

LEONILA S. PEREZ, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES AND THE HONORABLE COURT OF APPEALS, RESPONDENTS.*G.R. No. L-43548. June 29, 1981*

Ponente: GUERRERO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/3f0d2cfb09ad/>**GUERRERO, J.:**

Petition for review on certiorari of the Decision of the Court of Appeals[1] dated February 16, 1976 and its Resolution denying petitioner's Motion for Recon-sideration in CA-G.R. No. 15533-CR entitled "People of the Philippines, Plaintiff-Appellee, versus Leonila S. Perez, Accused-Appellant," affirming in toto the amended Decision of the Court of First Instance of Manila (Criminal Case No. 80842) dated April 3, 1973 convicting the accused of the crime of estafa thru abuse of confidence or unfaithfulness defined under Article 315, sub-section 1(b) of the Revised Penal Code.

Herein petitioner was charged with the crime of Estafa before the Court of First Instance of Manila under the following information:

"That on or about and during the period comprised between February 11, 1964 and February 14, 1964, both dates inclusive, in the City of Manila, Philippines, the said accused did then and there wilfully, unlaw-fully and feloniously defraud one Petra Farin in the following manner, to wit: the said accused by means of fraudulent repre-sentations and false manifestations which she made to the said Petra Farin that as soon as she obtain a loan from the bank, she could help Petra Farin in financing her building, and that to obtain said loan, her current account with the bank should be activated and for that purpose, they should exchange checks with each other, and by means of other similar deceits, induced and suc-ceeded in inducing the said Petra Farin to exchange checks with the said accused, as in fact the said Petra Farin issued checks to the accused, to which in turn, the said accused issued the following checks:

Republic Bank Check No. A-309932, dated February 11, 1964, in the amount of	P20,000.00
Republic Bank Check No. A-309933, dated February 11, 1964, in the amount of	P25,000.00
Republic Bank Check No. A-309935, dated February 11, 1964, in the amount of	P25,000.00
Republic Bank Check No. A-309936, dated February 11, 1964, in the amount of	P20,000.00
Republic Bank Check No. A-309937, dated February 11, 1964, in the amount of	P22,000.00
Republic Bank Check No. A-309938, dated February 11, 1964, in the amount of	P23,000.00
Republic Bank Check No. A-309939, dated February 12, 1964, in the amount of	P24,930.00
Republic Bank Check No. A-309941, dated February 12, 1964, in the amount of	P27,300.00
Republic Bank Check No. A-309942, dated February 12, 1964, in the amount of	P33,700.00

Republic Bank Check. No. A-309943, dated February 12, 1964, in the amount of P29,000.00

Republic Bank Check No. A-309945, dated February 13, 1964, in the amount of P45,000.00

Republic Bank Check No. A-309947, dated February 14, 1964, in the amount of P38,000.00

Republic Bank Check No. A-309946, dated February 13, 1964, in the amount of P45,000.00

all in the total amount of P377,930.00, thereby making the said Petra Farin believe that all the checks issued by her were good and with sufficient funds deposited in said bank; but that upon presentation of said checks to the bank for deposit, they were dishonored for the reason that the drawer, the herein accused, did not have sufficient funds deposited in said bank, and said accused, once in possession of the said checks of Petra Farin, all valued at P377,930.00, which she (accused) encashed and was paid for, with intent to defraud, did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert the same to her own personal use and benefit, to the damage and prejudice of the said Petra Farin in the aforesaid sum of P377,930.00, Philippine Currency.

Contrary to law."

In affirming the conviction of the accused-petitioner, the respondent Court of Appeals adopted the Counter-statement of Facts recited in the brief of the Government, as follows:

"Complainant Petra Farin is a current account depositor of the Philippine National Cooperative Bank (PNCB for short) with an overdraft line of P200,000.00 and a discounting line of P200,000.00, or a total accommodation of P400,000.00 with said PNCB (pp. 10--12, t.s.n., Sept. 13, 1968). She was likewise constructing a building in Quezon City and was negotiating with PNCB authorities for the transfer of the PNCB to said building upon its completion on a lease basis (p. 6, tsn, Dec. 3, 1968). As such and because of other banking transactions, she used to be in the PNCB premises in España, Manila where she frequently dealt with Mr. Alfredo Mamuyac, Treasurer of the PNCB, and Atty. Centeno, Legal Counsel of said banking institution (pp. 3-5, t.s.n., Sept. 13, 1968). Sometime in June or July, 1963, Mr. Mamuyac and Atty. Centeno talked to her and intimated to her that they would like her to meet a friend of theirs, a certain Atty. Perez, one of the legal counsel of Citizens Bank & Trust Company (pp. 5-7, tsn, Dec. 3, 1968). Both gentlemen told Mrs. Farin that they would like her to help and accommodate Atty. Perez because the latter may in one way or another be of help to her (Mrs. Farin's) banking transactions (pp. 8-10, tsn, Dec. 3, 1968). The meeting actually materialized and Atty. Perez and his wife, accused Leonila S. Perez, were then introduced to the complainant (pp. 5-11, tsn, Dec. 3, 1968). During the introduction of the accused and husband to the complainant, Mr. Alfredo Mamuyac and the legal counsel of the PNCB requested said complainant to give the accused and her husband, Atty. Jose Perez, a loan of P50,000.00, the treasurer and legal counsel of the PNCB as guarantors thereof (p. 9, tsn, Dec. 3, 1968). But before consenting to such request, complainant verified from the Vice-President of the Citizens Bank, Mr. Arambulo, and found to be true that Atty. Jose Perez, husband of the accused, was really the assistant legal counsel of said Citizens Bank. Thereafter, the complainant gave the accused and her husband a loan in the amount of P25,000.00, payable within thirty (30) days and then again another loan of P25,000.00. Both loans were duly paid by the couple (pp. 6-10, t.s.n., Sept. 13, 1968; pp. 15-21, t.s.n., Dec. 7, 1968).

"Thereafter, accused and her husband continued to meet complainant every now and then, the aforesaid couple being almost everyday with her, and most of the time said husband and wife dropped by her place early in the morning, taking breakfast with her at her residence in 304 Quezon Blvd. Ext., Quezon City (pp. 28-29, 26-37, t.s.n., Dec. 3, 1968). From then on accused started showering her and her children with gifts of various kinds and because of their continuous association with one another whereby they met everyday, they became closer and more intimate (pp. 33-34, t.s.n., Dec. 3, 1968). It was during this period of intimacy that accused and her husband learned from complainant that she and her daughter had a credit and discounting overdraft line in the total sum of P400,000.00 with the PNCB (pp. 10-12, tsn, Sept. 13, 1968; p. 26, tsn, July 8, 1969).

"It was during this close relationship that the accused and her husband, Atty. Jose Perez, proposed to exchange their checks from their bank, the Republic Bank, with the complainant's check from the PNCB in order to activate the account of the couple (accused and her husband) in the Republic Bank so that they can secure a million-peso loan, having as collateral the hacienda of the late Filemon Salcedo in Mindoro, the proceeds from which they (accused and her husband) can in turn help or give a big loan to the complainant to finance the construction of the latter's building in Quezon City (pp. 10-12, t.s.n., Sept. 13, 1968). On that occasion Atty. Perez likewise assured complainant that being the legal counsel of Citizens Bank, he had connections with various banks and if complainant will help him activate their account with the Republic Bank, he, in turn, can help her also. When queried as to what he meant by 'activate both my account', Atty. Perez told the complainant 'that each morning his wife (the herein accused), accompanied by him-self, will go to complainant's place, give her checks, and, in turn, the complainant will issue checks in the same amount as the checks of the accused', further inform-ing the complainant that, 'anyway, you have a P200,000.00 overdraft line and ano-ther P200,000.00 discounting line. So all in all you have an accommodation of P400,000.00 with the PNCB.' Atty. Perez further told complainant that he will give her Republic Bank checks and in return complainant should issue checks of PNCB. By constantly exchanging checks, it will appear that complainant having a big over-draft line, Atty. Perez' checks will be good and complainant's checks will also be good. In that way Atty. Perez' account will be activated and which may enable him to get a million-peso loan (pp. 39-42, t.s.n., Dec. 3, 1968).

