

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE VS. PRISCILLA BALASA, NORMITA VISAYA, GUILLERMO FRANCISCO, NORMA FRANCISCO AND ANALINA FRANCISCO, ACCUSED. NORMA FRANCISCO, GUILLE...*G.R. No. 106357. September 03, 1998*

Ponente: ROMERO, J.

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Greed has always been one of man's failings. The hope of greater gain has lured many a man to throw caution, and his common sense, to the wind. This human foible, known to many, has been exploited throughout the ages by con men, charlatans and cheats to bilk the gullible public of their hard-earned money. History has thus seen the unraveling of various disingenuous stratagems which are at bottom nothing but scams. The case at hand once again proves that "a sucker is born every minute."

Totoong walang pagkaubos sa ating daigdig ang mga taong nanlilinlang. Hindi magkakagayon naman kung walang nagpapalinlang. Dahil sa kanilang malaking hangarin na magkamal ng kimpal kimpal na kayamanan, pinapasukan nila ang mga kaduda-dudang alok ng mga mapagsamantala na kung sila ay mamuhunan ng kaunting salapi, ito ay tutubo ng malaki sa ilang araw lamang. Kaya't napakaraming mga tao ang nagagantso. Hindi masasabing mga hangal o dili kaya'y mga maralita na walang gaanong pinag-aralan ang mga nabibiktima. Kahit ang mga maykaya at matataas sa ating lipunan ay napaglalaruan din. Milyun-milyong salapi ang nahuhuthot sa kanila, hindi ng mga masakim na magnanakaw, kundi ng kanila na ring mga kasamahan sa tinatawag na "alta sociedad." Mismong mga kaibigan at kapanatag ng loob ang naguudyok sa kanilang sumali sa mga pakana na magpapayaman sa kanila. Higit namang nakakaawa kapag ang naloloko ay iyong nangungutang lamang at nagbabakasakali na ang ilang daan nila ay magiging libo.

Itong kapasiyahang ito ng Mataas na Hukuman ay nagbababalang muli. Magpakaingat-ingat ang lahat. Ang naghahangad ng kagitna, isang salop ang nawawala.

Iyon namang nanlilinlang. Walang gawaing masama na hindi nabubunyag rin. Totoong mahigpit ang ating batas na pumaparusa sa mga ganyang hindi na natututo, lalo't higit kung ang mga salarin ay mga sindikato.

Tunghayan natin kung papaano naganap ang gawang panloloko sa mga taga Palawan ng mga dayo lamang.

On July 6, 1989, the Panata Foundation of the Philippines, Inc., a non-stock, non-profit corporation with principal address at San Miguel, Puerto Princesa, Palawan, was registered with the Securities and Exchange Commission, under S.E.C. Reg. No. 165565. Its ten incorporators were Priscilla Balasa, Normita Visaya, Analina Francisco, Lolita Gelilang, Cynthia Ang, Norma Francisco, Purabel Espidol, Melinda Mercado, Rodolfo Ang, Jr. and Teresa G. Carandang. Five incorporators, namely, Priscilla Balasa, Normita Visaya, Analina Francisco, Lolita Gelilang and Cynthia Ang were named first trustees.

In addition, the management of the foundation was entrusted to Priscilla Balasa, as president and general

manager; Normita Visaya as corporate secretary and head comptroller; Norma Francisco as cashier; Guillermo Francisco as the disbursing officer; and Analina Francisco as treasurer. The latter also doubled as a typist of the Foundation.

On the other hand, the employees of the foundation were the tellers Rosemarie Balasa, Sylvia Magnaye, Judith Ponciano, Jessica Buaya, Rosario Arciaga, Paul Francisco, Enriquita Gabayan and Anita Macmac. The comptrollers, Ruth Jalover, Almarino Agayo, and Avelina Yan were under the supervision of Normita Visaya. Nelia Daco, one of the clerks assigned outside, was the one in direct contact with the depositors.

The Foundation's purposes, as stated in its by-laws, were as follows:

1. Uplift members' economic condition by way of financial or consultative basis (sic);
2. To encourage members in a self-help program;
3. To grant educational assistance;
4. To implement the program on the Anti-Drug campaign;
5. To acquire facilities either by or through purchase, lease, bequest of donations, equipments (sic), machineries (sic) and supplies for purposes of carrying out its business operation or hold such real or personal properties as may be convenient and proper in order to achieve the purpose of this corporation;
6. To cooperate with other organizations, institutions with similar activities for purposes of carrying out its business; and
7. To organize seminars or conferences specially in the rural areas and other selected cities."^[2]

After obtaining its SEC registration, the foundation immediately swung into operation. It sent out brochures soliciting deposits from the public, assuring would-be depositors that their money would either be doubled after 21 days or trebled after 30 days. Priscilla Balasa also went around convincing people to make deposits with the foundation at their office at the Diaz Apartment, Puerto Princesa.

The modus operandi for investing with the foundation was as follows:

When a person would deposit an amount, the amount would be taken by a clerk to be given to the teller. The teller would then fill up a printed form called a "slot." These "slots" were part of a booklet, with one booklet containing one hundred "slots." A "slot" which resembled a check, contained the following data:

PANATA FOUNDATION Control No. ____33____
(Logo) OF THE PHILIPPINES INC. Date 12-5-87 / Dec. 26, 1987
PFOPI Puerto Princesa, Palawan Amount P__500.00

SEC Reg. No. 165565
M__CHESTER MONREAL_____
Address__RPC_____
Share__FIVE____
Amount in words __FIVE HUNDRED PESOS Only____

(Sgd.) __ (Sgd.)_____
Signature of Member PRISCILLA BALASA
President / Manager

No. 30333^[3]

The control number indicated the number of the "slot" in a booklet, while the space after "date" would contain the date when the slot was acquired, as well as the date of its maturity. The amount deposited determined the number of shares, one share being equivalent to one hundred pesos. The depositor had the discretion when to affix his signature on the space provided therefor. Some would sign their slot only after payment on maturity, while others would sign as soon as they were given the slot. However, without the control number and the stamp of the teller, duly signed or initialed, no depositor could claim the proceeds of his deposit upon maturity.[4]

After the slot had been filled up by the teller, he would give it to the clerk assigned outside. The clerk would then give the slot to the depositor. Hence, while it was the teller who prepared and issued the slot, he had no direct contact with the depositor. The slots handed to a depositor were signed beforehand by the president of the foundation.

