

ROSALINDA SERRANO, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 123896. June 25, 2003

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Assailed in this Petition for Review on Certiorari under Rule 45 of the Rules of Court are the Decision[1] of December 18, 1992 and Resolution[2] of February 13, 1996 of the Court of Appeals in CA-G. R. No. 10802, "People of the Philippines v. Rosalinda Serrano," which affirmed the decision[3] of the Regional Trial Court of Pasay City, Branch 117, finding Rosalinda Serrano guilty beyond reasonable doubt of estafa through falsification of commercial documents.

Three informations were filed on June 18, 1985, charging petitioner, along with Nelia Giron (Nelia) and Edna Sibal (Edna), with estafa through falsification of commercial documents as follows:

Criminal Case No. 85-8239

That on or about the 21[st] day of September, 1984 in Pasay, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, with intent to deceive and defraud one Ramon C. Mojica thru Centerre Bank, New York, USA, did then and there willfully, unlawfully and feloniously falsify a Centerre Bank draft No. 00362562 dated September 7, 1984 payable to cash for the amount of \$12,000.00 United States currency, by making it appear that the said draft was drawn and issued by said bank in St. Louis, Missouri (sic), USA and signed by its authorized officers, when in truth and in fact as said accused well knew, the said draft was fraudulent/fictitious in that the same was not issued by the bank and that the signature appearing thereon was not of an officer of the bank but fictitious, and once in possession of, and armed with said draft falsified in the manner aforesaid, the above-named accused, through fraudulent manifestations and false representation gave and delivered the same to Ramon C. Mojica in exchange of (sic) the sum of P246,000.00 which amount the herein accused willfully, unlawfully and feloniously converted to their personal use and benefit; that when the said draft was presented to the drawee bank for payment, the same was dishonored for being fraudulent and despite repeated demands made upon the accused to pay the amount of \$12,000.00 or its equivalent in peso, said accused failed and refused and still fails and refuses to do so, to the damage and prejudice of the complainant Ramon C. Mojica in the aforesaid amount.

Contrary to law.[4]

Criminal Case No. 85-8238-P

That on or about the 24[th] day of September, 1984 in Pasay, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, with intent to deceive and defraud one Ramon C. Mojica thru Centerre Bank, New York, USA, did then and there willfully, unlawfully and feloniously falsify a Centerre Bank draft No. 00362563 dated September 7, 1984 payable to cash for the amount of \$10,000.00 United States currency, by making it appear that the said draft was drawn and issued by said bank, in St. Louis, Missouri, USA, and

signed by its authorized officers, when in truth and in fact as said accused well knew, the said draft was fraudulent/fictitious in that the same was not issued by the bank and that the signature appearing thereon was not of an officer of the bank but fictitious, and once in possession of, and armed with said draft falsified in the manner aforesaid, the above-named accused, through fraudulent manifestations and false representation, gave and delivered the same to Ramon C. Mojica in exchange of (sic) the sum of P160,000.00 which amount the herein accused willfully, unlawfully and feloniously converted to their personal use and benefit; that when the said draft was presented to the drawee bank for payment, the same was dishonored for being fraudulent and despite repeated demands made upon the accused to pay the amount of \$10,000.00 or its equivalent in peso, said accused failed and refused and still fails and refuses to do so, to the damage and prejudice of the complainant Ramon C. Mojica in the aforesaid amount.

Contrary to law.[5]

Criminal Case No. 85-8237-P

That on or about the 25[th] day of September, 1984 in Pasay, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, with intent to deceive and defraud one Ramon C. Mojica thru Citizens National Bank, San Francisco, California, did then and there willfully, unlawfully and feloniously falsify a Citizens National Bank draft No. 68534807 dated August 24, 1984 payable to cash for the amount of \$5,000.00 United States currency, by making it appear that the said draft was drawn and issued by said bank in San Francisco, California, USA, and signed by its authorized officers when in truth and in fact as said accused well knew, the said draft was fraudulent/fictitious in that the same was not issued by the bank and that the signature appearing thereon was not of an officer of the bank but fictitious, and once in possession of, and armed with said draft falsified in the manner, aforesaid, the above-named accused, through fraudulent manifestations and false representation gave and delivered the same to Ramon C. Mojica in exchange of (sic) the sum of P102,000.00 which amount the herein accused willfully, unlawfully and feloniously converted to their personal use and benefit; that when the said draft was presented to the drawee bank for payment, the same was dishonored and refused payment for being fraudulent and despite repeated demands made upon the accused to pay the amount of P102,000.00 or its equivalent in peso, said accused failed and refused and still fails and refuses to do so, to the damage and prejudice of the complainant Ramon C. Mojica in the aforesaid amount.

