

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
LICERIO P. SENDAYDIEGO, JUAN SAMSON AND ANASTACIO
QUIRIMIT, DEFENDANTS, JUAN SAMSON, DEFENDANT-APPELLANT,
PROVINCE OF PANG...**

G.R. Nos. L-33252-54. January 20, 1978

Ponente: AQUINO, J.

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AQUINO, J.:

In these three cases of malversation through falsification, the prosecution's theory is that in 1969 Licerio P. Sendaydiego, the provincial treasurer of Pangasinan, in conspiracy with Juan Samson y Galvan, an employee of a lumber and hardware store in Dagupan City, and with Anastacio Quirimit, the provincial auditor, as an accomplice, used six (6) forged provincial vouchers in order to embezzle from the road and bridge fund the total sum of P57,048.23.

The provincial voucher involved in these cases has several parts. In the upper part with the legend "ARTICLE OR SERVICE" the nature of the obligation incurred is indicated. That part is supposed to be signed by two officials of the provincial engineer's office and by the governor's representative.

The middle part of the voucher contains five numbered printed paragraphs. Paragraph 1 is a certificate to be signed by the creditor. It is stated therein that the creditor vouches that the expenses "were actually and necessarily incurred". In the instant cases paragraph 1 was not signed presumably because it is not relevant to the purchase of materials for public works projects.

Paragraph 2 is a certification that the expenses are correct and have been lawfully incurred. It is signed by the provincial engineer.

Paragraph 3 contains these words: "Approved for pre-audit and payment, appropriations and funds being available therefor." This is signed by the provincial treasurer.

Paragraph 4 is a certification which, as filled up in Exhibit K, Voucher No. 10724 dated February 28, 1969, reads:

"I certify that this voucher has been pre-audited and same may be paid in the amount of sixteen thousand seven hundred twenty-seven pesos and 52/100 (P16,727.52) in cash or in check, provided there is sufficient fund to cover the payment."

This is signed by the auditor.

Paragraph 5 is a certification signed by the provincial treasurer that the account mentioned in the provincial engineer's certification "was paid in the amount and on the date shown below and is chargeable as shown in the summary hereof. x x x." It may be noted that the provincial treasurer signs two parts of the voucher.

Following paragraph 5, and as referred to therein, is the receipt of payment signed by the creditor. As accomplished in Exhibit K, the receipt reads (it was signed according to the prosecution by Juan Samson, a point which is disputed by him):

"Received this 31st day of March, 1969, from L.P. Sendaydiego, Treasurer, Province of Pangasinan, the sum of sixteen thousand seven hundred twenty-seven pesos & 52/100 (P16,727.52) in full payment of the above stated account, which I hereby certify to be correct. Paid by Check No. _____.

CARRIED CONSTR. SUPPLY CO.

By: (Sgd.) JUAN SAMSON"

According to the prosecution, Samson also signed on the left margin of the six vouchers below the stamped words: "Presented to Prov. Treasurer. By Juan Samson."

Voucher No. 10724 (Exh. K). - This provincial voucher, dated February 28, 1969, evidences the payment of P16,727.52 to the Carried Construction Supply Co. of Dagupan City for lum-ber and hardware materials supposedly used in the repair of the bridge in Barrio Libertad at the Umingan-Tayug road in Pangasinan along the Nueva Ecija boundary (Exh. K). The voucher makes reference to invoice No. 3327 and other supporting papers.

The falsity of that provincial voucher is proven by the following circumstances:

(a) That there was no project for the repair of the bridge at Barrio Libertad (p. 1; Exh. Z).

(b) That the amount of P16,727.52 was never received by the Carried Construction Supply Co. The alleged official receipt No. 3025 of the company dated March, 1969 (Exh. K-6) is forged.

(c) That the lumber and materials mentioned in Exhibit K were never delivered by the company to the provincial government.

(d) That in the provincial voucher, Exhibit K, and in the supporting requisition and issue voucher (RIV) No. 2206 dated January 29, 1969 (Exh. A), covering the same lumber and hard-ware materials, the signatures of the following officials were forged: Salvador F. Oropilla, senior civil engineer; Rodolfo P. Mencias, supervising civil engineer; Victoriano M. Sevilleja, acting provincial engineer, and Ricardo B. Primicias, chief of equipment of the governor's office. These four officials denied that their signatures in the two vouchers, Exhibits A and B, are their genuine signatures.

(e) That the imprint of the rubber stamp on Exhibits A and B, containing the words "Approved: For and By Authority of the Governor (signed) Ricardo B. Primicias, Chief of Equipment", is not the imprint of the genuine rubber stamp used in Primicias' office.

(f) That charge invoice No. 3327 of the Carried Construction Supply Co. dated February 18, 1969, containing a description and the prices of the lumber and hardware materials (Exh. B), is fake because, according to Ambrosio Jabanes, the company's assistant manager, the company's invoice No. 3327 was issued to the Mountain Agricultural College (Exh. II-1). Oropilla denied that his alleged signature on Exhibit B is his signature.

(g) That three other documents, supporting the provincial voucher (Exh. K), were also forged. Those documents are the taxpayer's certificate dated February 10, 1969 (Exh. C) stating that no tax is due on the goods sold in the fake invoice No. 3327 and the two certificates as to the samples of lumber allegedly purchased from the Carried Construction Supply Co., (Exh. D and E). Narciso P. Martinez, a district forester, denied that his signatures in Exhibits D and E are his genuine signatures.

(h) That Angelo C. Manuel, the checker of the provincial auditor's office, denied that his signature on the left margin is his signature (Exh. A-10).

The forged character of provincial voucher No. 10724 (Exh. K) is incontrovertible.

