Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

JOSE RIZAL L. REMO, REYNALDO G. PANALIGAN, TITA L. MATULIN, ISAGANI CASALME, CIPRIANO P. ROXAS, CESARIO S. GUTIERREZ, CELSO A. LANDICHO and EDUARDO L. TAGLE,
Petitioners,

G.R. No. 192925

Present:

VELASCO, JR., *J.*,
Chairperson,
DE CASTRO,*
PEREZ,
REYES, and
JARDELEZA, *JJ*

-versus-

THE HONORABLE SECRETARY OF JUSTICE AGNES VST DEVANADERA, HONORABLE JUDGE DANILO SANDOVAL, HONORABLE CITY PROSECUTOR CARLOS BALLELOS, BATANGAS II ELECTRIC COOPERATIVE, INC., RUPERTO H. MANALO, NATIONAL ELECTRIFICATION ADMINISTRATION, LOURDES CRUZ, VIRGINIA BORJA, EDGAR DE GUZMAN and RODULFO CANLAS,
Respondents.

Promulgated:

December 9, 2016

x - x

DECISION

PEREZ, *J.*:

* Designated as Additional Member in lieu of Associate Justice Diosdado M. Peralta per Raffle dated December 7, 2016.

This case is an appeal[1] from the decision[2] dated 18 February 2010 and resolution[3] dated 16 July 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 110838.

The facts:

Prelude: BATELEC II, the Contracts, the NEA Audit

The Batangas II Electric Cooperative, Inc. (BATELEC II) is a cooperative engaged in the distribution and transmission of electric power to certain parts of the Batangas province.[4] It was organized and duly registered as a non-profit electric cooperative with the National Electrification Administration (NEA), pursuant to Presidential Decree (PD) No. 269, on 12 August 1977.

BATELEC II began its operations on 24 April 1978.

* * *

In 2004, BATELEC II entered into two (2) contracts that required it to spend a total of ₱81,100,000.00.

The first contract was entered into by BATELEC II with the I-SOLV Technologies, Inc. (ITI),[5] as represented by its president Manuel Ferdinand Trinidad (Trinidad). The contract was for the enterprise-wide automation and computerization of BATELEC II. Pursuant to the said contract, BATELEC II obligated itself to pay an aggregate amount of ₱75,000,000.00[6] to ITI in exchange of the total computerization solutions to be provided by the latter.

The second contract, on the other hand, was with the Supertrac Motors Corporation (Supertrac) and it was for the procurement of ten (10) boom trucks by BATELEC II. Under such contract, BATELEC II agreed to

---

1 *Rollo*, pp. 12-83. The appeal was filed as a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.

2 Id. at 318-337. The decision was penned by Associate Justice Florito S. Macalino for the Eleventh Division of the Court of Appeals with Associate Justices Hakim S. Abdulwahid and Normandie B. Pizarro, concurring.

3 Id. at 339-340. The resolution was penned by Associate Justice Florito S. Macalino for the Former Eleventh Division of the Court of Appeals with Associate Justices Hakim S. Abdulwahid and Normandie B. Pizarro, concurring.

4 Id. at 422-425, 422, *see* Articles of Incorporation of BATELEC II.

5 Now known as Smart Technologies, Incorporated.

6 See *rollo*, p. 320. Payable in twenty-two (22) monthly installments at ₱3,500,000.00 for the first 21 months and ₱1,500,000.00 for the 22nd month.

pay the sum of ₱6,100,000.00 to Supertrac as consideration for the ten (10) boom trucks to be supplied by the latter.[7] Supertrac was represented in the contract by its president, Rodrigo B. Bangayan (Bangayan).

* * *

In 2005, a NEA *audit report*[8] found the ITI and Supertrac contracts as having been replete with various irregularities and violations of NEA guidelines. Among the irregularities and anomalies noted in the said audit report were:[9]

A. *Re*: the ITI Contract

1. The decision to computerize BATELEC II was immediately implemented by the cooperative's directors without any documented comprehensive technical study or project design.

2. The award of the computerization contract to ITI was not preceded by competitive bidding as required by NEA regulations.

3. The directors of BATELEC II directly participated in the award of the computerization contract to ITI. Such participation thus violates NEA Bulletin No. 35 under Prohibition No. 2, which states that the members of the board of directors of an electric cooperative "[*s*]*hould not xxx involve themselves on functions that* [*do not*] *inherently belong to* [*m*]*anagement such as, for example, material purchases and procurement. x x x they should not sit as members of the* [*electric cooperative*]*'s bid[s] and awards committee but should confine themselves to laying down policies for* [*m*]*anagement's guidance.*"[10]

4. ITI is grossly unqualified to perform the ₱75,000,000.00 computerization contract:

---

7 *Rollo*, p. 323.

8 Id. at 511-549; the *2004 Audit Report* issued by the NEA on 18 March 2005. The reports contains the results of the audit it conducted on the accounts and transactions of BATELEC II for the period of 1 April 2001 to 30 September 2004.
Rollo, pp. 511-549; excerpts of the audit is found in the NEA decision dated 5 October 2006 in NEA ADM. Case No. 01-05-05.

