

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. BETH TEMPORADA, APPELLANT.*G.R. No. 173473. December 17, 2008*

Ponente: YNARES-SANTIAGO, J.

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Before us for review is the February 24, 2006 Decision[1] of the Court of Appeals (CA), affirming with modification the May 14, 2004 Decision[2] of the Regional Trial Court (RTC) of Manila, Branch 33, convicting accused-appellant Beth Temporada of the crime of large scale illegal recruitment, or violation of Article 38 of the Labor Code, as amended, and five (5) counts of estafa under Article 315, par. (2)(a) of the Revised Penal Code (RPC).

The antecedents, as found by the appellate court, are as follows:

From September 2001 to January 2002, accused Rosemarie "Baby" Robles, Bernadette Miranda, Nenita Catacotan and Jojo Resco and appellant Beth Temporada, all employees of the Alternative Travel and Tours Corporation (ATTC), recruited and promised overseas employment, for a fee, to complainants Rogelio Legaspi, Jr. as technician in Singapore, and Soledad Atle, Luz Minkay, Evelyn Estacio and Dennis Dimaano as factory workers in Hongkong. The accused and appellant were then holding office at Dela Rosa Street, Makati City but eventually transferred business to Discovery Plaza, Ermita, Manila. After complainants had submitted all the requirements consisting of their respective application forms, passports, NBI clearances and medical certificates, the accused and appellant, on different dates, collected and received from them placement fees in various amounts, viz: a) from Rogelio Legaspi, Jr. – 57,600.00; b) from Dennis Dimaano – P66,520.00; c) from Evelyn Estacio – P88,520.00; d) from Soledad Atle – P69,520.00 and e) from Luz Minkay – P69,520.00. As none of them was able to leave nor recover the amounts they had paid, complainant lodged separate criminal complaints against accused and appellant before the City Prosecutor of Manila. On November 29, 2002, Assistant City Prosecutor Restituto Mangalindan, Jr. filed six (6) Informations against the accused and appellant, one for Illegal Recruitment in Large Scale under Article 38 (a) of the Labor Code as amended, and the rest for five (5) counts of estafa under Article 315 paragraph 2 (a) of the Revised Penal Code.

The Information for large scale illegal recruitment reads:

Criminal Case No. 02-208371:

"The undersigned accuses ROSEMARIE "BABY" ROBLES, BERNADETTE M. MIRANDA, BETH TEMPORADA, NENITA CATACOTAN and JOJO RESCO x x x.

That in or about and during the period comprised between the months of September 2001 and January 2002, inclusive, in the City of Manila, Philippines, the said accused, representing themselves to have the power and capacity to contract, enlist and transport Filipino workers for employment abroad, did then and there willfully, unlawfully for a fee, recruit and promise employment to REGELIO A. LEGASPI, JR., DENNIS T. DIMAANO, EVELEYN V. ESTACIO, SOLEDAD B. ATTE and LUZ MINKAY without first having secured the required license from the Department of Labor and Employment as required by law, and charge or accept directly or indirectly from said complainant[s] the amount of PH57,600.00, PH66,520.00, PH88,520.00,

PH69,520.00, PH69,520.00, respectively, as placement fees in consideration for their overseas employment, which amounts are in excess of or greater than that specified in the scheduled of allowable fees prescribed of the POEA and without reasons and without fault of the said complainants, failed to actually deploy them and failed to reimburse them the expenses they incurred in connection with the documentation and processing of their papers for purposes of their deployment.

Contrary to law."

Except for the name of private complainant and the amount involved, the five (5) Informations for estafa contain substantially identical averments as follows:

Criminal Case No. 02-208372:

"The undersigned accuses ROSEMARIE "BABY" ROBLES, BERNADETTE M. MIRANDA, BETH TEMPORADA, NENITA CATACOTAN and JOJO RESCO x x x.

That in or about and during the period comprised between November 23, 2001 and January 12, 2002, inclusive, in the City of Manila, Philippines, the said accused, conspiring and confederating together and helping one another, did then and there willfully, unlawfully and feloniously defraud ROGELIO A. LEGASPI, JR., in the following manner, to wit: the said accused, by means of false manifestations and fraudulent representations which they made to said ROGELIO A. LEGASPI, JR., prior to and even simultaneous with the commission of the fraud, to the effect that they have the power and capacity to recruit and employ ROGELIO A. LEGASPI, JR., as technician in Singapore and could facilitate the processing of the pertinent papers if given the necessary amount to meet the requirements thereof, induced and succeeded in inducing said ROGELIO A. LEGASPI, JR., to give and deliver, as in fact he gave and delivered to said accused the amount of P57,600.00 on the strength of said manifestations and representations said accused well knowing that the same were false and fraudulent and were made solely for the purpose of obtaining, as in fact they did obtain the amount of P57,600.00, which amount, once in their possession, with intend to defraud, they willfully, unlawfully and feloniously misappropriated, misapplied and converted the same to their own personal use and benefit, to the damage and prejudice of said ROGELIO A. LEGASPI, JR. in the aforesaid amount of P57,000.00 Philippine Currency.

Contrary to law."

The other four (4) Informations for estafa involve the following complainants and amounts:

1. DENNIS T. DIMAANO P66,520.00
2. EVELYN V. ESTACIO P88,520.00
3. SOLEDAD B. ATLE P69,520.00
4. LUZ T. MINKAY P69,520.00[3]

Only appellant was apprehended and brought to trial, the other accused remained at large. Upon arraignment, appellant pleaded not guilty and trial on the merits ensued. After joint trial, on May 14, 2004, the RTC rendered judgment convicting appellant of all the charges:

WHEREFORE, the prosecution having established the GUILT of accused Beth Temporada BEYOND REASONABLE DOUBT, judgment is hereby rendered CONVICTING the said accused, as principal of the offenses charged and she is sentenced to suffer the penalty of LIFE IMPRISONMENT and a fine of Five Hundred Thousand Pesos (P500,000.00) for illegal recruitment; and the indeterminate penalty of four (4) years and two (2) months of prision correctional as minimum, to nine (9) years and one (1) day of prision mayor, as maximum for the estafa committed against complainant Rogelio A. Legaspi, Jr.; the indeterminate penalty of four (4) years and two (2) months of prision correctional as minimum to ten (10) years and one day of prision

mayor as maximum each for the estafas committed against complainants, Dennis Dimaano, Soledad B. Atte and Luz T. Minkay; and the indeterminate penalty of four (4) years and two (2) months of prision correccional as minimum, to eleven (11) years and one (1) day of prision mayor as maximum for the estafa committed against Evelyn Estacio.

The accused is also ordered to pay jointly and severally the complainants actual damages as follows:

1. Rogelio A. Legaspi Jr. P57,600.00
2. Dennis T. Dimaano 66,520.00
3. Evelyn V. Estacio 88,520.00
4. Soledad B. Atte 66,520.00
5. Luz T. Minkay 69,520.00

SO ORDERED.[4]

In accordance with the Court's ruling in *People v. Mateo*,^[5] this case was referred to the CA for intermediate review. On February 24, 2006, the CA affirmed with modification the Decision of the RTC:

WHEREFORE, with MODIFICATION to the effect that in Criminal Cases Nos. 02-208373, 02-208375, & 02-208376, appellant is sentenced to suffer the indeterminate penalty of six (6) years of prision correccional maximum, as minimum, to ten (10) years and one (1) day of prision mayor maximum, as maximum; and in Criminal Case No. 02-208374, she is sentenced to suffer the indeterminate penalty of eight (8) years and one (1) day of prision mayor medium, as minimum, to twelve (12) years and one (1) day of reclusion temporal minimum, as maximum, the appealed decision is AFFIRMED in all other respects.^[6]

Before this Court, appellant ascribes the lone error that the trial court gravely erred in finding her guilty of illegal recruitment and five (5) counts of estafa despite the insufficiency of the evidence for the prosecution.

We affirm the Decision of the CA, except as to the indeterminate penalties imposed for the five (5) counts of estafa.

Article 13(b) of the Labor Code defines recruitment and placement thusly:

ART. 13. Definitions. – x x x

(b) "Recruitment and placement" refers to any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not: Provided, That any person or entity which, in any manner, offers or promises for a fee, employment to two or more persons shall be deemed engaged in recruitment and placement.

To constitute illegal recruitment in large scale, three (3) elements must concur: (a) the offender has no valid license or authority required by law to enable him to lawfully engage in recruitment and placement of workers; (b) the offender undertakes any of the activities within the meaning of "recruitment and placement" under Article 13(b) of the Labor Code, or any of the prohibited practices enumerated under Article 34 of the said Code (now Section 6 of R.A. No. 8042); and, (c) the offender committed the same against three (3) or more persons, individually or as a group.^[7]

In the case at bar, the foregoing elements are present. Appellant, in conspiracy with her co-accused, misrepresented to have the power, influence, authority and business to obtain overseas employment upon payment

of a placement fee which was duly collected from complainants Rogelio Legaspi, Dennis Dimaano, Evelyn Estacio, Soledad Atle and Luz Minkay. Further, the certification[8] issued by the Philippine Overseas Employment Administration (POEA) and the testimony of Ann Abastra Abas, a representative of said government agency, established that appellant and her co-accused did not possess any authority or license to recruit workers for overseas employment. And, since there were five (5) victims, the trial court correctly found appellant liable for illegal recruitment in large scale.

Appellant insists that she was merely an employee of ATTC and was just "echoing the requirement of her employer." She further argues that the prosecution failed to prove that she was aware of the latter's illegal activities and that she actively participated therein. In essence, she controverts the factual findings of the lower courts.

The contention is untenable.

An employee of a company or corporation engaged in illegal recruitment may be held liable as principal, together with his employer, if it is shown that he actively and consciously participated in illegal recruitment.[9] Appellant actively took part in the illegal recruitment of private complainants. Rogelio Legaspi testified that after introducing herself as the General Manager of ATTC, appellant persuaded him to apply as a technician in Singapore and assured him that there was a job market therefor. In addition to the placement fee of P35,000.00 which he paid to accused Bernadette Miranda, he also handed the amount of P10,000.00 to appellant who, in turn, issued him a receipt for the total amount of P45,000.00. Upon the other hand, Soledad Atle and Luz Minkay, who applied as factory workers in Hongkong through co-accused, Emily Salagonos, declared that it was appellant who briefed them on the requirements for the processing of their application, and assured them and Dennis Dimaano of immediate deployment for jobs abroad. For her part, Evelyn Estacio testified that aside from the placement fee of P40,000.00 that she paid to co-accused "Baby" Robles in connection with her purported overseas employment, she also gave appellant P10,000.00 for which she was issued a receipt for the amount of P5,000.00.