Other five forged vouchers. - Five other provincial vouchers evidencing supposed payments of certain amounts to the Carried Construction Supply Co. for lumber and hardware materials supposedly used in the repair of other bridges were also falsified. These five vouchers are the following:

- Voucher No. 11995 dated April 29, 1969 evidencing the payment of P14,571.81 for lumber and hardware materials allegedly used in the repair of Bayaoas bridge at the Urbiztondo-Pasibi Road (Exh. O).
- Voucher No. 11869 dated April 15, 1969 evidencing the payment of P5,187.28 for lumber and hardware materials allegedly used in the repair of the Panganiban bridge at the Umingan-Tayug Road (Exh. P).
- Voucher No. 11870 dated April 28, 1969 evidencing the payment of P6,290.60 for lumber and hardware materials allegedly used in the repair of the Cabatuan bridge at the Umingan-Guimba Road (Exh. Q).
- Voucher No. 11871 dated April 15, 1969 evidencing the payment of P9,769.64 for lumber and hardware materials allegedly used in the repair of the Casabar bridge at the Binalohan-San Manuel Road (Exh. R).
- Voucher No. 11872 dated April 15, 1969 evidencing the payment of P4,501.38 for lumber and hardware materials allegedly used in the repair of the Baracbac bridge at the Umingan-Guimba Road (Exh. S).

As in the case of voucher No. 10724 (Exh. K), Oropilla, Mencias, and Primicias declared that their signatures in the said five vouchers are not their genuine signatures. Samson, who hand-carried the said vouchers for processing, did not turn over to the provincial auditor's office the papers supporting the said vouchers after the vouchers had been pre-audited. Hence, those supporting papers could not be presented in evidence.

Jabanes, the aforementioned assistant manager of the Carried Construction Supply Co., testified that the lumber and hardware materials mentioned in the five vouchers were never delivered by his company to the provincial government. The charge invoices mentioned in the said vouchers were cancelled invoices issued to the Mountain Agricultural College. The projected repairs of the bridges were fictitious.

The company's cashier testified that the company never received the payments for the lumber and hardware materials. The receipts evidencing payments (Exh. K-6, KK to KK-4) are fake official receipts. The cashier produced in court the genuine official receipts (Exh. LL to LL-7) bearing the serial numbers of the fake receipts. The genuine receipts do not refer to transactions with the provincial government.

Samson played a stellar role in the processing of the six vouchers. He used to be an employee of the provincial treasurer's office. He resigned and worked with several firms doing business with the provincial government. In 1969 he was the collector of the Carried Construction Supply Co. He represented that firm in its dealings with the offices of the governor, provincial auditor, provincial engineer and provincial treasurer. He was personally known to those provincial officials and the employees of their offices (21-22 Sendaydiego's brief).

The six (6) forged provincial vouchers, with their respective supporting papers, were hand-carried by Samson. He delivered the papers to Carmencita Castillo, the ledger clerk in the provincial engineer's office, for recording and for her signature (Exh. DD).

Thereafter, Samson brought the papers to the provincial treasurer's office. Marcelo Crusada, a laborer in that office who performed the chore of recording the vouchers and payrolls, recorded Vouchers Nos. 11869, 11871 and 11872 (Exh. P, R and S). Crusada's initials appear on the upper lefthand corner of the said vouchers with the date "4/17/69".

Samson signed on the left margin of the vouchers to indicate that he presented them to the provincial treasurer's office. Crusada said that after Samson had presented the said papers to him, Samson brought them to Ricardo Baraan, the bookkeeper of the provincial treasurer's office, for processing and for the latter's signature (Exh. WW).

From Baraan's office, Samson hand-carried the vouchers to the provincial auditor's office. He asked Virginia Cruz, a clerk, to record the same (Exh. CC).

Afterwards, Samson asked Donato Rosete, the assistant provincial treasurer, to initial the vouchers. After Rosete had initialled the vouchers, Samson went to the provincial treasurer's office where the amounts covered by the vouchers were paid by Sendaydiego to him in cash (instead of by check) as representative of the Carried Construction Supply Co. (Exh. EE). He received the payments on March 31 and April 29 and 28 (four payments on that date) as shown on the face of the vouchers.

The signatures of Sendaydiego and Quirimit, the auditor, on the said six vouchers are admittedly authentic. Sendaydiego signed the vouchers ahead of Rosete, his assistant. Sendaydiego's defense is that he signed the vouchers in the honest belief that the signatures therein of the provincial officials concerned were genuine because the vouchers had been pre-audited and approved by the auditor.

Samson denied the authenticity of his two signatures on each of the six vouchers showing that he received from Sendaydiego the amounts covered thereby as representative of the lumber and hardware firm (Exh. OO to TT) and that he presented the vouchers to the provincial treasurer's office (Exh. 6-12 - Samson). Sendaydiego testified that Samson's signatures are genuine.

In connection with the six vouchers, Sendaydiego, Samson and Quirimit were charged with malversation through falsification in three cases docketed as follows:

- Criminal Case No. 23349 involving provincial voucher No. 10724 dated February 28, 1969 in the sum of P16,727.52 (Exh. K), now L-33252.
- Criminal Case No. 23350 involving provincial vouchers Nos. 11869, 11870, 11871 and 11872 dated April 15 (two dates) 28 and 15, 1969 for the respective amounts of P5,187.28, P6,290.60, P9,769.64 and P4,501.38 (four vouchers, Exh. P, Q, R and S), now L-33253.
- Criminal Case No. 23351 involving provincial voucher No. 11955 dated April 29, 1969 in the sum of P14,571.81 (Exh. O), now L-33254.

After trial, the lower court acquitted the auditor, Quirimit, and found Sendaydiego and Samson guilty as principals of malversation through falsification of public or official documents, imposing on each of them the following penalties:

- In Criminal Case No. 23349, an indeterminate sentence of twelve years, ten months and twenty-one days, as minimum, to eighteen years, two months and twenty-one days of reclusion temporal, as maximum, and a fine of P16,727.52 and to indemnify solidarily the provincial government of Pangasinan in the same amount;
- In Criminal Case No. 23350, the penalty of reclusion perpetua, and a fine of P29,748.90 and to indemnify solidarily the provincial government of Pangasinan in the same amount; and
- In Criminal Case No. 23351, an indeterminate sentence of twelve years, ten months and twenty-one days, as minimum, to eighteen years, two months and twenty-one days of reclusion temporal, as maximum, and a fine of P14,571.81 and to indemnify solidarily the provincial government of Pangasinan in the same amount.

Sendaydiego and Samson appealed to this Court.

