PIO

Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

CARLOS L. TANENGGEE,
Petitioner,

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

G.R. No. 179448

Present:

CARPIO, *Chairperson,*
BRION,
DEL CASTILLO,
PEREZ, *and*
PERLAS-BERNABE, *JJ.*

Promulgated:
JUN 2 6 2013

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DECISION

DEL CASTILLO, *J.*:

Assailed in this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court is the December 12, 2006 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR No. 23653 affirming with modification the June 25, 1999 Decision[3] of the Regional Trial Court (RTC) of Manila, Branch 30, in Criminal Case Nos. 98-163806-10 finding Carlos L. Tanenggee (petitioner) guilty beyond reasonable doubt of five counts of estafa through falsification of commercial documents. Likewise questioned is the CA's September 6, 2007 Resolution[4] denying petitioner's Motion for Reconsideration[5] and Supplemental Motion for Reconsideration.[6]

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1 *Rollo*, pp. 18-103.
2 CA *rollo*, pp. 206-230; penned by Associate Justice Monina Arevalo-Zenarosa and concurred in by Associate Justices Martin S. Villarama, Jr. and Lucas P. Bersamin (now members of this Court).
3 Records of Criminal Case No. 98-163806, pp. 396-405; penned by Judge Senecio O. Ortile.
4 CA *rollo*, pp. 277-279.
5 Id. at 231-243.
6 Id. at 247-257.

Factual Antecedents

On March 27, 1998, five separate Informations[7] for estafa through falsification of commercial documents were filed against petitioner. The said Informations portray the same mode of commission of the crime as in Criminal Case No. 98-163806 but differ with respect to the numbers of the checks and promissory notes involved and the dates and amounts thereof, *viz*:

> That on or about July 24, 1997, in the City of Manila, Philippines, the said accused, being then a private individual, did then and there wilfully, unlawfully and feloniously defraud, thru falsification of commercial document, the METROPOLITAN BANK & TRUST CO. (METROBANK), represented by its Legal officer, Atty. Ferdinand R. Aguirre, in the following manner: herein accused, being then the Manager of the COMMERCIO BRANCH OF METROBANK located at the New Divisoria Market Bldg., Divisoria, Manila, and taking advantage of his position as such, prepared and filled up or caused to be prepared and filled up METROBANK Promissory Note Form No. 366857 with letters and figures reading "BD#083/97" after the letters reading "PN", with figures reading "07.24.97" after the word "DATE", with the amount of ₱16,000,000.00 in words and in figures, and with other words and figures now appearing thereon, typing or causing to be typed at the right bottom thereof the name reading "ROMEO TAN", feigning and forging or causing to be feigned and forged on top of said name the signature of Romeo Tan, affixing his own signature at the left bottom thereof purportedly to show that he witnessed the alleged signing of the said note by Romeo Tan, thereafter preparing and filling up or causing to be prepared and filled up METROBANK CASHIER'S CHECK NO. CC 0000001531, a commercial document, with date reading "July 24, 1997", with the name reading "Romeo Tan" as payee, and with the sum of ₱15,362,666.67 in words and in figures, which purports to be the proceeds of the loan being obtained, thereafter affixing his own signature thereon, and [directing] the unsuspecting bank cashier to also affix his signature on the said check, as authorized signatories, and finally affixing, feigning and forging or causing to be affixed, feigned and forged four (4) times at the back thereof the signature of said Romeo Tan, thereby making it appear, as it did appear that Romeo Tan had participated in the [preparation], execution and signing of the said Promissory Note and the signing and endorsement of the said METROBANK CASHIER'S CHECK and that he obtained a loan of ₱16,000,000.00 from METROBANK, when in truth and in fact, as the said accused well knew, such was not the case in that said Romeo Tan did not obtain such loan from METROBANK, neither did he participate in the preparation, execution and signing of the said promissory note and signing and endorsement of said METROBANK CASHIER'S CHECK, much less authorize herein accused to prepare, execute and affix his signature in the said documents; that once the said documents were forged and falsified in the manner above set forth, the said accused released, obtained and received from the METROBANK the sum of ₱15,363,666.67 purportedly representing the proceeds of the said loan, which amount, once in his possession, with intent to defraud, he misappropriated, misapplied and converted to his own

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[7] Records of Criminal Case No. 98-163806, pp. 2-3; records of Criminal Case No. 98-163807, pp. 1-2; records of Criminal Case No. 98-163808, pp. 1-2; records of Criminal Case No. 98-163809, pp. 1-2; records of Criminal Case No. 98-163810, pp. 1-2.

> personal use and benefit, to the damage and prejudice of the said METROBANK in the same sum of ₱15,363,666.67, Philippine currency.
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> CONTRARY TO LAW.[8]

On May 27, 1998, the RTC entered a plea of not guilty for the petitioner after he refused to enter a plea.[9] The cases were then consolidated and jointly tried.

The proceedings before the RTC as aptly summarized by the CA are as follows:

> During the pre-trial, except for the identity of the accused, the jurisdiction of the court, and that accused was the branch manager of Metrobank Commercio Branch from July 1997 to December 1997, no other stipulations were entered into. Prosecution marked its exhibits "A" to "L" and sub-markings.
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> x x x x
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> The prosecution alleged that on different occasions, appellant caused to be prepared promissory notes and cashier's checks in the name of Romeo Tan, a valued client of the bank since he has substantial deposits in his account, in connection with the purported loans obtained by the latter from the bank. Appellant approved and signed the cashier's check as branch manager of Metrobank Commercio Branch. Appellant affixed, forged or caused to be signed the signature of Tan as endorser and payee of the proceeds of the checks at the back of the same to show that the latter had indeed endorsed the same for payment. He handed the checks to the Loans clerk, Maria Dolores Miranda, for encashment. Once said documents were forged and falsified, appellant released and obtained from Metrobank the proceeds of the alleged loan and misappropriated the same to his use and benefit. After the discovery of the irregular loans, an internal audit was conducted and an administrative investigation was held in the Head Office of Metrobank, during which appellant signed a written statement (marked as Exhibit "N") in the form of questions and answers.
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> The prosecution presented the following witnesses:
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> Valentino Elevado, a member of the Internal Affairs [D]epartment of Metrobank[,] testified that he conducted and interviewed the appellant in January 1998; that in said interview, appellant admitted having committed the allegations in the Informations, specifically forging the promissory notes; that the proceeds of the loan were secured or personally received by the appellant although it should be the client of the bank who should receive the same; and that all the answers of the appellant were contained in a typewritten document voluntarily executed, thumbmarked, and signed by him (Exhibit "N").

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8 Records of Criminal Case No. 98-163806, pp. 2-3.

9 Id. at 73.

Rosemarie Tan Apostol, assistant branch manager, testified that the signatures appearing on the promissory notes were not the signatures of Romeo Tan; that the promissory notes did not bear her signature although it is required, due to the fact that Romeo Tan is a valued client and her manager accommodated valued clients; that she signed the corresponding checks upon instruction of appellant; and that after signing the checks, appellant took the same [which] remained in his custody.

Eliodoro M. Constantino, NBI Supervisor and a handwriting expert, testified that the signatures appearing on the promissory notes and specimen signatures on the signature card of Romeo Tan were not written by one and the same person.

Maria Dolores Miranda, a Loans Clerk at Metrobank Commercio Branch, testified that several cashier's checks were issued in favor of Romeo Tan; that appellant instructed her to encash the same; and that it was appellant who received the proceeds of the loan.

For his defense, appellant Carlos Lo Tanenggee testified that he is a holder of a Masters degree from the Asian Institute of Management, and was the Branch Manager of Metrobank Commercio Branch from 1994 until he was charged in 1998 [with] the above-named offense. He was with Metrobank for nine (9) years starting as assistant manager of Metrobank Dasmariñas Branch, Binondo, Manila. As manager, he oversaw the day to day operations of the [branch], solicited accounts and processed loans, among others.