Contrary to law.[6]

Of the three accused, only petitioner was brought to the jurisdiction of the trial court, Nelia and Edna having remained at large. When duly arraigned on February 18, 1987,[7] petitioner entered a plea of not guilty.

The facts of the case are as follows:

On September 21, 1984, businessman Ramon C. Mojica (Mojica) contacted his friend Nelia Oliva (Oliva), who worked at Banco Filipino (the bank) in Makati, for the purpose of buying U.S. dollars for the importation of machinery spare parts for his blanket factory in Cainta, Rizal.

As Oliva told Mojica that her co-employee Mel Lazo (Mel) knew people who were in the business of selling dollars, Mojica, by telephone, talked to Mel who informed him that she was acquainted with people who had cashier's checks drawn from US banks. After the two agreed on the exchange rate at P20.50 to a US dollar and to meet at the bank, Mojica repaired that same day, September 21, 1984, to the bank where he was introduced by Oliva to Mel, petitioner and Nelia.

Petitioner then instructed Mojica to go with her and Nelia to the lobby of the then Regent of Manila Hotel (the Regent), now the Heritage Hotel, in Roxas Boulevard, Pasay City, telling him that the check to be sold to him was with a certain Edna Sibal (Sibal) who would meet them there.[8]

At the lobby of the Regent, petitioner, Nelia and Edna presented Check No. 00362562[9] dated September 7, 1984 drawn by and against Centerre Bank, St. Louis, Missouri, U.S.A. for \$12,000.00. Assured that it was fully funded,[10] Mojica accepted the check in exchange for which he handed them Metrobank Cashier's Check No. CC-002880[11] dated September 21, 1984 in the amount of P246,000.00. Nelia and petitioner later returned the cashier's check and, upon petitioner's request, Mojica replaced it with Metrobank Cashier's Check Nos. CC-002882[12] and CC-002883,[13] both dated September 21, 1984, for P168,000.00 and P78,000.00, respectively.

The Metrobank checks were encashed on September 24, 1984 by petitioner whose signature, address and voter's affidavit number[14] appear at the checks' dorsal portions.

On September 24, 1984, petitioner phoned Mojica and inquired whether he was still willing to purchase some dollars, informing him that she, Nelia and Edna had another dollar check in the amount of \$10,000.00 and that they were willing to sell the same to him at the same rate of exchange.[15] Mojica, who accepted the offer, met with them that afternoon at the hotel, bringing with him, on their request, two cashier's checks, one for P150,000.00 and the other for P45,000.00.[16]

At the Regent, Nelia, Edna and petitioner handed Mojica Check No. 00362563[17] dated September 7, 1984 drawn by and against Centerre Bank, St. Louis, Missouri, U.S.A. for \$10,000.00 in exchange for Metrobank Cashier's Check Nos. 002891[18] and 002890,[19] both dated September 24, 1984, for P160,000.00 and P45,000.00, respectively. Nelia, Edna, and petitioner once again assured Mojica that the dollar check was sufficiently funded.[20] On that same day, petitioner encashed the Metrobank cashier's checks.[21]

The following day, September 25, 1984, petitioner phoned Mojica again and offered to sell a \$5,000.00 check to him at the same exchange rate of P20.50 to a U.S. dollar.[22] Mojica agreed and as usual, as instructed, he brought a cashier's check for P102,500.00 when they met that same afternoon at the Regent.[23]

As was their agreement, Mojica was handed by petitioner Check No. 68534807[24] dated August 24, 1984 drawn by and against the Citizens National Bank of San Francisco, California for \$5,000.00 in exchange for Metrobank Check No. 002894[25] dated September 25, 1982 for P102,500.00. Nelia, Edna and petitioner again assured Mojica that the dollar check was genuine and sufficiently funded.[26] They later returned the Metrobank checks to Mojica and requested him to replace it with two checks, one for P80,000.00, and the other for P22,500.00. Obliging, Mojica delivered to them replacement Metrobank Cashier's Check Nos. CC-002897[27] and CC-002898,[28] both dated September 25, 1984 for P80,000.00 and P22,500.00, respectively, which checks were encashed by petitioner on the same day, September 25, 1984.[29]

Mojica deposited the dollar checks to his Foreign Currency Deposit Unit (FCDU) Savings Account at the Cubao branch of Metrobank several weeks after which he was notified that all the dollar checks were fraudulent,[30] drawing him to demand the return of his money from Nelia, Edna and petitioner who, however, failed to comply. Hence, the filing of the three criminal cases against them.