Sendaydiego died on October 5, 1976. His appeal as to his criminal was dismissed. Death extinguished his criminal liability but his civil liability remained. The resolution of July 8, 1977 dismissing Sendaydiego's appeal reads as follows:

"The death of appellant Sendaydiego during the pendency of his appeal or before the judgment of conviction rendered against him by the lower court became final and executory extinguished his criminal liability, meaning his obligation to serve the personal or imprisonment penalties and his liability to pay the fines or pecuniary penalties (Art. 89[1], Revised Penal Code; 1 Viada, *Codigo Penal*, 4th Ed., 565).

"The claim of complainant Province of Pangasinan for the civil liability survived Sendaydiego because his death occurred after final judgment was rendered by the Court of First Instance of Pangasinan, which convicted him of three complex crimes of malversation through falsification and ordered him to indemnify the Province in the total sum of P61,048.23 (should be P57,048.23).

"The civil action for the civil liability is deemed impliedly instituted with the criminal action in the absence of express waiver or its reservation in a separate action (Sec. 1, Rule 111 of the Rules of Court). The civil action for the civil liability is separate and distinct from the criminal action (*People and Manuel vs. Coloma*, 105 Phil. 1287; *Roa vs. De la Cruz*, 107 Phil. 8).

"When the action is for the recovery of money' and the defendant dies before final judgment in the Court of First Instance, it shall be dismissed to be prosecuted in the manner especially provided' in Rule 87 of the Rules of Court (Sec. 21, Rule 3 of the Rules of Court).

"The implication is that, if the defendant dies after a money judgment had been rendered against him by the Court of First Instance, the action survives him. It may be continued on appeal (*Torrijos vs. Court of Appeals*, L-40336, October 24, 1975, 67 SCRA 394).

"The accountable public officer may still be civilly liable for the funds improperly disbursed although he has no criminal liability (U.S. vs. Elviña, 24 Phil. 230; Philippine National Bank vs. Tugab, 66 Phil. 583).

"In view of the foregoing, notwithstanding the dismissal of the appeal of the deceased Sendaydiego insofar as his criminal liability is concerned, the Court Resolved to continue exercising appellate jurisdiction over his possible civil liability for the money claims of the Province of Pangasinan arising from the alleged criminal acts complained of, as if no criminal case had been instituted against him, thus making applicable, in determining his civil liability, Article 30 of the Civil Code (Note: The lower court had issued an order of attachment against him on January 13, 1970 for the sum of P36,487 and in the brief for said appellant, there is no specific assignment of error affecting the civil liability fixed by the trial court.) and, for that purpose, his counsel is directed to inform this Court within ten (10) days of the names and addresses of the decedent's heirs or whether or not his estate is under administration and has a duly appointed judicial administrator. Said heirs or administrator will be substituted for the deceased insofar as the civil action for the civil liability is concerned (Secs. 16 and 17, Rule 3, Rules of Court). According to Sendaydiego's brief, he had a wife and ten children named Arturo, Licerio, Jr., Prospero, Regulo, Eduardo, Cesar, Nola, Aida, Wilfredo and Manolo (deceased).

"The title of this case should be amended to show its civil aspect by adding thereto the following: 'Province of Pangasinan vs. Heirs of Licerio P. Sendaydiego.'"

Sendaydiego's appeal will be resolved only for the purpose of showing his criminal liability which is the basis of the civil liability for which his estate would be liable.

Sendaydiego's appeal; civil liability of his estate. - In view of Sendaydiego's death, it is not necessary to resolve his first two assignments of error, wherein he assails the imposition of reclusion perpetua as a cruel and unusual penalty and wherein it is argued that there is no complex crime of malversation through falsification committed by negligence.

In the third assignment of error, it is contended that the trial court erred in allowing private prosecutors Millora and Urbiztondo to prosecute the case, thereby allegedly subjecting the accused to proceedings marked by undue publicity, prejudgment, bias and political self-interest.

Atty. Vicente D. Millora, a senior member of the provincial board, actually handled the prosecution of the case from the preliminary investigation, which started on June 5, 1969, up to the termination of the trial on July 29, 1970.

At the commencement of the preliminary investigation, the counsel for the accused auditor inquired whether Atty. Millora was authorized by the provincial board to act as private prosecutor in representation of the province of Pangasinan, the offended party. Atty. Millora replied that there was a board resolution designating him as private prosecutor.

The acting provincial commander, who filed the complaints, manifested to the trial court that he had authorized Atty. Millora to act as private prosecutor (4-8 tsn June 5, 1969).

Another defense counsel filed a written motion to inhibit Millora and the others as private prosecutors. The lower court denied the motion in its order of June 18, 1969 (p. 40, Record of Criminal Case No. 23350).

After the termination of the preliminary investigation conducted by the lower court, the provincial fiscal of Pangasinan and the city fiscal of Dagupan City filed three informations against the accused all dated November 4, 1969.

At the commencement of the trial on February 23, 1970 the city fiscal, an assistant provincial fiscal, and Atty. Millora, the private prosecutor, appeared for the prosecution. The city fiscal moved "that the private prosecutor (Millora) be authorized to conduct the examination subject to our (the fiscal's) control and supervision". The trial court granted the motion (7 tsn).

At the hearing on April 23, 1970 the same city fiscal moved that Atty. Urbiztondo be authorized to examine the prosecution witnesses under his supervision and control. The trial court granted the motion (155 tsn).

The record shows that at every hearing the provincial fiscal, the city fiscal or an assistant fiscal were present together with the private prosecutor.

Under the foregoing circumstances, we believe that there was substantial compliance with the rule that the criminal action should be "prosecuted under the direction and control of the fiscal" and that "the provincial fiscal shall represent the province" in any court (Sec. 4, Rule 110, Rules of Court; sec. 1683, Revised Administrative Code).

The observation of Sendaydiego's counsel, that the imposition of reclusion perpetua "could have been the result of the undue publicity, prejudgment, bias and political self-interest which attended the proceedings", is not well-founded. The trial court's decision dispels any doubt as to its impartiality. The evidence in the three cases is mainly documentary. The un-assailable probative value of the documents involved, rather than bias and prejudice, was the decisive factor on which the trial court anchored the judgment of conviction.

Moreover, as already adverted to, Sendaydiego's death had rendered moot the issue as to the propriety of the imposition of reclusion perpetua. And, as will be shown later, reclusion perpetua cannot be imposed in these cases because the crimes committed were not complex.

