

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. COURT OF APPEALS,
HON. RAMON G. GAVIOLA, JR., HON. BUENAVENTURA S. DE LA
FUENTE, HON. EDGARDO L. PARAS, MELCHOR J. JAVIER AND
VICTORIA...**

G.R. No. 51635. December 14, 1982

Ponente: TEEHANKEE, Acting C.J.

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TEEHANKEE, Acting C.J.:

The Court hereby sets aside the challenged resolutions of respondent Court of Appeals - the first dated September 18, 1979 which granted private respondents-accused's motion that the trial court's challenged order denying their demurrer to evidence be considered a "judgment of conviction" against them and that their petition for certiorari against said order of denial be considered as an "appeal" from such "judgment" and declared that it would decide the "appeal" on the merits "as soon as the respective briefs and/or memorandum of the parties are in" and gave the "appellants" (respondents-accused) twenty days from the time the basic record and transcripts were submitted within which to submit their "memorandum in lieu of appellants' brief" and the appellee (the petitioner People who was merely a respondent therein) a period of twenty days from receipt of "appellants' brief" within which to file their "appellee's brief;" and the second, dated October 8, 1979 which declared the case submitted for decision without the briefs or memoranda having been filed, which respondent court has stated in its comment was a "manifestly erroneous" resolution inadvertently issued by the division clerk of court upon his own responsibility.

Respondents-accused upon the denial by the trial court of their demurrer to evidence and prayer for dismissal of the criminal case against them (arising from their conversion to their own use and benefit of an erroneous bank remittance to them of U. S. \$1, 000, 000. 00 instead of U. S. \$1, 000. 00) had filed in respondent court their special civil action of certiorari^[1] praying for the annulment of said inter-locutory order, on the claim that their liability was civil rather than criminal. When they moved that they waived the right to present evidence in the trial court and that the trial court's challenged order be considered a "judgment of conviction" and that their action be considered as an appeal from the said judgment, "it was an admission of the futility of their action which could not prosper since the trial court obviously committed no grave abuse of discretion in denying their demurrer to evidence. All that was before respondent appellate court were the trial court's interlocutory orders denying dismissal of the criminal case since it "believe(d) that the prosecution has established a prima facie case" and setting the continuation of the trial on September 22, 1978 for reception of evidence on behalf of respondents-accused.

All that respondent court could accordingly do in view of respondents-accused's motion was to dismiss the petition and remand the case to the trial court for the rendition of its final judgment determining the impossible penalty in the exercise of its original and exclusive jurisdiction over the criminal case. Respondent court being exclusively a court of appellate jurisdiction could not preempt or arrogate unto itself the trial court's original and exclusive jurisdiction, much less convert the accused's petition of certiorari before it (questioning interlocutory orders of the trial court) into an appeal over a criminal case wherein the trial court had not yet rendered judgment

nor imposed any penalty on the accused. In short, there was no judgment of the trial court over which it could exercise its only jurisdiction - the appellate jurisdiction of review on appeal.

Assuming *arguendo* that respondent court could validly entertain respondents-accused's motion to consider themselves convicted solely on the prosecution's evidence since they were no longer presenting any evidence on their behalf and to rule upon their "conviction" by way of an appeal, the most that respondent court could do - since only a pure question of law is involved, to wit, whether their admitted acts as shown by the evidence of the prosecution constitute the crime of estafa or merely give rise to a civil liability which they admit - was to elevate the case to this Court under its exclusive jurisdiction to review and determine all such cases involving only errors or questions of law.

