

**LUCAS RAMIREZ AND ENCARNACION FAJARDO RAMIREZ,
PETITIONERS, VS. THE HONORABLE COURT OF APPEALS,
RESPONDENT.***G.R. Nos. L-23587-88. June 10, 1976*

Ponente: ESGUERRA, J.

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Before Us is a joint petition for certiorari to review the decision dated May 22, 1964 of the Court of Appeals, affirming the judgment of the Court of First Instance, Manila Branch XVI, in its Criminal Cases Nos. 33438, 33439 and 33440 convicting the spouses Lucas Ramirez and Encarnacion Fajardo Ramirez of the crime of falsification of public, official and/or commercial documents punishable under Section 172, paragraph 1, of the Revised Penal Code, and sentencing each of them in each case to not less than six (6) months of arresto mayor and not more than three (3) years, six (6) months and twenty-one (21) days of prision correccional, to pay a fine of P1,000.00 and one-half of the costs in each case.

The record discloses the following facts:

On December 9, 1949, the Central Bank of the Philippines, beset by an exchange crisis and pursuant to Section I4 (Exercise of Authority) and 74 (Emergency Restrictions on Exchange Operation) of Republic Act 265, otherwise known as the Central Bank Act, issued Circular No. 20 designed to protect international reserve during the said crisis. It subjected all transactions in gold and foreign exchange to a previous licensing by the Central Bank. To implement the said circular, guiding principles governing the licensing of foreign exchange for the payment of imports were promulgated and embodied in Circular No. 44 issued on June 12, 1953; and made effective July 1, 1953. It created the Bankers Committee to process applications of new importers who were made to accomplish and submit, among others, through local authorized banks, documents such as Balance Sheets, Profit and Loss Statements, Schedule of Monthly Sales and Merchandise Inventory to show that they met the criteria set by the Central Bank for new importers. These documents were further required to be certified to by an independent Certified Public Accountant. Further restrictions were imposed by subsequent circulars, all of which were devised to combat the then prevailing exchange crisis.

Against this backdrop, Criminal Cases Nos. 33438, 33430 and 33440, each entitled *People vs. Lucas Ramirez Encarnacion and Ligaya Bernardino*, *People vs. Lucas Ramirez, Encarnacion Ramirez and Salustia Lasin* and *People vs. Lucas Ramirez, Encarnacion Ramirez and Natalia Caparaz*, respectively, were filed, all for falsification of public, official and or commercial documents, spawned by a raid of Room 308 of the Quisumbing bldg. at Dasmariñas Street, Manila, which room was then leased by Mrs. Encarnacion Fajardo Ramirez. The search which was conducted by the NBI agents and Jose Aquino, a Central Bank confidential agent, yielded voluminous documents among which were duplicates of the papers submitted by applicant-importers Bernardino, Lasin and Caparaz duly certified by Segundo Esguerra, a CPA but which were allegedly falsified.

Criminal Case No. 33438 was eventually dismissed for failure of the prosecution to establish falsification and also

because one of the accused, Bernardino, remained at large.

In Criminal Case No. 33439 the information reads as follows:

"That on or about the period comprised between December 28, 1953 and May 12, 1954, inclusive, in the City of Manila, Philippines, the said accused, conspiring and confederating together with others whose true names and identities are still unknown, and helping one another, did then and there willfully, unlawfully and feloniously commit acts of falsification in the following manner, to wit: the said accused for the purpose of securing and obtaining dollar allocations or foreign exchange license for import payments, from the Central Bank of the Philippines, an agency or instrumentality of the Government of the Republic of the Philippines, thru its lawfully authorized agent, the Philippine Bank of Communications, did then and there willfully, unlawfully and feloniously prepare, concoct, execute and accomplish or cause to be prepared, concocted and executed and accomplished the following public, official and commercial documents:

1. Application of Salustia Lasin to qualify as new importer, together with:

- a. Balance Sheet as of December 31, 1953;
- b. Profit and Loss Statement for the year ending December 31, 1953;
- c. Schedule of Monthly Sales as of December 31, 1953;
- d. Merchandise Inventory as of December 31, 1953;
- e. Income Tax Return for 1953.

