

SECOND DIVISION

[G.R. No. 227069, November 22, 2017]

**HILARIO LAMSEN, PETITIONER, VS. THE PEOPLE OF
PHILIPPINES, RESPONDENTS.**

DECISION

PERLAS-BERNABE, J.:

Before the Court is a petition for review on *certiorari*^[1] filed by petitioner Hilario Lamsen (Lamsen) assailing the Decision^[2] dated January 30, 2015 of the Court of Appeals (CA) in CA-G.R. CR No. 35283, which affirmed the Decision^[3] dated March 28, 2012 of the Regional Trial Court of Manila, Branch 34 (RTC) in Crim. Case No. 11-288590 sustaining the Judgment^[4] dated July 5, 2011 of the Metropolitan Trial Court of Manila, Branch 21 (MeTC) in Crim. Case No. 400192-CB finding Lamsen guilty beyond reasonable doubt of the crime of falsification of public documents, as defined and penalized under Article 172 (1) of the Revised Penal Code (RPC).

The Facts

An Information^[5] dated September 30, 2003 was filed before the MeTC, charging Lamsen of the crime of Falsification of Public Documents, the accusatory portion of which reads:

That on or about April 21, 1993, and for sometime prior or subsequent thereto, in the City of Manila, Philippines, the said accused, being then a private individual, did then and there willfully, unlawfully and feloniously commit acts of falsification of public/official document, in the following manner, to wit: the said accused prepared, forged and falsified, or caused to be prepared, forged and falsified, a Deed of Absolute Sale dated April 21, 1993 notarized and acknowledged before Santiago R. Reyes, Notary Public for and in the City of Manila and docketed in his notarial registry Book as Doc. No. 88 Book No. 133, Page No. 19 and Series of 1993, and therefore a public document, by then and there stating therein[,] among others[,] that spouses Aniceta Dela Cruz and Nestor Tandas, the registered owner of a parcel of land containing an area of 43 square meters, more or less, located in Barrio Malabo, Municipality of Valenzuela, Metro Manila, covered by Transfer Certificate of Title No. V-16641 was sold[,] transferred and conveyed to the said accused for and in consideration of P150,000.00, by feigning, simulating and counterfeiting the signatures of said spouses Aniceta Dela Cruz and Nestor Tandas appearing on the lower left portion of said document[,] above the typewritten words "ANICETA DELA CRUZ" and "NESTOR TANDAS" thus making it appear as it did appear that said spouses

Aniceta Dela Cruz and Nestor Tandas had transferred ownership of the said parcel of land subject matter of said deed of sale of herein accused, and that the said spouses Aniceta Dela Cruz and Nestor Tandas participated and intervened in the signing of the said document, when in truth and in fact, as the said accused well knew that such was not the case[,] and that the said spouses Aniceta Dela Cruz and Nestor Tandas did not sell the said property to the said accused and that they did not participate and intervene in the signing of the said deed of sale, much less did they authorized the said accused or anybody else to sign their names or affix their signatures thereon, to the damage and prejudice of public interest.

Contrary to law.^[6]

The prosecution alleged that Aniceta dela Cruz (Aniceta) owned a parcel of land with an area of around forty-three (43) square meters located at Barrio Malabo, Valenzuela City, covered by Transfer Certificate of Title No. V-16641, and registered under the name of "Aniceta dela Cruz, married to Nestor Tandas" (subject property).

^[7] On September 7, 2001, ^[8] Aniceta passed away, leaving behind her nieces and surviving heirs, Teresita dela Cruz Lao (Teresita) and Carmelita Lao Lee (Carmelita).

^[9] After Aniceta's death, Teresita went to the former's house to look for the owner's duplicate title of the subject property, but the same was allegedly nowhere to be found. Accordingly, Teresita executed an affidavit of loss, which was annotated on the title on file with the Registry of Deeds of Valenzuela City (RD) on October 19, 2001.

^[10] Concurrently, Teresita and Carmelita executed an extrajudicial settlement of the estate of Aniceta. ^[11] Teresita also filed a petition for the issuance of second owner's duplicate copy before the Regional Trial Court of Valenzuela City, Branch 75. The said petition, however, was dismissed on the basis of the opposition of Lamsen, who claimed that the original copy of the owner's duplicate title could not have been lost because it was with him. Meanwhile, the RD informed Teresita through a letter dated May 9, 2002 that somebody requested for the registration of a deed of sale (subject deed) involving the subject property. Thus, she proceeded to the RD but was informed that the requesting party had withdrawn all the papers; hence, she asked for the Book of the RD to photocopy the withdrawal aforementioned. Thereafter, she went to the Notarial Section of Manila to get a certified true copy of the subject deed but was given a mere photocopy thereof, since the original was no longer on file. She then submitted the photocopy of the deed to the Philippine National Police (PNP) Crime Laboratory for examination, as the signatures of Aniceta and Nestor Tandas (Nestor) thereon appeared to be forged. Upon examination, Document Examiner II Alex Batiles (Batiles) confirmed that the subject deed was indeed falsified. He revealed that there were dissimilarities between the questioned and standard signatures of Aniceta and Nestor (spouses Tandas), and that they were not written by one and the same person. ^[12]

For his part, Lamsen interposed the defense of denial, claiming that while he was renting the place of his uncle Nestor sometime in 1993, he validly bought and acquired the subject property from spouses Tandas in the amount of P150,000.00. He added that the subject deed was executed, signed, and notarized by spouses Tandas in the presence of a certain Nicasio Cruz and Francisco Capinpin in the GSIS

Office, Manila. He averred that he subsequently left a xerox copy of the subject deed at the Notary Public and took the original with him. Ultimately, he contended that he no longer informed the relatives of Aniceta about the sale, as they already have a gap.^[13]

The MeTC Ruling

In a Decision^[14] dated July 5, 2011, the MeTC found Lamsen guilty beyond reasonable doubt of the crime of Falsification of Public Document and, accordingly, sentenced him to suffer the indeterminate penalty of *arresto mayor* in its maximum period, as minimum period of imprisonment *i.e.*, two [2] years and four [4] months), to *prision correccional* in its medium and maximum period (*i.e.*, four [4] years, nine [9] months, and ten [10] days), as maximum period of imprisonment, and to pay a fine of P5,000.00.^[15] It ruled that the prosecution was able to prove that the signatures of spouses Tandas were forged on account of the expert testimony of Batiles.^[16] Conversely, Lamsen failed to establish by clear and convincing evidence the genuineness and authenticity of Aniceta's signature on the subject deed.^[17]

With the subsequent denial^[18] of his motion for reconsideration,^[19] Lamsen filed an appeal^[20] before the RTC.

The RTC Ruling

In a Decision^[21] dated March 28, 2012, the RTC affirmed the MeTC ruling *in toto*.^[22] Prefatorily, it discredited Lamsen's claim that the offense had already prescribed, given that the ten (10)-year prescriptive period only commenced from the time the supposed forgery was discovered on May 9, 2002, the date of receipt of the letter of even date from the RD, and not from the time the Notary Public submitted the Notarial Report with the Office of the Clerk of Court of Manila sometime in April 1993. The submission of the Notarial Report is not considered an act of registration which would operate as a constructive notice to the whole world, since the Office of the Clerk of Court is not a public registry in the first place.^[23]

Apart from the findings of the handwriting expert, the RTC also relied on the following circumstantial evidence in convicting Lamsen of the crime charged: (a) the subject deed was notarized in Manila even if Lamsen and spouses Tandas were residents of Valenzuela; (b) Lamsen failed to show when the alleged witnesses signed the subject deed; (c) the subject deed was executed and notarized sometime in April 1993, but was registered with the RD only after the death of Aniceta sometime in May 2002; (d) the corresponding capital gains and documentary stamp taxes were paid only on April 11, 2002; and (e) the original copy of the subject deed, which was purportedly retained by Lamsen, was neither presented nor produced during trial.^[24]

Undaunted, Lamsen filed a motion for reconsideration,^[25] which was, however, denied in an Order^[26] dated May 31, 2012. Aggrieved, he filed an appeal^[27] before

the CA.

