

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LAWRENCE OLIVER CHAN AND ALEXANDER V. DATUIN, ACCUSED-APPELLANTS.

Ponente: ELBINIAS, J.

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ELBINIAS, J.:

At bench is an Appeal[1] from the Decision[2] dated August 20, 2009 of the Regional Trial Court, Branch 139, Makati City (“trial court” for brevity) in Criminal Case No. 01-900 for “Estafa”.

The conviction of the accused-appellants Lawrence Oliver Chan (“accused-appellant Chan” for brevity) and Alex Datuin (“accused-appellant Datuin” for brevity) stemmed from an Information[3] dated March 16, 2001 that read as follows:

“That on or about the 25th day of August, 1999, 1999, (sic) in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of false pretenses, and fraudulent acts, executed prior to or simultaneously with the commission of fraud, conspiring and confederating together and mutually helping and aiding one another, did then and there willfully, unlawfully and feloniously defraud complainant Compressed Air Machineries and Equipment Corporation (CAMEC), herein represented by Manuel B. Pablo, in the following manner[,] to wit: both accused falsely represented to complainant CAMEC that accused Chan had the facility/capacity to open the Letter of Credit (L/C) in favor of complainant and that accused Chan was a reputable and credible businessman, who had millions of peso deposits in Allied Bank where accused Datuin worked as Branch Manager, which representations were false and were made only to convince and induce CAMEC through Pablo to enter into a Memorandum of Agreement (MOA) with Lionheart Realty Corporation [(LRC)] owned by accused Lawrence Chan and to deliver to the accused the amount of P2,822,196.53; and on account of assurances and representations made by both accused, complainant CAMEC and LRC entered into a MOA whereby LRC pledged to open clean and negotiable Letter of Credits in favor of CAMEC and in consideration thereof complainant delivered three (3) checks amounting to P2,822,196.53 and cash amounting to P76,230.59; and the accused knew fully well that said representations were false and fraudulent and were only made to convince and induce said complainant to give and deliver, as in fact CAMEC gave and delivered, the total of (sic) amount of P2,898,427.12 to accused, who, once in possession of the said amounts of money subsequently appropriated for themselves, to the damage and prejudice of the complainant in the aforementioned total amount of P2,898,427.12.

CONTRARY TO LAW”.[4]

The prosecution presented Manuel Pablo (“Pablo” for brevity), and Raul Jude Alcantara (“Alcantara” for brevity), in order to prove the following:

Compressed Air Machineries and Equipment Corporation (“CAMEC” for brevity), a corporation engaged in the importation and sale of heavy equipment, was the exclusive distributor of JCB Sales Asia Pacific Pte. Ltd. (“JCB” for brevity) in the Philippines,[5] which in turn, is a company that supplies machineries.

Sometime in June or July 1999, Pablo, the President of CAMEC,[6] asked Alcantara, CAMEC’s marketing and financial consultant, to seek credit facilities for CAMEC because they needed to import heavy equipment.

Due to this, Alcantara sought the help of accused-appellant Datuin, the Branch Manager of Allied Bank.[7] The latter informed Alcantara that there was an existing bank client, accused-appellant Chan, who could open a Letter of Credit (“L/C” for brevity) for CAMEC.

Accused-appellant Datuin introduced accused-appellant Chan to Alcantara.[8] Accused-appellant Chan stated that since he was in the line of business of opening L/Cs, he could open an L/C for CAMEC.[9]

Sometime in August 1999, a meeting was held in accused-appellant Datuin's office in Allied Bank, Makati Branch.[10] Accused-appellant Datuin, accused-appellant Chan, Pablico, Alcantara and another person discussed the requirements for CAMEC's importation of machines, such as JCB and Samsung trucks.[11]

Accused-appellant Chan said that he had the capacity to open the L/C, provided that CAMEC would pay him 10.5% of the value involved in the L/C for the importation of machineries, which amount would serve as the consideration for accused-appellant Chan's services.[12] Accused-appellant Datuin added that accused-appellant Chan had bank accounts with Allied Bank, one of which was funded with millions of pesos, and the other with dollars.[13]

Succeeding meetings were arranged by accused-appellant Datuin, and were conducted at accused-appellant Datuin's office at Allied Bank.[14]

On August 25, 1999, a Memorandum of Agreement[15] (“MOA” for brevity) was signed by accused-appellant Chan, accused-appellant Datuin, Pablico, and Alcantara.[16] The MOA provided for the opening of the L/C between CAMEC, and Lionheart Realty Corporation (“LRC” for brevity), where accused-appellant Chan was the President. During the signing of the MOA, the persons present were accused-appellant Chan, Pablico, accused-appellant Datuin, and Alcantara. Accused-appellant Chan and Pablico signed the MOA, as the representatives of LRC and of CAMEC, respectively, while accused-appellant Datuin and Alcantara both signed as witnesses.[17]

Pursuant to the MOA, CAMEC paid to accused-appellant Chan on August 25, 1999, 10.5% of the amount of the L/C thru a manager's check, equivalent to Php 1,147,606.53.[18] Accused-appellant Chan in turn, gave Pablico a security check as an assurance that accused-appellant Chan would comply with his obligation of opening the L/C.[19]

CAMEC waited for the L/C, which would be issued within fifteen (15) days after the date of the signing of the MOA.[20] An L/C was then issued and forwarded by accused-appellant Chan to JCB, supplier of machineries. However, JCB later sent to Pablico a faxed letter dated September 30, 1999 stating that the L/C was “bogus”[21] and unacceptable.[22]