2. Information Sheet of Salustia Lasin as a new importer;

which documents have been executed under oath before a notary public and or officer authorized to administer oaths, as required by law and by the regulations duly promulgated by the Monetary Board, Central Bank of the Philippines pursuant to Republic Act No. 265, and other records or documents connected therewith and required by law to be kept by merchants, by stating, narrating, making it appear and representing in the said documents that the accused Salustia Lasin was qualified, under the law and regulations of the Central Bank, as a new importer, being actively engaged in the general merchandise (textile) business, with an establishment at Nos. 1514, 1515, Divisoria Market, in said city, continuously since July 1, 1953 operating on a paid-up capital of P23,500.00 with adequate distribution facilities, and that her purchases and gross sales of merchandise during the period from January 1, 1953 to December 31, 1953 amounted to P147,062.35 and P149,246.30, respectively and such other information or narration of facts pertinent thereto and in connection therewith, the said information, data and narration of facts being material for the purpose of said application, the said accused knowing fully well that their manifestations were all false and untrue and were made solely for the purpose of obtaining the said dollar allocations and foreign exchange license for import payments from the Central Bank of the Philippines; and the said accused, in furtherance of their conspiracy, submitted and filed the aforesaid documents with the said Central Bank of the Philippines thru its aforesaid duly authorized agent bank, vested by law with authority to determine and authorize the issuance of such dollar payments, securing and obtaining as a result thereof the approval of the application of said accused as a new importer and the issuance to her of a dollar allocation or foreign exchange license for import payments in the amount of \$8,975.00, every semester, to the damage and prejudice of the Republic of the Philippines and or the Central Bank of the Philippines."

Criminal Case No. 33440 likewise charged the spouses Lucas and Encarnacion Ramirez with the same offense, with Natalia Caparaz as co-accused. In the Information it was alleged that the foreign exchange allocation in the amount of \$8,177.75 every semester was obtained by Caparaz through the submission of falsified documents.

Record likewise showed that Salustia Lasin and Natalia Caparaz who were indicted in the information were discharged and made state witnesses. After trial the lower court convicted petitioners herein of the charges concerning the dollar application of Caparaz and Lasin. Both spouses appealed to the Court of Appeals which affirmed the judgment of the Court of First Instance and also denied their motion for reconsideration. Hence this petition.

Before We take up the assigned errors, We note, as was brought up by defense counsels Quisumbing, Ordoñez and Gatchalian in their well-written brief, the fact that — on January 21, 1962, while this case was pending in the Court of Appeals, the Central Bank issued Circular No. 133 which lifted and abolished the foreign exchange controls instituted by earlier circulars. This particular circular dispensed with the need for prior specific licensing from the Central Bank for the sale of foreign exchange for imports. Before Us now therefore are posed these questions:

1. Did the Honorable Court of Appeals err in not acquitting the petitioners herein?
2. Did the Honorable Court of Appeals err in not ruling that prosecution against petitioner spouses may no longer be had for falsification of documents required by Central Bank Circular No. 20 as a consequence of the repeal of said Circular by Circular No. 133?

I

A review of the proceedings and exhibits presented in the lower court reveals that there is truth in the findings of the trial court, affirmed by the Court of Appeals, that the spouses Lucas and Encarnacion Ramirez were guilty of the crime charged. Although their names never appeared in the allegedly falsified documents, this was so because they concocted, schemed and executed the plot to falsify the said documents submitted to the Central Bank very carefully and meticulously without involving their names, but this plot was betrayed by their active participation (other than signing their names) in the commission of the offense at bar which was positively proved.

During the trial the fact of illiteracy of the applicant-importers Salustia Lasin and Natalia Caparaz was elicited and established. Capitalizing on the illiteracy of Lasin and Caparaz who neither could read nor write except to sign their names but who were eager beavers to be among the importers, spouses Lucas and Encarnacion Ramirez had ready-made applications with manufactured figures and data signed by them (applicant importers). These applications had every appearance of genuineness and since the same appear to be duly certified to by Segundo Esguerra, and independent Certified Public Accountant, in compliance with a CB regulation, the applicant importers qualified as new importers and in fact obtained dollar allocations.

