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FIRST DIVISION

[G.R. No. 141931. December 4, 2000]

ANICETO RECEBIDO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYNOPSIS

Sometime in 1983, private complainant Caridad Dorol mortgaged an agricultural land to her cousin, herein petitioner. Petitioner and private complainant did not execute a document on the mortgage but the latter, instead gave petitioner a copy of the Deed of Sale dated June 16, 1973 executed in her favor by her father, Juan Dorol. On September 9, 1990 private complainant went to petitioner to redeem her property. However, petitioner refused to surrender the property claiming that private complainant sold it to him in 1979. Upon verification, private respondent found that a Deed of Sale dated August 13, 1979 which she allegedly executed in favor of petitioner, was filed in the Office of the Assessor and that the property was registered in the latter's name. After comparison of the specimen signatures of Caridad Dorol in other documents, with that appearing on the questioned Deed of Sale, the National Bureau of Investigation found that the latter signature was falsified.

Petitioner was charged, tried and convicted by the Regional Trial Court of Falsification of Public Document and was sentenced accordingly. Accused was ordered to pay damages and to vacate the land in question. On appeal, the Court of Appeals affirmed the decision of the trial court, with modification deleting the award of damages. Hence, this petition.

The Supreme Court denied the petition. The Court of Appeals did not commit any grave abuse of discretion when it affirmed petitioner's conviction by the trial court. The petitioner admitted that the Deed of Sale that was in his possession is a forged document as found by the appellate court. Petitioner, nonetheless, argued that notwithstanding this admission, the fact remained that there was no proof that the petitioner authored such falsification or that the forgery was done under his direction. This argument is without merit. Under the circumstances, there

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was no need of any direct proof that the petitioner was the author of the forgery. The petitioner was in possession of the forged deed of sale, which purports to sell the subject land from the private complainant to him. Given this factual backdrop, the petitioner is presumed to be the author of the forged deed of sale, despite the absence of any direct evidence of his authorship of the forgery. Since the petitioner is the only person who stood to benefit by the falsification of the document found in his possession, it is presumed that he is the material author of the falsification.

The trial court did not commit any error in ordering petitioner to vacate the subject property. Petitioner cannot profit from the effects of his crime.

SYLLABUS

1. **REMEDIAL LAW; MOTION TO QUASH; PRESCRIPTION; ALTHOUGH NOT INVOKED IN THE TRIAL MAY BE INVOKED ON APPEAL.**— Under the Rules of Court, the failure of the accused to assert the ground of extinction of the offense, *inter alia*, in a motion to quash shall not be deemed a waiver of such ground. The reason is that by prescription, the State or the People loses the right to prosecute the crime or to demand the service of the penalty imposed. Accordingly, prescription, although not invoked in the trial, may, as in this case, be invoked on appeal. Hence, the failure to raise this defense in the motion to quash the information does not give rise to the waiver of the petitioner-accused to raise the same anytime thereafter including during appeal.

2. **CRIMINAL LAW; PRESCRIPTION OF CRIMES; DEPENDS ON PENALTY IMPOSABLE; FALSIFICATION OF PUBLIC DOCUMENT; PRESCRIPTIVE PERIOD; RECKONING POINT.**— The petitioner is correct in stating that whether or not the offense charged has already prescribed when the information was filed would depend on the penalty imposable therefor, which in this case is "*prision correccional* in its medium and maximum periods and a fine of not more than 5,000.00 pesos." Under the Revised Penal Code, said penalty is a correctional penalty in the same way that the fine imposed is categorized as correctional. Both the penalty and fine being correctional, the offense shall prescribe in ten years. The issue

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that the petitioner has missed, however, is the reckoning point of the prescriptive period. The petitioner is of the impression that the ten-year prescriptive period necessarily started at the time the crime was committed. This is inaccurate. Under Article 91 of the Revised Penal Code, the period of prescription shall "commence to run from the day on which the crime is discovered by the offended party, the authorities, or their agents, x x x." In *People v. Reyes*, this Court has declared that registration in public registry is a notice to the whole world. The record is constructive notice of its contents as well as all interests, legal and equitable, included therein. All persons are charged with knowledge of what it contains.

3. ID.; FALSIFICATION OF PUBLIC DOCUMENT; POSSESSOR OF FALSIFIED DOCUMENT IS PRESUMED TO BE THE MATERIAL AUTHOR OF THE FALSIFICATION IF HE IS THE ONLY PERSON WHO STOOD TO BE BENEFITED BY THE FALSIFICATION; CASE AT BAR.—The petitioner admits that the deed of sale that was in his possession is a forged document as found by the trial and appellate court. Petitioner, nonetheless, argues that notwithstanding this admission, the fact remains that there is no proof that the petitioner authored such falsification or that the forgery was done under his direction. This argument is without merit. Under the circumstance, there was no need of any direct proof that the petitioner was the author of the forgery. As keenly observed by the Solicitor General, "the questioned document was submitted by petitioner himself when the same was requested by the NBI for examination. Clearly in possession of the falsified deed of sale was petitioner and not Caridad Dorol who merely verified the questioned sale with the Provincial Assessor's Office of Sorsogon." In other words, the petitioner was in possession of the forged deed of sale which purports to sell the subject land from the private complainant to him. Given this factual backdrop, the petitioner is presumed to be the author of the forged deed of sale, despite the absence of any direct evidence of his authorship of the forgery. Since the petitioner is the only person who stood to benefit by the falsification of the document found in his possession, it is presumed that he is the material author of the falsification. As it stands, therefore, we are unable to discern any grave abuse of discretion on the part of the Court of Appeals.

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4. **CIVIL LAW; SALES; A FORGED DEED OF SALE CANNOT BE A VALID BASIS OF POSSESSION; A PERSON CANNOT PROFIT FROM EFFECTS OF HIS CRIME.**— The petitioner based his claim of possession alternatively by virtue of two alternative titles: one, based on the forged deed of sale and, two, as mortgagee of the land. As already discussed, the deed of sale was forged and, hence, could not be a valid basis of possession. Neither could his status as mortgagee be the basis of possession since it is the mortgagor in a contract of mortgage who is entitled to the possession of the property. We have taken note of the practice in the provinces that in giving a realty for a collateral, possession usually goes with it. Besides, even assuming that petitioner had a right to possess the subject land, his possession became unlawful when the private complainant offered to redeem the property and petitioner unjustly refused. Petitioner cannot profit from the effects of his crime. The trial court, therefore, did not commit any error in ordering petitioner to vacate the subject property.

APPEARANCES OF COUNSEL

Atty. Rofebar F. Gerona for petitioner.
The Solicitor General for respondent.

RESOLUTION

KAPUNAN, *J.*:

This is a petition for review on *certiorari* assailing the Decision of the Court of Appeals in C.A.-G.R. No. 21347 entitled *"People of the Philippines versus Aniceto Recebido,"* dated September 9, 1999 which found petitioner guilty beyond reasonable doubt of Falsification of Public Document; and its Resolution dated February 15, 2000 denying petitioner's motion for reconsideration.

The antecedent facts are the following, to wit:

On September 9, 1990, private complainant Caridad Dorol went to the house of her cousin, petitioner Aniceto Recebido, at San Isidro, Bacon, Sorsogon to redeem her property, an agricultural land with an area of 3,520 square meters located at San Isidro, Bacon, Sorsogon,

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which Caridad Dorol mortgaged to petitioner sometime in April of 1985. Petitioner and Caridad Dorol did not execute a document on the mortgage but Caridad Dorol instead gave petitioner a copy of the Deed of Sale dated June 16, 1973 (Exhibit "A") executed in her favor by her father, Juan Dorol.

In said confrontation, petitioner refused to allow Caridad Dorol to redeem her property on his claim that she had sold her property to him in 1979. Caridad Dorol maintained and insisted that the transaction between them involving her property was a mortgage.

Caridad Dorol verified from the Office of the Assessor in Sorsogon that there exists on its file a Deed of Sale dated August 13, 1979 (Exhibit "J"), allegedly executed by Caridad Dorol in favor of petitioner and that the property was registered in the latter's name. After comparison of the specimen signatures of Caridad Dorol in other documents (Exhibits "K" to "K-10") with that of the signature of Caridad Dorol on the questioned Deed of Sale, NBI Document Examiner Antonio Magbojas, found that the latter signature was falsified (Exhibits "L-1" to "L-2").

Thereafter, Caridad Dorol filed her complaint against petitioner Aniceto Recebido with the National Bureau of Investigation (NBI), Legaspi City and its Questioned Documents Division conducted an examination in the original copy of the Deed of Sale in question allegedly signed by Caridad, particularly her signature affixed thereon.

Mr. Magboja's report was approved by the Chief of the Questioned Documents Division, Arcadio Ramos, and the Deputy Director of Technical Services, Manuel Roura, both of the NBI.[1]

Thus, the Office of the Provincial Prosecutor of Sorsogon filed the information indicting petitioner for Falsification of Public Document with the Regional Trial Court, 5th Judicial Region, Branch 51, Sorsogon, Sorsogon, reading as follows:

> "That on or about the 13th day of August, 1979, in the Municipality of Sorsogon, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being a private individual, did then and there, willfully, unlawfully and feloniously, with intent to defraud, falsify and/or imitate the signature of one Caridad Dorol

[1] Comment, Office of the Solicitor General pp. 1-2; *Rollo*. pp. 42-43.

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and/or cause it to appear that said Caridad Dorol has signed her name on a Deed of Absolute Sale of Real Property in favor of the herein accused and Notarized as Doc. No. 680; page No. 54; Boon No. XIV and Series of 1979 of the Registry of Notary Public Dominador S. Reyes, when in truth and in fact accused well knew, that Caridad Dorol did not execute said document, to the damage and prejudice of the latter.

Contrary to law."[2]

Upon arraignment petitioner pleaded "not guilty."

As narrated by the Court of Appeals, the petitioner contends that the land in question was mortgaged to him by Juan Dorol, the father of Caridad, on February 25, 1977 and was subsequently sold to him on August 13, 1983 although it was made to appear that the deed of sale was executed on August 13, 1979. It was also on the said date that Recebido gave Caridad the amount of ₱1,000.00 in addition to the ₱2,600.00 mortgage price given to Juan Dorol which culminated into the execution of the Deed of Sale signed by Caridad.[3]

After trial on the merits, the trial court rendered the decision on December 2, 1996, convicting petitioner of the crime charged and sentencing him as follows:

ACCORDINGLY, accused ANECITO RECEBIDO is sentenced to an indeterminate penalty of one (1) year to three (3) years and six (6) months of *prision correccional* as maximum and to pay a fine of Three Thousand (₱3,000.00) Pesos, with subsidiary imprisonment.

Accused is ordered to pay ₱5,000.00 damages and to vacate the land in question owned by the offended party.

SO ORDERED.[4]

On appeal, the Court of Appeals affirmed with modification the decision of the trial court, the dispositive portion of which reads:

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[2] RTC Decision, p. 1.

[3] Decision, Court of Appeals, p. 1; *Rollo,* p. 13.

[4] Decision, RTC, p. 1; *Id.,* at 24.

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WHEREFORE, with the modification that the award for damages is DELETED, the assailed judgment is AFFIRMED in all other respects.

SO ORDERED.[5]

The petitioner raises his case before this Court seeking the reversal of the assailed decision and resolution of the Court of Appeals. Based on his petition, the following issues are before this Court:

1. Whether or not the crime charged had already prescribed at the time the information was filed?
2. Whether or not the Court of Appeals committed gave abuse of discretion in sustaining the conviction of the petitioner?
3. Whether or not the Court of Appeals committed grievous error in affirming the decision of the trial court for the petitioner to vacate the land in question owned by the offended party?

We rule in the negative on the three issues.

On the first issue: While the defense of prescription of the crime was raised only during the motion for reconsideration of the decision of the Court of Appeals, there was no waiver of the defense. Under the Rules of Court, the failure of the accused to assert the ground of extinction of the offense, *inter alia,* in a motion to quash shall not be deemed a waiver of such ground[6] The reason is that by prescription, the State or the People loses the right to prosecute the crime or to demand

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[5] *Rollo*, p. 13.

[6] RULES OF COURT, Rule 117, Sec. 8, Rule 117 provides, to wit:

SEC. 8. *Failure to move to quash or to allege any ground therefor.* — The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion shall be deemed a waiver of the grounds of a motion to quash, *except the grounds of no offense charged, lack of jurisdiction over the offense charged, extinction of the offense or penalty and jeopardy*, as provided for in paragraphs (a), (b), (f) and (h) of Section 3 of this Rule. (Italics supplied)

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the service of the penalty imposed.[7] Accordingly, prescription, although not invoked in the trial, may, as in this case, be invoked on appeal.[8] Hence, the failure to raise this defense in the motion to quash the information does not give rise to the waiver of the petitioner-accused to raise the same anytime thereafter including during appeal.

Nonetheless, we hold that the crime charged has not prescribed. The petitioner is correct in stating that whether or not the offense charged has already prescribed when the information was filed would depend on the penalty imposable therefor, which in this case is *"prision correccional* in its medium and maximum periods and a fine of not more than 5,000.00 pesos."[9] Under the Revised Penal Code,[10] said penalty is a correctional penalty in the same way that the fine imposed is categorized as correctional. Both the penalty and fine being correctional, the offense shall prescribe in ten years.[11] The issue that the petitioner has missed, however, is the reckoning point of the prescriptive period. The petitioner is of the impression that the ten-year prescriptive period necessarily started at the time the crime was committed. This is inaccurate. Under Article 91 of the Revised Penal Code, the period of prescription shall "commence to run from the day on which the crime is discovered by the offended party, the authorities, or their agents, x x x." In *People v. Reyes,*[12] this Court has declared that registration in public registry is a notice to the whole world. The record is constructive notice of its contents as well as all interests, legal and equitable, included therein. All persons are charged with knowledge of what it contains.

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[7] *Santos v. Superintendent,* 55 Phil. 345, 348-349 (1930).

[8] See *People v. Balagtas,* 105 Phil. 1362-1363 [Unrep.].

[9] Petition, p. 4; *Rollo,* p. 6.

[10] REVISED PENAL CODE, Arts. 25 and 26.

[11] REVISED PENAL CODE, Art. 90.

[12] 175 SCRA 597, 604 (1989). Citations omitted.

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The prosecution has established that private complainant Dorol did not sell the subject land to the petitioner-accused at anytime and that sometime in 1983 the private complainant mortgaged the agricultural land to petitioner Recebido. It was only on September 9, 1990, when she went to petitioner to redeem the land that she came to know of the falsification committed by the petitioner. On the other hand, petitioner contends that the land in question was mortgaged to him by Juan Dorol, the father of private complainant, and was subsequently sold to him on August 13, 1983. This Court notes that the private offended party had no actual knowledge of the falsification prior to September 9, 1990. Meanwhile, assuming *arguendo* that the version of the petitioner is believable, the alleged sale could not have been registered before 1983, the year the alleged deed of sale was executed by the private complainant. Considering the foregoing, it is logical and in consonance with human experience to infer that the crime committed was not discovered, nor could have been discovered, by the offended party before 1983. Neither could constructive notice by registration of the forged deed of sale, which is favorable to the petitioner since the running of the prescriptive period of the crime shall have to be reckoned earlier, have been done before 1983 as it is impossible for the petitioner to have registered the deed of sale prior thereto. Even granting *arguendo* that the deed of sale was executed by the private complainant, delivered to the petitioner-accused in August 13, 1983 and registered on the same day, the ten-year prescriptive period of the crime had not yet elapsed at the time the information was filed in 1991. The inevitable conclusion, therefore, is that the crime had not prescribed at the time of the filing of the information.

On the second issue: We hold that the Court of Appeals did not commit any grave abuse of discretion when it affirmed petitioner's conviction by the trial court. The petitioner admits that the deed of sale that was in his possession is a forged document as found by the trial and appellate court.[13] Petitioner,

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[13] Petitioner's Reply, p. 2; *Rollo*, p. 56.

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nonetheless, argues that notwithstanding this admission, the fact remains that there is no proof that the petitioner authored such falsification or that the forgery was done under his direction. This argument is without merit. Under the circumstance, there was no need of any direct proof that the petitioner was the author of the forgery. As keenly observed by the Solicitor General, "the questioned document was submitted by petitioner himself when the same was requested by the NBI for examination. Clearly in possession of the falsified deed of sale was petitioner and not Caridad Dorol who merely verified the questioned sale with the Provincial Assessor's Office of Sorsogon."[14] In other words, the petitioner was in possession of the forged deed of sale which purports to sell the subject land from the private complainant to him. Given this factual backdrop, the petitioner is presumed to be the author of the forged deed of sale, despite the absence of any direct evidence of his authorship of the forgery. Since the petitioner is the only person who stood to benefit by the falsification of the document found in his possession, it is presumed that he is the material author of the falsification.[15] As it stands, therefore, we are unable to discern any grave abuse of discretion on the part of the Court of Appeals.

On the third issue: Petitioner submits that the trial court is without jurisdiction to order petitioner to vacate the land in question considering that the crime for which he is charged is falsification.[16] The petitioner insists that the civil aspect involved in the criminal case at bar refer to the civil damages recoverable *ex delicto* or arising from the causative act or omission.[17] In addition, petitioner argues that he is entitled to possession as mortgagee since the private complainant has not properly redeemed the property in question.

These are specious arguments. The petitioner based his claim of possession alternatively by virtue of two alternative titles:

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[14] Comment of the Solicitor General, p. 6; *Rollo*, p. 47.

[15] *Sarep v. Sandiganbayan*, 177 SCRA 440, 449 (1989).

[16] Petition, p. 6; *Rollo*, p. 8.

[17] Reply, p. 3; *Id.*, at 57.

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one, based on the forged deed of sale and, two, as mortgagee of the land. As already discussed, the deed of sale was forged and, hence, could not be a valid basis of possession. Neither could his status as mortgagee be the basis of possession since it is the mortgagor in a contract of mortgage who is entitled to the possession of the property. We have taken note of the practice in the provinces that in giving a realty for a collateral, possession usually goes with it.[18] Besides, even assuming that petitioner had a right to possess the subject land, his possession became unlawful when the private complainant offered to redeem the property and petitioner unjustly refused. Petitioner cannot profit from the effects of his crime. The trial court, therefore, did not commit any error in ordering petitioner to vacate the subject property.

In view of the foregoing, this Court finds that the Court of Appeals did not commit any reversible error in its Decision dated September 9, 1999 and its Resolution dated February 15, 2000.

ACCORDINGLY, the instant petition is DENIED for lack of merit.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Puno, Pardo, and *Ynares-Santiago, JJ.,* concur.

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[18] *Heirs of George Bofill v. Court of Appeals*, 237 SCRA 451, 459 (1994).