Every afternoon, the comptrollers would take the list of depositors made by the tellers with the amounts deposited by each, and have these typed. Norma Francisco would then receive from the tellers the amounts deposited by the public. It was also her job to pay the salaries of the foundation's employees. For his part, Guillermo Francisco would release money whenever a deposit would mature as indicated in the slots.

According to the foundation's rules, an investor could deposit up to P5,000.00 only, getting a slot corresponding thereto. Anyone who deposited more than that amount would, however, be given a slot but the slot had to be in the name of another person or several other persons, depending upon the amount invested.[5] According to Sylvia Magnaye, a foundation teller, all deposits maturing in August 1989 were to be tripled. For such deposits, the slots issued were colored yellow to signify that the depositor would have his deposit tripled. Deposits that would mature subsequent to August were only given double the amount deposited.[6] However, there were times when it was the depositor who would choose that his deposit be tripled, in which case, the deposit would mature later.[7]

The amounts received by the foundation were deposited in banks. Thus, a foundation teller would, from time to time, go to PNB, PCI Bank, DBP and the Rural Bank of Coron to deposit the collections in a joint account in the names of Priscilla Balasa and Norma Francisco.

Initially, the operation started with a few depositors, with most depositors investing small amounts to see whether the foundation would make good on its promise. When the foundation paid double or triple the amounts of their investment at maturity, most not only reinvested their earnings but even added to their initial investments. As word got around that deposits could be doubled within 21 days, or tripled, if the period lasted for more than 30 days, more depositors were attracted. Blinded by the prospect of gaining substantial profits for nothing more than a minuscule investment, these investors, like previous ones, were lured to reinvest their earnings, if not to invest more.

Most would invest more than P5,000.00, the investment limit set by the foundation. Priscilla Balasa would, however, encourage depositors to invest more than P5,000.00, provided that the excess was deposited under the name of others. She assured the depositors that this was safe because as long as the depositor was holding the slots, he was the "owner" of the amount deposited. Most investors then deposited amounts in the names of their relatives.

At the outset, the foundation's operations proceeded smoothly, as satisfied investors collected their investments upon maturity. On November 29, 1989, however, the foundation did not open. Depositors whose investments were to mature on said date demanded payments but none was forthcoming. On December 2, 1989, Priscilla Balasa announced that since the foundation's money had been invested in the stock market, it would resume operations on December 4, 1989. On that date, the foundation remained closed. Depositors began to demand reimbursement of their deposits, but the foundation was unable to deliver.

Consequently, sixty-four informations, all charging the offense of estafa, as defined in Presidential Decree No. 1689, were filed against Priscilla Balasa, Normita Visaya, Norma Francisco, Guillermo Francisco, Analina Francisco and eight other persons, mostly incorporators and employees of the Panata Foundation, before the Regional Trial Court of Palawan. Fourteen cases, including Criminal Case Nos. 8429 and 8751, were raffled off to Branch 52. Two more cases, Criminal Case Nos. 8704 and 8749, were similarly assigned to it. Of the sixteen cases assigned to Branch 52, eight were, with the consent of the accused, provisionally dismissed for lack of evidence.

In Criminal Case No. 8429, the information charging the accused with the crime of estafa "as amended by PD 1689" was filed on December 12, 1989. The accused in this case were: Priscilla Balasa, Almarino Agayo, Norma Francisco, Normita Visaya, Paul Francisco, Nelia Daco, Ruth Jalover,[8] Guillermo Francisco, Candido Tolentino, Jr., Rosemarie Balasa,[9] Ricardo del Rosario, Emelita Gabayan, Rosario Arciaga, Jessica Buaya, Avelina Yan, Anita Macmac, Gina Gabaldon, Ronaldo Belo, Fernando Cadauan, Lolita Gelilang, Cynthia Ang, Judith Ponciano, Sylvia Magnaye,[10] Analina Francisco and Sulpio Nabayan. As amended on February 16, 1990, the information in this case reads as follows:

"That sometime on (sic) December, 1989, the above-named accused being the Manager and employees of the PANATA Foundation of the Philippines, Inc., with office at No. 20 Diaz Apartment, Manalo Extension, Puerto Princesa City, Philippines, and within the jurisdiction of this Honorable Court, the said accused conspiring and confederating with one another and operating as a syndicate, did then and there wilfully, unlawfully and feloniously defraud one Estrella San Gabriel y Lacao by means of false representation and fraudulent means which they made to said Estrella San Gabriel to the effect that as an investor/subscriber to the PANATA Foundation, Inc. which is a non-stock corporation allegedly registered with the SEC under Registration No. 165565 and by means of other similar deceit induce the said Estrella San Gabriel to give and deliver to the said accused the amount of P5,500.00 as her investment in said foundation, and by manifestation and misrepresentation by the said accused that the said invested amount will be doubled or tripled within a certain period of days said accused knowing fully well that their manifestation and representations were false and fraudulent as they are made only for the purpose of obtaining as in fact they obtained the amount with intent to defraud misapply, misappropriate and convert the said amount for their own personal use and benefit, to the damage and prejudice of said Estrella San Gabriel in the amount of P5,500.00, Philippine Currency.

CONTRARY TO LAW and penalized under Presidential Decree No. 1689."

Likewise, in Criminal Case No. 8704, the information, filed on May 23, 1990, charged Priscilla Balasa, Norma Francisco, Guillermo Francisco, Normita Visaya, Analina Francisco, Lolita Gelilang, Cynthia Ang, Rodolfo Ang, Jr., Purable Espidol, Melinda Mercado, Almarino Agayo, Candido Tolentino, Jr., Ricardo del Rosario, Fernando Caduan, Paul Francisco and Teresita Carandang with the crime of estafa "as amended by Presidential Decree No. 1689" as follows:

"That sometime in July, 1989 to December 1989, the above-named accused being then the Manager, incorporators, members of the board of trustees, officers and employees of the PANATA FOUNDATION OF THE PHIL., INC. with Office No. 20 Diaz Apartment, Manalo Extension, Puerto Princesa City, Philippines and within the jurisdiction of this Honorable Court, the said accused conspiring, confederating together and mutually helping one another, and operating as a syndicate, did then and there wilfully, unlawfully and feloniously defraud, the complainant Conchita Bigornia, by means of false pretenses/representation and fraudulent means which they made to said Conchita Bigornia to the effect that as depositor/subscriber to the PANATA FOUNDATION OF THE PHIL., INC., which is a non-stock corporation allegedly registered with the SEC under Registration No. 165565 and by means of other similar deceit induce the said Conchita Bigornia, to give and deliver to the said accused the amount of TWENTY FOUR THOUSAND ONE HUNDRED (P24,100.00) PESOS, Philippine Currency, as his/her deposit/subscription in said Foundation, and

by manifestation and misrepresentation by the said accused that the said deposited/subscription amount will be doubled or tripled within a certain period of days said accused knowing fully well that this manifestation were (sic) false and fraudulent as they are made only for the purpose of obtaining as in fact they obtained the amount of TWENTY FOUR THOUSAND ONE HUNDRED PESOS (P24,100.00) from the said (Conchita Bigornia) and the said accused once in possession of the said amount with intent to defraud, misapply, misappropriate and convert the said amount for their own personal use and benefit, to the damage and prejudice of the said Conchita Bigornia in the amount aforesated.