The totality of the evidence, thus, established that appellant acted as an indispensable participant and effective collaborator of her co-accused in the illegal recruitment of complainants. As aptly found by the CA:

Without doubt, all the acts of appellant, consisting of introducing herself to complainants as general manager of ATTC, interviewing and entertaining them, briefing them on the requirements for deployment and assuring them that they could leave immediately if they paid the required amounts, unerringly show unity of purpose with those of her co-accused in their scheme to defraud private complainants through false promises of jobs abroad. There being conspiracy, appellant shall be equally liable for the acts of her co-accused even if she herself did not personally reap the fruits of their execution. We quote with approval the trial court's findings on the matter:

"xxx It is clear that said accused conspired with her co-accused Rosemarie "Baby" Robles, Bernadette M. Miranda, Nenita Catacotan, and Jojo Resco in convincing complainants xxx to apply for overseas jobs and giving complainants Soledad Atle, Luz Minkay and Dennis Dimaano guarantee that they would be hired as factory workers in Hongkong, complainant Rogelio Legaspi, as Technician in Singapore and Evelyn Estacio as quality controller in a factory in Hongkong, despite the fact that the accused was not licensed to do so.

It should be noted that all the accused were connected with the Alternative Travel and Tours Corporation (ATTC). Accused Beth Temporada introduced herself as ATTC's General Manager. Saod accused was also the one who received the P10,000.00 given by complainant Rogelio Legaspi, Jr. and the P10,000.00 given by complainant Evelyn Estacio as payment for their visa and plane ticket, respectively."[10]

Consequently, the defense of appellant that she was not aware of the illegal nature of the activities of her co-accused cannot be sustained. Besides, even assuming arguendo that appellant was indeed unaware of the

illegal nature of said activities, the same is hardly a defense in the prosecution for illegal recruitment. Under The Migrant Workers and Overseas Filipinos Act of 1995, a special law, the crime of illegal recruitment in large scale is *malum prohibitum* and not *malum in se*.^[11] Thus, the criminal intent of the accused is not necessary and the fact alone that the accused violated the law warrants her conviction.^[12]

In the instant case, we find no reason to depart from the rule that findings of fact of the trial court on the credibility of witnesses and their testimonies are generally accorded great respect by an appellate court. The assessment of credibility of witnesses is a matter best left to the trial court because it is in the position to observe that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied to the appellate courts.^[13] Further, there is no showing of any ill-motive on the part of the prosecution witnesses in testifying against appellant. Absent such improper motive, the presumption is that they were not so actuated and their testimony is entitled to full weight and credit.

Section 7(b) of R.A. No. 8042 prescribes the penalty of life imprisonment and a fine of not less than P500,000.00 nor more than P1,000,000.00 for the crime of illegal recruitment in large scale or by a syndicate. The trial court, therefore, properly meted the penalty of life imprisonment and a fine of P500,000.00 on the appellant.

Anent the conviction of appellant for five (5) counts of *estafa*, we, likewise, affirm the same. Well-settled is the rule that a person convicted for illegal recruitment under the Labor Code may, for the same acts, be separately convicted for *estafa* under Article 315, par. 2(a) of the RPC.^[14] The elements of *estafa* are: (1) the accused defrauded another by abuse of confidence or by means of deceit; and (2) the offended party or a third party suffered damage or prejudice capable of pecuniary estimation.^[15] The same evidence proving appellant's criminal liability for illegal recruitment also established her liability for *estafa*. As previously discussed, appellant together with her co-accused defrauded complainants into believing that they had the authority and capability to send complainants for overseas employment. Because of these assurances, complainants parted with their hard-earned money in exchange for the promise of future work abroad. However, the promised overseas employment never materialized and neither were the complainants able to recover their money.

While we affirm the conviction for the five (5) counts of *estafa*, we find, however, that the CA erroneously computed the indeterminate penalties therefor. The CA deviated from the doctrine laid down in *People v. Gabres*;^[16] hence its decision should be reversed with respect to the indeterminate penalties it imposed. The reversal of the appellate court's Decision on this point does not, however, wholly reinstate the indeterminate penalties imposed by the trial court because the maximum terms, as determined by the latter, were erroneously computed and must necessarily be rectified.

The prescribed penalty for *estafa* under Article 315, par. 2(d) of the RPC, when the amount defrauded exceeds P22,000.00, is *prisión correccional* maximum to *prisión mayor* minimum. The minimum term is taken from the penalty next lower or anywhere within *prisión correccional* minimum and medium (i.e., from 6 months and 1 day to 4 years and 2 months). Consequently, the RTC correctly fixed the minimum term for the five *estafa* cases at 4 years and 2 months of *prisión correccional* since this is within the range of *prisión correccional* minimum and medium.

On the other hand, the maximum term is taken from the prescribed penalty of *prisión correccional* maximum to *prisión mayor* minimum in its maximum period, adding 1 year of imprisonment for every P10,000.00 in excess of P22,000.00, provided that the total penalty shall not exceed 20 years. However, the maximum period of the prescribed penalty of *prisión correccional* maximum to *prisión mayor* minimum is not *prisión mayor* minimum as apparently assumed by the RTC. To compute the maximum period of the prescribed penalty, *prisión correccional* maximum to *prisión mayor* minimum should be divided into three equal portions of time each of which portion

shall be deemed to form one period in accordance with Article 65[17] of the RPC. Following this procedure, the maximum period of prisión correccional maximum to prisión mayor minimum is from 6 years, 8 months and 21 days to 8 years.[18] The incremental penalty, when proper, shall thus be added to anywhere from 6 years, 8 months and 21 days to 8 years, at the discretion of the court.[19]

In computing the incremental penalty, the amount defrauded shall be subtracted by P22,000.00, and the difference shall be divided by P10,000.00. Any fraction of a year shall be discarded as was done starting with the case of *People v. Pabalan*[20] in consonance with the settled rule that penal laws shall be construed liberally in favor of the accused. The doctrine enunciated in *People v. Benemerito*[21] insofar as the fraction of a year was utilized in computing the total incremental penalty should, thus, be modified. In accordance with the above procedure, the maximum term of the indeterminate sentences imposed by the RTC should be as follows:

In Criminal Case No. 02-208372, where the amount defrauded was P57,600.00, the RTC sentenced the accused to an indeterminate penalty of 4 years and 2 months of prisión correccional as minimum, to 9 years and 1 day of prisión mayor as maximum. Since the amount defrauded exceeds P22,000.00 by P35,600.00, 3 years shall be added to the maximum period of the prescribed penalty (or added to anywhere from 6 years, 8 months and 21 days to 8 years, at the discretion of the court). The lowest maximum term, therefore, that can be validly imposed is 9 years, 8 months and 21 days of prisión mayor, and not 9 years and 1 day of prisión mayor.

In Criminal Case Nos. 02-208373, 02-208375, and 02-208376, where the amounts defrauded were P66,520.00, P69,520.00, and P69,520.00, respectively, the accused was sentenced to an indeterminate penalty of 4 years and 2 months of prisión correccional as minimum, to 10 years and 1 day of prisión mayor as maximum for each of the aforesaid three estafa cases. Since the amounts defrauded exceed P22,000.00 by P44,520.00, P47,520.00, and P47,520.00, respectively, 4 years shall be added to the maximum period of the prescribed penalty (or added to anywhere from 6 years, 8 months and 21 days to 8 years, at the discretion of the court). The lowest maximum term, therefore, that can be validly imposed is 10 years, 8 months and 21 days of prisión mayor, and not 10 years and 1 day of prisión mayor.

Finally, in Criminal Case No. 02-208374, where the amount defrauded was P88,520.00, the accused was sentenced to an indeterminate penalty of 4 years and 2 months of prisión correccional as minimum, to 11 years and 1 day of prisión mayor as maximum. Since the amount defrauded exceeds P22,000.00 by P66,520.00, 6 years shall be added to the maximum period of the prescribed penalty (or added to anywhere from 6 years, 8 months and 21 days to 8 years, at the discretion of the court). The lowest maximum term, therefore, that can be validly imposed is 12 years, 8 months and 21 days of reclusión temporal, and not 11 years and 1 day of prisión mayor.

Response to the dissent.

In the computation of the indeterminate sentence for estafa under Article 315, par. 2(a) of the Revised Penal Code (RPC), the Court has consistently followed the doctrine espoused in *Pabalan* and more fully explained in *Gabres*. The dissent argues that *Gabres* should be reexamined and abandoned.

We sustain *Gabres*.

I.

The formula proposed in the Dissenting Opinion of Mr. Justice Ruben T. Reyes, i.e., the maximum term shall first be computed by applying the incremental penalty rule, and thereafter the minimum term shall be determined by descending one degree down the scale of penalties from the maximum term, is a novel but erroneous interpretation of the ISL in relation to Article 315, par. 2(a) of the RPC. Under this interpretation, it is not clear how the maximum and minimum terms shall be computed. Moreover, the legal justification therefor is not clear

because the meaning of the terms "penalty," "prescribed penalty," "penalty actually imposed," "minimum term," "maximum term," "penalty next lower in degree," and "one degree down the scale of penalties" are not properly set out and are, at times, used interchangeably, loosely and erroneously.

For purposes of this discussion, it is necessary to first clarify the meaning of certain terms in the sense that they will be used from here on. Later, these terms shall be aligned to what the dissent appears to be proposing in order to clearly address the points raised by the dissent.

The RPC provides for an initial penalty as a general prescription for the felonies defined therein which consists of a range of period of time. This is what is referred to as the "prescribed penalty." For instance, under Article 249[22] of the RPC, the prescribed penalty for homicide is *reclusión temporal* which ranges from 12 years and 1 day to 20 years of imprisonment. Further, the Code provides for attending or modifying circumstances which when present in the commission of a felony affects the computation of the penalty to be imposed on a convict. This penalty, as thus modified, is referred to as the "imposable penalty." In the case of homicide which is committed with one ordinary aggravating circumstance and no mitigating circumstances, the imposable penalty under the RPC shall be the prescribed penalty in its maximum period. From this imposable penalty, the court chooses a single fixed penalty (also called a straight penalty) which is the "penalty actually imposed" on a convict, i.e., the prison term he has to serve.

Concretely, in *U.S. v. Saadlucap*,[23] a pre-ISL case, the accused was found guilty of homicide with a prescribed penalty of *reclusión temporal*. Since there was one ordinary aggravating circumstance and no mitigating circumstances in this case, the imposable penalty is *reclusión temporal* in its maximum period, i.e., from 17 years, 4 months and 1 day to 20 years. The court then had the discretion to impose any prison term provided it is within said period, so that the penalty actually imposed on the accused was set at 17 years, 4 months and 1 day of *reclusión temporal*,[24] which is a single fixed penalty, with no minimum or maximum term.

With the passage of the ISL, the law created a prison term which consists of a minimum and maximum term called the indeterminate sentence.[25] Section 1 of the ISL provides —

SECTION 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; x x x.

Thus, the maximum term is that which, in view of the attending circumstances, could be properly imposed under the RPC. In other words, the penalty actually imposed under the pre-ISL regime became the maximum term under the ISL regime. Upon the other hand, the minimum term shall be within the range of the penalty next lower to the prescribed penalty. To illustrate, if the case of *Saadlucap* was decided under the ISL regime, then the maximum term would be 17 years, 4 months and 1 day of *reclusión temporal* and the minimum term could be anywhere within the range of *prisión mayor* (6 years and 1 day to 12 years) which is the penalty next lower to *reclusión temporal*. Consequently, an indeterminate sentence of 10 years of *prisión mayor* as minimum to 17 years, 4 months and 1 day of *reclusión temporal* as maximum could have possibly been imposed.

If we use the formula as proposed by the dissent, i.e., to compute the minimum term based on the maximum term after the attending or modifying circumstances are considered, the basis for computing the minimum term, under this interpretation, is the imposable penalty[26] as hereinabove defined. This interpretation is at odds with Section 1 of the ISL which clearly states that the minimum of the indeterminate sentence shall be "within the range of the penalty next lower to that prescribed by the Code for the offense." Consequently, the basis for fixing the

minimum term is the prescribed penalty,[27] and not the imposable penalty.

In *People v. Gonzales*,[28] the Court held that the minimum term must be based on the penalty prescribed by the Code for the offense "without regard to circumstances modifying criminal liability." [29] The *Gonzales*' ruling that the minimum term must be based on the prescribed penalty "without regard to circumstances modifying criminal liability" is only a restatement of Section 1 of the ISL that the minimum term shall be taken from within the range of the penalty next lower to the prescribed penalty (and from nowhere else).[30]

Further, the dissent proceeds from the erroneous premise that its so-called "regular formula" has generally been followed in applying the ISL. To reiterate, according to the dissent, the "regular formula" is accomplished by first determining the maximum term after considering all the attending circumstances; thereafter, the minimum term is arrived at by going one degree down the scale from the maximum term. As previously discussed, this essentially means, using the terms as earlier defined, that the minimum term shall be taken from the penalty next lower to the imposable penalty (and not the prescribed penalty.) In more concrete terms and using the previous example of homicide with one ordinary aggravating circumstance, this would mean that the minimum term for homicide will no longer be based on *reclusión temporal* (i.e., the prescribed penalty for homicide) but *reclusión temporal* in its maximum period (i.e., the imposable penalty for homicide with one ordinary aggravating circumstance) so much so that the minimum term shall be taken from *reclusión temporal* in its medium period (and no longer from *prisión mayor*) because this is the penalty next lower to *reclusión temporal* in its maximum period. The penalty from which the minimum term is taken is, thus, significantly increased. From this example, it is not difficult to discern why this interpretation radically departs from how the ISL has generally been applied by this Court. The dissent's "regular formula" is, therefore, anything but regular.

In fine, the "regular formula" espoused by the dissent deviates from the ISL and established jurisprudence and is, thus, tantamount to judicial legislation.

II.

There is no absurdity or injustice in fixing or "stagnating" the minimum term within the range of *prisión correccional* minimum and medium (i.e., from 6 months and 1 day to 4 years and 2 months). Preliminarily, it must be emphasized that the minimum term taken from the aforementioned range of penalty need not be the same for every case of *estafa* when the amount defrauded exceeds P12,000.00. In *People v. Ducosin*,[31] the Court provided some guidelines in imposing the minimum term from the range of the penalty next lower to the prescribed penalty:

We come now to determine the "minimum imprisonment period" referred to in Act No. 4103. Section 1 of said Act provides that this "minimum which shall not be less than the minimum imprisonment period of the penalty next lower to that prescribed by said Code for the offense." [32] We are here upon new ground. It is in determining the "minimum" penalty that Act No. 4103 confers upon the courts in the fixing of penalties the widest discretion that the courts have ever had. The determination of the "minimum" penalty presents two aspects: first, the more or less mechanical determination of the extreme limits of the minimum imprisonment period; and second, the broad question of the factors and circumstances that should guide the discretion of the court in fixing the minimum penalty within the ascertained limits.

x x x x

We come now to the second aspect of the determination of the minimum penalty, namely, the considerations which should guide the court in fixing the term or duration of the minimum period of imprisonment. Keeping in mind the basic purpose of the Indeterminate Sentence Law "to uplift and redeem valuable human material, and prevent unnecessary and excessive deprivation of personal liberty and economic usefulness" (Message of

the Governor-General, Official Gazette No. 92, vol. XXXI, August 3, 1933), it is necessary to consider the criminal, first, as an individual and, second, as a member of society. This opens up an almost limitless field of investigation and study which it is the duty of the court to explore in each case as far as is humanly possible, with the end in view that penalties shall not be standardized but fitted as far as is possible to the individual, with due regard to the imperative necessity of protecting the social order.

Considering the criminal as an individual, some of the factors that should be considered are: (1) His age, especially with reference to extreme youth or old age; (2) his general health and physical condition; (3) his mentality, heredity and personal habits; (4) his previous conduct, environment and mode of life (and criminal record if any); (5) his previous education, both intellectual and moral; (6) his proclivities and aptitudes for usefulness or injury to society; (7) his demeanor during trial and his attitude with regard to the crime committed; (8) the manner and circumstances in which the crime was committed; (9) the gravity of the offense (note that section 2 of Act No. 4103 excepts certain grave crimes — this should be kept in mind in assessing the minimum penalties for analogous crimes).

In considering the criminal as a member of society, his relationship, first, toward his dependents, family and associates and their relationship with him, and second, his relationship towards society at large and the State are important factors. The State is concerned not only in the imperative necessity of protecting the social organization against the criminal acts of destructive individuals but also in redeeming the individual for economic usefulness and other social ends. In a word, the Indeterminate Sentence Law aims to individualize the administration of our criminal law to a degree not heretofore known in these Islands. With the foregoing principles in mind as guides, the courts can give full effect to the beneficent intention of the Legislature.[33]

Admittedly, it is possible that the court, upon application of the guidelines in *Ducosin*, will impose the same minimum term to one who commits an estafa involving P13,000.00 and another involving P130 million. In fact, to a lesser degree, this is what happened in the instant case where the trial court sentenced the accused to the same minimum term of 4 years and 2 months of *prisión correccional* in Criminal Case Nos. 02-208372, 02-208373, 02-208375, 02-208376, and 02-208374 where the amounts defrauded were P57,600.00, P66,520.00, P69,520.00, P69,520.00 and P88,520.00, respectively. However, there is no absurdity and injustice for two reasons.

One, while it is possible that the minimum term imposed by a court would be the same, the maximum term would be greater for the convict who committed estafa involving P130 million (which would be 20 years of *reclusión temporal*) than the convict who swindled P13,000.00 (which could be anywhere from *prisión correccional* maximum to *prisión mayor* minimum or from 4 years, 2 months and 1 day to 8 years).[34] Assuming that both convicts qualify for parole after serving the same minimum term, the convict sentenced to a higher maximum term would carry a greater "burden" with respect to the length of parole surveillance which he may be placed under, and the prison term to be served in case he violates his parole as provided for in Sections 6[35] and 8[36] of the ISL. Under Section 6, the convict shall be placed under a period of surveillance equivalent to the remaining portion of the maximum sentence imposed upon him or until final release and discharge by the Board of Pardon and Paroles. Further, the convict with the higher maximum term would have to serve a longer period upon his re-commitment in prison in case he violates his parole because he would have to serve the remaining portion of the maximum term, unless the Board of Pardon and Paroles shall, in its discretion, grant a new parole to the said convict as provided for in Section 8.

Although the differences in treatment are in the nature of potential liabilities, to this limited extent, the ISL still preserves the greater degree of punishment in the RPC for a convict who commits estafa involving a greater amount as compared to one who commits estafa involving a lesser amount. Whether these differences in treatment are sufficient in substance and gravity involves a question of wisdom and expediency of the ISL that this Court cannot delve into.

Two, the rule which provides that the minimum term is taken from the range of the penalty next lower to the prescribed penalty is, likewise, applicable to other offenses punishable under the RPC. For instance, the minimum term for an accused guilty of homicide with one generic mitigating circumstance vis-à-vis an accused guilty of homicide with three ordinary aggravating circumstances would both be taken from prisión mayor — the penalty next lower to exclusion temporal. Evidently, the convict guilty of homicide with three ordinary aggravating circumstances committed a more perverse form of the felony. Yet it is possible that the court, after applying the guidelines in Ducosin, will impose upon the latter the same minimum term as the accused guilty of homicide with one generic mitigating circumstance. This reasoning can be applied mutatis mutandis to most of the other offenses punishable under the RPC. Should we then conclude that the ISL creates absurd results for these offenses as well?

In fine, what is perceived as absurd and unjust is actually the intent of the legislature to be beneficial to the convict in order to "uplift and redeem valuable human material, and prevent unnecessary and excessive deprivation of personal liberty and economic usefulness." [37] By the legislature's deliberate design, the range of penalty from which the minimum term is taken remains fixed and only the range of penalty from which the maximum term is taken changes depending on the number and nature of the attending circumstances. Again, the reason why the legislature elected this mode of beneficence to a convict revolves on questions of wisdom and expediency which this Court has no power to review. The balancing of the State's interests in deterrence and retributive justice vis-à-vis reformation and reintegration of convicts to society through penal laws belongs to the exclusive domain of the legislature.

III.

People v. Romero,[38] De Carlos v. Court of Appeals,[39] Salazar v. People,[40] People v. Dinglasan[41] and, by analogy, People v. Dela Cruz[42] do not support the formula being proposed by the dissent.

The instant case involves a violation of Article 315, par. 2(a) of the RPC.[43] The penalty for said violation is—

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

1st. The penalty of prisión correccional in its maximum period to prisión 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 cases, 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 prisión mayor or reclusión temporal, as the case may be. x x x

In contrast, Romero, De Carlos, and Salazar involved violations of Article 315 of the RPC as amended by Presidential Decree (P.D.) No. 1689[44] because: (1) the funds defrauded were contributed by stockholders or solicited by corporations/associations from the general public, (2) the amount defrauded was greater than P100,000.00, and (3) the estafa was not committed by a syndicate. Section 1 of P.D. No. 1689 provides—

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 money contributed by stockholders, or members of rural banks, cooperative, "samahang nayon(s)", or farmers association, 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 reclusión temporal to

reclusión perpetua if the amount of the fraud exceeds 100,000 pesos. (Emphasis supplied)

Since the prescribed penalty is reclusión temporal to reclusión perpetua, the minimum terms were taken from prisión mayor, which is the penalty next lower to the prescribed penalty.[45] As can be seen, these cases involved a different penalty structure that does not make use of the incremental penalty rule due to the amendatory law. Thus, the comparison of these cases with Gabres is improper.

Meanwhile, in Dinglasan, the felony committed was estafa through bouncing checks which is punishable under Article 315 par. 2(d) of the RPC as amended by Republic Act (RA) No. 4885[46] —

Sec. 1. Section Two, Paragraph (d), Article Three hundred fifteen of Act Numbered Thirty-eight hundred and fifteen is hereby amended to read as follows:

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

"(d) By postdating a check, or issuing a check in payment of an obligation when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check. The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack or insufficiency of funds shall be prima facie evidence of deceit constituting false pretense or fraudulent act."

and P.D. No. 818[47] —

Sec. 1. Any person who shall defraud another by means of false pretenses or fraudulent acts as defined in paragraph 2(d) of Article 315 of the Revised Penal Code, as amended by Republic Act No. 4885, shall be punished by:

1st. The penalty of reclusión temporal if the amount of the fraud is over 12,000 pesos but 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 in no case exceed thirty years. In such cases, and in connection with the accessory penalties which may be imposed under the Revised Penal Code, the penalty shall be termed reclusión perpetua; x x x (Emphasis supplied)

Here, the prescribed penalty of prisión correccional maximum to prisión mayor minimum was increased to reclusión temporal by the amendatory law. Consequently, the penalty next lower to reclusión temporal is prisión mayor from which the minimum term was taken. This is the reason for the higher minimum term in this case as compared to Gabres. In fact, Dinglasan is consistent with Gabres—

Since the face value of Check No. 029021, for which appellant is criminally liable for estafa, exceeds P22,000, the penalty abovesited must be "imposed in its maximum period, adding 1 year for each additional P10,000." Pursuant to *People vs. Hernando*, G.R. No. 125214, Oct. 28, 1999, an indeterminate sentence shall be imposed on the accused, computed favorably to him. In this case, the indeterminate sentence should be computed based on the maximum period of reclusión temporal as maximum, which is from 17 years, 4 months, and 1 day to 20 years. The minimum period of the sentence should be within the penalty next lower in degree as provided in the Revised Penal Code, i.e., prisión mayor, which is from 6 years and 1 day to 12 years imprisonment. Considering that the excess of the fraud committed, counting from the base of P22,000, is only P4,400, which is less than the P10,000 stated in P.D. 818, there is no need to add one year to the maximum penalty abovesited.[48] (Emphasis supplied)

As in Gabres, the penalty next lower (i.e., prisión mayor) was determined without considering in the meantime the effect of the amount defrauded in excess of P22,000.00 on the prescribed penalty (i.e., reclusión temporal).

Finally, Dela Cruz involved a case for qualified theft. The prescribed penalty for qualified theft is two degrees higher than simple theft. Incidentally, the penalty structure for simple theft[49] and estafa is similar in that both felonies (1) requires that the prescribed penalty be imposed in its maximum period when the value of the thing stolen or the amount defrauded, as the case may be, exceeds P22,000.00, and (2) provides for an incremental penalty of 1 year imprisonment for every P10,000.00 in excess of P22,000.00. It should be pointed out, however, that the prescribed penalty for simple theft is prisión mayor minimum and medium while in estafa it is lower at prisión correccional maximum to prisión mayor minimum.

Being two degrees higher, the prescribed penalty for qualified theft is, thus, reclusión temporal medium and maximum, while the minimum term is taken from the range of prisión mayor maximum to reclusión temporal minimum, which is the penalty next lower to reclusión temporal medium and maximum. The penalty next lower to the prescribed penalty is determined without first considering the amount stolen in excess of P22,000.00 consistent with Gabres. In fact, Dela Cruz expressly cites Gabres—

Applying the Indeterminate Sentence Law, the minimum of the indeterminate penalty shall be anywhere within the range of the penalty next lower in degree to that prescribed for the offense, without first considering any modifying circumstance attendant to the commission of the crime. Since the penalty prescribed by law is reclusión temporal medium and maximum, the penalty next lower would be prisión mayor in its maximum period to reclusión temporal in its minimum period. Thus, the minimum of the indeterminate sentence shall be anywhere within ten (10) years and one (1) day to fourteen (14) years and eight (8) months.

The maximum of the indeterminate penalty is that which, taking into consideration the attending circumstances, could be properly imposed under the Revised Penal Code. Since the amount involved in the present case exceeds P22,000.00, this should be taken as analogous to modifying circumstances in the imposition of the maximum term of the full indeterminate sentence, not in the initial determination of the indeterminate penalty. (citing Gabres) Thus, the maximum term of the indeterminate penalty in this case is the maximum period of reclusión temporal medium and maximum, which ranges from eighteen (18) years, two (2) months, and twenty one (21) days to twenty (20) years, as computed pursuant to Article 65, in relation to Article 64 of the Revised Penal Code.[50] (Emphasis supplied)

Clearly, none of these cases supports the Dissenting Opinion's thesis that the minimum term should be computed based on the maximum term. Quite the contrary, Dinglasan and Dela Cruz are consistent with Gabres.

IV.

The argument that the incremental penalty rule should not be considered as analogous to a modifying circumstance stems from the erroneous interpretation that the "attending circumstances" mentioned in Section 1 of the ISL are limited to those modifying circumstances falling within the scope of Articles 13 and 14 of the RPC. Section 1 of the ISL is again quoted below —

SECTION 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; x x x (Emphasis supplied)

The plain terms of the ISL show that the legislature did not intend to limit "attending circumstances" as referring to Articles 13 and 14 of the RPC. If the legislature intended that the "attending circumstances" under the ISL be limited to Articles 13 and 14, then it could have simply so stated. The wording of the law clearly permits other modifying circumstances outside of Articles 13 and 14 of the RPC to be treated as "attending circumstances" for purposes of the application of the ISL, such as quasi-recidivism under Article 160[51] of the RPC. Under this

provision, "any person who shall commit a felony after having been convicted by final judgment, before beginning to serve such sentence, or while serving the same, shall be punished by the maximum period of the penalty prescribed by law for the new felony." This circumstance has been interpreted by the Court as a special aggravating circumstance where the penalty actually imposed is taken from the prescribed penalty in its maximum period without regard to any generic mitigating circumstances.[52] Since quasi-recidivism is considered as merely a special aggravating circumstance, the penalty next lower in degree is computed based on the prescribed penalty without first considering said special aggravating circumstance as exemplified in *People v. Manalo*[53] and *People v. Balictar*.^[54]

The question whether the incremental penalty rule is covered within the letter and spirit of "attending circumstances" under the ISL was answered in the affirmative by the Court in *Gabres* when it ruled therein that the incremental penalty rule is analogous to a modifying circumstance.

Article 315 of the RPC pertinently provides —

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

1st. The penalty of prisión correccional in its maximum period to prisión 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 cases, 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 prisión mayor or reclusión temporal, as the case may be. x x x

Under *Gabres*, prisión correccional maximum to prisión mayor minimum is the prescribed penalty^[55] for estafa when the amount defrauded exceeds P22,000.00. An amount defrauded in excess of P22,000.00 is effectively considered as a special aggravating circumstance in the sense that the penalty actually imposed shall be taken from the prescribed penalty in its maximum period without regard to any generic mitigating circumstances. Consequently, the penalty next lower in degree is still based on the prescribed penalty without in the meantime considering the effect of the amount defrauded in excess of P22,000.00.

What is unique, however, with the afore-quoted provision is that when the amount defrauded is P32,000.00 or more, the prescribed penalty is not only imposed in its maximum period but there is imposed an incremental penalty of 1 year imprisonment for every P10,000.00 in excess of P22,000.00, provided that the total penalty which may be imposed shall not exceed 20 years. This incremental penalty rule is a special rule applicable to estafa and theft. In the case of estafa, the incremental penalty is added to the maximum period of the prescribed penalty (or to anywhere from 6 years, 8 months and 21 days to 8 years) at the discretion of the court, in order to arrive at the penalty actually imposed (i.e., the maximum term, within the context of the ISL).

This unique characteristic of the incremental penalty rule does not pose any obstacle to interpreting it as analogous to a modifying circumstance, and, hence, falling within the letter and spirit of "attending circumstances" for purposes of the application of the ISL. Under the wording of the ISL, "attending circumstances" may be reasonably interpreted as referring to such circumstances that are applied in conjunction with certain rules in the Code in order to determine the penalty to be actually imposed based on the prescribed penalty of the Code for the offense. The incremental penalty rule substantially meets this standard. The circumstance is the amount defrauded in excess of P22,000.00 and the incremental penalty rule is utilized to fix the penalty actually imposed. At its core, the incremental penalty rule is merely a mathematical formula for computing the penalty to be actually imposed using the prescribed penalty as starting point. Thus, it serves the

same function of determining the penalty actually imposed as the modifying circumstances under Articles 13, 14, and 160 of the RPC, although the manner by which the former accomplishes this function differs with the latter. For this reason, the incremental penalty rule may be considered as merely analogous to modifying circumstances. Besides, in case of doubt as to whether the incremental penalty rule falls within the scope of "attending circumstances" under the ISL, the doubt should be resolved in favor of inclusion because this interpretation is more favorable to the accused following the time-honored principle that penal statutes are construed strictly against the State and liberally in favor of the accused.[56] Thus, even if the Dissenting Opinion's interpretation is gratuitously conceded as plausible, as between Gabres and the dissent's interpretation, Gabres should be sustained since it is the interpretation more favorable to the accused.

V.

The claim that the maximum term should only be one degree away from the minimum term does not make sense within the meaning of "degrees" under the RPC because the minimum and maximum terms consist of single fixed penalties. At any rate, the point seems to be that the penalty from which the minimum term is taken should only be one degree away from the penalty from which the maximum term is taken.

As a general rule, the application of modifying circumstances, the majority being generic mitigating and ordinary aggravating circumstances, does not result to a maximum term fixed beyond the prescribed penalty. At most, the maximum term is taken from the prescribed penalty in its maximum period. Since the maximum term is taken from the prescribed penalty and the minimum term is taken from the next lower penalty, then, in this limited sense, the difference would naturally be only one degree. Concretely, in the case of homicide with one ordinary aggravating circumstance, the maximum term is taken from *reclusión temporal* in its maximum period which is within the prescribed penalty of *reclusión temporal*, while the minimum term is taken from *prisión mayor* which is the penalty next lower to *reclusión temporal*; hence, the one-degree difference observed by the dissent.

In comparison, under the incremental penalty rule, the maximum term can exceed the prescribed penalty. Indeed, at its extreme, the maximum term can be as high as 20 years of *reclusión temporal* while the prescribed penalty remains at *prisión correccional* maximum to *prisión mayor* minimum, hence, the penalty next lower to the prescribed penalty from which the minimum term is taken remains at anywhere within *prisión correccional* minimum and medium, or from 6 months and 1 day to 4 years and 2 months. In this sense, the incremental penalty rule deviates from the afore-stated general rule.[57]

However, it is one thing to say that, generally, the penalty from which the minimum term is taken is only one degree away from the penalty from which the maximum term is taken, and completely another thing to claim that the penalty from which the minimum term is taken should only be one degree away from the penalty from which the maximum term is taken.

The one-degree difference is merely the result of a general observation from the application of generic mitigating and ordinary aggravating circumstances in the RPC in relation to the ISL. Nowhere does the ISL refer to the one-degree difference as an essential requisite of an "attending circumstance." If the application of the incremental penalty rule deviates from the one-degree difference, this only means that the law itself has provided for an exception thereto. Verily, the one-degree difference is a mere consequence of the generic mitigating and ordinary aggravating circumstances created by the legislature. The difficulty of the dissent with the deviation from its so-called one-degree difference rule seems to lie with the inability to view these "attending circumstances" as mere artifacts or creations of the legislature. It does not make sense to argue that the legislature cannot formulate "attending circumstances" that operate differently than these generic mitigating and ordinary aggravating circumstances, and that, expectedly, leads to a different result from the one-degree difference—for it would be to

say that the creator can only create one specie of creatures. Further, it should be reasonably assumed that the legislature was aware of these special circumstances, like the incremental penalty rule or privileged mitigating circumstances, at the time it enacted the ISL as well as the consequent effects of such special circumstances on the application of said law. Thus, for as long as the incremental penalty rule is consistent with the letter and spirit of "attending circumstances" under the ISL, there is no obstacle to its treatment as such.

VI.

Much has been said about the leniency, absurdity and unjustness of the result under Gabres; the need to adjust the minimum term of the indeterminate penalty to make it commensurate to the gravity of the estafa committed; the deterrence effect of a stiffer imposition of penalties; and a host of other similar reasons to justify the reversal of Gabres. However, all these relate to policy considerations beyond the wording of the ISL in relation to the RPC; considerations that if given effect essentially seek to rewrite the law in order to conform to one notion (out of an infinite number of such notions) of wisdom and efficacy, and, ultimately, of justice and mercy.

This Court is not the proper forum for this sort of debate. The Constitution forbids it, and the principle of separation of powers abhors it. The Court applies the law as it finds it and not as how it thinks the law should be. Not too long ago in the case of *People v. Veneracion*,^[58] this Court spoke about the dangers of allowing one's personal beliefs to interfere with the duty to uphold the Rule of Law which, over a decade later, once again assumes much relevance in this case:

Obedience to the rule of law forms the bedrock of our system of justice. If judges, under the guise of religious or political beliefs were allowed to roam unrestricted beyond boundaries within which they are required by law to exercise the duties of their office, the law becomes meaningless. A government of laws, not of men excludes the exercise of broad discretionary powers by those acting under its authority. Under this system, judges are guided by the Rule of Law, and ought "to protect and enforce it without fear or favor," resist encroachments by governments, political parties, or even the interference of their own personal beliefs.^[59]

VII.

Mr. Justice Adolfo S. Azcuna proposes an interpretation of the incremental penalty rule based on the phrases "shall be termed prisión mayor or reclusión temporal, as the case may be" and "for the purpose of the other provisions of this Code" found in the last sentence of said rule, viz:

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

1st. The penalty of prisión correccional in its maximum period to prisión 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 cases, 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 prisión mayor or reclusión temporal, as the case may be. x x x (Emphasis supplied)

While this interpretation is plausible, Gabres should still be sustained because in construing penal statutes, as between two reasonable^[60] but contradictory constructions, the one more favorable to the accused should be upheld, which in this case is Gabres. The reason for this rule is elucidated in an eminent treatise on statutory construction in this wise:

It is an ancient rule of statutory construction that penal statutes should be strictly construed against the

government or parties seeking to enforce statutory penalties and in favor of the persons on whom penalties are sought to be imposed. This simply means that words are given their ordinary meaning and that any reasonable doubt about the meaning is decided in favor of anyone subjected to a criminal statute. This canon of interpretation has been accorded the status of a constitutional rule under principles of due process, not subject to abrogation by statute.

The rule that penal statutes should be strictly construed has several justifications based on a concern for the rights and freedoms of accused individuals. Strict construction can assure fairness when courts understand it to mean that penal statutes must give a clear and unequivocal warning, in language people generally understand, about actions that would result in liability and the nature of potential penalties. A number of courts have said: ... the rule that penal statutes are to be strictly construed ... is a fundamental principle which in our judgment will never be altered. Why? Because the lawmaking body owes the duty to citizens and subjects of making unmistakably clear those acts for the commission of which the citizen may lose his life or liberty. Therefore, all the canons of interpretation which apply to civil statutes apply to criminal statutes, and in addition there exists the canon [of strict construction] The burden lies on the lawmakers, and inasmuch as it is within their power, it is their duty to relieve the situation of all doubts.

x x x x

Additionally, strict construction protects the individual against arbitrary discretion by officials and judges. As one judge noted: "the courts should be particularly careful that the bulwarks of liberty are not overthrown, in order to reach an offender who is, but perhaps ought not to be, sheltered behind them."

But also, for a court to enforce a penalty where the legislature has not clearly and unequivocally prescribed it could result in judicial usurpation of the legislative function. One court has noted that the reason for the rule is "to guard against the creation, by judicial construction, of criminal offenses not within the contemplation of the legislature." Thus the rule requires that before a person can be punished his case must be plainly and unmistakably within the statute sought to be applied. And, so, where a statute is open to more than one interpretation, it is strictly construed against the state. Courts further rationalize this application of the rule of strict construction on the ground that it was not the defendant in the criminal action who caused ambiguity in the statute. Along these same lines, courts also assert that since the state makes the laws, they should be most strongly construed against it.[61] (Emphasis supplied; citations omitted)

Thus, in one case, where the statute was ambiguous and permitted two reasonable interpretations, the construction which would impose a less severe penalty was adopted.[62]

WHEREFORE, the Decision of the Court of Appeals is MODIFIED with respect to the indeterminate penalties imposed on appellant for the five (5) counts of estafa, to wit:

(1)

In Criminal Case No. 02-208372, the accused is sentenced to an indeterminate penalty of 4 years and 2 months of prisión correccional as minimum, to 9 years, 8 months and 21 days of prisión mayor as maximum.

(2)

In Criminal Case Nos. 02-208373, 02-208375, and 02-208376, the accused is sentenced to an indeterminate penalty of 4 years and 2 months of prisión correccional as minimum, to 10 years, 8 months and 21 days of prisión mayor as maximum for each of the aforesaid three estafa cases.

(3)

In Criminal Case No. 02-208374, the accused is sentenced to an indeterminate penalty of 4 years and 2 months of prisión correccional as minimum, to 12 years, 8 months and 21 days of reclusión temporal as maximum.

In all other respects, the Decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Carpio, Austria-Martinez, Carpio Morales, Tinga, Nachura, Leonardo-De Castro, and Brion, JJ., concur.

Puno, C.J., Pls. see Dissent.

Quisumbing, Azcuna, and Chico-Nazario, JJ., joins in the dissent of C.J. Puno.

Corona, J., filed a Separate Opinion.

Velasco, Jr., and Reyes, JJ., see dissenting opinion.

[1] CA rollo, pp. 121-136. Penned by Associate Justice Rebecca de Guia-Salvador, with Associate Justices Amelita G. Tolentino and Aurora Santiago-Lagman, concurring.

[2] Penned by Hon. Reynaldo G. Ros.

[3] CA rollo, pp. 121-124.

[4] Id. at 125-26.

[5] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[6] CA rollo, p. 135.

[7] People v. Gamboa, G.R. No. 135382, September 29, 2000, 341 SCRA 451, 458.

[8] Exhibits "A," "L," and "L-1."

[9] People v. Cabais, G.R. No. 129070, March 16, 2001, 354 SCRA 553, 561.

[10] CA rollo, pp. 9-10.

[11] Supra note 7 at 462.

[12] Id.

[13] People v. Guambor, G.R. No. 152183, January 22, 2004, 420 SCRA 677, 683.

[14] People v. Ballesteros, G.R. Nos. 116905-908, August 6, 2002, 386 SCRA 193, 212.

[15] Id. at 213.

[16] 335 Phil. 242 (1997).

[17] ARTICLE 65. Rule in Cases in Which the Penalty is Not Composed of Three Periods. — In cases in which the penalty prescribed by law is not composed of three periods, the courts shall apply the rules contained in the foregoing articles, dividing into three equal portions the time included in the penalty prescribed, and forming one period of each of the three portions.

[18] People v. Saley, G.R. No. 121179, July 2, 1998, 291 SCRA 715, 753-754.

[19] Id. at 755.

[20] 331 Phil. 64 (1996).

[21] 332 Phil. 710, 730-731 (1996).

[22] ARTICLE 249. Homicide. — Any person who, not falling within the provisions of article 246 shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by *reclusión temporal*.

[23] 3 Phil. 437 (1904).

[24] *Id.* at 440.

[25] The penalty is considered "indeterminate" because after the convict serves the minimum term, he or she may become eligible for parole under the provisions of Act No. 4103, which leaves the period between the minimum and maximum term indeterminate in the sense that he or she may, under the conditions set out in said Act, be released from serving said period in whole or in part. (*People v. Ducosin*, 59 Phil. 109, 114 [1933])

[26] In the other portions of the dissent though, there is also the impression that the basis is the penalty actually imposed as hereinabove defined. Whether it is the impossible penalty or penalty actually imposed, the dissent's interpretation contravenes the ISL because the minimum term should be fixed based on the prescribed penalty.

[27] See Aquino and Griño-Aquino, *The Revised Penal Code*, Vol. 1, 1997 ed., pp. 772-773; Padilla, *Criminal Law: Revised Penal Code Annotated*, 1988 ed., pp. 211-214.

[28] 73 Phil. 549 (1941).

[29] *Id.* at 552.

[30] The dissent cites several cases to establish that Gonzales has not been followed in cases outside of *estafa*. An examination of these cases reveals that this assertion is inaccurate.

- *Sabang v. People*, G.R. No. 168818, March 9, 2007, 518 SCRA 35; *People v. Candaza*, G.R. No. 170474, June 16, 2006, 491 SCRA 280; *People v. Concepcion*, G.R. No. 169060, February 6, 2007, 514 SCRA 660; *People v. Hermocilla*, G.R. No. 175830, July 10, 2007, 527 SCRA 296; *People v. Abulon*, G.R. No. 174473, August 17, 2007, 530 SCRA 675.

Gonzales was applied in these cases.

- *People v. Miranda*, G.R. No. 169078, March 10, 2006, 484 SCRA 555; *Garces v. People*, G.R. No. 173858, July 17, 2007, 527 SCRA 827—belongs to the class of cases involving accessories and accomplices as well as the frustrated and attempted stages of a felony.

Strictly speaking, these cases do not deviate from Gonzales. Here, the prescribed penalty for the principal and consummated stage, respectively, should be merely viewed as being lowered by the proper number of degrees in order to arrive at the prescribed penalties for accomplices and accessories as well as the frustrated and attempted stages of a felony. In turn, from these prescribed penalties, the minimum term is determined without considering in the meantime the modifying circumstances, as in Gonzales.

- *Garces v. People*, G.R. No. 173858, July 17, 2007, 527 SCRA 827—belongs to the class of cases involving privileged mitigating circumstances.

These cases are, to a certain extent, an exception to the rule enunciated in Gonzales. Here, the prescribed penalty is first reduced by the proper number of degrees due to the existence of a privileged mitigating circumstance. As thus reduced, the penalty next lower in degree is determined from which the minimum term is taken. To the extent

that the privileged mitigating circumstance, as a modifying circumstance, is first applied to the prescribed penalty before the penalty next lower in degree is determined, these cases deviate from Gonzales. However, this interpretation is based on the special nature of a privileged mitigating circumstance as well as the liberal construction of penal laws in favor of the accused. If the privileged mitigating circumstance is not first applied to the prescribed penalty before determining the penalty next lower in degree from which the minimum term is taken, it may happen that the maximum term of the indeterminate sentence would be lower than the minimum term, or that the minimum and maximum term would both be taken from the same range of penalty—absurdities that the law could not have intended. These special considerations which justified a deviation from Gonzales are not present in the instant case. As will be shown later, Gabres is a reasonable interpretation of the ISL in relation to Article 315, par. 2(a) of the RPC, and any contrary interpretation would be unfavorable to the accused.

[31] 59 Phil. 109 (1933).

[32] This wording of Act No. 4103 was later amended to the current wording "minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense" by Act No. 4225.

[33] Supra note 31 at 116-118.

[34] Similarly, in the instant case, the maximum term imposed on the accused increased as the amount defrauded increased in the various criminal cases filed against her as a consequence of the incremental penalty rule.

[35] Sec. 6. Every prisoner released from confinement on parole by virtue of this Act shall, at such times and in such manner as may be required by the conditions of his parole, as may be designated by the said Board for such purpose, report personally to such government officials or other parole officers hereafter appointed by the Board of Indeterminate Sentence for a period of surveillance equivalent to the remaining portion of the maximum sentence imposed upon him or until final release and discharge by the Board of Indeterminate Sentence as herein provided. The officials so designated shall keep such records and make such reports and perform such other duties hereunder as may be required by said Board. The limits of residence of such paroled prisoner during his parole may be fixed and from time to time changed by the said Board in its discretion. If during the period of surveillance such paroled prisoner shall show himself to be a law-abiding citizen and shall not violate any of the laws of the Philippine Islands, the Board of Indeterminate Sentence may issue a final certificate of release in his favor, which shall entitle him to final release and discharge.

[36] Sec. 8. Whenever any prisoner released on parole by virtue of this Act shall, during the period of surveillance, violate any of the conditions of his parole, the Board of Indeterminate Sentence may issue an order for his re-arrest which may be served in any part of the Philippine Islands by any police officer. In such case the prisoner so re-arrested shall serve the remaining unexpired portion of the maximum sentence for which he was originally committed to prison, unless the Board of Indeterminate Sentence shall, in its discretion, grant a new parole to the said prisoner.

[37] Supra note 31 at 117.

[38] G.R. No. 112985, April 21, 1999, 306 SCRA 90.

[39] G.R. No. 103065, August 16, 1999, 312 SCRA 397.

[40] G.R. No. 149472, October 15, 2002, 391 SCRA 162.

[41] G.R. No. 133645, September 17, 2002, 389 SCRA 71.

[42] 383 Phil. 213 (2000).

[43] Estafa committed 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.

[44] Effective April 6, 1980.

[45] See Article 61 of the RPC.

[46] Effective June 17, 1967.

[47] Effective October 22, 1975.

[48] Supra note 41 at 80.

[49] ARTICLE 309. Penalties. — Any person guilty of theft shall be punished by:

- The penalty of prisión mayor in its minimum and medium periods, if the value of the thing stolen is more than 12,000 pesos but does not exceed 22,000 pesos; but if the value of the thing stolen exceeds the latter amount, the penalty shall be the maximum period of the one prescribed in this paragraph, and one year for each additional ten thousand pesos, but the total of the penalty which may be imposed shall not exceed twenty years. In such cases, 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 prisión mayor or reclusión temporal, as the case may be. x x x

[50] Supra note 42 at 227-228.

[51] ARTICLE 160. Commission of Another Crime During Service of Penalty Imposed for Another Previous Offense — Penalty. — Besides the provisions of rule 5 of article 62, any person who shall commit a felony after having been convicted by final judgment, before beginning to serve such sentence, or while serving the same, shall be punished by the maximum period of the penalty prescribed by law for the new felony.

Any convict of the class referred to in this article, who is not a habitual criminal, shall be pardoned at the age of seventy years if he shall have already served out his original sentence, or when he shall complete it after reaching said age, unless by reason of his conduct or other circumstances he shall not be worthy of such clemency.

[52] See *People v. Perete*, 111 Phil. 943, 947 (1961).

[53] G.R. No. L-55177, February 27, 1987, 148 SCRA 98, 110.

[54] G.R. No. L-29994, July 20, 1979, 91 SCRA 500, 511.

The dissent argues that the use of quasi-recidivism as an example of an "attending circumstance" which is outside the scope of Article 14 of the RPC is inappropriate because quasi-recidivism is sui generis. The argument is off-tangent. The point is simply that quasi-recidivism is not found under Article 14 of the RPC yet it is treated as an "attending circumstance" for purposes of the application of the ISL in relation to the RPC. Hence, there are "attending circumstances" outside the scope of Articles 13 and 14 of the RPC. For the same reason, the incremental penalty rule is a special rule outside of Article 14 which, as will be discussed later on, serves the same function as modifying circumstances under Articles 13 and 14 of the RPC. See also Reyes, L.B., *The Revised Penal Code*, 14[th] ed., 1998, p. 766.

[55] The common thread in the RPC is to fix the prescribed penalty as the starting point for determining the prison sentence to be finally imposed. From the prescribed penalty, the attending circumstances are then considered in order to finally fix the penalty actually imposed. Further, the designation of a prescribed penalty is made in individual articles, or prescribed penalties are individually designated in separate paragraphs within a single article. Under Article 315, the penalty for estafa when the amount defrauded is over P12,000.00 but does not

exceed P22,000.00 and when such amount exceeds P22,000.00 is lumped within the same paragraph. Thus, the penalty of prisión correccional maximum to prisión mayor minimum may be reasonably considered as the starting point for the computation of the penalty actually imposed, and hence, the prescribed penalty when the amount defrauded exceeds P22,000.00. As will be discussed shortly, the amount defrauded in excess of P22,000.00 may then be treated as a special aggravating circumstance and the incremental penalty as analogous to a modifying circumstance in order to arrive at the penalty actually imposed consistent with the letter and spirit of the ISL in relation to the RPC.

[56] *People v. Ladjaalam*, 395 Phil. 1, 35 (2000).

[57] Cases involving privileged mitigating circumstances would, likewise, deviate from this general rule since the maximum term would be taken from a penalty lower than the prescribed penalty. See note 13.

[58] G.R. Nos. 119987-88, October 12, 1995, 249 SCRA 244.

[59] *Id.* at 251.

[60] The aforesaid phrases are broad enough to justify Mr. Justice Azcuna's interpretation, however, they are vague enough not to exclude the interpretation under Gabres. The said phrases may be so construed without being inconsistent with Gabres. (See Articles 90 and 92 of the RPC)

[61] 3 Sutherland Statutory Construction § 59:3 (6[th] ed.)

[62] *Id.* citing *Buzzard v. Commonwealth*, 134 Va. 641, 114 S.E. 664 (1992).

SEPARATE OPINION

CORONA, J.:

A man cannot suffer more punishment than the law assigns, but he may suffer less. – William Blackstone[1]

For when lenity and cruelty play for a kingdom, the gentler gamester is the soonest winner. – William Shakespeare[2]

The application of the Indeterminate Sentence Law is one of the more complicated and confusing topics in criminal law. It befuddles not a few students of law, legal scholars and members of the bench and of the bar.[3] Fortunately, this case presents a great opportunity for the Court to resolve with finality a controversial aspect of the application and interpretation of the Indeterminate Sentence Law. It is an occasion for the Court to perform its duty to formulate guiding and controlling principles, precepts, doctrines or rules.[4] In the process, the matter can be clarified, the public may be educated and the Court can exercise its symbolic function of instructing bench and bar on the extent of protection given by statutory and constitutional guarantees.[5]

The fundamental principle in applying and interpreting criminal laws, including the Indeterminate Sentence Law, is to resolve all doubts in favor of the accused. In *dubio pro reo*. When in doubt, rule for the accused. This is in consonance with the constitutional guarantee that the accused ought to be presumed innocent until and unless his guilt is established beyond reasonable doubt.[6]

Intimately intertwined with the in dubio pro reo principle is the rule of lenity. It is the doctrine that "a court, in construing an ambiguous criminal statute that sets out multiple or inconsistent punishments, should resolve the ambiguity in favor of the more lenient punishment." [7]

Lenity becomes all the more appropriate when this case is viewed through the lens of the basic purpose of the Indeterminate Sentence Law "to uplift and redeem valuable human material, and prevent unnecessary and excessive deprivation of personal liberty and economic usefulness." [8] Since the goal of the Indeterminate Sentence Law is to look kindly on the accused, the Court should adopt an application or interpretation that is more favorable to the accused.

It is on the basis of this basic principle of criminal law that I respectfully submit this opinion.

THE BONE OF CONTENTION

The members of the Court are unanimous that accused-appellant Beth Temporada was correctly found guilty beyond reasonable doubt of the crimes of illegal recruitment and estafa by the Regional Trial Court of Manila, Branch 33 and the Court of Appeals. However, opinions differ sharply on the penalty that should be imposed on accused-appellant for estafa. In particular, there is a debate on how the Indeterminate Sentence Law should be applied in a case like this where there is an incremental penalty when the amount embezzled exceeds P22,000 (by at least P10,000).

In this connection, the relevant portion of Article 315 of the Revised Penal Code provides:

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

1st. 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 in no case exceed twenty years. In such case, and in connection with the accessory penalties which may be imposed under the Revised Penal Code, the penalty shall be termed prision mayor to reclusion temporal, as the case may be.

x x x x x x x x

On the other hand, the relevant portion of the Indeterminate Sentence Law provides:

SECTION 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; x x x

Jurisprudence shows that there are two schools of thought on the incremental penalty in estafa vis-à-vis the Indeterminate Sentence Law. Under the first school of thought, the minimum term is fixed at prision correccional while the maximum term can reach up to reclusion temporal. This is the general interpretation. It was resorted to in *People v. Pabalan*, [9] *People v. Benemerito*, [10] *People v. Gabres* [11] and in a string of cases. [12]

On the other hand, under the second school of thought, the minimum term is one degree away from the maximum term and therefore varies as the amount of the thing stolen or embezzled rises or falls. It is the line of jurisprudence that follows *People v. De la Cruz*. [13] Among the cases of this genre are *People v. Romero*, [14] *People v. Dinglasan* [15] and *Salazar v. People*. [16]

The Court is urged in this case to adopt a consistent position by categorically discarding one school of thought. Hence, our dilemma: which of the two schools of thought should we affirm?

THE FIRST SCHOOL OF THOUGHT IS MORE FAVORABLE TO THE ACCUSED

Under the Indeterminate Sentence Law, in imposing a sentence, the court must determine two penalties composed of the "maximum" and "minimum" terms, instead of imposing a single fixed penalty.[17] Hence, the indeterminate sentence is composed of a maximum term taken from the penalty imposable under the Revised Penal Code and a minimum term taken from the penalty next lower to that fixed in the said Code.

The maximum term corresponds to "that which, in view of the attending circumstances, could be properly imposed under the rules of the [Revised Penal] Code." Thus, "attending circumstances" (such as mitigating, aggravating and other relevant circumstances) that may modify the imposable penalty applying the rules of the Revised Penal Code is considered in determining the maximum term. Stated otherwise, the maximum term is arrived at after taking into consideration the effects of attendant modifying circumstances.

On the other hand, the minimum term "shall be within the range of the penalty next lower to that prescribed by the [Revised Penal] Code for the offense." It is based on the penalty prescribed by the Revised Penal Code for the offense without considering in the meantime the modifying circumstances.[18]

The penalty prescribed by Article 315 of the Revised Penal Code for the felony of estafa (except estafa under Article 315(2)(d))[19] is prision correccional in its maximum period to prision mayor in its minimum period if the amount of the fraud is over P12,000 but does not exceed P22,000. If it exceeds P22,000, the penalty provided in this paragraph shall be imposed in its maximum period. Moreover, where the amount embezzled is more than P22,000, an incremental penalty of one year shall be added for every additional P10,000.

Thus, the Revised Penal Code imposes prision correccional in its maximum period to prision mayor in its minimum period (or a period of four years, two months and one day to eight years) if the amount of the fraud is more than P12,000 but not more than P22,000. If it exceeds P22,000, the penalty is imposed in its maximum period (or a period of six years, 8 months and 21 days to eight years) with an incremental penalty of one year for each additional P10,000 subject to the limitation that the total penalty which may be imposed shall in no case exceed 20 years.

Strictly speaking, the circumstance that the amount misappropriated by the offender is more than P22,000 is a qualifying circumstance. In *People v. Bayot*,[20] this Court defined a qualifying circumstance as a circumstance the effect of which is "not only to give the crime committed its proper and exclusive name but also to place the author thereof in such a situation as to deserve no other penalty than that especially prescribed for said crime." Applying the definition to estafa where the amount embezzled is more than P22,000, the amount involved ipso jure places the offender in such a situation as to deserve no other penalty than the imposition of the penalty in its maximum period plus incremental penalty, if warranted.[21] In other words, if the amount involved is more than P22,000, then the offender shall be sentenced to suffer the maximum period of the prescribed penalty with an incremental penalty of one year per additional P10,000.

However, *People v. Gabres* considered the circumstance that more than P22,000 was involved as a generic modifying circumstance which is material only in the determination of the maximum term, not of the minimum term:

Under the Indeterminate Sentence Law, the maximum term of the penalty shall be "that which, in view of the attending circumstances, could be properly imposed" under the Revised Penal Code, and the minimum shall be

"within the range of the penalty next lower to that prescribed" for the offense." The penalty next lower should be based on the penalty prescribed by the Code for the offense, without first considering any modifying circumstance attendant to the commission of the crime. The determination of the minimum penalty is left by law to the sound discretion of the court and it can be anywhere within the range of the penalty next lower without any reference to the periods into which it might be subdivided. The modifying circumstances are considered only in the imposition of the maximum term of the indeterminate sentence.

The fact that the amounts involved in the instant case exceed 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 charged against accused-appellant is prision correccional maximum to prision mayor minimum, the penalty next lower would then be prision correccional minimum to medium. Thus, the minimum term of the indeterminate sentence should be anywhere within six (6) months and one (1) day to four (4) years and two months while the maximum term of the indeterminate sentence should at least be six (6) years and one (1) day because the amounts involved exceeded P22,000.00, plus an additional one (1) year for each additional P10,000.00. (emphasis supplied)

If the circumstance that more than P22,000 was involved is considered as a qualifying circumstance, the penalty prescribed by the Revised Penal Code for it will be the maximum period of prision correccional in its maximum period to prision mayor in its minimum period. This has a duration of six years, 8 months and 21 days to eight years. The penalty next lower (which will correspond to the minimum penalty of the indeterminate sentence) is the medium period of prision correccional in its maximum period to prision mayor in its minimum period, which has a duration of five years, five months and 11 days to six years, eight months and 20 days.[22]

If the circumstance is considered simply as a modifying circumstance (as in Gabres), it will be disregarded in determining the minimum term of the indeterminate sentence. The starting point will be prision correccional maximum to prision mayor minimum and the penalty next lower will then be prision correccional in its minimum to medium periods, which has a duration of six months and one day to four years and two months.

From the foregoing, it is more favorable to the accused if the circumstance (that more than P22,000 was involved) is to be considered as a modifying circumstance, not as a qualifying circumstance. Hence, I submit that the Gabres rule is preferable.

On the contrary, the second school of thought is invariably prejudicial to the accused. By fixing the minimum term of the indeterminate sentence to one degree away from the maximum term, the minimum term will always be longer than prision correccional in its minimum to medium periods.

Worse, the circumstance (that more than P22,000 was embezzled) is not a modifying circumstance but a part of the penalty, if adopted, will mean that the minimum term of the indeterminate sentence will never be lower than the medium period of prision correccional in its maximum period to prision mayor in its minimum period, the penalty next lower to the maximum period of prision correccional in its maximum period to prision mayor in its minimum period.

THE SECOND SCHOOL OF THOUGHT AND ITS SHORTCOMINGS

The primary defect of the so-called second school of thought is that it contradicts the *in dubio pro reo* principle. It also violates the lenity rule. Instead, it advocates a stricter interpretation with harsher effects on the accused. In particular, compared to the first school of thought, it lengthens rather than shortens the penalty that may be imposed on the accused. Seen in its proper context, the second school of thought is contrary to the avowed

purpose of the law that it purportedly seeks to promote, the Indeterminate Sentence Law.

The second school of thought limits the concept of "modifying circumstance" to either a mitigating or aggravating circumstance listed under Articles 13 and 14 of the Revised Penal Code. It contends that the respective enumerations under the said provisions are exclusive and all other circumstances not included therein were intentionally omitted by the legislature. It further asserts that, even assuming that the circumstance that more than P22,000 was embezzled may be deemed as analogous to aggravating circumstances under Article 14, the said circumstance cannot be considered as an aggravating circumstance because it is only in mitigating circumstances that analogous circumstances are allowed and recognized.[23] The second school of thought then insists that, since the circumstance that more than P22,000 was involved is not among those listed under Article 14, the said circumstance is not a modifying circumstance for purposes of the Indeterminate Sentence Law.

The second school of thought therefore strictly construes the term "attending circumstances" against the accused. It refuses to recognize anything that is not expressed, takes the language used in its exact meaning and admits no equitable consideration.

To the point of being repetitive, however, where the accused is concerned, penal statutes should be interpreted liberally, not strictly.

The fact that there are two schools of thought on the matter by itself shows that there is uncertainty as to the concept of "attending" or "modifying" circumstances. Pursuant to the *in dubio pro reo* principle, the doubt must be resolved in favor of the accused and not against him.

Moreover, laws must receive sensible interpretation to promote the ends for which they are enacted.[24] The meaning of a word or phrase used in a statute may be qualified by the purpose which induced the legislature to enact the statute. The purpose may indicate whether to give a word or phrase a restricted or expansive meaning.[25] In construing a word or phrase, the court should adopt the interpretation that best serves the manifest purpose of the statute or promotes or realizes its object.[26] Where the language of the statute is fairly susceptible to two or more constructions, that which will most tend to give effect to the manifest intent of the lawmaker and promote the object for which the statute was enacted should be adopted.[27] Taken in conjunction with the lenity rule, a doubtful provision of a law that seeks to alleviate the effects of incarceration ought to be given an interpretation that affords lenient treatment to the accused.

The Indeterminate Sentence Law is intended to favor the accused, particularly to shorten his term of imprisonment.[28] The reduction of his period of incarceration reasonably helps "uplift and redeem valuable human material, and prevent unnecessary and excessive deprivation of personal liberty and economic usefulness." The law, being penal in character, must receive an interpretation that benefits the accused.[29] This Court already ruled that "in cases where the application of the law on indeterminate sentence would be unfavorable to the accused, resulting in the lengthening of his prison sentence, said law on indeterminate sentence should not be applied." [30] In the same vein, if an interpretation of the Indeterminate Sentence Law is unfavorable to the accused and will work to increase the term of his imprisonment, that interpretation should not be adopted. It is also for this reason that the claim that the power of this Court to lighten the penalty of lesser crimes carries with it the responsibility to impose a greater penalty for grave penalties is not only wrong but also dangerous.

Nowhere does the Indeterminate Sentence Law prescribe that the minimum term of the penalty be no farther than one degree away from the maximum term. Thus, while it may be true that the minimum term of the penalty in an indeterminate sentence is generally one degree away from the maximum term, the law does not mandate that its application be rigorously and narrowly limited to that situation.

THE PROPER INDETERMINATE PENALTIES IN THESE CASES

From the above disquisition, I respectfully submit that the prevailing rule, the so-called first school of thought, be followed. With respect to the indeterminate sentence that may be imposed on the accused, I agree with the position taken by Madame Justice Consuelo Ynares-Santiago.

Accordingly, I vote that the decision of the Court of Appeals be AFFIRMED with the following modifications:

(1)

in Criminal Case No. 02-208372, the accused be sentenced to an indeterminate penalty of 4 years and 2 months of prision correccional as minimum, to 9 years, 8 months and 21 days of prision mayor as maximum;

(2)

in Criminal Case Nos. 02-208373, 02-208375, and 02-208376, the accused be sentenced to an indeterminate penalty of 4 years and 2 months of prision correccional as minimum, to 10 years, 8 months and 21 days of prision mayor as maximum for each of the aforesaid three estafa cases and

(3)

in Criminal Case No. 02-208374, the accused be sentenced to an indeterminate penalty of 4 years and 2 months of prision correccional as minimum, to 12 years, 8 months and 21 days of prision mayor as maximum.

[1] Commentaries on the Laws of England 92.

[2] King Henry The Fifth, Act 3, Scene 6, Line 11.

[3] A survey of criminal law jurisprudence will show that among the portions of the ruling of trial courts and the appellate court that are most commonly corrected by this Court is the application of the Indeterminate Sentence Law. In fact, even this Court has grappled with the matter. (See *People v. Moises*, [160 Phil. 845 (1975)] overruling *People v. Colman* [103 Phil. 6 (1958)]; *People v. Gonzales* [73 Phil. 549 (1942)] overturning *People v. Co Pao* [58 Phil. 545 (1933)] and *People v. Gayrama* (60 Phil. 796 (1934)] and *People v. Mape* [77 Phil. 809 (1947)] reversing *People v. Haloot* [64 Phil. 739 (1937)] which followed the *Co Pao* ruling.)

[4] See *Salonga v. Cruz Paño*, 219 Phil. 402 (1985).

[5] *Id.*

[6] See Section 14 (2), Constitution.

[7] *Black's Law Dictionary*, Eighth Edition (2004), p. 1359.

[8] *People v. Ducosin*, 59 Phil. 109 (1933).

[9] 331 Phil. 64 (1996).

[10] 332 Phil. 710 (1996).

[11] 335 Phil. 242 (1997).

[12] These cases include *People v. Hernando*, 375 Phil. 1078 (1999), *People v. Menil*, 394 Phil. 433 (2000), *People v. Logan*, 414 Phil. 113 (2001), *People v. Gallardo*, 436 Phil. 698 (2002), *Garcia v. People*, 457 Phil. 713 (2003) and *Vasquez v. People*, G.R. No. 159255, 28 January 2008, 542 SCRA 520.

[13] 383 Phil. 213 (2000).

[14] 365 Phil. 531 (1999).

[15] 437 Phil. 621 (2002).

[16] 439 Phil. 762 (2002).

[17] *People v. Ducosin*, *supra*.

[18] *People v. Gonzales*, *supra* note 3.

[19] The penalty for estafa under Article 315(2)(d) is provided under PD 818 (Amending Article 315 of the Revised Penal Code by Increasing the Penalties for Estafa Committed by Means of Bouncing Checks).

[20] 64 Phil. 269 (1937).

[21] This is similar to the effect of the circumstance that the offender intended to aid the enemy by giving notice or information that is useful to the enemy in the crime of correspondence with hostile country under Article 120(3) of the Revised Penal Code (which necessitates the imposition of reclusion perpetua to death) or of the circumstance that the offender be a public officer or employee in the crime of espionage under Article 117 of the Revised Penal Code (which requires the imposition of the penalty next higher in degree than that generally imposed for the crime).

[22] See Article 61(5) of the Revised Penal Code. If the penalty is any one of the three periods of a divisible penalty, the penalty next lower in degree shall be that period next following the given penalty. Thus, the penalty immediately inferior to prision mayor in its maximum period is prision mayor in its medium period (*People v. Co Pao*, *supra* note 3). If the penalty is reclusion temporal in its medium period, the penalty next lower in degree is reclusion temporal in its minimum period (*People v. Gayrama*, *supra* note 3). The penalty prescribed by the Revised Penal Code for a felony is a degree. If the penalty prescribed for a felony is one of the three periods of a divisible penalty, that period becomes a degree, and the period immediately below is the penalty next lower in degree (Reyes, Luis B., *The Revised Penal Code*, Book Two, Fifteenth Edition [2001], p. 700).

[23] In particular, Article 13(10) expressly provides that "any other circumstances of a similar nature and analogous to those above mentioned" are treated as mitigating. Article 14, however, does not have a similar provision.

[24] *Lo Cham v. Ocampo*, 77 Phil. 636 (1946).

[25] *Krivenko v. Register of Deeds*, 79 Phil. 461 (1947).

[26] *Muñoz & Co. v. Hord*, 12 Phil. 624 (1909).

[27] *Ty Sue v. Hord*, 12 Phil. 485 (1909).

[28] *People v. Nang Kay*, 88 Phil. 515 (1951).

[29] *Id.*

[30] *Id.*

SEPARATE DISSENTING OPINION

AZCUNA, J.:

I join the Chief Justice in his dissent.

The penalty for estafa is a unique one, in a class by itself. The penalty prescribed by law depends on the amount involved. If it does not exceed P22,000, it is the penalty stated in par. 2(a) of Art. 315 of the Revised Penal Code, i.e., prision correccional maximum to prision mayor minimum. If it exceeds P22,000, it is that penalty plus one year for every P10,000, but in no case more than 20 years. Then the law states that in that event the penalty should be "termed" prision mayor or reclusion temporal, "as the case may be."

Accordingly, if the amount involved is, say, P500 Million, the penalty prescribed by law is reclusion temporal. Hence, the penalty one degree lower than that is prision mayor and it is within this one-degree lower penalty, i.e., prision mayor, that the minimum of the indeterminate sentence is to be fixed.

DISSENTING OPINION

VELASCO, J.:

I join the dissent of Chief Justice Reynato S. Puno.

It is clear that if the amount of fraud is over PhP 12,000 but does not exceed PhP 22,000, the penalty prescribed by Article 315 of the Revised Penal Code is prision correccional in its maximum to prision mayor in its minimum. Applying the Indeterminate Sentence Law (ISL), the RPC prescribed penalty will constitute the maximum period and the penalty next lower is prision correccional in its minimum to medium periods (6 months and 1 day to 4 years and 2 months). The ISL gives the judge the discretion in fixing the minimum penalty within the penalty next lower than the RPC prescribed penalty. Thus, the judge for an estafa involving over PhP 12,000 but not exceeding PhP 22,000 can prescribe the penalty of 4 years and 2 months as minimum period.

On the other hand, for the crime of estafa involving an amount exceeding PhP 22,000, which can go as high as several millions of pesos, the majority view posits that the RPC prescribed penalty is still prision correccional in its maximum period to prision mayor in its minimum period as the minimum period and the adjusted penalty based on the formula of 1 year per every PhP 10,000 but not to exceed 20 years is the maximum period. Thus following this line of reasoning, it admits that the penalty next lower would be prision correccional in its minimum and medium periods. Applying the ISL, the minimum period for an estafa of over PhP 22,000 can very well be 4 years and 2 months—exactly the same minimum penalty for estafa involving over PhP 12,000 but not exceeding PhP 22,000.

This result would be at war with the principle that the penalty for estafa is strictly based on the value or amount involved.^[1] This doctrine is captured in the graduation of penalties under Article 315(1), thus:

Article 315

Amount

Penalty

4[th] par.

Less than P200.00

Arresto Mayor in its medium and maximum period

3[rd] par.

Over P200.00 but less than P6,000.00

Arresto Mayor in its maximum period to prision correccional in its minimum period

2[nd] par.

Over P6,000.00 but less than P12,000.00

Prision correccional in its minimum and medium period

1[st] par.

Over P12,000.00 but less than P22,000.00

Prision correccional in its maximum period to prision mayor in its minimum period

1[st] par.

Over P22,000.00 add 1 year

(should be Prision Mayor or Reclusion Temporal)

It is obvious that the intent of the legislators in enacting Art. 315 of the RPC is to impose a penalty for estafa that is graduated—the graduation being based on the amount of the fraud. The higher the amount, the higher is the period of imprisonment. If we apply the First School of Thought which the majority adopted, then the minimum period under ISL for estafa from less than PhP 12,000 up to PhP 22,000 and the estafa exceeding PhP 22,000 will always be taken from within the range of prision correccional minimum and medium (i.e., from 6 months and 1 day to 4 years and 2 months). Thus, a swindler of a lesser amount (from PhP 12,000 to PhP 22,000) could be imprisoned for the same minimum term as a swindler of millions. This should not be the case. Justice demands that crime be punished and that the penalty imposed be commensurate with the offense committed.[2]

I submit that principle of proportionality between the offense committed and the penalty imposed finds application in determining the penalty for the crime of estafa. The penalty for estafa must always be commensurate with the amount defrauded.[3] If the concept of proportionality between the offense committed and the sanction imposed is not strictly adhered to, then unfairness and injustice will inevitably result.

It is a general rule of statutory construction that a law should not be so construed as to produce an absurd result.[4] The law does not intend an absurdity or that an absurd consequence shall flow from its enactment. If the words of the statute are susceptible of more than one meaning, the one that has a logical construction should be adopted over the one that will produce an absurdity. Statutes should receive a sensible construction, such as will give effect to the legislative intention and so as to avoid an unjust or an absurd conclusion.[5] Indeed a ridiculous situation will arise if a swindler of millions and a con man of less than PhP 22,000 will receive the same minimum sentence of 4 years and 2 months.

Worse, not only is the swindler of millions entitled to a very low penalty, he might very well even be qualified to avail of probation. A suspended execution of the penalty for a "big time" swindler could not have been intended by the framers of the Revised Penal Code.

The majority anchors its position on the postulate that all doubts should be resolved in favor of the accused. This principle however cannot prevail over the purpose or intent of the law. Undeniably the intendment of the law is to impose on the swindlers a higher penalty depending on the amount of fraud. This is easily deducible from the formula of imposing an additional one year of imprisonment for every PhP 10,000 over the threshold amount of PhP 22,000. If such was not the intent, then the RPC could have easily provided a penalty of prision mayor in its medium and maximum periods for estafa involving more than PhP 22,000 and above. The legislators, however, insisted on a higher penalty, clearly revealing an intent impose a harsher punishment for big time "estafadors."

Another point that has to be elucidated is the proposition of the majority that the maximum period of the penalty for estafa of more than PhP 22,000 is determined by using the formula of one (1) year for every additional PhP 10,000 while the minimum period is prision correccional in its maximum period to prision mayor in its minimum period. This is the only penalty, if accepted as correct, that has a fixed maximum period but a minimum period which is composed of two (2) periods—prision correccional in its maximum to prision mayor in its minimum period. Nowhere in the RPC or special laws can we find a penalty prescribed in that manner. Undoubtedly, this is not the prescribed penalty for estafa of more than PhP 22,000.

I concur with the view that Art. 315(1) that the penalty for estafa of more than PhP 22,000 is a single fixed penalty of either prision mayor or reclusion temporal.

I submit that the starting point for the computation of estafa of over PhP 22,000 should be the penalty of eight (8) years based on the phrase in Article 315(1) that "the penalty provided in this paragraph shall be imposed in the maximum." 8 years of imprisonment is prision mayor in its minimum period. Then we apply the formula of adding one (1) year for every additional PhP 10,000. To illustrate:

Amount of Fraud

Imprisonment

Over 22T to 32T 9 years (prision mayor)

Over 32T to 42T 10 years

Over 42T to 52T 11 years

Over 52T to 62T 12 years

Over 62T to 72T 13 years (reclusion temporal)

Over 72T to 82T 14 years

Over 82T to 92T 15 years

Over 92T to 102T 16 years

Over 102T to 112T 17 years

Over 112T to 122T 18 years

Over 122T to 132T 19 years

Over 132T to 142T 20 years

If the amount of the fraud is from PhP 22,001 to PhP 62,000 then the penalty is simply prision mayor. If the threshold PhP 62,000 is reached, then the penalty is reclusion temporal. The penalty cannot by express terms of the law, go higher than reclusion temporal in its maximum of 20 years. In other words, the penalty for estafa

involving an amount over PhP 22,000 up to PhP 142,000 and above is a single fixed penalty or straight penalty of either prision mayor or reclusion temporal depending on the amount. This is clear from Art. 315, 1[st] par.:

In such cases, 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 (emphasis supplied.)

Given the above perspective, it is quite easy to compute the ISL. If the penalty is prision mayor, the penalty next lower to that fixed by the RPC is prision correccional. If the penalty is reclusion temporal, then the penalty next lower is prision mayor. The judge will determine the maximum period by taking into consideration the attendant circumstances and the minimum shall be within the range of the next lower penalty.

With the foregoing mode of computation, for estafa of more than PhP 22,000 up to PhP 62,000, the penalty is 12 years of prision mayor. Applying the ISL, the penalty next lower is prision correccional—6 months, 1 day to 6 years. The judge has the discretion to fix the minimum within the range of prision correccional. However, since the maximum minimum penalty under ISL for estafa involving PhP 12,000 but not to exceed PhP 22,000, is 4 years and 2 months, then the minimum period for estafa of an amount over PhP 22,000 can be made higher than 4 years and 2 months. This way, the imposition of penalties under Art. 315(1) will be in harmony with the principle of proportionality that the penalty must be commensurate to the gravity of the offense and in line with the graduation of penalties under Art. 315.

For estafa involving more than PhP 62,000, then the penalty is a single fixed penalty of reclusion temporal while the penalty next lower is prision mayor. Thus the minimum period is any penalty within 6 years and 1 day to 12 years. The minimum period will undoubtedly be higher than the minimum period of 4 years and 2 months which has been fixed for estafa involving more than PhP 12,000 but not exceeding PhP 22,000. This manner of computation would be more in keeping with the intent of the framers of the Revised Penal Code.

Hence, my dissent.

[1] U.S. v. Fernandez, 9 Phil. 199 (1907); U.S. v. Leaña, 6 Phil. 368 (1906).

[2] Echegaray v. Secretary of Justice, 310 SCRA 96, 138 (1999), Separate Opinion of J. Vitug citing Record of the House of Representatives re: House Bill No. 62, which later evolved into the Death Penalty Law, R.A. 7659, now repealed by R.A. 9346.

[3] People v. Pascua, Aviguetero and Soliven, G.R. No. 125081, October 3, 2001; People v. Benemerito, G.R. No. 120389, November 21, 1996.

[4] Ang Giok Chip v. Springfield, No. L-33637, December 31, 1931; Paras v. COMELEC, G.R. No. 123169, November 4, 1996.

[5] Corsico, Jr. v. NLRC, G.R. No. 118432, May 23, 1997.

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