

# FIRST DIVISION

[ G.R. No. 233015, October 16, 2019 ]

**LUIS L. CO AND ALVIN S. CO, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, BANGKO SENTRAL NG PILIPINAS AND PHILIPPINE DEPOSIT INSURANCE CORPORATION, RESPONDENTS.**

## DECISION

**BERSAMIN, C.J.:**

When the information charges the accused to have forged a private document to commit fraud against another, the crime is falsification of a private document instead of *estafa*. It is the recital of the facts constitutive of the offense, not the designation of the offense in the information, that determines the crime being charged against the accused.

There can be no complex crime of falsification of private documents and *estafa* because the element of damage essential in both is the same.

### The Case

We resolve the appeal filed by the petitioners to seek the review and reversal of the decision promulgated on December 22, 2015,<sup>[1]</sup> whereby the Court of Appeals (CA) affirmed with modification the judgment rendered on February 11, 2013 by the Regional Trial Court (RTC), Branch 15, in Manila convicting them of *estafa* as defined and penalized under Article 315, paragraph 2(a), of the *Revised Penal Code*.<sup>[2]</sup>

### Antecedents

The CA summarized the factual and procedural antecedents thusly:

Accused-[a]ppellants Luis L. Co (Luis) and his son Alvin Milton S. Co (Alvin) were originally charged before the RTC with *Estafa*, as defined and penalized under Art. 315, paragraph 1(b) of the RPC, in an Information, which reads:

*That sometime during the period of March 1997 to December 1997, in the City of Manila and within the jurisdiction of this Honorable Court, the above-named accused[,], namely: **LUIS L. CO** and **ALVIN MILTON S. CO**[,], as principals by direct participation, with unfaithfulness or abuse of confidence, in their capacity (sic) as President and Assistant Vice President[,], respectively[,], of Jade Progressive Savings and Mortgage*

*Bank, a thrift bank organized under the existing laws of the Republic of the Philippines, conspiring, confederating[,] and mutually helping one another, did then and there, willfully, unlawfully, and feloniously defraud Jade Progressive Savings and Mortgage Bank, its depositors and creditors[,] through the use of deceit by authorizing the release of the total amount of **THREE MILLION, (sic) THIRTY[-]TWO THOUSAND NINE HUNDRED NINE PESOS (P3,032,909.00)** of the bank's funds supposedly as payment for services rendered by **ACME INVESTIGATION SERVICES, INC.** (a non-existent security agency), when in truth and in fact, no such contract existed and no such security services were rendered by said ACME INVESTIGATION SERVICES, INC[,], in favor of Jade Progressive Savings and Mortgage Bank. Thereafter, once in possession of the aforesaid amount of P3,032,909.00[,], the accused willfully, unlawfully, and feloniously misappropriate and convert the same for their own personal use and benefit, to the damage and prejudice of Jade Progressive Savings and Mortgage Bank, its depositors, creditors[,], and the Bangko Sentral ng Pilipinas, in the amount of P3,032,909.00, Philippine Currency.*

CONTRARY TO LAW.

The Accused-Appellants moved for the quashal of the Information on the ground that the same failed to allege facts constitutive of the crime of Estafa under Art. 315, paragraph 1(b) of the RPC. Their motion was denied; nonetheless, the RTC directed the prosecution to amend the Information.

The prosecution subsequently filed an amended Information this time charging the Accused-Appellants of Estafa, as defined and penalized under Art. 315, paragraph 2(a) of the RPC, the accusatory portion of which reads as follows:

*That in or about and during the period comprised between March 1997 to December 1997, inclusive, in the City of Manila, Philippines, the said accused, conspiring and confederating together and mutually helping each other, did then and there, willfully, unlawfully and feloniously defraud JADE PROGRESSIVE SAVINGS AND MORTGAGE BANK, a banking institution duly organized and existing under Philippine Laws, located at G/F Birchtree Plaza Bldg., 825 Muelle de Industria Binondo, this City, in the following manner[;] to wit: the said accused, Luis L. Co and Alvin Milton S. Co, President and Assistant Vice-President. respectively, of the said bank, and taking advantage of their position as such, by means of false pretenses or fraudulent acts which they made prior to or simultaneous with the commission of the fraud to the effect that there exists a contract between the*

said bank and ACME INVESTIGATION SERVICES. INC., a non-existent security agency, that the said security services of which were rendered in favor of the said bank, did in fact[,], with the intent to defraud, authorize the release of the amount of THREE MILLION, (sic) THIRTY[-]TWO THOUSAND NINE HUNDRED NINE PESOS (P3,032,909.00) and collect the same from the bank's funds for the purpose of paying the said security agency, said accused knowing fully well that no such security agency existed, no such contract exists between the said bank and the said agency[,], and no such security services were rendered in favor of the said bank and[,], therefore, no payment in the said amount of P3,032,909.00 having been made to the agency, that such acts/pretenses were only made by the accused for the purpose of obtaining (sic) as in fact, they did obtain the said total amount of P3,032,909.00 from the funds of the bank for their own personal use and benefit, thereby defrauding the said bank and its depositors and creditors, to the damage and prejudice of the said JADE PROGRESSIVE SAVINGS AND MORTGAGE BANK, its depositors and creditors[,], and the Bangko Sentral ng Pilipinas, in the said total amount of P3,032,909.00 Philippine Currency.

CONTRARY TO LAW.

The Accused-Appellants moved to quash the amended Information. They questioned the lack of signature of the Chief State Prosecutor and the Certification by any representatives of the State in the amended Information and the addition of new matters which changed the crime from Estafa under Art 315, par. 1(b) to Estafa under Art. 315, par. 2(a) of the RPC. Their motion was denied by the RTC.

When arraigned, the Accused-Appellants, assisted by counsel, pleaded not guilty to the crime charged. Pre-trial was conducted and terminated on June 7, 2004.

Thereafter, a hold departure order was issued against Accused-Appellants. Trial on the merits thereafter ensued.

The prosecution presented eight (8) witnesses: Catalina Zamora (Zamora), former Chief Accountant of Jade Bank; Minviluz Rubrico, former Deputy Liquidator of Jade Bank; Col. Ernesto Jimeno, General Manager of Philippine Association of Detective and Protective Agency (PADPAO); Julie Mae Barrios, Branch Head of Metrobank, Rada-Rodriguez branch; Spenser Say, Cluster Head of Metrobank Boni Avenue branch; PSI Wilfredo Rayos, Chief of Records section of the Security Agencies and Guards Supervision Division of the Philippine National Police (PNP); Raul Permejo, former messenger of Jade Bank; and Rodolfo Rante, Assisting Deputy Liquidator of Jade Bank.

On the other hand, the defense presented the two (2) Accused Appellants on the witness stand. The RTC denied the testimony of Josephine Bravo,

a practicing accountant, as to the procedure and banking practice of Jade Bank for she has no personal knowledge thereof.

**The Version of the Prosecution:**

Jade Bank was a thrift bank duly organized and existing under Philippine laws, with principal office address at G/F Birchtree Plaza Bldg., 825 Muelle de Industria, Binondo, Manila. In 2001, it was placed under liquidation by the Philippine Deposit and Insurance Corporation (PDIC).

The Accused-Appellants were both shareholders and officers of Jade Bank at the time material to the case. Accused-Appellant Luis was a director in 1996 and Acting President in 1997 while Accused-Appellant Alvin was Assistant Vice President in 1996 and 1997.

On April 21, 1997, Accused-Appellant Luis' secretary, Myla Jardeleza, handed Violeta Gella (Gella), disbursing clerk of Jade Bank, a request for payment with letter billing from Acme for investigation services and surveillance. The request was with the approval of Accused Appellant Luis. The letter billing signed by Arturo dela Cruz as Managing Director of Acme.

The check voucher and the checks were prepared by Gella and forwarded to Zamora, then Chief Accountant of Jade Bank. After verifying the entries and signing the billing statements, Zamora forwarded it to Accused-Appellant Alvin for certification and then back to Accused-Appellant Luis for approval of the check voucher and manager's check. Both the Accused-Appellants signed and certified the check vouchers and the manager's check. At the time, Zamora noticed that the letterhead of Acme had no contact number and therein signature of Arturo dela Cruz was similar to the signature of Accused-Appellant Alvin.

Several transactions of the same nature as above followed. Overall, the Accused-Appellants caused the release of eight (8) manager's checks supposedly for payment for services rendered by Acme amounting to Three Million Thirty-Two Thousand and Nine Hundred Nine Pesos (PhP3,032,909.00), as follows:

Transaction Date	Date of Letter Billing	Voucher Number	Manager's Check Number	Amount
April 21, 1997	March 31, 1997	2235	348	P242,900.00
April 21, 1997	April 23, 1997	2238	350	P262,250.00
May 16, 1997	May 15, 1997	2239	468	P400,250.00
June 17, 2007	June 15, 2007	2554	584	P401,250.00
July 21, 1997	May 15, 1997	2826	722	P313,838.00
August 14, 1997	July 31, 1997	3291	845	P524,500.00
September 16, 1997	June 30, 1997	3585	1077	P627,676.00
December 2,	December 1,	4246	1438	P260,245.00

1997	1997			
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As it turned out, Acme was a fictitious agency as it was neither registered with the Securities and Exchange Commission nor granted with the required license by the Security Agencies and Guards Supervision Division of the PNP. It was also not a registered member of PADPAO.

Investigations revealed that seven (7) of the eight (8) checks were deposited to Metrobank Account No. 7-310-500212 under the names of Nelson Sia and/or Antonio Santos, alleged officers of Acme. Said bank account, however, was opened and is owned and controlled by the Accused-Appellants; Nelson Sia and Antonio Santos being the alias used by Accused-Appellants Alvin and Luis, respectively.

Check No. 468, on the other hand, was deposited in Citytrust Bank Account No. 04-020-00743-1 in the names of Henry Chua, Al Mendoza, Antonio Santos, and/or Amelia Santos. This bank account was likewise opened and is owned and controlled by the Accused-Appellants. Zamora, who was directed to open the Citytrust account, witnessed Accused-Appellant Luis sign as Antonio Santos and Accused-Appellant Alvin as Al Mendoza. The total amount has since been withdrawn from the accounts.

### **The Version of the Defense:**

The Accused-Appellants denied the allegations against them.

Accused-Appellant Alvin stated that, as Sales/Product Manager and Assistant Vice President of Jade Bank, he was responsible for expanding the sales and creating new products and was under the supervision of Arcatomy Guarin, then the Chief Operating Officer and Executive Vice President of Jade Bank. He denied having any connection with Acme and maintained that he only signed the check vouchers after Zamora certified the correctness of the billing. He asserted further that the order for payment of Acme was approved by Accused-Appellant Luis.

On the other hand, Accused-Appellant Luis claimed that he signed the checks intended for Acme because all the initials from the accounting department were there. According to him, he was in no position to approve or disapprove billing statements because such is within the authority of the accounting department and he only signs the check if the payment is approved by said department and the check voucher is issued with all the required initials or signatures. He also testified that Acme provided security services to Jade Bank but that he has no direct participation in the said agency. On cross examination, however, he admitted that he cannot remember if Acme provided Jade Bank with security guards.

Accused-appellant Luis did not file his formal offer of evidence; thus, the RTC deemed him to have waived his right to file his formal offer of evidence.<sup>[3]</sup>