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THIRD DIVISION

[G.R. No. 115054-66. September 12, 2000]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **VICENTE MENIL, JR.**, *accused-appellant.*

SYNOPSIS

In reference to Article 315, par. 2(a) of the Revised Penal Code, the trial court, in a joint decision, convicted appellant of large scale swindling and 13 counts of estafa. The trial court found that appellant and his wife, who died while the case was pending, solicited investments through sales executives, assuring 10-fold, later, 7-fold, return after 15 days. Thus, they solicited million peso investments, but delayed in payments of the returns. Eventually, payments of the returns stopped, and neither were remitted investments returned.

The Court sustained the conviction. What appellant actually offered to the public was a "Ponzi Scheme," an unsustainable investment program that offers extravagantly high returns and pays these returns to early investors out of the capital contributed by later investors. Thus, using fraud and deceit, appellant induced gullible people to invest in his business, promising them high profit when no profit is forthcoming as appellant is not engaged in any business to finance its operation.

SYLLABUS

1. CRIMINAL LAW; ESTAFA BY FALSE PRETENSES PRIOR TO OR SIMULTANEOUSLY WITH COMMISSION OF FRAUD; ELEMENTS. — [Under] Article 315, par. 2 (a) of the Revised Penal Code, ...swindling or estafa by false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud is committed by "using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business, or imaginary transactions, or by other similar deceits." The elements of estafa under this penal provision are: (1) the accused defrauded another by means of deceit and (2) damage or prejudice capable of pecuniary estimation is caused to the offended party or third party.

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2. **ID.; ID.; FRAUD AND DECEIT, DEFINED.** — Fraud, in its general sense is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty trust, or confidence justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another. It is a generic term embracing all multifarious means which human ingenuity can devise and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated. On the other hand, deceit 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.

3. **ID.; ID.; ACTIONABLE FRAUD; PRESENT WHEN PROMISE OF INCOME BELIEVED BUT THE SAME COULD NOT BE REALIZED.** — It has been held that where one states that the future profits or income of an enterprise shall be a certain sum, but he actually knows that there will be none, or that they will be substantially less than he represents, the statements constitute an actionable fraud where the hearer believes him and relies on the statement to his injury. In the case at bench, it is abundantly clear that ultimately, the profits which accused-appellant promised to his investors would not be realized... what accused-appellant actually offered to the public was a "Ponzi Scheme," an unsustainable investment program that offers extravagantly high returns and pays these returns to early investors out of the capital contributed by later investors.

4. **ID.; LARGE SCALE SWINDLING UNDER PD 1689; PROPER PENALTY.** — P.D. No. 1689 thus penalizes offenders with life imprisonment to death regardless of the amount involved, provided that a syndicate committed the crime. A syndicate is defined in the same law as "consisting of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme." If the offenders are not members of a syndicate, they shall nevertheless be held liable for the acts prohibited by the law but they shall be penalized by *reclusion temporal* to *reclusion perpetua* if the amount of the fraud is more than one hundred thousand pesos. In the

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instant case, there was no showing by the prosecution that a syndicate perpetrated the Ponzi Scheme. While the prosecution proved that a non-stock corporation with eleven (11) incorporators including accused-appellant and his wife, was involved in the illegal scheme, there was no showing that these incorporators collaborated, confederated, and mutually helped one another in directing the corporation's activities. In fact, the evidence for the prosecution shows that it was only accused-appellant and his wife who had knowledge of and who perpetrated the illegal scheme. As such, the trial court was correct in convicting accused-appellant under the second paragraph of Section 1 of P.D. 1689 considering that the amount swindled by accused-appellant totals ₱45,494,936.00. The trial court erred, however, in imposing the penalty of *reclusion perpetua*. Given the absence of mitigating or aggravating circumstances, the lesser penalty imposed under the said paragraph, *reclusion temporal,* should have been imposed in its medium period. Applying the Indeterminate Sentence Law, accused-appellant, in Criminal Case No. 2948, should have been sentenced to an indeterminate penalty of ten (10) years of *prision mayor* medium, as minimum, to twenty (20) years of *reclusion temporal* medium, as maximum.

5. ID.; ESTAFA; PROPER PENALTY. — The penalty for estafa depends on the amount defrauded. Article 315 of the Revised Penal Code provides that "the penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period (or imprisonment ranging from 4 years, 2 months, and 1day to 8 years), if the amount of the fraud is over ₱12,000.00 but does not exceed ₱22,000.00, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period (6 years, 8 months and 21 days to 8 years), adding one year for each additional ₱10,000.00 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such case, 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. Under the Indeterminate Sentence Law, the maximum term of the penalty shall be "that which, in view of the attending circumstances could be properly imposed" under the Revised Penal Code, and the minimum shall be "within the range of the penalty next lower to that prescribed for the offense. The penalty next lower should

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be based on the penalty prescribed by the Code for the offense, without first considering any modifying circumstance attendant to the commission of the crime. The modifying circumstances are considered only in the imposition of the maximum term of the indeterminate sentence. In computing the penalty for estafa, the fact that the amounts involved exceed ₱22,000.00 should not be considered in the initial determination of the indeterminate penalty; instead the matter should be taken as analogous to modifying circumstances in the imposition of the maximum term of the full indeterminate sentence. This interpretation of the law is in accord with the rule that penal laws should be construed in favor of the accused. Since the penalty prescribed by law for estafa is *prision correccional* maximum to *prision mayor* minimum, the penalty next lower would then be *prision correccional* in its minimum to medium periods. Thus, the minimum term of the indeterminate sentence should be anywhere within six (6) months and one (1) day to four (4) years and two (2) months while the maximum term of the indeterminate sentence should at least be six (6) years and one (1) day because the amounts involved exceeded ₱22,000.00, plus one (1) year for each additional ₱10,000.00. The maximum penalty should not exceed twenty years.

APPEARANCES OF COUNSEL

Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

GONZAGA-REYES, *J.*:

On appeal is the joint decision[1] dated 16 August 1993, of the Regional Trial Court of Surigao City, Branch 30, in Criminal Case Nos. 2948, 2956, 3000, 3001, 3013, 3020, 3021, 3022, 3026, 3028, 3052, 3053, 3054, and 3058, convicting accused-appellant Vicente "Boy" Menil, Jr. of one (1) count of large scale swindling and thirteen (13) counts of estafa.

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[1] Penned by Judge Carlo H. Lozada.

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The facts of the case are as follows:

Vicente Menil, Jr. and his wife, Adrian B. Menil, were the proprietors of a business operating under the name ABM Appliance and Upholstery with offices at the Denso Building, Capitol Road, Surigao City. On July 15, 1989, they, through ushers and sales executives, began soliciting investments from the general public in Surigao City and its neighboring towns. They assured would-be investors that their money would be multiplied ten-fold after fifteen (15) calendar days. In other words, if a person invested ₱100.00, they claimed that after fifteen (15) calendar days the investor would get the amount of ₱1,000.00 in return. Each investor may invest a maximum amount of ₱1,000.00 for which they were reportedly assured a return of ₱10,000.00. With respect to their ushers and sales executives, they were given a 10% commission from the total amounts they remitted to the business.

The people who invested in the business were issued coupons which merely indicated the date of entry, the due date of the investment, the amount given, the amount to be received, the name and address of the investor and the name of the sales executive. Sales executives appointed by accused-appellant were given these coupons which they in turn, gave to the people they solicited from as proof of their investment. The sales executives likewise wrote down on a piece of yellow pad paper the details of the investments they received during a particular day. These sales executives were required to remit the investments they collected daily at the offices of ABM Appliance and Upholstery by presenting the money and the yellow pad containing the names of the investors. A representative of ABM Appliance and Upholstery then received the money and signed the yellow pad paper. The sales executives were then immediately given their 10% commission from the amount remitted. When the investments matured, a lump sum representing the total return of the investments were given to the sales executives who were given the task of distributing them to the investors they dealt with.

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Initially, the operation started with a few investors who invested small amounts. On the day of the start of the operations, for example, less than ₱200.00 were invested at their offices. Gradually the amounts invested and the number of depositors increased. On June 30, 1989 alone the business was able to attract more than 200 investors and the total amount of investments they received was more than ₱40,000.00. Because of the small amounts initially involved, accused-appellant and his wife were able to pay the returns on the investments as they fell due.

Sometime during the first week of August 1989 accused-appellant and his wife, apparently to clothe their operations with legitimacy caused the incorporation of their business, under the name ABM Development Center Inc. with the Securities and Exchange Commission. As registered under S.E.C Reg. No. 167274,[2] the ABM Development Center, Inc. was a non-stock corporation with twelve (12) incorporators and trustees, including accused-appellant Vicente Menil, Jr. and his wife Adriana B. Menil. Adriana B. Menil was likewise appointed as the treasurer of the non-stock corporation. The corporation had a total capitalization of ₱12,000.00 and its purposes, as stated in its Articles of Incorporation,[3] are as follows:

"1. To assist in the total development of community members morally, physically, educationally and economically and socially towards their present and future progress;

2. To operate coordinate and/or organize community development centers;

3. To make or coordinate in the making of studies and researches;

4. To solicit, receive, channel and/or distribute donations, economic aids, grants, investments in money or in kind;

5. To help train community members in newly acquired knowledge, modern trends and techniques;

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[2] Exhibit "2".

[3] Exhibit "2-A".

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6. To promote brotherhood, fellowship and unity among ourselves; and

7. To negotiate, represent, and deal with government and other agencies for the benefit and in behalf of the members as well as for the community."

On August 15, 1989 accused-appellant and his wife held a meeting with the sales executives and ushers of the ABM Development Center, Inc. at the Provincial Convention Center. At this meeting, accused-appellant informed the sales executives that the business of ABM Development Center, Inc. was proceeding normally and that investments were coming in. He advised the sales executives however that beginning that date, all investments accepted by the business would only have returns of 1:7 which investors will receive after fifteen (15) working days excluding weekends and holidays. As such if a person gave ₱100.00, his Investment will mature only after fifteen (15) working days and he will receive only ₱700.00. This change of policy was contained in a Memorandum dated August 24, 1989.[4]

After this August 15, 1989 meeting, the sales executives continued accepting investments from the general public and the offices of accused-appellant kept on accepting the remittances of the sales executives. By this time daily investments amounting to millions of pesos were pouring into the offices of ABM Development Center, Inc. and payments of the returns became delayed. Allegedly due to the delay in the counting of the money for release to investors, the payments which were set for release on August 28, 1989 were completely paid only on September 18, 1989.

On September 19, 1989 the ABM Development Center, Inc. stopped releasing payments. The sales investors went to the offices of ABM Development Center Inc. to inquire about the release of payments but there was no one around to address their complaints. The whereabouts of accused-appellant and his wife was also unknown.

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[4] Records, p. 69.

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On October 10, 1989, accused-appellant and his wife made an announcement over the radio that payments were forthcoming and that the investors should have no cause for alarm. They also repeated their announcement on television. Despite these assurances and despite repeated demands made by the investors, accused-appellant released no further payments and neither did he refund any investment remitted to him. Accused-appellant and his wife went into hiding in Davao City but eventually they were arrested by police authorities led by a certain Colonel Panchito.

Consequently a case for large scale swindling was filed by the City Prosecutor of Surigao City against the accused-appellant and his wife. Additionally, twenty cases for estafa were filed against accused-appellant and his wife by the Provincial Prosecutor's Office. Of these twenty (20) cases, seven (7) were provisionally dismissed on October 21, 1991 for failure to prosecute.

In Criminal Case No. 2948, the information[5] charging accused-appellant and his wife with the crime of large scale swindling was filed on December 14, 1989. The information in this case reads as follows:

"That in or about the month of August, 1989, and/or sometime prior or subsequent thereto, in the city of Surigao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, did then and there willfully, unlawfully and feloniously defraud thousands of investors using as instruments innocent and defrauded sales executives and/or ushers, in the following manner to wit the above-named accused, pretending to possess credit, property and a secret formula in their pyramiding business scheme, enticed the general public to invest with ABM Development Center, Incorporated, thru false manifestations and representations that the amount they would invest would earn seven hundred percent (700%) after fifteen (15) working days from date of investment, by which enticing offer, the general public was persuaded to invest large sums of money thru the innocent sales executives and/or ushers amounting

[5] *Rollo*, p. 7.

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to more than ONE HUNDRED THOUSAND PESOS (₱100,000.00), Philippine Currency, which were duly remitted to and received by the accused doing business under the name and style ABM Development Center, Incorporated, which was the front of their illegal transactions, but the accused once in the possession of the amounts invested and far from complying with their aforesaid obligation with deceit aforethought, misapplied, misappropriated, converted and absconded the amounts received as investments to their own personal use and benefit and despite repeated demands made for the payment of the benefits of the investments and/or the return of the amounts invested, said accused failed and refused, and still fail and refuse to do so, to the damage and prejudice of the investors in such sums as may be proven and such other damages as may be allowed by law.

Contrary to Article 315 of the Revised Penal Code, in relation to paragraph 2 of Presidential Decree No. 1689."

In Criminal Case No. 2956, accused-appellant and his wife were charged with violation of Article 315 of the Revised Penal Code. The information in this case reads as follows:

"That from July 26, 1989 to September 13, 1989, at Placer, Surigao del Norte, Philippines x x x the above-named accused x x x with deliberate criminal intent to defraud the general public by pretending to have a huge amount as sinking fund but later on was found out to be a pyramiding scam, accused Vicente Menil, Jr. being the Manager, and his wife accused Adriana B. Menil being the Treasurer of their association known as ABM Development Center Inx x x xoperating on funds solicited from the general public in the form of investments with the enticing return of 10 times then later reduced to 7 times the investment after due date and having successfully solicited thru their sales executive, Zohar Mondaya the total amount of ₱610,046.00, did then and there x x x misappropriate x x x the said amount x x x remitted to them subject to the condition that x x x after the lapse of 15 working days from remittance, said investment would be returned in seven folds to the Investors, but x x x repeated demands made x x x said accused failed and refused to pay or give as agreed upon by them x x x to the damage and prejudice of the investors in the said amount ₱610,046.00 x x x resulting to more financial difficulties of the general public and therefore constitutes economic sabotage that threatens the stability of the nation.

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Contrary to Art. 315 of the Revised Penal Code."[6]

Similarly worded informations were filed against the accused-appellant and his wife in Criminal Case Nos. 3000, 3001, 3013, 3020, 3021, 3022, 3026, 3028, 3052, 3053, 3054 and 3058. These informations likewise charged accused-appellant and his wife with violations of Article 315 of the Revised Penal Code and differed only in the amount allegedly swindled, the names of the complainants and the sales executives, and the time and place where the alleged swindling occurred.

Accused-appellant and his wife, upon being arraigned on April 4, 1990, pleaded not guilty to all the charges leveled against them.[7]

In the case for large scale swindling and in the thirteen (13) cases for estafa, a pre-trial was conducted. The pre-trial order[8] in Criminal Case No. 2948, for large scale swindling, shows the following stipulations:

1. That the accused Vicente Menil, Jr. and Adriana Menil are the General Manager and Treasurer, respectively of the ABM Appliances and Upholstery with Assurances and Privileges which later on changed to ABM Development Center;
2. That the ABM Development Center was operating business in Surigao City, particularly at the Capitol Road, that it was duly registered with the Securities and Exchange Commission and was duly issued a Mayor's Permit to operate the same;
3. That the ABM Appliances and Upholstery with Assurances and Privileges, and later ABM Development Center were merged into one, under one sanitary permit to operate as one entity;

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6 *Rollo*, pp. 20-21.

7 Records, p. 116.

8 Records, p. 174.

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4. That on August 24, 1989, Vicente Menil Jr., the General Manager, issued a Memorandum to all investors thereof regarding the decrease of the proceeds of the investment from one thousand percent to 700% so that the ₱10.00 investment will get only the proceeds of ₱70.00; and;
5. That what remain to be proved in the trial on the merits will be limited only to the names of the sales executives/ investors and amounts of investment.

For the thirteen estafa cases, the following facts were stipulated:

1. That the accused operated the ABM Appliance and Upholstery with Assurance Privileges and ABM Development Center, Inc., the latter being duly registered with the Securities and Exchange Commission;
2. That accused Vicente Menil, as General Manager, and Adriana Menil, as Treasurer, operating through the sales executives who solicited/received investments from the general public and remitted to the corporation;
3. That the listed sales executives and the amounts claimed remitted and received are qualifiedly admitted; and
4. That the operation of ABM stopped on September 18, 1989.[9]

Thereafter trial on the merits in the fourteen (14) cases commenced.

During the trial of the case, accused Adrian B. Menil, the wife of accused-appellant died of tuberculosis on November 5, 1992 and accordingly the trial court dismissed the cases as against her in an Order dated November 12, 1992.[10]

In all the fourteen (14) cases before the trial court, the documentary evidence for the prosecution was similar, consisting mainly of the investment records containing a listing of

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[9] *Rollo*, p. 26.

[10] Records, p. 331.

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remittances made by the sales executives/ushers of ABM Appliance and Upholstery and ABM Development Center, Inc. Likewise, the testimonial evidence for the prosecution consisted mainly of the testimonies of the sales executives/ushers of ABM Appliance and Upholstery and ABM Development Center Inc. who testified on the mode of operations the respective amounts which they solicited from the public and the places where they solicited.[11]

In Criminal Case No. 2948, for violation of P.D. 1689, due to the large number of witnesses listed in the complaint and information (91 in all), the prosecution and defense agreed to limit the number of witnesses to only four (4) sales executives.

These witnesses, namely Felicitas Gotostos, Gloria Apale, Wilfredo Lisandra and Nena Cagna-an, uniformly declared that they were sales executives and investors appointed by accused-appellant Vicente Menil, Jr. to solicit investments from people in Surigao City. Witness Felicitas Gatostos claimed that she remitted a total of ₱257,180.00. Gloria Apale turned over investments totalling ₱1,897,619.00 while Nena Cagna-an claimed to have remitted a total of ₱94,120.00. Finally, witness Wilfredo Lisondra allegedly turned over investments totalling ₱1,124,358.00. These amounts were listed on sheets of paper which were marked and acknowledged received by representatives of the ABM office. These four investments were included in a Summary of Total Investments presented by the prosecution containing the names of 1,124 sales executives and/or investors who all in all remitted a total amount of ₱45,494,936.00.

For the thirteen (13) estafa cases, the prosecution presented the thirteen complainants who were sales executives and/or investors of ABM assigned to the different *barangays* and municipalities in Surigao del Norte where ABM collected investments. They all testified on the *modus operandi* employed by accused-appellant in conducting his "investment business" and they identified documents which showed the names of the

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[11] *Rollo*, p. 27.

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investors they solicited from and the amounts which they remitted to ABM and which remained unpaid. Following is a summary of the amounts that these witnesses claim as having been duly received by ABM for investment purposes and which remained unpaid to date:

CRIMINAL CASE NO.	*WITNESS*	*PLACE*	*AMOUNT*
2956	Zohar Mandaya	Placer, Surigao del Norte	₱610,046.00
3000	Cedronio Cagampang	Bacuag, Surigao del Norte	₱136,670.00
3001	Joseph Lacsamana	Brgy. del Rosario, Tubod, Surigao del Norte	₱203.850.00
3013	Domingo T. Tejada	Brgy. Anislagan, Placer, Surigao del Norte	₱ 29,070.00
3020	Rosiefe M. Laid	Brgy. Sta. Cruz, Placer, Surigao del Norte	₱114,620.00
3021	Gamaliela Mordeno	Brgy. Roxas, Mainit, Surigao del Norte	₱447,960.00
3022	Rebecca Mosca	Brgy. Poblacion, Mainit, Surigao del Norte	₱275,280.00
3026	Patora Decalit	Brgy. Sta. Cruz, Placer, Surigao del Norte	₱222,120.00
3028	Francisca Tado	Tubod, Surigao del Norte	₱399,650.00
3052	Porferia Etac	Brgy Bad-as, Placer Surigao del Norte	₱172,910.00
3053	Leodegaria Paquero	Brgy. Marga, Tubod Surigao del Norte	₱148,278.00
3054	Felomina Calamba	Tubod, Surigao del Norte	₱320,000.00
3058	Merlina Silva	Brgy Bad-as, Placer	₱500,129.00

Accused Vicente Menil, Jr. put up a common defense in all the cases filed against him.

He testified that his investment business started on June 15, 1989 in Surigao City.[12] He insists that his investment business was legitimate as his corporation was registered with the Securities and Exchange Commission. He pointed out that under paragraphs 3 and 4 of the Articles of Incorporation of ABM Development Center, Inc. he was authorized to solicit and receive investments in money and in kind. He also presented a Mayor's Permit which he claimed authorized him to run the business.[13]

In answer to a question as to how his business operates the accused-appellant described it as a rolling system" which paid off dividends in the ratio of one is to ten initially and then one is to seven beginning August 15, 1989.[14] He claimed to have

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[12] T.S.N., January 26, 1993, p. 5.

[13] *Ibid.*, pp. 5-9.

[14] *Ibid.*, pp. 9-10.

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paid off these investments as they matured beginning June 30, 1989 and that he was able to pay off all investments received by his office which matured on August 28, 1989 and earlier.[15] He stated however, that because of the large amounts involved he was able to pay off the investments maturing on August 28, 1989 only on September 18, 1989 as the counting of the money alone took two or three days to finish.[16]

He alleged that he stopped giving payments after September 18, 1989 due to circumstances beyond his control. He claimed that on September 19, 1989, he and his wife were fetched by a certain Lt. Arab and were brought to the PC Headquarters where a certain Col. Macatangcop questioned them as to the delay in the payment of investments. He was then mauled by a certain Lt. Arab and two sons of Col. Macatangcop when he refused to issue to them a check for ₱500,000.00. He was released by Col. Macatangcop only after he issued a check for ₱250,000.00 and after he promised that he will not submit himself to a medical examination.[17]

After his experience with Col. Macatangcop, he proceeded back to his office to rest and to plan his next course of action. He then went to the Provincial Hospital in order to have his injuries checked. He was able to secure a medical certificate attesting to the injuries that he sustained.[18] While at the hospital, he heard rumors that he was being hunted by the military and so he transferred to the Miranda Clinic. Thereafter, he went to Toril, Davao City where he was arrested by a certain Col. Panchito.[19]

He stated that while in Davao City, a certain Sgt. Patino ransacked his belongings and took away his attaché case containing ₱50,000.00 in cash, several pieces of jewelry, watches, a camera, and an undisclosed amount in British pounds and

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16 *Ibid.*, pp. 11-19.

17 *Ibid.*, p. 19.

18 *Ibid*, pp. 20-23.

19 *Ibid.*, p. 25.

Ibid., pp. 26-28.

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American dollars. All in all, he claimed that he lost a total of half a million pesos.[20] He further stated that he left around ₱3,000,000.00 inside a steel cabinet in his office which had been taken into the custody of the city sheriff. When he checked the contents with the sheriff's office, he stated that the steel cabinet had been forcibly opened and the money was now missing.[21]

He further alleged that he had money in the Surigao City Banks amounting to half a million pesos but he gradually withdrew this amount to pay off his obligations. At this point, he could no longer pay off all his financial obligations as he had no more money and because he was detained at the Surigao City jail.[22]

On August 16, 1993, the trial court rendered a joint decision[23] finding accused-appellant guilty of one count of large scale swindling and thirteen (13) counts of estafa. The dispositive portion of the joint decision provides, as follows:

"WHEREFORE, this Court hereby finds accused Vicente Menil, Jr. GUILTY beyond reasonable doubt of Estafa, defined and penalized in Article 315, first paragraph and Sections 1(b) and 2(a) of the Revised Penal Code, in all the above-entitled thirteen (13) provincial cases and one (1) city case, and, accordingly, hereby sentences him, the following penalties:

Crim. Case No. 2948:

The qualified penalty provided for in second paragraph of Section 1, Presidential Decree No. 1689, for Large Scale Swindling, and metes out an imprisonment of *reclusion perpetua*; and to indemnify all the listed investors in Exhibits "PP-1" to "PP-2", in the total sum of ₱45,494,936.00, Exhibit "PP"; to suffer the accessory penalties provided for by law; and to pay the costs.

Crim. Case No. 2956:

An indeterminate penalty of Eight (8) years of *prision mayor* to Twenty Years of *reclusion temporal*; to indemnify the investors listed

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[20]
[21] *Ibid,* pp. 28-29.
[22] *Ibid,* pp. 31-32.
[23] *Ibid,* pp. 32-33.
Rollo, pp. 19-42.

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in Exhibits "A-5" to "A-188", in the amount of ₱624,726.00; to suffer the accessory penalties provided for by law; and, to pay the costs.

Crim. Case No. 3000:

An indeterminate penalty of Eight (8) years of *prision mayor* to Twenty Years of *reclusion temporal*; to indemnify the investors listed in Exhibits "A" to "A-27", the sum of ₱136,670.00; to suffer the accessory penalties provided for by law; and, to pay the costs.

Crim. Case No. 3001:

An indeterminate penalty of Eight (8) years of *prision mayor* to Twenty Years of *reclusion temporal*; to indemnify the investors listed in Exhibits "A-1" to "A-83", the sum of ₱203,850.00; to suffer the accessory penalties provided for by law; and, to pay the costs.

Crim. Case No. 3013:

An indeterminate penalty of Two (2) years, Four (4) Months of *prision correccional*, as the minimum, to Eight (8) years of *prision mayor*, as the maximum; to indemnify the investors listed in Exhibits "A-1" to "A-8" the sum of ₱29,070.00; to suffer the accessory penalties provided for by law and, to pay the costs.

Crim. Case No. 3020:

An indeterminate penalty of Eight (8) years of *prision mayor* to Twenty Years of *reclusion temporal*; to indemnify the investors listed in Exhibits "A-1" to "A-126" the sum of ₱114,620.00; to suffer the accessory penalties provided for by law; and, to pay the costs.

Crim. Case No. 3021:

An indeterminate penalty of Eight (8) years of *prision mayor* to Twenty Years of *reclusion temporal*; to indemnify the investors listed in Exhibits "A-1" to "A-126" the sum of ₱447,960.00; to suffer the accessory penalties provided for by law; and, to pay the costs.

Crim. Case No. 3022:

An indeterminate penalty of Eight (8) years of *prision mayor* to Twenty Years of *reclusion temporal*; to indemnify the investors listed in Exhibits "A-1" to "A-64" the sum of ₱275,280.00; to suffer the accessory penalties provided for by law; and, to pay the costs.

Crim. Case No. 3026:

An indeterminate penalty of Eight (8) years of *prision mayor* to Twenty Years of *reclusion temporal;* to indemnify the investors listed

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in Exhibits "A-1" to "A-28" the sum of ₱222,120.00; to suffer the accessory penalties provided for by law; and, to pay the costs.

Crim. Case No. 3028:

An indeterminate penalty of Eight (8) years of *prision mayor* to Twenty Years of *reclusion temporal*; to indemnify the investors listed in Exhibits "A-1" to "A-74" the sum of ₱399,650.00; to suffer the accessory penalties provided for by law and. to pay the costs.

Crim. Case No. 3052:

An indeterminate penalty of Eight (8) years of *prision mayor* to Twenty Years of *reclusion temporal* to indemnify the investors listed in Exhibits "A-1" to "A-26" the sum of ₱172,910.00; to suffer the accessory penalties provided for by law; and, to pay the costs.

Crim. Case No. 3053:

An indeterminate penalty of Two (2) Years and Four (4) Months of *prision correccional*, as the minimum, to Eight (8) years of *prision mayor*; to indemnify the investors listed in Exhibits "A-1" to "A-17" the sum of ₱36,970.00: to suffer the accessory penalties provided for by law and, to pay the costs.

Crim. Case No. 3054:

An indeterminate penalty of Eight (8) years of *prision mayor* to Twenty Years of *reclusion temporal*; to indemnify the investors listed in Exhibits "A-1" to "A-198" the sum of ₱920,883.00; to suffer the accessory penalties provided for by law; and, to pay the costs.

Crim. Case No. 3058:

An indeterminate penalty of Eight (8) years of *prision mayor* to Twenty Years of *reclusion temporal*; to indemnify the investors listed in Exhibits "A-1" to "A-150" the sum of ₱500,129.00; to suffer the accessory penalties provided for by law; and, to pay the costs.

Without subsidiary imprisonment, in case of insolvency.

Pursuant to Article 70, the penalty of *reclusion perpetua* shall be served first and, thereafter, the simultaneous service of the penalties imposed in the thirteen (13) provincial cases. Provided, however, that the maximum period shall in no case exceed Forty (40) Years, after applying the three-fold rule length of time, corresponding to the most severe of the penalties imposed, which is *reclusion perpetua*, computed at Thirty (30) years.

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The accused's preventive detention shall be credited in his favor, pursuant to law.

SO ORDERED."[24]

Hence this appeal where accused-appellant raises the following assignment of errors.[25]

I.

THE COURT *A QUO* ERRED IN NOT DECLARING AS PURELY CIVIL THE LIABILITY OF ACCUSED-APPELLANT TO THE PRIVATE COMPLAINANTS/INVESTORS.

II.

THE COURT *A QUO* MANIFESTLY ERRED IN CONVICTING ACCUSED-APPELLANT FOR LARGE SCALE SWINDLING UNDER P.D. 1869 IN CRIM. CASE NO. 2948 AND ESTAFA IN CRIM. CASE NOS. 2956-3058 RESPECTIVELY, DESPITE THE FACT THAT HIS GUILT WAS NOT PROVED BEYOND REASONABLE DOUBT.

We affirm the conviction of accused-appellant.

In convicting accused-appellant of the crimes of Large Scale Swindling punishable under P.D. 1689 in Criminal Case No. 2948 and estafa in the thirteen other criminal cases filed against accused-appellant, the trial court made reference to Article 315 par. 2 (a) of the Revised Penal Code. Under this provision, swindling or estafa by false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud is committed by "using fictitious name, or falsely pretending to possess power influence, qualifications, property, credit, agency, business, or imaginary transactions, or by other similar deceits." The elements of estafa under this penal provision are; (1) the accused defrauded another by means of deceit and (2) damage or prejudice capable of pecuniary estimation is caused to the offended party or third party.[26]

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[24] *Rollo,* pp. 39-41.

[25] *Rollo,* p. 98.

[26] *De la Cruz vs. CA,* 265 SCRA 299; *People vs. Bautista,* 241 SCRA 216.

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In the case at bench it is not disputed that the accused-appellant failed to pay the expected returns of the investments and/or solicitations of the private complainants. Accused-appellant himself admits that he was not able to pay the returns on the investments due August 29, 1989 onwards. Neither did he return the amount of their investments. Thus:

"Q: Okay. All right, you know this Crim. Case No. 3053, one Leodegaria Paquero claims that she had invested the amount of ₱36,970.00 duly acknowledged as to have been received by the ABM. Can you tell, Mr. Menil, what happened to this investment made by the said Leodegaria Paquero?

Court:

What municipality is that?

Pros. Calang:

Tubod, Barangay Marga, your Honor please.

Atty. Canoy:

I would like to request counsel to pinpoint your honor please, the amount?

Pros. Calang:

On pages 31-45 inclusive, on record.

Q: What happened to her investment of ₱36,970.00?
A: It was included in the damage when the business was closed.

Q: Meaning to say, not paid?
A: Not paid, sir.

Q: Even the total amount of investment was not returned?
A: Yes, it was not returned, sir.

Q: In Crim. Case No. 3000, one Cedronio Cagampang claims that he had invested to the ABM Development Center, Inc. as usher as well as investor in the amount of P136,670.00 turned over and received by the ABM Development Center, Incorporated. Kindly tell this Honorable Court what happened to this investment?
A: This one which was not yet due or arrived to its due date so this was not paid.

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Atty. Canoy:

> Your honor please, I think there is no need to present the same because it is admitted, your Honor that all monies invested and which became due after August 28 were not received.

Court:

> Yes, that is why there is that manifestation. So we will save time the same is true with the other cases where it was shown that the money were invested and due after August 28."[27]

What needs to be determined therefore is whether or not the element of defraudation by means of deceit has been established by the prosecution beyond reasonable doubt.

Fraud, in its general sense, is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust, or confidence justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another.[28] It is a generic term embracing all multifarious means which human ingenuity can devise and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated.[29] On the other hand, deceit 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.[30]

With these legal doctrines in mind, we hold that the testimonial and documentary evidence presented by the prosecution, as well as the admissions made by accused-appellant, sufficiently prove that accused-appellant employed fraud and deceit upon gullible people to induce them to invest in his "business." The inducement consisted of accused-appellant's assurance that

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[27] T.S.N., January 27, 1993, pp. 20-21.

[28] *CIR vs. CA,* 257 SCRA 200.

[29] *Alleje vs. CA*, 240 SCRA 495.

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money invested in his "business" would have returns of 1000%, later reduced to 700%, after 15 days. Lured by the false promise of quick financial gains on their investments, the unsuspecting people of Surigao del Norte readily turned over their hard-earned money to the coffers of ABM.

It has been held that where one states that the future profits or income of an enterprise shall be a certain sum, but he actually knows that there will be none, or that they will be substantially less than he represents, the statements constitute an actionable fraud where the hearer believes him and relies on the statement to his injury.[31] In the case at bench, it is abundantly clear that ultimately, the profits which accused-appellant promised to his investors would not be realized. Accused-appellant admitted during his testimony that the money he used to pay of maturing investments were taken from the remittances received by ABM Development Center, Inc. Thus:

Q: As far as you can recall as of June 30, 1989, how much investments were already made or received by your office?
A: More than forty thousand pesos.

Q: Your first due date was June 30, 1989 you said, the returns is estimated to be more than one thousand pesos?
A: Yes, sir.

Q: Where do you get this one thousand pesos for the investmentdue on June 30, 1989 is it not that you get it from the investment of the previous days?
A: That is the amount that I'm going to use. But I also have my own funds.
Q: How much was your funds as of June 30, 1989?
A: Two Hundred Fifty Thousand (₱250,000.00) Pesos.

Q: The investments that were due on July 1, 1989, the money that you are to pay for these returns were taken from the previous days, correct?
A: Yes, sir.

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[30] *People vs. Castillo*, 76 Phil. 72.
[31] *People vs. Balasa*, 295 SCRA 49.

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Q: The same is true with the investments due on July 2, you get all the money to pay from the investments made in the previous days correct?
A: Yes, sir.

Q: And the same thing is followed on the days after?
A: Yes, sir.

Q: Your last due date was August 28?
A: Yes, sir.

Q: Again the returns for these date were taken from the previous days, from the investments of the people from the previous dates?
A: Yes, sir.

xxx xxx xxx

Q: On August 29, were there still investments?
A: There was still investment on that date, sir, but as far as I know there were so many releases on that day. I paid up to September 18. But on September 19, there was already an incident that happened.

Q: The returns you made of investments on September 18, when was that investment made?
A: From the previous investments.

Q: My question is: Those amounts you paid on September 18, when was . . . were those amounts invested, do you agree that it was also fifteen days before?
A: Every due date we completely paid it. Every due date, we paid completely before going to the next day. Due date, for example, it was delayed because it was delayed in counting money. For example, the one hundred thousand pesos, it takes time in counting that one hundred thousand pesos.

Q: Are we to understand from you, Mr. Witness, that the returns of the investments due on August 28 were already paid on August 28?
A: Yes, sir.

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Q: And the money that you used in paying these returns were also taken from the previous days, from the investments of the people?
A: Yes, sir.[32]

In other words, accused-appellant merely paid the returns of maturing investments from the remittances of succeeding investors. What accused-appellant actually offered to the public was a "Ponzi Scheme," an unsustainable investment program that offers extravagantly high returns and pays these returns to early investors out of the capital contributed by later investors. In *People vs. Balasa,*[33] we had occasion to describe the workings of the "Ponzi Scheme" as follows:

"Named after Charles Ponzi who promoted the scheme in the 1920's, the original scheme involved the issuance of bonds which offered 50% interest in 45 days or a 100% profit if held for 90 days. Basically, Ponzi used the money he received from later investors to pay extravagant rates of return to early investors, thereby inducing more investors to place their money with him in the false hope of realizing this same extravagant rate of return themselves. This was the very scheme practiced by the Panata Foundation.

However, the Ponzi scheme works only as long as there is an ever-increasing number of new investors joining the scheme. To pay off the 50% bonds Ponzi had to come up with one-and-a-half times increase with each round. To pay 100% profit, he had to double the number of investors at each stage, and this is the reason why a Ponzi scheme is a scheme and not an investment strategy. The progression it depends upon is unsustainable. The pattern of increase in the number of participants in the system explains how it is able to succeed in the short run and, at the same time, why it must fail in the long run. This game is difficult to sustain over a long period of time because to continue paying the promised profits to early investors, the operator needs an ever larger pool of later investors. The idea behind this type of swindle is that the conman collects his money from his second or third round of investors and then absconds before anyone else shows up to collect. Necessarily these schemes only last weeks, or months at most."

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[32] T.S.N., January 26, 1993. pp. 39-43.
[33] 295 SCRA 49.

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That there was no profit forthcoming can likewise be deduced from the fact that accused-appellant was not engaged nor authorized to engage in any lucrative business to finance its operation. On this point accused-appellant points out that under the Articles of Incorporation of ABM Development Center, Inc., he was authorized to "make or coordinate in the making of studies and researches" and "to solicit, receive, channel and/or distribute donations, economic aids, grants investments in money or in kind." Likewise, he presented a Mayor's Permit that he claimed authorized him to engage in the investment business.

There is no merit in these contentions of accused-appellant. As proven by the prosecution the incorporation of the ABM Development Center, Inc. on August 21, 1989 was undertaken by accused-appellant only to give a semblance of legitimacy to its illegal operations. Accused-appellant started receiving investments from the public as early as July 15, 1989 and yet it was only after he was warned by a representative of the Department of Trade and Industry that his operation was illegal that he went about with the business of incorporating his moneymaking scheme.[34] Moreover, as borne out by the Articles of Incorporation, the ABM Development Center, Inc. was incorporated as a non-stock corporation. As a non-stock corporation, ABM Development Center, Inc. may only be formed or organized for charitable, religious, educational, professional, cultural, fraternal, literary, scientific, social, civic, or other similar purposes.[35] It may not engage in undertakings such as the investment business where profit is the main or underlying purpose. Although the non-stock corporation may obtain profits as an incident to its operation such profits are not to be distributed among its members but must be used for the furtherance of its purposes.[36] In the same vein, the Mayor's Permit issued to accused-appellant shows that he was only permitted to "act as dealer of appliances and upholstery." The permit did not give accused-appellant authority to engage in the investment business.

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[34] T.S.N., December 19, 1991, pp. 8-15.

[35] Corporation Code of the Philippines, Section 88.

[36] *Ibid.*, Section 87.

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Finally the fact that accused-appellant could not present any specific business plan or cite any donations or bequests which he received to finance his money-making scheme clearly shows that the investment scheme which he foisted on the unsuspecting public was fraudulent. It must be noted that according to the Articles of Incorporation of ABM Development Center, Inc., its paid-up capital was only ₱11,000.00 and yet it was able to transact business in terms of millions of pesos. It must likewise be stressed that accused-appellant refused to answer when asked about the specifics of his business and about how he would be able to fulfill his obligation of paying the promised exorbitant rates of return.

In his defense, accused-appellant points to the fact that several investors were paid the corresponding returns on their investments. This fact, accused-appellant argues, negates any perceived false pretense or deceit on his part and as such, his liability, if any should only be civil in nature.

There is no merit en this argument. As previously explained, the payment of returns to early investors is an integral part of the illegal Ponzi scheme foisted by accused-appellant on the unsuspecting public. The fact that early investors were paid the returns on their investments induced more people to participate in the illegal scheme with the hope of realizing the same extravagant rate of return. In fact, after word of these payments spread like wildfire, the amount of investments received by accused-appellant ballooned from thousands of pesos to several millions of pesos.

The prosecution having proved the two elements of damage and deceit in all the cases filed against accused-appellant, the trial court thus committed no error in finding accused-appellant guilty of one count of large scale swindling and thirteen (13) counts of estafa. The Court notes, however, that the penalties imposed by the trial court are erroneous.

In Criminal Case No. 2948, accused-appellant was charged with violation of P.D. 1689 and sentenced to imprisonment of *reclusion perpetua* Section 1 of the said law provides as follows:

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"SECTION 1. Any person or persons who shall commit estafa or other forms of swindling as defined in Articles 315 and 316 of the Revised Penal Code, as amended, shall be punished by life imprisonment to death if the swindling (estafa) is committed by a syndicate consisting of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme, and the defraudation results in the misappropriation of moneys contributed by stockholders, or members of rural banks cooperatives, *"samahang nayons,"* or farmers associations, or of funds solicited by corporations/associations from the general public.

When not committed by a syndicate as above defined, the penalty imposable shall be *reclusion temporal* to *reclusion perpetua* if the amount of the fraud exceeds 100,000 pesos."

P.D. No. 1689 thus penalizes offenders with life imprisonment to death regardless of the amount involved, provided that a syndicate committed the crime. A syndicate is defined in the same law as "consisting of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme." If the offenders are not members of a syndicate, they shall nevertheless be held liable for the acts prohibited by the law but they shall be penalized by *reclusion temporal* to *reclusion perpetua* if the amount of the fraud is more than one hundred thousand pesos.

In the instant case, there was no showing by the prosecution that a syndicate perpetrated the Ponzi scheme. While the prosecution proved that a non-stock corporation with eleven (11) incorporators including accused-appellant and his wife, was involved in the illegal scheme there was no showing that these incorporators collaborated, confederated, and mutually helped one another in directing the corporation's activities. In fact, the evidence for the prosecution shows that it was only accused-appellant and his wife who had knowledge of and who perpetrated the illegal scheme.

As such, the trial court was correct in convicting accused-appellant under the second paragraph of Section 1 of P.D. 1689 considering that the amount swindled by accused-appellant totals ₱45,494,936.00. The trial court erred, however, in imposing the penalty of *reclusion perpetua*. Given the absence of

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mitigating or aggravating circumstances, the lesser penalty imposed under the said paragraph, reclusion temporal, should have been imposed in its medium period. Applying the Indeterminate Sentence Law, accused-appellant, in Criminal Case No. 2948, should have been sentenced to an indeterminate penalty of ten (10) years of *prision mayor* medium, as minimum, to twenty (20) years of *reclusion temporal* medium, as maximum.

The trial court likewise erred in its application of the provisions of Article 315 of the Revised Penal Code and of the Indeterminate Sentence Law in the imposition of the proper penalties for the thirteen (13) estafa cases.

The penalty for estafa depends on the amount defrauded. Article 315 of the Revised Penal Code provides that "the penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period (or imprisonment ranging from 4 years, 2 months, and 1 day to 8 years), if the amount of the fraud is over ₱12,000.00 but does not exceed ₱22,000.00, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period (6 years, 8 months and 21 days to 8 years), adding one year for each additional ₱10,000.00 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such case, 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.[37]

Under the Indeterminate Sentence Law, the maximum term of the penalty shall be "that which, in view of the attending circumstances, could be properly imposed" under the Revised Penal Code, and the minimum shall be "within the range of the penalty next lower to that prescribed" for the offense.[38] The penalty next lower should be based on the penalty prescribed by the Code for the offense, without first considering any

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[37] *De la Cruz vs. Court of Appeals*, 265 SCRA 299; *People vs. Bautista*, 241 SCRA 216.

[38] See Section 1 of Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

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modifying circumstance attendant to the commission of the crime. The modifying circumstances are considered only in the imposition of the maximum term of the indeterminate sentence.[39]

In computing the penalty for estafa, the fact that the amounts involved exceed ₱22,000.00 should not be considered in the initial determination of the indeterminate penalty; instead the matter should be taken as analogous to modifying circumstances in the imposition of the maximum term of the full indeterminate sentence. This interpretation of the law is in accord with the rule that penal laws should be construed in favor of the accused. Since the penalty prescribed by law for estafa is *prision correccional* maximum to *prision mayor* minimum the penalty next lower would then be *prision correccional* in its minimum to medium periods. Thus, the minimum term of the indeterminate sentence should be anywhere within six (6) months and one (1) day to four (4) years and two (2) months while the maximum term of the indeterminate sentence should at least be six (6) years and one (1) day because the amounts involved exceeded ₱22,000.00, plus one (1) year for each additional ₱10,000.00.[40] The maximum penalty should not exceed twenty years.

Accordingly, with respect to the cases of estafa filed against accused-appellant, the applicable periods of imprisonment should, respectively, be as follows:

In Criminal Case No. 2956, where the amount swindled is ₱624,726.00, accused-appellant is hereby sentenced to an indeterminate penalty of four (4) years and two (2) months of *prision correccional* medium, as minimum, to twenty (20) years of *reclusion temporal* as maximum.

In Criminal Case No. 3000, where the amount involved is ₱136,670.00, accused-appellant is hereby sentenced to an indeterminate penalty of four (4) years and two (2) months of *prision correccional* medium, as minimum, to nineteen (19) years of *reclusion temporal* as maximum.

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[39] *People vs. Gabres*, 267 SCRA 581.

[40] *Ibid.,*

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In Criminal Case No. 3001, where the amount involved is ₱203,850.00, accused-appellant is hereby sentenced to an indeterminate penalty of four (4) years and two (2) months of *prision correccional* medium, as minimum, to twenty (20) years of *reclusion temporal* as maximum.

In Criminal Case No. 3013, where the amount involved is ₱29,070.00, accused-appellant is hereby sentenced to an indeterminate penalty of four (4) years and two (2) months of *prision correccional* medium, as minimum to eight (8) years of *prision mayor* as maximum.

In Criminal Case No. 3020, where the amount involved is ₱114,620.00, accused-appellant is hereby sentenced to an indeterminate penalty of four (4) years and two (2) months of *prision correccional* medium, as minimum, to seventeen (17) years of *reclusion temporal* as maximum.

In Criminal Case No. 3021, where the amount involved is ₱447,960.00, accused-appellant is hereby sentenced to an indeterminate penalty of four (4) years and two (2) months of *prision correccional* medium, as minimum, to twenty (20) years of *reclusion temporal* as maximum.

In Criminal Case No. 3022, where the amount involved is ₱275,280.00, accused-appellant is hereby sentenced to an indeterminate penalty of four (4) years and two (2) months of *prision correccional* medium, as minimum to twenty (20) years of *reclusion temporal* as maximum.

In Criminal Case No. 3026, where the amount involved is ₱222,120.00, accused-appellant is hereby sentenced to an indeterminate penalty of four (4) years and two (2) months of *prision correccional* medium, as minimum, to twenty (20) years of *reclusion temporal* as maximum.

In Criminal Case No. 3028, where the amount involved is ₱399,650.00, accused-appellant is hereby sentenced to an indeterminate penalty of four (4) years and two (2) months of *prision correccional* medium, as minimum, to twenty (20) years of *reclusion temporal* as maximum.

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In Criminal Case No. 3052, where the amount involved is ₱172,910.00, accused-appellant is hereby sentenced to an indeterminate penalty of four (4) years and two (2) months of *prision correccional* medium, as minimum, to twenty (20) years of *reclusion temporal* as maximum.

In Criminal Case No. 3053, where the amount involved is ₱36,970.00, accused-appellant is hereby sentenced to an indeterminate penalty of four (4) years and two (2) months of *prision correccional* medium, as minimum, to nine (9) years of *prision mayor* as maximum.

In Criminal Case No. 3054, where the amount involved is ₱920,883.00, accused-appellant is hereby sentenced to an indeterminate penalty of four (4) years and two (2) months of *prision correccional* medium, as minimum, to twenty (20) years of *reclusion temporal* as maximum.

In Criminal Case No. 3058, where the amount involved is ₱500,129.00, accused-appellant is hereby sentenced to an indeterminate penalty of four (4) years and two (2) months of *prision correccional* medium, as minimum, to twenty (20) years of *reclusion temporal* as maximum.

The amounts ordered reimbursed to the respective complainants and investors listed in the documentary exhibits of the prosecution are hereby affirmed.

WHEREFORE premises considered, the decision appealed from is hereby *AFFIRMED,* subject to the following modifications.

In Criminal Case No. 2948, where the total amount of the fraud is 45,494,936.00, accused-appellant is hereby sentenced to an indeterminate penalty of ten (10) years of *prision mayor* medium as minimum to twenty (20) years of *reclusion temporal* medium, as maximum.

In Criminal Case No. 2956, where the amount swindled is ₱624,726.00, accused-appellant is hereby sentenced to an indeterminate penalty of four (4) years and two (2) months of *prision correccional* medium, as minimum, to twenty (20) years of *reclusion temporal* as maximum.

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In Criminal Case No. 3000, where the amount involved is ₱136,670.00, accused-appellant is hereby sentenced to an indeterminate penalty of four (4) years and two (2) months of *prision correccional* medium as minimum, to nineteen (19) years of *reclusion temporal* as maximum.

In Criminal Case No. 3001, where the amount involved is ₱203,850.00, accused-appellant is hereby sentenced to an indeterminate penalty of four (4) years and two (2) months of *prision correccional* medium as minimum, to twenty (20) years of *reclusion temporal* as maximum.

In Criminal Case No. 3013, where the amount involved is ₱29,070.00, accused-appellant is hereby sentenced to an indeterminate penalty of four (4) years and two (2) months of *prision correccional* medium as minimum, to eight (8) years of *prision mayor* as maximum.

In Criminal Case No. 3020, where the amount involved is ₱114,620.00, accused-appellant is hereby sentenced to an indeterminate penalty of four (4) years and two (2) months of *prision correccional* medium as minimum, to seventeen (17) years of *reclusion temporal* as maximum.

In Criminal Case No. 3021, where the amount involved is ₱447,960.00, accused-appellant is hereby sentenced to an indeterminate penalty of four (4) years and two (2) months of *prision correccional* medium as minimum, to twenty (20) years of *reclusion temporal* as maximum.

In Criminal Case No. 3022, where the amount involved is ₱275,280.00, accused-appellant is hereby sentenced to an indeterminate penalty of four (4) years and two (2) months of *prision correccional* medium, as minimum, to twenty (20) years of *reclusion temporal* as maximum.

In Criminal Case No. 3026, where the amount involved is ₱222,120.00, accused-appellant is hereby sentenced to an indeterminate penalty of four (4) years and two (2) months of *prision correccional* medium as minimum, to twenty (20) years of *reclusion temporal* as maximum.

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In Criminal Case No. 3028, where the amount involved is ₱399,650.00, accused-appellant is hereby sentenced to an indeterminate penalty of four (4) years and two (2) months of *prision correccional* medium as minimum, to twenty (20) years of *reclusion temporal* as maximum.

In Criminal Case No. 3052, where the amount involved is ₱172,910.00, accused-appellant is hereby sentenced to an indeterminate penalty of four (4) years and two (2) months of *prision correccional* medium as minimum, to twenty (20) years of *reclusion temporal* as maximum.

In Criminal Case No. 3053, where the amount involved is ₱36,970.00, accused-appellant is hereby sentenced to an indeterminate penalty of four (4) years and two (2) months of *prision correccional* medium as minimum, to nine (9) years of *prision mayor* as maximum.

In Criminal Case No. 3054, where the amount involved is ₱920,883.00, accused-appellant is hereby sentenced to an indeterminate penalty of four (4) years and two (2) months of *prision correccional* medium as minimum, to twenty (20) years of *reclusion temporal* as maximum.

In Criminal Case No. 3058, where the amount involved is ₱500,129.00, accused-appellant is hereby sentenced to an indeterminate penalty of four (4) years and two (2) months of *prision correccional* medium as minimum, to twenty (20) years of *reclusion temporal* as maximum.

The amounts ordered reimbursed to the respective complainants and investors listed in the documentary exhibits of of the prosecution are hereby affirmed.

SO ORDERED.

Melo (Chairman), Vitug, Panganiban, and *Purisima, JJ.*, concur.