

NINETEENTH DIVISION

[CA-G.R. CR No. 02135, March 12, 2014]

**ANTONIO JUANIR ABAYON, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

DECISION

HERNANDO, J:

Before this Court is a Petition for Review under Rule 42 of the Rules of Court filed by Antonio Juanir Abayon assailing the December 28, 2012 Decision ^[1] of the Regional Trial Court (RTC), Branch 17, Palompon, Leyte in Criminal Case No. AC-P-0006 which affirmed the April 25, 2011 Decision ^[2] of the Municipal Trial Court (MTC) of Palompon, Leyte.

The Antecedents

Petitioner Antonio Juanir Abayon was charged with the crime of Falsification by Private Individual and Use of Falsified Documents under Article 172 of the Revised Penal Code in an Information ^[3] which reads:

“That on or about the month of February 2005, in the Municipality of Palompon, province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with deliberate intent to defraud, did then and there, willfully, unlawfully and feloniously falsify a public or official document, specifically a notarized Extrajudicial Settlement with Absolute Sale, by counterfeiting and/or imitating the signature of JUANITA N. VIACRUSIS, causing it to appear that she participated in the execution of the said document on November 26, 1978, as a vendor, when in fact she could not have signed said document as she died eight months earlier or on March 3, 1978, and by reason of the purported existence of the said falsified document in his favor, accused used the same in order to transfer under his name the tax declarations of the parcels of land subject of the said Extrajudicial Settlement with Absolute Sale, to the damage and prejudice of the heirs of the late Miguel Nayra who are the true owners of the said parcels of land.”

CONTRARY TO LAW.”

Upon arraignment on November 22, 2006, petitioner, duly assisted by counsel, pleaded not guilty to the offense charged against him. Trial thereafter ensued.

The prosecution's version of the incident is succinctly summarized by the Office of the Solicitor General (OSG) in its Comment ^[4], to wit:

When Miguel Nayra died in December 1976, his children Juanita Nayra-Viacrusis, Rosario-Nayra Abayon, Demetrio Nayra, and Alfredo Banaban, adjudicated to and partitioned among themselves the properties left by their father through an Extrajudicial Settlement Among Heirs dated May 16, 1978. Among the properties involved in the said settlement were:

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(5) A parcel of residential land situated in Washington St., Palompon, Leyte, bearing Tax Declaration No. 5357 in the name of Miguel Nayra; bounded in the North by Washington St., East by Victoriano Arevalo; South by Gegerio Licardo; and West by Lopez St., with an area of 95.79 square meters, more or less, and assessed at Php430.00;

(6) A parcel of residential land situated in Mabini St., Palompon, Leyte, bearing Tax Declaration No. 5354 in the name of Miguel Nayra; bounded in the North by Sixto Arevalo; East by Fabian Caminaro; South by Mabini St.; and West by Rufino Reyes, with an area of 1,397 square meters and assessed at Php 250.00.

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On March 3, 1978, Juanita Nayra-Viacrusis died in Manila. Rosario Nayra-Abayon, the wife of the petitioner and the younger sister of Juanita, was one of those who condoled with the bereaved family.

On November 26, 1978, an Extrajudicial Settlement with Absolute Sale was allegedly executed by Rose Nayra, Demetrio Nayra and Juanita N. Viacrusis, the heirs of Miguel Nayra, in favor of petitioner Antonio Abayon. The said instrument, which was notarized by Atty. Antonio F. Mendiola on November 1, 1978, conveyed to the petitioner the following parcels of land:

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It is a parcel of land situated at Sitio Liloan, Palompon, Leyte covered by Tax Declaration No. 5354, bounded in the North by Sixto Arevalo; East by Fabian Caminero; South by Mabini St.; and West by Rufino Reyes, having an area of 1,367 square meters and assessed at Php 250.00.

Also a parcel of residential land situated in Washington St., Palompon Leyte, covered by Tax Declaration No. 4739, with an area of 95.79 square meters. Bounded on the North by Washington St. and on the East by Victoriano Arevalo and on the West by Lopez St., South by Gregorio Licardo having an assessed value of Php 100.00.

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It was sometime in 2005 only when private complainants learned that the above-described properties were no longer in the name of Miguel Nayra as they were already transferred to the name of the petitioner.

For his part, petitioner argued that he was out of the country at the time that the above-mentioned deed was executed. The said deed is dated November 26, 1978

and based on the Certification issued by the Bureau of Immigration, petitioner left the Philippines on October 11, 1978 and arrived in the Philippines on November 30, 1978.

Furthermore, petitioner alleged that sometime in 1993, he found the deed denominated as Extrajudicial Settlement with Absolute Sale after he perused the personal files of his late wife Rosario. Surprised of what he discovered, he verified its authenticity with the Office of the Clerk, RTC, Tacloban City which then issued a certification that based on its records, the said instrument was notarized by Atty. Antonio P. Mendiola. The latter entered the same in his Notarial Register on June 1, 1978.

Thus, sometime in 2005, believing in the authenticity and due execution of the said instrument, petitioner went to the BIR of Ormoc City and paid all the taxes involving the said property. Thereafter, he caused its registration under his name with the Register of Deeds, Tacloban City. He likewise paid at the Municipal Treasurer's Office, Palompon, Leyte all the real property taxes thereof.

