

JOSE DE LA CONCEPCION Y PULONG, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND SANDIGANBAYAN, RESPONDENTS.*G.R. No. 73854. May 09, 1989*

Ponente: CORTES, J.

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The antecedent facts, undisputed by both parties, are as follows: On March 8, 1983, Teresita Genese, a revenue collection clerk of the cash division and real estate division of the Quezon City Treasurer's Office approached Angeles Factora, a senior revenue collection officer of the same office, requesting a loan of P26,250.00 from Factora's tax collection. Because of Genese's persistent pleas and assurances that the amount would be returned on the same day, Factora acquiesced. In the afternoon of the same day, Genese did return the amount but in the form of a check. The check, together with all the other tax collections of the city government were deposited with the Philippine National Bank (PNB). However, when the PNB presented the check for payment, the drawee bank, Manila Banking Corporation (Manilabank), dishonored it.

A few months earlier, on December 17, 1982, petitioner Jose dela Concepcion, Jr., employed as a registration clerk at the main office of the Manilabank received from the bank's legal department a deed of sale of a real estate property in favor of Carled Development Corporation (CARLED) and a deed of real estate mortgage over the same property executed by CARLED in favor of Manilabank, which were to be registered with the Register of Deeds of Makati. Petitioner was also given three checks, one of which was Check No. 998922 (Exh. "C") drawn against Manilabank with the Municipal Treasurer of Makati as payee, in payment for the transfer tax due from CARLED. On January 4, 1983, petitioner returned the documents to the bank on the pretext that the tasks assigned him have been accomplished.

However, on July 6, 1983, CARLED complained to Manilabank that it was informed by the municipal government of Makati that the transfer tax had not yet been paid.

Upon investigation by Manilabank, it was discovered that the duplicate copies of the check kept by its loans and discount department had been altered, the payee having been changed from "Municipal Treasurer of Makati" to "Municipal Treasurer of Quezon City."

The check surfaced when it was presented for payment by the PNB. Like its duplicate copies, the check was altered as to the payee. Manilabank dishonored the check and returned it unpaid to PNB which in turn notified the depositor of the check, the Quezon City Treasurer's Office, of the dishonor and the corresponding debit of its account in PNB in the amount of P26,250.00 (Exh. "Q"). Separate investigations were conducted by Manilabank, the Quezon City Treasurer's Office, the Quezon City Police and later by the Tanodbayan resulting in the filing with the Sandiganbayan of a criminal information for ESTABA THROUGH FALSIFICATION OF COMMERCIAL DOCUMENT against (1) Teresita Genese, revenue collection clerk of the cash division and real estate division of the Quezon City Treasurer's Office; (2) Isagani Alinea, revenue assessment clerk of the real estate division of the same office; and (3) petitioner Jose dela Concepcion, Jr. The information reads as follows:

That on or about the 8th day of March, 1983 and for sometime prior and subsequent thereto, in Quezon City, Philippines, the above-named accused, Teresita Amemita Genese and Isagani Alinea, being then a revenue collection clerk, cash division, and revenue assessment clerk, real estate division, respectively, Quezon City Treasurer's Office, and accused Jose dela Concepcion, at the time an employee of the legal department of the Manila Bank, charged with the duty of registering documents with the Registers of Deeds, with intent of gain, by means of deceit and falsification of commercial document, conspiring together, confederating with and mutually helping one another, did then and there, wilfully, unlawfully and feloniously defraud the Office of the City Treasurer, Quezon City, in the manner as follows: on the date and in the place aforementioned, said accused, being then in possession of a cashier's check with Serial Number CC-998922 dated December 17, 1982 in the amount of P26,250.00 payable to the Municipal Treasurer, Makati and drawn against the Manila Bank for the transfer tax for the account of Carled Development Corporation vis-a-vis the piece of land bought by it from Insular Life Assurance Company, Ltd. that was later mortgaged to the Manila Bank which took charge of the payment for Carled Development Corporation of the transfer tax and the registration of pertinent documents, falsified the same, by then and there making an alteration or intercalation of said instrument which changed its meaning, that is, the payee which is the Municipal Treasurer, Makati was altered to the Municipal Treasurer, Quezon City; that by virtue of said falsification, accused were able to exchange said check with cash money from the Office of the City Treasurer, Quezon City, but when the check was deposited with the Cubao Branch, Quezon City, Philippine National Bank, for encashment, it was dishonored for the reason "Payment Stopped And Payee's Name Altered"; and that the accused once in possession of said amount of P26,250.00, Philippine Currency, misapplied, misappropriated and converted the same to their own personal use and benefit, to the damage and prejudice of the City Treasurer's Office, Quezon City, in such amount as may be awarded under the provisions of the New Civil Code.

