



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

CESAR P. ALPAY,

G.R. Nos. 240402-20

Petitioner,

Present:

- *versus* -

LEONEN, J., *Chairperson*,
HERNANDO,
INTING,
DELOS SANTOS, and
LOPEZ, J., *JJ.*

Promulgated:

PEOPLE OF THE PHILIPPINES,

Respondent. June 28, 2021

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R E S O L U T I O N

INTING, J.:

Assailed in this Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court are the Decision² dated April 24, 2018 and Order³ dated May 25, 2018 issued by the Sandiganbayan, Fifth Division, in Criminal Case Nos. SB-10-CRM-0045 to 0083.

Cesar P. Alpay (petitioner) was accused in thirty-nine (39) Informations under Article 171 of the Revised Penal Code (RPC). The accusatory portion of Criminal Case No. SB-10-CRM-0045 states:

“That on or about 30 June 2004, or sometime prior or subsequent thereto, in the Municipality of Unisan, Quezon, and within the jurisdiction of this Honorable Court, the accused CESAR P.

¹ *Rollo*, pp. 3-28.

² *Id.* at 34-69; penned by Associate Justice Rafael R. Lagos with Associate Justices Maria Theresa V. Mendoza-Arcega and Maryann E. Corpus-Mañalac, concurring.

³ *Id.* at 96.

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ALPAY, a high ranking public official, being the Municipal Mayor of Unisan, Quezon, taking advantage of his official position and while in the discharge of his official functions, and committing the offense in relation thereto, did then and there, willfully, unlawfully, and feloniously falsify or cause to be falsified Disbursement Voucher No. 401-2004-06-154 dated 30 June 2004 and its supporting documents by making it appear that a certain Florencio Tapero received financial assistance in the amount of Sixty-three thousand eight hundred thirty pesos (Php 63,830.00) under the *Isang Bayan, Isang Produkto, Isang Milyong [Pisong] Programa ni GMA*, when in truth and in fact, and as the accused knew fully well that said person did not receive such financial assistance but instead was given a hand tractor purchased by the Municipality of Unisan without the benefit of public bidding and in violation of the terms of the *Isang Bayan, Isang Produkto, Isang Milyong [Pisong] Programa ni GMA*, to the damage and prejudice of the said municipality and the intended beneficiary.

CONTRARY TO LAW.”⁴

The Informations for the rest of the charges were similarly worded except for the allegations of the following details, *viz.*:

Case No.	Disbursement Voucher No.	Amount Involved	Beneficiary	Item Received
SB-10-CRM-0045	401-2004-06-154	63,830.00	Florencio Tapero	Hand tractor
SB-10-CRM-0046	401-2004-06-155	63,830.00	Feilipe Plazuelo	Hand tractor
SB-10-CRM-0047	401-2004-06-156	63,830.00	Antonio Tapero	Hand tractor
SB-10-CRM-0048	401-2004-06-157	63,830.00	Virginia Buhat	Hand tractor
SB-10-CRM-0049	401-2004-06-158	63,830.00	Leopoldo Abiog	Hand tractor
SB-10-CRM-0050	401-2004-06-159	12,300.00	Efren Pasamon	Motor Engine
SB-10-	401-2004-06-	12,300.00	Javier	Motor

⁴ *Id.* at 34-35.



CRM-0051	160		Magante	Engine
SB-10- CRM-0052	401-2004-06- 161	12,300.00	Erlito Santiago	Motor Engine
SB-10- CRM-0053	401-2004-06- 162	12,300.00	Rogelio Nograles	Motor Engine
SB-10- CRM-0054	401-2004-06- 163	12,300.00	Hardie de Mesa	Motor Engine
SB-10- CRM-0055	401-2004-06- 164	12,300.00	Romeo delos Santos	Motor Engine
SB-10- CRM-0056	401-2004-06- 165	12,300.00	Samuel Padilla	Motor Engine
SB-10- CRM-0057	401-2004-06- 166	12,300.00	Melquiades Daño	Motor Engine
SB-10- CRM-0058	401-2004-06- 167	12,300.00	Eraño Merluza	Motor Engine
SB-10- CRM-0059	401-2004-06- 168	12,300.00	Armando Gabiola	Motor Engine
SB-10- CRM-0060	401-2004-06- 169	12,300.00	Dizon Echevaria	Motor Engine
SB-10- CRM-0061	401-2004-06- 170	12,300.00	Edwin Manceras	Motor Engine
SB-10- CRM-0062	401-2004-06- 171	12,300.00	Luther Lopez	Motor Engine
SB-10- CRM-0063	401-2004-06- 172	12,300.00	Sofronio Matriano	Motor Engine
SB-10- CRM-0064	401-2004-06- 173	12,300.00	Julio Ogma	Motor Engine
SB-10- CRM-0065	401-2004-06- 174	12,300.00	Joseph Dabucol	Motor Engine
SB-10-	401-2004-06-	12,300.00	Ce ion	Motor