CONTRARY TO LAW and penalized under P. D. No. 1689."

Similar informations were filed against the same persons in Criminal Cases Nos. 8749 and 8751. The complainant in Criminal Case No. 8749, complainant Shiela San Juan, was allegedly defrauded of P25,800.00 while in Criminal Case No. 8751, the amount of P6,800.00 was allegedly defrauded from Benjamin Yangco.

In like manner, similarly worded informations in Criminal Case Nos. 8734 and 8428, raffled off to Branch 50, alleged that Elisia Mensias was defrauded in the amount of P4,500.00 and Alfonso and Prescilla Lacao defrauded in the amount of P58,850.00, respectively.

After the filing of the informations, warrants for the arrest of the defendants in the corresponding criminal cases were issued. However, only Priscilla Balasa, Normita Visaya, Guillermo Francisco, Norma Francisco and Analina Francisco were arrested, the rest of the defendants having gone into hiding.

On arraignment, the arrested defendants all pleaded not guilty to the crimes charged but before the presentation of prosecution evidence, Priscilla Balasa and Normita Visaya escaped from police custody. With their escape, only the spouses Guillermo and Norma Francisco were called to present evidence on behalf of the defense. Analina Francisco, being a deaf-mute, was not called to the witness stand due to the lack of a competent interpreter. The spouses, in denying criminal liability, presented the following facts:

Priscilla Balasa, Normita Visaya, and Analina Francisco, full-blooded sisters, are the common children of appellant spouses Guillermo and Norma Francisco. Before the Panata Foundation started operations in July 1989, Priscilla had been living with her parents in San Mateo, Isabela. Analina, on the other hand, was living with their elder sister, Normita, in Manila. Priscilla, however, left for Palawan in June 1989.

Sometime thereafter, Guillermo Francisco received a letter from Priscilla asking him to come to Palawan to provide her company, the latter's husband having left for abroad as a seaman. Consequently, Francisco came to Palawan sometime in August 1989 to live with Priscilla at the Diaz Apartment in Puerto Princesa. Norma Francisco also came to Palawan in August, purportedly to visit Priscilla's daughter, whom she missed. Analina likewise came to Palawan from Manila in August.

Guillermo denies participation in the commission of the crime charged. In his testimony, he limits his participation in the foundation's activities to paying the holders of matured slots. It was the comptroller, Ruth Jalover, who would give him the record on which to base the remittances he would make.[11] The money he disbursed was not always in his possession, as it would have to come from the bank. It was Sylvia Magnaye who would withdraw the money from the bank while it was Nelia Daco who would directly receive money from the people. Thus, not even once did he participate in the process of receiving money. His daughters Priscilla Balasa and Normita Visaya performed other jobs in the operation of the foundation while his other daughter, Analina Francisco, only typed documents. He knew that the foundation helped people who received money from it.[12] Although the primary purpose of the foundation was to help the needy, Guillermo testified having knowledge of only one recipient thereof, the church of Aborlan.

In her testimony, Norma Francisco also denied complicity in the crime charged, claiming that she only did

household chores in Puerto Princesa. She alleged that sometimes, she would "help the tellers." However, because Ruth Jalover was educated and she was not, the former would sometimes become the "acting manager of her daughter." Sylvia Magnaye, her daughter's sister-in-law and a permanent employee of the foundation, was one of the tellers who would deposit and withdraw from the bank. The eight tellers of the foundation all applied for their jobs with Priscilla but it was Normita who interviewed them. However, Normita was only a clerk in the foundation while Analina would type whatever work Ruth Jalover would give her. While Norma had no official position in the foundation, her husband, Guillermo, was the paymaster. During her stay in Puerto Princesa, she knew of no other business that her daughter Priscilla was engaged in except the foundation and a paluwagan, which she ran together with a certain Manny Diaz. Norma knew that the foundation was a charitable institution that had helped a lot of people. She did not help Ruth Jalover in the same way that she helped Sylvia Magnaye with her job as teller, but she had nothing to do with the keeping of records. She knew that money came from the tellers, who got the money from Nelia Daco, the one receiving money from prospective investors.[13]

On March 31, 1992, Branch 50 of the Regional Trial Court of Palawan issued a joint decision in Criminal Case Nos. 8734 and 8428 finding the accused guilty of the crime charged and of having acted in conspiracy in committing the same. Finding no aggravating or mitigating circumstances in the commission of the crime, the trial court decreed thus:

"WHEREFORE, AND IN VIEW OF THE FOREGOING CONSIDERATIONS, judgment is hereby rendered finding all the accused in the 2 above-entitled cases guilty as principals of the crime of estafa as the same is defined and penalized under the Revised Penal Code.

a. In Criminal Case No. 8428 accused Priscilla Balasa, Normita Visaya, Analina Francisco, Guillermo Francisco and Norma Francisco are hereby sentenced to suffer the penalty of reclusion perpetua as well as to pay the costs. The accused are jointly and severally ordered to pay the offended party Alfonso Lacao the sum of Fifty Eight Thousand Eight Hundred Fifty (P58,850.00) Pesos and to pay the further sum of Thirty Thousand Pesos (P30,000.00) as and for moral damages;

b. In Criminal Case No. 8734, accused Normita Visaya, Analina Francisco, Norma Francisco and Guillermo Francisco are hereby sentenced to suffer the penalty of reclusion perpetua as well as to pay the costs. They are furthermore ordered jointly and severally to indemnify the offended party Elisea Mensias the sum of Four Thousand Five Hundred (P4,500.00) Pesos as well as to pay the additional sum of Fifteen Thousand (P15,000.00) Pesos as and for moral damages.

The cases against the accused Almarino Agayo, Paul Francisco, Candido Tolentino, Jr., Ricardo del Rosario, Jessica Buaya, Fernando Cadauan, Lolita Gelilang, Cynthia Ang, Rodolfo Ang, Jr., Purable Espidol, Melinda Mercado, and Teresit Carandang who remained at large up to the present time are hereby ordered archived to be reinstated in the docket of this Court as soon as they shall have been arrested or surrendered voluntarily to the jurisdiction of this Court.

