

FERMINA RAMOS, PETITIONER, VS. THE COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. Nos. 64129-31. November 18, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for review on certiorari of the November 9, 1982 decision of the Court of Appeals in CA-G.R. Nos. 23626-CR; 23627-CR; and 23628-CR entitled "People of the Philippines v. Fermina Ramos, Lourdes Orpiano and Mariano Barreto;" "People of the Philippines v. Fermina Ramos, Lourdes Gonzales, Francisco Gonzales and Mariano Barreto;" and "People of the Philippines v. Fermina Ramos, Lourdes Gonzales, Francisco Gonzales, alias 'E. Rivera' and John Doe," respectively, which affirmed with modifications the judgments of the Court of First Instance (now Regional Trial Court) of Tagum, Davao, Branch IX, presided by Judge Felix L. Moya, by finding her guilty as co-principal of the crime of estafa with unfaithfulness or abuse of confidence under Article 315 subparagraph 1(b) of the Revised Penal Code instead of estafa thru reckless negligence. The dispositive portion of the Court of Appeals' decision reads as follows:

"WHEREFORE, the judgments of the trial court in Crim. Cases Nos. 3349, 3350 and 3351 finding the accused Fermina Ramos guilty beyond reasonable doubt, as principal, in the commission of the crime of estafa is hereby affirmed, but with modification of the penalties imposed upon her as follows:

"In Criminal Case No. 3349, she is hereby sentenced to suffer an indeterminate penalty of imprisonment ranging from five (5) years of prision correccional maximum, as minimum, to eight (8) years of prision mayor, as maximum, with the accessory penalties provided by law, and to pay the costs.

"In Criminal Cases Nos. 3350 and 3351, she is sentenced to suffer in each case an indeterminate penalty of imprisonment ranging from two (2) years of prision correccional minimum, as minimum, to five (5) years of prision correccional maximum, as maximum, with the accessory penalties provided by law, and to pay the costs.

"SO ORDERED." (Rollo, pp. 37-38)

The three (3) informations under which the herein petitioner was prosecuted and later on found criminally liable read as follows:

Criminal Case No. 3349:

"x x x

"That on or about May 19, 1976, in the Municipality of Tagum, Davao, Philippines, and within the jurisdiction of this Court, the herein accused, conspiring, confederating and helping one another, intentionally, feloniously and criminally, with deceit and intent to defraud the Family Savings Bank, Tagum Branch, Tagum, Davao, FERMINA RAMOS, the then Manager of the offended bank (Family Savings Bank), authorized one of her co-accused, LOURDES ORPIANO, to withdraw and was paid right there and then on May 19, 1976, in RCBC Check (Tagum) No. 85297, the payee of the same is the accused LOURDES ORPIANO, which she

subsequently endorsed it to her co-accused Mariano Barretto, in the sum of TWENTY-EIGHT THOUSAND (P28,000.00) PESOS, against her uncollected and uncleared check deposit, whose drawer is Lourdes Orpiano, PCIB DVO Check No. 77946 in the sum of TWENTY-EIGHT THOUSAND (P28,000.00) PESOS, and when said PCIB DVO Check was presented by the Family Savings Bank thru their Depository Bank for clearing, the same was dishonored by the Drawee Bank, to the damage and prejudice of the Family Savings Bank in the aforestated sum.

"Contrary to law.

Criminal Case No. 3350:

"x x x

"That on or about May 19, 1976, in the Municipality of Tagum, Davao, Philippines, and within the jurisdiction of this Court, the herein accused, conspiring, confederating and helping one another, intentionally, feloniously and criminally, with deceit and with intent to defraud the Family Savings Bank, Tagum Branch, Tagum, Davao, FERMINA RAMOS, the then Manager of the offended bank (Family Savings Bank), allowed one of her co-accused, LOURDES GONZALES, to withdraw and was paid right then and there on May 19, 1976, in BPI TAG Check No. 85325 in the amount of P20,440.00, the payee of the same is 'Cash,' which was subsequently deposited in the Rizal Commercial Banking Corporation, Tagum Branch, Tagum, Davao, in the savings account of accused MARIANO BARRETTO No. 6838, against her uncollected and uncleared check deposit (Joint Savings Account of accused-spouses Francisco Gonzales and Lourdes Gonzales), whose drawer is LOURDES GONZALES, BPI TAG Check No. 100190 in the sum of THIRTY EIGHT THOUSAND FOUR HUNDRED (P38,400.00) PESOS, and when said BPI TAG Check was presented by the Family Savings Bank thru their Depository Bank for clearing, the same was dishonored by the Drawee Bank, to the damage and prejudice of the Family Savings Bank in the aforestated sum.

