



**Republic of the Philippines
Supreme Court
Manila**

SECOND DIVISION

HILARIO LAMSEN,

Petitioner,

G.R. No. 227069

Present:

- versus -

**PEOPLE OF THE
PHILIPPINES,**
Respondents.

CARPIO, J., Chairperson,
PERALTA,
PERLAS-BERNABE,
CAGUIOA, and
REYES, JR., * JJ.

Promulgated:

22 NOV 2017

Alfredo C. Carpio

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DECISION

PERLAS-BERNABE, J.:

Before the Court is a petition for review on *certiorari*¹ filed by petitioner Hilario Lamsen (Lamsen) assailing the Decision² dated January 30, 2015 of the Court of Appeals (CA) in CA-G.R. CR No. 35283, which affirmed the Decision³ dated March 28, 2012 of the Regional Trial Court of Manila, Branch 34 (RTC) in Crim. Case No. 11-288590 sustaining the Judgment⁴ 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).

* On official leave.

¹ *Rollo*, pp. 9-30.

² *Rollo*, pp. 35-45. Penned by Associate Justice Romeo F. Barza with Associate Justices Rosmari D. Carandang and Agnes Reyes-Carpio concurring.

³ *CA rollo*, pp. 37-43. Penned by Presiding Judge Liwliwa S. Hidalgo-Bucu.

⁴ *Id.* at 29-36. Penned by Acting Presiding Judge Jaime B. Santiago.

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The Facts

An Information⁵ 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 ₱150,000.00, 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

⁵ Id. at 66.

⁶ Id.

⁷ See *CA rollo*, pp. 37 and 66.

⁸ Erroneously dated as “September 7, 2011” in the RTC Decision.

⁹ See *CA rollo*, pp. 30 and 38.

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 ₱150,000.00. 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 Decision¹⁴ 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

¹⁰ Erroneously dated as "October 19, 2011" in the RTC Decision. (See *id.*)

¹¹ *Rollo*, p. 37.

¹² *Id.* at 38.

¹³ *Id.* at 39.

¹⁴ *CA rollo*, pp. 29-36.

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(*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 ₱5,000.00.¹⁵ 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 denial¹⁸ of his motion for reconsideration,¹⁹ Lamsen filed an appeal²⁰ before the RTC.

The RTC Ruling

In a Decision²¹ 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

¹⁵ Id. at 35.

¹⁶ See id. at 33-34.

¹⁷ See id. at 34-35.

¹⁸ See id. at 37.

¹⁹ Dated July 16, 2011. Id. at 67-79.

²⁰ See Memorandum on Appeal for Accused dated February 7, 2012; id. at 80-98.

²¹ Id. at 37-43.

²² Id. at 43.

²³ See id. at 40-41. See also *rollo*, pp. 39-40.

²⁴ See id. at 42-43. See also *rollo*, pp. 40-41.

Undaunted, Lamsen filed a motion for reconsideration,²⁵ which was, however, denied in an Order²⁶ dated May 31, 2012. Aggrieved, he filed an appeal²⁷ before the CA.

The CA Ruling

In a Decision²⁸ 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 reconsideration³⁰ dated February 26, 2015. On September 7, 2015, Teresita and Carmelita filed a Manifestation³¹ 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 Resolution³³ 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 trial³⁵ on October 19, 2015, which was denied in a Resolution³⁶ 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 trial³⁸ on August 8, 2016,³⁹ Lamsen filed the instant petition⁴⁰ before the Court.

²⁵ Dated February 7, 2012. Id. at 99-104.

²⁶ Id. at 105.

²⁷ See Memorandum for the Petitioner dated July 18, 2014; id. at 198-216.

²⁸ *Rollo*, pp. 35-45.

²⁹ Id. at 43.

³⁰ *CA rollo*, 236-246.

³¹ Id. at 257-259.

³² Id. at 260-263.

³³ Id. at 255-256.

³⁴ *Rollo*, pp. 49 and 53.

³⁵ *CA rollo*, pp. 268-280.

³⁶ *Rollo*, pp. 49-54. Penned by Associate Justice Romeo F. Barza with Associate Justices Rosmari D. Carandang and Agnes Reyes-Carpio concurring.

³⁷ Id. at 52-54.

³⁸ *CA rollo*, pp. 314-319.

³⁹ See Resolution dated August 8, 2016 penned by Associate Justice Romeo F. Barza with Associate Justices Rosmari D. Carandang and Agnes Reyes-Carpio concurring; *rollo*, pp. 56-57.

⁴⁰ Id. at 9-33.

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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

⁴¹ See *People v. Dahil*, 750 Phil. 212, 225 (2015).

⁴² See *People v. Comboy*, G.R. No. 218399, March 2, 2016, 785 SCRA 512, 521.

⁴³ See *People v. Claro y Mahinay*, G.R. No. 199894, April 5, 2017, citing Section 2, Rule 133 of the Rules of Court.

⁴⁴ See *Guillergan v. People*, 656 Phil. 527, 534 (2011).