After trial on the merits, the MTC rendered its Decision on April 25, 2011, ruling that petitioner was guilty of the crime of using a falsified document and not of the crime of falsification. The dispositive portion of the judgment reads:

WHEREFORE, all the foregoing premises considered, the Court finds accused ANTONIO ABAYON, GUILTY beyond reasonable doubt of the crime of USE OF FALSIFIED DOCUMENT as defined and penalized under Article 172 of the Revised Penal Code and hereby sentences the accused to suffer the straight penalty of imprisonment of **FOUR (4) MONTHS AND ONE (1) DAY OF arresto mayor maximum** and to pay a **FINE of ONE THOUSAND PESOS (P1,000.00)** and to undergo subsidiary imprisonment in case of non-payment of the fine. Accused is hereby further ordered to pay the sum of **TWENTY THOUSAND PESOS (P20,000.00) as moral damages, TEN THOUSAND PESOS (P10,000.00) as attorney's fees** and TEN THOUSAND PESOS (P10,000.00) as **nominal damages**.

SO ORDERED.

Subsequently, petitioner moved for reconsideration but it was denied by the MTC in its Joint Order^[5] dated July 19, 2011.

Thus, petitioner elevated the case on appeal to the RTC. On December 28, 2012, the RTC rendered the assailed Decision, affirming *in toto* the Decision of the MTC, thus:

WHEREFORE, premises considered, there being no cogent reason to reverse or modify the judgment of conviction rendered by the MTC of Palompon, Leyte dated April 25, 2011, the same is hereby **AFFIRMED in toto**.

Petitioner then filed a Joint Motion for Reconsideration^[6] relative to the foregoing Decision but it was denied by the RTC in a Joint Order^[7] dated May 8, 2013.

Aggrieved, petitioner is now before Us via Rule 42 of the Rules of Court.

Assigned Errors

1. The court *a quo* erred in declaring that petitioner knew that the Extrajudicial Settlement with Absolute Sale was a forgery;
2. The court *a quo* did not take into account the fact that the questioned instruments are ancient documents. As such, they enjoy the presumption of genuineness and due execution;
3. The court *a quo* erred in declaring that the use of the fake document caused damaged to another or at least it was used with intent to cause such damage; and
4. The court *a quo* erred in affirming the Decision of the MTC, ordering petitioner to pay a fine of One Thousand Pesos, Moral, and Nominal Damages, including Attorneys Fees.

Subsequent to this Court's December 3, 2013 Resolution which noted, among others, that no Reply has been filed, and which declared the case submitted for Decision, petitioner filed a Motion for Leave for File Reply (dated October 31, 2013) which was received by this Court on December 6, 2013.^[8] Movant attached thereto his Reply.^[9] In the interest of justice, said Motion is granted, and the Reply of petitioner is thus admitted and considered in the resolution of the instant petition.

The Court's Ruling

The petition is bereft of merit.

The assigned errors in the instant appeal, being closely allied, will be discussed jointly.

Article 172 of the Revised Penal Code provides:

Art. 172. *Falsification by private individual and use of falsified documents.* -- The penalty of *prision correccional* in its medium and maximum periods and a fine of not more than P5,000 pesos shall be imposed upon:

1. Any private individual who shall commit any of the falsifications enumerated in the next preceding article^[10] in any public or official document or letter of exchange or any other kind of commercial document; and
2. Any person who, to the damage of a third party, or with the intent to cause such damage, shall in any private document commit any of the acts of falsification enumerated in the next preceding article.

Any person who shall knowingly introduce in evidence in any judicial proceeding or to the damage of another or who, with the intent to cause such damage, shall use any of the false

documents embraced in the next preceding article, or in any of the foregoing subdivisions of this article, shall be punished by the penalty next lower in degree.

From the foregoing, there are three acts punished under Article 172, to wit:

1. Falsification of public, official or commercial document by a private individual;
2. Falsification of private document by any person; and
3. Use of falsified document.

In this case, petitioner was charged with Falsification by Private Individual and Use of Falsified Documents. However, after trial on the merits, petitioner was not found guilty beyond reasonable doubt for the crime of falsification of public document. He was only convicted by the MTC for the crime of use of falsified document, thus:

The question that behooves this Court is whether or not the accused is guilty of the crime of falsification by forging the signature of Juanita Nayra-Viacrusis in the document denominated as Extra-Judicial Settlement with Sale executed on November 26, 1978.

The question must be answered in the negative. At the time the Extra-Judicial Settlement with Sale executed on November 26, 1978 was notarized, the accused was outside the country as could be gleaned from the Certification issued by the Bureau of Immigration. Accused left the Philippines on October 11, 1978 and arrived in the Philippines on November 30, 1978.

The presumption under the law that a person who is found in possession of a forged document and who used (uttered) the same is the forger thereof is clearly not applicable in this case. At the time the questioned document was notarized on November 26, 1978, the accused was out of the country.

The prosecution was not able to establish that the accused was in the Philippines on November 26, 1978. In fact, Dante testified that he did not see that the accused forged the signature of his mother.

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After an assiduous and judicious deliberation of all the evidence adduced, the Court finds that all the elements in the crime of use of falsified document are attendant in the instant case.

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We fully agree with the findings of the MTC and the RTC. The presumption that a person who has in his possession a falsified document and makes use of the same is the forger does not apply in the instant case. The effect of said presumption is to create the need of presenting evidence to overcome the *prima facie* case created, thereby which, if no contrary proof is offered, will prevail.^[11] Also, said presumption applies only in the absence of a satisfactory explanation. Here, We cannot hold