"Having been made to understand that she would get a big financial assistance from the accused and her husband after the release of the latter's million-peso loan, the complainant agreed to the pro-position of exchanging checks. She there-fore, issued several PNCB checks (Exhibits A, A-1 to A-27) all dated in the month of December, 1963, in the total amount of P441,059.00 in favor of the accused. Said checks, Exhibits A, A-1 to A-27, were all encashed by the accused who was duly paid the corresponding amounts therein. The accused on the other hand issued the cor-responding Republic Bank checks in favor of the complianant, which the latter was able to encash and collect (pp. 3-7, t.s.n., Oct. 17, 1968). In the following month of January, 1964, the complainant, true to their agreement, issued several checks (Exhibits B, B-1 to B-39) amounting to P843,907.00 in favor of the accused, who also issued in favor of the complainant the corresponding checks, good and honored (pp. 8-23, t.s.n., Oct. 13, 1968). Inas-much as the promised loan of the accused had not yet been released, the exchange of checks between her and the complainant continued. So from February 5 to February 10, 1964, the complainant again issued several checks (Exhibits C, C-1 to C-9) in the total amount of P254,600.00 and as usual, the accused also issued in exchange the cor-responding good and honored checks (pp. 34--37, t.s.n., Oct. 17, 1968).

"Since nothing went wrong in the early days of their transaction covering above exchanges of checks, complainant continued to issue additional checks in favor of accused (Exhibits D, D-1 to D-12) dated February 10 to 14, 1964, which accused was able to deposit and were honored (pp. 38--44, t.s.n., Oct. 17, 1968). In exchange for those checks (Exhs. D, D-1 to D-12) accused issued several checks with the same amount (Exhs. E, F, G, T, I, J, K, L, M, N, O, P, Q, R, S and T) and when deposited said checks were returned by the Republic Bank with notations 'Drawn Against Uncollected Deposits' and later 'Stop Payment' (Exhs. E-1 to T-1). Complainant got alarmed; but thinking it might only be due to mathematical errors, she first waited for a couple of days until she was finally convinced that accused really intended and did something wrong when she discovered that all her credit lines with her bank were exhausted, such that some of the checks she issued later were no longer honored by her bank. Alarmed, she immediately called and went to see the accused. The lat-ter was, however, making herself unavailable notwithstanding various attempts made by the complainant to have a talk with her. Finally, complainant chose to take along her friend, Mrs. Asuncion Trinidad, the owner of the Victory Liner, and who assisted her in trying to have a confrontation with the herein accused. After several attempts, complainant finally succeeded in seeing Atty. Perez, the husband of the accused, who assured complain-ant and Mrs. Trinidad that she (complainant) should not worry since it will only be a matter of accounting and that everything will be arranged and cleared and that whatever is due her (complainant) will be paid unto her. Atty. Perez even invited complainant to go with him to the office of Atty. Faylona, accused's

counsel, for purposes of account-ing in order to straighten out matters. Complainant, however, refused, telling Atty. Perez that they had started their transactions without any lawyer and, therefore, she saw no reason for a lawyer now intervening between them. Notwithstanding all attempts to make accused return or reimburse complainant for the amounts represented by the checks she issued in favor of the accused in the total sum of P377,930.00 which were charged and debited against complainant's overdraft, not a single centavo was returned to her (pp. 60-72, t.s.n., Oct. 17, 1968; pp. 2--19, t.s.n., Oct. 18, 1968)."

On a plea of NOT GUILTY, the case proceeded to trial and upon its termination, the trial court found the ac-cused-petitioner guilty of the crime of estafa committed with abuse of confidence or unfaithfulness under Article 315, Sec. 1, sub-sec. (b) of the Code, and in view of the amount involved and the absence of mitigating or aggravating circumstances, the accused was sentenced to an indeterminate penalty of SIX (6) YEARS and ONE (1) DAY of prision mayor, as the minimum, to SEVENTEEN (17) YEARS and FOUR (4) MONTHS of reclusion temporal, as the maximum, and was ordered to return to the complainant the amount of P377,930.00 with no subsidiary imprisonment in case of insolvency and to pay the costs.

Upon a Motion for Reconsideration and/or New Trial filed by the accused, which, among others, informed the court of the pendency of Civil Case No. Q-8446 before the CFI of Rizal wherein the same parties were ordered to engage the services of an accounting firm to settle their accounts arising from this same transaction of exchange of checks, the lower court amended its own decision, to wit:

"The pendency of Civil Case No. Q-8446 before the Court of First Instance of Rizal, Branch XVIII, entitled 'Petra Farin, et al. versus Leonila S. Perez, et al.,' which has as its object the recovery of the civil liability arising from the offense charged in the instant case, not being denied nor controverted by the prosecution, let the judgment in this case therefore, be accor-dingly amended so as to delete therefrom 'to return to the offended party the amount of P377,930.00.'"

On appeal to respondent Court of Appeals, the deci-sion below was affirmed in toto and accused's Motion for Reconsideration was likewise denied. Hence, this petition seeking a reversal of the judgment of conviction on the ground that the decision is devoid of support in the records; that it is grounded entirely on speculation and conjecture; that it is so glaringly erroneous as to constitute serious abuse of discretion; and that the trial court committed injustice in the wrong evaluation of facts brought out during the trial.[2]

Accused-petitioner argues that no estafa was committed in the case at bar; that her liability, if any, is civil in nature; that her guilt has not been proven beyond reasonable doubt; and that the penalty imposed has absolutely no basis. And she assigns the following errors:

- I. The respondent court erred in holding that it was accused who proposed the transaction of exchange of checks and in not taking into account that complaining witness was engaged in "kiting operations" (Monetary Board Resolution No. 479, Central Bank of the Philippines).
- II. The respondent court erred in not holding that the transaction of exchange of checks between accused and complaining witness is civil in nature and hence accused is not criminally liable therefor.
- III. The respondent court erred in convicting accused of the kind of estafa which was neither alleged or charged in the infor-mation nor proved by the evidence.
- IV. The respondent court erred in sentencing accused to an indeterminate penalty of 6 years and 1 day of prision mayor, as the minimum, to 17 years and 4 months of reclusion temporal, as the maximum, there being no factual or legal basis for the imposition of said penalty.
- V. The respondent court erred in convicting accused on the sole testimony of com-plaining witness whose derogatory back-ground has been duly investigated upon by another government agency which is the Central

Bank of the Philippines.

In sustaining or rejecting the defense of the petitioner, We quote hereunder the version of the accused in order to have a clear view of the matters involved in this case arising from a rather unusual and irregular banking transaction of exchange of checks between her and the complaining witness (214 checks issued by the accused and 91 checks by the complainant) in various amounts and on different dates, thus:

"Accused-petitioner Leonila Perez was an old bank client of the Philippine National Cooperative Bank (PNCB), having obtained a previous loan from said bank (tsn, p. 11, June 17, 1970, L. Perez). On the other hand, complaining witness Mrs. Petra Farin was also a client of the PNCB with a current account deposit and an overdraft line of P200,000.00 and a discounting line of P200,000.00 (tsn, p. 5, Sept. 13, 1968, P. Farin). Mrs. Farin was likewise nego-tiating for the transfer of the PNCB to the building she was starting to construct in Quezon City (ibid.).

Both were known to the PNCB officers, Mr. Alfredo Mamuyac (Treasure of PNCB) and Atty. Centeno (Legal Counsel of PNCB). They introduced accused to Mrs. Farin for the purpose of obtaining a loan which accused needed for the additional capitalization of her business (tsn, p. 11, June 17, 1970, L. Perez). Upon the personal guaranties and/or signatures of said PNCB officers, Mrs. Farin extended a loan of P50,000.00 in cash to accused sometime in July 1963, payable within one month (tsn, p. 18, Aug. 17, 1970, L. Perez). On August 1963, accused paid the said loan (tsn, p. 9, Sept. 13, 1968, P. Farin). Thereafter, accused bought a freezer from Mrs. Farin who was a dealer on household appliances whose business name is Quezon City Trading Center, Inc. (tsn, p. 15, July 8, 1969, Sonia del Rosario) which was duly paid for (tsn, p. 19, June 17, 1970, L. Perez).

In the meantime, Mrs. Farin was maintaining 13 current accounts in 13 different banks in Manila, to wit: First United Bank, Equitable Bank, China Banking Corporation, Philippine Bank of Commerce, Rizal Commercial Bank, Philippine National Cooperative Bank, Trader's Commercial Bank, Consolidated Bank, Merchants Banking Corporation, Pacific Banking Corporation, Citizens Bank, Continental Bank (tsn, p. 22-26, Dec. 3, 1968, P. Farin) and in Prudential Bank (tsn, p. 2, Dec. 4, 1968, P. Farin). Mrs. Farin therefore needed the checks of different people in order to actively maintain her 13 different current accounts and further to be able to get money out of issuing checks through discounting which in banking practice is known as 'kiting operations' (tsn, p. 30, Dec. 3, 1958, Atty. Faylona).