As a result, Pablico confronted accused-appellant Chan for him to explain why the L/C was bogus and unacceptable.[23] Accused-appellant Chan told Pablico that CAMEC had to pay fifteen thousand US Dollars (US \$ 15,000.00) in order for accused-appellant Chan to be able to issue a “clean” L/C to replace or amend the “bogus” L/C.[24] Subsequently, Pablico gave accused-appellant Chan an Allied Bank Check for such an amount which was equivalent to Php 607,365.00.[25] Accused-appellant Chan, in turn, gave another security check to CAMEC.[26] However, CAMEC did not receive any “clean” and negotiable L/C from accused-appellant Chan.[27]

This time, in order for accused-appellant Chan to be able to open an L/C to import Samsung dump trucks from Korea, CAMEC gave to accused-appellant Chan another check for 10.5% of the value involved in the L/C in the amount of Php 1,067,225.00. Accused-appellant Chan also issued in turn, another security check.[28] However, the Samsung officials, after receiving the L/C, told CAMEC that the L/C was unacceptable and “bogus”.[29]

CAMEC wrote a letter[30] dated November 29, 1999, to accused-appellant Chan asking him to issue a “clean” and acceptable L/C to the suppliers of CAMEC, JCB, and, Samsung; otherwise, CAMEC would deposit the “security checks” issued by accused-appellant Chan.[31] Accused-appellant Chan promised to comply, but he did not.[32]

CAMEC sent another letter to accused-appellant Chan, giving him until January 2000 to comply with his commitment to CAMEC.[33] In response, accused-appellant Chan offered to CAMEC some personal properties as collateral, including a Starex Van valued at Php 700,000.00, which accused-appellant Chan had claimed to be his own — in order for CAMEC to not deposit the security checks accused-appellant Chan had issued. Accused-appellant Chan promised to deliver to CAMEC five (5) units of Starex van, but accused-appellant Chan failed to do so.[34]

On January 21, 2000, CAMEC deposited the three (3) security checks amounting to Php 2,989,427.12. The bank advised CAMEC under an “Advise of Returned Checks” that the checks deposited were drawn against insufficient funds.

Afterwards, CAMEC went to the National Bureau of Investigation (“NBI” for brevity) to check the whereabouts of accused-appellant Chan. The NBI told CAMEC that accused-appellant Chan had been charged with eighteen (18) counts of Estafa. Thus, CAMEC requested from the Regional Trial Court of Makati, Branch 142 (“Makati RTC” for brevity), for the issuance of a Warrant of Arrest against accused-appellants Chan and Datuin. Consequently, Warrants of Arrest[35] were issued by the Makati RTC, as a result of which accused-appellant Datuin was arrested, while accused-appellant Chan voluntarily appeared before the Makati RTC to post bail.[36]

The defense, on the other hand, presented accused-appellant Chan as its lone witness in order to establish the following:

On August 1999, accused-appellant Chan was making a deposit at Allied Bank when he met Alcantara, the Finance Consultant of CAMEC.[37]

Alcantara asked accused-appellant Chan about his business.[38] Accused-appellant Chan told Alcantara that he had a company in Hongkong named Cutting House, referred to as “Financing”, which could open L/Cs.[39] In response, Alcantara said that he was connected with Far East Bank and Trust Company and CAMEC.[40] Alcantara then told accused-appellant Chan to return the following day so that accused-appellant Chan could talk with the President of CAMEC, Pablico.[41]

The following day, Alcantara again met with accused-appellant Chan at accused-appellant Datuin's office at Allied Bank in Pasay Road.[42] Alcantara and accused-appellant Chan discussed the terms and conditions of the L/C that were proposed by accused-appellant Chan.[43] Pablico was not present during the second meeting.[44]

Subsequently, a Memorandum of Agreement (“MOA” for brevity) was signed by accused-appellant Chan, Alcantara and Pablico.[45]

After signing the MOA, a Letter of Indemnity was also signed by accused-appellant Chan, Alcantara and Pablico. Such Letter of Indemnity stated that once the L/C was signed, the payments made by CAMEC to accused-appellant Chan could no longer be refunded, whether or not the LC would be used.[46]

According to accused-appellant Chan, he was able to comply with his obligation under the MOA and the Letter of Indemnity.[47] This was because accused-appellant Chan said that on August 31, 1991, he was able to open an L/C for CAMEC.[48] According to accused-appellant Chan, the L/C was issued by Hongkong and Shanghai Bank of Australia.[49] The beneficiary of the first L/C was JCB, which was a company in Singapore.[50] The goods

involved were heavy equipments to be supplied by JCB.[51]

The first L/C was negotiated by Pablico.[52] After negotiating it, Pablico wanted to amend a portion of the L/C, particularly to delete the additional requirement of the Inspection Certificate in the L/C.[53] However, accused-appellant Chan refused to amend the L/C, because the bank did not want JCB to collect the money before JCB could replace the goods to Pablico.[54]

Despite this issue not having been resolved, Pablico asked for the opening of a second L/C.[55]

Thus, on November 10, 1999, the second L/C was opened by accused-appellant Chan in favor of CAMEC.[56] The opening bank was Bangkok Banking Public Company, Ltd. in Singapore.[57] The beneficiary of the second L/C was Samsung Commercial Vehicle Company based in Korea.[58] The goods involved were trucks to be supplied by Samsung Commercial Vehicle Company to CAMEC.[59] Pablico again wanted to remove the Inspection Certificate from the L/C.[60] When the bank disagreed, Pablico asked for another L/C from accused-appellant Chan and asked that this time the L/C be without condition.[61]

According to accused-appellant Chan, a third L/C was opened sometime in November 1999.[62]

Afterwards, CAMEC wanted the bank checks and the service fees in the amount of Php 2.8 million to be refunded by accused-appellant Chan.[63] However, accused-appellant Chan refused to return the amounts, claiming that he had no obligation to return them since he complied with his obligation under the MOA and under the Letter of Indemnity.[64]

An Information[65] for Estafa dated March 16, 2001 was eventually filed against accused-appellants Chan and Datuin.

Accused-appellants Chan and Datuin pleaded “NOT GUILTY”[66].

On August 20, 2009, the trial court rendered the Decision[67] appealed from, which convicted accused-appellants Chan and Datuin of “Estafa”[68]. The dispositive portion of the Decision decreed:

“WHEREFORE, premises considered, accused LAWRENCE OLIVER CHAN and ALEXANDER DATUIN are found GUILTY beyond reasonable doubt of the crime of estafa defined and penalized under Article 315, paragraph 2(a), of the Revised Penal Code, as Amended, and are hereby sentenced to suffer the indeterminate penalty of imprisonment from four (4) years, two (2) months and one (1) day of prision correccional, as minimum, to twenty (20) years of reclusion temporal, as maximum, and to indemnify complainant CAMEC in the amount of Php 2,898,427.12 with interest at the rate of 12% per annum from the date of extrajudicial demand.

Both accused are likewise held solidarily liable to pay the said complainant the amount of Php 3,000.00 per appearance of its counsel by way of attorney’s fees and to pay the costs of this suit.

SO ORDERED.”[69] (Emphasis was made in the original)

Thus, accused-appellants Chan and Datuin filed an Appeal[70] from the Decision of the trial court praying for “the Honorable Court to render judgment, setting aside the decision of the trial court dated 20 August 2009 and acquitting them of the crime charged”[71].

Accused-appellants raised the following assignment of errors: “

Assignment of Errors

I

THE TRIAL COURT, WITH DUE RESPECT, COMMITTED REVERSIBLE ERROR WHEN IT RULED THAT CONSPIRACY IS PRESENT, CONTRARY TO THE EVIDENCE ON RECORD.

II

THE HONORABLE TRIAL COURT, WITH DUE RESPECT, COMMITTED REVERSIBLE ERROR WHEN IT FAILED TO RULE ON THE ACQUITTAL OF HEREIN ACCUSED-APPELLANTS.”[72]

To begin with, in the prosecution for “Estafa” under Article 315 paragraph 2 (a) of the Revised Penal Code, the following elements must be proven: (1) there must be a false pretense, fraudulent act or fraudulent means; (2) such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud; (3) the offended party must have relied on the false pretense, fraudulent act or fraudulent means and was thus induced to part with his money or property; and, (4) as a result, the offended party suffered damage.[73] The evidence on record established that accused-appellants Chan and Datuin represented to CAMEC that accused-appellant Chan had the capacity to open a clean, negotiable and acceptable L/C in favor of CAMEC. Such representation in turn, led CAMEC to enter into a MOA with accused-appellant Chan, and led CAMEC to give money to accused-appellant Chan. The representation was shown to be false by the fact that accused-appellant Chan failed to fulfill his obligation under the MOA by his issuance of a “bogus” L/C, which as a result, caused damage and prejudice to CAMEC.

Prosecution witnesses Pablico and Alcantara positively identified accused-appellants Chan and Datuin as the persons who falsely represented to CAMEC that accused-appellant Chan had the capacity to open a clean, negotiable, and acceptable L/C in favor of CAMEC, when in fact accused-appellant Chan could not be able to do so.[74]

Such positive identification of accused-appellants Chan and Datuin by the prosecution's witnesses Pablico and Alcantara prevails over accused-appellants defense of denial, in that accused-appellant Chan did not commit fraud against CAMEC since accused-appellant Chan had opened L/Cs in favor of CAMEC[75], and that accused-appellant Datuin had no participation in the transaction that transpired between accused-appellant Chan and CAMEC.[76] Such defenses of denial are negative and self-serving evidence undeserving of weight in law.[77]

The testimonies of the prosecution witnesses were credible, considering that no ill motive was shown to have existed on their part to testify against accused-appellants Chan and Datuin. The prosecution witnesses only wanted to recover their money and to obtain justice.

In claiming that the prosecution failed to establish the element of Deceit in the crime of Estafa, accused-appellants Chan and Datuin had argued as follows:

“Manifestly, none of the foregoing elements are present in the instant case. There was no false or fraudulent misrepresentation by accused-appellant Chan as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions. In fact, the records of the proceedings and the testimonies of Manuel Pablico and Jude Alcantara would indubitably show that not only did Lawrence Chan perform his contractual obligation in accordance with the terms and conditions of the Memorandum of Agreement (MOA) and the verbiage, but that the very contemporaneous actuations of the said witnesses betray the existence of deceit as contemplated by law. xxx

xxx

It bears noting in the instant case that the contending parties executed a MOA which essentially covered their respective rights and obligations. The stipulations contained in the MOA were a product of careful negotiations and counter-proposals which ultimately led to the formalization of the parties' contractual relationship. The

principal witness for the prosecution, Mr. Pablo, even admitted during the course of his testimony that all throughout the negotiations, the company's financial consultant, Mr. Jude Alcantara, was instrumental in crafting the MOA.

Hence, the determination of whether or not accused Lawrence Chan did commit the crime charged will be found in the pertinent provisions of the MOA itself. If Lawrence Chan fulfilled his part of the contract then there is no crime and the element of deceit which should have been employed before or during the inception of the transaction would be wanting.

Also, even assuming for the sake of argument, that the opened letters of credit were later on found to be not acceptable to the suppliers of private complainant, the same again would not amount to any crime as it would be the fault of private complainant itself for not first asking its own suppliers the latter's acceptable conditions for the sale of the equipments to CAMEC.”[78] (Emphasis supplied)

Defeating accused-appellants' arguments however, is the fact that without accused-appellants Chan and Datuin's representation that accused-appellant Chan could issue a clean and negotiable L/C in favor of CAMEC, CAMEC would not have entered into a MOA with accused-appellant Chan, and CAMEC would not have paid accused-appellant Chan. Accused-appellant Chan's undertaking to issue a clean and negotiable L/C was reflected in the MOA[79] that was signed by the parties, as follows:

“MEMORANDUM OF AGREEMENT

xxx

WITNESSETH: That -

WHEREAS, the Second Party (CAMEC) has a requirement for Import Letter of Credit (L/C) facility/ies for its importation of motor vehicle/s and/or equipment for its use or for trading purposes.

WHEREAS, the First Party (LIONHEART REALTY CORPORATION represented by accused-appellant Chan), by itself or thru its affiliates, partners or any other entity it has an arrangement with and it duly represents, has the capacity and capability to cause the issuance and opening of the required L/Cs for and in behalf of the Second Party in a manner that is legal, valid, binding and negotiable.

WHEREAS, the Second Party is desirous of utilizing the services of the First Party for the purpose of opening L/Cs for and [on] its behalf, and the First Party is willing to provide such service, under the following terms and conditions setforth and covenanted herewith:”[80] (Emphasis supplied)

Here, although accused-appellant Chan had issued L/Cs, the L/Cs issued by accused-appellant Chan in favor of CAMEC were “bogus” or fake, and were therefore unacceptable by the intended beneficiaries due to the L/Cs' having fallen short of the required standards. The Letters of Credit being defective was even admitted to by accused-appellant Chan in his letter[81] dated October 20, 1999 addressed to JCB. There, accused-appellant Chan made assurances that he was still “finalizing the issuance of a CLEAN, IRREVOCABLE, SIGHT Letter of Credit”[82] in favor of JCB. However, accused-appellant Chan still failed to comply with the assurances that he made.

As a consequence of accused-appellant Chan's acts and representations, CAMEC lost the money that it had paid to accused-appellant Chan in the amount of Php 2,898,427.12. In addition, CAMEC failed to recover such amount, because the security checks issued by accused-appellant Chan in favor of CAMEC were dishonored when CAMEC deposited them upon accused-appellant Chan's failure to comply with its commitment under the MOA.

Contrary to accused-appellants' assignment of error I, conspiracy had existed between accused-appellants Chan

and Datuin.

Accused-appellants had argued that:

“The trial court explicitly declared that ‘(A)ccused Datuin, conspiring and confederating with accused Chan, arranged for several meetings between CAMEC and Chan right at the office of Datuin to give the deceitful transaction the color of legality. Datuin's position made it conveniently possible to closely coordinate with Chan, the latter being the bank's depositor and client. Such relationship allowed both accused to plan and design the conspiracy against CAMEC.’

Accused-appellants, with due respect, cannot accept the trial court's sweeping conclusion. The mere fact that appellant Datuin arranged for several meetings between Jude Alcantara, Manuel Pablico of CAMEC and accused-appellant Chan right at his office does not imply conspiracy. Mere knowledge, acquiescence to or agreement to cooperate, is not enough to constitute one as party to a conspiracy, absent any active participation in the commission of the crime, with a view to the furtherance of the common design and purpose. Conspiracy transcends companionship.

Actually, the testimonies of Jude Alcantara and Manuel Pablico show that the former, upon instruction of the latter, sought the assistance of Alexander Datuin, with whom he was together in Far East Bank and the god-father of his daughter, if he could possibly recommend somebody who can help arrange and facilitate the opening of LC in order for CAMEC to be able to import heavy equipment. There is nothing in the record which shows that Mr. Datuin actively participated in the transaction between CAMEC and appellant Chan, except that he was the one who introduced Chan to Pablico and Alcantara; that he was always present and served coffee during the meeting held in his office. Neither is there any showing that Mr. Datuin earned or benefited from the said transaction. Mere suspicion, speculation, relationship, association and companionship do not prove conspiracy. Whatever suspicions the trial court entertained were pure speculations, insufficient to warrant the conclusion that accused-appellants conspired and confederated with each other in the commission of the crime with which they are charged. The required quantum of evidence is proof beyond reasonable doubt. “The sea of suspicion has no shore, and the court that embarks upon it is without rudder or compass.”[83]

Negating accused-appellants' arguments however, is that accused-appellant Chan represented himself to have had the capacity to issue a clean and negotiable L/C in favor of CAMEC. At the same time, accused-appellant Chan would not have been successful in doing so had it not been for the active participation of accused-appellant Datuin, including in having introduced accused-appellant Chan, and in vouching for the character, reputation and financial credibility of accused-appellant Chan. Accused-appellant Datuin, as Allied Bank's Bank Manager, was responsible for having told CAMEC representatives, Pablico and Alcantara, that accused-appellant Chan had bank accounts with Allied Bank having millions of pesos and dollars in deposits, and who, in turn, upon accused-appellant Datuin's representations and assurances, transacted with accused-appellant Chan.

In doing so, accused-appellant Datuin arranged for the meetings in his office at Allied Bank, Pasig Branch, between accused-appellant Chan and the representatives of CAMEC, Pablico and Alcantara. He continued vouching for accused-appellant Chan and confirming all representations of the latter by having actively participated in the meetings, by holding the meetings in his office, and by signing as a witness for accused-appellant Chan in the MOA executed by the parties. On top of all these, accused-appellant Datuin himself, as Bank Manager, knew the financial condition of accused-appellant Chan, and yet perpetuated accused-appellant Chan's representations.

All of these were as similarly found by the trial court, to wit:

“CAMEC would have not met and engaged the services of accused Chan were it not for Datuin's confidential and influential position as Allied Bank Manager, Makati City Branch. Accused Datuin was the top man in the said branch of Allied Bank and his position is something any person engaged in business would not ignore.

Datuin, as a bank manager, commanded respect and trust from bank depositors and prospective clients of the bank wanting to avail of the bank's services. When Jude Alcantara, CAMEC's financial consultant and former co-employee of Datuin, disclosed to the latter the requirement of CAMEC for an L/C and a person who could facilitate the same, accused Datuin, after a few days, readily suggested only one person, his co-accused Chan, who was a depositor of Allied Bank and a client of branch of the said bank where accused Datuin is the manager.

Accused Datuin vouched for the character, reputation and financial creditability of accused Chan by stating, albeit falsely, that Chan had millions of peso deposits in the Allied Bank, Pasay Road Branch and even assured that Chan had millions of dollar deposits at Citibank. Such statements coming from a bank official vouching for the qualifications, influence, credit and business of his own depositor were relied on heavily by CAMEC. Accused Datuin, conspiring and confederating with accused Chan, arranged for several meetings between CAMEC and Chan right at the office of Datuin to give the deceitful transaction the color of legality. Datuin's position made it conveniently possible to closely coordinate with Chan, the latter being the bank's depositor and client. Such relationship allowed both accused to plan and design the conspiracy against CAMEC.

Datuin was not merely a bystander or a passive player. Datuin was an active conspirator working closely and in cooperation with Chan. Prosecution witnesses Publico and Alcantara testified that their meetings were held right in the office of Datuin. The testimonies of these witnesses were credible and in accord with human experience for it was established that Datuin and Alcantara were former officemates and employees of Far East Bank and Trust Company. Such close association with Datuin by Alcantara afforded the privilege of having the meetings between CAMEC, Chan and Datuin right at the latter's own office. As opposed to the claim of Chan that Datuin was merely 'going to and from the counter' is a weak excuse belied by Datuin being made privy to the Memorandum of Agreement (Exhibit 'A') where Datuin signed as a witness for co-accused Chan whereas his counterpart Alcantara stood as witness for CAMEC.

Accused Datuin would have not signed merely as a bystander or as a witness without being informed about the provisions of the said MOA. Datuin affixed his signature willingly and with full knowledge of the undertakings of co-accused Chan and that of CAMEC. With that signature, Datuin sealed his fate as conspirator with co-accused Chan. Accused Datuin is burdened with the guilty knowledge of the designs of his co-accused Chan in perpetrating the fraud against the complainant. While it is true that Datuin did not issue or indorse the post-dated checks, his and Chan's concerted acts with common design and purpose in enjoining the complainant to enter into a MOA which is just preliminary step in the commission of the fraud, i.e., the issuance of the check in favor of accused Chan, indicate the presence of conspiracy as charged in the Information filed against them. This issue has been laid to rest in the case of *People vs. Isleta and Nuevo*, 61 Phil. 334 (1935) where appellant without having issued or indorsed the checks in question was held liable because of his guilty knowledge that his co-accused had no funds in the bank when he negotiated the checks xxx.

With Chan's business connections and Datuin's position as bank manager, they caused and facilitated, by concerted efforts, the issuance of bogus Letters of Credit which were never negotiated and remained a mere scrap of worthless papers. Chan's close association with Datuin as bank manager gave an apparent color of legality and credibility in Chan's alleged sufficient account with Datuin's bank, a fact relied on heavily by CAMEC. The actions of both accused showed coherence and unison to achieve that one single purpose of procuring the consent of CAMEC to engage the services of accused Chan relative to opening of L/Cs through deceit, false pretenses and acts purportedly attributing to Chan the so-called power and capacity, to the damage and prejudice of the complainant.”[84] (Emphasis supplied)

That the acts of accused-appellants Chan and Datuin in active cooperation in committing the crime of Estafa were sufficient to create the joint criminal liability of accused-appellants is pursuant to the following declaration made by the Supreme Court in *Augusto Sim, Jr., vs. Hon. Court of Appeals and The People of the Philippines*, G.R. No.