Petitioners herein would pass the buck to Segundo Esguerra the CPA whose signature appeared in all the statements filed in the CB. Thus petitioner Ramirez declared during the trial that Segundo Esguerra with another lawyer, Osmundo Miranda, now deceased, sub-leased a portion of the room at 308 Quisumbing Bldg. leased by her which Esguerra used as his office after the regular office hours (Esguerra was said to be working for H.R. Lopez, Inc. as Accountant) and that he used to stay there from 11:30 A.M. to 2:00 P.M., then from 5:00 to 7:00 P.M. daily (t.s.n. November 4, 1960 pp. 37-41). She would also have us believe that the alleged falsified papers were found at the outer room which was then occupied by Esguerra and the late Atty. Miranda -- a fact which she failed to prove. When the raid occurred it was Lucas Ramirez who came to the scene, opened the main door and unlocked all the cabinets and drawers in Room 308. As found out by the Court of Appeals:

"* * * Los agentes de la ley antes de verificar el registro del cuarto Num. 308 de edificio Quisumbing estuvieron en la residencia de los esposos aquí acusados y Lucas Ramirez fue quien les acompañó al referido cuarto, y según las pruebas de la acusación, Ramirez tenía las llaves de los armarios y mesas que estaban

dentro del cuarto y fue quien abrio los cajones de dichas mesas donde se encontraron los duplicados y los documentos falsos." (Emphasis supplied) (Criminal Record, Decision of the Court of Appeals, Third Div.)

The testimony of Jose Aquino, CB agent (t.s.n. March 10, 1958 pp. 3-5) that he remembered that there were divisions in Room 308 with several tables but without identifying who the occupants of the tables were did not in any way lend support to the contention of accused Encarnacion Ramirez that she sub-leased a portion of her room to Esguerra and deceased Miranda. No contract of sub-lease was presented, and even assuming arguendo that the same was sub-leased, no reason was offered why Lucas Ramirez had the keys not only to the main door but all the cabinets and drawers as well. What is apparent is that Esguerra held office at Room 308 Quisumbing Bldg. not as sub-lessee but on agreement with Lucas Ramirez who was himself a CPA and an Auditor of H.R. Lopez Inc., a firm where Esguerra was also employed as an Accountant. In fact Esguerra admitted that he went to 308 Quisumbing Bldg. after office hours (t.s.n. March 20, 1959 pp. 12-13.) on instructions of Lucas Ramirez and signed statements for a fee of P100.00 per certification (t.s.n. October 5, 1956, Criminal Record p. 352, 357). It surprises Us why Esguerra was not subjected to further investigations if he were equally guilty of the crime charged. Accused Encarnacion Ramirez too tried to wash her hands by testifying that she did not know Natalia Caparaz nor did she meet her before the heaving (t.s.n. p. 21 Nov. 4, 1960). On further examination, however, she admitted having known her as she (Caparaz) was introduced to her (Ramirez) by a mutual friend, Apolonia Alcantara (t.s.n. p. 31 Nov. 4, 1960). Also during the raid, the NBI and CB agents found among the papers powers of attorney executed by Lasin and Caparaz in favor of Encarnacion Fajardo Ramirez, authorizing the latter to manage the disposal of the dollar allocations. Likewise it was shown during the trial that the spouses petitioners herein benefited from the dollar allocations obtained by Caparaz and Lasin and in fact retained the lion's share therefrom. Thus from the allocation obtained by Caparaz in the amount of \$8,177.75, she (Caparaz) was only given the amount of P400.00 as reimbursement of her expenses and P65.00 as her share of the dollar allocation (t.s.n. pp. 10-11 March 20, 1959). Similarly when Lasin's application was approved for \$8,975.00 she was only given a share of P500.00 (t.s.n. May 15, 1959 pp. 33-34). All the above facts positively affirm the guilt of spouses-petitioners herein.

II

Anent the second error, it is the contention of petitioners herein that with the advent of full decontrol envisaged in Circular No. 133 issued on January 21, 1962, the crime for which petitioners were indicted has already been extinguished. Pertinent provisions of Circular 133 are hereunder quoted for easy reference, viz:

“* * *

2. Only authorized agent banks may sell foreign exchange for imports. Such exchange should be sold at the prevailing market rate to any applicant, without requiring prior specific licensing from the Central Bank, subject to the following conditions:

a. All imports must be covered by letter of credit except small transactions involving not more than \$100.00;

b. * * *

* * * * *

"4. The free market rate shall not be administratively fixed but shall be determined through transactions in the free market.

