

BENJAMIN LU HAYCO, PETITIONER-APPELLANT, VS. THE HONORABLE COURT OF APPEALS, RESPONDENTS-APPELLEES.

G.R. Nos. L-49607-13. August 26, 1985

Ponente: GUTIERREZ, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/4390ccc5ccf2/>

GUTIERREZ, JR., J.:

In these two (2) petitions for review on certiorari, petitioner Benjamin Lu Hayco questions the decisions of the respondent Court of Appeals, now Intermediate Appellate Court, affirming the decisions of Branches I and III of the Court of First Instance of Manila convicting him of nineteen counts of estafa.

The facts are undisputed.

Lu Chiong Sun and his son, Lu Chiong Pee are the owners of the Units Optical Supply Company.

On October 17, 1972, petitioner Benjamin Lu Hayco was able to obtain a special power of attorney from Lu Chiong Sun to manage the Units Optical Supply Company. The special power of attorney authorized the petitioner:

- x x x

- x x x

- x x x

- To deposit and withdraw funds in the name of the company to be used in its business and to do anything in connection with the business of the said company."

However, from October 2, 1972 to December 30, 1972, the petitioner deposited monies amounting to One Hundred Thirty-Nine Thousand Pesos (P139,000.00) paid by customers of the Units Optical Supply Company, not in the company's banks but in his own personal accounts with the Equitable Banking Corporation and the Associated Banking Corporation.

On December 23, 1972 and January 2, 1973, Lu Chiong Sun and Lu Chiong Pee as owners of the Units Optical Supply Company sent two (2) letters of demand to the petitioner asking for an accounting of the properties entrusted to his care.

When the petitioner failed to comply, a criminal complaint for estafa thru falsification of a public document was filed against him with Branch II of the Court of First Instance of Manila. The case was docketed as Criminal Case No. 14968. On March 17, 1975, the criminal case was dismissed and the petitioner acquitted of the crime charged. The special power of attorney was declared valid.

On January 3, 1973, Atty. Francisco Koh as administrator of the Units Optical Supply Company filed Civil Case No. 89373 for accounting and recovery of a sum of money against the petitioner before Branch XIV of the Court of First Instance of Manila. Trial was, however, suspended and the case remained pending as the petitioner

manifested his willingness to settle his liability although he asked for time to look for funds needed to settle his obligations.

On March 14, 1974, the petitioner was again charged with seventy-five (75) counts of estafa before two different salas of the Court of First Instance of Manila. Thirteen (13) of the cases were assigned to Branch I, to wit: Criminal Cases Nos. F-164503 to F-164509 and F-164548 to F-164553. Six (6) other cases, to wit: Criminal Cases Nos. 164536 to F-164541 were assigned to Branch III of the same court.

The monies involved in Criminal Cases Nos. F-164503 to 164506, F-164536 to F-164541 and F-164548 to F-164554 were deposited in the personal accounts of the petitioner with the Associated Banking Corporation while those in Criminal Cases Nos. F-164507 to F-164509 were deposited in his personal account with the Equitable Banking Corporation.

On January 15, 1976, the Court of First Instance of Manila, Branch I convicted the petitioner in Criminal Cases Nos. F-164548 to F-164553 of the crime of estafa. The dispositive portion of the decision reads:

WHEREFORE, in the light of the above considerations the Court finds the herein accused, Benjamin Lu Hayco, guilty beyond reasonable doubt of the crime of estafa imputed to him in the Informations corresponding to the six (6) above-numbered cases, and hereby sentences him to suffer in each of the first five cases from SIX (6) MONTHS OF PRISION MAYOR, as minimum, to ONE (1) YEAR, EIGHT (8) MONTHS and TWENTY (20) DAYS OF PRISION MAYOR, as maximum; and to the last numbered case, from ONE (1) YEAR, EIGHT (8) MONTHS and TWENTY (20) DAYS of PRISION MAYOR, as minimum, to TWO (2) YEARS, ELEVEN (11) MONTHS and TEN (10) DAYS, as maximum, also of PRISION MAYOR, and to indemnify the offended party, the Units Optical Supply Co. in the following amounts, to wit:

P 1,080.00

(Crim. Case No. F-164548);

P 1,960.00

(Crim. Case No. F-164549);

P 4,372.50

(Crim. Case No. F-164550);

P 892.50

(Crim. Case No. F-164551);

P 232.81

(Crim. Case No. F-164552); and

P10,190.85

(Crim. Case No. F-164553);

and to pay the costs of the proceedings. The bonds of the accused, if any, for his provisional liberty, are ordered cancelled.

On July 19, 1976, Branch III of the Court of First Instance of Manila convicted the petitioner of another six (6) counts of estafa in Criminal Cases Nos. F-164536 to F-164541. The dispositive portion of the decision reads:

WHEREFORE, under the facts and evidence, the Court finds the accused Benjamin Lu Hayco criminally liable

for the offense charged in all the six (6) informations beyond reasonable doubt and hereby sentences him as follows:

1. In Criminal Cases Nos. F-164536 and F-164539, to suffer the penalty of four (4) months and twenty (20) days of prision mayor in each case;
2. In Criminal Cases Nos. F-164537, F-164538, F-164540 and F-164541, to suffer the indeterminate penalty of from four (4) months of prision mayor to one (1) year and one (1) day of prision mayor in each case;
3. To indemnify the complainant in the sum of P102.00 in Criminal Case No. 164536; P3,200.00 in Criminal Case No. F-164537; P1,596.40 in Criminal Case No. F-164538; P113.50 in Criminal Case No. F-164540; and P3,545.00 in Criminal Case No. F-164541; and
4. With all the accessories of the law and costs in all six (6) instances.

And again, on August 30, 1976 Judge Rosario R. Veloso of the Court of First Instance of Manila, Branch III likewise convicted the petitioner of still another six (6) counts of estafa in Criminal Cases Nos. F-164503 to F-164509. The dispositive portion of the decision reads:

WHEREFORE, the Court finds the herein accused, BENJAMIN LU HAYCO, guilty beyond reasonable doubt of the crime of Estafa he is charged with in the above-numbered SEVEN (7) cases and sentences him to suffer in Criminal Case:

No. F-164503 — FOUR (4) MONTHS of PRISION MAYOR, as minimum, to ONE (1) YEAR, TWO (2) MONTHS, and TWENTY-ONE (21) days of PRISION MAYOR, as maximum, and to indemnify the offended parties in the sum of P2,452.50, and to pay the costs;

No. F-164504 — FOUR (4) MONTHS of PRISION MAYOR, as minimum, to ONE (1) YEAR, TWO (2) MONTHS, and TWENTY ONE (21) DAYS OF PRISION MAYOR, as maximum, and to indemnify the offended parties in the sum of P1,671.00, and to pay the costs;

No. F-164505 - FOUR (4) MONTHS of PRISION MAYOR, as minimum, to ONE (1) YEAR, TWO (2) MONTHS, and TWENTY-ONE DAYS (21) of PRISION MAYOR, as maximum, and to indemnify the offended parties in the sum of P1,347.00 and to pay the costs;

No. F-164506 — FOUR (4) MONTHS of PRISION MAYOR, as minimum, to ONE (1) YEAR, TWO (2) MONTHS and TWENTY-ONE (21) DAYS of PRISION MAYOR, as maximum, and to indemnify the offended parties in the sum of P1,460.00 and to pay the costs;

No. F-164507 — FOUR (4) MONTHS of PRISION MAYOR, as minimum, to ONE (1) YEAR, TWO (2) MONTHS and TWENTY-ONE (21) DAYS of PRISION MAYOR, as maximum, and to indemnify the offended parties in the sum of P245.00 and to pay the costs;

No. F-164508 — FOUR MONTHS (4) OF PRISION MAYOR as minimum, to ONE (1) YEAR, TWO (2) MONTHS and TWENTY-ONE (21) DAYS of PRISION MAYOR, as maximum, and to indemnify the offended parties in the sum of P3,848.50 and to pay the costs;

No. F-164509 — FOUR (4) MONTHS of PRISION MAYOR, as minimum, to ONE (1) YEAR, TWO (2) MONTHS and TWENTY-ONE (21) DAYS of PRISION MAYOR, as maximum, and to indemnify the offended parties in the sum of P2,149.50 and to pay the costs.

The petitioner appealed the judgment of conviction in Criminal Cases Nos. F-164548 to F-164553 and F-164536 to F-164541 to the respondent Court of Appeals. The appeals were docketed as CA-G.R. Nos. 19861-19866-CR and CA-G.R. Nos. 20061-20066-CR respectively. The petitioner likewise appealed the judgment of conviction in criminal Cases Nos. F-164503 to F-164509 to the appellate court and these were docketed as CA-G.R. Nos. 20827-20833-CR.

On November 6, 1978, the Court of Appeals affirmed in toto the decisions in Criminal Cases Nos. F-164503 to F-164509. This decision is now the subject matter of G.R. Nos. L-49607-13.

On October 30, 1980, the appellate court likewise affirmed the judgments of conviction in Criminal Cases Nos. F-164536 to F-164541 and F-164548 to F-164553, but modified the penalties imposed. The dispositive portion of the decision reads:

WHEREFORE, finding the guilt of the accused-appellant to have been proved beyond reasonable doubt, the judgment of conviction in all the aforementioned 12 cases are hereby. AFFIRMED and accused-appellant is hereby sentenced as follows:

In Criminal Cases Nos. F-164536, F-164539, to 3 months and 1 day of prision mayor;

In Criminal Cases Nos. F-164537, F-164538, F-164540, F-164541, F-164548, F-164549, F-164550, F-164551 and F-164552, to an indeterminate penalty of 4 months and 1 day of prision mayor as the minimum to 1 year and 1 day of prision mayor as the maximum;

In Criminal Case No. F-164553, to an indeterminate penalty of 4 months and 1 day of prision mayor as the minimum to 1 year 8 months and 21 days of prision mayor as the maximum.

Except with the foregoing MODIFICATIONS all the judgments appealed from are hereby AFFIRMED in all other respects.

Motions for reconsideration in both cases were denied by the appellate court.

In G.R. No. L-55775-86 and G.R. No. 49607-13 the petitioner raises similar assignments of errors:

I

THE RESPONDENT COURT OF APPEALS' JUDGMENT OF CONVICTION IS VOID. IT IS THE CARDINAL RULE THAT A JUDGMENT MUST CONFORM TO AND BE SUPPORTED BY BOTH THE PLEADINGS AND THE PROOFS, AND SHOULD BE IN ACCORDANCE WITH THE THEORY OF THE ACTION ON WHICH THE PLEADINGS WERE FRAMED AND THE CASE WAS TRIED (SECUNDUM ALLEGATA ET PROBATA). (Republic of the Philippines vs. de los Angeles et al., SC-G.R. No. L-26112 October 4, 1971).

II

RESPONDENT COURT OF APPEALS ERRED IN UPHOLDING THE JUDGMENT OF CONVICTION OF PETITIONER BENJAMIN LU HAYCO BY THE CITY COURT, THUS (A) RESULTING IN A VIOLATION OF HIS CONSTITUTIONAL RIGHT AGAINST DOUBLE JEOPARDY OR (B) AT THE VERY LEAST THE PENDENCY OF THE CIVIL SUIT FOR ACCOUNTING AND RECOVERY (I.E. CIVIL CASE NO. 89373) A PREJUDICIAL QUESTION TO THE CONTINUED PROSECUTION OF THE INSTANT CHARGE.

III

RESPONDENT COURT OF APPEALS LIKE THE CITY COURT ERRED IN FINDING THE PRESENCE OF THE ELEMENT OF CONVERSION AND CONSEQUENTLY FINDING THE PETITIONER GUILTY OF ESTAFA.