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.:

1. Scientific comparative examination and analysis of the questioned and the standard signatures of ANICETA TANDAS reveal dissimilarities in stroke structures, slant, lateral spacing, a strong indication that they were not by one and the same person. **However, no definite conclusion can be rendered due to the fact the questioned signatures are photocopies (Xerox) wherein minute details are not clearly manifested.**
2. Scientific comparative examination and analysis of the questioned and the standard signatures of NESTOR TANDAS reveal dissimilarities in stroke structure, slant, lateral spacing, a strong indication that they were not by one and the same person. **However, no definite conclusion can be rendered due to the fact the questioned signatures are photocopies (Xerox) wherein minute details are not clearly manifested.**⁴⁸ (Emphases and underscoring supplied)

⁴⁵ See *Ambray v. Tsourous*, G.R. No. 209264, July 5, 2016, 795 SCRA 627, 637-638.

⁴⁶ Id. at 638-639.

⁴⁷ See *rollo*, pp. 38-39. See also *CA rollo*, p. 34.

⁴⁸ See *rollo*, p. 38. See also *CA rollo*, p. 33.

Batiles further clarified that there are other handwriting elements which could not be determined in the photocopy, such as minor details which could not be visibly detected by the naked eye, *i.e.*, handwriting movement, line quality, and emphasis.⁴⁹

Notably, the genuineness and due execution of a photocopy could not be competently established without a copy of the original. Photocopies are considered secondary evidence which can be rendered inadmissible absent any proof that the original was lost, destroyed, or in the custody or under the control of the party against whom the evidence is offered.⁵⁰ Here, not only did the prosecution fail to present the original copy of the subject deed in court, it likewise did not provide ample proof that the same was lost, destroyed, or in the custody or under the control of Lamsen. Since mere photocopies of the subject deed were used to examine the questioned and standard signatures of spouses Tandas, no valid comparison can be had between them, thereby rendering Batiles' declaration inconclusive to support a finding of guilt beyond reasonable doubt against Lamsen.

Aside from the findings of Batiles, the courts *a quo* also relied on circumstantial evidence to convict Lamsen of the crime of falsification of public document. It was pointed out that: (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.⁵¹ Circumstantial evidence consists of proof of collateral facts and circumstances from which the main fact in issue may be inferred based on reason and common experience. It is sufficient for conviction if: (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 circumstantial evidence presented must therefore constitute an unbroken chain which leads one to a fair and reasonable conclusion pointing to the accused, to the exclusion of the others, as the guilty person. Stated differently, the test to determine whether or not the circumstantial evidence on record is sufficient to convict the accused is that the series of circumstances duly proven must be consistent with each other and that each and every circumstance must be consistent with the accused's guilt and inconsistent with his innocence.⁵²

⁴⁹ See *rollo*, p. 38.

⁵⁰ See Section 3, Rule 130 of the Rules of Court.

⁵¹ See *rollo*, pp. 40-41. See also *CA rollo*, pp. 42-43.

⁵² *Atienza v. People*, G.R. No. 188694, February 12, 2014, 726 Phil. 570, 582-583.

While it is true that the courts can rely on circumstantial evidence in order to establish the guilt of the accused, the circumstantial evidence which the courts *a quo* relied upon in this case did not sufficiently create moral certainty, since they appear to be too insignificant and unconvincing. *Firstly*, the Notarial Law does not require the parties to have the subject deed notarized in the place of their residence. *Secondly*, the issue on the date when the supposed witnesses signed the subject deed is immaterial. In fact, Section 30, Rule 132 of the Rules of Court provides that an instrument, such as a notarized document, may be presented in evidence without further proof, the certificate of acknowledgment being prima facie evidence of the execution of the instrument or document involved. *Thirdly*, having the subject deed registered with the RD after an unreasonable length of time from its execution and notarization does not necessarily imply that the subject deed was actually forged. *Lastly*, the supposed belated payment of the corresponding capital gains and documentary stamp taxes has no relevance at all with the supposed act of falsification. By and large, the prosecution presented no adequate circumstantial evidence which would warrant Lamsen's conviction for the crime of Falsification of Public Document.

As the Court finds the above-stated reasons already sufficient to grant the present petition, it is henceforth unnecessary to delve on the other ancillary issues raised herein.

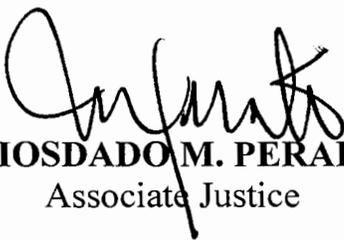
WHEREFORE, the petition is **GRANTED**. The Decision dated January 30, 2015 of the Court of Appeals in CA-G.R. CR No. 35283 is hereby **REVERSED** and **SET ASIDE**. Petitioner Hilario Lamsen is **ACQUITTED** of the crime of Falsification of Public Document on the ground of reasonable doubt. The bail bonds posted for his provisional liberty are consequently cancelled and released.

SO ORDERED.


ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson


DIOSDADO M. PERALTA
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

On Official Leave
ANDRES B. REYES, JR.
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice