



REPUBLIC OF THE PHILIPPINES  
Sandiganbayan  
Quezon City

SECOND DIVISION

The People of the Philippines,  
*Plaintiff,*

SB-13-CRM-0791

For: Violation of Article 315,  
paragraph (1), sub-paragraph (b) of  
the Revised Penal Code (*Estafa*)

-versus-

Present:  
Herrera, Jr., J. *Chairperson*  
Musngi, J. &  
Pahimna, J.

Alfredo Yap Po,  
*Accused.*

Promulgated:  
March 22, 2014

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DECISION

**HERRERA, JR., J.:**

Accused ALFREDO YAP PO ("Accused Po" for short) stands charged before this Court with ***Estafa with Abuse of Confidence*** as defined under ***Article 315, paragraph (1), sub-paragraph (b) of the Revised Penal Code (RPC)***, under an ***Information***<sup>1</sup> dated June 28, 2013, the accusatory portion of which reads:

"That in November 2005, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused **ALFREDO PO y YAP**, a high ranking public officer, being the Chairman of the Board of Mechanical Engineering (BME, for brevity), committing the offense in relation to his office, and taking advantage of the public office, with deliberate intent, did then and there wilfully and feloniously defraud the Philippine Society of Mechanical Engineers (PSME, for brevity), an integrated accredited

<sup>1</sup> Records of SB-13-CRM-0791, Vol. 1, pp. 1-2

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professional organization of Mechanical Engineers as follows: accused, then Chairman of the BME received in trust from PSME the amount of **SEVEN HUNDRED TWENTY EIGHT THOUSAND FIVE HUNDRED THIRTY NINE PESOS and FIFTY NINE CENTAVOS (P728,539.59)** representing the total collection from the sales of tickets and PSME membership dues during the November 2005 Oath-Taking Ceremony of the new Mechanical Engineers, the said amount having been remitted to him by Ofelia D. Dichoso, then Secretary of the BME from Eric Agcamaran, then designated PSME collector, pursuant to his directive, which is part of the changes he implemented when he became the Chairman of the BME in May 2005, though outside the scope of his functions, power and authority since this fund is private in nature, and which receipt gives accused an obligation to turn over this amount to PSME being its owner; However, accused once in possession of the said amount, contrary to his obligation to remit the same to PSME, with unfaithfulness and abuse of confidence wilfully, unlawfully, and feloniously misapplied, misappropriated and converted to his personal use and benefit the amount of **P728,539.59** that caused PSME to utilize part of its operating funds to defray the cost of printing of the souvenir program, plaques for the Speakers and Top Schools and medals for Topnotchers among others during the said Oath-Taking Ceremony, and despite demand to turn over and remit the said amount, accused failed, refused and denied receipt of this money to the damage of PSME in the aforesated amount.

CONTRARY TO LAW."

As bail for his provisional liberty, accused Po deposited the amount of Forty Thousand Pesos (P40,000.00), under Official Receipt Number 5086639.<sup>2</sup>

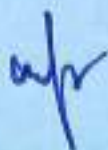
Upon being arraigned on October 1, 2013<sup>3</sup>, accused Po, assisted by counsel, pleaded not guilty to the charge. The case was thereafter set for pre-trial.

The pre-trial was terminated on January 21, 2014 and the Court accordingly issued a *Pre-Trial Order*<sup>4</sup>. Thereafter, trial ensued.

<sup>2</sup> Id., p. 118.

<sup>3</sup> Id., p. 129.

<sup>4</sup> Id., pp. 412-426.





The prosecution submitted a Manifestation dated May 22, 2014<sup>5</sup>, offering in evidence its documentary exhibits. The exhibits were admitted by the Court in an **Order** also dated May 22, 2014.

On February 12, 2018, accused Po, in open court, formally offered its documentary exhibits which the Court resolved to admit.

To prove the charge, the prosecution presented as witnesses the following: **1) Ofelia Dichoso**; **2) Aida F. Gabito**; and **3) Eriberto A. Agcamaran**. The prosecution also submitted as evidence the documents marked Exhibits "A" to "G", "N", "O", "P", "T", "U", "V", "W", "X", "Y" and "Z", inclusive of submarkings.