The petitioner submits that a comparison of the first prosecution in criminal case No. 14968 with the instant prosecutions for seventy-five (75) counts of estafa, shows that both are essentially the same in material respects. Both prosecutions are directed against the same accused by the same complainant for the same act of misappropriating or converting monies received by the Units Supply Optical Company under the same special power of attorney.

The respondents on the other hand submit that the petitioner is not placed in double jeopardy because Criminal

Case No. 14968 is separate and distinct from the subsequent seventy-five (75) counts of estafa filed against him.

The petitioner's contentions have no merit. In *People v. Militante* (117 SCRA 910), we laid down the following requisites for the protection against double jeopardy to benefit the accused:

xxx (1) A valid Complaint or Information or other formal charge sufficient in form and substance to sustain a conviction; (2) a competent Court; (3) the defendant had pleaded to the charge; (4) the defendant had been convicted, or acquitted, or the case against him dismissed or otherwise terminated without his express consent; (5) the second offense charged is the same as the first, or is an attempt to commit the same or a frustration thereof, or that the second offense necessarily includes or is necessarily included in the offense or information.

And in *People v. Alger* (92 Phil. 227), we held that:

x x x In order that a former conviction may be a bar to another prosecution, it is important to determine if the accused is newly prosecuted either for the same offense or for any offense which necessarily includes or is necessarily included in the offense charged. Stated in another way, the new charge should refer to the same offense or to any other necessarily included in it.

In the cases at bar, the petitioner cannot invoke double jeopardy because he is not being prosecuted for the same offense which resulted in his earlier acquittal.

In the earlier criminal case for estafa thru falsification of public document filed against the petitioner, the information charged that:

x x x in or about and during the period October 17, 1972 and October 20, 1972, xxx said accused did then and there willfully, unlawfully and feloniously commit acts of falsification upon a public document in the following manner, to wit: the said accused prepared, forged and falsified a Special Power of Attorney; xxx that once said document was prepared, forged and falsified, xxx the said accused, by means of false manifestations and fraudulent representations which he made to the management of the Equitable Banking Corporation xxx succeeded in inducing the management of the said Equitable Banking Corporation to encash Check No. 12097675, dated October 19, 1972, payable to Cash, in the amount of P16,465.12, which check said accused, drew, issued, and made out by virtue of the falsified Special Power of Attorney xxx and that said manifestations and representations were made for the sole purpose of obtaining, as in fact he did obtain the said amount of P16,465.12, which, once in his possession, with intent to defraud, he did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert the same to his own personal use and benefit, to the damage and prejudice of said Lu Chiong Sun in the aforesaid amount of P16,465.12 xxx.

The information in Criminal Case No. 14968 is very clear. The petitioner was prosecuted for his alleged act of falsifying the special power of attorney and after the alleged falsification for using the same document in encashing Check No. 12097675 in the amount of P16,465.12 which amount he misappropriated, misapplied and converted to his own personal use and benefit. These acts were allegedly done sometime between October 17, 1972 to October 20, 1972.

In the case at bar, except as to the dates and amounts of conversion, the informations commonly charged that:

x x x the said accused, being then an employee of the Units Optical Supply Company x x x and having collected and received from customers of the said company the sum of x x x in payment for goods purchased from it under the express obligation on the part of the said accused to immediately account for and deliver the said collection so made by him to the Units Optical Supply Company x x x far from complying with his aforesaid obligation and despite repeated demands x x x to do so, did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert the said sum x x x to his own personal use and benefit by depositing the said amount in his own name and personal account x x x and thereafter withdrawing the same for his own use and benefit, to the damage and prejudice of the said Units Optical Supply Company.