Appellant claimed that he was able to solicit Romeo Tan as a client-depositor when he was the branch manager of Metrobank Commercio. As a valued client, Romeo Tan was granted a credit line for forty million pesos ([₱]40,000,000.00) by Metrobank. Tan was also allowed to open a fictitious account for his personal use and was assisted personally by appellant in his dealings with the bank. In the middle of 1997, Tan allegedly opened a fictitious account and used the name Jose Tan. Such practice for valued clients was allowed by and known to the bank to hide their finances due to rampant kidnappings or from the Bureau of Internal Revenue (BIR) or from their spouses.

According to appellant, Tan availed of his standing credit line (through promissory notes) for five (5) times on the following dates: 1) 24 July 1997 for sixteen million pesos ([₱]16,000,000.00), 2) 27 October 1997 for six million pesos ([₱]6,000,000.00), 3) 12 November 1997 for three million pesos ([₱]3,000,000.00), 4) 21 November 1997 for sixteen million pesos ([₱]16,000,000,00), 5) 22 December 1997 for two million pesos ([₱]2,000,000.00). On all these occasions except the loan on 24 July 1997 when Tan personally went to the bank, Tan allegedly gave his instructions regarding the loan through the telephone. Upon receiving the instructions, appellant would order the Loans clerk to prepare the promissory note and send the same through the bank's messenger to Tan's office, which was located across the [street]. The latter would then return to the bank, through his own messenger, the promissory notes already signed by him. Upon receipt of the promissory note, appellant would order the preparation of the corresponding cashier's check representing the proceeds of the particular loan, send the same through the bank's messenger to the office of Tan, and the latter would return the same through his own messenger already endorsed together with a deposit slip under Current Account No. 258-250133-7 of Jose Tan. Only Cashier's Check dated 21 November 1997

> for sixteen million pesos ([₱]16,000,000.00) was not endorsed and deposited for, allegedly, it was used to pay the loan obtained on 24 July 1997. Appellant claimed that all the signatures of Tan appearing on the promissory notes and the cashier's checks were the genuine signatures of Tan although he never saw the latter affix them thereon.
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> In the middle of January 1998, two (2) Metrobank auditors conducted an audit of the Commercio Branch for more than a week. Thereafter or on 26 January 1998, appellant was asked by Elvira Ong-Chan, senior vice president of Metrobank, to report to the Head Office on the following day. When appellant arrived at the said office, he was surprised that there were seven (7) other people present: two (2) senior branch officers, two (2) bank lawyers, two (2) policemen (one in uniform and the other in plain clothes), and a representative of the Internal Affairs unit of the bank, Valentino Elevado.
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> Appellant claimed that Elevado asked him to sign a paper (Exhibit "N") in connection with the audit investigation; that he inquired what he was made to sign but was not offered any explanation; that he was intimidated to sign and was threatened by the police that he will be brought to the precinct if he will not sign; that he was not able to consult a lawyer since he was not apprised of the purpose of the meeting; [and] that "just to get it over with" he signed the paper which turned out to be a confession. After the said meeting, appellant went to see Tan at his office but was unable to find the latter. He also tried to phone him but to no avail.[10]

Ruling of the Regional Trial Court

After the joint trial, the RTC rendered a consolidated Decision[11] dated June 25, 1999 finding petitioner guilty of the crimes charged, the decretal portion of which states:

> WHEREFORE, the Court finds the accused, Carlos Lo Tanenggee, guilty beyond reasonable doubt of the offense of estafa thru falsification of commercial document[s] charged in each of the five (5) Informations filed and hereby sentences him to suffer the following penalties:
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> 1. In Criminal Case No. 98-163806[,] to suffer the indeterminate penalty of imprisonment from eight (8) years of prision mayor as minimum to twenty (20) years of reclusion temporal as maximum including the accessory penalties provided by law.
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> 2. In Criminal Case No. 98-163807[,] to suffer the indeterminate penalty of imprisonment from eight (8) years of prision mayor as minimum to twenty (20) years of reclusion temporal as maximum including the accessory penalties provided by law, and to indemnify Metrobank the sum of ₱16 Million with interest [at] 18% per annum counted from 27 November 1997 until fully paid.
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> 3. In Criminal Case No. 98-163808[,] to suffer the indeterminate penalty of imprisonment from eight (8) years of prision mayor as minimum to twenty

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10 CA *rollo*, pp. 210-215.

11 Records of Criminal Case No. 98-163806, pp. 396-405.

> (20) years of reclusion temporal as maximum including the accessory penalties provided by law, and to indemnify Metrobank the sum of ₱6 Million with interest [at] 18% per annum counted from 27 October 1997 until fully paid.
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> 4. In Criminal Case No. 98-163809[,] to suffer the indeterminate penalty of imprisonment from eight (8) years of prision mayor as minimum to twenty (20) years of reclusion temporal as maximum including the accessory penalties provided by law, and to indemnify Metrobank the sum of ₱2 Million with interest [at] 18% per annum counted from 22 December 1997 until fully paid.
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> 5. In Criminal Case No. 98-163810[,] to suffer the indeterminate penalty of imprisonment from eight (8) years of prision mayor as minimum to twenty (20) years of reclusion temporal as maximum including the accessory penalties provided by law, and to indemnify Metrobank the sum of ₱3 Million with interest [at] 18% per annum [counted] from 12 November 1997 until fully paid.
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> Accused shall serve the said penalties imposed successively.
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> As mandated in Article 70 of the Revised Penal Code, the maximum duration of the sentence imposed shall not be more than threefold the length of time corresponding to the most severe of the penalties imposed upon him and such maximum period shall in no case exceed forty (40) years.
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> SO ORDERED.[12]

Ruling of the Court of Appeals

Petitioner appealed the judgment of conviction to the CA where the case was docketed as CA-G.R. CR No. 23653. On December 12, 2006, the CA promulgated its Decision[13] affirming with modification the RTC Decision and disposing of the appeal as follows:

> **WHEREFORE**, the appeal is DENIED for lack of merit and the Decision dated 25 June 1999 of the Regional Trial Court (RTC) of Manila, Branch 30 convicting the accused-appellant Carlos Lo [Tanenggee] on five counts of estafa through falsification of commercial documents is hereby **AFFIRMED** with **MODIFICATION** that in Criminal Case No. 98-163806, he is further ordered to indemnify Metrobank the sum of [₱]16 Million with interest [at] 18% per annum counted from 24 July 1997 until fully paid.
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> **SO ORDERED**.[14]

On December 29, 2006,[15] petitioner moved for reconsideration, which the CA denied per its September 6, 2007 Resolution.[16]

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12 Id. at 404-405.
13 CA *rollo*, pp. 206-230.
14 Id. at 229-230.
15 Id. at 231.
16 Id. at 277-279.

Hence, the present Petition for Review on *Certiorari* under Rule 45 of the Rules of Court raising the basic issues of: (1) whether the CA erred in affirming the RTC's admission in evidence of the petitioner's written statement based on its finding that he was not in police custody or under custodial interrogation when the same was taken; and, (2) whether the essential elements of estafa through falsification of commercial documents were established by the prosecution.[17]

The Parties' Arguments

While he admits signing a written statement,[18] petitioner refutes the truth of the contents thereof and alleges that he was only forced to sign the same without reading its contents. He asserts that said written statement was taken in violation of his rights under Section 12, Article III of the Constitution, particularly of his right to remain silent, right to counsel, and right to be informed of the first two rights. Hence, the same should not have been admitted in evidence against him.

On the other hand, respondent People of the Philippines, through the Office of the Solicitor General (OSG), maintains that petitioner's written statement is admissible in evidence since the constitutional proscription invoked by petitioner does not apply to inquiries made in the context of private employment but is applicable only in cases of custodial interrogation. The OSG thus prays for the affirmance of the appealed CA Decision.

Our Ruling

We find the Petition wanting in merit.

Petitioner's written statement is admissible in evidence.

The constitutional proscription against the admissibility of admission or confession of guilt obtained in violation of Section 12, Article III of the Constitution, as correctly observed by the CA and the OSG, is applicable only in custodial interrogation.

Custodial interrogation means any questioning initiated by law enforcement authorities after a person is taken into custody or otherwise deprived of his freedom of action in any significant manner. Indeed, a person under custodial investigation is guaranteed certain rights which attach upon the commencement thereof, *viz*: (1) to remain silent, (2) to have competent and independent counsel

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17 *Rollo*, p. 671.

18 Exhibit "N," records of Criminal Case No. 98-163806, pp. 189-194.

preferably of his own choice, and (3) to be informed of the two other rights above.[19] In the present case, while it is undisputed that petitioner gave an uncounselled written statement regarding an anomaly discovered in the branch he managed, the following are clear: (1) the questioning was not initiated by a law enforcement authority but merely by an internal affairs manager of the bank; and, (2) petitioner was neither arrested nor restrained of his liberty in any significant manner during the questioning. Clearly, petitioner cannot be said to be under custodial investigation and to have been deprived of the constitutional prerogative during the taking of his written statement.

Moreover, in *Remolona v. Civil Service Commission*,[20] we declared that the right to counsel "applies only to admissions made in a criminal investigation but not to those made in an administrative investigation." Amplifying further on the matter, the Court made clear in the recent case of *Carbonel v. Civil Service Commission*:[21]

> However, it must be remembered that the right to counsel under Section 12 of the Bill of Rights is meant to protect a suspect during custodial investigation. Thus, the exclusionary rule under paragraph (2), Section 12 of the Bill of Rights applies only to admissions made in a criminal investigation but not to those made in an administrative investigation.[22]

Here, petitioner's written statement was given during an administrative inquiry conducted by his employer in connection with an anomaly/irregularity he allegedly committed in the course of his employment. No error can therefore be attributed to the courts below in admitting in evidence and in giving due consideration to petitioner's written statement as there is no constitutional impediment to its admissibility.

Petitioner's written statement was given voluntarily, knowingly and intelligently.

Petitioner attempts to convince us that he signed, under duress and intimidation, an already prepared typewritten statement. However, his claim lacks sustainable basis and his supposition is just an afterthought for there is nothing in the records that would support his claim of duress and intimidation.

Moreover, "[i]t is settled that a confession [or admission] is presumed voluntary until the contrary is proved and the confessant bears the burden of

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19 *People v. Bandula*, G.R. No. 89223, May 27, 1994, 232 SCRA 566, 574.
20 414 Phil. 590, 599 (2001).
21 G.R. No. 187689, September 7, 2010, 630 SCRA 202.
22 Id. at 207.

proving the contrary."[23] Petitioner failed to overcome this presumption. On the contrary, his written statement was found to have been executed freely and consciously. The pertinent details he narrated in his statement were of such nature and quality that only a perpetrator of the crime could furnish. The details contained therein attest to its voluntariness. As correctly pointed out by the CA:

> As the trial court noted, the written statement (Exhibit N) of appellant is replete with details which could only be supplied by appellant. The statement reflects spontaneity and coherence which cannot be associated with a mind to which intimidation has been applied. Appellant's answers to questions 14 and 24 were even initialed by him to indicate his conformity to the corrections made therein. The response to every question was fully informative, even beyond the required answers, which only indicates the mind to be free from extraneous restraints.[24]

In *People v. Muit*,[25] it was held that "[o]ne of the indicia of voluntariness in the execution of [petitioner's] extrajudicial [statement] is that [it] contains many details and facts which the investigating officers could not have known and could not have supplied without the knowledge and information given by [him]."

Also, the fact that petitioner did not raise a whimper of protest and file any charges, criminal or administrative, against the investigator and the two policemen present who allegedly intimidated him and forced him to sign negate his bare assertions of compulsion and intimidation. It is a settled rule that where the defendant did not present evidence of compulsion, where he did not institute any criminal or administrative action against his supposed intimidators, where no physical evidence of violence was presented, his extrajudicial statement shall be considered as having been voluntarily executed.[26]

Neither will petitioner's assertion that he did not read the contents of his statement before affixing his signature thereon "just to get it over with" prop up the instant Petition. To recall, petitioner has a masteral degree from a reputable educational institution and had been a bank manager for quite a number of years. He is thus expected to fully understand and comprehend the significance of signing an instrument. It is just unfortunate that he did not exercise due diligence in the conduct of his own affairs. He can therefore expect no consideration for it.

Forgery duly established.

"Forgery is present when any writing is counterfeited by the signing of another's name with intent to defraud."[27] It can be established by comparing the

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23 *People v. Rapeza*, 549 Phil. 378, 404 (2007).
24 CA *rollo*, p. 220.
25 G.R. No. 181043, October 8, 2008, 568 SCRA 251, 268.
26 *People v. Del Rosario*, 411 Phil. 676, 690-691 (2001), citing *People v. Santalani*, 181 Phil. 481, 490 (1979), *People v. Balane*, 208 Phil. 537, 556 (1983) and *People v. Villanueva*, 213 Phil. 440, 453-454 (1984).
27 *Ocampo v. Land Bank of the Philippines*, G.R. No. 164968, July 3, 2009, 591 SCRA 562, 570.

alleged false signature with the authentic or genuine one. A finding of forgery does not depend entirely on the testimonies of government handwriting experts whose opinions do not mandatorily bind the courts. A trial judge is not precluded but is even authorized by law[28] to conduct an independent examination of the questioned signature in order to arrive at a reasonable conclusion as to its authenticity.

In this case, the finding of forgery on the signature of Romeo Tan (Tan) appearing in the promissory notes and cashier's checks was not anchored solely on the result of the examination conducted by the National Bureau of Investigation (NBI) Document Examiner. The trial court also made an independent examination of the questioned signatures and after analyzing the same, reached the conclusion that the signatures of Tan appearing in the promissory notes are different from his genuine signatures appearing in his Deposit Account Information and Specimen Signature Cards on file with the bank. Thus, we find no reason to disturb the above findings of the RTC which was affirmed by the CA. A rule of long standing in this jurisdiction is that findings of a trial court, when affirmed by the CA, are accorded great weight and respect. Absent any reason to deviate from the said findings, as in this case, the same should be deemed conclusive and binding to this Court.

No suppression of evidence on the part of the prosecution.

Petitioner claims that the prosecution should have presented Tan in court to shed light on the matter. His non-presentation created the presumption that his testimony if given would be adverse to the case of the prosecution. Petitioner thus contends that the prosecution suppressed its own evidence.

Such contention is likewise untenable. The prosecution has the prerogative to choose the evidence or the witnesses it wishes to present. It has the discretion as to how it should present its case.[29] Moreover, the presumption that suppressed evidence is unfavorable does not apply where the evidence was at the disposal of both the defense and the prosecution.[30] In the present case, if petitioner believes that Tan is the principal witness who could exculpate him from liability by establishing that it was Tan and not him who signed the subject documents, the most prudent thing to do is to utilize him as his witness. Anyway, petitioner has the right to have compulsory process to secure Tan's attendance during the trial pursuant to Article III, Section 14(2)[31] of the Constitution. The records show,

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[28] RULES OF COURT, Rule 132, Section 22.

[29] *People v. Daco*, G.R. No. 168166, October 10, 2008, 568 SCRA 348, 361.

[30] *People v. Mazo*, 419 Phil. 750, 768 (2001), citing *People v. Padiernos*, 161 Phil. 623, 632-633 (1976).

[31] Section 14. (1) x x x

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the

however, that petitioner did not invoke such right. In view of these, no suppression of evidence can be attributed to the prosecution.

Petitioner's denial is unavailing.

The Court is also not persuaded by the bare and uncorroborated allegation of petitioner that the loans covered by the promissory notes and the cashier's checks were personally transacted by Tan against his approved letter of credit, although he admittedly never saw Tan affix his signature thereto. Again, this allegation, as the RTC aptly observed, is not supported by established evidence. "It is settled that denials which are unsubstantiated by clear and convincing evidence are negative and self-serving evidence. [They merit] no weight in law and cannot be given greater evidentiary value over the testimony of credible witnesses who testified on affirmative matters."[32] The chain of events in this case, from the preparation of the promissory notes to the encashment of the cashier's checks, as narrated by the prosecution witnesses and based on petitioner's own admission, established beyond reasonable doubt that he committed the unlawful acts alleged in the Informations.

Elements of falsification of commercial documents established.

Falsification of documents under paragraph 1, Article 172 in relation to Article 171 of the Revised Penal Code (RPC) refers to falsification by a private individual or a public officer or employee, who did not take advantage of his official position, of public, private or commercial document. The elements of falsification of documents under paragraph 1, Article 172 of the RPC are: (1) that the offender is a private individual or a public officer or employee who did not take advantage of his official position; (2) that he committed any of the acts of falsification enumerated in Article 171 of the RPC;[33] and, (3) that the falsification was committed in a public, official or commercial document.

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accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

32 *People v. Sison*, G.R. No. 172752, June 18, 2008, 555 SCRA 156, 170.

33 ART. 171. *Falsification by public officer, employee; or notary or ecclesiastical minister.* – The penalty of *prision mayor* and a fine not to exceed 5,000 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:

1. Counterfeiting or imitating any handwriting, signature, or rubric;
2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;
3. Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them;
4. Making untruthful statements in a narration of facts;
5. Altering true dates;
6. Making any alteration or intercalation in a genuine document which changes its meaning;

All the above-mentioned elements were established in this case. *First*, petitioner is a private individual. *Second*, the acts of falsification consisted in petitioner's (1) counterfeiting or imitating the handwriting or signature of Tan and causing it to appear that the same is true and genuine in all respects; and (2) causing it to appear that Tan has participated in an act or proceeding when he did not in fact so participate. *Third*, the falsification was committed in promissory notes and checks which are commercial documents. Commercial documents are, in general, documents or instruments which are "used by merchants or businessmen to promote or facilitate trade or credit transactions."[34] Promissory notes facilitate credit transactions while a check is a means of payment used in business in lieu of money for convenience in business transactions. A cashier's check necessarily facilitates bank transactions for it allows the person whose name and signature appear thereon to encash the check and withdraw the amount indicated therein.[35]

Falsification as a necessary means to commit estafa.

When the offender commits on a public, official or commercial document any of the acts of falsification enumerated in Article 171 as a necessary means to commit another crime like estafa, theft or malversation, the two crimes form a complex crime. Under Article 48 of the RPC, there are two classes of a complex crime. A complex crime may refer to a single act which constitutes two or more grave or less grave felonies or to an offense as a necessary means for committing another.

In *Domingo v. People*,[36] we held:

> The falsification of a public, official, or commercial document may be a means of committing estafa, because before the falsified document is actually utilized to defraud another, the crime of falsification has already been consummated, damage or intent to cause damage not being an element of the crime of falsification of public, official or commercial document. In other words, the crime of falsification has already existed. Actually utilizing that falsified public, official or commercial document to defraud another is estafa. But the damage is caused by the commission of estafa, not by the falsification of the document. Therefore, the falsification of the public, official or commercial document is only a necessary means to commit estafa.

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7. Issuing in an authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such copy a statement contrary to, or different from, that of the genuine original; or

8. Intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book.

x x x x

34 *Monteverde v. People*, 435 Phil. 906, 921 (2002).

35 *Domingo v. People*, G.R. No. 186101, October 12, 2009, 603 SCRA 488, 505-506.

36 Id. at 506-507.

"Estafa is generally committed when (a) the accused defrauded another by abuse of confidence, or by means of deceit, and (b) the offended party or a third party suffered damage or prejudice capable of pecuniary estimation."[37] "[D]eceit is the false representation of a matter of fact, whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury."[38]

The elements of estafa obtain in this case. By falsely representing that Tan requested him to process purported loans on the latter's behalf, petitioner counterfeited or imitated the signature of Tan in the cashier's checks. Through these, petitioner succeeded in withdrawing money from the bank. Once in possession of the amount, petitioner thereafter invested the same in Eurocan Future Commodities. Clearly, petitioner employed deceit in order to take hold of the money, misappropriated and converted it to his own personal use and benefit, and these resulted to the damage and prejudice of the bank in the amount of about ₱43 million.

Taken in its entirety, the proven facts show that petitioner could not have withdrawn the money without falsifying the questioned documents. The falsification was, therefore, a necessary means to commit estafa, and falsification was already consummated even before the falsified documents were used to defraud the bank. The conviction of petitioner for the complex crime of Estafa through Falsification of Commercial Document by the lower courts was thus proper.

The Proper Imposable Penalty

The penalty for falsification of a commercial document under Article 172 of the RPC is *prision correccional* in its medium and maximum periods and a fine of not more than ₱5,000.00.

The penalty in estafa cases, on the other hand, as provided under paragraph 1, Article 315 of the RPC is *prision correccional* in its maximum period to *prision mayor* in its minimum period[39] if the amount defrauded is over ₱12,000.00 but does not exceed ₱22,000.00. If the amount involved exceeds the latter sum, the same paragraph provides the imposition of the penalty in its maximum period with

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37 *Eugenio v. People*, G.R. No. 168163, March 26, 2008, 549 SCRA 433, 447.

38 *Joson v. People*, G.R. No. 178836, July 23, 2008, 559 SCRA 649, 656 citing *People v. Menil, Jr.* 394 Phil. 433, 452 (2000).

39 Minimum: 4 years, 2 months and 1 day to 5 years, 5 months and 10 days
Medium: 5 years, 5 months and 11 days to 6 years, 8 months and 20 days
Maximum: 6 years, 8 months and 21 days to 8 years.

an incremental penalty of one year imprisonment for every ₱10,000.00 but in no case shall the total penalty exceed 20 years of imprisonment.

Petitioner in this case is found liable for the commission of the complex crime of estafa through falsification of commercial document. The crime of falsification was established to be a necessary means to commit estafa. Pursuant to Article 48 of the Code, the penalty to be imposed in such case should be that corresponding to the most serious crime, the same to be applied in its maximum period. The applicable penalty therefore is for the crime of estafa, being the more serious offense than falsification.

The amounts involved in this case range from ₱2 million to ₱16 million. Said amounts being in excess of ₱22,000.00, the penalty imposable should be within the maximum term of six (6) years, eight (8) months and twenty-one (21) days to eight (8) years of *prision mayor*, adding one (1) year for each additional ₱10,000.00. Considering the amounts involved, the additional penalty of one (1) year for each additional ₱10,000.00 would surely exceed the maximum limitation provided under Article 315, which is twenty (20) years. Thus, the RTC correctly imposed the maximum term of twenty (20) years of *reclusion temporal*.

There is need, however, to modify the penalties imposed by the trial court as affirmed by the CA in each case respecting the minimum term of imprisonment. The trial court imposed the indeterminate penalty of imprisonment from eight (8) years of *prision mayor* as minimum which is beyond the lawful range. Under the Indeterminate Sentence Law, the minimum term of the penalty should be within the range of the penalty next lower to that prescribed by law for the offense. Since the penalty prescribed for the estafa charge against petitioner is *prision correccional* maximum to *prision mayor* minimum, the penalty next lower would then be *prision correccional* in its minimum and medium periods which has a duration of six (6) months and one (1) day to four (4) years and two (2) months. Thus, the Court sets the minimum term of the indeterminate penalty at four (4) years and two (2) months of *prision correccional*. Petitioner is therefore sentenced in each case to suffer the indeterminate penalty of four (4) years and two (2) months of *prision correccional* as minimum to twenty (20) years of *reclusion temporal* as maximum.

WHEREFORE, the Petition is **DENIED**. The Decision and Resolution of the Court of Appeals in CA-G.R. CR No. 23653 dated December 12, 2006 and September 6, 2007, respectively, are hereby **AFFIRMED with the MODIFICATION** that the minimum term of the indeterminate sentence to be imposed upon the petitioner should be four (4) years and two (2) months of *prision correccional*.

SO ORDERED.

MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ARTURO D. BRION
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
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.

ANTONIO T. CARPIO
Associate Justice
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