SO ORDERED."

On the other hand, Branch 52 rendered separate decisions in the cases assigned to it. Thus, on October 14, 1991, the trial court, in Criminal Case No. 8429 rendered a decision, the dispositive portion of which reads as follows:

"WHEREFORE, premises considered, judgment is hereby rendered finding co-accused PRISCILLA BALASA, NORMITA VISAYA, GUILLERMO FRANCISCO, and NORMA FRANCISCO guilty beyond reasonable doubt as co-principals of the crime of estafa committed by a syndicate in violation of Section 1 of Presidential Decree No. 1689, and each of the aforementioned accused is sentenced to reclusion perpetua; to pay to Estrella Lacao San Gabriel, jointly and severally, by way of restitution, the sum of P5,500.00.00, with interest thereon of 12% per annum from December, 1989, until fully paid; and to pay the costs.

On grounds of reasonable doubt engendered by lack of sufficiently clear and convincing evidence as against her, co-accused Analina Francisco is acquitted of the offense charged.

SO ORDERED."

Although Branch 52 rendered separate decisions in the cases assigned to it, all had essentially the same disposition - imposing the penalty of reclusion perpetua upon each of the convicted accused - only the name of the offended party and the amount to be restituted varied. Thus, in Criminal Case No. 8704,[14] the trial court ordered the accused to pay Conchita Bigornia by way of restitution, the amount of P24,200.00 with interest thereon of 12% per annum from December 1989. In Criminal Case No. 8749,[15] the same convicted accused were ordered to restitute Shiela San Juan the amount of P25,800.00 plus 12% per annum from December 1989. In Criminal Case No. 8751,[16] the convicted accused were ordered to restitute Benjamin Yangco the amount of P6,800.00 with 12% interest per annum from December 1989.

Guillermo and Norma Francisco filed notices of appeal in Criminal Case Nos. 8429, 8704, 8749 and 8751. Their appeal was docketed as G.R. No. 106357. Likewise, the joint decision in Criminal Case Nos. 8734 and 8428 was appealed to this Court by Guillermo Francisco, Norma Francisco, Analina Francisco, and Normita Visaya, docketed herein as G.R. Nos. 108601-02. Noting Normita Visaya's escape from police custody after arraignment, the Court, on August 15, 1994, and pursuant to Section 8, Rule 124 of the Revised Rules of Court, ordered the dismissal of her appeal on the ground of abandonment. The Court also considered Priscilla Balasa's conviction to be final and executory, in light of her escape from police custody. It also ordered the issuance of a warrant for the arrest of Normita Visaya and an alias warrant of arrest against Priscilla Balasa.

On October 16, 1993, appellants' counsel, Atty. Agustin Rocamora, filed an appellants' brief in G.R. No. 106357. Thereafter, appellants appointed the Maramba and Mamauag Law Office as new counsel in substitution of Atty. Rocamora. On November 2, 1994, new counsel filed a motion to consolidate G.R. No. 106357 and G. R. Nos. 108601-02. On December 7, 1994, the Court granted the motion and ordered the consolidation of the two cases. On the same day, counsel for appellants submitted a consolidated appellants' brief.

In G.R. No. 106357, counsel for appellants raise the following errors:

- 1.The trial court erred in convicting the appellants despite the total absence of evidence against them;
- 2.The trial court erred in ruling that conspiracy existed on the basis of the relationship of the appellants to the principal accused; and
- 3.The trial court erred in convicting appellants despite their prior conviction for the same offense in Criminal Case No. 8429.

On the other hand, the brief filed by appellants in the consolidated cases mainly argues that they cannot be convicted of the crime defined in Presidential Decree No. 1689 because the informations filed against them alleged prejudice against the complaining witnesses, not against the national, provincial, or city economy nor was evidence presented therefor.

Appellants' conviction must, however, be sustained, the issues raised being devoid of merit. The number and diversity of issues raised by appellants impel us to discuss the points raised seriatim.

For the first assignment of error, we hold that the elements of the crime defined and penalized by P.D. No. 1689 have been proven beyond reasonable doubt in these appealed cases. The informations filed against appellants alleged that by means of false representation or false pretenses and through fraudulent means, complainants were defrauded of various amounts of money by the accused. Article 315, paragraph 2 (a) of the Revised Penal Code

provides that swindling or estafa by false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud is committed by "using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by other similar deceits." The elements of estafa under this penal provision are: (1) the accused defrauded another by means of deceit and (2) damage or prejudice capable of pecuniary estimation is caused to the offended party or third party.[17] It is indisputable that the foundation failed to return the investments of the complaining witnesses, hence it is undeniable that the complainants suffered damage in the amount of their unrecouped investments. What needs elucidation is whether or not the element of defraudation by means of deceit has been established beyond reasonable doubt.

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 confidence justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another.[18] 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.[19] On the other hand, deceit is the false representation of a matter of fact whether by words or conduct, by 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.[20]

In pursuit of their agenda, appellants established a foundation which, by its articles of incorporation, was established, allegedly to "uplift members' economic condition by way of financial or consultative basis." Organized as a non-stock, non-profit charitable institution, its funds were to be obtained through membership dues and such other assessments as may be agreed upon by its board of directors.[21] Furthermore, the *modus operandi*[22] of the foundation, duly signed by Priscilla Balasa, provided that:

"Funding

Any funding requirements to finance the operation of the association shall be done through the collection of membership fees, dues, donations, bequests and other assessments. The amount of which shall be subject to the approval of the general membership of the association.

Likewise, all funds in-flows would be used exclusively to carry out the purposes for which the FOUNDATION is established and would not inure to the benefit of any single member of the FOUNDATION.

The operations personnel shall come from volunteers among its members and should the need arise, hiring of additional personnel be resorted to."

In contravention of these by-laws and *modus operandi*, the people behind the foundation enticed people to "deposit or invest" funds in the foundation under a "double or treble your deposit" scheme. These investment activities were clearly *ultra vires* acts or acts beyond the foundation's authority. Evidently, SEC registration was obtained only for the purpose of giving a semblance of legitimacy to the foundation; that the foundation's business was sanctioned by the government; and that it was allowed by law to accept deposits. This pretension was carried out even on the slots it issued, the foundation's S.E.C. registry number being indicated thereon.

In carrying out the charade, the manager went to the extent of delivering a speech and personally encouraging people to deposit or invest in the foundation. Alfonso Lacao, a complainant and prosecution witness, testified:

"Q:

Have you heard of this so called Panata Foundation?