CRM-0066	175		Sumilang	Engine
SB-10- CRM-0067	401-2004-06- 177	12,300.00	Felipe Labudlay	Motor Engine
SB-10- CRM-0068	401-2004-06- 178	12,300.00	Mario Organo	Motor Engine
SB-10- CRM-0069	401-2004-06- 179	12,300.00	Christopher Valenzuela	Motor Engine
SB-10- CRM-0070	401-2004-06- 180	12,300.00	Gernan Gollena	Motor Engine
SB-10- CRM-0071	401-2004-06- 181	12,300.00	Leovino Lagan	Motor Engine
SB-10- CRM-0072	401-2004-06- 182	12,300.00	Valentino Labudlay	Motor Engine
SB-10- CRM-0073	401-2004-06- 183	12,300.00	Romeo Alladel	Motor Engine
SB-10- CRM-0074	401-2004-06- 184	12,300.00	Edwin Gonzales	Motor Engine
SB-10- CRM-0075	401-2004-06- 185	12,300.00	Hilario Nanoy	Motor Engine
SB-10- CRM-0076	401-2004-06- 186	12,300.00	Adelino Legion	Motor Engine
SB-10- CRM-0077	401-2004-06- 187	12,300.00	Adriano Riyal	Motor Engine
SB-10- CRM-0078	401-2004-06- 188	12,300.00	Cecilio Daño	Motor Engine
SB-10- CRM-0079	401-2004-06- 189	12,300.00	Manuel Gulifardo	Motor Engine
SB-10- CRM-0080	401-2004-06- 191	12,300.00	Felicito Dotado	Motor Engine
SB-10-	401-2004-06-	12,300.00	Freddie	Motor

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CRM-0081	192		Ostonal	Engine
SB-10- CRM-0082	401-2004-06- 193	12,300.00	Romeo Javier	Motor Engine
SB-10- CRM-0083	401-2004-06- 194	12,300.00	Guilermo Nepumuceno	Motor Engine ⁵

When arraigned, petitioner pleaded not guilty to all the charges.⁶

The Antecedents

The present case shares the same factual background as G.R. No. 205976 entitled “*Alpay v. Sandiganbayan Fourth Division.*”⁷

In 2003, then President Gloria Macapagal-Arroyo (PGMA) issued Executive Order No. (EO) 176⁸ which institutionalized the “*Isang Bayan, Isang Produkto, Isang Milyong Piso*” program of the government designed to allocate lending to small and medium enterprises (SMEs) through identified funding sources. The funding amounted to one million pesos for every city or municipality in the country.⁹

In the second quarter of 2004 and prior to the end of his term, petitioner, who was then the outgoing Mayor of the Municipality of Unisan, Quezon Province, discussed his plan to make use of the ₱1,000,000.00 financial assistance for the benefit of SMEs in his municipality. He planned to distribute a portion of the financial assistance to selected farmers and fishermen to enable them to purchase much-needed motor engines for *bancas* and hand tractors. The project was subject to the condition that the farmers can only use the money for the sole purpose of purchasing the equipment. On June 30, 2004, petitioner invited 42 farmers-fishermen beneficiaries to his residence. They were given cash with simultaneous acquisition or purchase of hand tractors and motor engines to support the small-scale operation of their

⁵ *Id.* at 35-36.

⁶ *Id.* at 37.