For her 'kiting operations,' Mrs. Farin had business associates who were also prominent and/or wealthy women among whom are Atty. Lumen Policarpio, Mrs. Asuncion Trinidad, owner of big land transportation company (tsn, p. 34, Sept. 17, 1970, L. Perez) and Sonia del Rosario. Mrs. Farin made use of and had absolute control of the current accounts of Atty. Lumen Policarpio with the China Banking Corporation, Equitable Bank, Rizal Commercial Bank, Traders Commercial Bank and Merchants Banking Corporation. The same applies to the current account under the name of Policarpio Draperies so that Atty. Policarpio signed the checks but Mrs. Farin wrote the figures and other entries therein (tsn, pp. 10-11, Dec. 4, 1968, P. Farin). Moreover, Mrs. Farin made use of the current accounts with the PNCB under the name of Sonia del Rosario and the current account with Traders Commercial Bank and with PNCB under the name of Asuncion Trinidad (tsn, pp. 12-13, Dec. 4, 1968, P. Farin). Sonia del Rosario used to give blank checks to Mrs. Farin bearing only her signatures but the amount, the name of the payee and the date of the checks were filled up by Mrs. Farin (tsn, p. 13, Aug. 13, 1969, Asuncion Trinidad).

In the light of her said operations which was not known to accused, Mrs. Farin suggested the idea of exchange of checks (tsn, p. 7, Aug. 10, 1970, L. Perez) in spite of the fact that accused had only minimal overdraft account of P10,000.00 with the Republic Bank (tsn, p. 6, Aug. 17, 1970, L. Perez). Accused agreed to said proposal as a sign of gratitude since Mrs. Farin had helped her in one of her crucial moments (tsn, p. 8, Aug. 10, 1970, L. Perez). Besides, Mrs. Farin was very convincing, and her friends and associates surrounding her were prominent and wealthy people (tsn, p. 34, Aug. 17, 1970, L. Perez).

The exchange of checks started sometime in October 1963 (tsn, p. 3, 1970, L. Perez). The accused was made to issue one or two checks a day at first and three to four checks a day thereafter from the period of October 1963 to December 1963.

During the said period, accused was made to issue the following checks:

No. of

Name of

Check

Exhibit

Bank

No.

Amount

Date

3

RB

271028

P10,000.00

Oct. 30, 1963

3-A

RB

271029

10,000.00

Oct. 30, 1963

4

RB

271044

6,000.00

Nov. 5, 1963

5

RB

280680

10,000.00

Nov. 6, 1963

6

RB

271043

9,000.00

Nov. 7, 1963

7

RB

280685

27,500.00

Nov. 8, 1963

7-A

RB

280686

200.00

Nov. 8, 1963

8

RB

280684

15,000.00

Nov. 14, 1963

8-A

RB

280696

22,500.00

Nov. 14, 1963

9

RB

280694

200.00

Nov. 15, 1963

9-A

RB

280697

695.00

Nov. 15, 1963

10

RB

286679

29,650.00

Nov. 18, 1963

11

RB

271050

15,000.00

Nov. 19, 1963

12

RB

280698

15,000.00

Nov. 20, 1963

13

RB

280695

35,000.00

Nov. 25, 1963

13-A

RB

286690

200.00

Nov. 25, 1963

14

RB

286695

8,440.00

Nov. 29, 1963

14-A

RB

286696

27,400.00

Nov. 29, 1963

15

RB

290256

27,830.00

Dec. 4, 1963

15-A

RB

290258

29,320.00

Dec. 4, 1963

16

RB

290262

15,000.00

Dec. 5, 1963

17

RB

290259

350.00

Dec. 6, 1963

17-A

RB

290266

27,630.00

Dec. 6, 1963

17-B

RB

290267

80.00

Dec. 6, 1963

17-C

RB

290271

26,475.00

Dec. 6, 1963

18

RB

286700

20,000.00

Dec. 9, 1963

19

RB

290275

900.00

Dec. 10, 1963

20

RB

290286

1,155.00

Dec. 11, 1963

20-A

RB

290287

29,700.00

Dec. 11, 1963

21

RB

290290

265.00

Dec. 12, 1963

21-A

RB

290294

36,300.00

Dec. 12, 1963

22

RB

290296

10,000.00

Dec. 13, 1963

22-A

RB

290297

13,445.00

Dec. 13, 1963

23

RB

290288

10,000.00

Dec. 16, 1963

23-A

RB

294881

15,000.00

Dec. 16, 1963

24

RB

290269

20,000.00

Dec. 17, 1963

25

RB

290289

10,000.00

Dec. 18, 1963

25-A

RB

290291

15,000.00

Dec. 18, 1963

26

RB

294882

10,000.00

Dec. 19, 1963

26-A

RB

294883

8,105.00

Dec. 19, 1963

26-B

RB

294888

12,700.00

Dec. 19, 1963

26-C

RB

294891

150.00

Dec. 19, 1963

27

RB

294895

308.00

Dec. 22, 1963

28

RB

294890

20,000.00

Dec. 23, 1963

28-A

RB

294897

425.00

Dec. 23, 1963

29

RB

294893

20,000.00

Dec. 26, 1963

29-A

RB

294894

5,000.00

Dec. 26, 1963

29-B

RB

298305

23,200.00

Dec. 26, 1963

29-C

RB

298308

45.00

Dec. 26, 1963

30

RB

298315

27,300.00

Dec. 27, 1963

74

RB

276380

5,500.00

Oct. 15, 1963

75

RB

276399

6,020.00

Oct. 28, 1963

76

RB

280687

3,000.00

Nov. 8, 1963

77

RB

294876

2,000.00

Dec. 13, 1963

88

PNCB

155579

12,000.00

Dec. 18, 1963

In return or substitution thereof, Mrs. Farin issued the following checks:

No. of

Name of

Check

Amount

Date

Exhibit

Bank

No.

A

PNCB

069913

P 740.00

Dec. 4, 1963

A-1

PNCB

069912

17,100.00

Dec. 4, 1963

A-2

PNCB

069925

27,630.00

Dec. 6, 1963

A-3

PNCB

069928

15,000.00

Dec. 6, 1963

A-4

PNCB

069933

17,550.00

Dec. 6, 1963

A-5

PNCB

069934

10,080.00

Dec. 6, 1963

A-6

PNCB

069929

20,000.00

Dec. 6, 1963

A-7

PNCB

069948

12,900.00

Dec. 11, 1963

A-8

PNCB

153996

10,000.00

Dec. 11, 1963

A-9

PNCB

068264

29,532.00

Dec. 12, 1963

A-10

PNCB

068265

6,768.00

Dec. 12, 1963

A-11

PNCB

068508

23,445.00

Dec. 13, 1963

A-12

PNCB

068514

9,965.00

Dec. 16, 1963

A-13

PNCB

063521

20,000.00

Dec. 17, 1963

A-14

PNCB

068522

15,000.00

Dec. 18, 1963

A-15

PNCB

068530

7,500.00

Dec. 19, 1963

A-16

PNCB

068550

14,900.00

Dec. 19, 1963

A-17

PNCB

068540

25,200.00

Dec. 19, 1963

A-18

PNCB

068506

5,000.00

Dec. 20, 1963

A-19

PNCB

068951

10,000.00

Dec. 20, 1963

A-20

PNCB

068952

3,400.00

Dec. 20, 1963

A-21

PNCB

068548

20,000.00

Dec. 20, 1963

A-22

PNCB

070025

1,000.00

Dec. 26, 1963

A-23

PNCB

070028

5,000.00

Dec. 26, 1963

A-24

PNCB

070024

27,840.00

Dec. 26, 1963

A-25

PNCB

070026

23,200.00

Dec. 26, 1963

A-26

PNCB

070041

33,500.00

Dec. 27, 1963

A-27

PNCB

069713

28,800.00

Dec. 27, 1963

Meanwhile or in December 1963, accused applied for a loan of P120,000.00 with the PNCB against a collateral of a 3-storey building worth P300,000.00 which she and her husband owned (tsn, p. 18, Sept. 24, 1970, L. Perez). When the net proceeds of the said loan were released by the PNCB, Mrs. Farin used the same (tsn, p. 20, Sept. 24, 1970, L. Perez).

Being very much influential, Mrs. Farin opened a current account for accused in the Equitable Bank and in the PNCB al-though the "collaterals are theirs" (tsn, p. 22, Dec. 5, 1968, P. Farin). These were in addition to the current account of ac-cused with the Republic Bank. Again, the said current accounts in the name of accused were controlled by Mrs. Farin (tsn, p. 21, Sept. 24, 1970, L. Perez). The checkbooks of the said current accounts were kept by Mrs. Farin and she used to make accused sign all the checks in blank and then took them with her (tsn, pp. 10-15, Sept. 24, 1970, L. Perez).

During the month of January, 1964, accused was made to issue in favor of Mrs. Farin as much as 6 checks a day. Thus, for one month alone, accused had been made to issue as much as ninety (90) checks, to wit:

No. of

Name of

Check

Amount

Date

Exhibit

Bank

No.

31

RB

298322

P 892.50

Jan. 2, 1964

32

RB

294899

10,000.00

Jan. 3, 1964

33

RB

300757

27,300.00

Jan. 7, 1964

33-A

RB

300760

26,900.00

Jan. 7, 1964

34

RB

300761

650.00

Jan. 8, 1964

34-A

RB

300762

29,300.00

Jan. 8, 1964

35

RB

298307

5,080.00

Jan. 9, 1964

35-A

RB

300765

10,000.00

Jan. 9, 1964

36

RB

290277

400.00

Jan. 10, 1964

37

RB

300772

5,000.00

Jan. 13, 1964

38

RB

303327

14,750.00

Jan. 14, 1964

38-A

RB

303328

27,330.00

Jan. 14, 1964

38-B

RB

303338

18,730.00

Jan. 14, 1964

39

RB

298316

15,000.00

Jan. 15, 1964

39-A

RB

298318

20,000.00

Jan. 15, 1964

39-B

RB

303332

2,320.00

Jan. 15, 1964

39-C

RB

303337

19,750.00

Jan. 15, 1964

40

RB

303340

24,300.00

Jan. 16, 1964

41

RB

303341

23,775.00

Jan. 16, 1964

42

RB

303350

25,930.00

Jan. 17, 1964

43

RB

305326

24,700.00

Jan. 20, 1964

43-A

RB

305332

29,850.00

Jan. 20, 1964

44

RB

300773

15,000.00

Jan. 21, 1964

44-A

RB

305330

3,055.00

Jan. 21, 1964

45

RB

290264

8,300.00

Jan. 22, 1964

45-A

RB

300774

20,000.00

Jan. 22, 1964

45-B

RB

300775

10,000.00

Jan. 22, 1964

45-C

RB

305335

800.00

Jan. 22, 1964

45-D

RB

305337

7,340.00

Jan. 22, 1964

45-E

RB

305338

29,750.00

Jan. 22, 1964

46

RB

305346

27,300.00

Jan. 23, 1964

46-A

RB

306551

24,950.00

Jan. 23, 1964

47

RB

303344

20,000.00

Jan. 24, 1964

47-A

RB

306552

1,270.00

Jan. 24, 1964

47-B

RB

306556

14,316.00

Jan. 24, 1964

47-C

RB

306559

12,455.00

Jan. 24, 1964

48

RB

306560

475.00

Jan. 27, 1964

49

RB

290263

19,700.00

Jan. 29, 1964

49-A

RB

305334

25,000.00

Jan. 29, 1964

49-B

RB

306567

17,500.00

Jan. 29, 1964

49-C

RB

306568

14,900.00

Jan. 29, 1964

50

RB

303345

15,000.00

Jan. 30, 1964

50-A

RB

305333

20,000.00

Jan. 30, 1964

50-B

RB

306572

3,180.00

Jan. 30, 1964

50-C

RB

306573

26,750.00

Jan. 30, 1964

50-D

RB

306574

29,850.00

Jan. 30, 1964

50-E

RB

306575

30,000.00

Jan. 30, 1964

51

RB

308052

15,000.00

Jan. 31, 1964

51-A

RB

308055

22,450.00

Jan. 31, 1964

51-B

RB

308057

19,500.00

Jan. 31, 1964

78

RB

300764

10,200.00

Jan. 8, 1964

79

RB

303342

10,000.00

Jan. 16, 1964

80

RB

305327

15,000.00

Jan. 20, 1964

81

RB

305329

10,150.00

Jan. 20, 1964

82

RB

306557

10,000.00

Jan. 24, 1964

89

PNCB

155579

34,650.00

Jan. 17, 1964

90

PNCB

155580

39,555.00

Jan. 17, 1964

91

PNCB

155581

38,540.00

Jan. 17, 1964

92

PNCB

155582

39,445.00

Jan. 20, 1964

93

PNCB

155583

37,895.00

Jan. 20, 1964

94

PNCB

155584

38,775.00

Jan. 22, 1964

95

PNCB

155585

39,445.00

Jan. 22, 1964

96

PNCB

155586

39,550.00

Jan. 22, 1964

97

PNCB

155587

38,655.00

Jan. 22, 1964

98

PNCB

155588

41,335.00

Jan. 23, 1964

99

PNCB

155589

38,770.00

Jan. 23, 1964

100

PNCB

155590

42,660.00

Jan. 23, 1964

101

PNCB

155591

28,880.00

Jan. 24, 1964

102

PNCB

155592

39,719.00

Jan. 24, 1964

103

PNCB

155593

43,715.00

Jan. 24, 1964

104

PNCB

155594

41,565.00

Jan. 27, 1964

105

PNCB

155595

39,866.00

Jan. 27, 1964

106

PNCB

155596

38,445.00

Jan. 27, 1964

107

PNCB

155597

38,595.00

Jan. 27, 1964

108

PNCB

155598

29,880.00

Jan. 28, 1964

109

PNCB

155599

41,890.00

Jan. 28, 1964

110

PNCB

155600

43,699.00

Jan. 28, 1964

111

PNCB

072551

41,895.00

Jan. 29, 1964

112

PNCB

072552

39,635.00

Jan. 29, 1964

113

PNCB

072553

39,775.00

Jan. 29, 1964

114

PNCB

072554

40,885.00

Jan. 29, 1964

115

PNCB

072555

39,965.00

Jan. 30, 1964

116

PNCB

072556

37,418.00

Jan. 30, 1964

117

PNCB

072557

40,675.00

Jan. 30, 1964

118

PNCB

072558

39,770.00

Jan. 29, 1964

119

PNCB

072559

41,770.00

Jan. 30, 1964

120

PNCB

072560

38,660.00

Jan. 30, 1964

121

PNCB

072561

39,880.00

Jan. 31, 1964

122

PNCB

072562

37,445.00

Jan. 31, 1964

123

PNCB

072563

39,770.00

Jan. 31, 1964

For her part, Mrs. Farin issued the following checks:

No. of Exhibit

Name of Bank

Check

No.

Amount

Date

B

PNCB

070067

P12,500.00

Jan. 6, 1964

B-1

PNCB

070066

14,800.00

Jan. 7, 1964

B-2

PNCB

070073

20,000.00

Jan. 8, 1964

B-3

PNCB

070070

26,900.00

Jan. 8, 1964

B-4

PNCB

156546

P29,300.00

Jan. 8, 1964

B-5

PNCB

068979

16,500.00

Jan. 10, 1964

B-6

PNCB

120172

22,400.00

Jan. 13, 1964

B-7

PNCB

067537

19,750.00

Jan. 13, 1964

B-8

PNCB

120673

21,866.00

Jan. 13, 1964

B-9

PNCB

071604

29,650.00

Jan. 14, 1964

B-10

PNCB

071619

31,480.00

Jan. 15, 1964

B-11

PNCB

071624

20,075.00

Jan. 16, 1964

B-12

PNCB

071622

2,000.00

Jan. 16, 1964

B-13

PNCB

071637

29,985.00

Jan. 17, 1964

B-14

PNCB

071625

35,000.00

Jan. 16, 1964

B-15

PNCB

071630

10,000.00

Jan. 16, 1964

B-16

PNCB

070984

20,000.00

Jan. 16, 1964

B-17

PNCB

070989

24,700.00

Jan. 20, 1964

B-18

PNCB

071641

8,500.00

Jan. 20, 1964

B-19

PNCB

120693

25,000.00

Jan. 20, 1964

B-21

PNCB

071645

12,190.00

Jan. 22, 1964

B-22

PNCB

069949

8,300.00

Jan. 22, 1964

B-23

PNCB

070996

24,350.00

Jan. 23, 1964

B-24

PBC

120692

11,500.00

Jan. 20, 1964

B-25

PNCB

071553

29,925.00

Jan. 23, 1964

B-26

PNCB

071569

25,500.00

Jan. 24, 1964

B-27

PNCB

071562

25,895.00

Jan. 24, 1964

B-28

PNCB

071566

27,750.00

Jan. 24, 1964

B-29

PNCB

071481

18,500.00

Jan. 24, 1964

B-30

PNCB

071480

16,826.00

Jan. 24, 1964

B-31

PNCB

069950

19,700.00

Jan. 29, 1964

B-32

PNCB

071589

19,775.00

Jan. 29, 1964

B-33

PNCB

071585

16,256.00

Jan. 29, 1964

B-34

PNCB

072504

19,330.00

Jan. 29, 1964

B-35

PBC

135525

29,500.00

Jan. 13, 1964

B-36

PBC

135528

15,000.00

Jan. 29, 1964

B-37

PNCB

072512

11,685.00

Jan. 13, 1964

B-38

PNCB

071512

39,600.00

Jan. 17, 1964

B-39

PNCB

135531

19,075.00

Jan. 31, 1964

Although the exchange of checks became more frequent and numerous, it went on smoothly. There were also times when accused delivered to Mrs. Farin cash checks which accused issued but cashed herself from the bank and then delivered the cash value to Mrs. Farin upon the latter's request (tsn, pp. 24-26, Aug. 17, 1970, L. Perez). These checks were issued by accused payable to cash and endorsed by accused herself, to wit:

No. of Exhibit

Name of Bank

Check

No.

Amount

Date

74

RB

276380

P5,500.00

Oct. 15, 1963

75

RB

276399

6,020.00

Oct. 28, 1963

76

RB

280687

3,000.00

Nov. 8, 1963

77

RB

294876

2,000.00

Dec. 13, 1963

78

RB

300764

10,200.00

Jan. 8, 1964

79

RB

303342

10,000.00

Jan. 16, 1964

80

RB

305327

15,000.00

Jan. 20, 1964

81

RB

305329

10,150.00

Jan. 20, 1964

82

RB

306557

10,000.00

Jan. 24, 1964

The next batch of checks which accused was made to issue by Mrs. Farin during the month of February 1964 were:

No. of Exhibit

Name of Bank

Check

No.

Amount

Date

52

RB

306558

P25,000.00

Feb. 2, 1964

53

RB

306553

25,000.00

Feb. 6, 1964

53-A

RB

308061

20,000.00

Feb. 6, 1964

53-B

RB

308062

25,000.00

Feb. 6, 1964

53-C

RB

308065

32,200.00

Feb. 6, 1964

54

RB

308063

20,000.00

Feb. 7, 1964

54-A

RB

308064

25,000.00

Feb. 7, 1964

54-B

RB

308068

22,000.00

Feb. 7, 1964

54-C

RB

308069

23,000.00

Feb. 7, 1964

54-D

RB

308070

12,000.00

Feb. 7, 1964

54-E

RB

308071

15,000.00

Feb. 7, 1964

54-F

RB

308072

34,900.00

Feb. 10, 1964

55

RB

309926

20,000.00

Feb. 10, 1964

55-A

RB

309927

25,000.00

Feb. 10, 1964

55-B

RB

309928

20,000.00

Feb. 10, 1964

55-C

RB

209929

25,000.00

Feb. 10, 1964

55-D

RB

306570

20,000.00

Feb. 10, 1964

55-E

RB

308073

20,000.00

Feb. 10, 1964

55-F

RB

308074

25,000.00

Feb. 10, 1964

56

RB

309931

25,000.00

Feb. 11, 1964

57

RB

309940

6,300.00

Feb. 12, 1964

58

RB

306569

25,000.00

Feb. 17, 1964

124

PNCB

072564

42,735.00

Feb. 3, 1964

125

PNCB

072565

43,619.00

Feb. 3, 1964

126

PNCB

072566

39,440.00

Feb. 3, 1964

127

PNCB

072567

43,390.00

Feb. 4, 1964

128

PNCB

072568

39,798.00

Feb. 4, 1964

129

PNCB

072569

38,695.00

Feb. 4, 1964

130

PNCB

072570

37,615.00

Feb. 4, 1964

131

PNCB

072571

39,435.00

Feb. 5, 1964

132

PNCB

072572

43,540.00

Feb. 5, 1964

133

PNCB

072573

44,660.00

Feb. 5, 1964

134

PNCB

072574

41,330.00

Feb. 5, 1964

135

PNCB

072575

41,590.00

Feb. 6, 1964

136

PNCB

072576

39,445.00

Feb. 6, 1964

137

PNCB

072577

41,895.00

Feb. 6, 1964

138

PNCB

072578

43,895.00

Feb. 6, 1964

139

PNCB

072579

43,635.00

Feb. 6, 1964

140

PNCB

072580

42,710.00

Feb. 7, 1964

141

PNCB

072581

43,210.00

Feb. 7, 1964

142

PNCB

072582

43,550.00

Feb. 7, 1964

143

PNCB

072583

46,319.00

Feb. 7, 1964

144

PNCB

072584

43,390.00

Feb. 7, 1964

145

PNCB

072585

41,890.00

Feb. 7, 1964

146

PNCB

072586

44,435.00

Feb. 10, 1964

147

PNCB

072587

43,665.00

Feb. 10, 1964

148

PNCB

072588

43,730.00

Feb. 10, 1964

149

PNCB

072589

39,810.00

Feb. 11, 1964

150

PNCB

072590

42,530.00

Feb. 11, 1964

151

PNCB

072594

43,615.00

Feb. 12, 1964

152

PNCB

072592

P44,670.00

Feb. 12, 1964

153

PNCB

072595

39,655.00

Feb. 12, 1964

154

PNCB

072596

5,600.00

Feb. 20, 1964

E

RB

309932

20,000.00

Feb. 11, 1964

F

RB

309933

25,000.00

Feb. 11, 1964

G

RB

309935

25,000.00

Feb. 11, 1964

H

RB

309936

20,000.00

Feb. 11, 1964

I

RB

309937

22,000.00

Feb. 11, 1964

J

RB

309938

23,000.00

Feb. 11, 1964

K

RB

309939

24,930.00

Feb. 12, 1964

L

RB

309941

27,300.00

Feb. 12, 1964

M

RB

309942

33,700.00

Feb. 12, 1964

N

RB

309943

29,000.00

Feb. 12, 1964

O

RB

309945

45,000.00

Feb. 13, 1964

P

RB

309946

45,000.00

Feb. 13, 1964

Q

RB

309947

38,000.00

Feb. 14, 1964

R

RB

309949

25,000.00

Feb. 14, 1964

S

RB

309948

27,000.00

Feb. 14, 1964

T

RB

309944

39,700.00

Feb. 14, 1964

In turn, Mrs. Farin issued the following checks:

No. of Exhibit

Name of Bank

Check

No.

Amount

Date

D

PNCB

073846

P25,000.00

Feb. 10, 1964

D-1

PNCB

135648

20,000.00

Feb. 10, 1964

D-2

PNCB

073824

34,000.00

Feb. 11, 1964

D-3

PNCB

073820

45,000.00

Feb. 11, 1964

D-4

PNCB

073815

25,000.00

Feb. 11, 1964

D-5

PNCB

073288

44,390.00

Feb. 12, 1964

D-6

PNCB

073829

20,000.00

Feb. 12, 1964

D-7

PNCB

073831

13,500.00

Feb. 12, 1964

D-8

PNCB

073820

33,900.00

Feb. 12, 1964

D-9

PNCB

074205

22,500.00

Feb. 13, 1964

D-10

PNCB

074204

22,500.00

Feb. 13, 1964

D-11

PNCB

074207

25,500.00

Feb. 14, 1964

D-12

PNCB

073839

25,000.00

Feb. 14, 1964

59

RCBC

31625

45,000.00

Feb. 10, 1964

60

RCBC

31629

20,000.00

Feb. 11, 1964

61

PBC

135610

35,500.00

Feb. 11, 1964

62

PBC

135615

29,850.00

Feb. 12, 1964

63

PBC

135616

26,990.00

Feb. 12, 1964

64

PBC

135617

6,000.00

Feb. 12, 1964

65

CBC

235008

45,000.00

Feb. 13, 1964

66

PNCB

071599

15,300.00

Feb. 22, 1964

67

PNCB

071597

12,500.00

Feb. 28, 1964

68

PNCB

071646

14,250.00

Feb. 28, 1964

69

PNCB

070099

42,330.00

Feb. 29, 1964

In the second week of February, 1964, the checks of Mrs. Farin issued to accused started to be dishonored (Exhs. 59-69). Upon noti-fication by the Republic Bank, accused got scared and alarmed (tsn, p. 30, Aug. 10,

1970, L. Perez). She asked her husband to accompany her to the house of Mrs. Farin (tsn, p. 8, Jan. 21, 1971).