By Decision of May 29, 1990, the trial court found petitioner guilty beyond reasonable doubt of three (3) counts of estafa through falsification of commercial documents. The dispositive portion of the decision reads:

WHEREFORE, the Court finds the accused Rosalinda Serrano GUILTY beyond reasonable doubt for estafa thru falsification of [commercial] documents defined and penalized under paragraph 2(a) of Article 315 and paragraph 1 of Article 172 of the Revised Penal Code on three (3) counts and sentences her as follows:

- In Criminal Case No. 85-8237-P, to an indeterminate penalty ranging from SIX (6) YEARS and ONE (1) DAY of prision mayor as minimum to EIGHT (8) YEARS of prision mayor as maximum; to indemnify

Ramon C. Mojica the amount of P102,000.00, without subsidiary imprisonment in case of insolvency and to pay 1/3 of the proportionate costs.

- In Criminal Case No. 85-8238-P, to an indeterminate penalty ranging from TEN (10) YEARS and ONE (1) DAY of prision mayor as minimum to FOURTEEN (14) YEARS and EIGHT (8) MONTHS of reclusion temporal as maximum; to indemnify Ramon C. Mojica the amount of P160,000.00, without subsidiary imprisonment in case of insolvency and to pay 1/3 of the proportionate costs.

- In Criminal Case No. 85-8239-P, to an indeterminate penalty ranging from TEN (10) YEARS and ONE (1) DAY of prision mayor as minimum to FOURTEEN (14) and EIGHT (8) MONTHS of reclusion temporal as maximum; to indemnify Ramon C. Mojica the amount of P246,000.00, without subsidiary imprisonment in case of insolvency and to pay 1/3 of the proportionate costs.

SO ORDERED.[31]

Petitioner interposed an appeal with the Court of Appeals which, by Decision of December 18, 1992, affirmed the judgment of conviction but modified the penalties as follows:

1.) In Criminal Case No. 85-8237-P, six (6) years and one (1) day of Prision Mayor as minimum to twelve (12) years and one (1) day of Reclusion Temporal as maximum; to indemnify private complainant Ramon C. Mojica the amount of P102,000.00 without subsidiary imprisonment in case of insolvency; and to pay 1/3 of the proportionate costs.

2.) In Criminal Case No. 85-8238-P, ten (10) years and one (1) day of Prision Mayor as minimum to seventeen (17) years, four (4) months and one (1) day of Reclusion Temporal as maximum; to indemnify the private complainant Ramon C. Mojica the amount of P160,000.00 without subsidiary imprisonment in case of insolvency; and to pay 1/3 proportionate costs.

3.) In Criminal Case No. 85-8239-P, ten (10) years and one (1) day of Prision Mayor as minimum to seventeen (17) years, four (4) months and one (1) day of Reclusion Temporal as maximum; to indemnify the private complainant Ramon C. Mojica the amount of P246,000.00 without subsidiary imprisonment in case of insolvency; and to pay 1/3 of the proportionate costs.

SO ORDERED.[32]

Petitioner's motion for reconsideration having been denied by the Court of Appeals by Resolution of February 13, 1996, the present petition was filed.

Petitioner posits that from the handwritten memorandum dated June 8, 1988 reading:

Witnesses hereat confirms (sic) that Edna Sibal signed a promissory note for P553,500.— dated October 9, 1984 in favor of Mr. Ramon C. Mojica. This supersedes the promissory note of Edna Sibal signed in favor of Rosalina (sic) Serrano.[33]

below which Mojica affixed his signature along with two others, she is exculpated from criminal liability.

By petitioner's claim, under the promissory note dated October 9, 1984 mentioned in the above-quoted handwritten memorandum which note was, by the way, never presented in evidence, Edna undertook to return the proceeds of the subject dollar transactions, which undertaking was allegedly unconditionally accepted by Mojica. To petitioner, the acceptance by Mojica of Edna's promise to pay effectively converted or novated the transactions of the parties into ordinary creditor-debtor relationship, hence, Mojica is in estoppel to insist on their original relationship.[34]

