Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

MARIETA DE CASTRO,
Petitioner,

- *versus* -

PEOPLE OF THE PHILIPPINES,
Respondent.

G.R. No. 171672

Present:

SERENO, *C.J.*,
LEONARDO-DE CASTRO,
BERSAMIN,
PEREZ, and
PERLAS-BERNABE, *JJ.*

Promulgated:

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DECISION

BERSAMIN, *J.*:

The court should prescribe the correct penalties in complex crimes in strict observance of Article 48 of the *Revised Penal Code*. In *estafa* through falsification of commercial documents, the court should impose the penalty for the graver offense in the maximum period. Otherwise, the penalty prescribed is invalid, and will not attain finality.

Antecedents

The petitioner, a bank teller of the BPI Family Savings Bank (BPI Family) at its branch in Malibay, Pasay City, appeals the affirmance of her conviction for four counts of *estafa* through falsification of a commercial document committed on separate occasions in October and November 1993 by forging the signatures of bank depositors Amparo Matuguina and Milagrosa Cornejo in withdrawal slips, thereby enabling herself to withdraw a total of ₱65,000.00 and ₱2,000.00 from the respective savings accounts of Matuguina and Cornejo.

The antecedent facts were summarized in the assailed decision of the Court of Appeals (CA),[1] as follows:

> As culled from the evidence, Matuguina and Cornejo left their savings account passbooks with the accused within the space of a week in October – November 1993 when they went to the bank's Malibay branch to transact on their accounts. Matuguina, in particular, withdrew the sum of P500 on October 29 and left her passbook with the accused upon the latter's instruction. She had to return two more times before the branch manager Cynthia Zialcita sensed that something wrong was going on. Learning of Matuguina's problem, Zialcita told the accused to return the passbook to her on November 8. On this day, the accused came up with the convenient excuse that she had already returned the passbook. Skeptical, Zialcita reviewed Matuguina's account and found three withdrawal slips dated October 19, 29 and November 4, 1993 containing signatures radically different from the specimen signatures of the depositor and covering a total of P65,000. It was apparent that the accused had intervened in the posting and verification of the slips because her initials were affixed thereto. Zialcita instructed her assistant manager Benjamin Misa to pay a visit to Matuguina, a move that led to the immediate exposure of the accused. Matuguina was aghast to see the signatures in the slips and denied that the accused returned the passbook to her. When she went back to the bank worried about the unauthorized withdrawals from her account, she met with the accused in the presence of the bank manager. She insisted that the signatures in the slips were not her, forcing the accused to admit that the passbook was still with her and kept in her house.
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> Zialcita also summoned Juanita Ebora, the teller who posted and released the November 4 withdrawal. When she was asked why she processed the transaction, Ebora readily pointed to the accused as the person who gave to her the slip. Since she saw the accused's initials on it attesting to having verified the signature of the depositor, she presumed that the withdrawal was genuine. She posted and released the money to the accused.
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> On the same day, November 8, Zialcita instructed Misa to visit another depositor, Milagrosa Cornejo, whom they feared was also victimized by the accused. Their worst expectations were confirmed. According to Cornejo, on November 3, she went to the bank to deposit a check and because there were many people there at the time, she left her passbook with the accused. She returned days later to get it back, but the accused told her that she left it at home. Misa now showed to her a withdrawal slip dated November 4, 1993 in which a signature purporting to be hers appeared. Cornejo denied that it was her signature. As with the slips affecting Matuguina, the initials of the accused were unquestionably affixed to the paper.

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[1] *Rollo*, 107-10.

> Zialcita reported her findings posthaste to her superiors. The accused initially denied the claims against her but when she was asked to write her statement down, she confessed to her guilt. She started crying and locked herself inside the bathroom. She came out only when another superior Fed Cortez arrived to ask her some questions. Since then, she executed three more statements in response to the investigation conducted by the bank's internal auditors. She also gave a list of the depositors' accounts from which she drew cash and which were listed methodically in her diary.
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> The employment of the accused was ultimately terminated. The bank paid Matuguina ₱65,000, while Cornejo got her refund directly from the accused. In the course of her testimony on the witness stand, the accused made these further admissions:
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> (a) She signed the withdrawal slips Exhibits B, C, D and H which contained the fake signatures of Matuguina and Cornejo;
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> (b) She wrote and signed the confession letter Exhibit K;
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> (c) She wrote the answers to the questions of the branch cluster head Fred Cortez Exhibit L, and to the auditors' questions in Exhibit M, N and O;
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> (d) Despite demand, she did not pay the bank.[2]