9 Id.

10 CA *rollo*, pp. 171-176, 176; NEA Bulletin No. 35 dated 18 June 1990.

i. ITI was registered with the Securities and Exchange Commission (SEC) only on 6 April 2004 or just nine (9) days before the contract.

ii. ITI is undercapitalized for the venture. Its authorized capital stock is only worth ₱1,000,000.00, of which only a quarter—or merely ₱250,000.00—has been subscribed. Of its subscribed capital stock, only ₱62,500.00 is actually paid.

5. The computerization contract was implemented without prior approval from the NEA.

B. *Re*: the SMC Contract

1. The boom trucks of Supertrac were overpriced. Supertrac sells a boom truck at ₱610,000.00 per unit. A similar boom truck sold by a similar company[11] only sells at ₱320,000.00.

2. The bidding process that preceded the award of the boom trucks contract to Supertrac appears to be rigged. There are indications that three (3) of the four (4) companies that participated in the bid *i.e.*, Supertrac, the Sapphire Motors Corporation (SMC) and the Road & Tracks Motor Corporation (RTMC), are actually related, if not totally the same, companies:

i. The business address of the RTMC and the home address of one of its directors is the same as the home address of Bangayan—the president of Supertrac and the home addresses of two (2) directors of SMC.

ii. Ms. Rosalinda Accad is both the director of Supertrac and SMC.

iii. The delivery receipts nos. 3294, 3295, 3366 and 3337 that was issued by Supertrac to evidence its delivery of four (4) of the ten boom trucks to BATELEC II, were signed by Ms. Judith Sioco (Sioco) and approved by Ms. Ginalyn Valenton (Valenton). Sioco was also the signatory to the bid proposal of RTMC, while Valenton is also branch head of SMC.

* * *

[11] The audit report identified the Star Motors Corporation.

Spurred by the audit report's findings, some members-consumers of BATELEC II filed before the NEA an administrative complaint[12] charging the directors of the cooperative who approved the ITI and Supertrac contracts with gross mismanagement and corruption. Among those charged in the complaint were then BATELEC II directors and now herein petitioners Reynaldo G. Panaligan, Isagani S. Casalme, Cesario S. Gutierrez, Celso A. Landicho, Tita L. Matulin, Jose Rizal L. Remo, Cipriano P. Roxas and Eduardo L. Tagle.[13]

On 5 October 2006, the NEA rendered a decision ordering, among others, the removal of petitioners as directors of BATELEC II as well as the filing of appropriate criminal and civil actions against them by the remaining directors of BATELEC II.

On 9 October 2006, the NEA,[14] in conjunction with its decision, issued an order[15] directing the remaining directors[16] of BATELEC II, led by private respondent Ruperto H. Manalo (Manalo), to reorganize and elect a new set of officers for the cooperative immediately.

Pursuant to the 9 October 2006 order of the NEA, the remaining directors of BATELEC II conducted an election on 10 October 2006. In that election, Manalo was voted as new president of BATELEC II.[17]

The Criminal Complaint, the Resolution of the OCP and Criminal Cases No. 0503-2007 and 0504-2007

In the meantime, Manalo and the other private respondents[18] (Manalo *et al.*)—acting ostensibly for and on behalf of BATELEC II—filed a criminal complaint against petitioners, Trinidad and Bangayan before the Office of the City Prosecutor (OCP) of Lipa City. The complaint was docketed in the OCP as I.S. Nos. 07-0552 to 0553.

---

12 *Rollo*, pp. 506-510.

13 The other directors of BATELEC II who were charged in the administrative complaint were Ruben Calinisan, Gerardo Hernandez, Ireneo Montecer, Tirso M. Ramos, Jr.

14 *Via* then NEA Administrator Edita S. Bueno

15 CA *rollo*, p. 740.

16 Namely, private respondent Ruperto H. Manalo, Atty. Natalio M. Panganiban, Mr. Leovino O. Hidalgo, Mr. Gonzalo O. Bantugon, Mr. Adrian G. Ramos, Mr. Dakila P. Atienza and Mr. Michael Angelo C. Rivera.

17 CA *rollo*, p. 741; *via* BATELEC II Board Resolution No. 001, s. 2006.
Petitioners would challenged the 9 October 2006 order of the NEA *via* a petition for *certiorari* with the CA. Such petition was dismissed by the CA through its decision dated 15 December 2006. Undeterred, petitioners appealed the CA's decision before this Court. This appeal was docketed as G.R. No. 175736.
On 12 April 2016, we issued a decision in G.R. No. 175736 denying petitioners' appeal and affirming the CA's decision as well as the NEA order. ~~(*See* G.R. No. 175736, 12 April 2016)~~

18 Namely, private respondents Lourdes C. Cruz, Virginia B. Borja, Edgar A. de Guzman and Rodulfo B. Gelas (Canlas, in other parts of the records).