More particularly, the dates and amounts of conversions in the nineteen (19) counts of estafa now under review areas follows:

CRIMINAL CASE NUMBER

AMOUNTS INVOLVED DEPOSIT SLIPS DATES

1. F-1,64503

P 2,452.50

October 3 & 4, 1972

2. F-164504

1,671.40

October 5, 1972

3. F-164505

1,347.00

October 2, 1972

4. F-164506

1,460.00

October 3, 1972

5. F-164507

245.00

October 22, 1972

6. F-164508

1,849.50

October 30, 1972

7. F-164509

2,149.50

October 31, 1972

8. F-164536

102.00

November 3, 1972

9. F-164537

3,200.00

November 4, 1972

10. F-164538

1,596.40

November 6, 1972

11. F-164539

113.50

November 7, 1972

12. F-164540

860.00

November 8, 1972

13. F-164541

3,545.00

November 10, 1972

14. F-164548

1,079.25

November 22, 1972

15. F-164549

1,862.00

November 23, 1972

16. F-164550

4,372.50

November 24, 1972

17. F-164551

892.50

November 27, 1972

18. F-164552

295.81

November 28, 1972

19. F-164553

10,190.85

November 30, 1972

It is apparent therefore, that the petitioner is not being prosecuted for the same offense. In Criminal Case No. 14968, the petitioner was prosecuted for his act of allegedly falsifying the special power of attorney and of using the same in withdrawing the amount of P16,465.12 from the bank account of Lu Chiong Sun sometime between October 17, 1972 to October 20, 1972. In the instant prosecution for nineteen (19) counts of estafa, the petitioner is being prosecuted for his act of converting the monies he received from the customers of the Units Optical Supply Company by depositing the same to his own personal bank accounts and, thereafter, withdrawing the same for his own use and benefit. It should be noted that in these nineteen (19) counts of estafa, the petitioner deposited the monies not within the period covered by Criminal Case No. 14968 which is from October 17, 1972 to October 20, 1972 but on various other dates. Thus, the nineteen (19) counts of estafa which are now under review do not include the acts which were the subject of the first prosecution for estafa.

The petitioner-appellant also argues that the pendency of Civil Case No. 89373 for accounting and recovery of a sum of money before Branch XIV of the Court of First Instance of Manila, was a prejudicial question which should have stopped the prosecution of the seventy-five (75) counts of estafa. The petitioner submits that the resolution of these criminal cases depends to a large extent on the decision to be rendered in the civil case because if the petitioner's accounting before the Court of First Instance of Manila, Branch XIV is found satisfactory, then the charges against him will have no basis.

The argument is beside the point.

In *People v. Aragon* (94 Phil. 357), we defined a prejudicial question as one "which arises in a case, the resolution of which (question) is a logical antecedent of the issue involved in said case, and the cognizance of which pertains to another tribunal". In *Librodo v. Coscolluela, Jr.* (116 SCRA 303), we ruled that prejudicial question:

x x x comes into play generally in a situation where a civil action and a criminal action are both pending and there exists in the former an issue which must be preemptively resolved before the criminal action may proceed, because howsoever the issue raised in the civil action is resolved would be determinative *juris et de jure* of the guilt or innocence of the accused in the criminal case.

The issues in the civil case for accounting and recovery of sums of money are not determinative of the innocence or guilt of the petitioner in the prosecution of the seventy-five (75) counts of estafa. In the civil case for accounting and recovery of a sum of money, Lu Chiong Sun alleged that thru fraud, deceit and machinations, the petitioner was able to secure a general power of attorney in his favor to manage the Units Optical Supply Company and by virtue of the said special power of attorney, was able to close existing bank accounts with the Equitable Banking Corporation and to open new bank accounts with the same bank and the Associated Banking Corporation in his name and that of the Units Optical Supply Company with himself as the sole authorized signatory. Lu Chiong Sun further alleged that the petitioner deceitfully disposed of stocks, supplies, and equipment amounting to P250,000.00 without the consent of Lu Chiong Sun and that the petitioner was able to transfer approximately P200,000.00 from the bank accounts of Lu Chiong Sun and the Units Optical Supply Company to his own personal bank account with the Equitable Banking Corporation and the Associated Banking Corporation. Finally, Lu Chiong Sun sought an order from Branch XIV of the Court of First Instance of Manila for the petitioner to render an accounting and to return (1) all funds received by him thru the management of the Units Optical Supply Company, including the proceeds of the sale he effected of all stocks, supplies and equipment and (2) all funds transferred by him from Lu Chiong Sun's and the Units Optical Supply Company's bank accounts to his own personal bank account.