A:

Yes, ma'am I heard it from my friends who are talking about this Panata Foundation they even informed me that the manager of this Panata Foundation is calling for a meeting for all depositors and prospective depositors on Saturday afternoon.

Q:

With that information did you get interested in the proposed meeting being called by this Panata Foundation?

A:

I was curious and came Saturday I went to the office of the Panata Foundation to attend the meeting.

Q:

And at that time where was this office located?

A:

At Diaz Apartment, Manalo Extension, Puerto Princesa City.

Q:

Did you attend that meeting?

A:

Yes ma'am.

Q:

Whom did you see sponsoring that meeting on that particular day?

A:

Upon arrival I saw a woman delivering her message to the depositors and to the prospective depositors. I asked a friend of me (sic) who is that woman and he informed me that she is the manager of the Panata Foundation Priscilla Balasa.

x x x x x x x x

Q:

What was Priscilla Balasa doing if any in that particular meeting?

A:

In her message she was convincing all the people there to make their deposit to the Panata Foundation because according to her they were sent here to help the people of Puerto Princesa City and the people of Palawan.

Q:

Aside from that what did Priscilla Balasa tell those people who attended the meeting?

A:

She was assuring the people that they must not be afraid to deposit their money because they will not be fooling around with them.

x x x x x x x x

Q:

And did Priscilla Balasa tell those persons attending the meeting what would happen with the money they will deposit with the Panata Foundation?

A:

She was telling the people that you could deposit the money and it will be doubled within 21 days. I was further informed that the maximum amount to be deposited is P5,000.00.

Q:

You stated a while ago that the amount deposited will be doubled after 21 days?

A:

Yes ma'am.

Q:

Aside from that what else if any did Priscilla Balasa tell the public who attended that meeting?

A:

She was telling the public to make ease with their deposit because they were sent here to help the people of Puerto Princesa City and Palawan.

Q:

Did she tell the public as to where the money would be coming from?

A:

Right that moment she was not able to tell the public."^[23]

On cross-examination, Mr. Lacao testified:

"Q:

But did it not occur to your mind considering your past experience to investigate or cause the investigation of this Panata Foundation considering your connection as to whether they are in a position to make double your money investment specially so they are not engage (sic) in business, so to speak?

A:

Once I overheard the manager say when she was there telling the people around the depositors that their money is being invested in a world bank."^[24]

Priscilla Balasa, thus, promised the credulous public quick financial gains on their investments. The foundation even printed brochures proclaiming the merits of the foundation's investment scheme.^[25] Likewise, to bolster the illusion that indeed, the foundation was legitimate, the claim was made that deposits would be invested abroad in a world bank, with said transactions allegedly enabling the foundation to double or treble depositors' investments. The evidence, however, proves the contrary. Sylvia Magnaye, one of the tellers, testified:

"Q:

Other than to issue slots, do you know what other phase of operation in running the Panata Foundation during

the time that you were employed?

A:

No sir, I can only observe that issuing of slots.

Q:

Madam Witness, aside from issuing slots, there is only the activity of the foundation that you are well aware of?

A:

Sometimes they also sent me to deposit.

Q:

The deposit of the amount collected in the bank, is that correct?

A:

I do not know but they just send me to deposit amounts.

Q:

But you do not know in what other business activity other than the matter of collecting money and issuance of slots you do not know if the Panata Foundation is involved in any business activity?

A:

Yes, sir.

Q:

You do not know whether the foundation receives money regularly from any other source?

A:

I do not know sir."[26]

On cross-examination, she testified:

"Q:

You mentioned Madam Witness, that on several occasions you were asked to deposit certain amounts in the bank, do you remember having told the Court that?

A:

Right, sir.

Q:

Do you remember how many banks these deposited amounts were if you remember?

A:

I deposited at PNB, PCIBank, and DBP and Rural Bank of Coron.

Q:

Do you remember in whose names you deposited these amounts you deposited?

A:

In the name of the joint account of Priscilla Balasa and Norma Francisco."[27]

The testimonial evidence presented by the prosecution proves that appellants employed fraud and deceit upon gullible people to convince them to invest in the foundation. It has been held that where one states that the future profits or income of an enterprise shall be a certain sum, but he actually knows that there will be none, or that they will be substantially less than he represents, the statement constitutes actionable fraud where the hearer believes him and relies on the statement to his injury.[28] That there was no profit forthcoming can be clearly deduced from the fact that the foundation was not engaged nor authorized to engage in any lucrative business to finance its operation. It was not shown that it was the recipient of donations or bequest with which to finance its "double or triple your money" scheme, nor did it have any operating capital to speak of when it started operations.

Parenthetically, what appellants offered the public was a "Ponzi scheme," an investment program that offers impossibly high returns and pays these returns to early investors out of the capital contributed by later investors.[29] Named after Charles Ponzi who promoted the scheme in the 1920s, the original scheme involved the issuance of bonds which offered 50% interest in 45 days or a 100% profit if held for 90 days. Basically, Ponzi used the money he received from later investors to pay extravagant rates of return to early investors, thereby inducing more investors to place their money with him in the false hope of realizing this same extravagant rate of return themselves. This was the very same scheme practiced by the Panata Foundation.

However, the Ponzi scheme works only as long as there is an ever-increasing number of new investors joining the scheme. To pay off the 50% bonds Ponzi had to come up with a one-and-a-half times increase with each round. To pay 100% profit he had to double the number of investors at each stage, and this is the reason why a Ponzi scheme is a scheme and not an investment strategy. The progression it depends upon is unsustainable. The pattern of increase in the number of participants in the system explains how it is able to succeed in the short run and, at the same time, why it must fail in the long run. This game is difficult to sustain over a long period of time because to continue paying the promised profits to early investors, the operator needs an ever larger pool of later investors.[30] The idea behind this type of swindle is that the "con-man" collects his money from his second or third round of investors and then absconds before anyone else shows up to collect. Necessarily, these schemes only last weeks, or months at most.[31]

Note should also be taken of the fact that appellants used "slots" in their operation. These slots are actually securities,[32] the issuance of which needs the approval of the Securities and Exchange Commission. Knowing fully well that the S.E.C. would not approve the issuance of securities by a non-stock, non-profit organization, the operators of the Ponzi scheme, nevertheless, applied for registration as a foundation, an entity not allowed to engage in securities.