* * * * *

"8. All existing circulars, rules and regulations and conditions governing transactions in foreign exchange not

inconsistent with the provisions of this Circular are deemed incorporated hereto and made integral parts hereof by reference."

It is very clear that Circular 133 lifted the restrictions imposed by Circular 20 and subsequent circulars thereto. In short Circular 133 repealed Circular 20. This is so because Circular 20 and Circular 133 are diametrically opposed to each other. While Circular 20 restricted the sale of foreign exchange and subjected all transactions therein to specific licensing by the Central Bank, Circular 133 practically did away with prior licensing. As aptly elucidated in the case of *People vs. Sandico*[1] , Jr. et al.

"* * * The Solicitor General's opposition to the motion for dismissal is predicated primarily upon his contention that Circular 20 has not been repealed by Circular 133, and that far from being incompatible, the two actually complement each other. This contention is without merit. In the first place, while Circular 20 restricts sales of foreign exchange and subjects all transactions therein to specific licensing by the Central Bank, Circular 133 neither restricts sales of foreign exchange nor subjects transactions therein to licensing. As a matter of fact, Circular 133 provides that foreign exchange shall be sold at a free market rate to any applicant without requiring prior specific licensing from the Central Bank, and that the free market rate shall not be administratively fixed but shall be determined in the transactions in the free market. From the contradictory concepts of the two systems may be seen the incompatibility between the two circulars. Circular 133 was promulgated precisely to remedy the evils brought about by the control system; it is therefore not ancillary to Circular 20. If life is to be given to the remedy of decontrol as a policy for economic survival, Circular 20 must give way to the supervening Circular 133. The purpose of Circular 133 cannot be achieved by applying the provisions of Circular 20; the two circulars cannot operate hand in hand. It may be true that Circular 133 contains no specific provision which is in direct conflict with Secs. 4-a and b of Circular 20, the particular sections under which the appellants were charged and convicted. But it is obvious nonetheless that the respective purposes of these two circulars are diametrically opposed to each other, because while Circular 20 restricts the sale of foreign exchange and subjects all transactions therein to specific licensing by the Central Bank, the purpose of Circular 133 is clearly to abolish such restrictions and do away with licensing. It is beyond doubt, therefore, that the purpose of Circular 20 was abandoned by the promulgation of Circular 133, and Secs. 4-a and b thereof have lost all meaning and function."

Also under paragraph 8 of Circular 133 (*supra*) it is so provided that circulars consistent with the provisions of Circular 133 are deemed incorporated thereto. However since Circular 20 is inconsistent and runs counter to it then by necessary implication the same is abrogated and repealed. And as *Sutherland*[2] an eminent authority on Statutory Construction says — "When a subsequent enactment covering a field of operation coterminous with a prior statute cannot by any reasonable construction be given effect while the prior law remains in operative existence because of irreconcilable conflict between the two acts, the latest legislative expression prevails and the prior law yields to the extent of the conflict."

The decisive question to determine now is whether or not repeal of Circular 20 obliterated petitioner's crime.

Petitioners heavily relied on the case of *People vs. Quasha*[3] where this Court opined:

"* * * The majority of the court, however, are also of the opinion that, even supposing that the act imputed to the defendant constituted falsification at the time it was perpetrated, still with the approval of the Parity Amendment to the Constitution in March 1947, which placed Americans on the same footing as Filipino citizens with respect to the right to operate public utilities in the Philippines, thus doing away with the prohibition in Section 8, Article XIV, of the Constitution in so far as American citizens are concerned, the said act has ceased to be an offense within the meaning of the law, so that defendant can no longer be held criminally liable therefor." * * *

On the other hand, the Court of Appeals in its decision said:

"Finalmente, los apelantes contienden que con la abolicion de la adjudicacion de dolares, los autos cometidos por los esposos en el supuesto de que fuesen estos culpables ya han dejado de ser punibles, citando para este efecto la causa de Pueblo vs. Quasha, 49 O.G., 2826. Entendemos que la contencion carece de merito porque en la presente causa los esposos estan acusados de falsification de documentos oficial y comercial y no de una infraccion de los reglamentos del Banco Central sobre la adjudicacion de dolares y la causa de Quasha, supra, no es aplicable al caso de autos donde en parte se sostuvo que debido a la enmienda de la Constitution concendiendo a los americanos iguales privilegios que los filipinos en la llamada clausula de paridad, no era necesario expresar en la excritura de incorporacion la nacionalidad de los incorporadores americanos en una corporation de utilidad publica puesto que tenian los mismos derechos y privilegios que los Filipinos en una corporacion de tal indole."