The other seven assignments of error made by Sendaydiego's counsel refer to the trial court's conclusion that Sendaydiego and Samson are guilty beyond reasonable doubt of malversation through falsification or, specifically, that the provincial treasurer, in signing the six vouchers, evinced "malice or fraud and that there must have been connivance between" the two.

Several circumstances indicate that Sendaydiego conspired with Samson. Donato N. Rosete, the assistant provincial treasurer, testified that, contrary to the usual procedure, he affixed his initial to paragraph 3 of the vouchers after Sendaydiego had signed it. Rosete adhered to that unusual procedure because the interested party, Samson, who hand-carried the vouchers, approached Rosete after he (Samson) had conferred with the provincial treasurer and Samson told Rosete to initial the voucher because it was areglado na (already settled) since the treasurer had already signed the voucher (54 tsn July 3, 1969).

Rosete's testimony and affidavit confute appellant Sendaydiego's contention that the trial court erred in finding that he signed the questioned vouchers before Rosete had placed his initial in them. After the treasurer had signed the voucher, Rosete's duty to initial it was only ministerial (75 tsn July 3, 1969).

The bookkeeper in the treasurer's office testified that he indicated in the vouchers that the amounts covered thereby should be paid in cash. That indication was made by means of the symbol "A-1-1" placed at the bottom of the vouchers under the column "Account Number". The bookkeeper was instructed by Samson to place that symbol. Samson told him that he (Samson) had an understanding with Treasurer Sendaydiego that the payment should be made in cash. There were instances when the treasurer insisted on payment by check to creditors other than Juan Samson.

The cash payments were made to Samson in the inner office of the provincial treasurer where the cashier was

summoned to make the cash payments (11-12 tsn July 9, 1969; p. 11, Exh. EE). As noted by the trial court, it was unusual that the payments should be made in the treasurer's office when that was a ministerial chore of the cashier.

The cash payments were made to Samson even if Samson had no power of attorney from the Carried Construction Supply Co. authorizing him to receive the payments. The space in the vouchers for the signature of the witness, who should be present when the payments were received, was blank. The treasurer did not bother to have a witness to attest to the payments or to require the exhibition of Samson's residence certificate.

Another apt observation of the trial court is that the forged character of the six vouchers would have been unmasked by the supposed creditor, Carried Construction Supply Co., if the payments had been made by means of checks. The company on receiving the checks would have returned them to the treasurer because it knew that there was no reason to make any payments at all. The trial court said that the cash payments prove Sendaydiego's collusion with Samson.

Sendaydiego's counsel assails the lower court's finding that there was a conspiracy between the provincial treasurer and Samson as shown by the fact that the amounts covered by the vouchers were paid to Samson by the cashier in the treasurer's inner office. That point was testified to by Rosete, the assistant provincial treasurer.

The cashier, Napoleon Ulanday, would have been the best witness on how and where the payments were made. However, Ulanday died before the preliminary investigation was started. On May 27, 1969, after the anomalies were unearthed, he wrote a letter to the provincial treasurer, stating that he paid to Samson the amounts covered by five vouchers in the presence of Salazar K. Misal and Josefina E. Pulido (Exh. 13).

Rosete was in a position to state that the cash payments were made to Samson in the treasurer's inner office because his table was near the main door of the treasurer's office or was about fifteen meters away (18 tsn). Rosete always knew when the cashier went to the treasurer's office because the cashier was summoned by means of a buzzer (long buzz), and when the cashier came out of the treasurer's office, he would be holding the voucher (12-13 tsn).

Sendaydiego's counsel stressed that no gross negligence can be imputed to the treasurer (malversation is a crime which can be committed by means of dolo or culpa and the penalty in either case is the same). This argument does not deserve serious consideration because the facts proven by the prosecution show that he had a tie up with Samson and that he acted maliciously in signing the six questioned vouchers.

The last contention put forward for Sendaydiego is that, because the trial court acquitted the auditor, then the treasurer's exoneration follows as a matter of course. We see no merit in that contention because the evidence for the prosecution against Sendaydiego is not the same as its evidence against the auditor. For that reason, the auditor was charged only as an accomplice, whereas, the treasurer was charged as a principal. The auditor based his defense on the undeniable fact that the treasurer had approved the six vouchers "for pre-audit and payment" before they were passed upon by the auditor. In short, the auditor was misled by the treasurer's certification which the auditor apparently assumed to have been made in good faith when in truth it was made in bad faith.

We are convinced after a minutiose examination of the documentary and oral evidence and an unprejudiced consideration of the arguments of Sendaydiego's learned counsel that his criminal liability was established beyond reasonable doubt and, therefore, the civil liability of his estate for the amounts malversed was duly substantiated.

Samson's appeal. - Samson's brief has no statement of facts. He contends that the trial court erred in disregarding the expert testimony that his signatures on the vouchers are not his signatures; in finding that he forged the vouchers and received the proceeds thereof, and in relying on circumstantial evidence as proof of conspiracy.

As a preliminary issue, Samson argues that Judge Eloy B. Bello should have inhibited himself "in fairness to the accused, in the interest of justice, and as a gesture of delicadeza" because he had conducted the preliminary investigation.

Our searching study of the record fails to sustain Samson's insinuation that he was prejudiced by the fact that the Judge, who conducted the preliminary investigation, was the one who tried the case and convicted him. Judge Bello tried the case fairly. His conduct of the trial does not show that he had already prejudged their guilt.

Section 13, Rule 112 of the Rules of Court, in allowing a Court of First Instance to conduct a preliminary investigation, does not disqualify it from trying the case after it had found probable cause and after the fiscal, as directed by the Court, had filed the corresponding information. The rule assumes that the Judge, who conducted the preliminary investigation, could impartially try the case on the merits.

We cannot assume that judges as a rule are opinionated and narrow-minded insomuch that they would invariably be ironbound by their findings at the preliminary investigation.

The case of a Judge of the Court of First Instance, who conducts a preliminary investigation and then tries the case on the merits, is similar to a situation where an inferior court conducts a preliminary investigation of a grave or less grave offense falling within the concurrent jurisdiction of the Court of First Instance and the inferior court. In such a case, the inferior court after terminating the preliminary investigation is not obligated (por delicadeza) to remand the case to the Court of First Instance for trial. The inferior court has the option to try the case on the merits (*People vs. Palmon*, 86 Phil. 350; *Natividad vs. Robles*, 87 Phil. 834; *People vs. Colicio*, 88 Phil. 196). The assumption is that the inferior court can try the case without any ingrained bias or undue prejudice.

Samson sought to prove, through Lieutenant Colonel Jose G. Fernandez, retired chief of the Constabulary crime laboratory, a handwriting expert, that his signatures on the vouchers are not his signatures.

Fernandez found that the questioned signatures and the alleged genuine signatures (exemplars) of Samson have fundamental differences. The expert concluded that the questioned signatures and the exemplar signatures of Samson were not written by one and the same person (Exh. 20).

After examining the questioned and genuine signatures and analysing the evidence and contentions of the parties, we find that the expert is correct in declaring that (as admitted by the trial court) there are radical differences between the questioned and authentic signatures.

But the expert is in error in concluding that Samson did not forge the questioned signatures or in implying that Samson had no hand in the writing thereof.

The truth is that Samson used two forms of signature. His supposed genuine signatures found in his residence certificates, income tax returns and the genuine official receipt of the Carried Construction Supply Co. are "in an arcade form or rounded form of writing". The surname Samson is encircled.

On the other hand, the questioned signatures used in Samson's transactions with the provincial government are in angular form; his surname is not encircled, and the questioned signatures terminate in angular and horizontal strokes.

Samson was consistent in his fakeries. Knowing that the six vouchers evidenced fictitious transactions, he used therein his fake signature, or the signature which is different from his signature in genuine documents. He used his forged signatures in the six fake official receipts of the Carried Construction Supply Co., stating that the amounts covered by the six vouchers were received by him (Exh. K-6, KK to KK-4). The expert admitted that a person may have two forms of signature (286 tsn July 16, 1970).

Signatures may be deliberately disguised with the dishonest intention of denying the same as and when necessary (Mehta, *Identification of Handwriting and Cross Examination of Experts*, 4th Ed., 1970, p. 224; Harrison, *Suspect Documents*, pp. 418-419).

Sendaydiego himself testified that the questioned signatures of Samson in the six vouchers were Samson's signatures (94-99 tsn July 31, 1969).

Fernandez, the handwriting expert, declared that the questioned signatures of Samson in the vouchers were written by only one person (264-265 tsn July 16, 1970).

The evidence conclusively proves that Samson, as the representative or collector of the supposed creditor, Carried Construction Supply Co., hand-carried the vouchers in question to the offices of the provincial engineer, treasurer and auditor and then back to the treasurer's office for payment. He actually received the cash payments. Under those circumstances, Samson is presumed to be the forger of the vouchers.

The rule is that if a person had in his possession a falsified document and he made use of it (uttered it), taking advantage of it and profiting thereby, the presumption is that he is the material author of the falsification. This is especially true if the use or uttering of the forged documents was so closely connected in time with the forgery that the user or possessor may be proven to have the capacity of committing the forgery, or to have close connection with the forgers, and, therefore, had complicity in the forgery. (U.S. vs. Castillo, 6 Phil. 453; *People vs. De Lara*, 45 Phil. 754; *People vs. Domingo*, 49 Phil. 28; *People vs. Astudillo*, 60 Phil. 338; *People vs. Manansala*, 105 Phil. 1253).

In the absence of a satisfactory explanation, one who is found in possession of a forged document and who used or uttered it is presumed to be the forger thereof, or the one who induced the forgery (*Alarcon vs. Court of Appeals*, L-21846, March 31, 1967, 19 SCRA 688; *People vs. Caragao*, L-28258, December 27, 1969, 30 SCRA 993).

Samson's use of one form of signature for his crooked transactions with the provincial government and another form of signature for his valid transactions or papers shows the deviousness of the falsifications perpetrated in these cases. (Note that Sendaydiego signed the certification in the first voucher, Exhibit K, stating that proceeds thereof were paid to Samson but Sendaydiego did not sign the same certification in the other five forged vouchers, Exhibits O, P, Q, R and S).

As to the question of conspiracy, the statement of Samson's counsel on page 19 of his brief, that "the trial court made absolutely no finding of any supposed conspiracy" between Samson and Sendaydiego, is not correct.

We have already noted that the trial court explicitly stated that the circumstance that Sendaydiego signed the six vouchers ahead of his assistant shows that there was "malice or fraud" on the part of Sendaydiego and that there was connivance between Samson and Sendaydiego when the proceeds of the vouchers were paid to Samson in Sendaydiego's inner office, instead of in the cashier's office (p. 23, 26, Decision, Appendix to Samson's brief). The trial court said that the fact that Sendaydiego allowed payment in cash shows "his collusion" with Samson (*Ibid*, p. 26).

Samson's contention that the trial court merely conjectured that he had received the proceeds of the vouchers is not well-taken. The trial court's finding on that point is based on very strong circumstantial evidence (assuming that it was not proven that Samson signed the vouchers).

Samson vehemently argues that there is no evidence that the total sum of P57,048.23 paid under the six vouchers "was really misappropriated". He asserts that the six vouchers are genuine (although he contends that his

signatures thereon are forgeries) and that there is no proof that the amounts covered thereby were not paid for the construction materials indicated therein. He insists that the materials were actually delivered to the province.

These contentions appear to be untenable in the light of the declaration of Jabanes, the assistant manager of Carried Construction Supply Co., the alleged supplier, that the materials shown in the six vouchers were never delivered by the company (Exh. HH).

And Leticia Sevilleja (wife of the provincial engineer), who was employed as cashier of the Carried Construction Supply Co., denied that Samson turned over to the company the proceeds of the six vouchers which he was supposed to have collected for the company from Sendaydiego. The six vouchers appear to be fake principally because they evidence fictitious sales of construction materials.

Under the said circumstances, it cannot be contended that there was no malversation after Sendaydiego admitted that Samson acknowledged in the six vouchers that he received from Treasurer Sendaydiego the total sum of P57,048.23.

The assertion of Samson's counsel on page 29 of his brief, that the finding as to his guilt is based on a shaky foundation or is predicated on circumstances which were not proven, is not correct.