On the other hand, the only question to be resolved in the criminal cases for estafa is whether or not the

petitioner's acts of receiving and collecting monies from the customers in payment for goods purchased, and failing to immediately account for and deliver the said collections having deposited them in his own personal bank accounts constitute estafa under Article 315(1-b) of the Revised Penal Code.

It is readily apparent that a finding in the civil case for accounting and recovery of a sum of money is not *juris et de jure* determinative of the innocence of the petitioner in the subsequent seventy-five (75) criminal cases of estafa filed against him.

Furthermore, a promise of payment made to the prejudiced party and such subsequent agreements as may be entered into between the author of the estafa and the injured party after its commission, do not affect the existence of the estafa nor the liability of the guilty person (*U.S. v. Rodriguez*, 9 Phil. 153).

Finally, the petitioner-appellant argues that there is no estafa since the element of misappropriation or conversion was not proven. He claims that the mere act of depositing company funds in his own personal bank accounts cannot constitute conversion.

Again, we see no merit in this argument.

We have consistently held that the disturbance in property rights caused by misappropriation, though only temporary, is itself sufficient to constitute injury within the meaning of Article 315 (1-b) of the Revised Penal Code. In *U.S. v. Goyenechea* (8 Phil. 117), the defendant pledge a typewriter belonging to McCullough and Company to the American Loan Company. Because of said act, the typewriter was seized by the police, and afterwards taken into court. Throughout the trial, McCullough and Company was placed in a doubtful position as to its right over the typewriter. We held that:

x x x all of which are facts duly brought out in the case and which show conclusively that McCullough & Co. at least suffered disturbance in its property rights in the said typewriter and in the possession thereof. This fact, by itself, and without it being necessary to deal with any other considerations of material fact herein, always constitutes real and actual damage, and is positive enough under rule of law to produce one of the elements constituting the offense, the crime of estafa.

In the case at bar, surely, there was at least a disturbance in the property rights of Lu Chiong Sun. While the funds received by the petitioner were all deposited in his own personal bank accounts with the Equitable Banking Corporation and the Associated Banking Corporation, Lu Chiong Sun and the Units Optical Supply Company could not dispose of the said amounts. At least, this could be considered as a temporary prejudice suffered by Lu Chiong Sun which is sufficient to constitute conversion in the context of Article 315 (1-b) of the Revised Penal Code. We agree with the observation of the Solicitor General that:

xxx when appellant deposited company funds in his personal account, his act constitutes conversion because the money is no longer under the un-impeded disposal of the owners. They could not withdraw their money without the consent of accused. Even here, there already existed a disturbance of property rights to the prejudice of the owners, which constitutes damage.

On the argument that it was not the intention of the petitioner to misappropriate the funds himself, such intention may not exist in cases of this nature. Furthermore, it is not a necessary element of the crime. In *U.S. v. Sevilla*, (43 Phil. 186), we held that:

Fraudulent intent in committing the conversion or diversion is very evidently not a necessary element of the form of estafa here discussed; the breach of confidence involved in the conversion or diversion of trust funds takes the place of fraudulent intent and is in itself sufficient. The reason for this is obvious: Grave as the offense is, comparatively few men misappropriate trust funds with the intention of defrauding the owner; in most cases the offender hopes to be able to restore the funds before the defalcation is discovered. x x x".

WHEREFORE, the petitions for review are hereby DISMISSED for lack of merit. The decisions appealed from are AFFIRMED.

Melencio-Herrera, Plana, Relova, and De La Fuente, JJ., concur.

Teehankee, (Chairman), and Alampay, JJ., no part.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.