Finally, if the foundation were indeed legitimate, the incorporators, outside of the members of the Francisco family, would not have escaped from the clutches of the law. If the foundation and its investment scheme were legal, then it behooved them to come out and testify for their own exoneration. The wicked flee when no man pursueth: but the righteous are bold as a lion.[33]

In their defense, appellants would shift the blame on the investors. Invoking the legal principle of caveat emptor, they maintain that it was the investors' own greed that did them in, implying that the depositors should have known that no sensible business could afford to pay such extravagant returns. Having investigated the foundation and its activities, the investors should fault themselves, not the appellants, for investing in the foundation despite the patent impossibility of its claims.

The contention is untenable. The fact that the buyer makes an independent investigation or inspection has been held not to preclude him from relying on the representation made by the seller where the seller has superior knowledge and the falsity of such representation would not be apparent from such examination or inspection, and, a fortiori, where the efforts of a buyer to learn the true profits or income of a business or property are thwarted by some device of the seller, such efforts have been held not to preclude a recovery.[34] It has often been held that the buyer of a business or property is entitled to rely on the seller's statements concerning its profits, income or rents. The rule - that where a speaker has knowingly and deliberately made a statement concerning a fact the falsity of which is not apparent to the hearer, and has thus accomplished a fraudulent result, he cannot defend against the fraud by proving that the victim was negligent in failing to discover the falsity of the statement - is said to be peculiarly applicable where the owner of the property or a business intentionally makes a false statement concerning its rents, profits or income. The doctrine of caveat emptor has been held not to apply to such a case.[35]

The second assignment of error is likewise devoid of merit. Appellants deny the existence of a conspiracy in the perpetration of the fraudulent scheme, charging that mere relationship does not prove conspiracy. Guillermo Francisco further maintains that he was not even an incorporator of the foundation.

The evidence adduced by the prosecution confirms the existence of a conspiracy among the appellants in committing the crime charged. The fact that Guillermo Francisco was not an incorporator of the foundation does not make him any less liable for the crime charged. By his own admission, he participated in the foundation's activities by serving as its paymaster. Because he is father and husband to three of the organizers of the foundation, it is not farfetched to presume that he was aware of its operations. By his active cooperation, he showed a community of design with the incorporators of the foundation, thereby making him a co-conspirator and equally liable for the crime charged. His voluntary and indispensable cooperation was a concatenation of the criminal acts performed by his co-accused.[36] In this regard, appellant Guillermo Francisco is not being implicated as a co-conspirator solely because he is the father of the principal proponent of the Ponzi scheme. He is held liable as a conspirator because of his indispensable act of being the paymaster of the foundation.

Likewise, Norma Francisco's bare denial cannot exempt her from complicity. Denials of an accused cannot be accorded greater evidentiary weight than the positive declarations of credible witnesses who testify on affirmative matters.[37] Moreover, her efforts to show that she was a mere housewife who simply helped in her daughter's "business" is refuted by the prosecution witnesses. Ruth Jalover testified:

"Q:

Madam Witness, do you know a person by the name of Norma Francisco?

A:

Yes sir.

Q:

And how did you come to know her Madam Witness?

A:

She is my co-employee at the Panata Foundation sir.

Q:

What was her job in the Panata Foundation?

A:

She was the one who received the money from our tellers every afternoon."[38]

Sylvia Magnaye, on the other hand, testified:

"Q:

Madam Witness, do you know a person by the name of Norma Francisco?

A:

Yes sir.

Q:

How did you come to know her Madam Witness?

A:

She is our former cashier sir.

Q:

In the Panata Foundation?

A:

Yes sir."[39]

On cross-examination, she further testified:

"Q:

Now, I would like to direct your attention also to the other accused, Norma Francisco. You stated that she is your cashier, do you remember having done that?

A:

Yes sir.

Q:

When you say she is the cashier, do you mean to say that she is the one who pays out money or amounts to the employees Madam Witness?

A:

Yes sir."[40]

Aside from being the cashier, Norma Francisco was also an incorporator of the foundation. Likewise, the money invested in the foundation was deposited in joint bank accounts in Priscilla Balasa's name and hers. Norma Francisco's activities would thus show a community of design with the other accused making her a co-conspirator and equally liable for the crime charged. Her voluntary and indispensable cooperation concurred with the criminal acts performed by her co-accused.

As for Analina Francisco, however, the evidence adduced as to her complicity in the nefarious scheme is far from conclusive. While she was an incorporator and treasurer of the foundation, there is no denying the fact that she is a deaf-mute. As such, she is incapable of communicating and conveying her thoughts to the complaining

witnesses and other depositors. This casts serious doubt on whether she could be deemed to have similarly conspired and confederated with the other accused. As Branch 52 pointed out, on paper she might have been in the thick of the foundation's operation - being an incorporator and treasurer. We are not, however, convinced that she was actually involved in the sinister scheme. In fact, she was given the manual task of typing papers, despite her being the treasurer of the foundation. Her disability might have been the principal reason for giving her that job - she was literally deaf and mute to the nefarious activities going on in the foundation that she did not pose a danger to it. Furthermore, it is well settled that where the acts of an accused are capable of two interpretations, that which is in consonance with innocence should prevail.

With respect to the third assignment of error, appellants cannot raise the defense of double jeopardy for which the following requisites must concur: (1) a first jeopardy must have attached prior to the second; (2) the first jeopardy must have been validly terminated; (3) the second jeopardy must be for the same offense, or the second offense includes or is necessarily included in the offense charged in the first information, or is an attempt to commit the same or a frustration thereof.[41] In the instant case, the offense charged in Criminal Case No. 8429 is different from the offense charged in the other cases. While these cases arose out of the same scheme, the fraudulent acts charged were committed against different persons, hence they do not constitute the same offense.

Lastly, appellants assert that they cannot be convicted under P.D. No. 1689. They contend that the following requisites must concur for conviction under P.D. No. 1689: (1) that estafa is committed under Articles 315 or 316 of the Revised Penal Code; (2) by a syndication of five or more persons; (3) against a) stockholders or members of rural banks, cooperatives, or samahang nayon; b) corporations or associations the funds of which are solicited from the general public; and (4) such defraudation erodes the confidence of the public in the banking and cooperative systems, contravenes public interest, and (5) constitutes economic sabotage that threatens the stability of the nation."[42]

In support of their argument, appellants point out that there could not have been economic sabotage under the facts of the case because the total amount of P125,400.00 allegedly embezzled "by the other accused (not herein appellants)," did not weaken or threaten national economic stability. To emphasize that point, appellants enumerate the revenue collections of Palawan and Puerto Princesa City, "for dearth of a better reference," from 1987 to 1992 showing that the revenue collections for 1989 alone amounted to P75,002,499.19. Appellants assert that as compared to such revenue collection in 1989, the amount allegedly embezzled was negligible. As such, the crime committed in this case was not of the same genre as the "Agrix" and "Dewey Dee" scams that "spurred the birth of P.D. No. 1689." [43]

Appellants, in a desperate attempt to avoid conviction, grasp at straws. The law upon which appellants have been charged and convicted reads as follows:

PRESIDENTIAL DECREE NO. 1689

INCREASING THE PENALTY FOR CERTAIN FORMS OF SWINDLING OR ESTAFA.