Mrs. Farin told accused and her husband to redeposit said checks because she is going to clear them (tsn, p. 9, Jan. 21, 1971, Atty. Jose Perez). But the checks bounced again (tsn, p. 31, Aug. 10, 1970, L. Perez). Very much confused and sensing that there was something wrong with the transaction, accused pleaded with Mrs. Farin to put a stop on their exchange of checks and to have an accounting but the latter refused (tsn, pp. 19-20, Aug. 10, 1970, L. Perez). Atty. Perez told his wife to see a lawyer (tsn, p. 9, Jan. 21, 1971, Atty. Jose Perez).

Accused thereby consulted her lawyer (tsn, pp. 18-19, Aug. 10, 1970, L. Perez). Upon advise of counsel, the accused caused the stopping of payments on the checks she had issued to Mrs. Farin during the second week of February (tsn, pp. 8-9, Aug. 10, 1970, L. Perez).

Accused, through her counsel, took the following steps in order to terminate once and for all the so-called exchange of checks:

(1) Letter addressed to the PNCB by Atty. Faylona, counsel of accused, the pertinent portion of which reads as follows:

'In view of the fact that the blank checks issued by your bank to her under the abovesaid account is in the possession of a third party from whom she could not recover them any-more, please close the above current account upon receipt of this advise. This is being done to forestall my client and your bank of being defrauded under said account.' (Exh. 70).

(2) Letter addressed to the Equitable Banking Corporation by Atty. Faylona in behalf of accused which is of the same tenor as Exh. 70 (Exh. 71).

(3) Another letter addressed to the PNCB by Atty. Faylona requesting said bank to return to accused the cancelled or rejected checks under her current account with said bank (Exh. 72).

(4) Another letter addressed to the Equitable Banking Corporation signed by accused which reads as follows:

'This will authorize you to pay to Mrs. Petra P. Farin the sum of P4,960.00 which represents the balance of my current account No. 7-9576 when it was closed on February 17, 1964, after she has surrendered to you your EBC check book which still contains unused checks with Nos. 44061 to 44075 inclusive.' (Exh. 73)

In retaliation, Mrs. Farin as a plaintiff filed a civil action against accused as defendant for the recovery of P356,790.00 which was the alleged total cash value of the checks issued by her in favor of accused docketed before the CFI of Rizal as Civil Case No. Q-8446 dated November 18, 1964. In said civil case, and pursuant to the agreement of the parties, the court ordered the said parties to engage the services of a reputable public accountant who shall make the necessary accounting of the numerous checks issued by one to the other (Annex B of Petition).

To date, the required accounting has not yet been accomplished. In fact, the parties in said civil case have not yet agreed as to who should be appointed as accountant."^[3]

As stated herein earlier, the Court of Appeals convicted the petitioner, holding that "there was deceit when appellant misrepresented to complainant that the exchange of checks would be only for the purpose of 'activating her current account' with the Republic Bank so that her one-million peso loan application would be affirmed by said bank. This is so because actually, appellant did not use complainant's check only to 'activate' appellant's current account as she represented, but also misappropriated the value of complainant's check instead of depositing it in her current account to activate it. The result was that the checks she issued in exchange of those of complainant were dishonored to the damage of complainant. The supposed application for a one-million peso loan appears to be pure fiction, the allegation with respect thereto not having been substantiated by competent proof. It

was evidently made in furtherance of her scheme of fraud and swindle."⁴ The Court of Appeals affirmed the holding of the trial court that "what appellant did was to appropriate the money of complainant which she received only in trust or as a deposit, and therefore with the obligation to return it, which is the estafa defined in Art. 315 Sub-Sec. 1(b) of the Revised Penal Code."⁵

We do not agree that under the factual circumstances of the instant case, there was deceit employed by the accused petitioner in the agreement between her and the complainant to exchange bank checks to each other. It must be noted that complainant issued checks to the petitioner, not just one single check and the latter likewise issued numerous checks to the complainant, and not just only one. It must also be considered that the exchange of bank checks is not a usual or normal banking transaction. The exchange is quite irregular and out of the ordinary banking practice. Complainant herself testified that she entered into the agreement without any consideration. (t.s.n., pp. 22-23, Hearing of Dec. 4, 1968). The number of checks involved in the exchange was quite numerous, running to hundreds - 214 checks issued by complainant and 91 checks issued by the accused petitioner, in varying amounts and on different dates between the period October 1963 to February 1964.

Moreover, complainant appears to be an experienced businesswoman, wise and knowledgeable in banking practices and transactions since admittedly she has in her own name bank accounts in some 13 established banking institutions in Manila, such as: 1. First United Bank; 2. Traders Commercial Bank; 3. Rizal Banking Corporation; 4. Philippine National Cooperative Bank (PNCB); 5. The China Banking Corporation; 6. The Equitable Banking Corporation; 7. The Pacific Banking Corporation; 8. The Continental Bank and Trust Company; 9. The Consolidated Bank and Trust Company; 10. The Citizens Bank and Trust Company; 11. The Philippine Bank of Commerce; 12. The Prudential Bank and Trust Company; and 13. The Merchants Banking Corporation.⁶ It is not likely that complainant was or can easily be deceived into agreeing to exchange her checks with petitioner. Complainant also appears to have influential connections with the banking community that it was quite easy for her to check or verify whether petitioner had actually a million peso loan application or not. More than that, approval of loan application, such as for one million pesos as in the instant case, is not based nor dependent on the activated bank account of the applicant but on the net worth or assets of the borrower, his solvency and the value of collaterals offered as security for the loan.

As the trial court itself observed in its judgment which the Court of Appeals affirmed in toto, "(d)uring the early days of their transactions covering those exchanges of checks, nothing went wrong. All the checks issued by the accused in exchange of the checks received by her from the complainant were honored and paid by the accused's bank. It was however, sometime in February of 1964 when the accused's checks issued and exchanged for the checks she received from the complainant, (Exhs. E, F, G, T, I, J, K, L, M, N, O, P, Q, R, S, T) were returned with notations "Drawn Against Uncollected Deposits" and later "Stop Payment" (Exhs. E-1 to T-1).⁷

Clearly therefore, the exchange of checks between accused petitioner and complainant was from its beginning to February 1964, to the mutual satisfaction and interest of both parties. Hence, it is of no moment, immaterial and inconsequential to decide who induced whom to enter and agree to the transaction. Neither is it essential to inquire into the alleged "kiting" operations of the complainant for the investigation report to the Monetary Board contained in its Board Resolution No. 479 submitted as Annex "B" in the Brief for the Petitioner-Accused before this Court, pages 98-106, is clearly inadmissible in evidence against the complainant and may not be considered to her prejudice. The report originally submitted in petitioner's motion for new trial as newly-discovered evidence was ruled out to be without merits by the trial court in its order of April 3, 1975.

To Our mind, the fundamental issue to be resolved is the defense of good faith claimed by petitioner contending that her liability is purely civil.

Admittedly, the transaction between the parties involves hundreds of thousand pesos. The information in fact alleges a total amount of P377,930.00 purportedly misappropriated by the accused petitioner. It is significant that the amount of P377,930.00 is not represented by one single check alone but is the combined total value of 13 checks listed in the information. The evidence on record shows that the complainant issued 214 checks to the accused while the latter issued 91 checks to the former. It is also established in the evidence that the petitioner when informed by the bank that the checks of the complainant were beginning to be dishonored (Exhs. 59-69) got scared and alarmed. She forthwith confronted the complainant who told her that the checks will be cleared but nonetheless the checks bounced again. Petitioner demanded an accounting which complainant refused. As a last resort, petitioner consulted her lawyer who advise her to cause the stopping of payment on petitioner's checks and her lawyer further wrote the PNCB (Philippine National Cooperative Bank) and the Equitable Banking Corporation the following letter of advice:

"February 18, 1964

Philippine National Cooperative Bank

Boston Street, Port Area

Manila

Gentlemen:

Current Account of Leonila

_____ S. Perez _____

This is written on behalf of my client, Mrs. Leonila S. Perez.

In view of the fact that the blank checks issued by your bank to her under the above-cited account is in the possession of a third party from whom she could not recover them anymore, please close the above current account upon receipt of this advice. This is being done to forestall my client and your bank of being defrauded under said account.

Very sincerely,

S/T K. V. FAYLONA

Counsel for Mrs. Leonila S. Perez

Conforme:

S/T Leonila S. Perez" (Exh. "70")

Petitioner's counsel also wrote in behalf of petitioner a similar letter to the Equitable Banking Corporation, Juan Luna Street, Manila, requesting that the current account of petitioner with the bank be closed upon receipt of the letter, (Exh. "71"). The same lawyer also addressed another letter to the Philippine National Cooperative Bank requesting the return to petitioner of the cancelled or rejected checks under her current account with said bank. (Exh. "72") There is also another letter by the petitioner to the Equitable Banking Corporation dated March 11, 1964 which reads:

"This will authorize you to pay to Mrs. Petra P. Farin the sum of P4,960.00 which represents the balance of my current account NO. 7-9576 when it was closed on February 17, 1964 after she has surrendered to you your EBC check book which still contains unused checks with Nos. 44061 to 44075 inclusive." (Exh. "73")

The above evidence clearly indicate the grave concern and alarm that took over the petitioner who sought the

advice of counsel and the latter wrote the letters hereinabove quoted, after the checks marked Exhibits 59-69 issued by complainant to petitioner started to be dishonored, as can be seen in the debit statements given by the Republic Bank to the petitioner, Exh. 155 (Original Records, p. 249) with the following data:

Date

Check

Drawn

Deposited

No.

On

Reason for Return

Amount

2-12-64

135610

PBC

“Refer to Drawer”

P 35,500.00

-do-

135615

PBC

-do-

29,850.00

-do-

135617

PBC

-do-

6,000.00

-do-

135616

PBC

-do-

26,990.00

2-11-64

31629

Rizal

“Drawn Against

Uncollected Dep.”

20,000.00

-do-

31625

Rizal

-do-

45,000.00

P163,340.00

vvvvvvvvvvvvvvvvvvvv

(Exhibit 156, Original Records, p. 250)

2-13-64

VU235008

EBC

“Exceeds Arrangement”

P45,000.00

(Exhibit 157, Original Records, p. 251)

2-17-64

31629

Rizal

“Exceeds Arrangement”

P20,000.00

-do-

31625

Rizal

-do-

45,000.00

P65,000.00

vvvvvvvvvvvvvvvvvv

The above documentary proof indubitably show that complainant's checks bounced first as early as February 11, 1964, causing petitioner to react by closing her account in order to protect her own interest. We are in conformity with petitioner's contention that she acted in good faith and with justifiable reasons in stopping payments of the checks which she had issued to the complainant. Indeed "(g)ood faith and a desire to protect one's interest negate criminal intent. In prosecutions for estafa under par. 1(b), Article 315 of the Revised Penal Code, fraudulent misappropriation is mandatory. But where retention or withholding of funds was made in good faith or honestly done and for the purpose of self-protection or where otherwise an accounting appears to be indispensable, there is no misappropriation and therefore no estafa." (Reply Brief for Petitioner, p. 32)

It is of record that complainant Petra Farin filed a civil case against the accused petitioner for the recovery of P357,790.00 which was the alleged total cash value of the checks issued by her in favor of petitioner docketed

before the Court of First Instance of Rizal as Civil Case No. Q-8446 dated November 18, 1964 which is prior to the filing of the information for estafa against petitioner on December 3, 1965 but now increased to the amount of P377,930.00, although based on the same transaction of bank checks exchange between them.

In the civil case aforementioned, We note the order of the presiding judge dated July 16, which held that the only issue is who of the plaintiffs and defendants are indebted to each other, which involve an accounting of said checks. The order reads:

"When this case was called for trial today the attorneys of the parties manifested that their evidence consists of checks issued by the plaintiffs and by the defendants in favor of each other; that some of these checks were honored and some were dishonored; that the only issue is who of the plaintiffs and defendants are indebted to each other, which involves an accounting of said checks; and that the said accounting required the services of a reputable and competent public accountant, inasmuch as there were so many checks issued, all involving a considerable amount of money. The attorneys of parties agreed to engage the services of a reputable public accountant to be agreed by this Court; and to submit a stipulation of facts for the consideration of the Court, which stipulation will contain a reservation to introduce evidence on matter not covered by it." (Order dated July 16, 1965)⁸

Implementing the above order, the Court directed the parties to submit the names of their nominees to act as commissioner for purposes of making the necessary accounting, which however was amended by its order of December 15, 1976 directing the constitution of a committee of three commissioners composed of a nominee by the plaintiff Petra Farin, another nominee by the accused and her husband and a chairman appointed by the Court. As finally organized the committee consisted of Atty. Mercedes S. Gatmaytan as Chairman with Jose Gozon (plaintiff's nominee) and Atty. Samy Y. Militante (defendant's nominee) as members.

No further proceedings appear on record in said Civil Case No. Q-8446 although there is a showing that the defendant (petitioner herein) had filed a bond in the amount of P357,000.00 to answer and indemnify the plaintiff for whatever amounts may be awarded to her in said case. And neither has the commissioners met to make the accounting as directed by the court.

Viewed in the light of the continuing and lengthening duration of the transaction which was decidedly becoming complicated and becoming more irregular, the enormous amounts involved, the numerous checks issued as well as the facts and circumstances immediately preceding the stoppage of payment of petitioner checks then issued to complainant, which petitioner herself caused by advising her bank, when complainant's checks started to bounce and were dishonored, and considering the proceedings taken and conducted in the civil case aforesaid filed by the complainant against the petitioner for the value of the checks exchanged by the plaintiff with the defendant petitioner, We are persuaded and convinced that the petitioner herein acted in good faith not only to put to a stop the exchange of checks between them which evidently was going beyond control but also effect an accounting of the said transaction to determine their respective financial positions. Such an accounting was indeed necessary to find out who owes whom, for according to petitioner, complainant owes her P200,000.00 while petitioner on the other hand owes complainant P400,000.00 (t.s.n., p. 52, August 17, 1970 hearing). At least, their respective accountings do not tally (t.s.n., pp. 30-33, August 17, 1970), quoted in Brief for Petitioner Accused, pp. 60-61.

The need for an accounting is clear and evident for as explained by petitioner, "the transaction is a daily and a continuing one which lasted for five-long months (October 1963 to February 1964). Although under said transaction both accused and Mrs. Farin agreed to exchange checks with each other, it did not turn out to be as simple as that. For the exchange of one check with the other is not of the same amount and in fact at no single day of their transaction did the amount of checks issued by accused to Mrs. Farin and vice-versa tally with each other. Space won't suffice if we were to mention all but one good example were the checks dated January 22, 1964.

While accused issued ten (10) checks: P8,300.00 (Exh. 45), P20,000.00 (Exh. 45-A), P10,000.00 (Exh. 45-B), P800.00 (Exh. 45-C), P7,340.00 (Exh. 45-D), P29,750.00 (Exh. 45-E), P39,445. (Exh. 95), P39,550.00 (Exh. 961), P38,655.00 (Exh. 97), P38,775.00 (Exh. 94) in exchange thereof Mrs. Farin issued only two (2) checks P12,190.00 (Exh. B-21) and P8,300.00 (Exh. B-22). Neither does the total number of checks issued by accused to Mrs. Farin and vice-versa tally with each other." (Brief for Petitioner-Accused, pp. 54-55)

Under Our jurisprudence, there can be no estafa where a previous settlement of an account is necessary to determine the balance. Thus, in *United States vs. Camara*, 28 Phil. p. 238, 241, it was held that:

"A mere shortage in an account does not prove the misappropriation and abstraction for which punishment is provided in the code. (Decisions of June 9, 1884 and November 7, 1889). If a previous settlement is necessary in order to determine the balance, as in the present case, where the court ordered one to be made, the crime of estafa does not exist. (Decision of May 5, 1886). Delay in the execution of a commission, or in the delivery of a sum received by reason thereof, only involves civil liability. (Decisions of November 24, 1886 and December 23, 1890)."

It is also material and relevant to consider the discussion made by the Supreme Court, speaking thru Justice Street in the case of *U.S. vs. Berbari*, 42 Phil. 152, 167, on the question of the good or bad faith with which the accused in an estafa case has acted, which We quote:

"The discussion in cases of this kind must always revolve more or less around the question of the good or bad faith with which the accused has acted; and it is fundamental here that, to be characterized as estafa, the reprobated act must have been done with fraudulent intent. The authorities upon this point are entirely clear. (III Viada, 4th ed., pp. 515, et seq., especially Questions XIII, XV, XXIII, XXX, and XXXV.) And no case can be cited where a person believed by the court to have acted honestly, under reasonable necessity for self protection, has ever been condemned under the provision of law (Art. 535, subs. 5, Penal Code) which supplies the basis of this prosecution.

In considering the application of that provision both judges and lawyers are prone to proceed upon the assumption that the mere detention of property by one who has received it under the conditions there defined makes out a prima facie case of estafa; but as pointed out in *United States vs. Bleibel* (34 Phil. 227), this is not absolutely correct. It is the fraudulent misapplication, appropriation, or conversion of the property which really constitutes the crime of estafa. The mere delay in the fulfillment of the trust, without a fraudulent conversion, involves only a civil liability. In this class of cases perhaps more than any other is applicable the maxim *non est reus nisi mens sit rea*.

x x x

A court of last resort naturally hesitates to announce any hard and fast rule that might tend to impair the efficacy of article 535, subsection 5, as a deterrent to dishonesty. Each case must be decided on its own particular facts. All that can be here safely stated is that a conviction for estafa under that provision cannot be sustained against any person - be he agent, partner or what not - who has in good faith retained the property committed to his care for the purposes of reasonable self-protection against his principal in the same or related matters."

The pith and core of Our ruling is that under the factual but peculiar circumstances and particulars of the instant case wherein a transaction was entered into mutually by and between the petitioner-accused and the complainant for the exchange of their respective bank checks in varying and substantial amounts running through a five months period and thereupon said petitioner-accused, when complainant's checks "bounced" or were dishonored, herself caused the stoppage of payments on her own checks issued to the complainant in order to terminate such an irregular banking transaction of exchanging checks and thereby effect a needed accounting to determine their respective liabilities for her self-protection, there is no estafa committed under Article 315, subsection 1(b)

of the Revised Penal Code, the accused-petitioner having acted in good faith and with justifiable reasons, such that her liability if any, is purely civil in nature which may be found and decided in the civil case pending between them.

WHEREFORE, IN VIEW OF THE FOREGOING, the judgment of conviction rendered by the respondent Court of Appeals is hereby REVERSED, and the accused is acquitted of the charge.

Costs de officio.

SO ORDERED.

Teehankee, (Chairman), Makasiar, and Fernandez, JJ., concur.

Aquino, J., see concurring opinion.

[1] Sixth Division, Ponente: De Castro, J.; Concurring: Reyes and ERICTA, JJ.

[2] Petition, Records, pp. 8-9.

[3] Brief of Accused-Petitioner, pp. 3-24.

5 CA Decision, p. 41, Records

6 Brief for petitioner-accused, pp. 37-38.

7 CFI Decision, pp. 92-93, Records

8 Reply Brief for Petitioner, pp. 27-28.

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CONCURRING OPINION

AQUINO, J.:

I concur in the result. Leonila S. Perez is not criminally liable for her failure to return to Petra Farin the amount covered by Petra's thirteen checks. Under the singular facts of this case, Leonila committed simply a breach of contract which resulted in her being indebted to Petra. That debt should be recovered in the civil action filed by Petra against Leonila seventeen years ago.

Petra Farin and Leonila S. Perez agreed in 1963 to engage in kiting operations or to play the kiting game, a dis-counting device for the manipulation of bank credit by means of checks usually undertaken with the connivance of venal bank officials.

A "kite" is a check drawn against uncollected funds in a bank account (Merriam-Webster's 3rd Int. Dictionary). Kiting is commonly employed to denote a species of fraud or fraudulent practice consisting in the exchange of drafts or checks of approximately the same dates and amounts (51 C.J.S. 532).

To "kite" means to secure the temporary use of money by issuing or negotiating worthless paper and then redeeming such paper with the proceeds of similar paper, *ad infinitum* (Ballentine's Law Dictionary. See *Associated Citizens Bank vs. Ople*, L-48896, February 24, 1981).

"Check kiting" is a procedure whereby checks written on accounts in separate banks are used to generate short-term purchasing power through the use of the bank's credit. A de-positor with accounts in two banks may build up his balance in Bank A by depositing a check drawn on Bank B, although his balance in Bank B (perhaps an out-of-town bank) is not sufficient to cover the check. He makes the check good before it is presented for collection but in the meantime has made use of the bank's credit. Many banks prevent this practice by re-fusing to credit any check for deposit until collection has been made. (5 Encyclopedia Britanica, 1973, p. 361.)

Pursuant to the agreement (call it a contract) between Petra and Leonila to exchange good checks and thus attain their respective mercenary objectives, Petra issued to Leonila in December, 1963 twenty-eight checks of the Philippine National Cooperative Bank with a total face value of P441,059 which were all cashed by Leonila (Exh. A to A-27). In turn, Leonila issued to Petra checks of the Republic Bank with a total value of P441,059.

In January, 1964, Petra issued to Leonila forty checks with a total value of P843,907 which were honored by the bank (Exh. B to B-39). Leonila issued to Petra checks for the same amount.

From February 5 to 10, 1964 Petra issued to Leonila ten checks with a total value of P254,600 and, as per agree-ment, Leonila issued to Petra checks for that same amount. So far, so good.

Then, during the five-day period from February 10 to 14, 1964, Petra issued to Leonila thirteen PNCB checks with a total value of P377,930 which were cashed by Leonila (Exh. D to D-12).

During that same five-day period, Leonila issued to Petra thirteen Republic Bank checks also for the total amount of P377,930 but (sad to state) Leonila's checks were dis-honored for having been drawn against uncollected deposits (Dauds) or because there was a notice of "Stop Payment" (Exh. E to T).

Leonila's thirteen "MacArthur" checks are the bases of the estafa case against her.

Note that Leonila was not charged with estafa for having issued bouncing checks, a form of estafa through false pre-tenses under paragraph 2(d), article 315 of the Revised Penal Code.

Leonila was charged and convicted of the other kind of estafa: estafa through misappropriation committed with unfaithfulness or abuse of confidence under paragraph 1(b) of article 315. Instead of being charged with thirteen offenses, Leonila was charged with only one offense. Apparently, the alleged estafa was treated as a continuing offense.

It appears that Petra had issued to Leonila eleven checks dated February 10,11,12,13,22,28 and 29, 1964 for the total sum of P292,720 which were dishonored (Exh. 59 to 69).

Petra did not resort right away to a criminal action against Leonila. Petra filed against Leonila in the Court of First Instance of Rizal in November, 1964 a civil action to recover the sum of P356,790 as the total cash value of the checks issued by Petra to Leonila, Civil Case No. Q-8446. Up to this time, the case has not been tried.

This case is quite unique because it is an episode in the kiting game. It was implicit in the agreement or con-tract between Leonila and Petra that they would play fairly the kiting game and that each would not double-cross the other or would not abuse each other's confidence. That means that only good checks should be exchanged.

Should there be betrayal of confidence or violation of the agreement, the liability of the infractor would be civil - assuming that such agreement to manipulate bank credit could give rise to a legitimate civil action. Maybe the

basis of such a civil action would be the prevention of unjust enrichment of one at the expense of the other.

Under the agreement to play the kiting game, there would be an exchange of good checks, so that if one check is cashed, the cash would be returned to the issuer of the check by means of the check issued by the other player who had cashed the first player's check.

In this case, no criminal action would lie against Leonila S. Perez because Petra Farin's remedy is the civil action for the recovery of the amount of the encashed checks. Since Petra Farin allegedly issued also bouncing checks, Leonila Perez could file a counterclaim based in the theory that there was a breach of the agreement.

For, if Leonila Perez should be held criminally liable for having issued bouncing checks, Petra Farin, who allegedly issued also bouncing checks, would incur the same criminal liability.

Leonila and Petra knew the risks of the kiting game. They knew that either one could easily double-cross the other.

Such a double-cross is a violation of their contract to play fairly the kiting game. The breach of contract gives rise to a civil action, not to a criminal action.

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