The undisputed pertinent background facts of the case are as follows: On November 8, 1977, respondents-accused Melchor J. Javier and Victoria L. Javier were charged with estafa before the Circuit Criminal Court of the Seventh Judicial District presided over by then Judge, now Court of Appeals Associate Justice, Onofre Villaluz, in an information reading as follows:

"That on or about June 3, 1977, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court the above-named accused, Melchor J. Javier, Jr. and Victoria L. Javier, received from Prudential Bank & Trust Company, Pasay City Branch, the amount of US\$999, 993. 70, United States Currency, by virtue of a Telex from Manufacturers Hanover Bank, New York, U. S. A. , indicating that the remittance was upon instructions of Mellon Bank, N. A. which later bank acted pursuant to a request of the First National Bank of Moundsville, Moundsville, West Virginia, U. S. A. , to effect a transfer of US\$1, 000. 00 to the Prudential Bank & Trust Company for the account of the accused Victoria L. Javier but a Mellon Bank, N.A. employee sent by mistake a wire to Manufacturers Hanover Bank, New York, U.S.A., to effect the transfer of US\$1,000,000.00 instead of only US\$1,000.00; that once in possession of the aforesaid amount of US\$999,993.70, said accused Melchor J. Javier, Jr. and Victoria L. Javier, conspiring and confederating with each other, and fraudulently taking advantage of said mistake, of which they were fully aware, with grave abuse of confidence and/or unfaithfulness, in serious breach of their legal obligation to return the excess amount unduly sent and received by them, did then and there wilfully, unlawfully, feloniously and fraudulently misappropriate, misapply and convert the amount of US\$999,000.00 for their own use and benefit and despite repeated demands by the complainant, the accused refused and failed to return the same, to the damage and prejudice of Mellon Bank, N. A. in the aforesaid amount of US\$999,000.00.

CONTRARY TO LAW."

A plea of not guilty, having been interposed by the accused, the trial proceeded, and after the People had rested its case, the accused, on June 30, 1978, filed a demurrer to evidence and prayed for the dismissal of the criminal charge against them. Upon opposition by the People, the trial court on July 27, 1978 denied the demurrer to evidence or motion to dismiss, ruling that "the prosecution has established a *prima facie* case and that "demurrer to evidence, under Rule 35, is not applicable to criminal cases." Reconsideration, which was duly opposed by the People, was denied per the trial court's Order of August 18, 1978, which set the continuation of the trial for reception of the accused's evidence on September 22, 1978.

On September 8, 1978, the accused filed with respondent Court of Appeals their petition for certiorari with preliminary injunction questioning the interlocutory denial of their demurrer to evidence and motion for dismissal. The parties, respectively, thereafter filed their comment, reply, rejoinder and sur-rejoinder.

The petition was set and called for oral argument in respondent court on July 10, 1979 and respondents-accused, as petitioners therein, then made their move personally and through counsel eschewing the presentation of any evidence in their behalf in the trial of the criminal case and praying that respondent appellate court treat their

petition as if it were an appeal from a judgment of conviction and rule upon their "appeal."

After having required the parties to submit their respective memoranda on the question of whether it could so consider and convert the petition for certiorari as and into an "appeal," respondent court issued its challenged Resolution of September 18, 1979 reciting what transpired at the oral argument and ruling as follows:

"Herein Petition for Certiorari challenges the order of the court a quo denying petitioners 'Demurrer to the Evidence' as well as its order denying petitioners' motion for reconsideration. Without giving due course to the Petition, we required the respondents to comment and in the meantime restrained respondents from any further proceedings in Criminal Case No. CCC-VIII-2369-P. C.

"The pertinent facts, are as summarized in the People's memorandum, as follows:

'On November 8, 1977, petitioners were charged before the Circuit Criminal Court of the Seventh Judicial Dis-trict with the crime of estafa through misappropriation for refusing to return or account for the amount of US\$999, 000. 00 which was erroneously remitted to them by the Manufacturers Hanover Bank of Pittsburgh. In due course, petitioners pleaded not guilty and the prosecution presented its evidence. After the prosecution had rested its case, petitioners filed a demurrer to evidence. The same was denied by respondent Judge Onofre Villaluz.'

"The court a quo denied petitioners' 'Demurrer to Evidence' on its belief that the prosecution has established a prima facie case and because demurrer to evidence under Rule 35, Rules of Court is not applicable to criminal cases.

"The herein case was scheduled for oral argument on July 10, 1979, at which hearing, counsel for the petitioners manifested that they had no intention to present any further evidence in the criminal case; that on the basis of the evidence presented by the prosecution before the court a quo, they deserve an acquittal. They moved that the challenged order be considered a judgment against the petitioners and that the herein Petition for Certiorari be considered as an appeal from the said judgment. Confronted with the manifestation of their counsel, the petitioners, by themselves affirmed their counsel's representation, thus:

'MR. JUSTICE RAMON G. GAVIOLA, JR.:

Are the petitioners here?

'ATTY. BALGOS:

Yes, your Honor. They are here.

'MR. JUSTICE RAMON G. GAVIOLA, JR.:

Make it of record that the petitioners are here.

'MR. JUSTICE RAMON G. GAVIOLA, JR.: (to the petitioners)

Did you understand what your counsel said insofar as his manifestation is concerned to the effect that you are not going to present evidence?

PETITIONERS:

Yes, your Honor.

'MR. JUSTICE RAMON G. GAVIOLA, JR.:

Q - Do you also share your counsel's position that you consider the denial of your demurrer to the evidence as a verdict against you by the court a quo?

A - Yes, your Honor.

Q - Do you also realize that if this petition is treated as though it is an appeal, and, a verdict is found by this court against you, you could no longer go back to the court of origin for a new trial?

A - Yes, your Honor.

Q - And that your only area of relief is with the Supreme Court?

A - Yes, your Honor.'

"On the basis of the foregoing, we find it pointless for Us to remand the record of the here-in case to the court of origin for the lower court to do no more than impose the proper penalty. A review of the challenged order admits no other rationale. For clarity, however, we are incorporating pertinent portions of the findings upon which His Honor based his denial of petitioners' demurrer to the evidence."

(Note: The trial court's interlocutory order of denial of the demurrer to evidence and motion to dismiss is reproduced, but for brevity's sake is herein excerpted.) The trial court after ruling that "the prosecution has established a prima facie case" made a general dissertation as to the world-wide interest that the case aroused and that

"x x x The Philippines can unquestionably take pride in the fact that justice as it is known, practised and accepted by highly civilized society can be attained here. This is so because Philippine laws are based on the quintessence of civilization's well established, undebatable, and impregnable norm of conduct, perception, sense of values, and proper upbringing which, in turn, are in recognition of the supremacy of God's own laws.

"In bringing this case to the proper perspective, it is important to cite Chapter 22 of the Book of Deuteronomy in the Old Testament portion of the Bible:

'If you see someone's ox or sheep wandering away, don't pretend you didn't see it; take it back to its owner. If you don't know who the owner is, take it to your farm and keep it there until the owner comes looking for it, and then give it to him. The same applies to donkeys, clothings, or anything else you find. Keep it for its owner.'

"In analogy, the one million dollars which the Javier couple received by mistake, an amount which was nine-hundred-ninety-nine thousand dollars in excess of what was due them, as an inanimate object but, under the circumstances upon which the said amount found its way to them, it was akin to the movement of the ox or sheep (made as example in the Bible) that wandered. It went to the Javier couple, and the couple, instead of obeying the Bible's mandate to 'take it back to its owner, ' kept the excess amount to themselves. They insisted in keeping it despite demands from the Mellon Bank to give it back."

It added that "A predominantly Christian country, the Philippines produced Christian legislators who lost no time in enacting laws based on the Laws of God" and that "(I)t is not only the Christian religion that mandates the return to its owner of anything found or given by mistake. Other great religions - Mohammedanism, Buddhism, Shintoism - espouse the virtue of honesty, too. No wonder that the bodies of man-made laws all over the world reflect the same God-given mandate. As Christians are fully aware of, 'The Lord hates cheating and delights in honesty. ' (Proverbs II)," and concluded as follows:

"Considering the wide publicity generated by the Mellon Bank case, the world is indeed keenly waiting for the outcome. It has been very eager to find out if a foreign bank can attain justice in a court of law in the Philippines. Filipinos, of course, know the answer. They knew fully well that any person or any citizen of the world can attain it here.