"Contrary to law."

Criminal Case No. 3351:

"x x x

"That on or about May 19, 1976, in the Municipality of Tagum, Davao, Philippines, and within the jurisdiction of this Court, the herein accused, conspiring, confederating, and helping one another, intentionally, feloniously and criminally, with deceit and with intent to defraud the Family Savings Bank, Tagum Branch, Tagum, Davao, FERMINA RAMOS, the then Manager of the offended bank (Family Savings Bank), allowed one of her co-accused, LOURDES GONZALES, to withdraw and was paid right then and there on May 19, 1976, in BPI TAG Check No. 241132 in the amount of P18,560.00, the payee of the same is 'Cash,' which was subsequently deposited in the Rizal Commercial Banking Corporation, Tagum Branch, Tagum, Davao, in the savings account of accused FERMINA RAMOS No. 6835, against her uncollected and uncleared check deposit (Joint Savings Account of accused-spouses Francisco Gonzales and Lourdes Gonzales), whose drawer is alias 'E. RIVERA,' RCBC CAG Check No. 1868051 in the sum of THIRTY-NINE THOUSAND (P39,000.00) PESOS, and when said RCBC CAG Check was presented by the Family Savings Bank thru their Depository Bank for clearing, the same was dishonored by the Drawee Bank, to the damage and prejudice of the Family Savings Bank in the aforestated sum.

"Contrary to law."

The foregoing criminal charges were among the twenty-three (23) criminal charges filed by the Provincial Fiscal of Davao against the petitioner and her other co-accused, four (4) of which were dismissed for lack of basis, six (6) were dismissed for insufficiency of evidence, and ten (10) were dismissed with the trial court finding that the Family Savings Bank (FSB) had no cause to complain because the acts complained of were found to have been

done with the knowledge and consent of the higher ranking bank officials.

In three separate decisions, the trial court convicted petitioner Ramos not of the charges alleged in the complaint but of three (3) counts of Estafa Thru Reckless Imprudence, thus:

Criminal Case No. 3349:

"WHEREFORE, finding accused FERMINA RAMOS GUILTY beyond reasonable doubt of the crime of Estafa Thru Reckless Imprudence under Art. 365 of the Revised Penal Code, in conjunction with Art. 315 (1st) of the same Code, she is ordered to serve an indeterminate sentence of SIX (6) MONTHS, maximum period of arresto mayor, as minimum penalty, to ONE (1) YEAR and ONE (1) DAY, minimum period of prision correccional, as maximum penalty; to suffer all the accessory penalties provided by law; and to pay the costs of this suit.

"Since a separate civil action is pending, the court shall not order civil restitution.

"SO ORDERED."

Criminal Case No. 3350:

"WHEREFORE, finding accused FERMINA RAMOS GUILTY beyond reasonable doubt of the crime of Estafa Thru Reckless Imprudence under Art. 365 (1st) of the same code, she is ordered to serve an indeterminate sentence of SIX (6) MONTHS, maximum period of arresto mayor, as minimum penalty, to ONE (1) YEAR and ONE (1) DAY, minimum period of prision correccional, as maximum penalty; to suffer the accessory penalties provided by law; and to pay the costs of this suit.

"Since a separate civil action is pending, the court shall not order civil restitution.

"SO ORDERED."

Criminal Case No. 3351:

"WHEREFORE, finding accused FERMINA RAMOS GUILTY beyond reasonable doubt of the crime of Estafa Thru Reckless Imprudence under Art. 365 of the Revised Penal Code in conjunction with Art. 315 (1st) of the same code, she is ordered to serve an indeterminate sentence of SIX (6) MONTHS, maximum period of arresto mayor, as minimum penalty, to ONE (1) YEAR and ONE (1) DAY, minimum period of prision correccional, as maximum penalty; to suffer all the accessory penalties provided by law; and to pay the costs of this suit.

"Since a separate civil action is pending, the court shall not order civil restitution.

"SO ORDERED."

From the records, the facts are as follows:

On January 27, 1976, petitioner Fermina Ramos was designated Acting Branch Manager of the FSB in Tagum, Davao due to the transfer of the then branch manager, Mr. Johnny Cuan, to another branch. She was appointed branch manager effective February 16, 1976 which position she held until the middle of June of the same year. During the term of her predecessor Mr. Cuan, as branch manager of Tagum, the latter was authorized by the bank's Assistant Vice President Gerry Ramirez of the FSB, Cebu City to allow the drawing against uncleared check deposits (DAUD) to certain clients of the bank. Apparently, this practice was in violation of the bank's operation manual (O.M.S. No. 2:07), the pertinent provisions of which provide:

"All withdrawals must be approved and signed by the authorized officer of every branch designated by the Board of Directors. Authority to approve withdrawals below P200 may be given by the VP in charge.

"The officer in charge of approving the withdrawal should verify that:

"1) The amount being withdrawn is 'available' for withdrawal. This means that the balance of the account is sufficient and is not against a check deposit which is not yet cleared.

"In case it is against a check which is presumed to be cleared having been deposited for more than three (3) commercial banking days and with no notice of return, in order (sic) to exercise more care, further verification may be made from depository bank and our check registry as to date of deposit, clearance, etc. in order to be doubly sure that the check deposited was good." (Records, Exhibit D)

"x x x."

During the term of the herein petitioner, she received an order to stop DAUD which brought about the following quoted telegram sent by her on March 30, 1976 to AVP Ramirez:

"AVP GERRY RAMIREZ

FAMILY SAVINGS BANK

CEBU CITY

"I HAVE FOLLOWED YOUR ORDER TO STOP DAUD. BUT MANY CANNOT COVER-UP THEIR OD AS OF NOW. WHICH WOULD BE BETTER TO ISSUE PN AS PER LILIAN'S (DE LEON) ADVICE OR TO CONTINUE GIVING ACCOMMODATION UNTIL CLIENT CAN LIQUIDATE SIR, THE GIVING OF ACCOMMODATION AS YOU KNOW IS NOT MY DOING, MINE IS ONLY A CONTINUATION OF THE PAST MANAGEMENT AND NOW THAT I TRIED TO STOP THIS IS THE EFFECT, IN CASE OFFICERS WILL BE THE ONE TO ANSWER FOR THIS I'LL ANSWER ONLY THOSE ACCOMMODATION WHICH ORIGINATED ON MY TERM OF MANAGEMENT. THANK YOU." (Records, Exhibit 4)

On April 1, 1976, petitioner received VP Ramirez' response, to wit:

"REUR TELEGRAM DATED MARCH 31 I AGREE WITH YOU WITH REGARDS TO THE RESPONSIBILITY OF THE PAST MANAGEMENT BECAUSE I HAVE THE IMPRESSION THAT ALL THESE PRACTICES HAD BEEN DISCONTINUED BEFORE YOUR ASSUMPTION AS MANAGER PLEASE FOLLOW AS INSTRUCTED BY LILIAN I SHALL BE THERE BEFORE APRIL 9." (Records, Exhibit 5)

It appears that the accused, in violation of the bank's policy and without authority from either Ramirez or De Leon, not only continued to grant DAUD accommodations to old depositors who had enjoyed such privilege under her predecessors, but also extended the same privilege to new clients of the bank. Among those new clients were Lourdes Orpiano, her co-accused in Crim. Case No. 3349, and the spouses Lourdes and Francisco Gonzales, her co-accused in Crim. Cases Nos. 3350 and 3351.

Hereunder are the events chronicled by both the trial and the respondent appellate courts which led to the filing of the aforesaid criminal charges:

"1. Crim. Case No. 3349 - People v. Fermina Ramos, Lourdes Orpiano and Mariano Barreto

"With the approval of the accused Fermina Ramos, Savings Account No. 1531006558 of Lourdes Orpiano was opened on January 31, 1976 with an initial deposit of P2,800 (Exh. F).

"Fermina Ramos approved ten (10) withdrawals against uncleared check deposits of Lourdes Orpiano, on the following dates:

"March 23, 1976, the deposit and withdrawal of P52,000, resulting in the filing of Criminal Case No. 3337 with Branch VIII;

"April 8, 1976, the deposit and withdrawal of P35,000.00, resulting in the filing of Criminal Case No. 3331 with this Branch;

"April 10, 1976, the deposit and withdrawal of P35,000.00, resulting in the filing of Criminal Case No. 3333 with this branch;

"April 12, 1976, the deposit and withdrawal of P35,000.00, resulting in the filing of Criminal Case No. 3334 with this branch;

"April 26, 1976, the deposit and withdrawal of P29,000.00, resulting in the filing of Criminal Case No. 3339 with Branch VIII;

"May 5, 1976, the deposit and withdrawal of P29,000.00 resulting in the filing of Criminal Case No. 3343 with this branch;

"May 6, 1976, the deposit and withdrawal of P10,000.00 resulting in the filing of Criminal Case No. 3345 with this branch; and

"May 17, 1976, the deposit and withdrawal of P29,000.00, resulting in the filing of Criminal Case No. 3347 with Branch VIII.

"On May 19, 1976, PCIB DVO Check No. 77946, (Exh. 'A-1-3349-B'), for P28,000.00 drawn by Lourdes Orpiano was deposited by her in her savings account at the FSB Tagum, Branch (Exh. F-5). At that time, her account balance was only P234.34.

"As a result of that 'deposit' her account balance went up to P28,234.34.

On the same date, without waiting for the clearance of Orpiano's check, the Branch Manager, Fermina Ramos allowed her said co-accused to withdraw from her account the amount of P28,000.00 (Exh. 'A-1-3349-A'), the very amount which she deposited that day with an uncleared check. Thus her balance returned to the original amount of P234.34. The withdrawal was paid to Orpiano by FSB in the form of RCBC Tagum Check No. 85297 for P28,000 drawn by FSB on its account at the Rizal Commercial Banking Corporation in Tagum (Exh. A-1-3349-A). The check was payable to Orpiano who indorsed it to Mariano Barretto. When Orpiano's PCIB Dvo Check was presented by FSB thru its depository bank for clearing, it was dishonored by the drawee bank for having been drawn against insufficient funds (Exh. A-1-3349-F).

"2. Crim. Case No. 3350 - People v. Fermina Ramos, Lourdes Gonzales, Francisco Gonzales and Mariano Barretto.

"3. Crim. Case No. 3351 - People v. Fermina Ramos, Lourdes Gonzales, Francisco Gonzales, E. Rivera and John Doe. (pp. 30-31, Rollo)

"The joint savings account no. 1504010272 of the spouses Francisco Gonzales and Lourdes Gonzales was opened on March 4, 1976 with the FSB Tagum Branch, with the approval of the accused Fermina Ramos. Their initial deposit was only P500 (Exh. E-3).

"Four withdrawals against uncleared check deposits were made by Francisco Gonzales and/or Lourdes Gonzales on the following dates, with the approval of the branch manager Fermina Ramos:

"April 23, 1976 - drawing against uncleared check deposit of P39,000 resulting in the filing of Criminal Case No. 3336 in this Branch IX.

"April 27, 1976 - drawing against uncleared check deposit of P39,000 resulting in the filing of Criminal Case

No. 3352 in Branch VIII.

"May 19, 1976 - drawing against uncleared check deposit of P39,000 resulting in the filing of Criminal Case No. 3351 in Branch IX.

"May 19, 1976 - drawing against uncleared check deposit of P38,400 resulting in the filing of this Criminal Case No. 3350 in Branch IX also.