159280, May 18, 2004:

“Even in the absence of direct evidence of prior agreement to commit the crime, conspiracy may be deduced from the acts of the perpetrators before, during and after the commission of the crime, which are indicative of a common design, concerted action and concurrence of sentiments. Conspiracy is deemed implied when the malefactors have a common purpose and were united in its execution. Spontaneous agreement or active cooperation by all perpetrators at the moment of the commission of the crime is sufficient to create joint criminal responsibility.

In *Erquiaga v. Court of Appeals*, we ruled that conspiracy, as a rule, has to be established with the same quantum of proof as the crime itself and shown as clearly as the commission of the crime. However, conspiracy need not be shown by direct evidence, but may take the form of circumstances which, if taken together, would conclusively show that the accused came to an agreement to commit a crime and decided to carry it out with their full cooperation and participation.” (Emphasis supplied)

No cogent or compelling reason was therefore shown to justify any deviation from the following findings of the trial court, which were based on the facts and the law:

“Fraud, in its general sense, is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust or confidences justly reposed, resulting in damage to another, or by which the undue and unconscious advantage is taken of another. It is a generic term embracing all multifarious means which human ingenuity can device, and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated. Deceit is specie of fraud. xxx

Damage and deceit are essential elements of the offense and must be established with satisfactory proof to warrant conviction xxx. Deceit is defined as the false representation of a matter of fact, whether by words or conduct, false or misleading allegations, or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury xxx

The elements of estafa under Article 315, paragraph 2 (a) are present in the instant case as established by facts with clear, substantial and satisfactory proof. The deceit and fraudulent acts were committed by accused Chan and Datuin prior to or simultaneously with the commission of the fraud. Accused Chan and Datuin admitted the existence, genuineness and due execution of the Memorandum of Agreement xxx which contained all the terms and conditions agreed upon by the parties therein. Accused Chan likewise admitted having opened the questionable Letters of Credit xxx which were not accepted by the intended beneficiaries for miserably failing short of the required standards in issuing L/Cs. Accused Chan also admitted the existence of his own letter addressed to JCB xxx which contained his own admission that on October 20, 1999, the date of the said letter, he made formal assurances that he was 'finalizing the issuance of a clean, irrevocable Sight Letter of Credit' in favor of JCB and that the said L/C would have 'the standard requirements of Commercial Invoice, Packing List, Insurance and Bill of Lading, and would exclude the Inspection Certificate that previously subverted the L/C which he first opened.

The said letter was a clean give away of accused Chan's manipulative and deceitful act. The L/C which accused Chan purportedly opened for beneficiary JCB xxx was dated August 31, 1999, yet in October 20, 1999, he wrote and signed a letter declaring that he was still finalizing a clean, irrevocable sight letter of credit. With this admission, the August 31, 1999 L/C is nothing but a bogus one. The foregoing admission bolstered the deceit committed by accused Chan and Datuin whose misrepresentations and false pretenses of having the power, influence, credit, and business to open Letters of Credit as required by complainant CAMEC induced the latter to give and deliver to the said accused the required amount of money for that purpose. The misrepresentations, false pretenses and deceit accused Chan and Datuin used are all contained in the MOA

dated August 25, 1999. The said MOA itself was the very instrument used by accused Chan and Datuin that gave a stamp of apparent validity in the purported capacity of Chan to open the required L/Cs. Accused Chan used the MOA to commit the crime charged and at the same time tried to use it as his own defense by simply claiming that he complied with the said agreement in so far as the opening of L/C was concerned.

The claim of accused Chan that the non-acceptance by the beneficiary of the Letters of Credit were due to non-deletion of the Inspection Certificate, which he alleged as being requested by complainant CAMEC and its suppliers, is far from the truth. On the contrary, the letters of demand of CAMEC xxx showed that the delay or non-delivery of the L/Cs were caused by accused Chan himself. As earlier discussed, the L/Cs by themselves were defective, questionable and invalid for negotiation by the intended beneficiaries, i.e., the exact opposite of his undertaking, assurances and guarantee to procure for CAMEC a legal, valid, binding and negotiable L/C to the damage and prejudice of CAMEC. Accused Chan and Datuin procured with deceit the consent of CAMEC to execute the MOA by dangling before the said complainant the purported power and influence of Chan as a reputable depositor and businessman as vouched by Datuin.

The succeeding events led to the discovery of the unfortunate truth that accused Chan was nothing but a fraud and this is shown by his own checks that bounced to the bogus Letters of Credit that he used. Even up to the time that accused Chan was trying to settle allegedly with CAMEC, he came up with spurious titles and documents to properties which never existed. Accused Chan and Datuin defrauded CAMEC which resulted to the latter's actual loss in the amount of Php 2,898,427.13 which Chan misappropriated and used for his own pecuniary gain to the damage and prejudice of the said complainant.”[85] (Emphasis supplied)

Indeed, the trial court's appreciation of facts and evaluation of testimonies and credibility of the witnesses, as is the deeply entrenched rule, deserves much weight and respect, and should not be disturbed.[86] This is because the trial court had the distinct opportunity to hear the testimonies of the witnesses and to observe their conduct and demeanor on the stand.[87]

Thus, contrary to accused-appellant's assignment of error II, the prosecution had proven the guilt of accused-appellants beyond reasonable doubt for the crime of Estafa.

Considering that every person criminally liable for a felony is also civilly liable[88], the trial court was correct in ruling that accused-appellants would have to pay complainant CAMEC Php 2,898,427.12 which was the total value of the payments made by the CAMEC as a result of accused-appellants Chan and Datuin's acts.