"Implicit in the Philippine's bid for beneficial foreign investment and joint economic venture with Filipinos in a manner that would give the host people a just and reasonable share of profits in the development of their own

country is the inherent capacity of its courts of law to administer justice. Beneficial foreign investment and joint economic venture would just be relegated to dreams if the host people are regarded as dishonest, cheaters, and deceivers and the country's courts of law incapable of meting out elementary justice. Indeed, the Philippines will just be scaring away foreign investors ? all those who sincerely want to help in the development of this country - if Filipinos who steal, cheat and deceive were not held in check and were not meted out punishments by their own courts of law. The tourism program would collapse, too, for what foreign visitors would visit with a people who they think, does not value the virtue of honesty?

"In the petitioners' motion for reconsideration it was pointed out that:

- '1. It was error to declare that a demurrer to the evidence is not applicable to criminal cases.
- '2. It was error to deny the demurrer to the evidence on the basis of conjectures and speculations not based on the evidence presented by the prosecution.
- '3. The order amounts to a pre-judgment of the case which practically declares the accused guilty as charged.'

The motion for reconsideration was, however, denied for lack of merit.

"In the light of the foregoing and considering the right of the accused to a speedy trial, the appellants' motion is granted, hereby treating the herein Petition as an appeal, and hereby proceeding to decide herein case on the merits as soon as the respective briefs and/or memorandum of the parties are in.

"A review of the records show that on July 3, 1979, we required the court a quo to forward within ten (10) days from notice, the records and the stenographic notes of Criminal Case No, CC-VII-2369-P.C. for our consideration at the hearing scheduled for July 10, 1979. Since record does not show any compliance, the order is reiterated. Accordingly, the appellants are ordered to file their memorandum in lieu of Appellant's Brief within a period of twenty (20) days from the time basic record and transcripts are submitted and the appellees, their Appellees' Brief within a period of twenty (20) days from receipt of Appellants' Brief."

As indicated above, respondent court, through the division clerk of court, thereafter issued its admittedly "manifestly erroneous" Resolution of October 8, 1979 declaring the case submitted for decision without any briefs or memoranda having been filed (under the mistaken notion of the division clerk of court that such briefs or memoranda on the merits, pursuant to respondent court's questioned resolution considering the action before it as one of appeal, had already been filed), leading to the filing of the present action.

The petitioner People in its petition for certiorari, pro-hibition and mandamus prays that the Court annul the two resolutions in question, prohibit respondent court from deciding the criminal case as if it were already an appeal and command said court to remand the case to the trial court for promulgation of judgment. As further prayed for, the Court issued on October 15, 1979 its temporary restraining order enjoining respondent court from enforcing its challenged resolutions of September 18, 1979 and October 8, 1979, and from further proceeding with the case before it.

The Court finds the petition to be well taken, by virtue of the following considerations in amplification of those outlined hereinabove.

1. The only question submitted to the respondent court in the certiorari petition filed by respondents-accused was whether or not the trial court acted with grave abuse of discretion in denying their demurrer to evidence and motion to dismiss - which was filed therein in aid of its appellate jurisdiction.[2] Such a petition was doomed to failure in view of the long settled rule that certiorari does not lie to challenge the trial court's interlocutory order finding in the exercise of its sound judgment and discretion that the prosecution's evidence has established a prima facie case and denying the accused's motion to dismiss, since as reaffirmed in *Joseph vs. Villaluz*,[3] (which