The CA Ruling

In a Decision^[28] dated January 30, 2015, the CA affirmed the RTC ruling, holding that all the elements of the crime of falsification of public document were attendant.^[29]

Expectedly, Lamsen filed a motion for reconsideration^[30] dated February 26, 2015. On September 7, 2015, Teresita and Carmelita filed a Manifestation^[31] containing their joint affidavit of desistance and retraction. On the same day, Lamsen filed a Supplement to the motion for reconsideration dated February 26, 2015 (Supplement)^[32] asking the court to dismiss the case in light of the aforesaid joint affidavit.

In a Resolution^[33] dated September 4, 2015, the CA denied the motion for reconsideration dated February 26, 2015. Subsequently, it received the Manifestation and Supplement and noted the same without action.^[34]

Unyielding, Lamsen filed a motion for new trial^[35] on October 19, 2015, which was denied in a Resolution^[36] dated May 31, 2016. The CA held that the original copy of the subject deed could not be considered newly discovered evidence, considering that Lamsen had every opportunity to produce and present it during trial.^[37]

With the subsequent denial of his motion for reconsideration/new trial^[38] on August 8, 2016,^[39] Lamsen filed the instant petition^[40] before the Court.

Issue Before the Court

The issue for the Court's resolution is whether or not Lamsen's conviction for the crime of falsification of public documents, as defined and penalized under Article 172 (1) of the RPC, should be upheld.

The Court's Ruling

The petition is meritorious.

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.^[41] "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."^[42]

"In every criminal case, the accused is entitled to acquittal unless his guilt is shown

beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Only moral certainty is required, or that degree of proof which produces conviction in an unprejudiced mind."^[43]

Here, Lamsen was charged of the crime of falsification of public document under Article 172 (1) of the RPC:

Article 172. Falsification by private individual and use of falsified documents. – x x x:

1. Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document or letter of exchange or any other kind of commercial document;

x x x x

The elements of the said crime are as follows: (a) the offender is a private individual; (b) the offender committed any of the acts of falsification enumerated in Article 171; and (c) the falsification was committed in a public document."^[44]

Relatedly, the prosecution must likewise establish the fact of falsification or forgery by clear, positive, and convincing evidence, as the same is never presumed. Withal, the fact of forgery can only be established by a comparison between the alleged forged signature and the authentic and genuine signature of the person whose signature is theorized to have been forged."^[45] "Under Rule 132, Section 22 of the Rules of Court, the genuineness of handwriting may be proved in the following manner: (1) by any witness who believes it to be the handwriting of such person because he has seen the person write; or he has seen writing purporting to be his upon which the witness has acted or been charged; (2) by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party, against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge. Corollary thereto, jurisprudence states that the presumption of validity and regularity prevails over allegations of forgery and fraud. As against direct evidence consisting of the testimony of a witness who was physically present at the signing of the contract and who had personal knowledge thereof, the testimony of an expert witness constitutes indirect or circumstantial evidence at best."^[46]

In this case, the prosecution presented an expert witness, Batiles, to prove its allegation of falsification or forgery. While Batiles testified during cross-examination that the questioned signatures were not written by one and the same person, and that there is a certainty that the subject deed was falsified,^[47] the Court, however, finds this declaration unreliable and inconclusive, as it is inconsistent with the Questioned Document Report No. 130-03. In the said Report, which Batiles himself issued after examining the allegedly falsified subject deed, Batiles found that no definite conclusion can be rendered because the documents submitted by the prosecution were mere photocopies of the original, viz.: