

ROLANDO SANTOS Y RAMIREZ, PETITIONER, VS. SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. Nos. 71523-25. December 08, 2000

Ponente: BUENA, J.

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BUENA, J.:

Challenged in these four separate petitions for review on certiorari is the Decision dated July 19, 1985[1] of the Sandiganbayan disposing of Criminal Case Nos. 5949 to 5951 as follows:

"WHEREFORE, judgment is hereby rendered, finding accused Alfredo Fajardo, Jr. alias Boy Fajardo, Marcelo Desiderio y Silvestre, Jesus Estacio y Estrella and Rolando Santos y Ramirez alias Mickey Mouse, GUILTY as co-principals in the three (3) separate complex crimes of Estafa Thru Falsification of Public Documents and hereby sentences them as follows:

"1. In Criminal Case No. 5949, there being no modifying circumstance in attendance, each of said accused to suffer the indeterminate penalty ranging from FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of prision correccional as the minimum, to TEN (10) YEARS and ONE (1) DAY of prision mayor as the maximum; to pay a fine of P5,000.00 each, to indemnify, jointly and severally, the Bank of the Philippine Islands and/or the Central Bank of the Philippines in the amount of P1 million representing the amount defrauded, and to pay their proportionate costs of said action;

"2. In Criminal Case No. 5950, there being no modifying circumstance in attendance, sentences each of said accused to suffer the indeterminate penalty ranging from FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of prision correccional as the minimum, to TEN (10) YEARS and ONE (1) DAY of prision mayor as the maximum, to pay a fine of P5,000.00 each, to indemnify, jointly and severally, the Bank of the Philippine Islands and/or the Central Bank of the Philippines, in the amount of P3 million representing the amount defrauded, and to pay their proportionate share of the costs of said action;

"3. In Criminal Case No. 5951, there being no modifying circumstance in attendance, sentences each of them to suffer the indeterminate penalty ranging from FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of prision correccional as the minimum, to TEN (10) YEARS and ONE (1) DAY of prision mayor as the maximum, to pay a fine of P5,000.00 each, to indemnify, jointly and severally, the Bank of the Philippine Islands in the amount of P5 million representing the amount defrauded, and to pay their proportionate share of the costs of said action.

"Accused Estacio, Fajardo, Jr., Santos and Desiderio appear to have been detained at the NBI as of February 16, 1982 by virtue of a Presidential Commitment Order, although all of them were later bonded and released on different dates, except Santos who has remained in custody up to the present. Accordingly, they should be granted the benefits of such preventive imprisonment under Article 29 of the Revised Penal Code, as amended, as follows: Santos from February 16, 1982 up to the date of the promulgation of this decision; Estacio up to April 29, 1985; Fajardo, Jr. up to April 26, 1982 and Desiderio up to April 19, 1982.

"Let copies of this decision be furnished the Hon. Governor, Central Bank; the Citibank; the Bank of the Philippine Islands and the Bankers Association of the Philippines for their information and guidance.

"SO ORDERED."

On April 15, 1982, the Tanodbayan filed with the Sandiganbayan three (3) informations for estafa thru falsification of public documents against Felipe Salamanca, Mariano Bustamante, Basilio Tan, Alfredo Fajardo, Jr., Jesus Estacio, Rolando San Pedro, Manuel Valentino, Rolando Santos, Marcelo Desiderio, Jaime Tan and Emilio Reyes.[2] The informations filed were similarly worded except for the dates of commission of the crime charged, the number of the checks involved, and the amounts allegedly misappropriated. Thus:

"That on or about (October 19, 1981 in Crim. Case No. 5949, November 20, 1981 in Crim. Case No. 5950, and October 30, 1981 in Crim. Case No. 5951), in the City of Manila and within the jurisdiction of this Honorable Court, accused Manuel Valentino, employed as Bookkeeper detailed at the Clearing Office, Central Bank of the Philippines and accused Jesus Estacio y Estrella, employed as Janitor-Messenger of the Central Bank of the Philippines, and as such are public employees, with abuse of confidence and taking advantage of their official position, in order to implement a plan or scheme to defraud the Bank of the Philippine Islands, Laoag City Branch, which plan or scheme was previously formulated and agreed upon by all the herein accused immediately prior to (October 19, 1981 in Crim. Case No. 5949, November 20, 1981 in Crim. Case No. 5950, and October 30, 1981 in Crim. Case No. 5951), accused Manuel Valentino pursuant to said plan or scheme, did then and there wilfully, unlawfully and feloniously and taking advantage of his official position and with intent to gain and to defraud, falsify the Clearing Statement prepared by the Central Clearing office of the Bank of the Philippine Islands and submitted to the Clearing Section of the Central Bank of the Philippines as well as the Manifest prepared by the Central Bank Clearing Office in connection thereto by crossing out the entry in the duplicate copies of the aforesaid Clearing Statement and Manifest which entries refer to Check No. (27101 in Crim. Case No. 5949, 27111 in Crim. Case No. 5950, and 27108 in Crim. Case No. 5951) and Check No. (27105 in Crim. Case No. 5949, 27118 in Crim. Case No. 5950 and 27121 in Crim. Case No. 5951) issued by accused Bustamante against his checking account at the Bank of Philippine Islands, Laoag City Branch, which has only an outstanding balance of P1,000.00 and which checks were deposited in the current account of Magna Management Consultant with the Citibank Greenhills Branch by accused Rolando San Pedro and as a result of the aforesaid falsification which made it appear that no such checks were submitted by the Bank of Philippine Islands to the Central Bank of the Philippines for clearing, the Bank of the Philippine Islands, Laoag City Branch has not issued any notice of dishonor or stop payment to the Citibank Greenhills Branch, and as a consequence thereof accused Rolando San Pedro was able to withdraw from the Citibank the full amount of the two checks amounting to (P1,000,000.00 in Crim. Case No. 5949, P3,000,000.00 in Crim. Case No. 5950, and P5,000,000.00 in Crim. Case No. 5951) and thereafter all the accused appropriated among themselves the proceeds thereof to their own personal use and benefit and to the damage and prejudice of the Central Bank of the Philippines or the Bank of the Philippine Islands, Laoag City Branch in the aforementioned amount of (P1,000,000.00 in Crim. Case No. 5949, P3,000,000.00 in Crim. Case No. 5950, and P5,000,000.00 in Crim. Case No. 5951)."

Upon arraignment, accused Fajardo, Jr. @ Boy Fajardo, Desiderio, Estacio, Valentino and Santos, assisted by their respective counsel, pleaded not guilty to the crimes charged.[3] Salamanca, Basilio Tan, Jaime Tan, Reyes and Bustamante have remained at-large while San Pedro died. Upon agreement of the prosecution and the defense, a joint trial of the three cases was ordered conducted.[4]

Estacio was first discharged as an accused to be utilized as a state witness.[5] Later, he filed a motion for his re-inclusion in the information as an accused allegedly for the sake of the safety of his family. The Sandiganbayan granted his motion and thus he was re-included as an accused in Crim. Case Nos. 5949-5951.[6] The prosecution also moved for the discharge of Valentino as an accused but the Sandiganbayan denied that motion. Exercising its discretion, the Sandiganbayan eventually discharged Valentino from the three informations to be a state witness.[7]

The antecedent facts that gave rise to the instant petitions are as follows:

Sometime in 1981, a syndicate masterminded by Felipe Salamanca infiltrated the Clearing Center of the Central Bank of the Philippines (Central Bank, for brevity). In its operation, the syndicate employed two schemes: the switching scheme, and the pilferage scheme.

In the switching scheme, a syndicate would open a current account with such banks as the Bank of America (BA) and the Philippine Veterans Bank (PVB) in Iloilo. As a matter of procedure, checks drawn on the BA were forwarded to the Central Bank for clearing. Upon receipt of those checks by the clearing clerk of the Central Bank, who was a member of the syndicate, he would substitute those checks with ones bearing the stamp of another bank. Thus, instead of forwarding the checks to the BA, these were misrouted to cause delay in the clearing procedure. Upon the lapse of the clearing period, the depositor would withdraw the amount of the checks. However, the scheme faltered as the huge amounts covered by the checks caused suspicion on the part of the PVB. It called up the BA to inquire about those checks and hence, the former bank discovered that the checks were insufficiently funded.

In the pilferage scheme, current accounts would be opened with a provincial bank, such as the Bank of the Philippine Islands (BPI), Laoag branch, and a city bank such as the Citibank-Greenhills, Manila. A BPI check deposited with Citibank would then be forwarded to the Central Bank clearing house where members of the syndicate, who were employed there, would pilfer the check and alter the Central Bank manifest and the entries in the clearing bank statements. The pilferage was intended to provide opportunity for the syndicate to blot out entries referring to the pilfered check. Consequently, BPI-Laoag would not know that a check drawn on it had been deposited with Citibank. After the lapse of the five-day clearing period, the syndicate would withdraw the amount deposited from Citibank simply because said bank would have considered the check cleared and funded, as no protest or notice of dishonor could be received from BPI-Laoag. In utilizing this scheme in the commission of the crimes charged in Criminal Case Nos. 5949 to 5951, the syndicate netted Nine Million Pesos (P9,000,000.00).

EVIDENCE FOR THE PROSECUTION

The prosecution offered the testimonies of sixteen (16) witnesses,[8] and documentary evidence marked Exhibits "A" to "DD", and Annexes "B" to "QQ", with sub-markings, to prove the following:

On October 14, 1981, one Mariano Bustamante[9] opened a savings account with BPI-Laoag with an initial deposit of P3,000.00: P2,000.00 of which was in check, and P1,000.00 in cash.[10] That same day, he opened a current account with P1,000.00 as initial deposit in the same bank. Upon his request, a checkbook was issued to him.[11]

That same month, Marcelo Desiderio, allegedly a representative of Magna Management Consultant, approached Maria Nieves Garrido, personal banker of Citibank-Greenhills, and requested signature cards and other requirements for the purpose of opening a current account. Thereafter, Desiderio returned to the bank, submitted the required documents and duly accomplished forms, and made an initial deposit of P10,000.00. Thus, a checking account in the name of Magna Management Consultant was opened in Citibank-Greenhills with Rolando San Pedro as its representative. A checkbook was given to Desiderio.[12]

On October 15, 1981, at the Ramada Hotel, Felipe Salamanca informed Manuel Valentino that two (2) checks were to be deposited with Citibank the following day. Salamanca instructed Valentino to watch out for those checks in the clearing house at the Central Bank. On October 16, 1981, two (2) checks in the amounts of Four Hundred Ninety-Eight Thousand Seven Hundred Nineteen Pesos (P498,719.00), and Five Hundred One Thousand

Two Hundred Sixty Pesos and Thirty Centavos (P501,260.30) were indeed deposited with the Citibank-Greenhills under the current account of Magna Management Consultant, represented by Rolando San Pedro. On October 30, 1981, two (2) more checks were deposited at the same bank in the total amount of P3,000,000.00. Another deposit of checks was made on November 20, 1981 in the total amount of P5,000,000.00. All these checks were brought to the Central Bank Clearing Center.

The checks deposited on October 16, 1981 did not reach the Central Bank on that day, which was a Friday, but on Monday, October 19, 1981. Manuel Valentino, a bookkeeper at the Clearing Operations Division of the Central Bank, received from Jesus Estacio, a Central Bank janitor-messenger, the demand envelope containing the two (2) BPI-Laoag checks in the total amount of P1,000,000.00 in the comfort room on the fourth floor of the Central Bank administration building. Therein Valentino altered the amount of P1,076,416.95 by crossing out the amount of One Million Pesos. Thus, under the column "Total amount received", only the amount of P76,416.95 was reflected in order that BPI-Laoag would not look for the P1 million check.[13] Valentino then brought the altered clearing statement back to the Clearing Center and prepared a Central Bank Manifest where he changed the figure in the original copy to tally with those in the altered clearing statement.

On October 30, 1981, the syndicate employed the same scheme. As soon as the demand envelope containing the BPI-Laoag checks arrived, Valentino took it and gave it to Jesus Estacio who then brought the same to the comfort room at the fourth floor. Valentino followed him there and took the two BPI checks amounting to P3,000,000.00, and altered the figures in the BPI Clearing Statement. Valentino thereafter brought said envelopes to the clearing house, and prepared the Central Bank Manifest, likewise altering the figures in the original to tally with the figures in the altered clearing statement.

At the last operation on November 20, 1981, the group followed the same procedure - Valentino asked Estacio to give him the demand envelope and the former then went to the comfort room. Valentino took the two BPI-Laoag checks in the total amount of P5,000,000.00 which he later gave to Salamanca. Again, he altered the figures in the clearing statement and those in the Central Bank Manifest so that these would conform with each other.[14]

As a matter of procedure, the demand envelopes containing the checks intended for BPI-Laoag, the altered Central Bank Manifests, and the clearing statements were forwarded to the Regional Clearing Center. The pilfered checks deposited in the account of Magna Management Consultant were not included in those envelopes. Because BPI-Laoag did not receive the checks with a total value of P9,000,000.00, these were not processed. Consequently, as no objection or protest regarding the checks were registered and no notice of dishonor of the checks for insufficient funds was made by the BPI-Laoag, and since the reglementary period for making such protest or notice of dishonor had elapsed, Citibank-Greenhills considered the checks as good and funded.

Hence, on different dates covering the period from October 26 to December 6, 1981, Citibank-Greenhills allowed withdrawals in the aggregate amount of P9,000,000.00 from the account of Magna Management Consultant. Withdrawals were made through checks endorsed by Rolando San Pedro and encashed by Jaime R. Tan.[15] The proceeds of the anomalous transactions were divided among the members of the syndicate. Salamanca gave Estacio P10,000.00 after the October 19, 1981 operation, P4,900.00 after the October 30, 1981 operation and P5,000.00 after the November 20, 1981 operation. Valentino received P20,000.00, P10,000.00 and P20,000.00 after the October 16 and 30, and November 20, 1981 operations.

On January 28, 1982, Segundo Gonzaga, then Administrative Assistant for Transit Center (Clearing Center of BPI), was informed through a long distance telephone call by the manager of BPI-Laoag that their clearing transactions on October 19, 1981, October 30, 1981 and November 20, 1981 registered an outstanding discrepancy of P9,000,000.00 as reflected in their inter-office reconciliation statement. The manager of

BPI-Laoag and the BPI Regional Manager for Northern Luzon who went to the office at BPI-Ayala showed the clearing statements to Gonzaga. Upon comparing the xerox copies of the BPI Clearing Statements (Laoag copies) and xerox copies of the clearing envelope sent to Citibank Manila, Gonzaga noticed the alterations. Thus, he went to the Accounting Department of BPI-Ayala and found out that the Central Bank debited their bank in the amount of P9,000,000.00.[16]

Gonzaga went to Citibank-Greenhills and talked to Jake Ocampo, its assistant manager, about the clearing items. After checking their outgoing clearing checks for October 19, 1981, October 30, 1981 and November 20, 1981, Ocampo told Gonzaga that they did not recall said clearing checks. He gave Gonzaga reproduced microfilm copies of those checks. Gonzaga submitted the checks to his superiors with an accompanying report.[17] The BPI and the Central Bank jointly referred the matter for investigation to the National Bureau of Investigation (NBI) which assigned the case to Head Agent Salvador Ranin of the Special Investigation Division.[18]

On February 12, 1982, the Chief of the Anti-Bank Fraud Unit of the Central Bank, Atty. Agapito Fajardo, the bank's Chief Security Officer, and the BPI Vice-President and Comptroller brought Manuel Valentino to the NBI. The following day, Agent Ranin took Valentino's statement. Valentino waived his rights to remain silent and to counsel. He signed the waiver on the first page of his statement. On March 22, 1982, Agent Ranin took Valentino's supplementary sworn statement. The same NBI agent took Jesus Estacio's statement on February 17, 1982 and supplementary statement on March 22, 1982. Like Valentino, Estacio waived his right to counsel. In their respective statements, Valentino and Estacio admitted their participation in the commission of the crime, narrated how they carried out the plan to defraud the banks, and identified those who participated in the criminal acts. After the investigation, Agent Ranin came out with a Memorandum Report dated April 26, 1982.[19]

EVIDENCE FOR THE DEFENSE

On December 2, 1969, the Central Bank of the Philippines employed Jesus Estacio as janitor-messenger. In 1978, a certain Rico Javier introduced Estacio to Felipe Salamanca. When Salamanca learned that Estacio was connected with the Central Bank, he asked Estacio if he knew any bookkeeper thereat as his compadre needed one. Estacio replied that he would look for one. A week later, Salamanca called up Estacio and asked him if he had found a bookkeeper. Estacio mentioned Manuel Valentino. Salamanca instructed Estacio to bring Valentino to Jack's Restaurant in Quezon City after office hours. In that restaurant, Estacio introduced Valentino to Salamanca. Valentino was in turn introduced to Basilio Tan. During their conversation, Valentino told Salamanca about his work as a bookkeeper at the Central Bank.[20]

Sometime in October 1981, Valentino requested Estacio to accompany him to the EDCOR office. There they met Salamanca, Marcelo Desiderio, Rolando Santos and Basilio Tan. Salamanca told Estacio to stay outside the office because the group was going to discuss something. Half an hour later, the group dispersed. That same month, Estacio saw Romeo Villasanta, another accused, at the clearing office of the Central Bank. When Estacio asked why Villasanta was there, the latter answered that he was "just expediting something." Estacio saw Villasanta for the second time that same month talking with Valentino at the clearing office. Valentino asked Estacio to point out the office of the Department of Economic Research to Villasanta because Villasanta would be doing some research. Estacio went with Villasanta to the fourth floor and showed him the said office. Villasanta then inquired where the comfort room in that floor was. Estacio thereafter went back to his work and did not see Villasanta anymore.[21]

On November 20, 1981, Valentino asked Estacio to bring an envelope to the fourth floor and to wait for him at its lobby. Estacio acceded and later, Valentino arrived. Valentino took the envelope from Estacio and went to the comfort room. Thereafter, Estacio went to the Clearing Office.[22]

Sometime in February 1982, upon learning that somebody from the NBI was looking for him, Estacio went to the NBI. There he told Agent Ranin that he wanted to call a lawyer but Agent Ranin did not allow him to do so. Agent Ranin investigated him from 5:30 p.m. until 7:30 p.m. on February 17, 1982. This continued the following day and lasted a week. In the course of the investigation, Agent Ranin promised Estacio that he would not be harmed should he cooperate and admit the charges against him, and that he would be freed once he becomes a state witness. However, Agent Ranin hit him with a newspaper and poked his gun at him. Estacio was allowed to read the statement before he signed it.[23]

On cross-examination, Estacio admitted that during his stay at the NBI for about two months, his wife and children would visit him every week and he could talk to them freely.[24] He was transferred to Muntinlupa and detained at the Death Row for two years. On March 22, 1982, Agent Ranin took his second statement that was a continuation of his first statement. He was unable to read his supplementary statement because of fear of Agent Ranin, who was scaring him. He stressed that the statements he made before the NBI were not true and that he only signed those documents[25] because he was afraid of Agent Ranin.[26]

Rolando Santos came to know Felipe Salamanca when he sold his car to him (Salamanca) on installment with P15,000.00 as down payment with the balance of P20,000.00 to be paid in two or three months. He accepted partial payment for the car. After a time, Salamanca fully paid the balance. In July 1981, Salamanca gave him P3,000.00. Twice or thrice, Salamanca tried to convince him to join a scheme to defraud a bank. After Salamanca had paid him the full price of the car, Salamanca asked him again to join his group. All he had to do was to open a checking account. He could have easily facilitated this, being the Vice-President for Finance of American Steamship Agencies. In those meetings with Salamanca where he was persuaded to open a checking account with a bank, Basilio Tan, the son of a general and his classmate at San Beda College, Valentino, and Desiderio were present. When he told Salamanca that he was not interested in the scheme to defraud a bank, as he was busy with his job, Salamanca got mad. On October 20, 1981, an unidentified assailant shot him in his house. He sustained three (3) gunshot wounds and was confined at the Parañaque Medical Center.[27]

Marcelo Desiderio came to know Felipe Salamanca sometime in July 1981 when Salamanca went to his office[28] because he wanted to open an account with Citibank-Greenhills. Desiderio went to Citibank-New York to inquire about the requirements for opening an account. Two days later, he gave Salamanca the bank forms and signature cards to be accomplished. He learned from Salamanca that the forms would be filled up by Rolando San Pedro. For the initial deposit, Salamanca gave him P10,000.00 in cash and check. He also received P2,500.00 as consultancy fee. He went to Citibank-Greenhills to make the deposit and the bank issued him a checkbook.[29]

Desiderio denied that he was present in any meeting where Salamanca and his group discussed a plan to defraud a bank. He acceded in opening the bank account at Citibank-Greenhills because Salamanca assured him that the account would be opened in connection with a loan application with the Citibank of New York. He denied that Salamanca's group tasked him and Rolando Santos with opening accounts in Metro Manila banks, particularly with Citibank-Greenhills. He denied knowing Santos and Estacio personally although he admitted that Estacio, with Manuel Valentino, came to his office to deliver a tailored suit for a certain Atty. Martin. He further denied knowing Jaime Tan but admitted knowing Alfredo Fajardo, who was his client when he was still connected with BPI.[30]

Alfredo Fajardo opted to waive his right to testify and said that he has no documentary evidence to present before the Sandiganbayan.[31] Another accused, Emilio Reyes, voluntarily surrendered to the Sandiganbayan and was detained at the Security and Sheriff Services office.[32] He filed a motion for reinvestigation on June 16, 1987 but it was resolved against him.[33] He pleaded not guilty to the charges against him.[34] However, since July 17, 1989, Reyes failed to appear for trial. On February 16, 1990, the Sandiganbayan acquitted him in these cases on

account of the prosecution's failure to prove his guilt beyond reasonable doubt.[35] Because the cases against Reyes were tried in absentia, the Sandiganbayan ordered that these be archived without prejudice to revival "for purposes of contempt citation in the event that he shall have been apprehended and brought within the jurisdiction" of the court.[36]

Rolando San Pedro was arrested on March 22, 1988 at the vicinity of the Sandiganbayan.[37] He entered a plea of not guilty to the charges against him.[38] On June 11, 1989, he died.[39] Thus, the Sandiganbayan dismissed the cases against him. In the Resolution of February 23, 1990, which was promulgated on March 12, 1990, the Sandiganbayan resolved that the cases against Felipe Salamanca, Basilio Tan, Jaime Tan and Mariano Bustamante be archived.[40]

As stated earlier, the Sandiganbayan convicted Estacio, Desiderio, Santos, and Fajardo of the complex crimes of estafa thru falsification of public documents. Estacio, Desiderio and Fajardo filed separate motions for reconsideration,[41] while Santos filed with the Supreme Court a motion for extension of time to file a petition for certiorari.[42] On September 26, 1985, the Sandiganbayan denied those motions for reconsideration.[43] Hence, the instant petitions for review on certiorari that they individually filed with this Court, but which were consolidated in the Resolution of December 10, 1985.[44]

In its consolidated comment on the petitions, the Office of the Solicitor General (OSG) questions the propriety of raising factual issues in a petition for review on certiorari under Rule 45 of a Decision of the Sandiganbayan.[45] The OSG asserts that in such a petition, this Court's jurisdiction is "confined to questions of law" and hence, this Court "is not supposed to reweigh evidence but only to determine its substantiality." On this matter, in *Filoteo, Jr. vs. Sandiganbayan*,[46] this Court, after citing *Jariol, Jr. vs. Sandiganbayan*,[47] said:

"As amended by Republic Act No. 7975, Section 7 of P.D. No. 1606 expressly provides that '(d)ecisions and final orders of the Sandiganbayan shall be appealable to the Supreme Court by petition for review on certiorari raising pure questions of law in accordance with Rule 45 of the Rules of Court.' However, in exceptional cases, this Court has taken cognizance of questions of fact in order to resolve legal issues, as where there was palpable error or grave misapprehension of facts by the lower court. Criminal cases elevated by convicted public officials from the Sandiganbayan deserve the same thorough treatment by this Court as criminal cases involving ordinary citizens simply because the constitutional presumption of innocence must be overcome by proof beyond reasonable doubt. In all criminal cases, a person's life and liberty are at stake."

While only petitioner Estacio is a government employee in these cases, as the three others are private individuals, it is in the light of this pronouncement that the instant petitions shall be considered and resolved. Moreover, in the recent case of *Armed Forces of the Philippines Mutual Benefit Association, Inc. vs. Court of Appeals*,[48] the Court, citing Supreme Court Circular No. 2-90 dated March 9, 1990, held that a petition for review on certiorari questioning the final judgment, order, or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Courts or other courts, may raise factual issues. In the exercise of its sound discretion, taking into account the attendant circumstances, this Court retains the option of either taking cognizance of, and deciding such issues, or referring the case to the proper court for determination. In these criminal cases, this Court chooses to take cognizance of factual questions raised in the interest of proper administration of justice.

In their separate petitions, petitioners assert that there was no proof beyond reasonable doubt that they committed the crimes charged principally because:

(a)

the extrajudicial confessions of petitioner Estacio and Valentino are inadmissible in evidence as their right to counsel was violated when said confessions were executed;

(b)

the discharge of Valentino from the informations to be a state witness was improper; and

(c)

conspiracy, which made all petitioners equally guilty, was not adequately proven.

Notably, petitioners Santos and Estacio aver that, should they be convicted as charged, they should be held individually liable only as an accomplice.[49]

Relevant to petitioners' contention on the admissibility of the extrajudicial confessions of petitioner Estacio and Valentino is Article IV, Section 20 of the 1973 Constitution providing for the rights of an accused during custodial investigation. It reads:

"No person shall be compelled to be a witness against himself. Any person under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such rights. No force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against him. Any confession obtained in violation of this section shall be inadmissible in evidence."

On the other hand, the first paragraph of Article III, Section 12 of the 1987 Constitution states:

"(1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel."

A comparison of these provisions would readily show that the 1973 Constitution does not specify the right against uncounselled waiver of the right to counsel, which is found in paragraph 1, Section 12, Article III of the 1987 Constitution. However, the latter constitutional provision cannot be applied to extrajudicial confessions made prior to its date of effectivity. In *Filoteo, Jr. vs. Sandiganbayan*, this Court held that:

"x x x the specific provision of the 1987 Constitution requiring that a waiver by an accused of his right to counsel during custodial investigation must be made with the assistance of counsel may not be applied retroactively or in cases where the extrajudicial confession was made prior to the effectivity of said Constitution. Accordingly, waivers of the right to counsel during custodial investigation without the benefit of counsel during the effectivity of the 1973 Constitution should, by such argumentation, be admissible. Although a number of cases held that extrajudicial confessions made while the 1973 Constitution was in force and effect, should have been made with the assistance of counsel, the definitive ruling was enunciated only on April 26, 1983 when this Court, through *Morales, Jr. vs. Enrile*, issued the guidelines to be observed by law enforcers during custodial investigation. The Court specifically ruled that '(t)he right to counsel may be waived but the waiver shall not be valid unless made with the assistance of counsel.' Thereafter, in *People vs. Luvendino*, the Court through Mr. Justice Florentino P. Feliciano vigorously taught:

`x x x. The doctrine that an uncounselled waiver of the right to counsel is not to be given legal effect was initially a judge-made one and was first announced on 26 April 1983 in *Morales vs. Enrile* and reiterated on 20 March 1985 in *People vs. Galit*. x x x.

`While the *Morales-Galit* doctrine eventually became part of Section 12 (1) of the 1987 Constitution, that doctrine affords no comfort to appellant Luvendino for the requirements and restrictions outlined in *Morales* and *Galit* have no retroactive effect and do not reach waivers made prior to 26 April 1983 the date of promulgation of *Morales*.'"[50]

Clearly then, the *Morales-Galit* rulings are inapplicable in these cases as the extrajudicial confessions in question

here, were taken on February 13, February 17 and March 22, 1982, long before the date of promulgation of the Morales Decision on April 26, 1983. Prior to this date, the guidelines requiring that waiver of the right to counsel by an accused can be properly made only with the presence and assistance of counsel, had yet to be formulated and pronounced by this Court.[51]

The rule on prospective application of "judge-made laws" was stressed in *Co vs. Court of Appeals*.^[52] In that case, the Court, through then Chief Justice Andres R. Narvasa, ruled that in accordance with Article 8 of the Civil Code providing that "(j)udicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines," and Article 4 of the same Code stating that "(l)aws shall have no retroactive effect, unless the contrary is provided," the principle of prospectivity of statutes, original or amendatory, shall apply to judicial decisions, which, although in themselves are not laws, are nevertheless evidences of what the law means.

As to the admissibility of the uncounselled waivers of Valentino and petitioner Estacio of their right to counsel during custodial investigation, the intelligent and voluntary execution thereof should be determined. The pre-interrogation advisories to the extrajudicial confessants uniformly state:

"01. QUESTION: Mr. MANUEL VALENTINO, we are informing you that you are under investigation in connection with the alleged Estafa thru Falsification of Commercial/Official Documents committed at the Central Bank of the Philippines. But before we ask you any question, you must understand your legal rights. You have the right to remain silent. You have the right not to give any statement if you do not wish to. Anything you say may be used as evidence against you in any proceeding. You are entitled to the assistance of counsel of your own choice. If you cannot afford a lawyer and you want one, a lawyer will be appointed for you before we ask you any question. Now, after having been so informed, are you still willing to give a free and voluntary statement and swear to tell the truth and nothing but the truth in this investigation?

ANSWER: Yes, sir.

"02. Q: Are you willing to sign a Waiver of your rights?

"A: Yes, sir.

"WAIVER

"I have been advised of my right to remain silent; that anything that I say may be used as evidence against me and that I have the right to a lawyer to be present with me while I am being questioned.

"I understand these rights and I am willing to make a statement and answer questions. I do not want the assistance of counsel and I understand and know whag (sic) I am doing. No promises or threats have been made to me and no force or pressure of any kind has been used against me.

(Sgd. with thumbmark)

MANUEL VALENTINO y SOCAN

13 February 1982, NBI, Manila"[53]

It is settled that once the prosecution has shown that there was compliance with the constitutional requirement on pre-interrogation advisories, a confession is presumed to be voluntary and the declarant bears the burden of proving that his confession is involuntary and untrue.^[54] The defense attempted to prove that Valentino and petitioner Estacio were subjected to threats and intimidation at the NBI to obtain their confessions. Other than their bare assertions, Valentino and petitioner Estacio miserably failed to present any convincing evidence to prove the NBI's use of force or intimidation on their persons. Before signing their statements, they never protested against any form of intimidation, much more, of maltreatment that they could have relayed to relatives visiting

them at the NBI. In *People vs. Pia*,^[55] the Court said:

"x x x It has been held that where the defendants did not present evidence of compulsion or duress or violence on their persons; where they failed to complain to the officers who administered the oaths; where they did not institute any criminal or administrative action against their alleged intimidators for maltreatment; where there appeared to be no marks of violence on their bodies and where they did not have themselves examined by a reputable physician to buttress their claim, all these should be considered as factors indicating voluntariness of confessions."

That the statements were intelligently executed is borne out by the fact that both confessants have reached the tertiary level of education: Valentino holds the degree of Bachelor of Science in Commerce^[56] while petitioner Estacio reached the first year of college education in banking and finance.^[57] Possessed with sufficient education and not proven to be mentally unfit, they could have protested the forced extraction of culpability from themselves if indeed that was true.

Moreover, the extrajudicial confessions in question are replete with details on the manner in which the crimes were committed, thereby ruling out the probability that these were involuntarily made.^[58] Voluntariness of a confession may be inferred from its language such that, if upon its face the confession exhibits no sign of suspicious circumstances tending to cast doubt upon its integrity, it being replete with details - which could possibly be supplied only by the accused - reflecting spontaneity and coherence which, psychologically, cannot be associated with a mind to which violence and torture have been applied, it may be considered voluntary.^[59] In *U.S. vs. De los Santos*,^[60] the Court said:

"If a confession be free and voluntary - the deliberate act of the accused with a full comprehension of its significance, there is no impediment to its admission as evidence, and it then becomes evidence of a high order; since it is supported by the presumption - a very strong one - that no person of normal mind will deliberately and knowingly confess himself to be the perpetrator of a crime, especially if it be a serious crime, unless prompted by truth and conscience."

In these cases, the NBI investigator would not have known the members of the syndicate and the sophisticated manner by which the crimes in question were perpetrated if Valentino and Estacio, who were directly involved therein, did not reveal these.

With respect to the admissibility of the extrajudicial confessions of Valentino and petitioner Estacio against their co-accused, once again, this Court declares that although an extrajudicial confession is admissible only against the confessant, jurisprudence makes it admissible as corroborative evidence of other facts that tend to establish the guilt of his co-accused.^[61] In *People vs. Alvarez*,^[62] this Court ruled that where the confession is used as circumstantial evidence to show the probability of participation by the co-conspirator, that confession is receivable as evidence against a co-accused. The Court elucidated further in *People vs. Encipido*^[63] as follows:

"It is also to be noted that APPELLANTS' extrajudicial confessions were independently made without collusion, are identical with each other in their material respects and confirmatory of the other. They are, therefore, also admissible as circumstantial evidence against their co-accused implicated therein to show the probability of the latter's actual participation in the commission of the crime. They are also admissible as corroborative evidence against the others, it being clear from other facts and circumstances presented that persons other than the declarants themselves participated in the commission of the crime charged and proved. They are what is commonly known as interlocking confession and constitute an exception to the general rule that extrajudicial confessions/admissions are admissible in evidence only against the declarants thereof."

Petitioner Estacio claimed that, to his surprise, he found Valentino at the NBI. They talked for a while and Valentino told him to say whatever he (Valentino) would say.^[64] That allegation alone cannot be considered as

indicative of collusion between them as their sworn statements both contain facts showing their deep involvement in the scheme to defraud a bank. Human experience dictates that no one would volunteer to demonstrate one's culpability unless it was the truth. It may thus be safely presumed that in telling petitioner Estacio to say whatever he would say, Valentino was merely cautioning petitioner Estacio to tell the truth. Nevertheless, even without the extrajudicial confessions of petitioner Estacio and Valentino, evidence on record is sufficient to sustain a finding of culpability.[65]

On the validity of the discharge of Valentino from the information to be a state witness, the determination of who should be used as a state witness to bolster the successful prosecution of criminal offenses is part of prosecutorial discretion.[66] However, it is the courts that finally determine whether the requirements of the Rules of Court[67] have been satisfied to justify the discharge of an accused to become a state witness.

It should be recalled that petitioner Estacio was originally discharged to be a state witness. Upon his manifestation that he would rather remain an accused in these cases for the protection of his family, the court re-included him in the information. Apparently considering the nature of the crimes and the secrecy by which these were perpetrated, the prosecution was left with no recourse but to side with Valentino's motion for his discharge to be a state witness. The absolute necessity for the testimony of someone who was a participant in the criminal scheme is buttressed by the ruling that where a crime is contrived in secret then the discharge of one of the conspirators is essential so he can testify against the other conspirators.[68] In a conspiracy which was done in secret, there is a necessity to discharge one of the accused to provide direct evidence of the commission of the crime.[69]

Worth noting, however, is that Valentino's testimony and his sworn statements differ with regard to petitioner Estacio's participation in the commission of the October 19, 1981 criminal act, and the participation of petitioner Fajardo in the three crimes. Valentino stated in his sworn statement that on October 19, 1981, when he noticed that the BPI representative had placed the demand envelope containing the BPI-Laoag checks for clearing at the Laoag counter behind him, petitioner Estacio, who was the syndicate's messenger, immediately came with a push cart. Petitioner Estacio placed the demand envelope in the pushcart and proceeded to the comfort room in the fourth floor where Valentino followed him to alter the documents to suit the syndicate's purposes. On the other hand, when he testified, Valentino asserted that he did not see petitioner Estacio at the meeting when they hatched the first operation on October 16, 1981. When the alterations were made on October 19, 1981, Valentino claimed that petitioner Estacio was not with them[70] for it was he himself who brought the bundle of checks to the fourth floor comfort room where Villasanta took the checks and altered the bank statements.

With respect to petitioner Fajardo, Valentino averred in his supplementary sworn statement that petitioner Fajardo was present in three or four conferences where he participated in the discussion to defraud a bank.[71] However, on the witness stand, Valentino swore that petitioner Fajardo had "no participation in these cases"[72] or in the three operations subjects of these cases.

These discrepancies in Valentino's sworn statements and testimony are material ones as far as petitioners Estacio and Fajardo are concerned. On this issue, the Court has consistently held that:

"x x x discrepancies between the statement of the affiant in his affidavit and those made by him on the witness stand do not necessarily discredit him since ex-parte affidavits are generally incomplete. Affidavits are generally subordinate in importance to open court declarations because they are oftentimes not in such a state as to afford him a fair opportunity of narrating in full the incident which has transpired in his affidavit and those made by him. This is so because affidavits are frequently prepared by the administering officer and cast in the latter's language or the latter's understanding of what the affiant had said, while the affiant frequently simply signs the affidavit after the same has been read to him." [73]

In *People vs. Fabro*, the Court ruled that repudiation and recantation of confessions which have been obtained in accordance with the Constitution are looked upon with disfavor as unreliable.[74] However, that ruling may not find application under the circumstances of these cases. In *Fabro*, it was the accused himself who recanted his confession when, on the witness stand, he denied he committed the crime. No other witness testified for the defense. On the other hand, in these cases, Valentino, a co-conspirator who appeared as a state witness before the court, adhered to his confession as regards the participation of the accused, except that he testified that petitioner Estacio was absent when the first crime was planned and committed, and that petitioner Fajardo was not involved in the three cases. It has been held that where a witness who testified for the prosecution subsequently testifies for the defense by retracting his previous testimony, the test to decide which testimony to believe is a comparison coupled with the application of the general rules of evidence.[75] Although these cases do not involve the conflicting testimonies of a witness, that rule may be applied in a conflict between a sworn statement and the testimony while recognizing the inferiority of a sworn statement to a testimony. In these cases, the narration of facts in Valentino's sworn statements were in substance reproduced in his testimony which, in turn, was supported by other testimonial evidence and the voluminous documentary evidence.

In the absence of any reason to question the credibility of Valentino and that of his testimony, that portion of his testimony on the nonparticipation of petitioner Estacio in *Crim. Case No. 5949* and petitioner Fajardo in all three cases shall be controlling. We deem the variance in Valentino's testimony as endeavors to rectify his sworn statements to conform to the truth. To reiterate, such variance, does not make him a less credible witness or affect the merit of his testimony, as the other pieces of prosecution evidence support it and do not prove that it is untruthful or contrived.

The value of Valentino's testimony in the prosecution of these cases cannot be underestimated. It fills in the gaps in the prosecution evidence that the other prosecution witnesses failed to cover. Without it, conspiracy to defraud the BPI-Laoag of P9,000,000.00 through falsification of the clearing statement and manifest would not have been proven beyond reasonable doubt.

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[76] As creditably shown by the prosecution, the crimes were committed not solely by the person who altered the clearing statement and manifest. That all-important act, the conception of which could have been hatched only by one familiar with banking procedures, would not have been possible if not for the indispensable cooperation of others. Thus, Valentino testified:

"Q Will you please describe in detail what was agreed upon during the meeting?

A It was agreed upon that Salamanca and Villasanta will open an account at Laoag Branch of the Bank of the Philippine Islands and Desiderio also and Santos are also in charge in opening accounts in Metro Manila, particularly Citibank, Greenhills. Basilio Tan, he is stationary in the office. Jaime Tan and Rolando San Pedro are the ones in charge in withdrawals at the Citibank." [77]

However, the liability of each of the petitioners must be considered within the purview of the following pronouncement in the celebrated case of *People vs. Berroya*[78] where the Court said that:

"x x x to hold an accused liable as co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or furtherance of the conspiracy. That overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the time of the commission of the crime, or by exerting moral ascendancy over the other co-conspirators by moving them to execute or implement the conspiracy. Hence, the mere presence of an accused at the discussion of a conspiracy, even approval of it without any active participation in the same, is not enough for purposes of conviction. Thus, assuming Vienes was a participant in the planning to abduct a Taiwanese national, in the absence of eyewitnesses to the actual abduction, there is a paucity of evidence as to

whether or not Vienes carried out his part of the plan." (emphasis supplied)

In these cases, even if Valentino's supplementary sworn statement stating that petitioner Fajardo participated in the discussion of the scheme to milk money from a bank should be given evidentiary weight, still, that evidence is not enough to convict him. There is no evidence showing that he participated in opening a bank account in the procedure to alter the clearing manifests and statements, or in the withdrawal of substantial amounts resulting from such alteration of documents. There is thus insufficient evidence against petitioner Fajardo to find him culpable for the crimes charged in these cases and hence, he should be acquitted.

Similarly situated as petitioner Fajardo, is petitioner Santos. His admission to having attended several meetings of Salamanca's group did not satisfactorily define his liability as a conspirator considering the absence of any proof that he committed an overt act in pursuance of the syndicate's scheme. His pretext of having entered into a "car sale" with Salamanca may ring hollow in truth but the weakness of his defense cannot be taken against him considering the insufficiency of prosecution evidence on his participation in the actual commission of the crime. His acquittal is, therefore, likewise in order.

With respect to petitioner Estacio, Valentino's testimony on the first syndicate operation on October 16, 1981 should be counted in his favor. There is insufficient evidence that he participated in the alteration of documents at the Central Bank Clearing Office on October 19, 1981 much more in the prior discussion to perpetrate the crime. Hence, his acquittal in Criminal Case No. 5949 should follow. However, as regards the syndicate operations on October 30, 1981 and November 20, 1981, there is proof beyond reasonable doubt of his role in carrying the demand envelopes to the Central Bank's fourth floor comfort room where alterations were made. By the nature of his work, he had access to these demand envelopes containing BPI checks. His participation in the conspiracy was therefore vital to the realization of the syndicate's objectives.

Parenthetically, the Court notes with dismay the Sandiganbayan's pronouncement that petitioner Estacio's "wishy-washy" attitude in offering himself as a state witness "confirmed his knowledge of the intimate details of the conspiracy and the mode or manner by which its operations and schemes would be initiated and consummated." [79] Such conclusion is in consonance with the presumption of guilt, not with that of innocence. An accused may have some reasons for his irresolute action as far as testifying for the prosecution is concerned. Petitioner Estacio had such reason - he feared for the safety of his family considering that he would be up against a syndicate that, because of the success of its evil scheme, had the money to harm their perceived "enemies." That petitioner Estacio was deeply enmeshed in the syndicate's activities to bleed money from banks is shown by the fact that in Crim. Case No. 6603 involving the syndicate's operation in the Solidbank, his conviction for the crime of estafa thru falsification of public/commercial documents was affirmed by this Court in G.R. No. 75362. [80] But such conviction for another crime must not be the basis for a conclusion that the accused is guilty of another crime charged, although basically, the same criminal acts were committed. We therefore find the Sandiganbayan's pronouncement totally unexpected of a court that must determine the culpability of an accused based on the prosecution evidence and not on the weakness of the defense or the reputation of an accused.

Petitioner Desiderio, on the other hand, has been proven guilty beyond reasonable doubt for having participated both in the discussion and mapping out of the malevolent scheme and in its actual execution. Desiderio's knowledge of banking procedures provided the rationale for his giving "birth", or having "authored" the scheme along with Salamanca and Villasanta. [81] He had served as branch manager in the BPI where he was employed for twenty-seven years, or until he was charged with estafa for accommodating a client's loan against an uncollected deposit. [82] Nieves Garrido, a personal banker at Citibank-Greenhills, who entertained him when he made queries about opening a current account, confirmed his having opened said account for Magna Management Consultant, thereby lending credence to and corroborating Valentino's testimony on his role in the implementation

of the criminal scheme.

Petitioner Desiderio's claim that he opened that account in accordance with his legitimate role as consultant in Mardes Management Consultant is a lame excuse. Anyone, especially a businessman such as San Pedro or Salamanca, could have opened a current account without hiring the services of a management consultant. That lame excuse sounds even lamer considering the evidence showing that his alleged client was also engaged in management consultancy. Desiderio thus relied on denial as a mode of defense. A denial, like other defenses, remains subject to the strength of the prosecution evidence which is independently assessed. When the evidence for the prosecution convincingly connects the crime and the culprit, the probative value of the denial is negligible.[83] Desiderio's denial of complicity in the scheme cannot, therefore, prevail over the positive testimonies of Nieves Garrido and Valentino that he played the important role of opening the current account that paved the way to the "inside jobs" of petitioner Estacio, Valentino and, probably, Villasanta. His sole overt act under the syndicate's scheme facilitated the commission of all three counts of estafa thru falsification of public documents.

Notably, in these cases, the Sandiganbayan observed that none of the accused refuted the documentary exhibits offered in evidence by the prosecution.[84] The pieces of documentary evidence consist of bank records including deposit slips, ledger cards, specimen cards, checks for deposit and withdrawal, clearing statements and clearing manifests. All of these clearly and positively buttress the prosecution's theory as to how the pilferage scheme was successfully implemented. The defense obviously could not demolish the evidentiary weight of the prosecution's documentary evidence and hence, it focused on the prosecution evidence on the membership of the accused in the syndicate, and on the probative value of the interlocking confessions of Valentino and petitioner Estacio. There is thus no alternative to giving full credence and merit to the prosecution's documentary evidence, and to declaring them to be in complete accord with the prosecution theory on the commission of the offenses and the nature and extent of participation of the accused.

The informations filed in these cases individually charge an offense "defined and penalized under Article 315, par. 2 (a) in relation to Article 171, par. 2" of the Revised Penal Code. The elements of estafa are as follows: (1) the accused defrauded another by abuse of confidence, or by means of deceit; and (2) the offended party or a third party suffered damage or prejudice capable of pecuniary estimation.[85] It is indubitable that estafa was committed by abuse of confidence in these cases. The conspirators that enlisted and utilized the assistance of Central Bank employees abused the confidence that the banking system reposed upon such employees. As a result of such abuse of confidence, the BPI sustained damage in the aggregate of Nine Million Pesos (P9,000,000.00). Verily, the perpetrators of the crimes breached even the confidence that people reposed on the Central Bank and the whole banking system.

By falsifying clearing documents, the offenders committed the complex crime of estafa thru falsification of public documents. Under Article 171 (4) of the Revised Penal Code, any public officer or employee who, taking advantage of his official position, makes untruthful statements in a narration of facts, commits the crime of falsification of public documents. This kind of falsification requires the concurrence of the following requisites: (a) the offender makes in a document untruthful statements in a narration of facts; (b) he has a legal obligation to disclose the truth of the facts narrated by him; and (c) the facts narrated by the offender are absolutely false.[86]

The prosecution has duly proven these requisites. Valentino occupies a public position as bookkeeper at the Clearing Office of the Central Bank. He intercepted and pilfered BPI-Laoag checks with the assistance of petitioner Estacio, a janitor-messenger at the Central Bank. In the comfort room, Valentino and/or Villasanta, who has so far avoided the clutches of the law, tampered with the clearing statements and clearing manifests which Estacio had taken from Valentino's desk. The tampered documents, along with the pilfered demand envelopes,

were then sent to the Central Bank Regional Clearing Center in Laoag. These "inside jobs" were perpetrated as part of the decadent scheme that private individuals had hatched to gain monetary gratification.

Article 315, paragraph 2 (a) under which the defendants were charged in these cases, states that any person who shall defraud another by means of "using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits" shall be held liable for the crime of swindling (estafa). Under the peculiar circumstances proven in these cases, the crime actually committed by the offenders is that defined in Article 318 of the Revised Penal Code on other deceits. The first paragraph of this article states that "(t)he penalty of arresto mayor and a fine of not less than the amount of the damage caused and not more than twice such amount shall be imposed upon any person who shall defraud or damage another by any other deceit not mentioned in the preceding articles of this chapter." Although the information charged the accused with violation of paragraph 2 of Article 171 of the Revised Penal Code defining the crime of falsification by public officer or employee, the Sandiganbayan correctly found that the accused violated paragraph 4 of the same Article which states as follows:

"The penalty of prision mayor and a fine not to exceed P5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

xxx xxx xxx

"4. Making untruthful statements in a narration of facts."

Inasmuch as the crime committed in these cases is the complex crime of estafa thru falsification of public documents and Article 48 of the Revised Penal Code states that when an offense is a necessary means for committing another offense, "the penalty for the most serious crime shall be imposed" in its maximum period, the penalty for the crimes committed in these cases is that imposed for falsification of public documents or prision mayor in its maximum period and a fine of P5,000.00.

While it appears that the Sandiganbayan correctly held that the basis for imposition of penalty should be that imposed by law for falsification of public documents, it erred in imposing the maximum penalty of the indeterminate sentence it meted upon the accused. Finding no modifying circumstances, the Sandiganbayan imposed for each complex crime of estafa thru falsification of public document, the indeterminate penalty of four (4) years, two (2) months and one (1) day of prision correccional to ten (10) years and one (1) day of prision mayor.

Under the procedural guidelines for imposing penalties for complex crimes enunciated in *Nizurtado vs. Sandiganbayan*,^[87] the first step in determining the proper penalty is to consider whether or not aggravating and/or mitigating circumstances attended the commission of the crimes.

Only petitioner Estacio claimed that he voluntarily surrendered. For said mitigating circumstance to be appreciated, surrender must be made spontaneously or in such a manner that it shows the intent of the accused to surrender unconditionally to the authorities, either because he acknowledges his guilt, or because he wishes to save them the trouble and expense of finding and capturing him.^[88] According to NBI Agent Ranin, petitioner Estacio went to the NBI bearing a referral note from Atty. Agapito Fajardo, Chief of Anti-Fraud Unit of the Central Bank.^[89] However, it was proven by the prosecution beyond peradventure of doubt that petitioner Estacio's alleged surrender was anything but spontaneous. He went to the NBI on February 17, 1982,^[90] five days after Atty. Fajardo had brought Valentino to that office for questioning, and a day after a Presidential Commitment Order (PCO) had been issued against him and Valentino.^[91] Moreover, the booking sheet and arrest report states that petitioner Estacio was "arrested" on February 16, 1982.^[92] Voluntary surrender having

been insufficiently proven, as far as penalty is concerned, petitioner Estacio in Crim. Cases Nos. 5950-51 shall suffer the same penalty as petitioner Desiderio who did not present proof that could mitigate the penalty that he should suffer for the crimes.

Article 64 of the Revised Penal Code states that when the penalty prescribed by law is a single divisible penalty, the accused shall be imposed the medium period of such penalty when there are neither aggravating nor mitigating circumstances. The propriety of imposing the medium period of the more serious penalty for a complex crime after considering the modifying circumstances notwithstanding that Article 48 requires the imposition of the penalty in its maximum period has been settled.[93] It is supported by the doctrine that penal provisions shall be interpreted in favor of the accused.

The medium period of prision mayor is eight (8) years and one (1) day to ten (10) years. In the absence of impediments to the application of the Indeterminate Sentence Law, for each crime committed, the penalty that should be imposed upon petitioner Estacio in Crim. Case Nos. 5950 and 5951, and upon petitioner Desiderio in Crim. Case Nos. 5949, 5950 and 5951, shall be the indeterminate sentence comprising of the minimum penalty within the range of prision correccional, to the maximum penalty of prision mayor medium plus a fine of P5,000.00. It will be observed that the maximum penalty erroneously imposed by the Sandiganbayan is ten (10) years and one (1) day which is already within the period of prision mayor maximum.

WHEREFORE, IN VIEW OF THE FOREGOING, petitioner Rolando Santos y Ramirez in G.R. Nos. 71523-25, petitioner Alfredo R. Fajardo, Jr. in G.R. No. 72384-86 and petitioner Jesus E. Estacio in G.R. No. 72420-22 with respect to Criminal Case No. 5949 are hereby ACQUITTED of the crimes charged for lack of proof beyond reasonable doubt. The Decision of the Sandiganbayan as far as petitioner Marcelo S. Desiderio in G. R. No. 72387-89 and petitioner Jesus E. Estacio, with respect to Criminal Case Nos. 5950 and 5951 are concerned, is hereby AFFIRMED subject to the modification that, for each crime, they shall suffer the indeterminate sentence of four (4) years, two (2) months, and one (1) day of prision correccional maximum to ten (10) years of prision mayor medium.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

[1] Penned by Associate Justice Romeo M. Escareal and concurred in by Associate Justices Ramon V. Jabson and Amante Q. Alconcel.

[2] The informations were filed with the Sandiganbayan although the accused other than Valentino and Estacio who were the bookkeeper and janitor-messenger of the Central Bank, respectively, are private persons. Sec. 4 of P.D. No. 1606, as amended, allows the joint trial of private individuals and public officers if they are charged as co-principals, accomplices or accessories.

[3] Records, pp. 58-61 and 124.

[4] Ibid., p. 135.

[5] Ibid., pp. 401-406.

[6] Ibid., pp. 535-536.

[7] Ibid., pp. 567-575.

[8] NBI Head Agent Salvador Ranin; BPI Loans Bookkeeper Zoilo Mamuad; BPI Administrative Assistant for Communications Management Department Segundo Gonzaga, Jr.; Central Bank (CB) Assistant Chief of Clearing Operations Division Floriano Sangalang; BPI-Laoag Senior Assistant Manager Rogelio Vicente; BPI-La Union Distributing Clerk Evaristo Yap; Citibank-Greenhills Bank Teller Virgilio Lozada; CB-Laoag Bookkeeper Dante Fernandez; CB Chief of Clearing Operations Division Alfonso Magsalin; Citibank-Greenhills Personal Banker Ma. Nieves Garido; Citibank-Greenhills Teller and Journal Clerk Renato de Guzman; BPI Document Examiner Nicanor Rones; Citibank-Greenhills Teller Teresita Guzman; Citibank-Greenhills Vault Teller and Utility Clerk Evelyn Pascual; CB-Laoag Regional Clearing Officer Jose Alcantara, and Manuel Valentino, former bookkeeper of the Clearing Operations Division of the Central Bank.

[9] Mariano Bustamante could be a fictitious name used by Romeo Portugal, alias Romeo Villasanta. When a picture of Portugal was shown to employees of BPI Laoag, they claimed that the person in that picture resembled "Mariano Bustamante."

[10] Exhs. B, B-1, B-3 and B-4.

[11] Exh. B-2.; TSN, November 16, 1982, pp. 29-30; March 10, 1983, pp. 81-93; December 2, 1982, pp. 7-12.

[12] TSN, January 10, 1983, pp. 14-81.

[13] Annex "U."

[14] TSN, May 17, 1984, pp. 91-100.

[15] TSN, March 10, 1983, pp. 13-38.

[16] The Central Bank debited BPI the following amounts: October 19, 1981 - P1,076,416.95; October 30, 1981 - P3,148,894.01, and November 20, 1981 - P5,039,015.85 as against the following amounts received by the BPI-Laoag: October 19, 1981 - P76,416.95; October 30, 1981 - P148,894.01 and November 20, 1981 - P39,015.85.

[17] TSN, December 2, 1982, pp. 28-42.

[18] TSN, November 16, 1982, pp. 13-14.

[19] Exh. A. Included in the Memorandum Report are, among others, the joint letter request of Agapito Fajardo of the Central Bank and Primer R. Leonen of BPI, the statements and supplementary statements of Manuel Valentino, the statements and supplementary statements of Jesus Estacio, the statements of the prosecution witnesses, photocopies of BPI checks, photocopies of Citibank checks, photocopies of Central Bank Clearing Statements, and photocopies of Central Bank Manifests.

[20] TSN, October 24, 1984, pp. 5-15.

[21] TSN, October 25, 1984, pp. 3-9.

[22] Ibid., pp. 9-10.

[23] On cross-examination, Estacio claimed that he did not read his statement before signing it. (TSN, December 19, 1984, p. 18).

[24] TSN, October 25, 1984, p. 31

[25] Exhs. C and C-1.

[26] TSN, December 19, 1984, p. 21.

[27] TSN, August 2, 1984, pp. 6-31.

[28] Desiderio's office was allegedly the Mardes Management Consultant located at the Doña Victoriana Bldg. in Cubao, Quezon City. He was allegedly a consultant in that firm, Vice-President of Mardes Trading Corporation, and proprietor of Mardes Farms.

[29] TSN, January 22, 1985, pp. 4-9.

[30] Ibid., pp. 10-25.

[31] TSN, January 22, 1985, pp. 29-30.

[32] Records, p. 1258.

[33] Ibid., p. 1347.

[34] Ibid., pp. 1352 and 1354.

[35] Ibid., pp. 1718-1750.

[36] Ibid., p. 1754.

[37] Ibid., p. 1355.

[38] Ibid., pp. 1440 and 1442.

[39] Ibid., pp. 1612, 1619-1621.

[40] Ibid., p. 1755.

[41] Ibid., pp. 1013, 970 and 978.

[42] Order dated August 5, 1985, Records pp. 1009 and 1010.

[43] Records, pp. 1085-1091.

[44] Rollo of G.R. No. 71523-25, p. 167-B.

[45] Ibid., pp. 179-200, 182-183.

[46] 263 SCRA 222, 255 [1996].

[47] 188 SCRA 475, 482-483 [1990].

[48] G.R. No. 126745, July 26, 1999.

[49] Rollo in G. R. Nos. 71523-25, pp. 35-36 and Rollo in G. R. No. 72420-22, p. 27.

[50] Supra, pp. 258-260.

[51] See: People vs. Fortich, 281 SCRA 601, 615 [1997].

[52] 227 SCRA 444, 448-449 [1993].

[53] Annex "B."

[54] People vs. Suarez, 267 SCRA 119, 134-135 [1997] citing People vs. Solis, 182 SCRA 182 [1990] People vs. Estevan, 186 SCRA 34 [1990].

[55] 145 SCRA 581, 586 [1986] citing *People vs. Villanueva*, 128 SCRA 488 [1984]; *People vs. Urgel*, 134 SCRA 483 [1985] and *People vs. Toledo*, 140 SCRA 259 [1985].

[56] TSN, May 17, 1984, p. 9.

[57] TSN, October 25, 1984, p. 25.

[58] *Estacio vs. Sandiganbayan*, 183 SCRA 12 [1990].

[59] *People vs. Villanueva*, 266 SCRA 356, 362 [1997].

[60] 24 Phil. 329, 358 (1913).

[61] *People vs. Suarez*, supra at p. 113 citing *People vs. Cabiltes*, 25 SCRA 112 [1968]; *People vs. Simbajon*, 15 SCRA 83 [1965].

[62] 201 SCRA 364, 377 [1991] citing *People vs. Condemena*, 23 SCRA 910 [1968] and *People vs. Vasquez*, 113 SCRA 772 [1982].

[63] 146 SCRA 478, 492 [1986].

[64] TSN, October 25, 1984, p. 22.

[65] *Estacio vs. Sandiganbayan*, supra at p. 21.

[66] *People vs. Espanola*, 271 SCRA 689, 708 [1997].

[67] Rule 119 of the Rules of Court provides:

SEC. 9. Discharge of one of several defendants to be witness for the prosecution. - When two or more persons are charged with the commission of a certain offense, the competent court, at any time before they have entered upon their defense, may direct one or more of them to be discharged with the latter's consent that he or they may be witnesses for the government when in the judgment of the court:

- (a) There is absolute necessity for the testimony of the defendant whose discharge is requested;
- (b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said defendant;
- (c) The testimony of said defendant can be substantially corroborated in its material points;
- (d) Said defendant does not appear to be the most guilty;
- (e) Said defendant has not at any time been convicted of any offense involving moral turpitude.

[68] *Chua vs. Court of Appeals*, 261 SCRA 112, 119 [1996] citing *People vs. Salbino*, 134 SCRA 492 [1985] and *People vs. Villamor*, 110 SCRA 199 [1981].

[69] *Chua vs. Court of Appeals*, 261 SCRA 112 [1996].

[70] TSN, May 17, 1984, pp. 34-36, 55-56.

[71] Annex "B-1."

[72] TSN, May 18, 1984, p. 6.

[73] *People vs. Banguis*, 291 SCRA 279, 286 [1998].

[74] 277 SCRA 19, 41 [1997].

[75] *People vs. Navarro*, 297 SCRA 331, 348 [1998].

[76] Art. 8, Revised Penal Code.

[77] TSN, May 17, 1984, p. 29.

[78] 283 SCRA 111, 129-130 [1997].

[79] Sandiganbayan Decision, p. 85, Rollo in G. R. No. 72420-22, p.114.

[80] *Estacio vs. Sandiganbayan*, supra.

[81] TSN, May 17, 1984, p. 61.

[82] TSN, January 22, 1985, pp. 16 and 18.

[83] *People vs. Fabro*, supra, p. 40.

[84] Sandiganbayan Decision, pp. 94-95, Rollo in G.R. No. 72420-22, pp. 123-124.

[85] *People vs. Reyes*, 282 SCRA 105, 122 [1997].

[86] *Siquian vs. People*, 171 SCRA 223, 230 [1989] citing *Cabigas vs. People*, 152 SCRA 18 [1987].

[87] 239 SCRA 33, 46-47 [1994].

[88] *People vs. Maalat*, 275 SCRA 206, 213-214 [1997].

[89] TSN, December 1, 1982, pp. 50-51.

[90] *Ibid.*, p. 50.

[91] *Ibid.*, p. 41; Records, pp. 46-48.

[92] Annex "JJ."

[93] *Nizurtado vs. Sandiganbayan*, supra.

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