The trial court also properly awarded Attorney's Fees in favor of CAMEC. This, considering that the reason for the award was clearly stated in the trial court's Decision[89], which was that “CAMEC was also compelled to engage the services of a lawyer to prosecute the case, pay the filing fee and professional fee and Php 3,000.00 for every appearance in court of its counsel”[90]. That the trial court may award Attorney's Fees in a criminal case if the reason was clearly stated, is pursuant to the Supreme Court's pronouncement in *Romualdo Pagsibigan vs. People of the Philippines and Eleazar Cabasal*[91], as follows:

“The award of attorney's fees and expenses of litigation must have factual and legal justification, which must be stated in the body of the decision. Otherwise, the award is disallowed. In *Consolidated Bank & Trust Corporation v. Court of Appeals*, the Court held that:

The award of attorney's fees lies within the discretion of the court and depends upon the circumstances of each case. However, the discretion of the court to award attorney's fees under Article 2208 of the Civil Code of the Philippines demands factual, legal and equitable justification, without which the award is a conclusion without a premise and improperly left to speculation and conjecture. It becomes a violation of the proscription against the imposition of a penalty on the right to litigate (*Universal Shipping Lines, Inc. v. Intermediate Appellate Court*, 188 SCRA 170 [1990]). The reason for the award must be stated in the text of the court's decision. If it is stated only in the dispositive portion of the decision, the same shall be disallowed. As to the award of

attorney's fees being an exception rather than the rule, it is necessary for the court to make findings of fact and law that would bring the case within the exception and justify the grant of the award (*Refractories Corporation of the Philippines v. Intermediate Appellate Court*, 176 SCRA 539 [1989])." (Emphasis supplied)

However, the penalty imposed on accused-appellants should be reduced. The trial court erred in imposing to accused-appellants Chan and Datuin the penalty of four (4) years, two (2) months and one (1) day of *Prision Correccional* as minimum to twenty (20) years of *Reclusion Temporal* as maximum. This is because the basis for the penalty, which in this case is for *Estafa*, depends upon the amount involved. In *People of the Philippines vs. Beth Temporada*, G.R. No. 173473, December 17, 2008, the Supreme Court En Banc illustrated the appropriate imposable penalty for *Estafa*, as follows:

"The prescribed penalty for *Estafa* under Article 315, xxx when the amount defrauded exceeds P22,000.00, is *prisión correccional* maximum to *prisión mayor* minimum. The minimum term is taken from the penalty next lower or anywhere within *prisión correccional* minimum and medium (i.e., from 6 months and 1 day to 4 years and 2 months).

On the other hand, the maximum term is taken from the prescribed penalty of *prisión correccional* maximum to *prisión mayor* minimum in its maximum period, adding 1 year of imprisonment for every P10,000.00 in excess of P22,000.00, provided that the total penalty shall not exceed 20 years. xxx To compute the maximum period of the prescribed penalty, *prisión correccional* maximum to *prisión mayor* minimum should be divided into three equal portions of time each of which portion shall be deemed to form one period in accordance with Article 65 of the RPC. Following this procedure, the maximum period of *prisión correccional* maximum to *prisión mayor* minimum is from 6 years, 8 months and 21 days to 8 years. The incremental penalty, when proper, shall thus be added to anywhere from 6 years, 8 months and 21 days to 8 years, at the discretion of the court.

In computing the incremental penalty, the amount defrauded shall be subtracted by P22,000.00, and the difference shall be divided by P10,000.00. Any fraction of a year shall be discarded as was done starting with the case of *People v. Pabalan* in consonance with the settled rule that penal laws shall be construed liberally in favor of the accused."

Applying the ruling here reveals that since the amount involved was Php 2,898,427.12, then the minimum term of the indeterminate sentence should be anywhere within *Prision Correccional* minimum and medium, or from six (6) months and one (1) day to four (4) years and two (2) months.

For its part, the maximum term of the indeterminate sentence is to be determined by subtracting from the amount that was involved (of Php 2,898,427.12) to the threshold of Php 22,000.00.

Since there is an excess of Php 2,876,427.12, the duration of the penalty should be increased by one (1) year for every additional Php 10,000.00 in excess of Php 22,000.00. Thus, two hundred eighty seven years (287) years are to be added to anywhere from 6 years, 8 months and 21 days to 8 years, which is the maximum period of the prescribed penalty. However, since the law provides that the penalty should not exceed twenty (20) years, the maximum term should be fixed at twenty (20) years of *Reclusion Temporal*.

Thus, the trial court should have meted out the indeterminate penalty of four (4) years and two (2) months of *Prision Correccional* as minimum to twenty (20) years of *Reclusion Temporal* as maximum for the crime of *Estafa*. This, being pursuant to Article 315 of the Revised Penal Code in relation to the Indeterminate Sentence Law.

After careful consideration of all the facts, arguments, and issues appearing on the records, as well as of the pertinent laws and jurisprudence, and, in accordance with what is best determined to be proper under the

circumstances, the following disposition is therefore made on these matters.

WHEREFORE, the Decision of the trial court is **AFFIRMED**, with the **MODIFICATION** that the penalty of accused-appellants is **REDUCED** to the indeterminate penalty of four (4) years and two (2) months of Prison Correccional as minimum to twenty (20) years of Reclusion Temporal as maximum for the crime of Estafa.

SO ORDERED.

Didican (Chairman) and Paredes, JJ., concur.