⁷ G.R. No. 205976 (Notice), August 5, 2013.

⁸ Entitled, “Institutionalizing the ‘*Isang Bayan, Isang Produkto, Isang Milyong Piso*’ Program to Stimulate Local Economic Activity,” approved on February 11, 2003.

⁹ *Alpay v. Sandiganbayan Fourth Division, supra* note 7.

respective businesses. The recipients were asked to sign a list and a document indicating receipt of the equipment.¹⁰

According to Teresita Musca (Musca), Municipal Accountant, she processed disbursement vouchers for PGMA's livelihood project. She received 42 disbursement vouchers from the Office of the Municipal Mayor, all of which bore petitioner's signature certifying that the expenses/cash advances were necessary, lawful, and incurred under his direct supervision. She then affixed her signature certifying to the completeness and propriety of the supporting documents. The vouchers were accompanied by an unsigned *Sinumpaang Salaysay* where it was stated that a certain beneficiary received a certain amount. The *Sinumpaang Salaysay* was to be signed by the recipient upon release of the money.¹¹

Soon after, Bernardita de Jesus (de Jesus), Municipal Treasurer, received 42 disbursement vouchers from the Office of the Municipal Accountant. She noticed that the vouchers she received already bore the signatures of petitioner and Musca. De Jesus asserted that the disbursement vouchers she received did not follow the normal procedure as she had yet to first sign and certify as to the availability of the funds. Because she knew that the project was funded and that the vouchers were already signed by petitioner and Musca, she issued the checks and sent them to petitioner for signature.¹² However, contrary to the procedure, both de Jesus and Musca testified that the checks were not returned to the Office of the Treasurer for distribution.¹³

Petitioner denied the allegations. He alleged that after Nonato E. Puache won the mayoralty race in May 2004, the latter accomplished and submitted a Memorandum Receipt for Equipment, Semi-Expendable and Non-Expendable Property for all the transactions involving the financial assistance program (Memorandum). The Memorandum made it appear that during his term, his office received motor engines and hand tractors for itself and not for the beneficiaries. A report from the Commission on Audit further stated that the financial assistance program should have undergone public bidding considering that it was the Municipality that purchased the motor engines.¹⁴

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Rollo*, pp. 50, 268.

¹⁴ *Id.* at 9.

Out of the 39 beneficiaries named in the Informations filed against petitioner, only six testified for the prosecution, 20 testified for the defense while 13 recanted their testimony in favor of petitioner.¹⁵

Ruling of the Sandiganbayan

On April 24, 2018, the Sandiganbayan rendered a Decision¹⁶ in Criminal Case Nos. SB-10-CRM-0045 to 0083 as follows: the Sandiganbayan acquitted petitioner in Criminal Case Nos. SB-10-CRM-0045, 0046, 0047, 0049, 0052, 0053, 0060, 0062, 0064, 0068, 0072, 0073, 0075, 0076, 0077, 0078, 0079, 0080, 0081, and 0082; but it found him guilty beyond reasonable doubt in Criminal Case Nos. SB-10-CRM-0048, 0050, 0051, 0054, 0055, 0056, 0057, 0058, 0059, 0061, 0063, 0065, 0066, 0067, 0069, 0070, 0071, 0074, and 0083 for the crime of Falsification by Public Officer, Employee or Notary or Ecclesiastic Minister under Article 171 of the RPC and sentenced him to suffer the indeterminate penalty of imprisonment of six (6) months and one (1) day of *prision correccional*, as minimum, to six (6) years and one (1) day of *prision mayor*, as maximum, and ordering him to pay a fine of ₱5,000.00 in each of the case.¹⁷

The dispositive portion of the assailed Decision reads:

WHEREFORE, premises considered, the Court renders judgment as follows:

1. For Criminal Case Nos. SB-10-CRM-0045, 0046, 0047, 0049, 0052, 0053, 0060, 0062, 0064, 0068, 0072, 0073, 0075, 0076, 0077, 0078, 0079, 0080, 0081 & 0082, accused Cesar P. Alpay is ACQUITTED of the charges against him in view of the failure of the prosecution to prove his guilt beyond reasonable doubt. The Hold Departure Order against the accused with respect to these cases are CANCELLED.