Judgment of the RTC

On July 13, 1998, the Regional Trial Court in Pasay City (RTC) rendered its judgment,[3] finding the petitioner guilty as charged, and sentencing her to suffer as follows:

> (*a*) In Criminal Case No. 94-5524, involving the withdrawal of ₱20,000.00 from the account of Matuguina, the indeterminate sentence of two years, 11 months and 10 days of *prison correccional*, as minimum, to six years, eight months and 20 days of *prision mayor*, as maximum, and to pay BPI Family ₱20,000.00 and the costs of suit;
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> (*b*) In Criminal Case No. 94-5525, involving the withdrawal of ₱2,000.00 from Cornejo's account, the indeterminate sentence of three months of *arresto mayor*, as minimum, to one year and eight months of *prision correccional*, as maximum, and to pay BPI Family ₱2,000.00 and the costs of suit;
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> (*c*) In Criminal Case No. 94-5526, involving the withdrawal of ₱10,000.00 from the account of Matuguina, the indeterminate sentence of four months and 20 days of *arresto mayor*, as minimum,

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2 *Rollo*, pp. 107-110.
3 Id. at 60-69.

> to two years, 11 months and 10 days of *prision correccional*, as maximum, and to pay BPI Family ₱10,000.00 and the costs of suit; and
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> (*d*) In Criminal Case No. 94-5527, involving the withdrawal of ₱35,000 from Matuguina's account, the indeterminate sentence of two years, 11 months and 10 days of *prision correccional*, as minimum, to eight years of *prision mayor*, as maximum, and to pay BPI Family ₱35,000.00 and the costs of suit.

Decision of the CA

On appeal, the petitioner contended in the CA that: (1) her conviction should be set aside because the evidence presented against her had been obtained in violation of her constitutional right against self-incrimination; (2) her rights to due process and to counsel had been infringed; and (3) the evidence against her should be inadmissible for being obtained by illegal or unconstitutional means rendering the evidence as *the fruit of the poisonous tree*.

On August 18, 2005, the CA promulgated its decision[4] affirming the judgment of the RTC, to wit:

> In summary, we find no grounds to disturb the findings of the lower court, except the provision of the dispositive portion in case 94-5525 requiring the accused to pay BPI Family ₱2,000. This must be deleted because the accused had already paid the amount to the depositor.
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> IN VIEW OF THE FOREGOING, the decision appealed from is AFFIRMED, with the modification that the award of ₱2,000 to the complainant in case 94-5525 be deleted.
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> SO ORDERED.

Issues

In this appeal, the petitioner still insists that her conviction was invalid because her constitutional rights against self-incrimination, to due process and to counsel were denied. In behalf of the State, the Office of the Solicitor General counters that she could invoke her rights to remain silent and to counsel only if she had been under custodial investigation, which she was not; and that the acts of her counsel whom she had herself engaged to represent her and whom she had the full authority to replace at any time were binding against her.

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[4] *Rollo*, pp. 106-114; penned by Associate Justice Mario L. Guariña III (retired), with the concurrence of Associate Justice Marina L. Buzon (retired) and Associate Justice Santiago Javier Ranada (retired).

Ruling of the Court

The appeal lacks merit.

We first note that the petitioner has accepted the findings of fact about the transactions that gave rise to the accusations in court against her for four counts of *estafa* through falsification of a commercial document. She raised no challenges against such findings of fact here and in the CA, being content with limiting herself to the supposed denial of her rights to due process and to counsel, and to the inadmissibility of the evidence presented against her. In the CA, her main objection focused on the denial of her right against self-incrimination and to counsel, which denial resulted, according to her, in the invalidation of the evidence of her guilt.

Debunking the petitioner's challenges, the CA stressed that the rights against self-incrimination and to counsel guaranteed under the Constitution applied only during the custodial interrogation of a suspect. In her case, she was not subjected to any investigation by the police or other law enforcement agents. Instead, she underwent an administrative investigation as an employee of the BPI Family Savings Bank, the investigation being conducted by her superiors. She was not coerced to give evidence against herself, or to admit to any crime, but she simply broke down bank when depositors Matuguina and Cornejo confronted her about her crimes. We quote with approval the relevant portions of the decision of the CA, *viz*:

> The accused comes to Us on appeal to nullify her conviction on the ground that the evidence presented against her was obtained in violation of her constitutional right against self-incrimination. She also contends that her rights to due process and counsel were infringed. Without referring to its name, she enlists one of the most famous metaphors of constitutional law to demonize and exclude what she believes were evidence obtained against her by illegal or unconstitutional means – evidence constituting *the fruit of the poisonous tree*. We hold, however, that in the particular setting in which she was investigated, the revered constitutional rights of an accused to counsel and against self-incrimination are not apposite.
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> The reason is elementary. These cherished rights are peculiarly rights in the context of an official proceeding for the investigation and prosecution for crime. The right against self-incrimination, when applied to a criminal trial, is contained in this terse injunction – *no person shall be compelled to be a witness against himself*. In other words, he may not be required to take the witness stand. He can sit mute throughout the proceedings. His right to counsel is expressed in the same laconic style: he shall enjoy *the right to be heard by himself and counsel*. This means inversely that the criminal prosecution cannot proceed without having a counsel by his side. These are the traditional rights of the accused in a criminal case. They exist and may be invoked when he faces a formal indictment and trial for a criminal offense. But since Miranda vs Arizona 384 US 436, the law has come to recognize that an accused needs the

same protections even before he is brought to trial. They arise at the very inception of the criminal process – when a person is taken into custody to answer to a criminal offense. For what a person says or does during custodial investigation will eventually be used as evidence against him at the trial and, more often than not, will be the lynchpin of his eventual conviction. His trial becomes a parody if he cannot enjoy from the start the right against self-incrimination and to counsel. This is the logic behind what we now call as the *Miranda doctrine*.

The US Supreme Court in *Miranda* spells out in precise words the occasion for the exercise of the new right and the protections that it calls for. The occasion is *when an individual is subjected to police interrogation while in custody at the station or otherwise deprived of his freedom in a significant way.* It is when custodial investigation is underway that the certain procedural safeguards takes over – *the person must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning.*

We must, therefore, be careful to note what the *Miranda* doctrine does not say. It was never intended to hamper the traditional law-enforcement function to investigate crime involving persons *not under restraint*. The general questioning of citizens in the fact-finding process, as the US Supreme Court recognizes, which is not preceded by any restraint on the freedom of the person investigated, is not affected by the holding, since the compelling atmosphere inherent in in-custody interrogation is not present.

The holding in *Miranda* is explicitly considered the source of a provision in our 1987 bill of rights that *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*, a provision identical in language and spirit to the earlier Section 20, Article IV of the 1973 Constitution. People vs. Caguioa 95 SCRA 2. As we can see, they speak of the companion rights of a person under investigation to remain silent and to counsel, to ensure which the *fruit of the poisonous tree* doctrine had also to be institutionalized by declaring that *any confession or admission obtained in violation of these rights is inadmissible.* But to what extent must the rights to remain silent and to counsel be enforced in an investigation for the commission of an offense? The answer has been settled by rulings of our Supreme Court in *Caguoia* and in the much later case of Navallo vs Sandiganbayan 234 SCRA 175 incorporating *in toto* the Miranda doctrine into the above-cited provisions of our bill of rights. Thus, the right to remain silent and to counsel can be invoked only in the context in which the *Miranda* doctrine applies – when the official proceeding is conducted under the coercive atmosphere of a custodial interrogation. There are no cases extending them to a non-coercive setting. In *Navallo*, the Supreme Court said very clearly that the rights are invocable only when the accused is under custodial investigation. A person undergoing a normal audit examination is not under custodial investigation and, hence, the audit examiner may not be considered the law enforcement officer contemplated by the rule.

By a fair analogy, the accused in the case before us may not be said to be under custodial investigation. She was not even being

> investigated by any police or law enforcement officer. She was under administrative investigation by her superiors in a private firm and in purely voluntary manner. She was not restrained of her freedom in any manner. She was free to stay or go. There was no evidence that she was forced or pressured to say anything. It was an act of conscience that compelled her to speak, a true mental and moral catharsis that religion and psychology recognize to have salutary effects on the soul. In this setting, the invocation of the right to remain silent or to counsel is simply irrelevant.
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> The accused makes a final argument against her conviction by contending that she did not get effective legal representation from her former counsel who was already old and feeble when the case was being heard. In fact, the records show, her counsel died during the pendency of the case, an octogenarian at that. One can truly make a case from one's lack of a competent and independent counsel, but we are not prepared to say that the accused was so poorly represented that it affected her fundamental right to due process. Except for the several postponements incurred by her counsel, there is really no showing that he committed any serious blunder during the trial. We have read the transcripts of the trial and failed to get this impression. The evidence against the accused was simply too overwhelming. We may take note that once, the trial court admonished the accused to replace her counsel due to his absences, but she did not. She must live by that.[5]

Considering that the foregoing explanation by the CA was justly supported by the records, and that her investigation as a bank employee by her employer did not come under the coverage of the Constitutionally-protected right against self-incrimination, right to counsel and right to due process, we find no reversible error committed by the CA in affirming the conviction of the petitioner by the RTC.

The guilt of the petitioner for four counts of *estafa* through falsification of a commercial document was established beyond reasonable doubt. As a bank teller, she took advantage of the bank depositors who had trusted in her enough to leave their passbooks with her upon her instruction. Without their knowledge, however, she filled out withdrawal slips that she signed, and misrepresented to her fellow bank employees that the signatures had been verified in due course. Her misrepresentation to her co-employees enabled her to receive the amounts stated in the withdrawal slips. She thereby committed two crimes, namely: *estafa*, by defrauding BPI Family Savings, her employer, in the various sums withdrawn from the bank accounts of Matuguina and Cornejo; and falsification of a commercial document, by forging the signatures of Matuguina and Cornejo in the withdrawal slips to make it appear that the depositor concerned had signed the respective slips in order to enable her to withdraw the amounts. Such offenses were complex crimes, because the *estafa* would not have been consummated without the falsification of the withdrawal slips.

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[5] Id. at 110-113.

Nonetheless, there is a need to clarify the penalties imposable.

According to Article 48 of the *Revised Penal Code*,[6] the penalty for a complex crime is that corresponding to the most serious crime, the same to be applied in its maximum period. Otherwise, the penalty will be void and ineffectual, and will not attain finality.

In the four criminal cases involved in this appeal, the falsification of commercial documents is punished with *prision correccional* in its medium and maximum periods (*i.e.*, **two years, four months and one day to six years**) and a fine of ₱5,000.00.[7] In contrast, the *estafa* is punished according to the value of the defraudation, as follows: with the penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period (*i.e.*, four years, two months and one day to eight years) if the amount of the fraud is over ₱12,000.00 but does not exceed ₱22,000.00, and if such amount exceeds ₱22,000.00, the penalty is imposed in the maximum period, adding one year for each additional ₱10,000.00, but the total shall not exceed 20 years, in which case the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be, in connection with the accessory penalties that may be imposed and for the purpose of the other provisions of the *Revised Penal Code*; with the penalty of *prision correccional* in its minimum and medium periods (*i.e.*, six months and one day to four years and two months) if the amount of the fraud is over ₱6,000.00 but does not exceed ₱12,000.00; with the penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period (*i.e.*, four months and one day to two years and four months) if the amount of the fraud is over ₱200.00 but does not exceed ₱6,000.00; and with the penalty of *arresto mayor* in its medium and maximum periods (*i.e.*, two months and one day to six months) if the amount of the fraud does not exceed ₱200.00.[8]

In Criminal Case No. 94-5524, *estafa* was the graver felony because the amount of the fraud was ₱20,000.00; hence, the penalty for *estafa* is to be imposed **in its maximum period**. However, the RTC and the CA fixed the indeterminate sentence of two years, 11 months and 10 days of *prison correccional*, as minimum, to six years, eight months and 20 days of *prision mayor*, as maximum. Such maximum of the indeterminate penalty was short by one day, **the maximum period of the penalty being six years, eight months and 21 days to eight years**. Thus, the indeterminate sentence is corrected to **three years of *prison correccional*, as minimum, to six years, eight months and 21 days of *prision mayor*, as maximum.**

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[6] Article 48. *Penalty for complex crimes.* — When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.

[7] Art. 172, *Revised Penal Code*.

[8] Art. 315, *Revised Penal Code*.

In Criminal Case No. 94-5525, involving ₱2,000.00, the *estafa* is punished with four months and one day of *arresto mayor* in its maximum period to two years and four months of *prision correccional* in its minimum period. The falsification of commercial document is penalized with *prision correccional* in its medium and maximum periods (*i.e.*, two years, four months and one day to six years) and a fine of ₱5,000.00. The latter offense is the graver felony, and its penalty is to be imposed in the maximum period, which is from **four years, nine months and 11 days to six years plus fine of ₱5,000.00**. The penalty next lower in degree is *arresto mayor* in its maximum period to *prision correccional* in its minimum period (*i.e.*, four months and one day to two years and four months). Thus, the indeterminate sentence of three months of *arresto mayor*, as minimum, to one year and eight months of *prision correccional*, as maximum that both the RTC and the CA fixed was erroneous. We rectify the error by prescribing in lieu thereof the indeterminate sentence of two years of *prision correccional*, as minimum, to **four years, nine months and 11 days of *prision correccional* plus fine of ₱5,000.00, as maximum.**

In Criminal Case No. 94-5526, involving ₱10,000.00, the RTC and the CA imposed the indeterminate sentence of four months and 20 days of *arresto mayor*, as minimum, to two years, 11 months and 10 days of *prision correccional*, as maximum. However, the penalty for the falsification of commercial documents is higher than that for the *estafa*. To accord with Article 48 of the *Revised Penal Code*, the penalty for falsification of commercial documents (*i.e.*, *prision correccional* in its medium and maximum periods and a fine of ₱5,000.00) should be imposed in the maximum period. Accordingly, we revise the indeterminate sentence so that its **minimum** is **two years and four months of *prision correccional*,** and its **maximum** is **five years of *prision correccional* plus fine of ₱5,000.00.**

In Criminal Case No. 94-5527, where the amount of the fraud was ₱35,000.00, the penalty for *estafa* (*i.e.*, *prision correccional* in its maximum period to *prision mayor* in its minimum period, or four years, two months and one day to eight years) is higher than that for falsification of commercial documents. The indeterminate sentence of two years, 11 months and 10 days of *prision correccional*, as minimum, to eight years of *prision mayor*, as maximum, was prescribed. Considering that the maximum period ranged from six years, eight months and 21 days to eight years, the CA should have clarified whether or not the maximum of eight years of *prision mayor* already included the incremental penalty of one year for every ₱10,000.00 in excess of ₱22,000.00. Absent the clarification, we can presume that the incremental penalty was not yet included. Thus, in order to make the penalty clear and specific, the indeterminate sentence is hereby fixed at four years of *prision correccional*, as minimum, to six years, eight months and 21 days of *prision mayor*, as maximum, plus one year incremental penalty. In other words, the maximum of the indeterminate sentence is **seven years, eight months and 21 days of *prision mayor***.

The CA deleted the order for the restitution of the ₱2,000.00 involved in Criminal Case No. 94-5525 on the ground that such amount had already been paid to the complainant, Milagrosa Cornejo. There being no issue as to this, the Court affirms the deletion.

The Court adds that the petitioner is liable to BPI Family for interest of 6% *per annum* on the remaining unpaid sums reckoned from the finality of this judgment. This liability for interest is only fair and just.

WHEREFORE, the Court **AFFIRMS** the decision promulgated by the Court of Appeals on August 18, 2005, subject to the following **MODIFICATIONS**, to wit:

(1) In Criminal Case No. 94-5524, the petitioner shall suffer the indeterminate penalty of three years of *prison correccional*, as minimum, to six years, eight months and 21 days of *prision mayor*, as maximum;

(2) In Criminal Case No. 94-5525, the petitioner shall suffer the indeterminate penalty of two years of *prision correccional*, as minimum, to four years, nine months and 11 days of *prision correccional* plus fine of ₱5,000.00, as maximum;

(3) In Criminal Case No. 94-5526, the petitioner shall suffer the indeterminate penalty of two years and four months of *prision correccional*, as the minimum, to five years of *prision correccional* plus fine of ₱5,000.00, as the maximum; and

(4) In Criminal Case No. 94-5527, the petitioner shall suffer the indeterminate penalty of four years of *prision correccional*, as minimum, to seven years, eight months and 21 days of *prision mayor*, as maximum.

The Court **ORDERS** the petitioner to pay to BPI Family Saving Bank interest of 6% *per annum* on the aggregate amount of ₱65,000.00 to be reckoned from the finality of this judgment until full payment.

The petitioner shall pay the costs of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice