



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

**ERIC WU a.k.a. WU CHUN and
DAPHNY CHEN,**

Petitioners,

G.R. Nos. 207220-21

Present:

HERNANDO,
Acting Chairperson,
LAZARO-JAVIER,*
INTING,*
LOPEZ, M.V.,* and
MARQUEZ, JJ.

- versus -

**PEOPLE OF THE
PHILIPPINES and HAFTI
TOURS, INC.,**

Respondents.

Promulgated:

MAR 16 2022

X-----X

DECISION

HERNANDO, J.:

This petition for review on *certiorari*¹ assails the November 27, 2012 Decision² and May 17, 2013 Resolution³ of the Court of Appeals (CA) in CA-G.R. CR Nos. 31063 and 31921 which granted private respondent's HAFTI Tours, Inc.'s (HTI's) consolidated appeals of the December 7, 2006⁴ and April 2, 2007⁵ Orders of the Regional Trial Court (RTC), Branches 112 and 114, Pasay City in Criminal Case Nos. 06-1263-CFM and 07-0254-CFM, respectively.

* Per March 7, 2022 Raffle vice S.A.J. Perlas-Bernabe, J. Zalameda, and J. Rosario who recused due to prior action in the Court of Appeals.

¹ *Rollo*, pp. 11-19.

² *Id.* at 109-126. Penned by Associate Justice Rosalinda Asuncion-Vicente and concurred in by Associate Justices Priscilla Baltazar-Padilla (a retired Member of this Court) and Agnes Reyes-Carpio concurring.

³ *Id.* at pp. 42-45.

⁴ *CA rollo*, pp. 47-48. Penned by Judge Jesus B. Mupas.

⁵ *Id.* at 10-12. Penned by Judge Edwin B. Ramizo.

The assailed Orders of the RTC, Branches 112 and 114, separately quashed the Informations for *Estafa* under Article 315 1(b) of the Revised Penal Code (RPC), for misappropriation and conversion of varying amounts, instituted against petitioners, Spouses Eric Wu a.k.a. Wu Chun (Eric) and Daphny Chen (Chen) (collectively, spouses Wu).

The Antecedent Facts:

The spouses Wu are Taiwan nationals residing in the Philippines under a Special Resident Retiree's Visa (SRRV) upon their investment and deposit of \$90,000.00 with the Philippine Retirement Authority (PRA) of the Board of Investments (BOI).⁶

In 2002, at the solicitation of HTI, the spouses Wu sought to transfer their dollar time deposit investment plus accrued interests with the PRA, and invest the money with HTI, representing their capital contribution, in exchange for the issuance of 47,440 shares of stock of HTI.⁷

On August 21, 2002, pending approval by the PRA of the spouses Wu's dollar time deposit, HTI issued a board resolution certified by its corporate secretary, Sandra G. Dy, listing petitioners as two of four persons authorized to deposit and withdraw from HTI's Globalbank deposit account:

RESOLVED, as it is hereby resolved that the company HAFTI TOURS, INC, open and maintain a dollar and peso account with GLOBAL BANK, ERMITA BRANCH, and that only four individuals (joint signatories from (sic) A and specimen B or in the absence of the (sic) one of the signatories from specimens A and B, jointly with any one from specimen C are authorized to deposit in and withdraw from said bank account, and to sign any and all documents, slips or instruments required in the implementation of the foregoing appointment and authority. The corporation appoints and authorizes:

Specimen A
WU CHUN

Specimen B
DAPHNY CHEN

Specimen C
SANDRA G. DY
JENNIFER T. LIM

That this resolution is a continuing one with full force, and effect unless revoked or amended by a resolution of directors (sic) or until a change is made in the name/s of the person/s authorized to sign in behalf of the corporation, in which case, a copy of the resolution shall be forwarded to the party concerned.

Sgd. SANDRA G. DY
Corporate Secretary⁸

⁶ *Rollo* p. 110.

⁷ *Id.*

⁸ *Id.* at 110-111.

Upon approval of the conversion of the spouses Wu's dollar time deposit, the PRA, on September 9, 2002, deposited the peso equivalent thereof *i.e.*, ₱4,622,508.00, to HTI's deposit account with Metrobank.⁹ However, HTI failed to issue the promised shares of stock in Eric and Chen's names.¹⁰

Immediately thereafter, the relationship between HTI and the spouses Wu turned sour. On separate occasions, Eric and Chen issued checks to various payees, for different amounts, drawn from HTI's corporate bank deposit accounts leading to the litigation between the parties.

Two of those checks are the subject matter of Criminal Case Nos. 06-1263-CFM and 07-0254-CFM for *Estafa* against the Wu couple. The two Informations read:

Criminal Case No. 06-1263-CFM: (RTC 112):

That on or about the period comprising the year 2002, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, and who while being both authorized signatories of private complainant Hafti Tours Inc.'s Metrobank Checking Account No. 610-00252-4 represented by Jennifer T. Lim, and as such were entrusted with the funds thereon with the specific obligation to disburse only duly authorized expenditures, but said accused, with intent to defraud and in breach of trust and confidence reposed upon them by [HTI], did then and there willfully, unlawfully and feloniously misapply, misappropriate and convert to their own use and benefit the amount of Php17,524.00 by drawing and issuing using [HTI's] aforesaid Metrobank corporate check no. 6100011274 dated February 12, 2003, amounting to [₱]17,524.00 in favor of Manila Montessori Children's School Foundation Inc. as tuition fee payment of accused's son Primo, and despite demands made upon them, both accused refused and failed and still refuse and fail to reimburse or return the aforesaid amount, to the damage and prejudice of private complainant in the same total of Php17,524.00

Contrary to law.¹¹

Criminal Case No. 07-0254-CFM:

That on or about the 3rd day of October 2002, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another and who, while being both authorized signatories of private complainant Hafti Tours Inc.'s Global Bank Checking Account No. 040-282-00114-0 represented by Jennifer Lim, and as such were entrusted with the funds thereon with the specific obligation to disburse only duly authorized expenditures, but said

⁹ Id. at 110.

¹⁰ Id.

¹¹ Id. at 115-116.

accused with intent to defraud and in breach of trust and confidence reposed upon them by [HTI], did then and there willfully, unlawfully and feloniously misapply, misappropriate and convert to their own use and benefit the amount of [P]291,000.00 and despite demands made upon them to return said amount both accused refused and failed and still refuse and fail to return the aforesaid amount, to the damage and prejudice of [HTI] in the amount of [P]291,000.00.

Contrary to law.¹²

Previous thereto, HTI filed seven criminal complaints against the Wus before the Office of the City Prosecutor, Parañaque City, involving the same checks, including those with payable amounts of P291,000.00 and P17,524.00, which were ultimately dismissed on the ground of duplicity of offenses charged.¹³ The dismissal was brought up to the Department of Justice (DOJ), the CA and this Court in G.R. No. 196066 which affirmed the Parañaque City Prosecutor's Office's dismissal of the complaints with finality.¹⁴

Insisting on the defect in the Informations, the spouses Wu filed separate motions to quash before the RTC Branches 112 and 114, on the following grounds:

(1) In Criminal Case No. 06-1263-CFM, the facts alleged in the Information do not constitute an offense; and (2) suspension of the proceedings due to the existence of a prejudicial question.¹⁵

(2) In Criminal Case No. 07-0254-CFM, duplicity of offenses charged considering that the misappropriated amount of P17,524.00 covered by Metrobank Check No. 6100011274 had been the subject of prosecution in IS No. 03-H-3320 subsequently filed as Criminal Case No. 03-1293, before RTC, Branch 195, Parañaque City.¹⁶

Ruling of the Regional Trial Court, Branches 112 and 114.

In separate Orders, the RTC Branches 112 and 114, quashed the Informations for *Estafa* against the Wus on the same ground of duplicity of offenses charged. Significantly, the RTC Branches 112 and 114's Orders pertained to the prior prosecution of the spouses Wu for the same charges of misappropriation of the amounts of P291,000.00 and P17,524.00 in Criminal Case No. 03-1293 before RTC, Branch 195, Parañaque City which was eventually dismissed with finality.¹⁷

¹² Id. at 111-112.

¹³ Id. at 14, 117.

¹⁴ Id. at 119.

¹⁵ CA *rollo*, p. 10.

¹⁶ Id.

¹⁷ Id.

The December 7, 2006 Order of the RTC Branch 112 in Criminal Case No. 06-1263-CFM reads:

In the present case, [petitioners] stand trial for allegedly misappropriating the amount of P17,524.00 evidenced by the same check used in prosecuting them in the prior case that was already dismissed with finality. Very clearly, the prior case and the present case involved the prosecution of the same check No. 6100011274, should be allowed (*sic*).

[Petitioners] should not be harassed with various prosecution based on the same act splitting the same into various charges, all emanating from the same law violation, when the prosecution could easily and well embody them in a single Information (citation omitted).

With respect to the Motions to Suspend Proceedings and/or Motion to Quash, the same is rendered moot and academic.

WHEREFORE, the Motion to Quash is hereby **GRANTED** and the instant Information for Estafa be ordered **DISMISSED**.¹⁸

Meanwhile, the April 2, 2007 Order of the RTC Branch 114 in Criminal Case No. 07-0254-CFM holds:

Evaluating the evidence on record and after a careful and judicious study of the respective allegations of the parties in this case, the Court finds the subject Motion To Quash Information to be well-taken and meritorious as well. The Court concurs with [petitioners] that there is duplicity of offenses charged in this case. The records will show that [petitioners] stand charged for Estafa covering Global Bank Check No. 0000054700 dated October 3, 2002 in the amount of Php 291,000.00. However, this check was already presented in evidence by the complainant Hafti Tours Inc. involving prior prosecution against [petitioners] before the Office of the City Prosecutor of Paranaque, Regional Trial Court of Paranaque, Department of Justice and even went up to the Court of Appeals which eventually dismissed all the criminal cases filed against [petitioners]. Likewise, the Court concurs with [petitioners] that the allegations as contained in the Information relative to this case is different from the findings of the Office of the City Prosecutor of Pasay, thus, to the mind of the Court, does not constitute the offense charged of Estafa.

In view of the foregoing, the subject Motion To Quash Information is granted; Accordingly, the Information for Estafa against [petitioners] is hereby ordered dismissed.”

SO ORDERED.¹⁹

With the respective denials of its motions for reconsideration, HTI filed separate appeals to the CA. The succeeding events narrated by the CA follow:

¹⁸ Records, pp. 313-314.

¹⁹ Id. at 147.

On February 24, 2009, appellees filed a Motion to Consolidate CA- G.R. CR No. 31921 with CA-G.R. CR No. 31063 alleging that both cases involve the same parties and the same causes of action, that the Informations in both cases were quashed by the respective trial courts, and that both cases involve evidence presented in an estafa case that was previously dismissed by the DOJ, the trial court and the Court of Appeals. [Petitioners] also filed a similar motion in CA-G.R. CR No. 31921.

On May 12, 2009, this Court granted the motion filed by [petitioners] to consolidate CA-G.R. CR No. 31921 with CA-G.R. CR No. 31063, the latter having the lower docket number. The Court denied HTI's motion for the issuance of a hold departure order on the ground that the hold departure order previously issued by the RTC of Pasay City, Branch 114, has not yet been lifted. We also directed the Office of the Solicitor General (OSG) to file its comment on HTI's motion to require OSG to file a brief in behalf of the City Prosecutor of Pasay City.

On February 5, 2010, the OSG filed a Manifestation and Motion In Lieu of Brief praying for the affirmance of the Orders dated April 2, 2007 and June 18, 2007 of the Regional Trial Court of Pasay City, Branch 114, in Criminal Case No. 07-0254-CFM.²⁰

x x x x

Considering that the Manifestation and Motion In Lieu of Brief filed by the OSG refers only to the assailed Orders rendered by the RTC of Pasay City, Branch 114, in Criminal Case No. 07-0254-CFM, this Court ordered both HTI and the OSG to file their respective appellant's brief in CA-G.R. CR No. 31921 assailing the Order dated December 7, 2006 issued by the RTC of Pasay City, Branch 112, in Criminal Case No. 06-1263-CFM.

On September 14, 2010, HTI filed its Appellant's Brief. On November 2, 2010, [petitioners] filed a Manifestation that they are adopting their brief in CA-G.R. CR No. 31063 filed on January 16, 2008 as their Appellees' brief in CA-G.R. CR No. 31921.

On January 25, 2011, the OSG filed its Appellant's Brief. On February 16, 2011, [petitioners] filed a Reply Brief disputing the OSG's arguments. On March 28, 2011, this Court resolved to consider [petitioners'] Reply Brief as their Appellees' Brief in relation to the Appellant's Brief filed by the OSG.²¹

Notably, the Office of the Solicitor General (OSG) took conflicting positions before the CA regarding the RTC's dismissal of the criminal cases. In Criminal Case No. 07-0254-CFM appealed to the CA in CA-G.R. CR No. 31063, the OSG filed a Manifestation and Motion in Lieu of Brief adhering to the dismissal of the case because the Information failed to show how petitioners misappropriated or converted the amount of ₱291,000.00.²² On the other hand,

²⁰ *Rollo*, p. 115.

²¹ *Id.* at 118.

²² *Id.* at 120.

in Criminal Case No. 06-1263-CFM appealed to the CA in CA-G.R. CR No. 31921, the OSG filed an appellant's brief questioning the dismissal of the case.²³

**Ruling of the Court of Appeals in
CA-G.R. CR Nos. 31063 and
31921.**

As adverted to, the CA granted HTI's appeal and reversed and set aside the December 7, 2006 and April 2, 2007 Orders of the RTC Branches 112 and 114, respectively:

WHEREFORE, premises considered, the appeal is hereby GRANTED: The assailed Order dated April 2, 2007 of the Regional Trial Court of Pasay City, Branch 114, in Criminal Case No. 07-0254-CFM and the Order dated December 7, 2006 issued by the Regional Trial Court of Pasay City, Branch 112, in Criminal Case No. 06-1263-CFM are hereby REVERSED and SET ASIDE. The cases are remanded to the respective Branch of the RTC for [petitioners'] arraignment and trial.

The Manifestation filed by [petitioners] Eric Wu and Daphny Chen that the Supreme Court has denied with finality the Motion for Reconsideration filed by Hafti Tours, Inc. in SC G.R. No. 196066 is **NOTED**.

SO ORDERED.²⁴

The CA ruled that there was no duplicity of offenses because both Informations separately charged a single offense of *Estafa* by conversion and misappropriation for each amount of ₱291,000.00 and ₱17,524.00. The CA found that the RTC, Branches 112 and 114, in sustaining the ground for duplicity of offenses, mistakenly referred to the previous prosecution of the spouses Wu in Criminal Case No. 03-1293 before the RTC, Branch 195, Parañaque City for the same charge of misappropriation with the same subject matter. The CA held that double jeopardy, or *res judicata in prison grey*, did not attach since the Wus were not arraigned in Criminal Case No. 13-1293 which was eventually dismissed by the RTC, Branch 195, Parañaque City.²⁵

As for the ground that the facts charged do not constitute an offense, the CA disagreed with the RTC Branch 114's succinct ruling that the allegations contained in the Information in Criminal Case No.07-0254-CFM differed from the findings of the Pasay City Prosecutor's Office. The CA found that the facts charged in the Information (Criminal Case No.07-0254-CFM) sufficiently averred the elements of the offense of *Estafa* under Article 315, paragraph 1(b) of the RPC. According to the CA, while the Wus are indeed authorized signatories of HTI's corporate checking accounts, their issuance of checks must

²³ Id. at 28-29.

²⁴ Id. at 125-126.

²⁵ Id. at 123-124.

be for authorized corporate expenditures. Consequently, they may still be held liable for *Estafa* should they be found to have expended corporate funds for their personal use, notwithstanding their money investment deposited with HTI's corporate account. In all, the CA ruled that the allegation in the Information, of spouses Wu's willful, unlawful, and felonious acts of misapplication, misappropriation and conversion of the amount of ₱291,000.00 for their own use and benefit resulting in prejudice to HTI, constituted the offense of *Estafa* under Article 315, paragraph 1(b) of the RPC.

Expectedly, the Wus filed a motion for reconsideration which raised new arguments:

- (1) the two trial courts [RTC 112 and 114] were correct in dismissing the separate Informations filed against [petitioners] for *Estafa*, xxxx, based on their judicial determination of probable cause; and
- (2) [petitioners] could not be prosecuted for *Estafa* due to the pendency of a criminal case for *Estafa* against HTI and its officers before the Regional Trial Court, Parañaque City, Branch 196 docketed as Criminal Case No. 09-0099 involving the same invested money of [₱]4,622,508.00.²⁶

In denying the motion for reconsideration for lack of merit, the CA distinguished the executive determination of probable cause for the purpose of filing of an Information before the trial court on one hand, from the judicial determination of probable cause for purposes of issuance of a warrant of arrest, on the other hand. The CA noted that the RTC Branches 112's and 114's separate quashals of the Informations specifically cited grounds which did not list lack of probable cause. Likewise, the CA saw no need to rule on the issue of prejudicial question which the spouses Wu raised for the first time only in this appeal.

Hence, this appeal by *certiorari* of the spouses Wu positing the following issues:

I

WHETHER OR NOT THE TRIAL COURT HAS THE RIGHT TO DISMISS CRIMINAL INFORMATION AFTER FINDING THE SAME TO BE INSUFFICIENT TO SUSTAIN A PROBABLE CAUSE PURSUANT TO SUPREME COURT PRONOUNCEMENT IN THE LANDMARK CASES OF ALLADO VS. DIOKNO; AND SALONGA VS. CRUZ-PAÑO

²⁶ Id. at 42-43.

II

WHETHER OR NOT VARIANCE BETWEEN THE RESOLUTION OF THE CITY PROSECUTOR AND THE ALLEGATIONS IN THE INFORMATION IS VIOLATIVE OF THE RIGHT OF ACCUSED [PETITIONERS] TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION.²⁷
(citations omitted)

The spouses Wu are adamant that the RTC Branches 112 and 114 correctly quashed the Informations based on their judicial determination of the absence of probable cause. They proffer that the trial courts ultimately dismissed the cases not only on the grounds stated in their December 7, 2006 and April 2, 2007 Orders, but on the entire absence of probable cause to prosecute the Wus for the offense of *Estafa* under Article 315, paragraph 1(b) of the RPC. Thus, the CA erred in remanding Criminal Case Nos. 06-1263-CFM and 07-0254-CFM to the RTC Branches 112 and 114 for trial.

Our Ruling

The CA correctly reversed the RTC Branches 112 and 114's quashal of the Informations for *Estafa*.

**Absence of probable cause is not
a ground of a motion to quash
Information.**

The paucity of petitioners' argument is evidenced by the dearth of conviction in their petition. They invoke the landmark rulings in *Allado v. Diokno*²⁸ and *Salonga v. Cruz-Pano*²⁹ with nary a link and discussion on their applicability to the herein criminal cases.

It can be readily gleaned that the spouses Wu are now grasping at straws since their motions to quash stated only specific grounds. Nowhere in their arguments before the RTC, and even in their briefs before the CA, did the spouses Wu allude to the supposed lack of probable cause as a ground for the dismissal of the Informations.

Rule 112 of the Rules of Court provides for the prosecution of offenses. A criminal action is instituted upon the filing of a complaint with the prosecutor's office for the purpose of conducting a preliminary investigation, as may be required.³⁰ Upon the filing of the Information before the trial court, the judge is

²⁷ Id. at 14.

²⁸ 302 Phil. 213 (1994).

²⁹ 219 Phil. 402 (1985).

³⁰ See Section 1, Rule 110 in relation to Section 1, Rule 112 of the Rules of Court.

required to personally evaluate the resolution of the prosecutor and its supporting evidence for purposes of issuance of a warrant of arrest.³¹ At that stage, the judge may immediately dismiss the case if the evidence on record clearly fails to establish probable cause.³² However, the judge cannot reverse the findings of the prosecutor during preliminary investigation and *motu proprio* quash the Information for lack of probable cause. In case of doubt on the existence of probable cause, the judge may simply order the prosecutor to present additional evidence.³³

Corollary thereto, Section 4,³⁴ Rule 112 of the Rules of Court provides the remedy of a party aggrieved by the resolution of the investigating prosecutor, *i.e.* to file a petition for review before the Secretary of the Department of Justice (DOJ). Plainly, at the stage of the proceedings in RTC Branches 112 and 114, the filing of a motion to quash and before arraignment, the spouses Wu have already been arrested and taken into custody to answer for their alleged commission of *Estafa* against HTI.

Moreover, Section 3, Rule 117 of the Rules of Court lists the grounds for the filing of a motion to quash which should distinctly specify its factual and legal grounds.³⁵ Spouses Wu's belated argument on lack of probable cause as the RTC's additional ground in quashing the Informations against them fails in light of Section 2,³⁶ Rule 117 which precludes the court from considering grounds not stated in the motion to quash, except lack of jurisdiction over the offense charged.

Further on this point, the failure to allege any grounds in their motion to quash is deemed a waiver of their objection.³⁷ On the whole, the Wus' unsubstantiated claim that the RTC Branches 112 and 114 dismissed the cases, likewise for lack of probable cause, is decimated by specific provisions of the Rules of Court.

³¹ See Section 5(a), Rule 112 of the Rules of Court.

³² See Section 5(a), Rule 112 of the Rules of Court.

³³ See Section 5(a), Rule 112 of the Rules of Court.

³⁴ SECTION 4. *Resolution of Investigating Prosecutor and its Review.* — xxxx

If upon petition by a proper party under such rules as the Department of Justice may prescribe or *motu proprio*, the Secretary of Justice reverses or modifies the resolution of the provincial or city prosecutor or chief state prosecutor, he shall direct the prosecutor concerned either to file the corresponding information without conducting another preliminary investigation, or to dismiss or move for dismissal of the complaint or information with notice to the parties. The same rule shall apply in preliminary investigations conducted by the officers of the Office of the Ombudsman.

³⁵ See Section 2, Rule 117 of the Rules of Court.

³⁶ SECTION 2. *Form and Contents.*— The motion to quash shall be in writing, signed by the accused or his counsel and shall distinctly specify its factual and legal grounds. The court shall consider no ground other than those stated in the motion, except lack of jurisdiction over the offense charged.

³⁷ See Section 9, Rule 117, in relation to Section 9, Rule 15, of the Rules of Court

The ground of duplicity of offenses is different from the ground of double jeopardy; no duplicity of offenses.

At the outset, we note that the sparse petition did not contain a discussion on duplicity of offenses. It obliquely referred to duplicity of actions,³⁸ insisting that the prior prosecution in Criminal Case No. 03-1293 before the RTC, Branch 195, Parañaque City, barred their subsequent prosecution in Criminal Case Nos. 06-1263-CFM and 07-0254-CFM before the RTC Branches 112 and 114, Pasay City.

The spouses Wu's argument is a fish that will not fly. Duplicity of actions is not the same as duplicity of offenses as a ground for a motion to dismiss. Certainly, duplicity of offenses is not the same as the rule on double jeopardy.

The Rules of Court do not proscribe the filing of dual or even multiple actions against a respondent or accused. The Wus prior prosecution in Criminal Case No. 03-1293 where they were not arraigned is not a bar to another or subsequent prosecution.³⁹

Section 13, Rule 110 of the Rules of Court mandates the "complaint or Information to charge only one offense, except when the law prescribes a single punishment for various offenses."

The facts charged constitute the offense of *Estafa* under Article 315, paragraph 1(b) of the RPC.

We completely agree with the CA's disquisition herein:

It is axiomatic that a complaint or information must state every single fact necessary to constitute the offense charged; otherwise, a motion to dismiss/quash on the ground that it charges no offense may be properly sustained. The fundamental test in considering a motion to quash on this ground is whether the facts alleged, if hypothetically admitted, will establish the essential elements of the offense as defined in the law.

The trial court may not consider a situation contrary to that set forth the criminal complaint or information. Facts that constitute the defense of the accused against the charge under the information must be proved by them during trial. Such facts or circumstances do not constitute proper grounds for a motion to quash the information on the ground that the material averments do not constitute the offense.

³⁸ *Rollo* p. 15; see paragraph 20 of the Petition.

³⁹ See Section 6, Rule 117 of the Rules of Court.

The established rule is that the character of the crime is not determined by the caption or preamble of the information or from the specification of the provision of law alleged to have been violated; the crime committed is determined by the recital of the ultimate facts and circumstances in the complaint or information.

Contrary to appellees' contentions, a reading of the two Informations will disclose that the essential elements of the offense charged are sufficiently alleged. The elements of estafa under paragraph 1 (b), Article 315 of the Revised Penal Code are: (1) the offender receives the 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 return, the same; (2) the offender misappropriates or converts such money or property or denies receiving such money or property; (3) the misappropriation or conversion or denial is to the prejudice of another; and 4) the offended party demands that the offender return the money or property.

In CA-G.R. CR No. 31063, the Information charged that [petitioners], while being authorized signatories of HTI's corporate checking account only for authorized expenditures, "misapplied, misappropriated and converted" to their own use and benefit the amount of P291,000.00 from the said bank account to the detriment of the said corporation. In CA-G.R. CR No. 31921, the Information similarly charged that appellees, while being authorized signatories of HTI's corporate checking account only for authorized expenditures, drew against the said bank account to pay for the tuition fee of their son to the detriment of the corporation. These facts, as alleged in the two Information indubitably constitute the elements of estafa under Article 315, paragraph 1(b) of the RPC.

The fact that appellees' investment was deposited into HTI's corporate account does not mean that they could not be held liable for estafa, if they did in fact misappropriate the corporate fund for their personal use. The crime of estafa is committed when a person shall defraud another by any of the means mentioned in Article 315 of the Revised Penal Code. This is true whether or not such person is an officer of the corporation defrauded, as in these consolidated cases.⁴⁰


Finally, the Section 4, Rule 117 of the Rules of Court specifically directs the court to give the prosecution an opportunity to correct the defect in the Information on the ground of "the facts charged do not constitute an offense." Only when "the prosecution fails to make the amendment, or the complaint or information still suffers from the same defect despite the amendment," shall the motion to quash be granted.⁴¹

WHEREFORE, the petition is **DENIED**. The November 27, 2012 Decision and May 17, 2013 Resolution of the Court of Appeals in CA-G.R. CR Nos. 31063 and 31921 are hereby **AFFIRMED**.

⁴⁰ *Rollo*, pp. 124-125.

⁴¹ Section 4, Rule 117 of the Rules of Court.

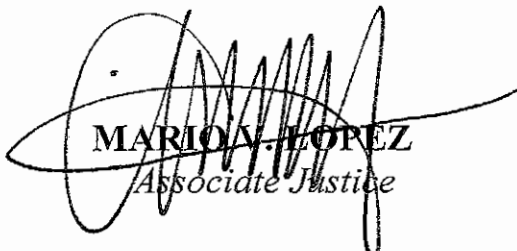
SO ORDERED.


RAMON PAUL L. HERNANDO
Associate Justice
Acting Chairperson

WE CONCUR:


AMY C. LAZARO-JAVIER
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice


MARION LOPEZ
Associate Justice


JOSE MIDAS P. MARQUEZ
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.


RAMON PAUL L. HERNANDO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting 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.


ALEXANDER G. GESMUNDO
Chief Justice