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FIRST DIVISION

[G.R. No. 164443. June 18, 2010]

ERIBERTO S. MASANGKAY, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; CRIMES AGAINST PUBLIC INTEREST; PERJURY; ELEMENTS.— For perjury to exist, (1) there must be a sworn statement that is required by law; (2) it must be made under oath before a competent officer; (3) the statement contains a *deliberate assertion of falsehood*; and (4) *the false declaration is with regard to a material matter*.

2. ID.; ID.; ID.; ID.; MATERIALITY; MATERIAL MATTER, DEFINED; PRESENT IN CASE AT BAR.— On the element of materiality, a material matter is the main fact which is the subject of the inquiry or any fact or circumstance which tends to prove that fact, or any fact or circumstance which tends to corroborate or strengthen the testimony relative to the subject of inquiry, or which legitimately affects the credit of any witness who testifies. xxx The statements for which the petitioner is tried for perjury are the very grounds he relied upon in his petition for corporate dissolution. They refer to acts of the MFI directors which are allegedly fraudulent, illegal and prejudicial, and which would allegedly justify corporate dissolution under Section 105 of the Corporation Code. Evidently, these statements are material to his petition for involuntary dissolution. The element of materiality is therefore present.

3. ID.; ID.; ID.; ID.; DELIBERATE FALSEHOOD; NOT PROVEN IN CASE AT BAR; EXPLAINED.— The prosecution, however, failed to prove the element of deliberate falsehood. The prosecution has the burden of proving beyond reasonable doubt the falsehood of petitioner's statement that the December 5, 1992 meeting "did *not actually materialize*." In other words, the prosecution has to establish that the said meeting in fact took place, *i.e.*, that the directors were actually and physically present in one place at the same time and conferred with each

other. xxx We have held before that a conviction for perjury cannot be obtained by the prosecution by merely showing the inconsistent or contradictory statements of the accused, even if both statements are sworn. The prosecution must additionally prove which of the two statements is false and must show the statement to be false by evidence *other than* the contradictory statement. The rationale for requiring evidence other than a contradictory statement is explained thus: x x x Proof that accused has given contradictory testimony under oath at a different time will not be sufficient to establish the falsity of his testimony charged as perjury, for this would leave simply one oath of the defendant as against another, and it would not appear that the testimony charged was false rather than the testimony contradictory thereof. The two statements will simply neutralize each other; there must be some corroboration of the contradictory testimony. Such corroboration, however, may be furnished by evidence *aliunde* tending to show perjury independently of the declarations of testimony of the accused. In this case, however, the prosecution was unable to prove, by convincing evidence other than the minutes, that the December 5, 1992 meeting actually took place. It merely presented, aside from the minutes, the testimony of private complainant Cesar, who is a respondent in the corporate dissolution case filed by the petitioner and is therefore not a neutral or disinterested witness. The prosecution did not present the testimony of the other directors or participants in the alleged meeting who could have testified that the meeting actually occurred. Neither did the prosecution offer any explanation why such testimony was not presented. It likewise failed to present any evidence that might circumstantially prove that on December 5, 1992, the directors were physically gathered at a single place, and there conferred with each other and came up with certain resolutions. Notably, the prosecution failed to present the *notice* for the alleged meeting. xxx [T]he petitioner is being charged with deliberate falsehood for his statement that the deed of exchange is fictitious. To support the accusation, the prosecution proved that petitioner assented to the said Deed of Exchange by virtue of his signatures in the minutes of the alleged December 5, 1992 meeting and on the instrument itself, and his participation in procuring the guardianship court's approval of the transaction. These allegedly show that the exchange was not fictitious and that Eriberto

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knew it. We cannot agree with this line of reasoning. Petitioner's imputation of fictitiousness to the Deed of Exchange should not be taken out of context. He explained in paragraph 5 of his petition for involuntary dissolution that the Deed of Exchange is simulated and fictitious *pursuant to Article 1409 of the Civil Code, because it deprived Gilberto Masangkay of his property without any consideration at all.* To justify his allegation that Gilberto did not receive anything for the exchange, he stated in the same paragraph that Gilberto never became a stockholder of MFI (MFI stocks were supposed to be the consideration for Gilberto's land). This fact was subsequently proven by the petitioner through the corporate secretary Elizabeth, who admitted that MFI never issued stocks in favor of the stockholders. This testimony was never explained or rebutted by the prosecution. Thus, petitioner's statement that the exchange was "simulated and fictitious x x x because they x x x deprived [Gilberto] of his own property without any consideration at all" cannot be considered a deliberate falsehood. It is simply his characterization of the transaction, based on the fact that Gilberto did not receive consideration for the exchange of his land. As importantly, petitioner's statements in paragraph 5 of the petition for involuntary dissolution about the nature of the Deed of Exchange are *conclusions of law*, and not factual statements which are susceptible of truth or falsity. They are his opinion regarding the legal character of the Deed of Exchange. He opined that the Deed of Exchange was fictitious or simulated under Article 1409 of the Civil Code, because MFI supposedly did not perform its reciprocal obligation to issue stocks to Gilberto in exchange for his land. His opinion or legal conclusion may have been wrong (as failure of consideration does not make a contract simulated or fictitious), but it is an opinion or legal conclusion nevertheless. An opinion or a judgment cannot be taken as an intentional false statement of facts.

APPEARANCES OF COUNSEL

Alentajan Law Office for petitioner.
The Solicitor General for respondent.
Edgar Dennis A. Padernal for Cesar S. Masangkay, Jr.

D E C I S I O N

DEL CASTILLO, *J.*:

Every criminal conviction must draw its strength from the prosecution's evidence. The evidence must be such that the constitutional presumption of innocence is overthrown and guilt is established beyond reasonable doubt. The prosecutorial burden is not met when the circumstances can yield to different inferences. Such equivocation betrays a lack of moral certainty to support a judgment of conviction.

This Petition for Review[1] assails the March 16, 2004 Decision[2] and the July 9, 2004 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CR No. 25775. The dispositive portion of the assailed Decision reads:

> WHEREFORE, the petition is DENIED, and the appealed Decision is AFFIRMED with the MODIFICATION that Eriberto Masangkay is instead meted the penalty of imprisonment for a term of Six (6) months and One (1) day of *prision correccional* minimum.
>
> SO ORDERED.[4]

Factual Antecedents

Petitioner Eriberto Masangkay (Eriberto), his common-law wife Magdalena Ricaros (Magdalena), Cesar Masangkay (Cesar) and his wife Elizabeth Masangkay (Elizabeth), and Eric Dullano were the incorporators and directors of Megatel Factors, Inc. (MFI) which was incorporated in June 1990.[5]

On December 29, 1993 Eriberto filed with the Securities and Exchange Commission (SEC) a Petition for the Involuntary

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[1] *Rollo*, pp. 9-35.

[2] *Id.* at 37-45; penned by Associate Justice Roberto A. Barrios and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Fernanda Lampas Peralta.

[3] *Id.* at 47-48.

[4] *Id.* at 44.

[5] Records, Vol. III, pp. 762-774.

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Dissolution[6] of MFI for violation of Section 6 of Presidential Decree (PD) No. 902-A. The named respondents were MFI, Cesar and Elizabeth.[7] The said petition was made under oath before a notary public, and alleged among others:

3. At or around September 1, 1993, respondent Elizabeth A. Masangkay prepared or caused to be prepared a Secretary's Certificate which states:

> That at a special meeting of the Board of Directors of the said corporation held at its principal office on December 5, 1992, the following resolution by unanimous votes of the directors present at said meeting and constituting a quorum was approved and adopted:
>
> RESOLVED, as it is hereby resolved that Lot No. 2069-A-2 situated at Bo. Canlalay, Biñan, Laguna containing an area of 3,014 square meters covered by Transfer Certificate of Title No. T-210746 be exchanged with 3,700 shares of stock of the corporation worth or valued at ₱370,000.00 by way of a "Deed of Exchange with Cancellation of Usufruct."

x x x x x x x x x

4. Said secretary's certificate is *absolutely fictitious and simulated* because the alleged meeting of the Board of Directors held on December 5, 1992 *did not actually materialize.*

x x x x x x x x x

5. Using the said falsified and spurious document, x x x respondents executed another *fictitious* document known as the "Deed of Exchange with Cancellation of Usufruct."

The contract purporting to be a transfer of 3,700 shares of stock of MFI in return for a piece of a land (Lot No. 2064-A-2) located at Canlalay, Biñan, Laguna and owned by minor child Gilberto Ricaros Masangkay is void.

Article 1409 of the New Civil Code states:

> "Art. 1409. The following contracts are inexistent and void from the beginning.

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[6] *Rollo,* pp. 49-64.

[7] *Id.* at 49. The petition was docketed as Case No. 12-93-4650.

x x x x x x x x x

(2)Those which are absolutely simulated or fictitious;

(3) Those whose cause or object did not exist at the time of the transaction;

x x x x x x x x x

These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived."

The aforementioned *contract is indeed simulated and fictitious* because they defrauded minor child Gilberto Ricaros Masangkay and deprived him of his own property without any consideration at all.

Records of the MFI revealed that minor child Gilberto Ricaros Masangkay [or] his alleged guardian Magdalena S. Ricaros never became a stockholder at any point in time of MFI.

x x x x x x x x x[8]

The case remains pending to date.[9]

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[8] *Id.* at 50-52.

[9] The case was transferred to and remains pending in Branch 90 of the Quezon City Regional Trial Court pursuant to Republic Act (RA) No. 8799 or the Securities Regulation Code, which took effect on August 9, 2000 (See *Suzuki v. De Guzman,* G.R. No. 146979, July 27, 2006, 496 SCRA 651, 666). The said Code transferred jurisdiction over intra-corporate disputes to regular courts. Section 5 of RA 8799 reads:

Section 5. *Powers and Functions of the Commission.* – x x x

5.2. The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: *Provided*, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payment/rehabilitation cases filed as of June 30, 2000 until finally disposed.

Section 5 of PD No. 902-A reads:

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Claiming that Eriberto lied under oath when he said that there was no meeting of the Board held on December 5, 1992 and that the Deed of Exchange with Cancellation of Usufruct is a fictitious instrument, the respondent in the SEC case, Cesar, filed a complaint for perjury[10] against Eriberto before the Office of the Provincial Prosecutor of Rizal.

Eriberto raised the defense of primary jurisdiction. He argued that what is involved is primarily an intra-corporate controversy; hence, jurisdiction lies with the SEC pursuant to Section 6 of PD 902-A, as amended by PD No. 1758. He also insisted that there was a prejudicial question because the truth of the allegations contained in his petition for involuntary dissolution has yet to be determined by the SEC. These defenses were sustained by the assistant provincial prosecutor and the complaint for perjury was dismissed for lack of merit.[11]

It was however reinstated upon petition for review[12] before the Department of Justice.[13] Chief State Prosecutor Zenon

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Section 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:

a) Devices or schemes employed by or any acts, of the board of directors, business associates, its officers or partnership, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/ or of the stockholder, partners, members of associations or organizations registered with the Commission.

b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members, or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity;

c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations.

[10] Records, Vol. IV, pp. 1009-1011.

[11] *Rollo,* pp. 65-67.

[12] Records, Vol. IV, pp. 1012-1026.

[13] *Rollo*, pp. 68-69.

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L. De Guia held that the petition for involuntary dissolution is an administrative case only and thus cannot possibly constitute a prejudicial question to the criminal case. He also rejected the claim that the SEC has exclusive authority over the case. The Chief State Prosecutor explained that the prosecution and enforcement department of the SEC has jurisdiction only over criminal and civil cases involving a violation of a law, rule, or regulation that is administered and enforced by the SEC. Perjury, penalized under Article 183 of the Revised Penal Code (RPC), is not within the SEC's authority.[14] Thus, he ordered the conduct of a preliminary investigation, which eventually resulted in the filing of the following information:

That sometime in the month of December 1992,[15] in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously commit acts of perjury in his Petition for Involuntary Dissolution of Megatel Factors, Inc. based on violation of Section 6 of Presidential Decree 902-A against Megatel Factors, Inc., Cesar Masangkay, Jr. and Elizabeth Masangkay which he made under oath before a notary authorized to receive and administer oath and filed with the Securities and Exchange Commission, wherein he made willful and deliberate assertion of a falsehood on a material matter when he declared the following, to wit: a) the secretary certificate dated September 1, 1993, proposed by Elizabeth Masangkay is fictitious and simulated because the alleged December 5, 1992, meeting *never took place*; and, b) the Deed of Exchange with Cancellation of Usufruct *is a fictitious document*, whereby the respondents defrauded the minor child Gilberto Ricaros Masangkay, by exchanging the child's 3,014 square meters lot with 3,700 shares of stock of the corporation, when in fact no consideration for the transfer was made as Gilberto Ricaros Masangkay or his guardian Magdalena Ricaros has never been a stockholder of the Corporation at any point in time, when in truth and in fact the accused well knew that the same statements he made in his petition and which he reaffirmed and made use as part of his evidence in the Securities and Exchange Commission (SEC) are false.[16]

[14] *Id.*

[15] Order dated March 27, 1996 (*id.* at 89) granting the prosecution's motion to amend the information.

[16] CA *rollo,* p. 65.

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The information was docketed as Criminal Case No. 56495 and raffled to the Metropolitan Trial Court (MeTC) of Mandaluyong City, Branch 59.

Eriberto filed a motion to quash,[17] insisting that it is the SEC which has primary jurisdiction over the case. He also argued that the truth of the allegations contained in the information is still pending resolution in SEC Case No. 12-93-4650, thereby constituting a prejudicial question to the perjury case.

The MeTC denied the motion to quash for lack of merit.[18] It held that the fact that the parties to the criminal case are mostly stockholders of the same corporation does not automatically make the case an intra-corporate dispute that is within the SEC jurisdiction. It likewise held that the fact that the parties are stockholders is merely incidental and that the subject of the case is a criminal act and hence within the general jurisdiction of the MeTC. As regards the issue of prejudicial question, the MeTC ruled that the petition before the SEC has nothing to do with the criminal case. The truth of the statements for which he is being indicted is a matter of defense which the defendant may raise in the criminal case.

Eriberto filed a petition for *certiorari* before Branch 158 of the Pasig City Regional Trial Court (RTC) to assail the denial of his motion to quash. The denial was affirmed.[19] He then filed a petition for *certiorari* before the CA, which was denied for being a wrong mode of appeal.[20]

Failing to suspend the criminal proceedings, Eriberto entered a plea of not guilty during arraignment.[21] He then waived the conduct of a pre-trial conference.[22]

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[17] *Rollo,* pp. 70-83.

[18] *Id.* at 84-85.

[19] Records, Vol. II, pp. 382-387.

[20] *Id.* at 576-577, 620.

[21] Records, Vol. I, p. 79.

[22] *Id.* at 144.

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During trial, the prosecution presented the private complainant Cesar as its sole witness.[23] He testified that on December 5, 1992, a meeting of the Board of Directors was held at 9:00 o'clock in the morning at the office of MFI in Canlalay, Biñan, Laguna. He presented the minutes of the alleged meeting and reiterated the details contained therein indicating that the Board unanimously approved Magdalena's proposal to exchange her son's (Gilberto Masangkay [Gilberto]) property with MFI shares of stock.[24] The prosecution established that one of the signatures appearing in the minutes belongs to Eriberto.[25] This allegedly belies Eriberto's statement that the December 5, 1992 meeting "did not actually materialize," and shows that he knew his statement to be false because he had attended the meeting and signed the minutes thereof. The prosecution also pointed out that in the proceedings before the guardianship court to obtain approval for the exchange of properties, Eriberto had testified in support of the exchange.[26] The guardianship court subsequently approved the proposed transaction.[27] The resulting Deed of Exchange contained Eriberto's signature as first party.[28]

As for Eriberto's statement that the Deed of Exchange was simulated, the prosecution disputed this by again using the minutes of the December 5, 1992 meeting, which states that the property of Gilberto will be exchanged for 3,700 MFI shares.

For his defense, Eriberto asserted that the December 5, 1992 meeting did not actually take place. While he admitted signing, reading and understanding the minutes of the alleged meeting, he explained that the minutes were only brought by Cesar and Elizabeth to his house for signing, but there was no actual meeting.[29]

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[23] Records, Vol. II, pp. 673-691 and Records, Vol. III, pp. 695-709.

[24] Records, Vol. III, p. 752.

[25] *Id.*

[26] *Id.* at 793-794.

[27] *Id.* at 812-814 and 819.

[28] *Id.* at 817.

[29] *Id.* at 911.

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To support the claim that no meeting took place in 1992, the defense presented Elizabeth, the MFI corporate secretary, who could not remember with certainty if she had sent out any notice for the December 5, 1992 meeting and could not produce any copy thereof.

The defense also presented a notice of meeting dated *October 19, 1993*, which called for the MFI board's *initial* meeting "since its business operations started," to be held on November 9, 1993. Emphasizing the words "initial meeting," Eriberto argued that this proves that prior to November 9, 1993, no meeting (including the December 5, 1992 meeting) had ever taken place.

As for the charge that he perjured himself when he stated that the Deed of Exchange was fictitious and simulated for lack of consideration, Eriberto explained that MFI never issued stock certificates in favor of his son Gilberto. Corporate secretary Elizabeth corroborated this statement and admitted that stock certificates were never issued to Gilberto or any of the stockholders.[30]

While he admitted supporting the proposed exchange and seeking its approval by the guardianship court, Eriberto maintained that he did so because he was convinced by private complainant Cesar that the exchange would benefit his son Gilberto. He however reiterated that, to date, Gilberto is not a stockholder of MFI, thus has not received any consideration for the exchange.

On rebuttal, the prosecution refuted Eriberto's claim that the board had its first actual meeting only on November 9, 1993. It explained that the November 9, 1993 meeting was the initial meeting "since business operations began," because MFI obtained permit to conduct business only in 1993. But the November 9, 1993 meeting was not the first meeting *ever held* by the board of directors. The prosecution presented the secretary's certificates of board meetings held on April 6, 1992[31] and September 5, 1992[32] — both before November 9, 1993

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[30] *Id.* at 912-913.

[31] *Id.* at 900.

[32] *Id.* at 901.

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and both signed by Eriberto.[33] At this time, business operations have not yet begun because the company's hotel building was still under construction. The said secretary's certificates in fact show that MFI was still sourcing additional funds for the construction of its hotel.[34]

Ruling of the Metropolitan Trial Court

On October 18, 2000, the MeTC rendered a judgment[35] holding that the prosecution was able to prove that the December 5, 1992 meeting actually took place and that petitioner attended the same as evidenced by his signature in the minutes thereof. As for Eriberto's statement that the Deed of Exchange was "fictitious," the MeTC held that his participation in the approval and execution of the document, as well as his avowals before the guardianship court regarding the proposed exchange all militate against his previous statement. Petitioner was thus found guilty as charged and sentenced to imprisonment of two months of *arresto mayor* minimum and medium, as minimum, to one year and one day of *arresto mayor* maximum and *prision correccional* minimum, as maximum.[36]

Ruling of the Regional Trial Court

Eriberto appealed[37] his conviction to the RTC of Mandaluyong City, Branch 213, which eventually affirmed the appealed judgment.[38] The *fallo* of the Decision states that:

> WHEREFORE, the decision of October 18, 2000 by Metropolitan Trial Court, Branch 59, Mandaluyong City, convicting the accused-appellant *Eriberto S. Masangkay* of the crime of perjury under Article 183 of the Revised Penal Code is hereby *affirmed in toto*.
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> SO ORDERED.[39]

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[33] *Id.* at 900-901.

[34] *Id.*

[35] *Rollo,* pp. 90-98.

[36] *Id.* at 98.

[37] *Id.* at 100-118.

[38] CA *rollo,* pp. 22-24.

[39] *Id.* at 24.

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Ruling of the Court of Appeals

The CA affirmed the appealed ruling of the trial courts, holding that the prosecution was able to prove that the falsehoods in the petition for involuntary dissolution were deliberately made. It explained that Eriberto's signatures on the two allegedly fictitious documents show that he participated in the execution of the Deed of Exchange and was present in the December 5, 1992 meeting. Having participated in these two matters, Eriberto knew that these were not simulated and fictitious, as he claimed in his verified petition for involuntary dissolution of MFI. Thus, he deliberately lied in his petition.[40]

The CA rejected petitioner's argument that the two statements were not material. It ruled that they were material because petitioner even cited them as principal basis for his petition for involuntary dissolution.[41]

The appellate court found no merit in the issue of prejudicial question. It held that the result of the petition for involuntary dissolution will not be determinative of the criminal case, which can be resolved independently.[42]

The CA however, corrected the imposed penalty on the ground that the trial court was imprecise in its application of the Indeterminate Sentence Law. The CA meted the penalty of imprisonment for a term of six months and one day of *prision correccional* minimum.[43]

Petitioner moved for reconsideration[44] which was denied.[45]

Hence, this petition.[46]

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[40] *Id.* at 42.

[41] *Id.* at 43.

[42] *Id.*

[43] *Id.* at 44.

[44] *Id.* at 142-153.

[45] *Id.* at 47-48.

[46] Defendant's motion for extension was initially denied by the Court (*id.* at 7) in its Resolution dated August 16, 2004, which states:

[Defendant's] motion for extension of thirty (30) days from August 4,

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Issues

Petitioner submits the following issues for review:

I

WHETHER THERE WAS DELIBERATE ASSERTION OF FALSEHOOD

II

WHETHER THE TRUTHFUL ALLEGATION IN THE PETITION FOR INVOLUNTARY DISSOLUTION THAT THERE WAS NO MEETING IS MATERIAL TO THE PETITION

III

WHETHER PERJURY COULD PROSPER WHILE THE MAIN CASE REMAINS PENDING[47]

Since this is a case involving a conviction in a criminal case, the issues boil down to whether the prosecution was able to prove the accused's guilt beyond reasonable doubt.

Our Ruling

We rule that the prosecution failed to prove the crime of perjury beyond reasonable doubt.

Article 183 of the RPC provides:

False testimony in other cases and perjury in solemn affirmation. – The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period shall be imposed upon any person who, knowingly making untruthful statements and not being included

2004 within which to file petition for review on *certiorari* is DENIED for lack of sufficient showing that [defendant] has not lost the fifteen (15)-day reglementary period to appeal pursuant to Section 2, Rule 45 of the 1997 Rules of Civil Procedure, as amended, in view of the lack of statement of whether the assailed Court of Appeals' resolution dated July 9, 2004 received on July 20, 2004 is a denial/dismissal of the petition or the motion for reconsideration thereof.

Upon [defendant's] Motion for Reconsideration (*id.* at 154-157), the Court granted the motion for extension (*id.* at 160) and eventually gave due course to the Petition for Review (*id.* at 232-233).

[47] *Id.* at 240.

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in the provisions of the next preceding articles shall testify under oath, or make an affidavit, upon any material matter before a competent person authorized to administer an oath in cases in which the law so requires.

Any person who, in case of a solemn affirmation made in lieu of an oath, shall commit any of the falsehoods mentioned in this and the three preceding articles of this section, shall suffer the respective penalties provided therein.

For perjury to exist, (1) there must be a sworn statement that is required by law; (2) it must be made under oath before a competent officer; (3) the statement contains a *deliberate assertion of falsehood*; and (4) *the false declaration is with regard to a material matter*.[48]

The presence of the first two elements is not disputed by the petitioner and they are indeed present in the instant case. The sworn statements which contained the alleged falsehoods in this case were submitted in support of the petition for involuntary dissolution, as required by Sections 105 and 121 of the Corporation Code.

The petition was also verified by the petitioner before a notary public[49]—an officer duly authorized by law to administer oaths. This verification was done in compliance with Section 121 of the Corporation Code.[50]

It is the elements of *deliberate falsehood* and *materiality* of the false statements to the petition for involuntary dissolution which are contested.

On the element of materiality, a material matter is the main fact which is the subject of the inquiry or any fact or circumstance which tends to prove that fact, or any fact or circumstance

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[48] *Sy Tiong Shiou v. Sy Chim and Chan Sy,* G.R. Nos. 174168 and 179438, March 30, 2009, 582 SCRA 517, 534.

[49] *Rollo,* p. 59.

[50] Section 121. *Involuntary Dissolution.* – A corporation may be dissolved by the Securities and Exchange Commission upon filing a verified complaint and after proper notice and hearing on grounds provided by existing laws, rules and regulations.

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which tends to corroborate or strengthen the testimony relative to the subject of inquiry, or which legitimately affects the credit of any witness who testifies.[51]

Petitioner filed a petition for involuntary dissolution of MFI based on Section 105 of the Corporate Code, which states:

Section 105. *Withdrawal of stockholder or dissolution of corporation.* – In addition and without prejudice to the other rights and remedies available to a stockholder under this Title, any stockholder of a close corporation may, for any reason, compel the said corporation to purchase his shares at their fair value, which shall not be less than their par or issued value, when the corporation has sufficient assets in his books to cover its debts and liabilities exclusive of capital stock: *Provided,* That any stockholder of a close corporation may, by written petition to the Securities and Exchange Commission, compel the dissolution of such corporation whenever any of the acts of the directors, officers or those in control of the corporation is *illegal, or fraudulent, or dishonest, or oppressive or unfairly prejudicial* to the corporation or any stockholder, or whenever corporate assets are being misapplied or wasted.

He stated in his petition for involuntary dissolution that:

x x x x x x x x x

4. Said secretary's certificate is absolutely fictitious and simulated, because the alleged meeting of the Board of Directors held on December 5, 1992 did not actually materialize.

x x x x x x x x x

5. Using the said falsified and spurious document, x x x respondents executed another fictitious document known as the Deed of Exchange with Cancellation of Usufruct.

x x x x x x x x x

The aforementioned contract is indeed simulated and fictitious because they defrauded minor child Gilberto Ricaros Masangkay and deprived him of his own property without any consideration at all.

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[51] *United States v. Estraña,* 16 Phil. 520, 529 (1910).

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x x x x x x x x x

8. The foregoing acts and deeds of the respondents, done in evident bad faith and in conspiracy with one another, are seriously *fraudulent and illegal* because they constitute estafa through falsification of documents, punishable under Articles 315 and 171 of the Revised Penal Code.

9. Likewise, said acts and deeds are feloniously *prejudicial* to the stockholders of MFI, including petitioner, as corporate assets are being misapplied and wasted.

10. MFI should therefore be ordered dissolved after appropriate proceedings before this Honorable Commission, in accordance with Sections 105 and 121 of the New Corporation Code x x x.[52]

The statements for which the petitioner is tried for perjury are the very grounds he relied upon in his petition for corporate dissolution. They refer to acts of the MFI directors which are allegedly fraudulent, illegal and prejudicial, and which would allegedly justify corporate dissolution under Section 105 of the Corporation Code. Evidently, these statements are material to his petition for involuntary dissolution. The element of materiality is therefore present.

The prosecution, however, failed to prove the element of deliberate falsehood.

The prosecution has the burden of proving beyond reasonable doubt the falsehood of petitioner's statement that the December 5, 1992 meeting "did *not actually materialize*." In other words, the prosecution has to establish that the said meeting in fact took place, *i.e.*, that the directors were actually and physically present in one place at the same time and conferred with each other.

To discharge this burden, the prosecution relied mainly on the minutes of the alleged December 5, 1992 meeting, signed by the accused, which are inconsistent with his statement that the December 5, 1992 meeting did not actually materialize. According to the minutes, a meeting actually took place. On

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[52] *Rollo,* pp. 50-54.

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the other hand, according to the petitioner's statement in the petition for dissolution, the meeting did not actually materialize or take place. The two statements are obviously contradictory or inconsistent with each other. But the mere contradiction or inconsistency between the two statements merely means that one of them is false. It cannot tell us which of the two statements is actually false. The minutes could be true and the sworn statement false. But it is equally possible that the minutes are false and the sworn statement is true, as explained by the petitioner who testified that the minutes were simply brought to his house for signature, but no meeting actually transpired. Given the alternative possibilities, it is the prosecution's burden to affirmatively prove beyond reasonable doubt that the first statement (the minutes) is the true one, while the other statement (in the petition for dissolution) is the false one.

We have held before that a conviction for perjury cannot be obtained by the prosecution by merely showing the inconsistent or contradictory statements of the accused, even if both statements are sworn. The prosecution must additionally prove which of the two statements is false and must show the statement to be false by evidence *other than* the contradictory statement.[53] The rationale for requiring evidence other than a contradictory statement is explained thus:

> x x x Proof that accused has given contradictory testimony under oath at a different time will not be sufficient to establish the falsity of his testimony charged as perjury, for this would leave simply one oath of the defendant as against another, and it would not appear that the testimony charged was false rather than the testimony contradictory thereof. The two statements will simply neutralize each other; there must be some corroboration of the contradictory testimony. Such corroboration, however, may be furnished by evidence *aliunde* tending to show perjury independently of the declarations of testimony of the accused.[54]

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[53] *Villanueva v. Secretary of Justice,* G.R. No. 162187, November 18, 2005, 475 SCRA 495, 514-515.

[54] *Id.* at 515, citing *People v. McClintic*, 160 N.W. 461 (1916).

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In this case, however, the prosecution was unable to prove, by convincing evidence other than the minutes, that the December 5, 1992 meeting actually took place. It merely presented, aside from the minutes, the testimony of private complainant Cesar, who is a respondent in the corporate dissolution case filed by the petitioner and is therefore not a neutral or disinterested witness.[55] The prosecution did not present the testimony of the other directors or participants in the alleged meeting who could have testified that the meeting actually occurred. Neither did the prosecution offer any explanation why such testimony was not presented. It likewise failed to present any evidence that might circumstantially prove that on December 5, 1992, the directors were physically gathered at a single place, and there conferred with each other and came up with certain resolutions. Notably, the prosecution failed to present the *notice* for the alleged meeting. The corporate secretary, Elizabeth, who was presented by the petitioner, could not even remember whether she had sent out a prior notice to the directors for the alleged December 5, 1992 meeting. The lack of certainty as to the sending of a notice raises serious doubt as to whether a meeting actually took place, for how could the directors have been gathered for a meeting if they had not been clearly notified that such a meeting would be taking place?

The insufficiency of the prosecution's evidence is particularly glaring considering that the petitioner had already explained the presence of his signature in the minutes of the meeting. He testified that while the meeting did not actually take place, the minutes were brought to his house for his signature. He affixed his signature thereto because he believed that the proposed exchange of the assets, which was the subject of the minutes, would be beneficial to his child, Gilberto. Acting on this belief, he also supported the approval of the exchange by the guardianship court.

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[55] See also *Magat v. People,* G.R. No. 92201, August 21, 1991, 201 SCRA 21, 36 and *Mercury Drug, Co., Inc. v. Court of Industrial Relations,* 155 Phil. 636, 644, 648 (1974).

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Under these circumstances, we cannot say with moral certainty that the prosecution was able to prove beyond reasonable doubt that the December 5, 1992 meeting actually took place and that the petitioner's statement denying the same was a deliberate falsehood.

The second statement in the petition for involuntary dissolution claimed to be perjurious reads:

> 5. Using the said falsified and spurious document, respondents executed another fictitious document known as the Deed of Exchange with Cancellation of Usufruct.
>
> The contract purporting to be a transfer of 3,700 shares of stock of MFI in return for a piece of land (Lot No. 2064-A-2) located at Canlalay, Biñan, Laguna and owned by minor child Gilberto Masangkay is void.
>
> Article 1409 of the New Civil Code states:
>
> > Article 1409. The following contracts are inexistent and void from the beginning:
> >
> > x x x x x x x x x
> >
> > (2) those which are absolutely simulated or fictitious;
> >
> > (3) those whose cause or object did not exist at the time of the transaction;
> >
> > x x x x x x x x x
> >
> > These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived.
>
> The aforementioned contract is indeed *simulated and fictitious because they defrauded* minor child Gilberto Ricaros Masangkay and deprived him of his own property *without any consideration at all.*
>
> Records of the MFI revealed that minor child Gilberto Ricaros Masangkay [or] his alleged guardian Magdalena S. Ricaros never became a stockholder at any point in time of MFI.

In short, the petitioner is being charged with deliberate falsehood for his statement that the deed of exchange is fictitious. To support the accusation, the prosecution proved that petitioner

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assented to the said Deed of Exchange by virtue of his signatures in the minutes of the alleged December 5, 1992 meeting and on the instrument itself, and his participation in procuring the guardianship court's approval of the transaction. These allegedly show that the exchange was not fictitious and that Eriberto knew it.

We cannot agree with this line of reasoning. Petitioner's imputation of fictitiousness to the Deed of Exchange should not be taken out of context. He explained in paragraph 5 of his petition for involuntary dissolution that the Deed of Exchange is simulated and fictitious *pursuant to Article 1409 of the Civil Code, because it deprived Gilberto Masangkay of his property without any consideration at all.* To justify his allegation that Gilberto did not receive anything for the exchange, he stated in the same paragraph that Gilberto never became a stockholder of MFI (MFI stocks were supposed to be the consideration for Gilberto's land). This fact was subsequently proven by the petitioner through the corporate secretary Elizabeth, who admitted that MFI never issued stocks in favor of the stockholders. This testimony was never explained or rebutted by the prosecution. Thus, petitioner's statement that the exchange was "simulated and fictitious x x x because they x x x deprived [Gilberto] of his own property without any consideration at all" cannot be considered a deliberate falsehood. It is simply his characterization of the transaction, based on the fact that Gilberto did not receive consideration for the exchange of his land.

As importantly, petitioner's statements in paragraph 5 of the petition for involuntary dissolution about the nature of the Deed of Exchange are *conclusions of law*, and not factual statements which are susceptible of truth or falsity. They are his opinion regarding the legal character of the Deed of Exchange. He opined that the Deed of Exchange was fictitious or simulated under Article 1409 of the Civil Code, because MFI supposedly did not perform its reciprocal obligation to issue stocks to Gilberto in exchange for his land. His opinion or legal conclusion may have been wrong (as failure of

consideration does not make a contract simulated or fictitious),[56] but it is an opinion or legal conclusion nevertheless. An opinion or a judgment cannot be taken as an intentional false statement of facts.[57]

We recognize that perjury strikes at the very administration of the laws; that it is the policy of the law that judicial proceedings and judgments shall be fair and free from fraud; that litigants and parties be encouraged to tell the truth, and that they be punished if they do not.[58] However, it is also at the heart of every criminal proceeding that every person is presumed innocent until proven guilty beyond reasonable doubt.

Given the foregoing findings, there is no more need to discuss the issue involving the propriety of proceeding with the perjury case while the civil case for corporate dissolution is pending.

WHEREFORE, the petition is *GRANTED.* The assailed March 16, 2004 Decision of the Court of Appeals in CA-G.R. CR No. 25775 and its July 9, 2004 Resolution, are *REVERSED and SET ASIDE.* Petitioner Eriberto S. Masangkay is *ACQUITTED* of the charge of perjury on the ground of *REASONABLE DOUBT.*

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Leonardo-de Castro, and *Perez, JJ.,* concur.

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[56] Simulated or fictitious contracts are defective contracts, "those not really desired or intended to produce legal effects or in any way alter the juridical situation of the parties" (*Vda. de Rodriguez v. Rodriguez,* 127 Phil. 294, 301 (1967). Failure of consideration or failure to pay the consideration does not make a contract defective; it merely gives rise to a cause of action for specific performance or rescission (*Montecillo v. Reynes,* 434 Phil. 456, 468-469 (2002).

[57] See also *People v. Yanza*, 107 Phil. 888, 891 (1960).

[58] *People v. Cainglet,* 123 Phil. 568, 575 (1966).