Petitioner's position is bereft of merit. Novation is not one of the grounds prescribed by the Revised Penal Code

for the extinction of criminal liability.[35]

x x x, [I]t is well-settled that criminal liability for estafa is not affected by compromise or novation of contract, for it is a public offense which must be prosecuted and punished by the Government on its own motion though complete reparation should have been made of the damage suffered by the offended party. As was said in the case of *People vs. Gervacio*, 'a criminal offense is committed against the People and the offended party may not waive or extinguish the criminal liability that the law imposes for the commission of the offense'. The fact, therefore, that the accused herein had, with the consent of the offended party, assumed the obligation of paying the rentals, which he collected, out of his own salary after he had committed the misappropriation, does not obliterate the criminal liability incurred.[36] (Underscoring supplied)

The handwritten memorandum, even assuming that the alleged promissory note of Edna mentioned therein actually exists, cannot exculpate petitioner from criminal liability, especially in the absence of a showing that there was an unmistakable intent to extinguish the original relationship between Mojica on the one hand, and petitioner, Nelia and Edna on the other.

Petitioner then avers that her participation in the questioned dollar transactions was limited to her act of introducing Nelia and Edna to Mel who in turn introduced them to Oliva and eventually to Mojica. Such role, she submits, cannot in any way be considered criminal and cannot be construed as part of a conspiracy,[37] her interest in the success of the dollar transactions having been solely motivated by her desire to enforce and collect outstanding obligations of Nelia and Edna to her.[38]

This Court is not persuaded. Direct proof of previous agreement to commit a crime is not necessary to prove conspiracy as it may be deduced from the acts of the perpetrators before, during and after the commission of the crime which are indicative of a common design, concerted action and concurrence of sentiments.[39]

As the trial court found:

Serrano claims that she had no participation in the transactions and was merely present to collect the alleged indebtedness of her co-accused Giron and Sibal to her. However, in her direct and cross examination on April 11, 1989, it clearly showed that Serrano knew every single detail of the three (3) transactions. She was not only a participant, but was also an instrument in the commencement and consequently in the consumation (sic) of the three (3) transactions. She arranged their meeting with Mojica and in all these transactions aside from being present she personally called and advised him to buy additional bank drafts in the September 24 & 25, 1984 transactions. It was also shown that Serrano personally received all the proceeds of the Metrobank Cashier's Checks issued and/or exchanged by Mojica with the subject bank drafts. As a matter of fact, she admitted that she was the one who encashed and received the proceeds of the three (3) fraudulent checks; that she likewise caused and formally applied for the issuance of Metrobank Cashier's Check No. 002897 dated September 25, 1984 in the amount of P80,000.00 (t.s.n., August 23, 1988, pp. 34-35). It has also been established that Serrano, Giron, and Sibal guaranteed the genuineness of the three (3) subject bank drafts and that they were sufficiently funded (t.s.n., October 14, 1987, pp. 11-12). So that because of this (sic) false pretenses and fraudulent representations of the three accused, Mojica was induced to part with his money in the amount of P550,000.00 All these facts belied the claim of Serrano that she has no participation. As a matter of fact, she admitted that she kept part of the proceeds, but claim (sic) that it was in payment of the alleged indebtedness of Giron and Sibal to her. In each transactions (sic) she received P25,000.00, so that she received a total of P75,000.00 which shows that this was her share in the subject fraudulent transactions.[40]

Factual findings of the trial court, when adopted and confirmed by the Court of Appeals, are final and conclusive and may not be reviewed on appeal except: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is a grave abuse of discretion; (3) when the finding is grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the Court of Appeals is based on a

misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the Court of Appeals, in making its findings went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings of the Court of Appeals are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (10) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.[41]

From a review of the evidence on record, there is no cogent reason to disturb the factual findings of the trial court and the Court of Appeals which both found that there was proof beyond reasonable doubt that the acts committed by petitioner constitute the complex crime of estafa through falsification of commercial documents.

Article 172 of the Revised Penal Code punishes any private individual who shall commit any of the acts of falsification enumerated in Article 171 in any public or official document or letter of exchange or any other kind of commercial document.

Article 171 provides:

Art. 171. Falsification by public officer, employee or notary or ecclesiastic minister.— The penalty of prison mayor and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

- Counterfeiting or imitating any handwriting, signature or rubric;
- Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;
- Attributing to persons who have participated in any act or proceeding statements other than those in fact made by them;
- Making untruthful statements in a narration of facts;
- Altering true dates;
- Making any alteration or intercalation in a genuine document which changes its meaning;
- Issuing in an authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such a copy a statement contrary to, or different from, that of the genuine original; or
- Intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book.