WHEREAS, there is an upsurge in the commission of swindling and other forms of frauds in rural banks, cooperatives, "samahang nayon(s)", and farmers' associations or corporations/associations operating on funds solicited from the general public;

WHEREAS, such defraudation or misappropriation of funds contributed by stockholders or members of such rural banks, cooperatives, "samahang nayon(s)", or farmers' associations, or of funds solicited by corporations/associations from the general public, erodes the confidence of the public in the banking and cooperative system, contravenes the public interest, and constitutes economic sabotage that threatens the stability of the nation;

WHEREAS, it is imperative that the resurgence of said crimes be checked, or at least minimized, by imposing capital punishment on certain forms of swindling and other frauds involving rural banks, cooperatives, "samahang nayon(s)", farmers' associations or corporations/associations operating on funds solicited from the general public;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby decree and order as follows:

SEC. 1. Any person or persons who shall commit estafa or other forms of swindling as defined in Article 315 and 316 of the Revised Penal Code, as amended, shall be punished by life imprisonment to death if the swindling (estafa) is committed by a syndicate consisting of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme, and the defraudation results in the misappropriation of moneys contributed by stockholders, or members of rural banks, cooperatives, "samahang nayon(s)", or farmers associations, or of funds solicited by corporations/associations from the general public.

When not committed by a syndicate as above defined, the penalty imposable shall be reclusion temporal to reclusion perpetua if the amount of the fraud exceeds 100,000 pesos.

SEC. 2. This decree shall take effect immediately.

DONE in Manila, Philippines, this 6th day of April, in the year of Our Lord, nineteen hundred and eighty.

Under this law, the elements of the crime are: (a) estafa or other forms of swindling as defined in Articles 315 and 316 of the Revised Penal Code is committed; (b) the estafa or swindling is committed by a syndicate, and (c) defraudation results in the misappropriation of moneys contributed by stockholders, or members of rural banks, cooperatives, "samahang nayon(s)," or farmers associations, or of funds solicited by corporations/associations from the general public. These are the only elements of the crime under Section 1 of the decree. The two other "ingredients" added by appellants to constitute the crime of economic sabotage under P.D. No. 1689 have been taken from the "whereas" clause or preamble of the law. A preamble is not exactly an essential part of an act as it is an introductory or preparatory clause that explains the reasons for the enactment, usually introduced by the word "whereas." [44] In *People v. Purisima*, [45] we explained that the preamble serves as the key to the intent and spirit of the decree. It enumerates the facts or events justifying the promulgation of the decree and the sanctions for the acts prohibited therein. As such, although it is an aid in interpretation, the preamble of an act or decree is not the law subject thereof. Appellants' novel theory must, therefore, be given short shrift by this Court.

Assuming arguendo that the preamble was part of the statute, appellants' contention that they should not be held criminally liable because it was not proven that their acts constituted economic sabotage threatening the stability of the nation remains too flimsy for extensive discussion. As the preamble of P.D. No. 1689 shows, the act prohibited therein need not necessarily threaten the stability of the nation. It is sufficient that it "contravenes public interest." Public interest was affected by the solicitation of deposits under a promise of substantial profits, as it was people coming from the lower income brackets who were victimized by the illegal scheme.

Similarly, the fact that the entity involved was not a rural bank, cooperative, samahang nayon or farmers' association does not take the case out of the coverage of P.D. No. 1689. Its third "whereas clause" states that it also applies to other "corporations/associations operating on funds solicited from the general public." The foundation fits into these category as it "operated on funds solicited from the general public." To construe the law otherwise would sanction the proliferation of minor-league schemers who operate in the countryside. To allow these crimes to go unabated could spell disaster for people from the lower income bracket, the primary target of swindlers.

Again, P.D. No. 1689 penalizes offenders with life imprisonment to death regardless of the amount involved,

provided that a syndicate committed the crime. A syndicate is defined in the same law as "consisting of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme." If the offenders are not members of a syndicate, they shall nevertheless be held liable for the acts prohibited by the law but they shall be penalized by reclusion temporal to reclusion perpetua if the amount of the fraud is more than one hundred thousand pesos (P100,000.00).

In the instant case, a syndicate perpetrated the Ponzi scheme. The evidence shows that at least five persons - Priscilla Balasa, Normita Visaya, Norma Francisco, Guillermo Francisco, and the other incorporators of the foundation - collaborated, confederated and mutually helped one another in directing the foundation's activities.

In its decision in Criminal Case Nos. 8428 and 8734, Branch 50 found that the "accused numbering 5 who composed the Francisco Family together with others acted and operated as a syndicate as defined under P.D. No. 1689 and should be held liable therefor."^[46] However, it imposed the penalty of reclusion perpetua, the penalty imposable under the second paragraph of Section 1 of P.D. No. 1689 - where the offenders are not members of a syndicate and the amount involved is more than P100,000.00. The existence of a syndicate having been proved, the crime falls under the first paragraph of Section 1 of P.D. No. 1689, with an imposable penalty of life imprisonment to death. Hence, the imposition of reclusion perpetua is incorrect. Given the absence of aggravating or mitigating circumstances, the lesser penalty, or life imprisonment, should have been meted out.^[47]

Branch 52, likewise, ruled that the accused committed the offense of estafa by a syndicate under P.D. No. 1689. Therefore appellants, due to the absence of mitigating or aggravating circumstances, should have been punished with life imprisonment. However, in the dispositive portion of its decision in the four cases assigned to it, Branch 52 imposed the penalty of reclusion perpetua instead.