We believe that the ratiocination of the Court of Appeals is altogether hair-splitting. If We will recall, the crime of falsification stemmed from the violation of the legal requirements of the Central Bank, specifically Circulars 20 and 44, where applicant-importers were obliged to disclose the truth on the figures and data appearing in the documents submitted but which they allegedly falsified to qualify them as new importers. These requirements incorporated in Circular 20 and subsequent circulars were issued during an emergency in an effort to curb the outward flow of foreign exchange. Eventually, a free market ensued and the emergency measures were lifted. Consequently, there is no more obligation now to submit to the Central Bank such documents in support of the application for foreign exchange.

Although the acts imputed to the accused constituted, at the time they were committed, falsification of commercial documents penalized under Sec. 172, paragraph 1, of the Revised Penal Code, the promulgation of Central Bank Circular 133 abolishing the requirement of specific licensing under Central Bank Circular No. 20 wiped away the legal obligation of the applicants for foreign exchange to disclose the truth of the facts narrated in the documents support in their application. As there is no more legal obligation of the applicant to disclose such truth, an untruthful statement therein no longer constitutes the crime of falsification perpetrated by making false statements in a narration of facts (Francisco, Revised Penal Code, p. 194, 1963, ed.; U.S. vs. Lopez, 15 Phil. 515 and People vs. Quasha, 93 Phil. 333).

It may be argued that the repeal of Central Bank Circular No. 20 by Central Bank Circular No. 133 did not extinguish the criminal liability for falsification of commercial documents because the Revised Penal Code where such offense is punishable was unaffected thereby remains valid and subsisting. True that the pertinent provision of the Revised Penal Code on falsification was not repealed by Circular No. 133, but the stubborn fact remains that the repeal of Circular No. 20 which imposed the obligation to state the truth in the papers supporting the application for foreign exchange extinguished that obligation, leaving no more foundation on which the falsification of such papers would rest. The root cause of the falsification, which was Central Bank Circular No. 20, having been totally removed, the offense arising out of a disregard or violation of said circular has no more leg to stand on.

The greater weight of authority is inclined to the view that an appellate court, in reviewing a judgment on appeal, will dispose of a question according to the law prevailing at the time of such disposition, and not according to the law prevailing at the time of rendition of the appealed judgment. The court will, therefore, reverse a judgment which was correct at the time it was originally rendered where, by statute, there has been an intermediate change in the law which renders such judgment erroneous at the time the case was finally disposed of on appeal (111 A.L.R. 1318; see cases cited therein). Thus, if pending the appeal from a judgment of the lower court the law is changed, or the statute under which it was decided has been repealed, the appellate court must dispose of the case under the law in force when its decision is rendered. The court must conform its decision to the law then existing and may, therefore, reverse a judgment which was correct when pronounced in the subordinate tribunal, if it

appears that pending the appeal a statute which was necessary to support the judgment of the lower court has been withdrawn by an absolute repeal (Vance vs. Rankin (1902) 194 I11. 625, 62 N.E. 807, 88 Am St. Rep. 173; Wall vs. Chesapeake & O.R. Co. (1919) 290 111.227,125 N.E.20).

Likewise it was held that while as a general rule it is the province of an appellate court to inquire only into the question whether a judgment was erroneous when rendered, if subsequent to the judgment of the lower court and before the decision of the appellate court is handed down a law intervenes changing the applicable rule, the judgment of the lower court, although correct under the law prevailing at the time it was rendered, must be set aside by the appellate court and a judgment in conformity with the new law must be entered (U.S. vs. The Peggy (1801) 1 Cranch (U.S.) 103, 2 L. Ed. 49).

It may be argued that the function of the appellate court is not to consider the merits of a cause on the basis of supervening extraneous circumstances but merely to review the judgment of the lower court with a view to determining whether it was erroneous or correct when it was rendered. But because judgment is suspended by appeal, it is without finality; that to give it finality the appellate court must itself pronounce its judgment, and that in so doing it must be governed by the existing law. When the previous law under which alone validity could be given to the judgment has been repealed, the sole prop and foundation for support of the judgment has been removed, and of necessity it must be declared null and void (Yeaton vs. United States (1809) 5 Cranch (U.S.) 281, 3 L. Ed. 101).

In view of the failure of the Court en banc after its first deliberation to reach a decision on this case due to the absence of the required number of justices to promulgate a decision, and of the abstention of two justices from participating therein, the case was set for rehearing en banc in accordance with Sec. 3, Rule 125 of the Rules of Court.

On September 4, 1975, the case was reheard en banc and subsequently the justices present were requested to cast their respective votes on the final outcome of the case.

On April 8, 1976, the Court for the second time, formally voted on the case, and the result of the voting among the eleven justices present was as follows:

1. For ACQUITTAL of the accused appellants —

- 1) Esguerra
- 2) Muñoz Palma
- 3) Concepcion
- 4) Martin, JJ.

2. For CONVICTION of the accused appellants —

- 1) Castro, C.J.
- 2) Teehankee
- 3) Barredo
- 4) Makasiar
- 5) Aquino, JJ.

3. For ABSTENTION —

1) Fernando

2) Antonio, JJ.

It resulted that the majority of eight required by the constitution in ordinary cases heard en banc to decide a case has not for the second time been obtained.

Pursuant to the provisions of Sec. 3, Rule 125 of the Rules of Court, if after the case is reheard and in the rehearing no decision is again reached, the judgment of conviction of the lower court shall be reversed and the defendant shall be acquitted.

WHEREFORE, the accused appellants, Lucas Ramirez and Encarnacion Fajardo Ramirez, are hereby acquitted of the offense charged, with costs de oficio.

SO ORDERED.

Castro, C.J., dissents in a separate opinion.

Fernando, J., took no part.

Teehankee, J., dissents in a separate opinion.

Barredo, J., Concurs in the opinion of Justice Aquino.

Makasiar, J., concurs in the dissent of Justice Teehankee and Aquino, JJ.

Antonio, J., took no part.

Aquino, J., dissents in a separate opinion.

Concepcion, Jr., votes to acquit.

[1] 00964-C R July 20, 1962 Court of Appeals Reports vol. 2 p. 488, 493.

[2] Sutherland, Statutes and Statutory Construction 463, 464.

[3] L-6055, June 12, 1953, 93 Phil. 333, 340.

DISSENTING OPINION

CASTRO, C.J.:

The burden of my dissent may be simply stated thus: the repeal of Circular 20 by Circular 133 did not obliterate the crime of falsification punished by Article 172 of the Revised Penal Code which the herein petitioners were charged with and found guilty of in the court a quo. It is unmitigated nonsense to say that a mere circular issued by the Central Bank can operate to amend a statute passed by Congress; and since the herein petitioners were charged with the crime of falsification and not with a violation of Circular 20, no amount of sophistry can give validity to the conclusion that Circular 133 has operated to repeal Article 172.

Advertence is made by Mr. Justice Esguerra in his opinion to People vs. Sandico, Jr., et al. (Court of Appeals Reports, Vol. 2, July 20, 1962, pages 488, 492, 493). I was the Associate Justice who penned the decision in that case. If my complete opinion therein is to be examined very closely, it will be readily seen that the portions thereof cited by Mr. Justice Esguerra are unassailable, because the accused were charged, not with an offense

punished by the Revised Penal Code, but with a violation of Circular 20 in relation to Section 34 of Republic Act 265, or, more specifically, with having "transacted, negotiated or otherwise dealt in foreign exchange by purchasing, dealing in or transacting with persons or entities who are not authorized agents of the Central Bank of the Philippines, and by disposing, exporting and/or otherwise failing to sell said foreign exchange to any designated agent of the Central Bank within the requisite period."

Reliance on *People vs. Sandico* as a basis for the acquittal of the petitioners in the case at bar is not only improper; it is likewise grossly misleading.

DISSENTING OPINION

TEEHANKEE, J.:

I dissent from the decision reversing the judgment of conviction of petitioners-accused of the crime of falsification of public and commercial documents under Article 172 of the Revised Penal Code because of the Court's failure to attain the necessary 8 out of 9 votes for affirmance of the conviction (with 5 votes for affirmance and 4 votes for reversal) pursuant to Rule 125, section 3 of the Rules of Court.

As stated in the main opinion[1] the decisive question is whether or not repeal of 1949 Circular 20 subjecting all transactions in foreign exchange transactions to licensing by the Central Bank (allegedly by 1962 Circular No. 133 which provided for sales of foreign exchange at the prevailing free market rate without requiring specific licensing from the Central Bank but subject to certain conditions such as letters of credit to cover all imports with special time deposits varying from 25% to 150% depending upon the classification of the imported goods) "obliterated petitioners' crime" of falsification.

Even assuming that Circular No. 133 repealed Circular No. 20 (which in my opinion it did not, since it merely liberalized at the time the sales of foreign exchange with the adoption of a free market rate), the adoption of Circular No. 133 by the Monetary Board could by no means obliterate the crime of falsification under which the petitioners were charged, found positively guilty beyond all doubt (as reaffirmed in the main opinion[2]) and convicted.

Had the petitioners-accused simply violated the Circular by obtaining the dollar allocations without being entitled thereto but without falsification of documents, then they would have been criminally charged and convicted of willful violation of the Circular under Section 34 of Republic Act No. 265 which imposes the penalty of a fine up to P20,000.00 and imprisonment up to five years[3] . And the alleged repeal of Circular No. 20 might arguably be cited now for erasing their criminal liability thereunder for willful violation.

But petitioners without presenting themselves nor using their own names had fabricated documents and records to have their two illiterate dummies secure semestral dollar allocations as fake new importers in the amounts of \$8,177.75 (for Caparaz) and \$8,975.00 (for Lasin) per semester, which were actually for their use and benefit[4] and were therefore charged, tried and convicted for falsification of public and commercial documents under Article 172 of the Revised Penal Code[5] on the very strength of the testimonies of the two dummies who were utilized as state witnesses for the prosecution.

Clearly, the crime of falsification which remains a serious crime has not been obliterated by the alleged repeal of Circular No. 20, and petitioners' criminal liability has neither been obliterated nor extinguished.

The main opinion in holding that "the root cause of the falsification, which was Central Bank Circular No. 20, having been totally removed, the offense arising out of a disregard or violation of said Circular has no more leg to

stand on"[6] disregards that petitioners' motive in committing falsification (to get dollar allocations thru their dummies as fake new importers) does not erase or justify the crime of falsification of public documents with the removal of the motive (Circular No. 20) since in the falsification of public documents, whether by public officials or private persons, the idea of gain or intent to prejudice a third person is secondary and the principal thing punished is the violation of the public faith and the destruction of the truth as therein solemnly declared.

The removal (repeal) of the Circular might leave a prosecution for violation thereof under Section 34 of the Central Bank Act without any leg to stand on, but petitioners stand charged with falsification.

Since all the nine (of eleven) members of the Court who have participated in this case have unanimously agreed that petitioners' guilt of the crime of falsification of public and commercial documents has been proved beyond reasonable doubt, their conviction by the trial court as affirmed on appeal by the Court of Appeals must stand.

[1] At page 9.

[2] At page 7.

[3] Section 34 of the Central Bank Act (Rep. Act 265) provides: "SEC. 34. Proceedings upon violation of laws and regulations. — Whenever any person or entity wilfully violates this Act or any order, instruction, rule or regulation legally issued by the Monetary Board, the person or persons responsible for such violation shall be punished by a fine of not more than twenty thousand pesos and by imprisonment of not more than five years."

[4] Main opinion, at pp. 5-7.

[5] Which imposes the penalty of a fine up to P5,000.00 and imprisonment of prison correccional in its medium and maximum periods.

[6] At page 11; emphasis supplied.

DISSENTING OPINION

AQUINO, J:

I dissent. I do not agree with the opinion that the supposed recall of Circular 20 by Circular 133 of the Central Bank obliterated the crime of falsification punished in Article 172 of the Revised Penal Code which the petitioners had committed. They were not charged under Circular 20. Circular 133 did not repeal Article 172.

The facts of the instant case are different from those of *People vs. Quasha*, 39 Phil. 333. This Court is not bound by the opinion of the Court of Appeals in *People vs. Sandicho*, 2 Court of Appeals Reports 488 cited in the majority opinion.

The alleged recall of Circular 20, as a supervening fact, maybe a basis for executive clemency. That repeal did not extinguish the petitioners' criminal liability under Article 172.

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