The same penalty shall be imposed upon any ecclesiastical minister who shall commit any of the offenses enumerated in the preceding paragraphs of this article, with respect to any record or document of such character that its falsification may affect the civil status of persons. (Emphasis supplied)

Under the three above-quoted informations, the mode of falsification attributed to petitioner and her co-conspirators is that of making it appear that the dollar checks were drawn and issued by Centerre Bank, St. Louis, Missouri, U.S.A. and Citizens National Bank, San Francisco, California, U.S.A., when petitioner knew very well that they were fraudulent in that they were not issued by the aforementioned banks and the signatures appearing thereon were not the signatures of officers of the bank.

The dollar checks were undeniably spurious. While there is no direct proof that petitioner and her co-conspirators

were the authors of the falsification, since petitioner was the possessor and utterer of the dollar checks and benefited from the proceeds of the cashier's checks which were exchanged therefor, the inevitable conclusion is that she falsified them. It is an established rule that when it is proved that a person has in his possession a falsified document and makes use of the same, the presumption or inference is justified that such person is the forger.[42]

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.

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.[43]

The falsification of the dollar checks was the necessary means for the commission of estafa. The informations allege, and the evidence established by the prosecution shows, the essential elements of estafa or swindling under paragraph 2(a) of Article 315 of the Revised Penal Code:[44]

- That there must be a false pretense, fraudulent act or fraudulent means.
- That such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud.
- That the offended party must have relied on the false pretense, fraudulent act, or fraudulent means, that is, he was induced to part with his money or property because of the false pretense, fraudulent act, or fraudulent means.
- That as a result thereof, the offended party suffered damage.[45]

The acts of petitioner in falsifying the dollar checks and misrepresenting to Mojica that they were genuine and sufficiently funded on account of which he parted with, in exchange therefor, the Metrobank cashier's checks constitute the fraud contemplated under the provision of Article 315, paragraph 2(a) of the Penal Code. That petitioner encashed the Metrobank checks and appropriated the proceeds thereof to the damage and prejudice of Mojica seals her liability.

Accordingly, petitioner is liable for 3 counts of estafa through falsification of commercial documents under paragraph 2(a) of Article 315 and Article 172 in relation to Article 171(2) of the Revised Penal Code.

The indeterminate penalty imposed by the appellate court on petitioner needs modification, however. Estafa is punished as follows:

ART. 315. Swindling (estafa) — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

1[st] The penalty of prision correccional in its maximum period to prision mayor in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos; and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such case, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed prision mayor or reclusion temporal, as the case may be;

x x x

In complex crimes, under Article 48[46] of the Revised Penal Code, the penalty for the more serious crime shall be applied in its maximum period.

In imposing a prison sentence under the Revised Penal Code, or its amendments, the Indeterminate Sentence Law provides that the maximum term of the penalty shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum shall be within the range of the penalty next lower to that prescribed by the Code for the offense.[47]

The penalty next lower should be based on the penalty prescribed by the Revised Penal Code for the offense, without first considering any modifying circumstance attendant to the commission of the crime. The minimum of the indeterminate penalty is left to the sound discretion of the court, to be fixed from within the range of the penalty next lower without reference to the periods into which it may be subdivided. The modifying circumstances are considered only in the imposition of the maximum term of the indeterminate sentence.[48]

That the amount involved in each of the cases at bar exceeds P22,000.00 should not be considered in the initial determination of the indeterminate penalty; instead, the matter should be so taken as analogous to modifying circumstances in the imposition of the maximum term of the full indeterminate sentence. This interpretation of the law accords with the rule that penal laws should be construed in favor of the accused. Since the penalty prescribed by law for the estafa committed by petitioner is prision correccional maximum to prision mayor minimum, the penalty next lower would be prision correccional minimum to medium. Thus, the minimum term of the indeterminate sentence for each case should be anywhere within Six (6) Months and One (1) Day to Four (4) Years and Two (2) Months while the maximum term should at least be Six (6) Years and One (1) Day because the amount involved in each case exceeds P22,000.00, plus an additional one (1) year for each additional P10,000.00.[49]

In Criminal Case No. 85-8239-P, the amount involved is P246,000.00. Hence, the minimum penalty should be reduced to Four (4) Years and Two (2) Months of prision correccional which is the maximum of the allowable minimum penalty of the indeterminate sentence. The maximum penalty should at least be Six (6) Years and One (1) Day of prision mayor plus a period of twenty-two (22) years (one [1] year for each additional P10,000.00). However, since the law states that the total penalty shall not exceed twenty years, the maximum penalty is fixed at twenty (20) years of reclusion temporal.

In Criminal Case No. 85-8238-P, the amount involved is P160,000.00. The minimum penalty should then be reduced to Four (4) Years and Two (2) Months of prision correccional. The maximum penalty should at least be Six (6) Years and One (1) Day of prision mayor plus a period of thirteen (13) years, hence, the maximum imposable penalty should be Nineteen (19) Years and One (1) Day of reclusion temporal.

In Criminal Case No. 85-8237-P, the amount involved is P102,000.00. Hence, the minimum penalty should be reduced to Four (4) Years and Two (2) Months of prision correccional. The maximum penalty should at least be Six (6) Years and One (1) Day of prision mayor plus a period of eight (8) years for a total maximum period of Fourteen (14) Years and One (1) Day of reclusion temporal.

WHEREFORE, the challenged Decision is hereby **AFFIRMED** with the following **MODIFICATIONS**:

- In Criminal Case No. 85-8239-P, petitioner is sentenced to suffer the indeterminate penalty of Four (4) Years and Two (2) Months of prision correccional, as minimum, to Twenty (20) Years of reclusion temporal, as maximum.
- In Criminal Case No. 85-8238-P, petitioner is sentenced to suffer the indeterminate penalty of Four (4) Years and Two (2) Months of prision correccional, as minimum, to Nineteen (19) Years and One (1) Day of reclusion

temporal, as maximum.

- In Criminal Case No. 85-8237-P, petitioner is sentenced to suffer the indeterminate penalty of Four (4) Years and Two (2) Months of prision correccional, as minimum, to Fourteen (14) Years and One (1) Day of reclusion temporal, as maximum.

SO ORDERED.

Puno, (Chairman), Panganiban, Sandoval-Gutierrez, and Corona, JJ., concur.

[1] Rollo at 30-37.

[2] Id. at 39-40.

[3] Records at 24-24-J.

[4] Id. at 15-16.

[5] Id. at 8-9.

[6] Id. at 8-9.

[7] Id. at 133.

[8] TSN, October 14, 1987 at 4.

[9] Exhibit "A", Records at 232.

[10] TSN, August 12, 1987 at 6.

[11] Exhibit "B", Records at 232.

[12] Exhibit "C", Records at 232.

[13] Exhibit "D", Records at 233.

[14] TSN, August 23, 1988 at 46-47.

[15] TSN, October 14, 1987 at 7.

[16] Id. at 8.

[17] Exhibit "E", Records at 233.

[18] Exhibit "F", Records at 233.

[19] Exhibit "G", Records at 234.

[20] TSN, October 14, 1987 at 11.

[21] TSN, August 23, 1988 at 43-45.

[22] TSN, October 14, 1987 at 11.

[23] Ibid.

[24] Exhibit "H", Records at 234.

[25] Exhibit "I", Records at 234.

[26] TSN, October 14, 1987 at 13.

[27] Exhibit "J", Records at 234.

[28] Exhibit "K", Records at 235.

[29] TSN, October 14, 1987 at 14.

[30] Id. at 18.

[31] Records at 24-I-24-J.

[32] Rollo at 7-8.

[33] Exhibit "2", Records at 255.

[34] Rollo at 21.

[35] Articles 89 and 94, Revised Penal Code.

[36] *People v. Nery*, 10 SCRA 244, 248 (1964) (citations omitted).

[37] Rollo at 22.

[38] Id. at 23.

[39] *Erquiaga v. Court of Appeals*, 367 SCRA 357, 364 (2001) (citation omitted), *People v. Gonzales-Flores*, 356 SCRA 723, 739 (2001) (citation omitted).

[40] Records at 24-F-24-G.

[41] *Go v. Court of Appeals*, 351 SCRA 145, 151-152 (2001) (citation omitted).

[42] *Koh Tieck Heng v. People*, 192 SCRA 533, 546-547 (1990) (citation omitted).

[43] *People v. Sendaydiego*, 81 SCRA 120, 141 (1978) (citation omitted).

[44] Art. 315. Swindling (estafa).— Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

x x x

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

[45] *Erquiaga v. Court of Appeals*, 367 SCRA 357, 365 (2001) (citation omitted).

[46] Art. 48. Penalty for complex crimes.— When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.

[47] *People v. Sagaydo*, 341 SCRA 329, 339-340 (2000) (citation omitted).

[48] *Quinto v. People*, 305 SCRA 708, 719-720 (1999) (citation omitted).

[49] *People v. Gabres*, 267 SCRA 581, 595-596 (1997) (citation omitted).

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