The complaint accused petitioners, Trinidad and Bangayan of having committed the crime of *syndicated estafa* under Presidential Decree (PD) No. 1689 in relation to Article 315(1)(b) of the Revised Penal Code (RPC). Manalo *et al.* alleged that petitioners, Trinidad and Bangayan acted in conspiracy, and as a syndicate, to defraud BATELEC II by way of the highly irregular and anomalous ITI and Supertrac contracts.[19] According to Manalo *et al.*, the implementation of such contracts have led to the misappropriation of millions and millions of pesos worth of funds of BATELEC II.

Preliminary investigation thereafter ensued.

On 9 November 2007, the OCP[20] issued a resolution[21] in I.S. Nos. 07-0552 to 0553. In the said resolution, the OCP found probable cause to hail petitioners to court albeit only for two (2) counts of *simple estafa* under Article 315(1)(b) of the RPC. The OCP, however, absolved Trinidad and Bangayan on the ground of lack of evidence against them. The dispositive portion of the resolution thus reads:[22]

> **WHEREFORE**, premises considered, let informations for violation of Article 315 1 (b) of the Revised Penal Code for two (2) counts be filed in the proper court against [petitioners] Reynaldo G. Panaligan, Tita L. Matulin, Jose Rizal [L.] Remo, Isagani S. Casalme, Cipriano P. Roxas, Cesario S. Gutierrez, Celso A. Landicho and Eduardo L. Tagle.
>
> The complaint against respondents Ferdinand Trinidad and Rodrigo Bangayan is hereby DISMISSED for insufficiency of evidence.

Pursuant to the OCP resolution, two (2) informations[23] for simple estafa under Article 315(1)(b) of the RPC were filed against petitioners before the Regional Trial Court (RTC) of Lipa City. Both informations were raffled to Branch 12, presided by Judge Danilo S. Sandoval (Judge Sandoval). The information pertaining to the estafa committed in relation with the ITI contract was docketed as Criminal Case No. 0503-2007 whereas that pertaining to the estafa committed in relation with the Supertrac contract was docketed as Criminal Case No. 0504-2007.

Petitions For Review Before the Justice Secretary and the Flip-Flopping Resolutions

---

19 *Rollo*, pp. 85-103, 89; *see* Resolution of the OCP dated 9 November 2007 in I.S. Nos. 07-0552 to 0553.

20 Thru State Prosecutors Florencio D. Dela Cruz, Jr. and Nolibien N. Quiambao who were designated as acting city prosecutors of Lipa City under Department Order No. 713 dated 23 August 2007 of the Department of Justice.

21 Id. at 85-103.

22 Id. at 101.

23 *Rollo*, pp. 607-611, 659-661; both dated 9 November 2007.

The filing of the informations notwithstanding, petitioners and Manalo still filed their respective petitions for review assailing the OCP resolution before the Secretary[24] of the Department of Justice (DOJ).

In their petition for review,[25] petitioners challenged, among others, the OCP's finding of probable cause for simple estafa against them. Petitioners insist upon their absolute innocence of any crime and pray for the dismissal of the complaint against them.

In his petition for review, on the other hand, Manalo sought to question the OCP's absolution of Trinidad and Bangayan and also its downgrading of the indictable offense from syndicated estafa to simple estafa. Manalo maintained that petitioners, Trinidad and Bangayan should all be charged with the crime of syndicated estafa.[26]

On **26 November 2008**, the DOJ Secretary issued a **resolution**[27] dismissing petitioners' petition for review for lack of merit and favoring Manalo's petition. The DOJ Secretary agreed with Manalo's assertion that petitioners, Trinidad and Bangayan should all be charged and be so charged with the crime of syndicated estafa. Thus, in his resolution, the DOJ Secretary ordered the modification of the OCP resolution and directed the filing in court of two (2) separate informations for syndicated estafa—one against petitioners and Trinidad and another against petitioners and Bangayan. The dispositive portion of the resolution accordingly provides:[28]

> **WHEREFORE**, the assailed Resolution is hereby **MODIFIED** and that the Investigating State Prosecutors are directed to file Two (2) Separate Informations in Court, to wit:
>
> 1. Information for Syndicated Estafa under Presidential Decree 1689 in relation to Article 315 paragraph 1 (b) of the Revised Penal Code against [petitioners] Reynaldo Panaligan, Jose Rizal Remo, Tita Matulin, Isagani Casalme, Cipriano Roxas, Cesario Gutierrez, Celso Landicho, Eduardo [L.] Tagle and Manuel Ferdinand Trinidad.
>
> 2. Information for Syndicated Estafa under Presidential Decree 1689 in relation to Article 315 paragraph 1 (b) of the Revised Penal Code against [petitioners] Reynaldo Panaligan, Jose Rizal Remo, Tita Matulin, Isagani Casalme, Cipriano Roxas, Cesario Gutierrez, Celso Landicho, Eduardo L. Tagle and Rodrigo Bangayan.
>
> **SO ORDERED**.