controlling case was expressly noted by respondent court in the course of the hearing of July 10, 1979) that the appellate courts cannot and will not review in such special civil actions the prosecution's evidence and decide here and now in advance that it has or has not established beyond reasonable doubt the guilt of the accused and hence "this Court will not annul an interlocutory order denying a motion to dismiss a criminal case. Appeal is the proper remedy of the [accused] in order to have the findings of fact of the respondent judge reviewed by a superior court." Such special civil actions questioning the trial court's interlocutory order denying the accused's motion to dismiss the criminal case by way of demurrer to evidence, should be given short shrift, since the orderly procedure prescribed by the Rules of Court is for the accused to present their evidence after which the trial court, on its evaluation of the evidence submitted by both the prosecution and the defense, may then properly render its judgment of conviction or acquittal.

2. Respondents-accused's move at the hearing of July 10, 1979 waiving their right to present evidence and praying that respondent court unprecedentedly consider the trial court's interlocutory denial of the motion to dismiss as a "judgment of conviction" and convert their certiorari action to one of appeal from such "judgment" could not confer any jurisdiction or authority upon respondent court to do so. The moment the accused waived their right to present evidence and accepted the interlocutory order of denial as a verdict of conviction, thereby conceding the futility of their petition, its appellate jurisdiction ceased. The petition was filed with it in aid of its appellate jurisdiction and all it could do was to dismiss the petition accordingly for the trial court to render judgment imposing the corresponding penalty. At the hearing of July 10, 1979, Justice Paras had in his interpellation of the accused's counsel correctly brought this out, as per the transcript of the hearing submitted by respondent court with its comment, as follows:

"MR. JUSTICE EDGARDO L. PARAS:

Now, in such a case has there been any penalty imposed by the court a quo? Now, if there is no penalty it will be very difficult for this court to affirm or to deny it since there is no penalty imposed as yet.

"ATTY. BALGOS:

I submit to the pronouncement of the Honorable Justice. x x x Inasmuch as Judge Villaluz has already said that under the bible and to help the tourism program of the government and to aid the economic program of the government these people must be convicted. Why do we have to go back to Judge Villaluz and then just come up here again? We might as well resolve the case already here before this Honorable Court. x x x

"MR. JUSTICE EDGARDO L. PARAS:

Mr. counsel, I think the court is aware of this fact that although generally an appeal here should be the remedy. I mean that this case cannot as yet be appealed. It is merely interlocutory. According to you are manifesting before us that your clients will not present evidence anymore. You said it will be a waste of time if we remand this to the lower court. But the court below has not yet imposed any penalty. Even assuming that it is convinced that your clients are guilty, it has not yet imposed any particular penalty. Do you think Mr. counsel that this court, Court of Appeals, can impose a penalty even if no such penalty has been given by the court a quo?

"ATTY. BALGOS:

Yes, your Honor, I cannot find specific jurisprudence on this point x x x Our penal code provides for penalties in a situation like that. So, I sincerely believe that this court as it is so inclined can find the accused guilty and impose upon them the requisite penalty provided for by law. We feel that this petition for certiorari can be considered a petition for review and you would then resolve the questions on the merits already."[4]