Contrary to law. [Rollo, pp. 20-21.]

During their separate arraignments, both Teresita Genese and petitioner pleaded not guilty. However, Genese, pending trial, jumped bail and succeeded in eluding the authorities even after the promulgation of the decision of the court a quo. The third accused, Isagani Alinea was never arraigned and remained at large.

After trial, the Sandiganbayan rendered a judgment of conviction, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered finding accused Jose De La Concepcion y Pulong and Teresita Genese y Amemita GUILTY beyond reasonable doubt as co-principals of the complex crime of Estafa Thru Falsification of Commercial Document, as defined and penalized under Articles 315, Paragraph 1(B) and 171, Paragraph 6, of the Revised Penal Code, in relation to Article 48 thereof, and favorably appreciating the mitigating circumstance of voluntary surrender in favor of accused Genese, with no aggravating circumstance in offset, and after applying the benefits of the Indeterminate Sentence Law, hereby sentences them as follows: Accused De La Concepcion to suffer the indeterminate penalty ranging from SEVEN (7) YEARS and ONE (1) DAY of prision mayor, as the minimum, to TEN (10) YEARS and ONE (1) DAY, likewise of prision mayor, as the maximum, and accused Genese to suffer an indeterminate penalty ranging from FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of prision correccional, as minimum, to SEVEN (7) YEARS and ONE (1) DAY, of prision mayor, as the maximum, to indemnify, jointly and severally, both the Manila Banking Corporation, Ayala, Makati and Quezon City Treasurer's Office in the amounts of P26,250.00 each; to pay a fine of P3,500.00 each, and to pay their proportionate share of the costs of this action.

Accused Genese is likewise sentenced to suffer temporary special disqualification from SIX (6) YEARS and ONE (1) DAY to TEN (10) YEARS and ONE (1) DAY.

* * *

[Sandiganbayan Decision, pp. 39-40; Rollo, pp. 58-59.]

The motion for reconsideration of the decision having been denied, the accused Jose dela Concepcion, Jr. filed

this petition for review on certiorari seeking the annulment of his conviction on the ground that his guilt has not been proved beyond reasonable doubt.

During the trial, the prosecution presented as witness Angeles Factora, a senior revenue collection officer of the Quezon City Treasurer's Office, who testified that at around 11:30 a.m. on March 8, 1983, the accused Teresita Genese borrowed from her P26,250.00. Because of Genese's promise to return it on the same day, Factora lent her the amount from the day's collection for real estate taxes.* In the afternoon of the same day, Genese did return the amount but in the form of check instead of cash [TSN, July 11, 1985, pp. 7-14.]

Prosecution witness Purita Garcia, a revenue assessment clerk of the same office, corroborated Factora's testimony since she was present when Genese turned over the check. Having had the opportunity to examine the check given by the accused Genese to Factora, witness Garcia was able to identify it as the same check presented in evidence by the prosecutor as Exhibit "C", the Manilabank Check No. 998922 [TSN, July 11, 1985, pp. 30-33.]

The prosecution next presented as witness Manuel Dominguez, a senior legal officer of the Quezon City Treasurer's Office whose duty included conducting investigations on anomalies involving employees of the City Treasurer's Office. He testified that he was assigned to investigate the accused Isagani Alinea for his possible involvement in the irregular exchange of the altered Manilabank check (Exh. "C") for cash from the Quezon City Treasury. Alinea allegedly confessed to having induced Genese into exchanging the altered check for cash from tax collection of the city. Moreover, Dominguez testified that according to Alinea, the entire scheme was "the work of a syndicate" [TSN, July 1985, p. 44.] Prosecution witness Gaudencio Maliwat, another employee of the Quezon City Treasurer's Office also confirmed the rumor about the existence of a syndicate [TSN, August 22, 1985, p. 22.]

Lastly, the prosecution summoned to the witness stand Bienvenido Angeles, the manager of Manilabank who was involved in the investigation made by the bank on petitioner. The relevant facts of his testimony are the following: petitioner was terminated by the bank because of certain irregularities he committed including his possible involvement in the alteration of the check in question; the duplicate copies of the check, like the original, were discovered by the bank to have been altered as to the payee; although the duplicate copies of the check were kept by a custodian, access to them by unauthorized persons was not ruled out; petitioner was often assigned errands in the Quezon City Treasurer's Office and the Quezon City Register of Deeds [TSN, June 4, 1985, pp. 5-22.]

For his part, petitioner who did not present a single witness besides himself, denied the charge against him and gave the following uncorroborated version of the events:

1. Petitioner de la Concepcion, Jr. was an employee of the Manila Banking Corporation, Makati Main Office. He was a registration clerk assigned at the Legal Department. Sometime in December, 1982 petitioner performed his customary duties to register documents with the register of deeds. Specifically, he received from the bank's legal department the following: the deed of sale of a real estate property in favor of Carled Development Corporation; a deed of real estate mortgage over the same property executed by Carled Development Corporation in favor of the Manila Banking Corporation; and three (3) cashier's checks to pay the registration fees, other expenses and the transfer tax corresponding to the said deed of sale. Among the three (3) cashier's checks he received was Check No. CC-998922 in the sum of P26,250.00 (Exh. "C") payable to the Municipal Treasurer of Makati for the transfer tax. All the aforesaid documents and the three (3) cashier's checks were prepared by the bank's Loan and Discount Department and transmitted to the Legal Department for registration by petitioner de la Concepcion, Jr. Obviously, the bank took charge of the payment for Carled Development Corporation of the transfer tax, registration expenses and other fees of the deeds of sale and mortgage.

2. After receipt of the documents of sale and mortgage as well as the three (3) cashier's checks, petitioner went

to the register of deeds of Makati to register said documents and to pay the corresponding tax, expenses and other fees using the three (3) cashier's checks prepared separately. However, petitioner was not able to transact business immediately because of the heavy volume of transactions in the register of deeds of Makati and the long line of people awaiting their turn. Petitioner left the place and went to other offices to follow up some pending works. When he went back to the register of deeds of Makati he met his casual acquaintance by the name of "Peter" who in two previous occasions helped him with his registration work in Manila. Peter inquired from him if he has some problems in the registration and he told Peter that he finds it difficult to register because of too many people. Peter offered his assistance and petitioner in his honest desire to facilitate the registration agreed considering that Peter already helped him in previous registration assignments.

Petitioner turned over to Peter the deed of sale, the deed of real estate mortgage, and the three (3) separate cashier's checks corresponding to the registration fees, other expenses and for the transfer tax. One of the checks was for the transfer tax originally payable to the Municipal Treasurer of Makati. Peter issued to petitioner a receipt therefor dated December 28, 1982 (Exh. 2) and assured him that he would take care of the work. Petitioner gave Peter some amount for his assistance.

3. Petitioner went back to the Office of the Register of Deeds of Makati to follow up the registration work being done by Peter. At this point, Peter told him that he is not yet through with the work because according to him the cashier's check for the transfer tax (now Exh. "C") originally payable to the Municipal Treasurer of Makati should be changed to Quezon City to facilitate registration. Petitioner asked Peter for the said cashier's check but the latter told him that it was left at his house. At any rate Peter told him not to worry.

4. Petitioner went back again to the Makati Register of Deeds to follow up with Peter what happened to the registration work. Peter was not there. It was only in the early days of January, 1983 when he saw Peter at the register of deeds of Makati and the latter handed to him the documents already stamped registered. Petitioner turned over the documents to the bank on January 4, 1983. (Exh. G, p. 1 par. 4 last sentence) Petitioner never saw Peter again since then.

5. Sometime in July, 1983, petitioner was informed by his employer-bank that the transfer tax for the sale of the real estate property to Carled Development Corporation was not paid. This information was relayed by Carled when it received a letter from the Municipal Treasurer of Makati. In the investigation conducted it turned out that the said cashier's check intended to pay the transfer tax and payable to the Municipal Treasurer of Makati was deposited by the Quezon City Treasurer's Office with its account at PNB Cubao. Further investigation showed that the check which was originally worded payable to the Municipal Treasurer of Makati was changed to "Municipal Treasurer Quezon City"; that Quezon City Treasurer's Office took possession of the check on March 8, 1983 because one of its employees, accused Teresita Genese, gave the same to her co-employee Angela Factora, teller, in payment of the P26,250.00 cash Genese earlier in the day borrowed from Factora (TSN p. 9-14 July 11, 1985).

6. Petitioner de la Concepcion, Jr. was investigated by his employer-bank and he gave his side telling how he met "Peter" a casual acquaintance on December 28, 1982 at the register of deeds of Makati; the offer to him by Peter for assistance in the registration of the documents in question; why he consented to let Peter do the registration work and giving to him the documents and the three (3) cashier's checks; that he is innocent on how the cashier's check originally payable to the Municipal Treasurer of Makati surfaced in Quezon City Treasurer's Office with the payee already altered to read "Municipal Treasurer Quezon City" (Exh. "C"); that he is innocent about the alteration; that he only dealt with Peter who previously helped him in similar registration assignments in good faith and in his desire to facilitate the registration work; that he does not know accused Teresita Genese, the person who encashed the check with teller Factora, muchless accused Isagani Alinea. After giving his side, the bank management prodded petitioner de la Concepcion, Jr. that if he had nothing to do with what happened and he is innocent, he should show his sincerity and good faith by depositing with the bank the sum of P26,250.00 to answer for any contingent damage the bank may sustain should something happen to the check, and reassuring him that said deposit would be returned to him in the

event that the bank is not prejudiced. Convinced by the prodding of the bank and the conditions for the release of his deposit, and considering that his conscience is clear and he had nothing to do with the falsification and encashment of the check, petitioner had to borrow money from his relative and deposited the required amount with the Manila Banking Corporation. The bank issued a receipt (Exh. "E".)

7. In the meantime, the renegade accused Isagani Alinea, an employee of the Quezon City Treasurer's Office, was also investigated by Atty. Manuel Dominguez, Senior Legal Officer of said office, and it was disclosed that the check in question came from Alinea and he gave it to accused Teresita Genese for her to encash it and the proceeds were given to him. (Testimony of Atty. Dominguez, TSN July 11, 1985) Alinea in that investigation did not disclose how the check came into his possession and who in particular gave it to him.

8. In a separate investigation conducted by the Fiscal where all the three accused were present, Alinea in his written statement said that he does not know Jose de la Concepcion, Jr. or a person called "Peter". In the same investigation accused Teresita Genese likewise stated that she does not know Jose de la Concepcion, Jr. or "Peter". (Exh. 3, 3-A, 4 and 4-A)

9. In the meantime, the cashier's check (Exh. "C") was dishonored by the PNB Cubao Branch, depository bank of the Treasurer's Office of Quezon City because of the "stop payment order" previously made by the Manila Banking Corporation, and therefore said bank was not financially damaged nor incurred any loss. . . . (Testimony of Mr. Angeles, Bank Officer, TSN pp. 16-17 June 4, 1985)

* * *

[Petition, pp. 2-6; Rollo, pp. 7-11.]

Petitioner's conviction being anchored on his alleged participation in a conspiracy to obtain cash from the collections of the Quezon City Treasury through the use of altered checks, the main issue boils down to whether his participation therein has been proved beyond reasonable doubt.

The rule in this jurisdiction is that conspiracy must be established by positive and conclusive evidence. It cannot be based on mere conjectures but must be established as a fact. The same degree of proof required to establish the crime is necessary to support a finding of the presence of conspiracy. It must be shown to exist as clearly and convincingly as the commission of the offense itself [*Macadangdang v. Sandiganbayan*, G.R. Nos. 75440-43, February 14, 1989 citing *Gomez v. Intermediate Appellate Court*, G.R. No. 63202, April 9, 1985, 135 SCRA 620.] However, direct proof is not always essential [*People v. Cruz*, G.R. No. L-15369, April 26, 1962, 4 SCRA 1114; *People v. Belen*, G.R. No. L-13895, September 30, 1963, 9 SCRA 39; *People v. Capito*, G.R. No. L-24466, March 19, 1968, 22 SCRA 1130] because conspiracy can seldom be proved except by circumstantial evidence [*People v. Cadag*, G.R. No. L-13830, May 31, 1961, 2 SCRA 388 citing *People v. Romualdez*, 57 Phil. 148 (1932).]

In this particular case, no direct evidence was presented by the prosecution to prove the culpability of petitioner. However, the Court finds highly significant certain circumstances which, taken together, inevitably point to petitioner's guilt.

Petitioner has been a registration clerk of Manilabank for twelve years. According to him he was not authorized nor was he in the habit of delegating his functions to others [TSN, November 28, 1985, p. 31.] Yet in seeking to exculpate himself he testified that he entrusted the check in question together with some other documents to a certain Peter. The check involved was in the amount of P26,250.00. Besides the said check, the following documents given by Manilabank to petitioner were allegedly entrusted by the latter to Peter: (a) a deed of sale of a real estate in favor of CARLED the consideration of which was P10,500,000.00 (Exh. "J"); (b) a real estate mortgage of the same property executed by CARLED in favor of Manilabank; (c) two Manilabank checks one for

P95,000.00 and the other P44,141.50. Considering the importance of these documents and the amount of money involved as well as petitioner's own statement that he does not delegate his duties to others, the Court rejects petitioner's story that he entrusted them to Peter, an acquaintance whose surname and residence petitioner does not even know.

According to the petitioner, the long lines at the Makati Register of Deeds and at the Makati Treasurer's Office forced him to give the documents and checks to Peter to facilitate the registration of the deed of sale and mortgage as well as the payment of the transfer tax [TSN, November 28, 1985, p. 6.] Yet while the documents were given to petitioner on December 17, 1983, it wasn't until 18 days later, on January 4, 1984, that petitioner returned the said documents to the bank thus negating his alleged intention of rushing the tasks assigned him.

Petitioner reported to the legal department on January 4, 1984 to having registered the sale and mortgage and paid the transfer tax by returning certain documents, which on close examination belie his claim of having accomplished his errands and indicate further his culpability in the crime charged. First of all, petitioner did not submit an official receipt of the payment of the transfer tax or any evidence that it has been paid. Second, the real estate mortgage (Exh. "K") which petitioner claimed to have registered with the Makati Register of Deeds bore a printed certification of registration by the register of deeds not of Makati but of Quezon City. In the printed certification of registration, the phrase "Quezon City" appears twice. One of them was crossed out by a pen and below it was handwritten the word "Makati". The registration is therefore patently spurious not only because of the said alteration but also because the property subject matter of the mortgage is located in Makati. Considering the long experience of petitioner as a registration clerk and considering further that when petitioner returned the documents to the bank on January 4, 1983, he reported having accomplished his tasks, the Court will not now allow him to feign ignorance of the patently irregular registration of the mortgage. The non-registration of the mortgage confirms the non-payment of the transfer tax, for which the check in question [Exh. "C"] was meant, since as admitted by petitioner himself based on his experience as a registration clerk, the mortgage will not be registered by the Register of Deeds unless there is proof that the transfer tax has been paid [TSN, November 28, 1985, p. 33.] Therefore, the effort to make the mortgage appear as having been registered as described above reveals petitioner's attempt to cover up the non-payment of the transfer tax and his ties with some employees of the Quezon City government.

The Court next finds significant the fact that the duplicate copies of the check which were kept by the loans and discount department of Manilabank were similarly altered as to the original, the payee having been changed from "Municipal Treasurer of Makati" to "Municipal Treasurer of Quezon City." While it is true, as contended by petitioner that the duplicate copies were never handed to him but were kept by a custodian, a Mr. Bunoan of the loans and discount department, petitioner nevertheless admitted to having called up said department to have the payee changed from "Municipal Treasurer of Makati" to "Municipal Treasurer of Quezon City" "allegedly upon the information by Peter that to do so would facilitate the payment of the transfer tax and the registration of the different documents [TSN, November 28, 1985, p. 9, p. 41.] This admission is inconsistent with petitioner's claim of innocence regarding the alteration of the check and consequently, fatal to his cause.

The Court also finds relevant the fact that petitioner made a deposit of P26,250.00 to Manilabank during the investigation. The deposit was made upon instruction by Manilabank to answer for the damage caused by the altered check to the Quezon City Treasury should the latter, through PNB, seek recovery from Manilabank. Petitioner contends that his making of the deposit notwithstanding his lack of the necessary funds [TSN, November 28, 1985, p. 19] shows his innocence, sincerity and good faith [Petition, p. 5; Rollo, p. 10.] But his eagerness to show his innocence to the bank investigators and willingness to shoulder the damage caused by the alteration of the check, rather than support his claim of innocence, further strengthen the other circumstantial

evidence pointing to petitioner's guilt.

It must be remembered that petitioner was given exclusive possession of the check by Manilabank. That it should turn up in the Quezon City Treasurer's Office, where petitioner has admitted to having made several acquaintances [TSN, November 28, 1985, p. 22] because of the transactions he has made therein in the many years that he has been a registration clerk of Manilabank, has not been credibly explained by petitioner. Petitioner's story about Peter, the "fixer" is unsupported by any evidence.

