

SECOND DIVISION

[G.R. NO. 153133, September 26, 2006]

MELY NIERVA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT. D E C I S I O N

GARCIA, J.:

Under consideration is this petition for review on certiorari under Rule 45 of the Rules of Court assailing the Decision^[1] dated April 16, 2002 of the Court of Appeals (CA) in *CA-G.R. CR No. 19817* which affirmed *in toto* that of the Regional Trial Court of Baguio City, Branch 6,^[2] in Criminal Case No. 7555-R finding the herein petitioner **Mely Nierva** guilty beyond reasonable doubt of the crime of Falsification of Public Document defined and penalized under Article 172, paragraph 1 in relation to Article 171, paragraphs 1 and 2 of the Revised Penal Code, in conspiracy with two (2) of her co-accused therein, namely, Purita Llorente and Aida Reyes.

As culled from the records, the material facts are:

Petitioner Mely Nierva was the owner of a one-storey house on a parcel of unregistered land at Km. 4-5, Asin Road, Baguio City and covered by Tax Declaration No. 50047^[3] in her name.

On May 16, 1987, the petitioner, using her aforementioned property as collateral, obtained a loan of P50,000.00 from a lending company, Angeniz and Co., Inc. (ANGENIZ), through its representative, Ines Chan (Chan). The mortgage was annotated on Tax Declaration No. 50047.^[4]

On May 29, 1989, after settling her first loan, petitioner secured a new loan from the same lending company, this time in the amount of P350,000.00 for which she again executed a Real Estate Mortgage^[5] over her same property, which mortgage was likewise annotated on her Tax Declaration No. 50047^[6] and registered with the Register of Deeds as well as with the City Assessor's Office, Baguio City. The mortgage document contained a prohibition against the alienation or encumbrance of the mortgaged property without ANGENIZ' consent.^[7]

On August 22, 1989, while her latest loan from ANGENIZ was still subsisting, the petitioner executed a second Real Estate Mortgage^[8] over the same property in favor of Purita Llorente to collateralize a loan of P160,000.00 she obtained from the latter. This second deed of mortgage was notarized on the same date by Atty. Daniel Fariñas.

Also, on August 22, 1989, one Aida Reyes had a document - a *Release of Real Estate Mortgage*^[9] - notarized by Atty. Amado Orden. Said document was apparently signed by Ines Chan acknowledging her receipt of P350,000.00 from the petitioner and releasing the latter's mortgage obligation to ANGENIZ. The release

document likewise bears the signatures of Reyes and the petitioner's maid Editha Solomon as witnesses. After the notarization of this release instrument, Reyes registered the same with the City Assessor's Office of Baguio City. Consequently, the earlier mortgage in favor of ANGENIZ as annotated on Tax Declaration No. 50047 was cancelled.^[10]

On August 24, 1989, two (2) documents both dated August 22, 1989 with one purportedly executed by Ines Chan were received for registration at the Register of Deeds of Baguio City. The two documents are: a *Release of Real Estate Mortgage* in favor of the herein petitioner Mely Nierva purportedly signed by Chan, and a Real Estate Mortgage in favor of Purita Llorente. Both documents, however, were apparently withdrawn by Llorente on August 31, 1989 as revealed by the entries made in the Register of Deeds' Daybook for Registration of Documents Relative To Land Not Recorded Under The Land Registration Act.^[11]

On September 8, 1989, after having borrowed another P160,000.00 from Llorente, thereby bringing her total obligation to the latter in the amount of P320,000.00, the petitioner executed a new Real Estate Mortgage over her same property, thus replacing the previous real estate mortgage she executed in Llorente's favor on August 22, 1989.^[12]

Meanwhile, with the petitioner having failed to pay the balance of her existing loan obligation to ANGENIZ, the latter, through Chan, proceeded to foreclose the mortgaged property. It was at this time that Chan learned of the existence of a second mortgage dated August 22, 1989 over the same property in favor of Llorente and of a *Release of Real Estate Mortgage* purportedly signed by her discharging petitioner's mortgage indebtedness to ANGENIZ. Chan was able to see a copy of the document at the office of Atty. Amado Orden, the lawyer who notarized the release instrument.