---

24 Then, Secretary Raul M. Gonzales.

25 CA *rollo*, pp. 96-102; dated 26 November 2007.

26 *Rollo*, pp. 136-161, 159; *see* Resolution of the DOJ Secretary dated 26 November 2008 in I.S. Nos. 07-0552 to 0553.

27 Id. at 131-161.

28 Id. at 160.

Petitioners, Trinidad and Bangayan all filed their respective motions for reconsideration from the above resolution.

On **28 January 2009**, the DOJ Acting Secretary issued a **resolution**[29] granting Trinidad's motion for reconsideration. In the said resolution, the DOJ Secretary held that there is not enough evidence presented during the preliminary investigation that sufficiently establishes that Trinidad was in conspiracy with the petitioners.[30] Hence, in the resolution, the DOJ Secretary ordered the exclusion of Trinidad from the informations for syndicated *estafa* that were required to be filed pursuant to the 26 November 2008 resolution.

On 24 February 2009, petitioners filed a new motion praying for the resolution of the issues raised in their original motion for reconsideration (motion to resolve issues).[31]

On **6 May 2009**, the DOJ Secretary issued a **resolution**[32] granting Bangayan's motion for reconsideration. In the said resolution, the DOJ Secretary ordered the exclusion of Bangayan from the informations for syndicated *estafa* that were required to be filed pursuant to the 26 November 2008 resolution. The resolution based its absolution of Bangayan on the ground that he, like Trinidad, was not shown to have conspired with petitioners regarding the approval of the Supertrac contract.[33]

On **2 June 2009**, the DOJ Secretary issued an **order**[34] denying petitioners' motion for reconsideration.

On **4 June 2009**, however, the DOJ Secretary issued another **resolution**;[35] this time, acting upon the petitioners' motion to resolve issues. In this resolution, the DOJ Secretary ordered the charges to be filed against petitioners, pursuant to the 26 November 2008 resolution, to be downgraded from syndicated estafa to mere simple estafa under Article 315 paragraph 1 (b) of the RPC.

Aggrieved by the 4 June 2009 resolution, Manalo *et al.* filed a motion for reconsideration.

---

29 Id. at 690-693.
30 Id.
31 Id. at 694-704.
32 Id. at 208-211.
33 Id.
34 Id. at 729-732.
35 Id. at 733-737.

On **28 July 2009**, the DOJ Secretary[36] issued a **resolution**[37] granting Manalo *et al.*'s motion for reconsideration. In another flip flop, the DOJ Secretary opined that Trinidad and Bangayan should both be charged along with the petitioners and the charge against them ought to be syndicated estafa. Hence, in this resolution, the DOJ Secretary reverted back to the original disposition under the 26 November 2008 resolution and again required the filing of two (2) informations for syndicated estafa—one against petitioners and Trinidad and another against petitioners and Bangayan.

Trinidad and Bangayan each filed a motion for reconsideration from the 28 July 2009 resolution.[38]

The Amendment of the Informations, the Issuance of Warrants of Arrests and the Exclusion Anew of Trinidad and Bangayan

On the other hand, the OCP filed before the RTC amended informations in Criminal Case Nos. 0503-2007 and 0504-2007 on 7 October 2009.[39] The amended informations were filed in compliance with the 28 July 2009 resolution of the DOJ Secretary, thus:

1. In Criminal Case No. 0503-2007, the OCP filed an amended information for **syndicated estafa** under PD No. 1689 in relation to Article 315(1)(b) of the RPC against **petitioners and Trinidad**, *and*

2. In Criminal Case No. 0504-2007, the OCP filed an amended information for **syndicated estafa** under PD No. 1689 in relation to Article 315(1)(b) of the RPC against **petitioners and Bangayan**.

On even date, the RTC, through Judge Sandoval, forthwith issued an order[40] admitting the amended informations and directing the issuance of warrants of arrest against the petitioners, Trinidad and Bangayan.

---

36 Then Acting Secretary Agnes VST Devanadera.

37 *Rollo*, pp. 756-777.

38 Id. at 778-779; petitioners also filed their motion for reconsideration, but the same was denied by the DOJ Secretary *via* a resolution dated 28 September 2009.

39 *See* CA *rollo*, pp. 363-367.

40 *Rollo*, pp. 420-421.

Subsequently, however, the DOJ Acting Secretary issued resolutions[41] granting the motions for reconsideration of Trinidad and Bangayan and ordered their exclusion anew from the amended informations. The RTC, for its part, eventually approved of such exclusion.

Petitioners' Certiorari to the CA, the Ruling of the CA and the Present Appeal

Upset by the turn of events, petitioners filed with the CA a petition for *certiorari*[42] challenging the validity of: (a) the 28 July 2009 resolution of the DOJ Secretary and (b) the warrants of arrest issued by the RTC in Criminal Case Nos. 0503-2007 and 0504-2007. This petition was docketed as CA-G.R. SP No. 110838.

