor<sup>[33]</sup> and the fact that he submitted therein a certification that he is a licensed civil engineer.<sup>[34]</sup>

The initial query to be resolved is whose evidence between the prosecution and defense is credible.

Case law dictates that an accused can be convicted even if no eyewitness is