"On May 19, 1976 the standing balance in the ledger of the joint savings account of Francisco and Lourdes Gonzales was only P3.25. On that day, an uncleared RCBC Check No. 186851 (sic) (Exh. C-1-3351) for P39,000 drawn by a certain E. Rivera on the Rizal Commercial Banking Corporation, Cagayan de Oro City, was deposited by the Gonzales spouses in their joint savings account, thus raising their account balance to P39,003.25.

"On the same day, another uncleared check, BPI Tagum No. 100190 for P38,400 drawn by Lourdes Gonzales on her account at the Bank of the Philippine Islands, Tagum Branch (Exh. C-1-3350-D), was deposited by her in her and her husband's joint savings account at the FSB, Tagum (Exh. E-2), further raising their account balance to P77,403.25.

"Later on the same day, May 19, 1976, Francisco Gonzales and Lourdes Gonzales made two withdrawals from their joint savings account, with the approval of the accused Fermina Ramos.

"The first was for P18,560.00 (Exh. C-1-3351-A) which was paid to them in the form of a 'cash' check, BPI Tag Check No. 241132, drawn by the FSB on its account in the Bank of the Philippine Islands in Tagum (Exh. C-1-3351-A). This check later found its way into Fermina Ramos' Savings Account No. 6835 in the Rizal Commercial Banking Corporation in Tagum (Exh. C-1-3351-B). This transaction is the subject of Crim. Case No. 3351.

"The second withdrawal was paid to Lourdes Gonzales in the form of a BPI Tag Check No. 85325 in the amount of P20,440, payable to 'cash,' drawn by the FSB Tagum branch on its account in the Bank of the Philippine Islands in Tagum (Exh. C-1-3350-C). It was later deposited in the Savings Account No. 6838 of Mariano Barreto in the Rizal Commercial Banking Corporation, Tagum, Branch. This transaction is the subject of Crim. Case No. 3350.

"Both Rivera's RCBC Check No. 1868051 and Lourdes Gonzales' BPI Check No. 100190 were dishonored by the drawee banks (Exh. E-2).

"x x x

"In June 1976, the deluge of bouncing checks deposited in the FSB Tagum branch and withdrawn without prior clearance, pursuant to the DAUD accommodations granted by the accused became unmanageable. Even the checks issued by the FSB Tagum branch were no longer being honored by its depository banks. In her letter of May 30, 1976 to Mercedes Gotianum, FSB Executive Vice-President, the accused disclosed that 'we no longer could withdraw against uncleared deposits. Out-of-town checks are to be credited to our account upon clearing only.' (Exh. 8-A)

"An audit of the Tagum branch was ordered by the FSB central office. It resulted in the filing of twenty-three (23) criminal complaints for estafa against the depositors and Fermina Ramos. Ten (10) of them were assigned to Branch VIII and thirteen (13) were assigned to Branch IX, the sala of Judge Felix Moya (Rollo, pp. 30-33).

As the other accused remained at large, petitioner was tried separately. Thereafter, Judge Felix L. Moya convicted her of estafa through reckless negligence in three (3) of the thirteen (13) cases assigned to his sala and acquitted her in all the rest. These three (3) cases are the subject matter of this petition. The other cases assigned to Branch VIII of the same Regional Trial Court were also dismissed.

Petitioner appealed to the Court of Appeals which modified the trial court's decision and convicted the accused of estafa with unfaithfulness or abuse of confidence under Article 315 subparagraph 1(b) of the Revised Penal Code. Accordingly, the penalties imposed by the trial court based on Article 365 were set aside by the respondent Court which imposed the penalty prescribed under Article 315.

In this petition for review, petitioner raised the following errors allegedly committed by the Court of Appeals:

1. Finding that there was evidence adduced in 3351 - regardless of whether it was competent and adequate or not;
2. Finding that in 3349 and 3350 the evidence adduced was competent and adequate for conviction;
3. Finding that the acts complained of constitute estafa under Art. 315 of the Revised Penal Code; and
4. Finding that there was conspiracy between the several accused and so, where there was defraudation, there was deliberate defraudation and not just defraudation made possible by negligence of the petitioner Fermina Ramos. (Petitioner's Brief, p. 54, Rollo)

After a review of the records, the Court finds that the first two (2) assignments of error made by the petitioner are untenable. Well-settled is the rule that factual findings made by the trial court, as well as those of the Court of Appeals, are entitled to great weight and respect. But even after a careful review of the said factual findings contained in the records, this Court is not persuaded by the petitioner's contention that all the evidence presented are incompetent and inadequate for conviction in the cases at bar.

Petitioner contends that the audit worksheets of Elrey Ramos and xerox copies of the dishonored checks and check return slip in Crim. No. Case 3349 are inadmissible because they do not constitute the best evidence.

We see no error on the part of the trial judge in admitting the testimony of the bank auditor Elrey Ramos based on the worksheets he prepared in the process of his investigation regarding the unauthorized DAUD extended by the petitioner to her co-accused. These worksheets, as correctly pointed out by the Solicitor General, are organized data culled from the pertinent bank documents which are not intended to supplant the probative value of said documents. But together with the other evidence presented such as the account ledgers of petitioner's co-accused, a number of inter-office correspondence between the petitioner and her superiors as well as the xerox copies of the uncleared checks deposited to the FSB and the checks issued by the latter corresponding to the withdrawals against said uncleared checks, they present indubitable proof that DAUD was allowed by petitioner even after that practice was prohibited. Besides, these documents and the testimony of another prosecution witness Francisco Juele, Jr., an employee of the FSB, Tagum Branch, corroborate with each other. From the material dates, the amounts involved, the check numbers and the names of the different depository banks, to the signatures of the parties involved, especially that of the signature of the herein petitioner as the approving officer, the authenticity of these documents is apparent.

In *Commissioner of Internal Revenue v. Fireman's Fund Ins., Co.*, G.R. No. L-30644, March 9, 1987, 148 SCRA 315, 323, it was held that the court is not precluded from admitting documents other than the best evidence to prove a party's allegations, thus:

"There is no argument to petitioner's contention that the insurance policies with the corresponding documentary stamps affixed are the best evidence to prove payment of said documentary stamp tax. This rule however does not preclude the admissibility of other proofs which are uncontradicted and of considerable weight, such as: copies of the applications for manager's checks, copies of the manager's check vouchers of the bank showing the purchases of documentary stamps corresponding to the various insurance policies issued during the years 1952-1958 duly and properly identified by the witnesses for respondent company during the

hearing and admitted by the respondent Court of Tax Appeals."

Moreover, the entries in the account ledgers of the depositors which are on file on the bank may be regarded as originals under paragraph c, Section 4, Rule 130 of the Rules of Court, the pertinent provision of which reads:

"Section 4(c). When an entry is repeated in the regular course of business, one being copied from another at or near the time of the transaction, all the entries are likewise equally regarded as originals."

The above-cited provision alone is sufficient to reject petitioner's contention that the documents admitted by the trial court which were among the bases of her conviction do not constitute the best evidence.

We agree with respondent court that the cases-subject matter of this petition do not involve violations of B.P. 22 or estafa under paragraph 2(d) of Article 315 of the Revised Penal Code but rather, estafa with unfaithfulness or abuse of confidence under Article 315 subparagraph 1(b) of the same code, in that the herein petitioner conspired and cooperated with her co-accused to defraud the bank by allowing them to withdraw funds of the bank against their worthless check deposits.

As correctly ruled by the respondent court, the Regional Trial Court erred in convicting the petitioner under Article 365 (criminal negligence) in connection with Article 315 of the Revised Penal Code, instead of under Article 315, solely, as co-principal. The pertinent portion of the respondent court's decision reads:

"The crime committed by the accused was estafa with unfaithfulness or abuse of confidence under Article 315 subparagraph 1(b) of the Revised Penal Code, in that she conspired and cooperated with her co-accused to defraud the bank by allowing them to withdraw funds of the bank against their worthless check deposits. Her cooperation was intentional, deliberate and malicious, not unwitting or merely negligent. Consequently, as correctly pointed out by the Solicitor General, the trial court erred in penalizing her under Article 365, instead of under Article 315, of the Revised Penal Code which provides:

'Art. 315. Swindling (estafa). - Any person who shall defraud another by any of the 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 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.

'1. with unfaithfulness or abuse of confidence, namely:

x x x x x

'(b) by misappropriating or converting, to the prejudice of another, money, goods, or other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond, or by denying having received such money, goods, or other property.'" (pp. 36-37, Rollo)

It is not, however, sufficient to hold that petitioner conspired with her co-accused to defraud the bank on the basis of a showing that the checks deposited to the bank indeed bounced. There is still a need to prove conspiracy which, on the other hand, can be shown by circumstantial evidence. It is well-settled that direct proof is not essential to show conspiracy. It need not be shown that the parties actually came together and agreed in expressed terms to enter in and pursue a common design. The existence of the assent of minds which is involved in a

conspiracy may be, and, from the secrecy of the crime, usually must be, inferred by the court from proof of facts and circumstances which, taken together, apparently indicate that they are merely parts of some complete whole.

In resume, it is clear from the evidence that petitioner allowed withdrawals on uncleared checks deposited into the accounts of her co-accused, i.e., four (4) withdrawals for the spouses Francisco and Lourdes Gonzales and ten (10) withdrawals on the accounts of Lourdes Orpiano. These, by themselves, are irregular and suspicious acts. Firstly, they were contrary to specific bank's policies and procedures (Exh. "D"). Petitioner's justification that she was merely following her predecessor's practice, is belied by the fact that her co-accused were not included in the list of depositors allowed DAUD accommodations as said co-accused opened their accounts only when the manager of the FSB was already the petitioner. Furthermore, it was admitted by the petitioner herself that she was repeatedly ordered by her superiors to stop giving DAUD accommodations. Notwithstanding the specific instructions, petitioner repeatedly granted accommodations in at least fourteen (14) instances and despite her knowledge that prior checks deposited by her co-accused turned out to be unfunded. See these clearly indicate that she acted maliciously or in bad faith by assuming to dispose the money of the bank as if it were her own, thereby committing conversion and a clear breach of trust. She performed an indispensable act necessary to enable her and her co-accused to accomplish the criminal purpose they had in mind. Apart from the foregoing, conspiracy was further strengthened by the testimonial evidence given by one of the employees of the bank, Mr. Francisco Juele who testified as follows:

"Fiscal Isagani Fuentes:

Q - Could you remember what other transaction transpired in the bank when this depositor made transactions there?

A - She instructed us that whenever this depositor comes, she has to attend to her transaction personally.

Q - With Mrs. Gonzales?

A - Yes, Sir. (TSN, March 1, 1978, p. 14)

x x x

Q - And again, will you please tell us if there was anything that the accused Mrs. Ramos have instructed the bank about this particular depositor?

A - The instruction was, she has to attend to the transaction personally.

Q - And aside from these transactions made by the accused Lourdes Orpiano, was there any other transactions with the bank aside from these?

A - None, Sir. (Ibid, pp. 18-19)

x x x

Q - And will you please tell this Honorable Court what instructions did you receive with respect to the transaction made by Segundina Orpiano?

A - The instruction was, she has to attend to it personally. (Ibid, p. 21)

x x x

Q - And will you please tell us again if any instruction was given to you or to the bank regarding these transactions of Mr. Barreto in the bank?

A - The instruction was, she has to attend personally to the transaction of the depositor. (Ibid, pp. 23-24)

What is even more alarming is the fact that there was one check (BPI Tag Check No. 241132, drawn by the FSB on its account in the Bank of P.I. in Tagum, Exh. C-1-3351-A), proceeds of a withdrawal, which went into the personal account of petitioner Fermina Ramos. This is a clear proof of her evident intention to benefit from these transactions. And despite this very disturbing evidence, petitioner made no effort to justify the same.

ACCORDINGLY, the petition is hereby DENIED and the assailed decision of the respondent Court of Appeals is AFFIRMED.

SO ORDERED.

Narvasa, (Chairman), Cruz, and Feliciano, JJ., concur.

Grino-Aquino, J., no part.

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