On the other hand, accused Po testified and presented as witnesses the following: **1) Ramon Solis** and **2) Anthony A. Cristobal**. Accused Po likewise offered documents marked Exhibit "20", "21" and "22" with submarkings.

### SUMMARY OF THE TESTIMONIES OF THE PROSECUTION WITNESSES

**OFELIA D. DICHOSO** testified that she was a Professional Regulation Officer II at the Professional Regulation Commission (PRC) from August 5, 2003 until June 30, 2008. As such, she was in charge of secretarial work for the following Professional Regulatory Boards: Mechanical Engineering, Marine Deck Officers, and Pharmacy. She prepared programs for licensure examinations, took charge of certification and documentation, attended board meetings and undertook such other functions that were assigned to her by her immediate superiors which included accused Po, the then Chairman of the Board of Mechanical Engineering (BME).

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<sup>5</sup> Records, volume 2, p. 505.

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Dichoso recalled that on October 2005, Po summoned her to inform her of the new procedure in the collection of membership fees of the Philippine Society of Mechanical Engineers (PSME) and of payments arising from the sale of oath-taking tickets. Per Po's instructions, Eriberto Q. Agcamaran, who was a representative from the PSME, will remit to Dichoso the collected amounts which are then to be turned over to Po. Curious as to whether the new arrangement had been firmed up with the PSME, Po confirmed with the witness that he had already talked with the then PSME President, Engr. Vic De Guzman, regarding such arrangement. Complying therefore with Po's verbal directive, the said new procedure was implemented after Dichoso was likewise able to confirm from Agcamaran that he received the same instructions from the PSME President. With the new set-up, Agcamaran started to remit daily to Dichoso the amounts he collected from the sale of oath-taking tickets and from the payment of PSME membership fees. According to the witness, this revised collection and remittance scheme was also known to Maricel Montiero, Secretary of the Philippine Association of Board Examiners (PABE), and to Cirila Eden, Dichoso's roommate. Eden, to whom Dichoso disclosed the new set-up directed by Po, supposedly countered, "*Mag-ingat ka* (Just be careful.)". With the change in effect, the witness prepared a Daily Inventory of Tickets Disposal reflecting the remittances made by Agcamaran from November 3 to November 21, 2005. Additionally, she had prepared a Summary Report indicating the collection from oath-taking tickets and the payment of PSME membership fees. She stated that Agcamaran remitted the amount of Php830,700.00 from the sale of oath-taking tickets and Php333,600.00 from the payment of PSME Membership fees, which totalled to an amount of Php1,164,300.00. She testified that she wrote the words "received by" in the upper right hand portion of the Daily Inventory of Ticket Disposal, with the date and time, to prove that she turned over the money to Accused Po. She added that when Po signed his initials underneath the date and time, the same was witnessed by Maricel Montiero and a certain Anthony Cristobal, apart from herself. Dichoso confirmed that the initials above the name Alfredo Y. Po in the report of



collection of PSME membership fee (Exhibit "F-2"), and in the lower left portion of the report of collection of oath-taking tickets (Exhibit "E-2") were those of Po because she was present when he affixed them after he personally received from her the total amount of Php728,539.59. The seeming variance in inscription by Po, she explained, was because he was in a hurry and appeared reluctant to sign and acknowledge receipt of the amounts stated in the report. She claims having pressed Po about the disparity of the affixed initials from his usual, but Po did not offer any response. The turnover of funds to Po, according to Dichoso, transpired on two occasions: 1) on November 10, 2005, in the separate amounts of Php139,500.00 from the payment of PSME membership fees and Php319,150.00 from the sale of oath-taking tickets; and 2) on November 21, 2005, in the respective amounts of Php194,100.00 from membership fees and Php75,789.59 from the oath taking tickets, after due deduction for hotel expenses and other miscellaneous charges. The first turnover, according to Dichoso, was witnessed by Anthony Cristobal and Maricel Montiero, whereas the second was witnessed by several persons when remittance was made at the Manila Hotel Gallery Room right after the oath taking. She affirmed having executed three sworn statements, respectively dated November 20, 2006, January 25, 2007, and June 27, 2006 (Exhibits "A", "B" and "C").<sup>6</sup> Further, Dichoso recounted that she had communicated to Atty. Carlos Almenor, who was then Secretary of the Professional Regulatory Commission *En Banc*, the directed change in the procedure for collection and had similarly shown the latter the subject initials made by Po after the fact of collection.<sup>7</sup>

**AIDA F. GABITO** testified that she was a Bookkeeper of the PSME for the years 1984 to 2009. As such, her responsibilities included the safekeeping of all records/official receipts pertaining to the transactions of the organization and the recording of the association's disbursements. Gabito narrated that during oath-taking ceremonies for mechanical

<sup>6</sup> Judicial Affidavit dated December 6, 2013, Records, volume 1, pp. 357-366.

<sup>7</sup> TSN of March 31, 2014, pp. 7-50.





engineers, the usual procedure is that PSME would deploy Eriberto Q. Agcamaran daily at the office of the PRC so that the newly-passed engineers can fill up PSME membership forms, pay their dues and purchase tickets to the oath-taking. Official receipts for the membership fees are thereupon issued by Agcamaran. At day's end, he would return to the PSME office and remit to Gabito the official receipts together with the sums he collected. Gabito then gives him another set of blank receipts for the next collection day. The daily collections are deposited by Agcamaran at the PCI Bank the following day, before he goes to PRC. For the November 2005 oath-taking ceremonies, however, only the receipts were turned over by Agcamaran, following the instruction of Po that the collected amounts were to be remitted to Dichoso and thereafter to be forwarded to the accused. The fact of such instruction was learned by the witness because Agcamaran informed her so and because she herself witnessed former PSME President Engr. Mencias talking over the phone with Engr. Vic De Guzman, then PSME President, about the instructions of accused Po with regard to the funds turnover. Together with the receipts handed over by Agcamaran to Gabito were the acknowledgement signed by Dichoso that she received from Agcamaran the cash collected from payment of PSME membership fees and oath-taking tickets. The witness further testified that PSME operating funds had to be utilized to defray some of the expenses for the oath-taking ceremonies, e.g. for the souvenir program, plaques and medals.<sup>8</sup>

**ERIBERTO A. AGCAMARAN** was a messenger/liaison officer of the Philippine Society of Mechanical Engineers in 2005. As had been the practice for years, he was tasked to collect the payments for oath-taking fees and PSME membership dues relative to the November 2005 ceremonies for the newly-passed mechanical engineers. For that occasion, however, he averred that the collected funds were to be remitted to Ofelia ("Ofe") Dichoso for eventual forward to accused Po, per instructions

<sup>8</sup> Judicial Affidavit dated December 4, 2013, Records, volume 1, pp. 389-393; TSN of March 31, 2014, pp. 53-68.





conveyed to him by Dichoso. Relying on said verbally-communicated instruction, he thus remitted his collections to her, trusting (albeit admittedly without proof) that the same were turned over to Po as Chairman of the Board of Mechanical Engineering.<sup>9</sup>

### SUMMARY OF THE TESTIMONIES OF THE ACCUSED AND HIS WITNESSES

**ALFREDO Y. PO**, in his Judicial Affidavit, asserted that he did not receive any money from Ofelia Dichoso supposedly representing collections from the November 2005 oath-taking of new mechanical engineers. He explained that the Board of Mechanical Engineering (BME) and the Philippine Society of Mechanical Engineers (PSME) are separate and distinct entities and confirmed that, in the year 2005, he was not holding any position in the PSME. Po stated that the following documents belied the loss of the amount of Php728,539.59 from the coffers of the Society and which was imputed to him: the Notices to the Public that were caused by PSME to be published in the Philippine Star and in the Philippine Daily Inquirer; the PSME Secretary's Certificate attesting to the authority granted so that publication of the aforesaid Notices can be effected, informing all members of PSME that (1) the collections from the November 2005 and May 2006 oath-taking ceremonies have been remitted to the PSME, and (2) there were no collectibles from Commissioner Alfredo Y. Po (Exhibit "21"); Minutes of the Special Board Meeting of PSME Directors held on January 12, 2013 (Exhibit "22"); and PSME's 2006 letter to the then-Chair of PRC declaring support to BME Chair Po, together with signatures of support from PSME officers and members. The minutes of the 2013 Special Board Meeting noted that in the February 2006 PSME National Board Meeting, "National Treasurer Alex Pamplona reported that the amount of P336,000 was deposited in the PS Bank account of PSME and all collections had been turned over to him." Po further sought to highlight the fact that PSME did not file any case against him with respect to the

<sup>9</sup> Judicial Affidavit dated February 14, 2014, Records, volume 1, pp.405-408; TSN of May 22, 2014, pp. 7-15.





sum of Php728,539.59, nor did the organization make any demand from him to return the alleged misappropriated fund. He stated that he never verified from the accounts of the PSME whether there were indeed missing funds.<sup>10</sup>

**RAMON F. SOLIS** testified that aside from being one of the Directors of PSME in 2005, he was also President of PSME from August to December 2006. He stated that the PSME is the only PRC-accredited professional organization of Mechanical Engineers and, as such, is the entity responsible for organizing the oath-taking of new mechanical engineers in coordination with the BME. He said he got acquainted with accused Po because the PSME works closely with the BME for the said activity. He stated that he attended the Society's meeting of January 12, 2013 which convened PSME's Board of Directors and which discussed the allegation against Commissioner Po for the supposedly unaccounted/unremitted amount of PhP728,539.59 to the PSME. The witness identified the Minutes arising from the said meeting, a portion of which noted that Minutes of a prior PSME National Board Meeting (February 3, 2006) provided that PSME's National Treasurer Alex Pamplona has reported that the amount of P336,000 was deposited in the PS Bank account of PSME and that all collections had been turned over to him (Pamplona) by Engr. Serge Balolong. The same 2006 Minutes likewise supposedly indicated that all collections from the oath taking ceremonies of the PSME were intact and in the custody of the National Treasurer Alex Pamplona. A declaration of support in favor of Po was mentioned as having been issued by the 2006 PSME National Board of Directors. As an offshoot of the 2013 discussions, the directors resolved to issue a statement to its members and to the public that PSME had no collectibles from Commissioner Po relative to the November 2005 and May 2006 oath-taking ceremonies and that all its funds are intact and in its hands. On cross-examination, the witness confirmed that Engineer Balolong and Treasurer Pamplona were

<sup>10</sup> Revised Judicial Affidavit dated September 27, 2017, Records, volume 2, pp.694-702; TSN of October 5, 2017, pp. 23-36.





not present during the subject 2013 meeting. Neither did the witness see any financial certification or bank statement that would have supported the claim that the funds of the Society were intact and that, indeed, the money in question had been duly deposited/accounted for and remitted.<sup>11</sup>

**ANTHONY A. CRISTOBAL**, in his Revised Judicial Affidavit, disclosed that he and Accused Po were both members of the Philippine Association of Regulatory Board Members (PAPRB). Cristobal preceded Po as PAPRB President and, during the latter's term, he would always seek advice from Cristobal. They both held office at the PRC in 2005 when Cristobal was the Chairman of the Board of Customs Brokers and accused Po was the Chairman of the BME. He claimed that he executed an affidavit on January, 2013 after having learned that he was identified by Ofelia Dichoso in her 2007 sworn statement as having witnessed the turn-over of money to accused Po on November 10, 2005 at the PABE Library in the PRC Building. Cristobal pointed out that such statement was untrue. He denied being at the said library during that date, asserting that he was at a Rotary Club meeting then. He likewise denied being acquainted with Dichoso. When asked about his whereabouts on November 10, 2005, however, Cristobal recanted and said he could not recall where he was on the said date.<sup>12</sup>

### FACTS STIPULATED AND DEEMED ESTABLISHED

During the pre-trial the parties stipulated on the following:

1. That prior to his appointment as PRC Commissioner, accused Po was a member of the Board of the Mechanical Engineering (BME) of the PRC;
2. That on March 26, 2005, accused Po was made Chairman of BME; and

<sup>11</sup> Judicial Affidavit dated January 23, 2018, Records, volume 2, pp.735-743; TSN of January 29, 2018, pp. 11-23.

<sup>12</sup> Revised Judicial Affidavit dated October 5, 2017, Records, volume 2, pp.717-720; TSN of October 10, 2017, pp. 7-16.





3. That accused Po was appointed PRC Commissioner on October 11, 2010.<sup>13</sup>

### FINDINGS AND CONCLUSION

The core issue for the Court's resolution is whether or not accused Po is guilty of *Estafa*, as defined and penalized under Article 315 (1) (b) of the Revised Penal Code (RPC).

**Article 315 (1) (b) of the RPC states:**

Art. 315. Swindling (*estafa*). - Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

1st. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos; and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be[.]

x x x x

1. With unfaithfulness or abuse of confidence, namely:

x x x x

(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;

x x x x

The elements of *Estafa* under this provision are as follows<sup>14</sup>:

<sup>13</sup> Supra at Note 4, p. 415; and TSN of January 20, 2014, p. 5.

<sup>14</sup> Paz Cheng Y. Chu, vs. People of the Philippines, G. R. No. 174113, January 13, 2016.



(1) the offender's receipt of money, goods, or other personal property in trust, or on commission, or for administration, or under any other obligation involving the duty to deliver, or to return, the same;

(2) misappropriation or conversion by the offender of the money or property received, or denial of receipt of the money or property;

(3) the misappropriation, conversion or denial is to the prejudice of another; and

(4) demand by the offended party that the offender return the money or property received.

To hold a person liable under this provision, the concurrence of the above mentioned elements must be established beyond reasonable doubt by the prosecution.

*Receipt of money, goods, or other personal property in trust, or on commission, or for administration, or under any other obligation involving the duty to deliver, or to return, the same*

The fact of receipt of the money by accused Po is sufficiently settled by the telling testimonies of prosecution witnesses Dichoso, Gabito and Agcamaran, and supported by the Daily Inventory Tickets Disposal and the Report of Collection of PSME Membership Fees and of Oath-taking Tickets signed by Accused Po. Accused Po claimed that he did not receive any money collected from the passers of the Mechanical Engineering Board Examinations who had paid for the PSME membership dues and related fees for their induction on November, 2005; neither did he instruct Dichoso to turn-over to him the collections; nor did he have a hand in the collection



of funds arising from the said activity. These claims were, however, forthrightly negated by the account of witness Dichoso<sup>15</sup>:

Q: Sometime in October 2005, do you recall of any important task that was assigned to you in connection with the Oath taking of the Board passers of mechanical engineers.

A: Yes.

Q: What was the important task all about?

A: I was called by then Chairman Alfredo Y. Po in the library of old Philippine Association of Board Examiners (PABE) and informed me about the new procedure in the collection of the oath taking tickets and the Philippine Society of Mechanical Engineers (PSME) membership fees wherein he said that Mr. Eriberto Q. Agcamaran, the representative from the PSME will remit to me the collection and thereafter turn over the amount to him.

Q: With that instruction of your superior Engr. Po, what did you tell him, if any?

A: At first, I was really hesitant because I know that all the collections for the oath taking tickets and PSME membership fees belong to the PSME but since it was his instruction so I have to obey. I asked him if there was an arrangement already with the PSME and he said he already talked with the then President of the PSME and the instruction was clear that Mr. Agcamaran will remit to me every afternoon his collection.

Q: Who was then the President of PSME in October 2005, if you can recall?

A: Engr. Vic De Guzman Sir.

Q: In compliance with the instruction of Mr. Po what did you do?




A: I talked to Mr. Agcamaran and then he confirmed to me that the tickets for the oath taking would be taken from me for disposal by him to the board passers and the collection will be remitted to me.

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Q: Was the arrangement you had with Mr. Agcamaran as to the remittance of the fees that he collected followed?

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<sup>15</sup> Supra at Note 6, pp. 358-359



A: Yes, Sir, he remitted to me the amount collected before 5:00 P.M. and upon receipt of the amount I signed an acknowledgement receipt in a sheet of paper as proof that I received the cash collections for the oath taking tickets. However as regards the cash collections for the PSME membership fees only the cash was turned over to me, the official receipts (OR) remain in the custody of Mr. Agcamaran.

The instruction on the remittance of the collection to Accused Po was corroborated by PSME's bookkeeper witness Aida Gabito<sup>16</sup>:

Q: Was that procedure concerning the collection of PSME membership fees and payment of oath taking tickets as well as the deposit of the cash collection to the PCI Bank followed in the November 2005 oath taking ceremonies of the mechanical engineers?

A: Yes, sir the same procedure was followed except the money collected for the membership fees and oath taking tickets were not turned over to the office of PSME, only the official receipts were turned over by Mr. Agcamaran.

Q: Why is it that only the official receipts were turned over by Mr. Agcamaran, what happened to the money collected for PSME membership and oath taking tickets?

A: As per instruction of Mr. Alfredo Po, the collections of Mr. Agcamaran will be remitted to Ofelia D. Dichoso and thereafter the same will be given to Mr. Po.

Q: How do you know that Mr. Po gave that instruction?

A: On November 3, 2005, while I was in the PSME Office, I witnessed former PSME President Engr. Mencias informing by phone Engr. Vic De Guzman then PSME President about the instruction of Mr. Alfredo Y. Po that the collections for PSME membership and oath taking tickets will be turned over to Ms. Ofelia D. Dichoso by Mr. Agcamaran.

No less than the PSME President himself knew of the collection procedure as instructed by Accused Po.

<sup>16</sup> Supra at Note 8, pp. 390-391



The instruction was further substantiated by witness Eriberto Q. Agcamaran<sup>17</sup>:

- Q: After you collected the oath taking fees and PSME membership fees what happened next to the money?
- A: I remit the oath taking fees and PSME membership fees to Ofelia D. Dichoso, Sir.
- Q: Why did you remit the oath taking fees and PSME membership fees to Ofelia D. Dichoso?
- A: There was an instruction that the money will be given to Mr. Alfredo Po thru Ofelia D. Dichoso.

It must be noted that witnesses Dichoso and Agcamaran were from different offices, PRC and PSME, respectively. Thus, it would be not in accord with human nature for an employee from one office, in this case of Agcamaran from the PSME, to simply abide by the instruction from an employee from a different office without any advice from his superiors.

Accused Po's claim of non-receipt of the monies was strongly debunked when witness Dichoso clearly recounted when, where and how accused Po received the money<sup>18</sup>:

- Q: Do you recall when did you remit those amounts you mentioned to Mr. Po?
- A: First on November 10, 2005 I remitted P139,000.00 for the PSME membership fees and P319,000.00 for the oath taking fees at the PABE Library.
- Q: Were there any person present at the time you remitted that money to Alfredo Y. Po.
- A: Yes sir, Mr. Anthony Cristobal and Maricel Montiero personally witnessed the remittance.
- Q: What about the amount of P194,100.00 and P75,789.59 when did you remit those to Mr. Po?
- A: On November 21, 2005, I remitted P194,100.00 for membership fees and P75,789.59 for the oath

<sup>17</sup> Supra at Note 9, pp. 405-406

<sup>18</sup> Supra at Note 6, p. 364



taking tickets after deducting the amount I paid for hotel expenses and other miscellaneous expenses.

As evidence of remittance of the collections to Accused Po, witness Dichoso recalled that Accused Po signed in her presence the Report of Collection of Oath-taking Tickets and Report of Collection of PSME Membership Fee, showing that he received the sums of money<sup>19</sup>:

Q: I notice in the upper right hand portion of the Daily Inventory of Ticket Disposal there appears a phrase "received by with the date and time and underneath is a signature or an initial", will you please explain what is that phrase all about?

A: I was the one who wrote the phrase "received by", also the date and time to prove that I turned over the amounts to Mr. Po, afterwards Mr. Po affixed his initial.

Q: Who was present at that time when Alfredo Y. Po affixed his initial/signature?

A: Mr. Anthony Cristobal, Maricel Montiero and myself were present sir.

Q: There appears a signature or initial above the typewritten name Engr. Alfredo Y. Po, as appearing in the report of collection of PSME membership, whose signature or initial is that.

A: That is the signature and initial of Alfredo Y. Po sir.

Q: How about the signature or initial appearing in the lower left portion of the Report of Collection of Oath taking Tickets.

A: That was the signature or initial of Alfredo Y. Po sir.

Q: Why did you say that those are the signatures or initials of Mr. Po?

A: Because I was present when he affixed his signatures or initials after he personally received from me the total amount of P728,539.59.

Q: I notice that the signature or initial of Mr. Po, as appearing in the Daily Inventory Tickets Disposal and the Report of Collection of PSME Membership Fees and that of Oath taking Tickets are different from one another, will you kindly explain why?

<sup>19</sup> Id., pp. 362-364.

*Wfr*

*M*



- A: Because Engr. Po signed the said documents in a hurry, as he was then very reluctant to sign and acknowledge that he received the amount stated in the report that is why the signature differs from each other.
- Q: What does that signature of Mr. Po in these documents signify?
- A: That he personally received from me the amount of P139,500.00, P319,150.00, P194,100.00 and P75,789.59 or a total amount of P728,539.59.

The accused claimed that the adverted initials were not his, but witness Dichoso recounted that Po simply brushed aside the observation she made about the variance in the Commissioner's signatures.<sup>20</sup> It is not quite unexpected that the accused would sign differently from his usual manner, precisely because he was in a hurry and was in fact reluctant as he knew that the receipt of the collections was not part of his function as Chairman of the Board of BME. Whether the signatures affixed by Po were in his customary style or not is of no moment as the genuineness of his signature was duly proven by witness Dichoso who saw Po sign the documents.

Section 22, Rule 132 of the Rules of Court provides:

**Section 22. How genuineness of handwriting proved.**

— The handwriting of a person may be proved by any witness who believes it to be the handwriting of such person because he has seen the person write, or has seen writing purporting to be his upon which the witness has acted or been charged, and has thus acquired knowledge of the handwriting of such person. Evidence respecting the handwriting may also be given by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge.

In the face of the prosecution's telling testimonial and documentary pieces of evidence, Po could only offer a lame denial and an

<sup>20</sup> Supra at Note 7, pp. 47-49



unsubstantiated explanation of receipt of the money. He offered no clear account on the dates Dichoso narrated she delivered the money to him. Accused Po kept on harping on the Notices of Publication made by the PSME in his favour in the Philippine Daily Inquirer and the Philippine Star. He tried to further strengthen his claim of non-receipt of the subject money by presenting witness Cristobal, but Cristobal's flip-flopping testimony failed to persuade.<sup>21</sup> Attempting to refute Dichoso's assertion that he was present at the PABE Library and thus witnessed the turn-over of money to Po, Cristobal could only muster a conflicting explanation as to his actual whereabouts that day. What was unambiguous in the testimonies of Accused Po and Cristobal was their utter failure to clearly state their exact whereabouts, other than the PABE Library, on the dates Dichoso mentioned in her testimony.

**Misappropriation or conversion by the offender of the money or property received, or denial of receipt of the money or property**

When Accused Po received the money from Dichoso it brought upon him an obligation to deliver it to PSME for the purpose for which the funds were collected. He readily knew that the monies were specifically collected for a particular purpose. His failure to remit it to the PSME thus amounted to conversion of the money for his personal advantage.

The words "convert" and "misappropriate" connote an act of using or disposing of another's property as if it were one's own or devoting it to a purpose or use different from that agreed upon. To misappropriate for one's own use includes not only conversion to one's personal advantage but also every attempt to dispose of the property of another without any right.<sup>22</sup>

<sup>21</sup> Supra at Note 12, pp. 15-16.

<sup>22</sup> Tony Tan vs. People, G.R. No. 153460, January 29, 2007 (513 SCRA 194).





Accused Po strongly denied the receipt of the money from Dichoso by taking refuge in the support thrown to him by the PSME. However, the records of the case belied Po's defense that the money was intact in the coffers of the PSME. What cannot be ignored from the records of the case was the failure of the accused to present any documentary proof that the money was indeed intact. The notices published in the newspapers and the Certification by the Board Secretary presented in Court, claiming that the funds of the PSME were intact, were not backed up by any financial statement which would have conclusively set the record straight. The testimony of witness Solis created more questions than clarifications. Solis claimed that the Minutes of the February 3, 2006 PSME National Board Meeting provided that National Treasurer Pamplona reported that the amount of Php336,000.00 had been deposited in the PS Bank account of PSME and that all collections had been turned over to Pamplona by Engr. Serge Balolong. Nowhere during his testimony did he present the Minutes of the February 2006 meeting nor the PS Bank Account deposit slip and the financial statement of the PSME that would have shown that indeed the monies were duly deposited and were intact. Such claim was likewise belied by the failure of the accused to present Treasurer Pamplona to corroborate the claim of witness Solis. There is no best way to prove that the funds were intact than presenting the corresponding financial documents that will set the record straight. Their failure to do so only strongly affirms that there was misappropriation of the monies collected.

**The misappropriation, conversion or denial is to the prejudice of another**

Evidently, such denial of the fact of receipt and of the misappropriation resulted in prejudice to the PSME. The funds of PSME were for expenses relative to the induction and for the other membership programs of the Society. Accused Po repeatedly took refuge in the support accorded him by the PSME, but not a single clear proof, such as deposit slip or financial statement of the PSME on the dates material to the case,





was shown to confirm that the money was intact and that no prejudice was caused to PSME. Po's stance failed to persuade as against the testimonial and documentary proof presented by the prosecution.

**Demand by the offended party that the offender return the money or property received**

The law does not require demand as a condition precedent to the existence of the crime of embezzlement.<sup>23</sup> Indeed, the accused may be convicted of the felony under Article 315, paragraph 1(b) of the Revised Penal Code if the prosecution proved misappropriation or conversion by the accused of the money or property subject of the Information. Jurisprudence instructs that in a prosecution for *estafa*, demand is not necessary where there is evidence of misappropriation or conversion.<sup>24</sup> The testimonial and documentary evidence of the prosecution was able to establish that Accused Po misappropriated the amount of P728,539.59, representing the collection from payments for oath-taking tickets and membership fees, when he received the money from Dichoso. Demand, therefore, is no longer necessary.

The totality of evidence proffered by the prosecution indubitably showed that they have proven the elements of the crime, thus, the Court is left with no other conclusion but the guilt of the accused.

**WHEREFORE**, premises considered, the Court finds accused ALFREDO YAP PO guilty beyond reasonable doubt of the crime of *Estafa*, as described in the *Information* dated June 28, 2013, and as defined and penalized under **Article 315 of the Revised Penal Code**, as amended by Republic Act No. 10951<sup>25</sup>.

<sup>23</sup> *George L. Tubb vs. People of the Philippines*, G.R. No. L-9811, April 22, 1957.

<sup>24</sup> *Lee vs. People*, G.R. No. 157781, April 11, 2005 (455 SCRA 256).

<sup>25</sup> An Act Adjusting the Amount or the Value of Property and Damage on which a Penalty is Based and the Fines Imposed Under the Revised Penal Code, Amending for the Purpose Act No. 3815, Otherwise Known as "the Revised Penal Code", as Amended

*apv*

*M*


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Pursuant to the directive of the Supreme Court in *Hernan vs. The Honorable Sandiganbayan*<sup>26</sup> mandating the application of the said new legislation to the benefit of an accused and taking into consideration the following: the absence of any aggravating circumstance and the presence of a mitigating circumstance, i.e., accused's voluntary surrender<sup>27</sup>, and considering further the provisions of the *Indeterminate Sentence Law*, he is hereby sentenced to suffer the penalty of imprisonment two (2) months and one (1) day of *arresto mayor* medium, as minimum, to four (4) months and one (1) day of *arresto mayor maximum*, as maximum.

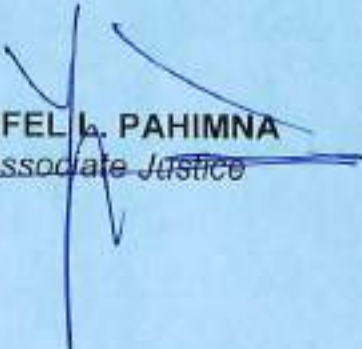
As to the accused's civil obligation, he is ordered to restitute the amount of Seven Hundred Twenty Eight Thousand Five Hundred Thirty Nine Pesos and Fifty Nine Centavos (P728,539.59) to the PSME, representing the money he misappropriated, subject to legal interest until its full satisfaction.

SO ORDERED.

  
OSCAR C. HERRERA, JR.  
Chairperson  
Associate Justice

*We concur:*

  
MICHAEL FREDERICK L. MUSNGI  
Associate Justice

  
LORIFEL L. PAHIMNA  
Associate Justice

<sup>26</sup> G.R. No. 217874, December 5, 2017.

<sup>27</sup> Record, volume 1, p. 114




**ATTESTATION**

I attest that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
OSCAR C. HERRERA, JR.  
Chairman  
Second Division

**CERTIFICATION**

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairman's Attestation, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
AMPARO M. CABOTAJE-TANG  
Presiding Justice