Confronted by Chan, the petitioner admitted having executed a second mortgage on her property in favor of Llorente but denied any participation in the execution of the *Release of Real Estate Mortgage* and instead pointed to Llorente as the one solely responsible therefor.^[13] She then requested the suspension of the foreclosure proceedings against her property and promised Chan the payment of her loan balance with ANGENIZ as she would first borrow money from Llorente.^[14]

As it turned out, the petitioner sold her property to Llorente for P320,000.00 under a Deed of Absolute Sale^[15] dated February 6, 1990.

Later, Llorente talked to Chan and told the latter that she will pay the petitioner's loan balance with ANGENIZ in the amount of P100,000.00 in cash on condition that a release of the petitioner's mortgage would be executed.^[16] Chan refused the offer saying that the petitioner's indebtedness with ANGENIZ amounted to P167,000.00, not P100,000.00.^[17] Consequently, no compromise was reached by the parties.

On March 20, 1990, Llorente, on the basis of the aforementioned Deed of Absolute Sale, caused the cancellation of the petitioner's Tax Declaration No. 50047 and the issuance of Tax Declaration No. 1314^[18] in her own name.

Eventually, ANGENIZ was able to successfully foreclose the subject property and, being the highest bidder at the resulting public auction thereof, was issued the corresponding Sheriff's Certificate of Sale^[19] therefor on April 10, 1990.

Such was the state of things when ANGENIZ lodged a criminal complaint against the petitioner for falsification of a public document relative to the same *Release of Real Estate Mortgage* earlier adverted to. On the basis of said complaint, an Information^[20] was filed with the Regional Trial Court (RTC) of Baguio City charging the petitioner with the crime of Falsification of Public Document under Article 172, paragraph 1, in relation to paragraphs 1 and 2, Article 171 of the Revised Penal Code. After a reinvestigation was conducted at the instance of the petitioner herself, an Amended Information^[21] was subsequently filed, thereunder impleading Aida Reyes, Purita Llorente and one Edwin Olivas as additional accused in the crime charged, allegedly committed as follows:

That on or about the 22nd day of August, 1989, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, did then and there willfully, unlawfully and feloniously falsify the signature of INES L. CHAN in the Release of Real Estate Mortgage dated August 22, 1989 acknowledged before Notary Public Amado C. Orden in the City of Baguio and docketed in his Register as Doc. No. 301, Page No. 62, Book No. XLIV, Series of 1989., causing it to appear that Ines L. Chan signed the said deed, when in truth and in fact, said complainant did not so participate whatsoever in the signing of the said Release of Real Estate Mortgage, to the damage and prejudice of ANGENIZ & CO., INC., represented by Ines L. Chan in the amount of ONE HUNDRED SIXTY SEVEN THOUSAND PESOS AND NINE HUNDRED NINETY PESOS AND 35/100 CENTAVOS (P167,990.35), Philippine Currency.

Docketed in the RTC as Criminal Case No. 7555-R, the Information, as amended, was raffled to Branch 6 of the court.

On arraignment, all four (4) accused entered a plea of "Not guilty."

In a decision^[22] dated January 2, 1996, the trial court acquitted accused Edwin Olivas but convicted of the crime charged all the remaining three, namely, petitioner Mely Nierva, Purita Llorente and Aida Reyes, and accordingly sentenced them, thus:

WHEREFORE, the Court Finds the accused Mely Nierva, Purita Llorente and Aida Reyes GUILTY beyond reasonable doubt of Violation of Article 172 paragraph 1 in relation to Article 171 paragraphs 1 and 2 of the Revised Penal Code for Falsification of Public Document as confederates and conspirators as charged in the information and hereby sentences each of them, applying the Indeterminate Sentence Law, to an imprisonment ranging from 4 months and 1 day of arresto mayor as Minimum to 3 years 6 months and 21 days of prision correctional as Maximum and to pay a Fine of P5,000.00 with subsidiary imprisonment in case of insolvency at the rate of P8.00 a day but not exceeding one third of the principal penalty and to pay the costs.

For failure of the prosecution to prove his guilt beyond reasonable doubt,

the accused Edwin Olivas is hereby acquitted of the offense of falsification charged.

Costs de oficio.

The cash bond of accused Edwin Olivas is hereby cancelled and discharged and ordered released to him upon proper receipt thereof.

SO ORDERED.

In its judgment of conviction, the trial court found that Ines Chan's signature on the subject Release of *Real Estate Mortgage* was a forgery. In concluding that there was conspiracy among the three convicted accused, the trial court took into consideration the following circumstances: (1) the existence of the falsified *Release of Real Estate Mortgage* dated August 22, 1989; (2) the benefit which each of them obtained from the execution thereof, to wit: the petitioner's mortgage obligation to ANGENIZ was cancelled resulting in her obtaining a loan from Llorente, the latter taking a collateral free from any encumbrance, and Reyes getting her commission from the loan she brokered between the petitioner and Llorente; (3) the petitioner's presence in Baguio City on August 22, 1989 as testified to by Atty. Daniel Fariñas who notarized the second real estate mortgage document likewise dated August 22, 1989; (4) petitioner, more than Reyes, must necessarily be interested in the release of the mortgage on her property, she being its owner; (5) the claim of Llorente that she had no knowledge of the earlier mortgage of the property to ANGENIZ cannot be believed because of the annotation appearing on Tax Declaration No. 50047; (6) the testimony of Reyes that she was the one who presented the subject *Release of Real Estate Mortgage* for notarization was a declaration against her interest; (7) the choice of different lawyers to notarize the falsified Release of Real Estate Mortgage and the second *Real Estate Mortgage* in favor of Llorente; (8) Llorente presented the falsified document of release to the Register of Deeds for registration on August 22, 1989 and later withdrew the same on August 24, 1989; (9) the petitioner's maid Editha Solomon signed as a witness to the subject *Release of Real Estate Mortgage*; and (10) the petitioner sold the property to Llorente despite the prohibition in her mortgage contract with ANGENIZ and the nonpayment of her indebtedness to the latter.

Of the three (3) convicted accused, only the petitioner and Llorente appealed to the CA in CA-G.R. CR No. 19817.

As stated at the outset hereof, the CA, in its assailed decision^[23] of April 16, 2002, affirmed that of the trial court. Ruled the appellate court:

In fine, the Court finds that the prosecution has established the guilt of appellants beyond reasonable doubt of the crime of Falsification of Public Document defined under Article 171 of the Revised Penal Code and penalized under Article 172 thereof, with the penalty of prision correccional in its medium and maximum periods and a fine of not more than P5,000.00. We therefore find that the court a quo imposed the proper penalty after applying the Indeterminate Sentence Law.

Unable to accept her conviction, the petitioner has come to this Court *via* this petition for review, contending that the CA erred -

xxx in affirming the decision of the Trial Court in Criminal Case 7555-R;

xxx in failing to properly appreciate the facts of the case.

For her part, on May 10, 2002, Purita Llorente moved for a reconsideration of the CA decision. On account thereof, the Office of the Solicitor General (OSG), when asked to comment on this petition, stated that the assailed CA decision has not yet attained finality and accordingly prayed for the petition's dismissal on ground of prematurity. Upon the other hand, private complainant Inez Chan, through counsel, merely asked that the proceedings hereon be simply suspended or deferred.^[24]

In her Manifestation^[25] of September 6, 2002, the petitioner expressed conformity to the deferment of action on this petition. Subsequently, replying to the OSG's comment, the petitioner informed the Court that the pending motion for reconsideration of Llorente with the CA was denied by said court on September 12, 2002,^[26] adding that Llorente has filed with this Court a *Motion For Extension of Time to file Petition for Certiorari*. A check, however, with the Docket Division of the Court reveals that no such motion for extension was filed by Llorente.

Hence, in our December 5, 2002 Resolution,^[27] we merely noted the petitioner's reply to the OSG's comment. With no pleading having been filed by Llorente who evidently lost interest in contesting the CA decision, we shall now proceed to address the merit or lack of it of the instant petition.

Given the fact that the falsified character of the subject *Release of Real Estate Mortgage* is a non-issue in this case, the only question to be resolved herein is whether the petitioner is guilty of the crime charged in conspiracy with Purita Llorente and Aida Reyes, or, to be more precise, whether conspiracy was duly proven with respect to the petitioner.

We rule in the affirmative.

Prefaratorily, it must be emphasized that findings of facts of the appellate court are conclusive in this proceeding and it is on the basis thereof that this petition must be viewed.

Here, an examination of the CA's findings and of the records show that conspiracy has been duly established between the petitioner and the two other accused Llorente and Reyes in the commission of the offense charged.

We concur with the CA that conspiracy existed between the three (3), as shown by the following circumstances, to wit:

1. There was a *Release of Real Estate Mortgage* dated August 22, 1989 which was never signed by Inez Chan, neither did she give her consent thereto;