

EN BANC

[G.R. No. 111399, September 27, 1996]

**ODON PECHO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES
AND THE SANDIGANBAYAN, RESPONDENTS.**

R E S O L U T I O N

DAVIDE, JR., J.:

In our decision of 14 November 1994, we modified the appealed judgment of the Sandiganbayan in Criminal Case No. 14844 by holding the petitioner guilty of the complex crime of attempted estafa through falsification of official and commercial documents, and sentencing him to suffer an indeterminate penalty ranging from two (2) years, four (4) months, and one (1) day of *prision correccional* as minimum to ten (10) years and one (1) day of *prision mayor* as maximum and to pay a fine of Two Thousand Pesos (P2,000.00).

In short, we held that although the petitioner could not be convicted of the crime charged, *viz.*, violation of Section 3(e) of R.A. No. 3019, as amended -- because the said section penalizes only consummated offenses and the offense charged in this case was not consummated -- he could, nevertheless, be convicted of the complex crime of attempted estafa through falsification of official and commercial documents, which is necessarily included in the crime charged.

Unable to accept our verdict, the petitioner seasonably filed a motion for reconsideration on the ground that after having been acquitted of the violation of Section 3(e) of R.A. No. 3019, a special law, he could not be convicted anymore of attempted estafa through falsification of official and commercial documents, an offense punishable under the Revised Penal Code, a general law; otherwise, the constitutional provision on double jeopardy would be violated. In other words, his acquittal of the crime charged precludes conviction for the complex crime of attempted estafa through falsification of official and commercial documents, because both offenses arose from the *same* overt act as alleged in the information in Criminal Case No. 14844.

In its Comment on the motion for reconsideration signed only by Assistant Solicitor General Romeo C. de la Cruz and Solicitor Josette Sonia Holgado-Marcilla, the Office of the Solicitor General disagrees with the petitioner and asserts that the rule on double jeopardy cannot be successfully invoked in this case considering that no new information for estafa through falsification of public document was filed against the petitioner; only one information was filed against him and his co-accused. For double jeopardy to exist, there must be such new information and the accused must be able to show that (1) he has been previously brought to trial, (2) in a court of competent jurisdiction, (3) upon a valid complaint or information sufficient in form and substance, (4) for the same offense or an attempt to or frustration thereof as that charged in the new information, and that (5) the case has been dismissed or

terminated without his consent or after he had pleaded to the information but before judgment was rendered.^[1]

Nevertheless, the Office of the Solicitor General joins the petitioner in the latter's plea for his acquittal, but for another ground, namely, *insufficiency of evidence*.

In the resolution of 22 August 1995, we directed the Solicitor General to inform the Court whether he agrees with the recommendation of Assistant Solicitor General De la Cruz and Solicitor Holgado-Marcilla. In his Manifestation of 14 September 1995, the Solicitor General not only expressed full agreement with the said recommendation, but even added the following observations:

10. After reading the Court's Decision, the Solicitor General has noted that petitioner's conviction is based on circumstantial evidence.

11. The law and a host of the Court's ruling declare that circumstantial evidence is sufficient for conviction if the following conditions concur:

(1) There is more than one circumstance;

(2) The facts from which the inferences are derived are proven; and

(3) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt (Section 3, Rule 133, Rules of Court).

12. In this case, it should be stressed that the inference that petitioner falsified documents appears to be based on another inference, i.e., that he was in possession of the same because he accompanied his co-accused Catre in the transactions. However, other than accompanying Catre, there is no evidence on record that petitioner had custody of the falsified documents.

13. As to the conspiracy angle, there is likewise no showing that petitioner interceded for Catre. In fact, it was Catre who talked to Calica. (p. 19-20, TSN, August 26, 1991) Neither was it shown that petitioner had a hand in the processing of the import entry declaration for the release of the shipment from the Bureau of Customs. It was not also proven that he was instrumental in the approval of the import entry declaration.

14. The elements of conspiracy, like the physical acts constituting the crime itself, must be proven beyond reasonable doubt. (People vs. Manuel, 234 SCRA 532). To hold an accused guilty as co-principal by reason of conspiracy, it must be shown that he performed an overt act in pursuance or furtherance of the conspiracy. (People vs. Roxas, 241 SCRA 369). In this regard, it is respectfully submitted that there is no overt act conclusively attributable to petitioner which would pin him down as a co-conspirator.

15. Thus, it is the inexorable duty of the Solicitor General to recommend petitioner's acquittal, as he so recommends, inasmuch as the People was

not able to adduce evidence sufficient to overcome the constitutional presumption of petitioner's innocence.

We then required the parties to submit their respective memoranda on the following issues:

(a) the sufficiency of the evidence for the complex crime of attempted estafa through falsification of public and commercial documents, and

(b) the validity of the conviction therefor under an information for the violation of Section 3(e) of R.A. No. 3019, as amended, vis-a-vis the constitutional right of the accused to be informed of the nature and cause of the accusation against him.