The Court finds this an opportune time to restate that the penalties of life imprisonment and reclusion perpetua are not the same. Thus:

"While 'life imprisonment' may appear to be the English translation of reclusion perpetua, in reality, it goes deeper than that. First, 'life imprisonment' is invariably imposed for serious offenses penalized by special laws, while reclusion perpetua is prescribed under The Revised Penal Code. Second, 'life imprisonment,' unlike reclusion perpetua, does not carry with it any accessory penalty. Third, 'life imprisonment' does not appear to have any definite extent or duration, while reclusion perpetua entails imprisonment for at least thirty (30) years after which the convict becomes eligible for pardon, although the maximum period thereof shall in no case exceed forty (40) years."^[48]

WHEREFORE, premises considered, the decisions appealed from are hereby **AFFIRMED** in so far as appellants **GUILLERMO** and **NORMA FRANCISCO** are convicted for violation of the first paragraph of Section 1 of Presidential Decree No. 1689 and ordered to restitute to complainants the amounts they have been defrauded, subject to the **MODIFICATION** that appellants **GUILLERMO** and **NORMA FRANCISCO** shall each suffer the penalty of life imprisonment for each violation of the same law under the corresponding criminal cases. Appellant **ANALINA FRANCISCO** is hereby **ACQUITTED** of the crimes charged under Criminal Case Nos. 8428 and 8734 on ground of reasonable doubt and her immediate release from custody is ordered unless she is being held on other legal grounds.

Let a copy of this Decision be furnished the Department of Justice and the Philippine National Police in order that the arrest of Priscilla Balasa, Normita Visaya and the others who have so far eluded the law shall be effected with dispatch.

SO ORDERED.

Narvasa, C.J., (Chairman), Kapunan, and Purisima, JJ., concur.

[1] Claudian, De Consulatu Stilichonis. Bk. ii, l. 111.

[2] Exh. J, Crim. Case No. 8428.

[3] Exh. F (Crim. CaseNo. 8428)

[4] Sylvia Magnaye, TSN, February 12, 1991, pp. 18-53.

[5] Ibid., pp. 29-30.

[6] Sylvia Magnaye, TSN, July 25, 1991, pp. 6 & 20-22.

[7] Sylvia Magnaye, TSN, February 12, 1991, p. 50

[8] Ruth Jalover, together with Rosemarie Balasa and Sylvia Magnaye turned state witnesses and were consequently excluded from the informations.

[9] Supra.

[10] See Note 8.

[11] TSN, September 13, 1991, p. 11.

[12] Ibid., pp. 9-15.

[13] TSN, September 13, 1991, pp. 2-9.

[14] Promulgated on December 23, 1991.

[15] Promulgated on February 19, 1992.

[16] Promulgated on October 14, 1991.

[17] De la Cruz vs. CA, 265 SCRA 299 (1996); People v. Bautista, 241 SCRA 216 (1995).

[18] CIR vs. CA, 257 SCRA 200 (1996).

[19] Alleje vs. CA, 240 SCRA 495 (1995), citing Black's Law Dictionary, 4th ed.

[20] People v. Castillo, 76 Phil. 72 (1946).

[21] Article VII of Panata Foundation Inc. By-laws provides as follows:

"Section 1. Funds - The funds of the association shall be derived from admission fees, annual dues and special assessments of members, gifts, donations or benefits.

Section 2. Fees and Dues - Every member of the association shall, in addition to the membership fee pay dues and/or assessments that may be imposed by the association from time to time.

Section 3. Disbursements - Withdrawal from the funds of the association, whether by check or any other instrument shall be signed by the Treasurer and countersigned by the President. If necessary, the Board of Trustees may designate other signatories."

[22] Exh. J-14. The "modus operandi" or a detailed explanation as to how the foundation shall carry out its

objectives, is a SEC requirement which must be submitted by non-stock corporations (See SEC Quarterly Bulletin No. 3, September 1982, p. 77).

[23] TSN, April 11, 1991, pp. 3-6.

[24] Ibid., p. 23.

[25] Sylvia Magnaye, TSN, February 12, 1991, p. 27.

[26] TSN, March 15, 1991, pp. 36-37.

[27] Ibid., pp. 39-40.

[28] 37 Am. Jur. Fraud and Deceits § 130.

[29] <http://risk.ifci.ch>.

[30] This ever increasing base of investors is the reason why a Ponzi scheme is alternatively known as a "pyramid scheme" or "pyramiding scheme." Technically speaking, however, a pyramid scheme is different from a Ponzi scheme. A "pyramid sales scheme" as defined in Section 53 of R.A. 7394, known as the Consumer Act of the Philippines, involves:

"x x x sales devices whereby a person, upon condition that he makes an investment, is granted by the manufacturer or his representative a right to recruit for profit one or more additional persons who will also be granted such right to recruit upon condition of making similar investments: Provided, That, the profits of the person employing such a plan are derived primarily from the recruitment of other persons into the plan rather than from the sale of consumer products, services and credit; Provided, further, That the limitation on the number of participants does not change the nature of the plan."

In the classic pyramid scheme 10 people say, make an investment and each in turn gets 10 additional people to invest, who in their turn must each get 10, and so on. The money for the first 10 "investors" comes from the 10 they enroll, and the money for the second group of 10 comes from the 10 investors that each of them enrolls, and so on. This type of scheme involves a geometric increase in the number of "investors." The interesting thing about a geometric progression like this is that starting with only 10 investors, by the 10th round of such a scheme the number of participants would have to be twice as large as the total population of the earth. Diagrammatically, such a scheme looks like a pyramid" hence its name.

[31] <http://199.173.224.3/history/Ponzi.html>.

[32] Sec. 2 (a) of The Revised Securities Act (B.P. Blg. 178) defines "securities" as including "bonds, debentures, notes, evidences of indebtedness, shares in a company, preorganization certificates or subscriptions, investment contracts, certificates of interest or participation in a profit sharing agreement, collateral trust certificates, equipment trust certificates (including conditional sale contracts or similar interests or instruments serving the same purpose), voting trust certificates, certificates of deposit for a security, x x x."

[33] Proverbs 28:1.

[34] 37 Am. Jur. Fraud and Deceits § 234.

[35] Ibid., § 277.

[36] *Subayco v. Sandiganbayan*, 260 SCRA 798 (1996).

[37] *People v. Pabalan*, 262 SCRA 574 (1996).

[38] TSN, March 13, 1991, pp. 6-7.

[39] TSN, March 15, 1991, p. 11.

[40] Ibid., p. 39.

[41] Guerrero vs. CA, 257 SCRA 703 (1996).

[42] Rollo, pp. 109-110.

[43] Ibid., pp. 111-114.

[44] Viray v. Amnesty Commission, 85 Phil. 354 (1950).

[45] 86 SCRA 542 (1978).

[46] Decision, p. 10.

[47] Art. 65, Revised Penal Code.

[48] People vs. Ballabare 264 SCRA 350 (1996), citing People vs. Retuta, 234 SCRA 645 (1994).

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