As was stated earlier, the prosecution failed to present any direct evidence to prove petitioner's guilt. Reliance was made solely on circumstantial evidence. Nevertheless, the Court has consistently ruled that:

Where the events constitute a compact mass of circumstantial evidence, the existence of every bit of which was satisfactorily proved, and the proof of each is confirmed by the proof of the other, and all without exception leading by mutual support to but one conclusion, the circumstantial evidence are sufficient to establish the culpability of the accused beyond reasonable doubt. . . .

x x x In determining the sufficiency of circumstantial evidence to support a conviction, each case is to be determined on its own peculiar circumstances and all the facts and circumstances are to be considered together as a whole, and, when so considered, may be sufficient to support a conviction, although one or more of the facts taken separately would not be sufficient for this purpose. . . . No general rule has been formulated as to the quantity of circumstantial evidence which will suffice for any case but that matters not. For all that is required is that the circumstances proved must be consistent with each other, and at the same time inconsistent with the hypothesis that he is innocent and with every other rational hypothesis except that of guilt. . . . [People v. Madriaga IV, G.R. No. 73057, March 8, 1989; Citations omitted.]

In the case at bar, the Court, after a careful examination of the record, has found the following circumstances highly significant: the check subject matter of the offense was entrusted to petitioner; the check turned up already altered in the Quezon City Treasurer's Office where petitioner admitted having made acquaintances; the real estate mortgage which was entrusted to him together with the check was fictitiously registered with the Quezon City Register of Deeds; petitioner reported having paid the transfer tax with the check (Exh. "C") thru Peter, a "fixer" but failed to present an official receipt therefore; the duplicate copies of the check kept by Manilabank were similarly altered as the original; petitioner admitted having called the bank to have the payee on the check changed from "Municipal Treasurer of Makati" to "Municipal Treasurer of Quezon City", petitioner deposited P26,250.00 with Manilabank to answer for the damage caused by the alteration of the check; petitioner alleged that the purpose in giving the check and other documents to Peter was to rush the payment of the transfer tax and the registration of the sale and mortgage but this was negated by the fact that the petitioner reported having accomplished his tasks eighteen days after they were assigned by the bank. These circumstances, having been proved with certainty by clear and convincing evidence, are, together with the inherent weakness of the defense of such nature that an analysis and combination of all of them would lead to no other conclusion than that petitioner is guilty of the crime charged. The evidence presented by the prosecution, albeit circumstantial, is of a sufficient quantum to establish the guilt of petitioner to a moral certainty.

However, contrary to the finding by the Sandiganbayan that both the Manilabank and the Quezon City Treasurer's Office were prejudiced and suffered loss by the alteration and encashment of the check, the Court, after a careful consideration of the record and considering that Manilabank was able to dishonor the check, holds that only the Quezon City Treasurer's Office incurred damage in the amount of P26,250.00.

Since the petitioner is charged with estafa through falsification of a commercial document, a complex crime, the penalty for the more serious offense, in this case estafa, shall be applied in its maximum period. The amount of damage being P26,250.00, the appropriate penalty under Art. 315 in relation to Art. 48 of the Revised Penal Code

is prision correccional in its maximum period to prision mayor in its minimum period, the same to be applied in its maximum period or from SIX (6) YEARS, EIGHT (8) MONTHS AND TWENTY ONE (21) DAYS TO EIGHT (8) YEARS. Applying the Indeterminate Sentence Law, the minimum term of the penalty to be imposed shall be within the range of the penalty next lower in degree, which is prision correccional in its minimum and medium periods, or from SIX (6) MONTHS and ONE (1) DAY to FOUR (4) YEARS and TWO (2) MONTHS.

WHEREFORE, in view of the foregoing, the judgment of the Sandiganbayan is AFFIRMED with modifications as to the penalty. Petitioner Jose de la Concepcion y Pulong is found GUILTY beyond reasonable doubt of the crime of estafa through falsification of commercial document, without any aggravating or mitigating circumstance, and is sentenced to suffer the indeterminate penalty ranging from FOUR (4) YEARS and TWO (2) MONTHS of prision correccional, as minimum, to SIX (6) YEARS, EIGHT (8) MONTHS and TWENTY (20) DAYS of prision mayor, as maximum. Petitioner is also ordered to reimburse, jointly and severally with the accused Teresita Genese, the amount of P26,250.00 to the Quezon City Treasurer's Office and to pay the proportionate costs.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Grino-Aquino, Medialdea, and Regalado, JJ., concur.

* While witness Angeles Factora was not included in the information, the Sandiganbayan, in its decision, directed the Tanodbayan to conduct an investigation to determine any liability which may have been incurred by her in lending her cash collections to the accused Teresita Genese [See Sandiganbayan Decision, p. 40; Rollo, p. 59.]

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