Petitioners allege that the 28 July 2009 resolution of the DOJ Secretary and the warrants of arrest issued by the RTC have been products of grave abuse of discretion. They specifically claim:[43]

1. The DOJ Secretary gravely abused its discretion when it ordered the filing of informations for syndicated estafa, despite the fact that not all the elements of such crime, or even of simple estafa, has been established in this case:

   a. Manalo *et al.* presented no evidence establishing that petitioners misappropriated or converted funds of BATELEC II. The funds of BATELEC II were duly paid to Supertrac and ITI pursuant to the contracts and it was never shown that petitioners had been in conspiracy with either corporation.

   b. Even assuming the existence of estafa, petitioners cannot be considered as a "*syndicate*" pursuant to PD No. 1689 since they never formed themselves into a corporation or cooperative with the sole purpose of defrauding the public.

   c. Moreover, there is no evidence showing that the funds used in the Supertrac and ITI contracts were derived from contributions paid by members of BATELEC II.

---

41 Id. at 307-311 and 312-317; Bangayan's motion for reconsideration was granted *via* a resolution dated 12 October 2009; Trinidad's motion for reconsideration was granted *via* a resolution dated 12 November 2009.

42 CA *rollo*, pp. 7-51.

43 Id.

2. Judge Sandoval likewise gravely abused his discretion when he issued the warrants of arrest almost immediately after the amended informations; relying merely on the resolution of the prosecutors and the DOJ Secretary and without making a personal determination of the existence of probable cause as required by the Constitution.

On 18 February 2010, the CA rendered a decision[44] in CA-G.R. SP No. 110838 dismissing the *certiorari* petition of petitioners. It ascribed no grave abuse of discretion either on the part of the DOJ Secretary for her 28 July 2009 resolution or on the part of Judge Sandoval for his warrants of arrest.

Petitioners moved for reconsideration, but the CA remained steadfast.[45]

Hence, this appeal.

OUR RULING

The facts upon which the DOJ Secretary premised its finding of probable cause against petitioners are clear and not disputed.

The petitioners were the directors of BATELEC II that approved, for the said cooperative, the contracts with ITI and Supertrac. The contracts required BATELEC II to pay a total of ₱81,000,000.00 to ITI and Supertrac in exchange for the system-wide computerization of the cooperative and for ten (10) boom trucks. It was, however, alleged that petitioners—in approving the ITI and Supertrac contracts—have committed undue haste, violated various NEA guidelines and paid no regard to the disadvantageous consequences of the said contracts to the interests of BATELEC II in general.

Meanwhile, it has been established that Trinidad and Bangayan—the presidents of ITI and Supertrac, respectively—have not been in conspiracy with petitioners insofar as the approval of the contracts were concerned.[46]

---

44 *Rollo*, pp. 318-337.
45 Id. at 339-340.
46 Supra note 41. *See* further *rollo*, pp. 690-693 and 208-211.

From the foregoing, the DOJ Secretary held that petitioners ought to be indicted for two counts of syndicated estafa under PD No. 1689 in relation to Article 315(1)(b) of the RPC.

We disagree.

Our review of the established facts *vis-à-vis* the applicable laws and jurisprudence had made it clear that such indictment could not have been based on any valid finding of probable cause: *first*, as the petitioners cannot be regarded as a "*syndicate*" under PD No. 1689 and *second*, as they could not even be considered to have committed simple estafa under Article 315(1)(b) of the RPC.

We find then that the finding of probable cause against petitioners to be grossly erroneous. The petitioners were right. The 28 July 2009 resolution of the DOJ Secretary, their indictment and, necessarily, the warrants of arrest issued against them were indeed products of grave abuse of discretion. All must be, as they should have been, set aside.

Hence, we grant the instant appeal.

I

We begin with the basics.

Any person who causes pecuniary damage upon another through any of the acts of abuse of confidence or of deceit, as enumerated in Article 315 of the RPC, commits the crime of estafa or swindling. One of such acts of *abuse of confidence* is that specified in Article 315(1)(b) of the RPC, *viz*:[47]

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

Broken down, estafa under Article 315(1)(b) of the RPC has the following elements:[48]

---

47 REVISED PENAL CODE (RPC) or Act No. 3815.

48 *Corpuz v. People of the Philippines*, G.R. No. 180016, 29 April 2014, 724 SCRA 1, 31-32.

1. That money, goods or other personal property is received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return the same;

2. That there be misappropriation or conversion of such money or property by the offender or denial on his part of such receipt;

3. That such misappropriation or conversion or denial is to the prejudice of another; *and*

4. That there is a demand made by the offended party on the offender.

The crime known as syndicated *estafa*, on the other hand, is set forth and penalized by Section 1 of PD No. 1689. The said section reads:

> **Section 1.** Any person or persons who shall commit *estafa* or other forms of swindling as defined in Article 315 and 316 of the Revised Penal Code, as amended, shall be punished by life imprisonment to death if the swindling (*estafa*) is committed by a syndicate consisting of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme, and the defraudation results in the misappropriation of moneys contributed by stockholders, or members of rural banks, cooperative, "*samahang nayon(s)*", or farmers' associations, or of funds solicited by corporations/associations from the general public.
>
> When not committed by a syndicate as above defined, the penalty imposable shall be reclusion temporal to *reclusion perpetua* if the amount of the fraud exceeds 100,000 pesos.

In essence, syndicated estafa is but the commission of any kind of estafa under Article 315 of the RPC (or other forms of swindling under Article 316) with two (2) additional conditions: *one*, the estafa or swindling was perpetrated by a "*syndicate*" and *two*, the estafa or swindling resulted in the "*misappropriation of money contributed by stockholders, or members of rural banks, cooperative, samahang nayon(s), or farmers association, or of funds solicited by corporations/associations from the general public.*" Thus, in *People v. Balasa*,[49] we detailed the elements of syndicated estafa as follows:

1. Estafa or other forms of swindling as defined in Articles 315 and 316 of the Revised Penal Code is committed;

2. The estafa or swindling is committed by a syndicate; *and*

---

[49] G.R. No. 106357, 3 September 1988.

3. The defraudation results in the misappropriation of moneys contributed by stockholders, or members of rural banks, cooperatives, *samahang nayon(s)*, or farmers associations, or of funds solicited by corporations/associations from the general public.

The penalty for syndicated estafa under PD No. 1689 is significantly heavier than that of simple estafa under Article 315 of the RPC.[50] The penalty imposable for simple estafa follows the schedule under Article 315 and is basically dependent on the value of the damage or prejudice caused by the perpetrator, but in no case can it exceed twenty (20) years imprisonment.[51] Syndicated estafa, however, is punishable by life imprisonment to death regardless of the value of the damage or prejudiced caused.

II

The first reason why the finding of probable cause for syndicated estafa against petitioners cannot stand is because they, under the circumstances, cannot be considered as a "*syndicate*" under PD No. 1689. As stated in the foregoing discussion, in order to commit the crime of syndicated estafa, the estafa must be committed by a "*syndicate*" as contemplated by the law.

In PD No. 1689, the term syndicate is described as "*consisting of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme* x x x." By itself, however, such description can be vague and somewhat confusing. Indeed, going by the description alone, one can be led into the inference that an estafa committed by five conspiring persons against any of the stockholders or members of the associations mentioned under PD No. 1689 would automatically give rise to the crime of syndicated estafa. But is such inference really what the law contemplates?

Fortunately, the true import of the term "syndicate" has already been elucidated upon by relevant jurisprudence. Drawing from textual clues from the statute itself, our case law answers the foregoing query with a clear *no*.

---

50 This is equally true in the case of other forms of swindling under Article 316 of the RPC, which is only punishable by *arresto mayor* in its minimum to medium periods and a fine of not less than the value of the damage caused but not more three times such value.

51 Article 315 of the RPC.

Syndicate Must Be Five or More Persons Who Used The Association That They Formed or Managed to Defraud Its Own Stockholders, Members or Depositors.

Our resolution in the case of *Galvez v. Court of Appeals, et al.*[52] points us in the right direction. In *Galvez*, a criminal complaint for syndicated estafa was filed against five individuals who were the interlocking directors of two corporations that purportedly defrauded a commercial bank. Acting on such complaint, the city prosecutor issued a resolution finding probable cause to indict the directors for simple estafa under Article 315(2)(a) of the RPC, but not for syndicated estafa. This resolution was subsequently reversed by the DOJ Secretary upon review, but was ultimately sustained by the CA on *certiorari*. In its appeal to this Court, the commercial bank raised the question of whether the city prosecutor was correct in not charging the directors with syndicated estafa.

Galvez resolved the question in the affirmative. Citing the text of Section 1 of PD No. 1689 as well as previous cases that applied the said law, *Galvez* declared that in order to be considered as a syndicate under PD No. 1689, the perpetrators of an estafa must not only be comprised of at least five individuals but **must have also used the association that they formed or managed to defraud its own stockholders, members or depositors**. Thus:[53]

> On review of the cases applying the law, we note that the **swindling syndicate used the association that they manage to defraud the general public of funds contributed to the association**. Indeed, Section 1 of Presidential Decree No. 1689 speaks of a syndicate formed with the intention of carrying out the unlawful scheme for the misappropriation of the money contributed by the members of the association. In other words, **only those who formed [or] manage associations that receive contributions from the general public who misappropriated the contributions can commit syndicated *estafa***. xxx. (Emphasis supplied).

Hence, *Galvez* held that since the directors therein were "*outsiders*" or were not affiliated in any way with the commercial bank whose funds they allegedly misappropriated, they cannot be charged with syndicated estafa but only of simple estafa under Article 315(2)(a) of the RPC.

Dissecting the pronouncement in *Galvez* for our present purposes, however, we are able to come up with the following standards by which a

---

52 704 Phil. 463 (2013).

53 Id. at 473.

group of purported swindlers may be considered as a syndicate under PD No. 1689:

1. They must be at least five (5) in number;[54]

2. They must have formed or managed[55] a rural bank, cooperative, "*samahang nayon*," farmer's association or any other corporation or association that solicits funds from the general public.[56]

3. They formed or managed such association with the intention of carrying out an unlawful or illegal act, transaction, enterprise or scheme[57] *i.e.*, they used the very association that they formed or managed as the means to defraud its own stockholders, members and depositors.[58]

Guided by the foregoing standards, we shall now venture to apply the same to the instant case.

Petitioners Do Not Constitute a Syndicate; They Did Not Use BATELEC II as a Means to Defraud Its Members of their Contributions

There is no doubt that petitioners met the first and second standards under *Galvez*: petitioners are more than five (5) in number and they, as its directors, had management of BATELEC II—an electric cooperative. What is lacking on the part of the petitioners is the third standard. **Petitioners do not constitute a syndicate under PD No. 1689, as they never used BATELEC II as a means to defraud its members.**

To satisfy the third standard under *Galvez*, it must be established that the purported swindlers used the very association they formed or managed to defraud its members. Since the association contemplated by PD No. 1689 must be one that "*solicit[s] fund from the general public*," it follows **that the fraud committed through such association must pertain to its receipt of contribution or solicitation from its stockholders, members or the public**. Such kind of fraud is evidently missing in the case at bench:

---

54 Section 1 of PD No. 1689.
55 365 Phil. 531, 543 (1999).
56 *See* Section 1 of PD No. 1689 in relation to *Galvez v. Court of Appeals*, supra note 52.
57 Supra note 54.
58 Supra note 52 at 474.

First. It is undisputed that the contributions of the members of BATELEC II were paid to the latter not out of any fraudulent act, transaction or scheme. As admitted by Manalo *et al.*, the "*contributions*" of the members of BATELEC II comprise of their payments for the electricity being supplied by the cooperative.[59] In other words, **the contributions of the members of BATELEC II were received by the latter through legitimate transactions**.

Second. As BATELEC II received the contributions of its members *via* legitimate transactions, it cannot be said that the petitioners had used the cooperative to commit fraud on any of its members. Any alleged misuse of such contributions committed by petitioners *after BATELEC II has already received them through legal means* would **not constitute as defraudation committed through the cooperative, but would merely be an act of mismanagement committed against it**. Clearly then, the third standard of *Galvez* was not met.

Verily, petitioners cannot be considered as a syndicate under PD No. 1689. They, therefore, cannot also be charged with syndicated estafa under the said law.[60]

III

There is, however, a more fundamental reason why the finding of probable cause against petitioners should fail. The petitioners, under the circumstances, could not even be considered to have committed simple estafa under Article 315(1)(b) of the RPC.

The first two (2) elements of estafa under Article 315(1)(b) of the RPC do not exist by the factual circumstances of this case.

As Directors of BATELEC II that Approved the ITI and Supertrac Contracts, Petitioners Did Not Receive Funds of the Cooperative; They Don't Have Juridical Possession of Cooperative Funds

The first element of estafa under Article 315(1)(b) of the RPC is that the offenders must have received money, goods or other personal property—

---

59 *Rollo*, pp. 446, 482; *see* Comment of private respondent Manalo.

60 *Cf. People v. Romero*, supra note 55 at 539 and *People v. Menil, Jr.*, 394 Phil. 433, 441 (2000). The second paragraph of Section 1 of PD No. 1689 will only apply if the group of swindlers does not meet the first standard but satisfies the second and third standards of *Galvez*.

(a) in trust (b) on commission (c) for administration or (d) under any obligation involving the duty to make delivery of, or to return the same. This element is absent in this case since petitioners did *not* receive any of the funds of BATELEC II as such.

While petitioners, as directors of BATELEC II, may be said to be vested with control over how the cooperative spends its funds,[61] the same cannot be considered as receipt and possession of such funds under Article 315(1)(b) of the RPC. This is so because petitioners—even in their capacities as directors of BATELEC II—do not acquire *juridical possession* of the funds of the cooperative.

Juridical possession is the type of possession that is acquired by the transferee of a thing when he receives the same under the circumstances mentioned in Article 315(1)(b) of the RPC.[62] When juridical possession is acquired, the transferee obtains such right over the thing that he can set up even against its owner.[63] This is what petitioners lack.

Petitioners, despite their collective authority as directors to authorize expenditures for BATELEC II, do not have juridical possession over the funds of the cooperative. They simply do not have any right over such funds that they can set up against BATELEC II.

Clearly, petitioners cannot be considered to have received BATELEC II funds under the circumstances mentioned in Article 315(1)(b) of the RPC. The first element of estafa under the same provision is, therefore, absent.

There is no Misappropriation or Conversion of the Funds of BATELEC II

But even assuming that the first element of estafa under Article 315(1)(b) of the RPC is present in this case, a finding of probable cause against petitioners is still bound to collapse. This is so because the second element of estafa under the said article is just the same non-existent.

---

61 Section 24 of PD No. 269, as amended, provides:
SECTION 24. *Board of Directors.* —
(a) The Management of a Cooperative shall be vested in its Board, subject to the supervision and control of NEA which shall have the right to be represented and to participate in all Board meetings and deliberations and to approve all policies and resolutions.
xxxx

62 387 Phil. 15, 25 (2000).

63 Id. at 26.

The second element of estafa under Article 315(1)(b) of the RPC requires that there must be *misappropriation* or *conversion* of the money or property received by the offender or a denial on his part of such receipt. The terms misappropriation or conversion, in the context of the article on point, connotes "*an act of using or disposing of another's property as if it were one's own or of devoting it to a purpose or use different from that agreed upon.*"[64] This element was not established in this case:

First. In approving the ITI and Supertrac contracts, the petitioners merely exercised their prerogative—as directors of the cooperative—to enter into contracts that they deem to be beneficial for BATELEC II.[65] Though the petitioners may have committed certain lapses, errors in judgment or even violations of NEA guidelines in making such approval, these do not have the effect of rendering the contracts with ITI and Supertrac illegal or void *ab initio.* Hence, from a strictly legal perspective, any payment made by BATELEC II pursuant to such contracts—backed as they were by the proper board approvals[66]—cannot *per se* be deemed a misappropriation or conversion of the cooperative's funds.

Second. Manalo *et al.* presented absolutely no evidence that the funds of BATELEC II were *not* spent in accordance with the ITI and Supertrac contracts as approved by the petitioners. In other words, there was no proof that the funds of the cooperative had been paid to persons or for purposes other than those to whom and for which the said funds ought to be paid under the contracts. As the evidence stands, no one but ITI and Supertrac received BATELEC II funds.

Third. Moreover, the absolution of both Trinidad and Bangayan—on the ground that they were not in conspiracy with the petitioners—greatly undermines any potential inference of misappropriation or conversion on the part of the petitioners. It negates the possibility that petitioners could have used the ITI and Supertrac contracts to embezzle funds from the cooperative. More significantly, it indirectly proves petitioners' good faith in approving the ITI and Supertrac contracts.

Verily, petitioners cannot be considered to have misappropriated or converted BATELEC II funds. The second element of estafa under the same provision is, therefore, nil.

---

64 700 Phil. 632, 640 (2012).

65 Supra note 61.

66 CA *rollo*, pp. 355-356; BATELEC II Board Resolution No. 04-067 for the ITI contract and BATELEC II Board Resolution No. 04-111 for the Supertrac contract.

Without Misappropriation or Conversion, Any Prejudice Caused Upon BATELEC II May Only Give Rise to Civil Liability

Without proof of misappropriation or conversion, the finding that petitioners may have committed the crime of estafa under Article 315(1)(b), much less of syndicated estafa, obviously, cannot hold. As we have seen, the evidence of Manalo *et al.* only tends to establish that petitioners have committed various lapses and irregularities in approving the ITI and Supertrac contracts and that such lapses and irregularities, in turn, caused some prejudice to BATELEC II. Such evidence, by itself, is certainly not enough for purposes of criminal prosecution for estafa.

Given the evidence at hand, petitioners, at most, may only be held civilly liable for the prejudice sustained by BATELEC II[67] subject to defenses petitioners may raise.

IV

We thus come to the disposition of this case.

We hold that the CA erred when it found that the DOJ Secretary did not commit grave abuse of discretion in issuing 28 July 2009 resolution in I.S. Nos. 07-0552. In view of the absolute dearth of evidence supporting the finding of probable cause against petitioners, we indeed find that the said resolution had been the product of such abuse of discretion. Consequently, we must set aside the decision of the CA and direct the incumbent Secretary of Justice to withdraw the informations filed against petitioners pursuant to the 28 July 2009 resolution.

The warrants of arrest issued against petitioners in Criminal Case Nos. 0503-2007 and 0504-2007 must too be lifted, as a necessary consequence of the invalidity of the indictment against them.

WHEREFORE, premises considered, the petition is hereby **GRANTED**. We hereby render a decision as follows:

1. **REVERSING** and **SETTING ASIDE** the decision dated 18 February 2010 and resolution dated 16 July 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 110838;

---

67 34 Phil. 227 (1916).

2. **SETTING ASIDE** the resolution dated 28 July 2009 of the Secretary of the Department of Justice in I.S. Nos. 07-0552 to 0553 and **DIRECTING** the Secretary of Justice to issue a resolution dismissing the criminal complaint docketed as I.S. Nos. 07-0552 to 0553 before the Office of City Prosecutor of Lipa City for lack of probable cause and lack of merit;

3. **DIRECTING** the incumbent Secretary of the Department of Justice to file motion to dismiss the informations in Criminal Case Nos. 0503-2007 and 0504-2007 with the Regional Trial Court of Lipa City, Branch 12, and to ask for the **LIFTING** of the warrants of arrest issued against petitioners pursuant to the 7 October 2009 Order of the said RTC of Lipa City.

Let a copy of this Decision be served to the Regional Trial Court, Branch 12, of Lipa City for its consideration.

SO ORDERED.

JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

BIENVENIDO L. REYES
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

I attest 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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Third Division, Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
DEC 19 2016