

FIRST DIVISION

[G.R. NO. 144026, June 15, 2006]

**FERNANDO S. DIZON, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

DECISION

CHICO-NAZARIO, J.:

Before Us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Civil Procedure assailing the Decision^[1] of the Court of Appeals which affirmed the Decision^[2] of the Regional Trial Court (RTC) of Pasay City, Branch 109, finding petitioner Fernando S. Dizon guilty beyond reasonable doubt of the crime of *Falsification of Private Document* as defined and penalized under Art. 172, par. 2, in relation to Art. 171, pars. 2 and 4 thereof of the Revised Penal Code.

Petitioner was charged with falsification of a private document under the following information:

That on or about and sometime in the month of July, 1986, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, Fernando S. Dizon, did then and there willfully, unlawfully, and feloniously commit falsification of a private document, to wit: Said accused, with intent to damage Titan Construction Corporation, did then and there willfully, unlawfully and feloniously prepare a document, to wit: a certification dated July 10, 1986, by stating and making it appear in said document that the First United Construction Corporation has undertaken building construction, sewage, water, and other civil works, for the following projects of Titan Construction Corporation:

<u>Title</u>	<u>Cost</u>
1. Calapan Super Area Shop	P 8,900,000.00
2. Masbate Super Area Shop	9,800,000.00
3. Catarman Super Area Shop	12,000,000.00

and that the same was executed and signed by the President of Titan Construction Corporation, when in truth and in fact, as said accused well knew that said certification was not issued nor authorized to be issued by Titan Construction Corporation and that it is false because First United Construction Corporation never had any participation of the projects listed therein which were undertaken by Titan Construction Corporation and that the signature appearing in said certification as being that of Titan Construction Corporation's President is false and a forgery since it was not signed by its President, to the damage and prejudice of Titan Construction Corporation.^[3]

Under arraignment on 17 May 1991, accused petitioner pleaded not guilty to the offense charged.

This criminal case against petitioner originated from a civil action^[4] for prohibition, damages with petition for the issuance of temporary restraining order/preliminary injunction filed by Titan Construction Corporation and Fernando M. Sopot on 25 January 1991 against the members of the Pre-Post Qualification Bids and Awards Committee (PBAC) and the Public Estates Authority (PEA). In said civil case, plaintiffs maintained that the members of the PBAC and the PEA erroneously awarded to First United Construction Corporation, in a bidding held on 30 October 1990, the contract for the construction of the *Bahay Pangarap* Project of the PEA.

A witness for the prosecution, Atty. Jaime Linsangan, counsel for Titan Construction Corporation, presented certain documents submitted by First United Construction Corporation during the bidding conducted on the *Bahay Pangarap* Project. Among those presented as evidence in court was the alleged "Certification" dated 10 July 1986 issued by Titan Construction Corporation which reads as follows:

July 10, 1986

C E R T I F I C A T I O N

This is to certify that FIRST UNITED CONSTRUCTION CORPORATION has undertaken building const'n, sewerage, water, and other civil works for the following on-going projects of Titan Construction Corporation

<u>Title</u>	<u>Cost</u>
1. Calapan Super Area	P 8,900,000.00
2. Masbate Super Area	9,800,000.00
3. Catarman Super Area	12,000,000.00

Titan Construction Corporation
by: (Sgd.)
President^[5]

According to Atty. Linsangan, he had presented a copy of said certification to the officers of Titan Construction Corporation, and upon verification learned that the projects mentioned in said certification were never undertaken by First United Construction Corporation. He was likewise informed by the same officers that the signature on the said certification was not the signature of the former President of Titan Construction Corporation, Vicente Liwag.

Another witness, Jose Caneo, testified that he is the Vice President for Special Projects of Titan Construction Corporation since 1981 and that petitioner and his father, Felipe Dizon, were his former co-employees and had worked with them. He alleged that petitioner, as the possessor of the questioned certification, which petitioner himself submitted to the PEA in support of their bid, must be presumed to be the author and/or perpetrator of the falsification, and that he presumes it must be the petitioner who delivered the certification to the PEA as the certification was among the records of the First United Construction Corporation where the petitioner was one of its officers. He further claimed that he has no personal knowledge as to who affixed the forged signature on the document.

For the defense, petitioner and his father testified. From their testimonies, it was discerned that petitioner is a civil engineer by profession and had worked with the National Housing Authority from 1978 to 1981. He was likewise an employee of Titan Construction Corporation as office engineer before he accepted overseas employment in Saudi Arabia. Upon his return in 1985, he worked with some friends and organized their own construction company now known as First United Construction Corporation. Petitioner had discussed with his father his plans to participate in government projects and thus, requested the latter to secure a certification from the Titan Construction Corporation attesting that they had done some construction works for said company. Thereafter, his father gave him the certification he requested.

The petitioner claimed that he had no part in the preparation of said document, and neither does he have knowledge as to who signed said certification, as his father only informed him that the certification came from Jose Caneo. He also disclosed that he does not know Mr. Vicente Liwag. Petitioner also admitted that the First United Construction Corporation had no part in the completion of the three projects referred to in the certification, but nonetheless allowed his engineers, specifically, Myleen Hizon, to include said certificate in the documents submitted for their pre-qualification bid thinking that the signature appearing therein was genuine. According to petitioner, he only used the questioned certification due to the belief that the Titan Construction Corporation had authorized its use, and only came to know of the alleged forgery of the signature appearing in said document when the criminal case was filed against him. Furthermore, petitioner maintained that the reason the criminal case was filed against him was due to his refusal to pay the ten million pesos (P10,000,000.00) demanded of him by Jose Caneo and Benito Yao, said amount representing the expected profit from the *Bahay Pangarap* Project.

Felipe Dizon, father of the petitioner, on his part, testified that he was employed by Titan Construction Corporation from 1981 until 1991, and was both vice president and project manager of said corporation in 1986. He stated that his son requested him to secure a certification to the effect that he had done some construction work in order to help him take part in public biddings, and explained that he found nothing wrong with this request as this was an ordinary practice of construction companies, the same having been done by Titan Construction Corporation when it was starting. In order to secure said certification, he approached Jose Caneo and conveyed his son's request. Jose Caneo then told him to prepare the certification and he will have the same signed by Vicente Liwag. Thereafter, he asked one of the employees of Titan Construction Corporation to type said certification, choosing the projects to be mentioned therein as said projects were known to him as vice president and project manager. He asserted that when Jose Caneo gave him the certification two weeks later, he was of the belief that the signature appearing thereon was genuine; otherwise, he would not have given the same to his son. Also, Felipe Dizon claimed that the case was filed as a result of the disqualification of Titan Construction Corporation from the public bidding for the *Bahay Pangarap* Project, and that he was informed by Benito Yao that the case will be withdrawn if his son paid ten million pesos representing the expected profit from said project.

On rebuttal, Jose Caneo countered that he was never approached by Felipe Dizon to have any certification signed by Vicente Liwag and likewise denied demanding any amount from the petitioner for the withdrawal of the case.

After trial and a perusal of the evidence presented, the trial court concluded that petitioner, then the Executive Vice President of First United Construction Corporation, in his desire to join public biddings, requested his father to secure a certification that would show that he had participated in some of the projects of Titan Construction Corporation, knowing fully well that he in fact had not participated in any of Titan Construction Corporation's projects. His father, in turn gave the petitioner a certification allegedly from Titan Construction Corporation declaring that First United Construction Corporation had participated in the construction of the three projects mentioned therein. The said certification was material to enable First United Construction Corporation to qualify for the pre-qualification bid for the *Bahay Pangarap* Project of the PEA. As a result of the submission of said certification, First United Construction Corporation pre-qualified and was thereafter awarded the project, causing the other bidders, including Titan Construction Corporation, to lose and thus, sustain loss.

Consequently, the trial court rendered a judgment of conviction on 22 April 1993. According to the court *a quo*:

From the foregoing evidences (sic) it would appear that the accused Fernando Dizon caused it to appear in the certification that the President of Titan Construction Corporation, Mr. Vicente Liwag participated in the act of issuing the said document. His admission to the effect that he caused the securing of the certification for the purpose of submitting the same to the Public Estates Authority (PEA) as part of the pre-qualification requirements in the bidding. In the case of *People vs. Domingo*, 49 Phil 28; *People vs. Manansala*, 105 Phil 1253, the possessor of the falsified document is presumed to be the author thereof, and the one who stands to benefit therefrom is presumed to be the author thereof. He admitted requesting his father to secure the said certification. He likewise admitted that he has no participation in anyone of the projects mentioned therein. That despite such knowledge of falsity of the contents of the document he accepted and allowed the same to be used for the pre-qualification bidding before the PEA.

His admission to the effect that said certification was necessary to pre-qualify his company to participate in the bidding for government projects knowing fully well its falsity shows his intent to misrepresent facts and/or pervert the truth in the narration of fact contained in the certification with a wrongful intent to injure and/or damage third person.

The Court hardly believe[s] the defense of the accused that one Benito Yao was extorting money from him in the amount of P10,000,000.00 on the promise that the case would be withdrawn. The records of the Titan Construction Corporation duly registered with the Securities and Exchange Commission does not show on record that Benito Yao is a stockholder, director, or officer of the said company.

In view of all the foregoing, the Court finds the accused FERNANDO S. DIZON guilty beyond reasonable doubt of the crime of Falsification of Private Document as defined and penalized under Art. 172, par. 2 in relation to Art. 171, par. 2 and 4 thereof and hereby sentences him to

imprisonment of Two (2) YEARS, Four (4) Months and One (1) Day to Six (6) Years and a fine of P5,000.00.^[6]

Aggrieved, petitioner appealed the conviction before the Court of Appeals. On 29 November 1999, the appellate court rendered the assailed Decision affirming the judgment of the trial court with modification of the penalty, the dispositive part of which states:

WHEREFORE, the appealed decision is AFFIRMED with the MODIFICATION that, absent any aggravating nor mitigating circumstance, appellant FERNANDO S. DIZON is sentenced to an indeterminate penalty of FOUR (4) MONTHS and ONE (1) DAY of *arresto mayor*, minimum term, to FOUR (4) YEARS, NINE (9) MONTHS and TEN (10) DAYS of *prision correccional*, as maximum term. All other aspects of the appealed decision stay.^[7]

Petitioner's Motion for Reconsideration was subsequently denied; hence, the instant petition.

Petitioner asserts that the Court of Appeals erred in affirming the judgment of conviction because the prosecution failed to adduce any proof to substantiate the allegation that petitioner was involved in the preparation of the falsified certification, and that the sole basis of the conviction was the legal presumption that the possessor of the falsified document is presumed to be the author thereof. Petitioner argues that for said presumption to take hold, it must first be shown that the questioned document is a forgery or was indeed falsified. According to petitioner, the foregoing is not true in the instant case because the State failed to introduce satisfactory evidence of the forgery or falsification of the certification, as well as to establish that the said certification was unauthorized. Petitioner rationalizes that while it is true that, other than the signature of the president of Titan Construction Corporation, the representations made in the certification are false, it does not necessarily follow that its execution was unauthorized by Titan Construction Corporation. He further justifies that there is evidence in record that attests to a furtive practice in the construction industry where certifications, of the kind involved in this case, are issued by established construction corporations to assist new construction firms to pre-qualify in public biddings.

Petitioner also stresses that, based on his testimony and that of his father, it has been satisfactorily shown that he had no participation in the drafting and issuance of the certification. Petitioner explains that the certification was prepared by his father, Felipe Dizon, who was then still an officer of Titan Construction Corporation, and that through an intermediary, Felipe Dizon arranged to have the certification signed by the president of Titan Construction Corporation, Vicente Liwag. Thereafter, Felipe Dizon delivered the signed certification to his son. Petitioner maintains that with his father's admission of complicity, it was tenuous for both the trial court and the appellate court to hold that petitioner is the forger of the certification.

In order to properly address the issues presented by petitioner, it is necessary that we discuss the elements of the crime of *Falsification of Private Document* under the Revised Penal Code which the petitioner has been accused of perpetrating. The elements of Falsification under Paragraph 2 of Article 172 are as follows:

1. That the offender committed any of the acts of falsification, except those in par. 7, enumerated in Art. 171;