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- [1] Rollo, pp. 114 - 149
 - [2] Records, pp. 403 - 437
 - [3] Records, pp. 1 - 2
 - [4] Records, p. 1
 - [5] TSN, December 5, 2002, p. 17
 - [6] TSN, December 5, 2002, p. 8
 - [7] TSN, May 15, 2003, p. 9
 - [8] TSN, May 15, 2003, pp. 10 - 13
 - [9] TSN, May 15, 2003, pp. 13 – 14; TSN, December 5, 2002, pp. 21
 - [10] TSN, December 5, 2002, pp. 15 - 19
 - [11] TSN, December 5, 2002, pp. 16 - 22
 - [12] TSN, December 5, 2002, p. 21; Records, pp. 35 - 36
 - [13] TSN, December 5, 2002, pp. 22 - 25
 - [14] TSN, March 27, 2003, pp. 9 – 10
 - [15] Records, pp. 34 - 38
 - [16] TSN, December 5, 2002, pp. 28 – 31; TSN, May 15, 2003, pp. 14 - 18
 - [17] TSN, December 5, 2002, pp. 28 - 31
 - [18] TSN, December 5, 2002, pp. 33 - 38
 - [19] TSN, December 5, 2002, pp. 55 - 57
 - [20] TSN, December 5, 2002, pp. 39 - 42
 - [21] Records, p. 230
 - [22] TSN, December 5, 2002, pp. 42 - 45
 - [23] TSN, December 5, 2002, pp. 45 - 47
 - [24] TSN, December 5, 2002, pp. 49 - 50

- [25] TSN, December 5, 2002, pp. 51 - 55
- [26] TSN, December 5, 2002, pp. 57 - 58
- [27] TSN, December 5, 2002, pp. 9 - 11
- [28] TSN, December 5, 2002, pp. 60 – 62, 66 - 68
- [29] TSN, December 5, 2002, pp. 63 - 65
- [30] Records, p. 233
- [31] TSN, December 5, 2002, pp. 82 - 88
- [32] TSN, December 5, 2002, p. 89
- [33] TSN, December 5, 2002, p. 90 - 94
- [34] TSN, December 5, 2002, pp. 94 - 99
- [35] Records, pp. 64 – 65, 295, 319
- [36] Records, p. 404
- [37] TSN, April 1, 2004, pp. 11 – 15, 84 - 86
- [38] TSN, April 1, 2004, p. 15
- [39] TSN, April 1, 2004, pp. 15 - 16
- [40] TSN, April 1, 2004, pp. 16 - 17
- [41] TSN, April 1, 2004, pp. 17 - 18
- [42] TSN, April 1, 2004, pp. 13, 18 – 21, 86
- [43] TSN, April 1, 2004, pp. 21 - 22
- [44] TSN, April 1, 2004, p. 22
- [45] TSN, April 1, 2004, pp. 25 - 28
- [46] TSN, April 1, 2004, pp. 30 - 37
- [47] TSN, April 1, 2004, p. 37
- [48] TSN, April 1, 2004, pp. 38 - 40
- [49] TSN, April 1, 2004, pp. 39, 41
- [50] TSN, April 1, 2004, pp. 45 - 46
- [51] TSN, April 1, 2004, p. 66
- [52] TSN, April 1, 2004, p. 47
- [53] TSN, April 1, 2004, pp. 48 - 49
- [54] TSN, April 1, 2004, p. 52
- [55] TSN, April 1, 2004, pp 53 - 55

- [56] TSN, April 1, 2004, p. 55
- [57] TSN, April 1, 2004, p. 59
- [58] TSN, April 1, 2004, pp. 57 - 58
- [59] TSN, April 1, 2004, p. 66
- [60] TSN, April 1, 2004, p. 61
- [61] TSN, April 1, 2004, p. 63
- [62] TSN, April 1, 2004, pp. 65 - 66
- [63] TSN, April 1, 2004, p. 69
- [64] TSN, April 1, 2004, pp. 69 - 70
- [65] Records, pp. 1 - 2
- [66] Records, p. 147
- [67] Records, pp. 403 - 437
- [68] Records, p. 436
- [69] Records, pp. 436 - 437
- [70] Rollo, pp. 114 - 147
- [71] Rollo, p. 147
- [72] Rollo, p. 135
- [73] Lyzah Sy Franco vs. People of the Philippines, G.R. No. 171328, February 16, 2011
- [74] TSN, December 5, 2002, pp. 13 – 27; TSN, May 15, 2003, pp. 10 - 12
- [75] Rollo, pp. 140 - 146
- [76] Rollo, pp. 136 - 139
- [77] People of the Philippines vs. Antonio Baldomar y Liscano, G.R. No. 197043, February 29, 2012
- [78] Rollo, pp. 140 - 146
- [79] Records, pp. 217 - 221
- [80] Records, p. 217
- [81] Records, p. 240
- [82] Records, p. 240
- [83] Rollo, pp. 137 - 139
- [84] Records, pp. 433 - 435
- [85] Records, pp. 432 - 433
- [86] People of the Philippines vs. Reynaldo Albalate, Jr., G.R. No. 174480, December 18, 2009

[87] People of the Philippines vs. Sammy Ramos, G.R. No. 172470, April 8, 2008

[88] Article 100, Revised Penal Code

[89] Records, pp. 403 - 437

[90] Rollo, p. 61

[91] G.R. No. 163868, June 04, 2009

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