In their respective memoranda, the petitioner and the Office of the Solicitor General are one in asserting that the petitioner could not be convicted based entirely on circumstantial evidence because of the failure of the prosecution to satisfy the requisites set forth in Section 4, Rule 133 of the Rules of Court, namely, (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. The petitioner further cited portions of the transcripts of the stenographic notes of the testimony of Customs Broker Constantino Calica which prove that it was Catre alone who made the introduction to Calica that they were agents of Eversun Commercial Trading, and that it was Catre who did all the talking and directly transacted with Calica regarding the terms and conditions of the particular engagement and who actually delivered the documents to him. There is no evidence that the petitioner had a hand in the processing of the import entry declaration for the release of the shipment from the Bureau of Customs or was instrumental in the approval of the import entry declaration. Thus:

- Q** Now, did Mr. Odon Pecho actually engage your services?
- A** They are two, sir, Mr. Joe Catre and Mr. Odon Pecho.
- Q** Who actually transacted with you with regards to your services, is it Mr. Catre or Mr. Pecho?
- A** Mr. Joe Catre, sir.
- Q** So it was Joe Catre?
- A** Yes, sir.
- Q** And not Odon Pecho, is that right?
- A** Well, he is the companion of Mr. Catre and they introduced themselves to me that they are the authorized representative of the importer.
- Q** That is right. Who introduced to you?
- A** Mr. Catre was the one who talks [sic] to me, sir.
- Q** But in your testimony, the person who delivered to you the documents, the bill of lading, the commercial invoices, the packing list, the importer's sworn statement, etc. which was made the basis of the, of your preparation for the processing of the import entry, who delivered to you these documents that you mentioned?
- A** Mr. Catre, sir.

Q And who talked to you about the terms and conditions of this engagement or contracts?

A Mr. Catre, sir.

Q And not Mr. Odon Pecho?

A Yes, sir.

Q Who actually delivered to you the documents, Mr. Catre or Mr. Pecho?

A It was Mr. Catre, sir, he was the one handling the case.

AJ
ESCAREAL

Q [To] Whom did you talk first?

A Mr. Catre, Your Honor, he was the one handling the case, the documents, Your Honor.

Q Do you know how they introduced themselves to you?

A That is the only thing that I remember Your Honor that they came to my office and told me that they are the importer's representatives and that they are engaging my services.

Q Who said that?

A Mr. Catre, Your Honor.

Q How about Mr. Pecho?

A No, Your Honor.

Q Did he say anything?

A At that time your Honor, it was Mr. Catre who was doing that talking.

Q Did Mr. Catre give his name to you?

A Yes, Your Honor.

Q How did he introduce himself?

A That he is Mr. Joe Catre, Your Honor.

Q How about his companion, did his companion introduce himself to you or he was introduced by Mr. Catre to you?

A He did not introduce himself to me Your Honor.

Q So during that meeting you do not know that the name of the companion of Mr. Catre is Odon Pecho.

A Yes, your Honor.

Q And how did your son attend to it?

A Two days after Your Honor, Mr. Catre called our office to assist and help them in the preparation of the cargo at the arrastre operator because that is usually being done by the broker when the shipment goes for examination. (t.s.n., Hearing of August 26, 1991)

As to the second issue, the Office of the Solicitor General rejects the theory of the petitioner and submits that the information in this case contains the essential ingredients of estafa through falsification of public and commercial documents; therefore, assuming there is sufficient evidence, the petitioner could be convicted of

the complex crime of attempted estafa through falsification of public and commercial documents without violating Section 14(2), Article III of the Constitution on the right of the accused to be informed of the nature and cause of the accusation against him.

I

We shall first take up the second issue since it involves a constitutional right of the accused.

On the assumption that the prosecution's evidence had satisfied the quantum of proof for conviction for the complex crime of attempted estafa through falsification of public and commercial documents, there is absolutely no merit in the petitioner's claim that he could not be convicted of the said crime without offending his right to be informed of the nature and cause of the accusation against him, which is guaranteed by the Bill of Rights.^[2] Such right, an ancient bulwark of the liberties of men, has its origin in the Bill of Rights which the people of Great Britain demanded and received from the Prince and Princess of Orange on 13 February 1688. It was adopted by the Constitution of the United States and was extended to the Philippines by Act No. 235, or the Philippine Bill of 1902.^[3] It was later carried into the Jones Law and, ultimately, enshrined in the Constitutions of 1935, 1973, and 1987. It has the following objectives:

First. To furnish the accused with such a description of the charge against him as will enable him to make his defense; second, to avail himself of his conviction or acquittal for protection against a further prosecution for the same cause; and third, to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had (United States vs. Cruikshank, 92 U.S. 542). In order that this requirement may be satisfied, facts must be stated; not conclusions of law. Every crime is made up of certain acts and intent; these must be set forth in the complaint with reasonable particularity of time, place, names (plaintiff or defendant), and circumstances. In short, the complaint must contain a specific allegation of every fact and circumstance necessary to constitute the crime charged.^[4]

Conformably therewith, the Rules of Court has prescribed the appropriate rules.^[5]

What determines the real nature and cause of accusation against an accused is the actual recital of facts stated in the information or complaint and not the caption or preamble of the information or complaint nor the specification of the provision of law alleged to have been violated, they being conclusions of law.^[6] An incorrect caption is not a fatal mistake.^[7]

It follows then that an accused may be convicted of a crime which, although not the one charged, is necessarily included in the latter. Section 4, Rule 120 of the Rules of Court thus provides:

SEC. 4. *Judgment in case of variance between allegation and proof.* --
When there is variance between the offense charged in the complaint or