Recapitulation. - In resumé, it appears that the provincial treasurer wants to base his exculpation on his belief that in the six vouchers the signatures of Samson and the officials in the provincial engineer's office appeared to be genuine and on the fact that the auditor had approved the vouchers. The treasurer claimed that he acted in good faith in approving the payments of the proceeds of the vouchers to Samson as the representative of the supplier, Carried Construction Supply Co.

On the other hand, Samson, by impugning his signatures in the vouchers, denied that he received the said amounts from the cashier of the treasurer's office.

These conflicting versions of the treasurer and Samson have to be resolved in the light of the inexpugnable fact that Samson had hand-carried the vouchers and followed up their processing in the offices of the provincial engineer, treasurer and auditor (Exh. AA, p. 1; Exh. CC, p. 2; Exh. DD; Exh. W and EE, p. 5) and that Samson's principal, the Carried Construction Supply Co., denied having sold to the provincial government the construction materials described in the six vouchers and denied having received from Samson the prices of the alleged sales.

The result is that Samson's denial of his signatures in the six vouchers and in the six receipts (Exh. K-6 and KK to KK-4) and the provincial treasurer's pretension of having acted in good faith or having committed an honest mistake have to be disbelieved.

The unavoidable conclusion is that Sendaydiego and Samson were in cahoots to defraud the provincial government and to camouflage the defraudation by means of the six vouchers which have some genuine features and which appear to be extrinsically authentic but which were intrinsically fake.

Penalties. - The trial court and the parties assumed that three complex crimes of malversation through falsification of public documents were committed in this case. That assumption is wrong.

The crimes committed in these three cases are not complex. Separate crimes of falsification and malversation were committed. These are not cases where the execution of a single act constitutes two grave or less grave felonies or where the falsification was used as a means to commit malversation.

In the six vouchers the falsification was used to conceal the malversation. It is settled that if the falsification was resorted to for the purpose of hiding the malversation, the falsification and malversation are separate offenses (People vs. Cid, 66 Phil. 354; People vs. Villanueva, 58 Phil. 671; People vs. Garalde, 52 Phil. 1000; People vs.

Regis, 67 Phil. 43).

In the Regis case, *supra*, where the *modus operandi* is similar to the instant cases, the municipal treasurer made it appear in two official payrolls dated April 30 and May 2, 1931 that some persons worked as laborers in a certain street project at Pinamungahan, Cebu. In that way, the two amounts covered by the payrolls, P473.70 and P271.60, were appropriated and taken from the municipal funds. As a matter of fact, no such work was done in the said street project and the persons mentioned in both payrolls had not performed any labor.

It was held in the Regis case that the falsification and malversation did not constitute a complex crime because the falsifications were not necessary means for the commission of the malversations. Each falsification and each malversation constituted independent offenses which must be punished separately.

The municipal treasurer was convicted of two falsifications and two malversations. Four distinct penalties were imposed.

In the instant cases, the provincial treasurer, as the custodian of the money forming part of the road and bridge fund, could have malversed or misappropriated it without falsifying any voucher. The falsification was used as a device to prevent detection of the malversation.

The falsifications cannot be regarded as constituting one continuing offense impelled by a single criminal impulse.

Each falsification of a voucher constitutes one crime. The falsification of six vouchers constitutes six separate or distinct offenses (*People vs. Madrigal-Gonzales*, 117 Phil. 956).

And each misappropriation as evidenced by a provincial voucher constitutes a separate offense. The six misappropriations evidenced by the six vouchers constitute six distinct offenses (*U.S. vs. Sacramento*, 53 Phil. 639).

The overall result is that in these three cases six separate offenses of falsification and six separate crimes of malversation were committed. Appellant Samson is a co-principal in each of the said twelve offenses.

As already stated, he is presumed to be the author of the falsification because he was in possession of the forged vouchers and he used them in order to receive public monies from the provincial treasurer.

He is a co-principal in the six crimes of malversation because he conspired with the provincial treasurer in committing those offenses. The trial court correctly ruled that a private person conspiring with an accountable public officer in committing malversation is also guilty of malversation (*People vs. Rodis*, 105 Phil. 1294; *U.S. vs. Ponte*, 20 Phil. 379; *U.S. vs. Dato and Lustre*, 37 Phil. 359; *U.S. vs. Dowdell*, 11 Phil. 4; *People vs. Caluag*, 94 Phil. 457).

Note that a different rule prevails with respect to a stranger taking part in the commission of parricide or qualified theft. In such cases, the stranger is not guilty of parricide or qualified theft but only of murder or homicide, as the case may be, and simple theft, by reason of paragraph 3, article 62 of the Revised Penal Code (*People vs. Patricio*, 46 Phil. 875 and *People vs. Valdellon*, 46 Phil. 245).

Falsification of a public document committed by a private person is punished in article 172(1) of the Revised Penal Code by prison correccional in its medium and maximum periods and a fine of not more than P5,000.

For the malversation of the sums of P5,187.28 and P4,501.38, respectively covered by vouchers Nos. 11869 and 11872 (Exh. P and S), the penalty provided in paragraph 2 of article 217 of the Revised Penal Code is prison mayor minimum and medium.

For the malversation of the sums of P6,290.60 and P9,769.64, respectively covered by vouchers Nos. 11870 and 11871 (Exh. Q and R) the penalty provided in paragraph 3 of article 217 is prision mayor maximum to reclusion temporal minimum.

For the malversation of the sums of P16,727.52 and P14,571.81 respectively covered by vouchers Nos. 10724 and 10995 (Exh. K and O), the penalty provided in paragraph 4 of article 217 is reclusion temporal medium and maximum.

In each of the malversation cases, a fine equal to the amount malversed should be added to the imprisonment penalty.

In the twelve cases the penalty should be imposed in the medium period since there are no modifying circumstances (Arts. 64[1] and 65, Revised Penal Code). Samson is entitled to an indeterminate sentence.

WHEREFORE, Samson is convicted of six crimes of falsification of a public document and six crimes of malversation.

In lieu of the penalties imposed by the trial court, he is sentenced to the following penalties:

For each of the six falsifications of the vouchers (Exh. K, O, P, Q, R and S), Samson is sentenced to an indeterminate penalty of two (2) years of prision correccional minimum, as minimum, to four (4) years of prision correccional medium, as maximum, and to pay a fine of three thousand pesos.

For the malversation of the sum of P16,727.52 covered by voucher No. 10724 (Exh. K), Samson is sentenced to an indeterminate penalty of twelve (12) years of prision mayor maximum, as minimum, to seventeen (17) years of reclusion temporal medium, as maximum; to pay a fine in the amount of P16,727.52, and to indemnify the province of Pangasinan in the same amount (Criminal Case No. 23349, L-33252).

For the malversation of the sum of P14,571.81 covered by voucher No. 11995 (Exh. O), Samson is sentenced to an indeterminate penalty of twelve (12) years of prision mayor maximum, as minimum, to seventeen (17) years of reclusion temporal medium, as maximum; to pay a fine in the sum of P14,571.81, and to indemnify the province of Pangasinan in the same amount (Criminal Case No. 23351, L-33254).

For the malversation of the sum of P6,290.60 covered by voucher No. 11870 (Exh. Q), Samson is sentenced to an indeterminate penalty of nine (9) years of prision mayor medium, as minimum, to thirteen (13) years of reclusion temporal minimum, as maximum; to pay a fine of P6,290.60, and to indemnify the province of Pangasinan in the same amount (Criminal Case No. 23350, L-33253).

For the malversation of the sum of P9,769.64 covered by voucher No. 11871 (Exh. R), Samson is sentenced to an indeterminate penalty of nine (9) years of prision mayor medium, as minimum, to thirteen (13) years of reclusion temporal minimum, as maximum; to pay a fine of P9,769.64, and to indemnify the province of Pangasinan in the same amount (Criminal Case No. 23350, L-33253).

For the malversation of the sum of P5,187.28, covered by voucher No. 11869 (Exh. P), Samson is sentenced to an indeterminate penalty of five (5) years of prision correccional maximum, as minimum, to eight (8) years of prision mayor minimum, as maximum; to pay a fine of P5,187.28, and to indemnify the province of Pangasinan in the same amount (Criminal Case No. 23350, L-33253).

For the malversation of the sum of P4,501.38 covered by voucher No. 11872 (Exh. S), Samson is sentenced to an indeterminate penalty of five (5) years of prision correccional maximum, as minimum, to eight (8) years of prision mayor minimum, as maximum; to pay a fine of P4,501.38, and to indemnify the province of Pangasinan in the same amount (Criminal Case No. 23350, L-33253).

In the service of the twelve penalties meted to Samson, the threefold limit provided for in article 70 of the Revised Penal Code should be observed (*People vs. Escares*, 102 Phil. 677), meaning that the maximum penalty that he should serve is three times the indeterminate sentence of twelve (12) years to seventeen (17) years, the severest penalty imposed on him, or thirty-six (36) years to fifty-one (51) years (See *People vs. Peñas*, 68 Phil. 533).

The maximum duration of his sentences should not exceed forty (40) years (Penultimate par. of art. 70; *People vs. Alisub*, 69 Phil. 362; *People vs. Concepcion*, 59 Phil. 518, 68 Phil. 530 and 69 Phil. 58).

The estate of the late Licerio P. Sendaydiego is ordered to indemnify the province of Pangasinan in the sum of P57,048.23. Samson and the said estate are solidarily liable for the said indemnity (Art. 110, Revised Penal Code). Samson should pay one-half of the costs.

SO ORDERED.

Antonio, Concepcion, Jr., and Santos, JJ., concur.

Barredo, J., (Acting Chairman), concurs in a separate opinion.

Fernando, J., did not take part.

[*] Title of case was amended pursuant to resolution dated July 8, 1977. In the resolution of August 31, 1977 Sendaydiego's heirs, namely, his wife Paula and children, Arturo, Licerio Jr., Prospero, Regulo, Eduardo, Wilfredo, Cesar, Nela and Aida were substituted for him.

SEPARATE OPINION

BARREDO, J.:concurring

While I concur in the judgment finding the accused appellant Juan Samson guilty of six separate crimes each of falsification and malversation as elucidated in the very well studied and ably prepared main opinion of our distinguished colleague, Mr. Justice Aquino, and while I further agree that said appellant and the estate of the deceased Licerio P. Sendaydiego are jointly and solidarily liable to the Province of Pangasinan for the amounts stated in the dispositive portion of the decision herein, I have my own legal basis for holding that the estate of Sendaydiego is indeed liable for the said amounts.

To start with, I find it difficult to share the view that "notwithstanding the dismissal of the appeal of the deceased Sendaydiego (he died during the pendency of this appeal) insofar as his criminal liability is concerned, x x x Sendaydiego's appeal will (nevertheless) be resolved only for the purpose of showing his criminal liability which is the basis of the civil liability for which his estate is liable." It seems to me that there is some degree of irreconcilable inconsistency in dismissing a criminal case, thereby acquitting the accused therein of criminal liability - because of death or any other cause not amounting to a finding that he had not committed the act complained of - and at the same time holding that he or his estate has incurred civil liability based on his criminal liability. It is to me clearly obvious that the dismissal of an appeal, due to death of the appellant, from a judgment of conviction by a trial court does not result in the affirmance of such conviction - contrary to the general rule when an appeal in a criminal case is dismissed - but, on the contrary, it amounts to an acquittal of the appellant based on the constitutionally mandated presumption of innocence in his favor that can be overcome only by a finding of guilt, something that his death prevents the court from making. In a sense, the death of an

accused-appellant has the effect of his total absolution by God from any earthly responsibility for the offense as such, a divine act of clemency no human court can reverse, qualify, much less disregard. It is an inherent inalienable human right of every individual not to be subject to imputation of criminal liability in any sense, unless his guilt of the crime charged against him has been duly proven beyond reasonable doubt in a duly held criminal proceeding. The intervention of death of the accused in any criminal case is an injunction by fate itself that no criminal liability whatsoever should be imposed on him, not only because from the very nature of the situation, it is impossible to do so but also because it would be a juridical absurdity to contemplate such a legal concept. In short, death extinguishes the crime, and, corollarily, all its consequences.

Indeed, it is but logical to hold that the civil liability resulting from criminal liability under Article 100 of the Revised Penal Code would have no basis unless criminal responsibility is fixed or exists. It has been said that civil liability under this provision "is rooted in the criminal liability".^[1] In this connection and adjectively, Section 1 of Rule 111 stipulates that "when a criminal action is instituted, the civil action for recovery of civil liability arising from the offense charged is impliedly instituted with the criminal action, etc." But it must be emphasized that these legal precepts refer exclusively to the civil liability consequent of the offense in its juridical essence as a crime, it being elementary in our legal system that the same act may give rise to civil responsibility independent of that resulting from the commission of the act as a crime.

Thus, it is entirely possible for one to be free from civil liability directly rooted in the act viewed as a violation of the penal law and still be liable civilly for it considered otherwise as an infringement of a right based on or created by contract or by laws other than the criminal law. A consistent host of jurisprudence, too familiar to the bench and bar to need particular citation here, exists upholding the right of a party aggrieved by an act criminal in nature to indemnity, restitution or reparation, notwithstanding the absence or failure of the usual criminal prosecution, in view of the provisions of the pertinent articles of the Civil Code on Human Relations and Section 2 of Rule 111. Stated otherwise, the same act or set of facts can be the subject of obligations arising at the same time thru the different modes contemplated in Article 1157 of the Civil Code providing that "obligations arise from (1) law; (2) contracts; (3) quasi-contracts; (4) acts or omissions punished by law; and (5) quasi--delicts." Thus, that an act or omission is punished by law, thereby making the actor civilly liable therefor, does not exclude simultaneous liability of the actor for the same act viewed also as one giving rise to an obligation under another law, and/or under a contract, quasi-contract or quasi-delict, with the sole qualification that the aggrieved party cannot recover damages more than once for the same act or omission. (See Art. 2177, Civil Code.)

I am confident that the points I have just discussed are beyond debate. And as I see it, my learned colleagues in the majority and I are agreed that in the light of the legal principles I have stated, there can be no doubt that the estate of Sandaydiego could be held liable for the acts of the deceased that can be proven to have damaged the Province of Pangasinan in spite of the dismissal of Sendaydiego's appeal by reason of his death. Our possible disagreement relates only to the procedural aspect of the matter.

The main opinion justifies the imposition of civil liability upon said estate within this appeal proceeding, thereby dispensing with the filing of a separate civil action for the purpose. In my view, the dismissal of Sendaydiego's appeal amounts, as I have said to his acquittal. This acquittal to my mind is different juridically from one based on reasonable doubt because as I have already intimated earlier, it is a total absolution by fate itself which carries with it necessarily, exemption from or extinction of the civil liability as if the Court had held that the act from which the civil (action) might arise did not exist. (Section 2 (e), Rule 111.) But this is not to say that the estate is already exonerated altogether from another kind of civil liability for indemnity, restitution or reparation, for under the unbroken line of precedents I have already referred to, the pertinent provisions on Human Relations of the Civil Code, particularly Article 30, come into play, for under this cited provision, the total absolution of

Sendaydiego based on his death becomes virtually immaterial, since this provision contemplates prosecution of the civil liability arising from a criminal offense without the need of any criminal proceeding to prove the commission of the crime as such, that is, without having to prove the criminal liability of the defendant so long as his act causing damage or prejudice to the offended party is proven by a preponderance of evidence. This article provides, "when a separate civil action is brought to demand civil liability arising from a criminal offense, and no criminal proceedings are instituted during the pendency of the civil case, a preponderance of evidence shall likewise be sufficient to prove the act complained of."

My reading of the existing jurisprudence is that the civil liability not based on the act as crime has to be prosecuted in a separate civil action and not within the same criminal proceeding wherein the accused has been acquitted or the case against him is terminated with exonerative consequence. If there is any jurisprudence to the contrary, it is still isolated and is not binding precedent. Worse, in my opinion, it is based on what I consider to be the erroneous premise that Article 29 of the Civil Code does not mean literally what it says. Textually, this article states:

"When the accused in a criminal prosecution is acquitted on the ground that his guilt has not been proved beyond reasonable doubt, a civil action for damages for the same act or omission may be instituted. Such action requires only a preponderance of evidence. Upon motion of the defendant, the court may require the plaintiff to file a bond to answer for damages in case the complaint should be found to be malicious.

"If in a criminal case the judgment of acquittal is based upon reasonable doubt, the court shall so declare. In the absence of any declaration to that effect, it may be inferred from the text of the decision whether or not the acquittal is due to that ground."

Definitely and unequivocally, what it authorizes is that "a civil action for damages for the same act or omission may be instituted." It does not say that the civil action joined with the criminal action, as provided for in Section 1 of Rule 111, shall survive and be the one continued. I reiterate that what is left to the offended party after the death of an accused before conviction is the right to institute a civil action for damages for the same act or omission pursuant to Articles 29 and 30 of the Civil Code and Sections 2 and 3 (c) of Rule 111 of the Rules of Court.

All these notwithstanding, for the purposes of the instant case, I am willing to take the position that since the point I am pressing on is more or less procedural or remedial in nature, and perhaps, the failure of the parties concerned to seriously object to the procedure pursued in the main opinion could be a sufficient excuse for not following what I feel is the proper way of dealing with the civil liability incurred by the estate of the deceased Sendaydiego, hence my concurrence, in the qualified sense implicit in this separate opinion, in the dispositive portion of the decision herein.

May I add here that the foregoing reasons explain why I have always insisted that when appeals in criminal cases before Us have to be dismissed by reason of the death of the appellant, it is not proper to qualify such dismissal as limited to that of the criminal liability of the appellant. It is my humble view that the dismissal should be unqualified and that the offended parties concerned should be left to pursue their remedies, if they so desire, in the appropriate separate civil action contemplated both in the Civil Code and in Rule 111, as explained above. I admit this view might entail the institution of what is virtually a repetitive proceeding, but I cannot see any way of avoiding what the unequivocal language of the pertinent legal provisions mandate, unless I make myself a party to judicial legislation, which I believe it is not constitutionally permissible for me to do, no matter how practical the

procedure might be.

[1] The Revised Penal Code by Aquino, Vol. I, p. 711, (1976 ed.)

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