2. For Criminal Case Nos. SB-10-CRM-0048, 0050, 0051, 0054, 0055, 0056, 0057, 0058, 0059, 0061, 0063, 0065, 0066, 0067, 0069, 0070, 0071, 0074, & 0083, accused Cesar P. Alpay is found GUILTY beyond reasonable doubt in each of these cases. The

¹⁵ *Id.* at 51-52.

¹⁶ *Id.* at 34-69.

¹⁷ *Id.* at 68.

mitigating circumstance of voluntary surrender is credited to him in each of these cases. He is, therefore, meted the indeterminate penalty of six (6) months and one (1) day of *prisión correccional*, as minimum, to six (6) years and one (1) day of *prisión mayor*, as maximum, in each of these cases. He is further fined P5,000 in each of these cases.

SO ORDERED.¹⁸

Petitioner filed a Motion for Reconsideration¹⁹ of the Decision but the Sandiganbayan denied it in an Order²⁰ dated May 25, 2018.

Hence, the petition.

The Issues

Petitioner puts forward the following assignment of errors:

1. The Sandiganbayan gravely erred in finding him guilty of 19 counts of falsification under Article 171 of the RPC; and
2. The Sandiganbayan gravely erred in denying his Motion for Reconsideration for lack of interest on his part to prosecute the motion.

Petitioner submits that as former Mayor of Unisan, Quezon, he did not intervene in the preparation of the subject documents.²¹ He explained that it was impossible for him to commit the crimes because as the then mayor, he did not have the duty to make, prepare, or otherwise intervene in the preparation of the subject documents.²² Assuming for the sake of argument that the subject documents were falsified, he is not the author thereof. Further, he did not cause it to appear that the beneficiaries have participated in any act or proceeding.²³

¹⁸ *Id.* at 68.

¹⁹ *Id.* at 70-93.

²⁰ *Id.* at 96.

²¹ *Id.* at 18.

²² *Id.* at 20.

²³ *Id.* at 18.

Moreover, petitioner avers that the Sandiganbayan likewise gravely erred in denying his Motion for Reconsideration based on the failure of his counsel to appear during the hearing for the motion. He argued that his contentions, the reliefs and remedies prayed for, such as the reversal of the assailed Decision, are all included in his Motion for Reconsideration; thus, he need not reiterate them in open court.²⁴

In its Comment,²⁵ People of the Philippines contend that there is sufficient basis for the finding of guilt against petitioner. Petitioner's position enabled him to influence both the Municipal Treasurer and Accountant to cause the issuance of the checks to his chosen beneficiaries. This happened notwithstanding the earlier objections from the members of the Bids and Awards Committee. His intervention became even more apparent with his signature on the disbursement vouchers when they were forwarded to the Municipal Treasurer and Accountant—a clear contravention of the established procedures. As against the positive testimonies of the witnesses and the silence of petitioner, the former must prevail and be given evidentiary weight.²⁶

Meanwhile, in his Reply²⁷ to the Comment of the People of the Philippines, petitioner reiterated his position that the prosecution failed to prove all the elements of the crime of Falsification by Public Officer, Employee or Notary or Ecclesiastic Minister; and that there is no circumstantial evidence to show that he authored the alleged forgery and falsification of the subject documents. Further, the Sandiganbayan erred in summarily dismissing the retraction of some witnesses.²⁸

Ruling of the Court

It is a basic tenet that the appellate jurisdiction of the Court over decisions and final orders of the Sandiganbayan is limited only to questions of law. The Court does not review the factual findings of the Sandiganbayan that are generally conclusive upon the Court.²⁹

²⁴ *Id.* at 23.

²⁵ *Id.* at 265-283.

²⁶ *Id.* at 275.

²⁷ *Id.* at 296-310.

²⁸ *Id.* at 303.

²⁹ *Herrera v. Sandiganbayan*, G.R. Nos. 217064-65 (Notice), December 4, 2019, citing *Zoleta v. Sandiganbayan*, 765 Phil. 9, 52 (2015).

