

FIRST DIVISION

[G.R. NO. 168486, June 27, 2006]

**NOE S. ANDAYA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,
RESPONDENT.**

DECISION

YNARES-SANTIAGO, J.:

This is a petition for review on certiorari from the September 29, 2004 Decision^[1] of the Court of Appeals in CA-G.R. CR No. 26556, affirming the January 29, 2002 Decision^[2] of the Regional Trial Court, Branch 104 of Quezon City in Criminal Case No. 92-36145, convicting petitioner Noe S. Andaya of falsification of private document, and the April 26, 2005 Resolution^[3] denying the motion for reconsideration.

Complainant Armed Forces and Police Savings and Loan Association, Inc. (AFPSLAI) is a non-stock and non-profit association authorized to engage in savings and loan transactions. In 1986, petitioner Noe S. Andaya was elected as president and general manager of AFPSLAI. During his term, he sought to increase the capitalization of AFPSLAI to boost its lending capacity to its members.

Consequently, on June 1, 1988, the Board of Trustees of AFPSLAI passed and approved Resolution No. RS-88-006-048 setting up a Finder's Fee Program whereby any officer, member or employee, except investment counselors, of AFPSLAI who could solicit an investment of not less than P100,000.00 would be entitled to a finder's fee equivalent to one percent of the amount solicited.

In a letter^[4] dated September 1991, the Central Bank wrote Gen. Lisandro C. Abadia, then Chairman of the Board of Trustees, regarding the precarious financial position of AFPSLAI due to its alleged flawed management. As a result, Gen. Abadia requested the National Bureau of Investigation (NBI) to conduct an investigation on alleged irregularities in the operations of AFPSLAI which led to the filing of several criminal cases against petitioner, one of which is the instant case based on the alleged fraudulent implementation of the Finder's Fee Program.

On October 5, 1992, an information for **estafa through falsification of commercial document** was filed against petitioner, to wit:

The undersigned accuses NOE S. ANDAYA of the crime of Estafa thru Falsification of Commercial Document, committed as follows:

That on or about the 8th day of April, 1991 in Quezon City, Philippines, the above-named accused, **with intent to gain**, by means of deceit, false pretenses and falsification of commercial document, did then and there, wilfully, unlawfully and feloniously defraud the ARMED FORCES AND POLICE SAVINGS AND LOAN ASSOCIATION, INC., represented by its

Chairman of the Board of Director[s], Gen. Lisandro C. Abadia, AFP, in the following manner, to wit: on the date and in the place aforementioned the said accused being then the President and General Manager of the Armed Forces and Police Savings and Loan Association, Inc., caused and approved the disbursement of the sum of P21,000.00, Philippine Currency, from the funds of the association, by then and there making it appear in Disbursement Voucher No. 58380 that said amount represented the 1% finder's fee of one DIOSDADO J. GUILLAS [Guilas]; when in truth and in fact accused knew fully well that there was no such payment to be made by the association as finder's fee; that by virtue of said falsification, said accused was able to encashed (sic) and received (sic) MBTC Check No. 583768 in the sum of P21,000.00, which amount once in his possession, misapplied, misappropriated and converted to his own personal use and benefit, **to the damage and prejudice of the said offended party** in the aforesaid sum of P21,000.00, Philippine Currency.

CONTRARY TO LAW.^[5] (Emphasis supplied)

The case was raffled to Branch 104 of the Regional Trial Court of Quezon City and docketed as Criminal Case No. 92-36145. On May 30, 1994, petitioner was arraigned^[6] and pleaded not guilty to the charge, after which trial on the merits ensued.

The prosecution presented two witnesses, namely, Diosdado Guilas and Judy Balangue.

Guilas, a general clerk of AFPSLAI's Time Deposit Section, testified that on April 8, 1991, he was informed by Tini Gabriel and Julie Alabansa of the Treasury Department that there was a finder's fee in the amount of P21,000.00 in his name.

Subsequently, Judy Balangue, an investment clerk of the Time Deposit Section, told him that the finder's fee was for petitioner. When Guilas went to petitioner's office to inform him about the finder's fee in his (Guilas') name, petitioner instructed him to collect the P21,000.00 and turn over the same to the latter. Guilas returned to the Treasury Department and signed Disbursement Voucher No. 58380^[7] after which he was issued Metrobank Check No. 683768^[8] for P21,000.00. After encashing the check, he turned over the proceeds to petitioner. On cross-examination, Guilas admitted that there was no prohibition in placing the finder's fee under the name of a person who did not actually solicit the investment.

Balangue also testified that on April 3, 1991, petitioner instructed him to prepare Certificate of Capital Contribution Monthly No. 52178^[9] in the name of Rosario Mercader for an investment in AFPSLAI in the amount of P2,100,000.00 and to inform Guilas that the finder's fee for the aforesaid investment will be placed in the latter's name. On cross-examination, Balangue confirmed that a P2,100,000.00 worth of investment from Rosario Mercader was deposited in AFPSLAI. He further acknowledged that the Finder's Fee Program did not prohibit the placing of another person's name as payee of the finder's fee.

The defense presented three witnesses, namely, Emerita Arevalo, Ernesto Hernandez and petitioner.

Arevalo, secretary of petitioner in AFPSLAI, explained that the finder's fee was for the P2,100,000.00 investment solicited by Ernesto Hernandez from Rosario Mercader. The finder's fee was placed in the name of Guilas upon request of Hernandez so that the same would not be reflected in his (Hernandez's) income tax return. She alleged that Guilas consented to the arrangement of placing the finder's fee in his (GUILAS') name. She also claimed that there was no prohibition in the Finder's Fee Program regarding the substitution of the name of the solicitor as long as there was no double claim for the finder's fee over the same investment.

Hernandez, an associate member of AFPSLAI and vice president of Philippine Educational Trust Plan, Inc. (PETP Plans), testified that sometime in 1991, he was able to solicit from Rosario Mercader an investment of P2,100,000.00 in AFPSLAI. He also asked petitioner to place the finder's fee in the name of one of his employees so that he (Hernandez) would not have to report a higher tax base in his income tax return. On April 8, 1991, petitioner handed to him the finder's fee in the amount of P21,000.00.

Petitioner denied all the charges against him. He claimed that the P21,000.00 finder's fee was in fact payable by AFPSLAI because of the P2,100,000.00 investment of Rosario Mercader solicited by Ernesto Hernandez. He denied misappropriating the P21,000.00 finder's fee for his personal benefit as the same was turned over to Ernesto Hernandez who was the true solicitor of the aforementioned investment. Since the finder's fee was in fact owed by AFPSLAI, then no damage was done to the association. The finder's fee was placed in the name of Guilas as requested by Hernandez in order to reduce the tax obligation of the latter. According to petitioner, Guilas consented to the whole setup.

Petitioner also claimed that Hernandez was an associate member of AFPSLAI because his application for membership was approved by the membership committee and the Board of Trustees and was in fact issued an I.D. There was no prohibition under the rules and regulation of the Finder's Fee Program regarding the substitution of the name of the solicitor with the name of another person. On cross-examination, petitioner claimed that he merely approved the substitution of the name of Hernandez with that of Guilas in the disbursement voucher upon the request of Hernandez. He brushed aside the imputation of condoning tax evasion by claiming that the issue in the instant proceedings was whether he defrauded AFPSLAI and not his alleged complicity in tax evasion.

After the defense rested its case, the prosecution presented two rebuttal witnesses, namely, Ma. Victoria Mague and Ma. Fe Moreno.

Mague, membership affairs office supervisor of AFPSLAI, testified that Hernandez was ineligible to become a member of AFPSLAI under sections 1 and 2 of Article II of the association's by-laws. However, she admitted that the application of Hernandez as member was approved by the membership committee.

Moreno, legal officer of AFPSLAI at the time of her testimony on January 25, 2000, stated that there are eight criminal cases pending against the petitioner in various branches of the Regional Trial Court of Quezon City. In one case decided by Judge Bacalla of Branch 216, petitioner was convicted of estafa through falsification involving similar facts as the instant case. She further stated that Hernandez was

not a member of AFPSLAI under sections 1 and 2 of Article II of the by-laws. On cross-examination, she admitted that the case decided by Judge Bacalla convicting petitioner was on appeal with the Court of Appeals.

The defense dispensed with the presentation of Mercader in view of the stipulation of the prosecution on the fact that Mercader was a depositor of AFPSLAI and that she was convinced to invest in the association by Ernesto Hernandez.^[10]

On June 20, 2001, the trial court rendered a Decision^[11] convicting petitioner of falsification of private document. On July 5, 2001, petitioner filed a motion for new trial.^[12] In an Order^[13] dated December 20, 2001, the trial court ruled that the evidence submitted by petitioner in support of his motion was inadequate to conduct a new trial, however, in the interest of substantial justice, the case should still be reopened pursuant to Section 24,^[14] Rule 119 of the Rules of Court in order to avoid a miscarriage of justice.

Petitioner proceeded to submit documentary evidence consisting of the financial statements of AFPSLAI from 1996 to 1999 to show that AFPSLAI did not suffer any damage from the payment of the P21,000.00 finder's fee. He likewise offered the testimony of Paterno Madet, senior vice president of AFPSLAI, who testified that he was personally aware that Rosario Mercader invested P2,100,000.00 in AFPSLAI; that Hernandez was a member of AFPSLAI and was the one who convinced Mercader to invest; that the finder's fee was placed in the name of Guilas; that petitioner called him to grant the request of Hernandez for the finder's fee to be placed in the name of one of the employees of AFPSLAI; that there was no policy which prohibits the placing of the name of the solicitor of the investment in the name of another person; that the substitution of the name of Hernandez with that of Guilas was approved by petitioner but he (Madet) was the one who approved the release of the disbursement voucher.

On January 29, 2002, the trial court rendered the assailed Decision convicting petitioner of falsification of private document based on the following findings of fact: Hernandez solicited from Rosario Mercader an investment of P2,100,000.00 for AFPSLAI; Hernandez requested petitioner to place the finder's fee in the name of another person; petitioner caused it to appear in the disbursement voucher that Guilas solicited the aforesaid investment; the voucher served as the basis for the issuance of the check for P21,000.00 representing the finder's fee for the investment of Mercader; and Guilas encashed the check and turned over the money to petitioner who in turn gave it to Hernandez.

The trial court ruled that all the elements of falsification of private document were present. First, petitioner caused it to appear in the disbursement voucher, a private document, that Guilas, instead of Hernandez, was entitled to a P21,000.00 finder's fee. Second, the falsification of the voucher was done **with criminal intent to cause damage to the government** because it was meant to lower the tax base of Hernandez and, thus, evade payment of taxes on the finder's fee.

Petitioner moved for reconsideration but was denied by the trial court in an Order^[15] dated May 13, 2002. On appeal, the Court of Appeals affirmed *in toto* the decision of the trial court and denied petitioner's motion for reconsideration; hence, the instant petition challenging the validity of his conviction for the crime of

falsification of private document.

Preliminarily, petitioner contends that the Court of Appeals contradicted the ruling of the trial court. He claims that the Court of Appeals stated in certain portions of its decision that petitioner was guilty of estafa through falsification of commercial document whereas in the trial court's decision petitioner was convicted of falsification of private document.

A close reading of the Court of Appeals' decision shows that the alleged points of contradiction were the result of inadvertence in the drafting of the same. Read in its entirety, the decision of the Court of Appeals affirmed *in toto* the decision of the trial court and, necessarily, it affirmed the conviction of petitioner for the crime of falsification of private document and not of estafa through falsification of commercial document.

In the main, petitioner implores this Court to review the pleadings he filed before the lower courts as well as the evidence on record on the belief that a review of the same will prove his innocence. However, he failed to specify what aspects of the factual and legal bases of his conviction should be reversed.

Time honored is the principle that an appeal in a criminal case opens the whole action for review on any question including those not raised by the parties.^[16] After a careful and thorough review of the records, we are convinced that petitioner should be acquitted based on reasonable doubt.

The elements of falsification of private document under Article 172, paragraph 2^[17] in relation to Article 171^[18] of the Revised Penal Code are: (1) the offender committed any of the acts of falsification under Article 171 which, in the case at bar, falls under paragraph 2 of Article 171, *i.e.*, causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate; (2) the falsification was committed on a private document; and (3) the falsification caused damage or was committed with intent to cause damage to a third party.

Although the public prosecutor designated the offense charged in the information as estafa through falsification of commercial document, petitioner could be convicted of falsification of private document, had it been proper, under the well-settled rule that it is the allegations in the information that determines the nature of the offense and not the technical name given by the public prosecutor in the preamble of the information. We explained this principle in the case of *U.S. v. Lim San*^[19] in this wise:

From a legal point of view, and in a very real sense, it is of no concern to the accused what is the technical name of the crime of which he stands charged. It in no way aids him in a defense on the merits. x x x That to which his attention should be directed, and in which he, above all things else, should be most interested, are the facts alleged. The real question is not did he commit a crime given in the law some technical and specific name, but did he perform the acts alleged in the body of the information in the manner therein set forth. x x x The real and important question to him is, "Did you perform the acts alleged in the manner alleged?" not, "Did you commit a crime named murder?" If he performed the acts