3. The accused's contention has been that their liability is civil and not criminal, as per their extensive comment at

bar wherein they aver that "(J)udge Villaluz has obviously confused criminal responsibility with civil liability to the extent that where civil liability is contested in court, there must also be criminal responsibility. This is certainly wrong and confused. The Javiers have never denied receipt of the money, they have never denied their civil obligation to account for and return what was not rightfully theirs, what they have contested was the attitude of the Mellon Bank representative s and their unreasonable demand for the immediate reimbursement to the last cent -- which is precisely the subject of a pending civil case." [5] While the trial court did make a general dissertation on Philippine laws being based on the Bible and the Laws of God without specifically mentioning the particular Article on Estafa of the Revised Penal Code under which the accused were charged, all such dissertations were but obiter dicta, and the determinative ruling was his finding of the prosecution having established a prima facie case with the documentary and testimonial evidence. The pleadings of the People, both in the trial and respondent courts in opposition to the accused's demurrer and motion to dismiss (as well as in the case at bar) had specified Article 315, paragraph 1, sub-paragraph (a) of the Revised Penal Code under which the accused were charged for misappropriation and conversion to their own use and benefit of the US\$999,000.00 erroneously remitted to them but involving the duty and obligation on their part to return the same as well as complete undisputed details of the accused's massive withdrawals and disbursements of US\$975,000.00 in eleven days from their receipt of the US\$1,000,000.00 bank remittance, complete with citations of authorities and jurisprudence. [6] The lack of express factual findings in the interlocutory order goes but to show the need of returning the case to the trial court for the rendition of judgment and imposition of penalty in the exercise of its original and exclusive jurisdiction over the criminal case.

4. Manifestly, respondent court was bereft of jurisdiction to grant accused's counsel's motion, supra, to by-pass the trial court and itself "find the accused guilty and impose upon them the requisite penalty provided by law" (with their proposal to consider the trial court's denial order as a "judgment of conviction") and then review its own verdict and imposition of penalty (with the conversion of the certiorari petition into one of review on appeal).

The exclusive and original jurisdiction to hear the case for estafa involving the sum of US\$999,000.00 and pass judgment upon the evidence and render its findings of fact and in the first instance adjudicate the guilt or non-guilt of the accused lies with the trial court i. e. the Court of First Instance [7] concurrently with the Circuit Criminal Court, as in this case. [8]

On the other hand, the certiorari petition before it was filed only in aid of its appellate jurisdiction on the narrow issue of whether the trial court committed a grave abuse of discretion in denying the motion to dismiss the criminal case. Such a petition merited outright dismissal, more so with the accused's motion to consider the denial order as a verdict of conviction, as above shown.

There was no judgment of the trial court over which respondent court could exercise its appellate jurisdiction. The mandate of Article X, section 9 of the Constitution requires that "Every decision of a court of record shall state the facts and the law on which it is based." Rule 120, section 2 of the Rules of Court requires further that "The judgment must be written in the official language, personally and directly prepared by the judge and signed by him and shall contain clearly and distinctly a statement of the facts proved or admitted by the defendant and upon which the judgment is based. If it is of conviction the judgment or sentence shall state (a) the legal qualification of the offense constituted by the acts committed by the defendant, and the aggravating or mitigating circumstances attending the commission thereof, if there is any; (b) the participation of the defendant in the commission of the offense, whether as principal, accomplice or accessory after the fact; (c) the penalty imposed upon the defendant; and (d) the civil liability or damages caused by the offended party, if there is any, unless the enforcement of the civil liability by a separate action has been reserved." It is obvious that the denial order was not such a judgment.

Assuming further that the denial order could be deemed such a "judgment of conviction", since the facts are

undisputed and based solely on the prosecution's evidence (with the accused having waived their right to present evidence), respondent court could not exercise appellate jurisdiction over the "appeal", since the case would involve purely questions of law, i. e. whether the admitted facts constitute or not the crime of estafa - which falls within the exclusive jurisdiction of the Supreme Court to review on certiorari under Section 17 of the Judiciary Act, as amended by Republic Act No. 5440.

5. There is no question that as per the record of the hearing of July 10, 1979, respondents-accused affirmed personally and through counsel that they categorically waived their right to present their evidence in the trial of the criminal case. Thus, Justice de la Fuente expressly asked: "You have to be consistent. If the case is denied and returned to the court of origin, you want to present witnesses" of their counsel, Atty. Balgos, who replied "No more,"[9] and "so that our position is this - inasmuch as Mr. Justice de la Fuente asked whether if the petition were denied and the case were returned to the court of origin whether we will still present evidence. We are not presenting already."[10] Their counsel further replied to Justice Gaviola: "Precisely I asked my client to come here today and for the record make manifest that they are not presenting any further evidence."[11] Respondents-accused affirmed their counsel's manifestations to respondent court as reproduced in respondent court's September 18, 1979 Resolution quoted hereinabove, wherein they expressly undertook that if a verdict were found against them, "they could no longer go back to the court of origin for a new trial" and that their "only area of relief is with the Supreme Court." Such express waiver is binding upon them and the trial court "has no alternative but to decide the case upon the evidence presented by the prosecution alone."[12]

The Court makes this clear in the exercise of its supervisory power so that there may be no further undue delay in this case, and the orderly procedure prescribed by the law on jurisdiction and judgments and by the Rules of Court be duly observed by all subordinate courts. Since the accused accepted as a judgment of conviction the trial court's denial of their demurrer to evidence and waived their right to present evidence, their petition for certiorari is ordered dismissed and the case remanded to the trial court for rendition of judgment and imposition of the corresponding penalty, as should have been done from the beginning. And any appeal that accused may take therefrom would have to be to this Court on a petition for review on certiorari under Republic Act No. 5440 in relation to section 17 of the Judiciary Act as amended thereby, since it would involve the pure question of law of whether their acts make them criminally liable for estafa or swindling, besides their accepted civil liability for the excess bank remittance of US\$999,000.00.

ACCORDINGLY, the petition is granted and the questioned resolutions of respondent Court of Appeals of September 18, 1979 and October 8, 1979, are hereby annulled and set aside, and the restraining order enjoining said respondent court from further proceedings in Case CA-G. R. No. SP-08339 is hereby made permanent. As further prayed for, Criminal Case No. CCC-VII-2369-P. C. against respondents-accused is ordered remanded to the Circuit Criminal Court of the Seventh Judicial District for prompt promulgation of judgment in accordance herewith. This decision is immediately executory upon its promulgation. SO ORDERED.

Plana, Vasquez, Relova, and Gutierrez, Jr., JJ., concur.
Melencio-Herrera, J., in the result.

[1] Docketed as CA-G. R. No. 08339, entitled "Melchor J. Javier, Jr. and Victoria L. Javier vs. People of the Phil. and Hon. Onofre H. Villaluz, etc."

[2] Under Rule 65, section 4 of the Rules of Court.

[3] 89 SCRA 324 (April 10, 1979), citing *Manalo vs. Mariano*, 69 SCRA 80 (1976). See also to same effect: *U. S. vs. Romero*, 22 Phil 565 (1912); *U. S. vs. de la Cruz*, 28 Phil 279 (1914); and *U. S. vs. Choa Chiok*, 36 Phil 831

(1917).

[4] Transcript of hearing of July 10, 1979, Annex B of respondent court's Comment; Re-cord, pp. 313-314.

[5] Record, p. 254.

[6] Record, pp. 12, et seq., 92, p. 353-365, Record, cit. U. S. vs. Yap, 34 Phil 102.

[7] Section 17, Judiciary Act in conjunction with Article 315, Revised Penal Code. The cited statutes read: "Section 44. Original jurisdiction. ? Courts of First Instance shall have original juris-diction:

'x x x (f) In all criminal cases in which the penalty provided by law is imprisonment for more than six months, or a fine of more than two hundred pesos; xxx'"

"Art. 315. Swindling (estafa). - Any person who shall defraud another by way of the means mentioned hereinbelow shall by punished by:

First. The penalty of prision correccional in its maximum period to prision mayor in its minimum period, if the amount of the fraud is over 12, 000 pesos but does not exceed 22, 000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10, 000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such 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.

[8] Rep. Act 5179, section 1.

[9] Transcript of hearing, p. 4, Rec. p. 307.

[10] Idem, p. 5, Rec., p. 308.

[11] Idem, pp. 8-9, Rec., pp. 311-312.

[12] Abriol v. Homeres, 84 Phil 525 (1949).

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