Question of law exists “when a doubt or a difference arises as to what the law is on a certain state of facts, and the question does not call for an examination of the probative value of the evidence presented by the parties-litigants.”³⁰ Meanwhile, the question of fact emerges “when the query necessarily solicits calibration of the whole evidence considering mostly the credibility of witnesses, existence, and relevance of specific surrounding circumstances, their relation to each other and the whole, and probabilities of the situation.”³¹

The sufficiency of evidence, circumstantial or otherwise, to support a conviction of a crime is a factual issue, the determination of which is better left to the lower court. Such factual determination is respected and rendered conclusive as an acknowledgment of the court’s intrinsic competence to experientially evaluate evidence.³² In convicting herein petitioner, the Sandiganbayan found sufficient circumstantial evidence pointing to the inevitable conclusion that petitioner is indeed guilty of falsification.

Nevertheless, as declared by the Court in *Villarosa v. People*,³³ while the Court is not a trier of facts, it may analyze, review, and even reverse findings of facts if there is compelling reason to do so. Moreover, the unique nature of an appeal in a criminal case is that the appeal throws the whole case open for review of all its aspects. The Court, acting in its appellate jurisdiction over the decisions and final orders of the Sandiganbayan, is duty-bound to correct, cite and appreciate errors in the appealed judgment, whether they are assigned or unassigned. It is incumbent upon the Court to render such judgment as law and justice dictate, whether it be favorable or unfavorable to the accused.³⁴

In the petition, petitioner denies having “actually” falsified the subject documents. He argues that, assuming that the signatures appearing on the subject documents do not belong to the witnesses, the prosecution nonetheless failed to establish that the falsification was his

³⁰ *Id.*, citing *Adlawan v. People*, 830 Phil. 88, 101 (2018)

³¹ *Id.*, citing *Adlawan v. People*, *id* at 102.

³² *People v. Bueza, Jr.*, G.R. No. 233743 (Notice), December 2, 2019, citing *Macayan, Jr. v. People*, 756 Phil. 203, 214-215 (2015) and *People v. Taguibuya*, 674 Phil. 476, 480-481 (2011)

³³ G.R. No. 233155-63 (Notice), July 17, 2018.

³⁴ *Id.*

own doing. The witnesses' denial of their signatures does not amount to the fact that he forged their signatures.³⁵

The petition lacks merit.

Petitioner's denial, unsubstantiated and uncorroborated, must certainly fail. Denial, when unsubstantiated by clear and convincing evidence, is negative and self-serving evidence. It deserves no greater evidentiary value than the testimony of credible witnesses who testify on affirmative matters.³⁶

The lack of evidence showing that petitioner "actually" forged the signatures of the witness-beneficiaries cannot exonerate him. The Court has previously ruled that it is not strange to realize that in cases of forgery, the prosecution would not always have the means of obtaining such direct evidence to confute acts contrived clandestinely. Courts have to rely on circumstantial evidence consisting of pieces of facts, which if woven together would produce a single network establishing doubt.³⁷

Circumstantial evidence indirectly proves a fact in issue. In Our jurisdiction, circumstantial evidence could establish the commission of the crime and the identity of its perpetrator.³⁸ The utilization of circumstantial evidence to support a conviction is a recognition of the instances when direct evidence is not available due to the clandestine nature of the crime or the perpetrator's desire to conceal it.³⁹

Under the 2019 Amendments to the 1989 Revised Rules on Evidence,⁴⁰ the following requisites must be shown to sustain a conviction based on circumstantial evidence, to wit: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.⁴¹ Also, the

³⁵ *Rollo*, p. 19

³⁶ *Pacasmu v. People*, 603 Phil. 612, 634 (2009), citing *People v. Maglente*, 578 Phil. 980, 1000 (2008) and *People v. Ags. Oay, Jr.*, 474 Phil. 509, 527-528 (2004).

³⁷ *Id.*, citing *Caubang v. People*, 285 Phil. 875, 891 (1992).

³⁸ *People v. Buerza, Jr.*, *supra* note 32, citing *Bacerra v. People*, 812 Phil. 25, 36 (2017).

³⁹ *Id.*, citing *Zabala v. People*, 752 Phil. 59, 67 (2015).

⁴⁰ A.M. No. 19-08-15-SC

⁴¹ *Id.*, citing Section 4, Rule 133, 2019 Amendments to the 1989 Revised Rules on Evidence.

circumstances being considered must be consistent with the hypothesis that the accused is the author of the crime.⁴²

Guided by the principles, the Court is convinced that petitioner's guilt beyond reasonable doubt was established by the following pieces of evidence considered by the Sandiganbayan.

First, it is not disputed that petitioner was a public officer at the time material to the case. Specifically, he was the Mayor of Unisan, Quezon.

Second, petitioner took advantage of his official position. An officer is said to have taken advantage of his official position in the falsification of a document if he had the duty to make or prepare or otherwise intervene in the preparation of the document or he had official custody of the document.

In this case, it was petitioner himself who informed the department heads about his intention to use the funds for the *Isang Bayan, Isang Produkto, Isang Milyong Pisong Programa ni GMA*. Per testimonies of de Jesus and Musca, there was a "reversed-process" in the preparation of documents with petitioner pre-signing and pre-approving the release of funds before the responsible officers affixed their signatures. Worse, de Jesus testified that when the duplicate copies of the checks were returned to her office, the acknowledgment receipts falsely stated that the checks were received from her.⁴³

Third, the prosecution witnesses Virginia Buhat, Romeo delos Santos, Samuel Padilla, Sofronio Matriano, Gernan Gollena, and Guillermo Nepomuceno denied having signed the subject documents and receiving the hand tractors or motor engines. They did not, in fact, participate in the program.

As regards the other witnesses who recanted their previous testimonies,⁴⁴ the Court affirms the ruling of the Sandiganbayan that

⁴² *Id.*, citing *People v. Tajada*, 442 Phil 369, 376 (2002)

⁴³ *Rollo*, p. 274.

⁴⁴ The beneficiaries who later testified in favor of petitioner after recanting their previous testimonies are Efren Pasamon, Javie Magante, Hardie de Mesa, Melquiades Daño, Eraño Merluza, Armando Gabiola, Edwin Mancera, Joseph Dabucol, Cenon Sumilang, Felipe Labudlay, Christopher

their purported recantation has no probative value. The Sandiganbayan properly observed:

In their previous testimonies as witnesses for the prosecution, the witness positively identified that the purported signatures on the disbursement vouchers and its accompanying documents are not really their signatures. The prosecution even offered in evidence copies of their identification cards with their signatures, which bear their authentic signatures.

These witnesses also earlier testified that no checks were distributed to them. Witness Rojas, who was then an agricultural technologist and was present when the accused led the distribution of the equipment, corroborated the witness-beneficiaries' earlier testimonies that no check was distributed.

In contrast, in their testimonies for the accused, the witness-beneficiaries conveniently weave their identifications of their respective signatures into one similar narrative. There is no attempt to explain why they changed their testimony or why they were mistaken when they initially denied their signatures. There is, in fact, no mention of their previous testimony. They testified as if they never denied their signatures.

All things considered, the witness-beneficiaries' recantation of their denial of their signatures is coming off as an afterthought.⁴⁵

Recantations are viewed with suspicion and reservation. They are not reliable and deserve only scant attention. The rationale for the rule is obvious. Affidavits of retraction can easily be secured from witnesses, usually through intimidation or for monetary consideration. Recanted testimony is exceedingly unreliable as there is always the probability that it will later be repudiated.⁴⁶ The Court explained in length in one case:

Indeed, it is a dangerous rule to set aside a testimony which has been solemnly taken before a court of justice in an open and free trial and under conditions precisely sought to discourage and forestall falsehood simply because one of the witnesses who had given the testimony later on changed his mind. Such a rule will make solemn trials a mockery and place the investigation of the truth at the mercy

⁴⁵ Valenzuela, Leovino Lagan, and Edwin Gonzales, *id* at 51-52.

⁴⁶ *Rollo*, p. 59.

⁴⁶ *People v. P/Supt. Lamson, et al.*, 721 Phil. 256, 259 (2013), citing *Regidor, Jr., et al. v. People, et al.*, 598 Phil. 714, 737 (2009), further citing *Balderama v. People, et al.*, 566 Phil. 412, 421 (2008).



of unscrupulous witnesses. Unless there be special circumstances which, coupled with the retraction of the witness, really raise doubt as to the truth of the testimony given by him at the trial and accepted by the trial judge, and only if such testimony is essential to the judgment of conviction, or its elimination would lead the trial judge to a different conclusion, an acquittal of the accused based on such a retraction would not be justified.

This Court has always looked with disfavor upon retraction of testimonies previously given in court. *The asserted motives for the repudiation are commonly held suspect, and the veracity of the statements made in the affidavit of repudiation are frequently and deservedly subject to serious doubt.*

Such being the experience of this court, we should proceed with extreme caution and judicial prudence in according any probative value to affidavits of recantation in the light of the sad reality that the same can be easily secured from poor and ignorant witnesses for some financial consideration or through intimidation. Especially when the affidavit of retraction is executed by a prosecution witness after the judgment of conviction has already been rendered, "it is too late in the day for his recantation without portraying himself as a liar." *At most, the retraction is an afterthought which should not be given probative value.*⁴⁷ (Italics supplied; citations omitted.)

Absent any special circumstance attendant to this case, the recantation of some of the witness-beneficiaries fails to cast doubt on the truth and veracity of their earlier testimonies as well as to the collective statements of all of the prosecution witnesses as a whole.⁴⁸

Fourth, significantly, records of the case established a paper trail of documents and participation of petitioner in the subject transactions. Petitioner intervened in the preparation of the documents and even participated in the distribution of the proceeds of the vouchers. From the time of the preparation of the disbursement vouchers up to the time of the distribution of the checks and the submission of the acknowledgment receipts, he had custody of the subject documents and initiated their circulation. The Sandiganbayan explained:

First, as testified to by witness municipal accountant Musca [.] the disbursement vouchers originated from the Office of the Mayor and the accused had already signed boxes A and D of the vouchers, contrary to established procedure. He approved the subject of the

⁴⁷ *Molina, et al. v. People*. 328 Phil. 445, 466-467 (1996).

⁴⁸ *People v. P/Supt. Lamsam, et al.*, *supra* note 46 at 261.

vouchers even without the signatures of the municipal auditor and treasurer. This confirms that he had already committed irregularities with respect to the vouchers and he had physical possession of the vouchers.

Second, it appears that the accused caused the preparation and circulation of the disbursement vouchers. x x x, the accused initiated the circulation of the falsified documents.

x x x x

After the municipal treasurer issued the checks, the accused had possession of the documents. He held these documents until the distribution of the equipment. The accused knew that the proceeds of the vouchers should be given to the beneficiaries. Yet, when he supposedly called the beneficiaries, he gave away equipment instead of the checks. In the time the accused possessed the documents, the arrangement to convert the funds to equipment was carried out.⁴⁹

Notably, the series of transactions from the issuance of the disbursement vouchers up to the receipt of the equipment and machines by the beneficiaries, all transpired only in one day—on petitioner's last day of term as Mayor. To make the situation worse, petitioner made it appear that the distribution of the proceeds of the fund was a direct financial assistance when in truth, the beneficiaries received either a hand tractor or a motor engine—a clear violation of EO 176.

In the end, there is also no greater proof of the crime than the direct testimony of the heads of the municipal government and the beneficiaries that the amounts distributed by petitioner to the alleged fishermen-farmers/beneficiaries were not distributed to the deserving SMEs as EO 176 required.

The penalty of imprisonment is the same for falsification both under the RPC and Republic Act No. (RA) 10951⁵⁰ which is *prision mayor*, albeit, the imposable fine is different. Under the RPC, the imposable fine is not more than ₱5,000.00; while under RA 10951, the imposable fine is not more than ₱1,000,000.00. The penalty of fine of not more than ₱5,000.00 under the old law should be imposed because

⁴⁹ *Rollo*, pp. 64-65.

⁵⁰ Entitled, "An Act Adjusting the Amount or the Value of Property and Damage on Which a Penalty is Based, and the Fines Imposed under the Revised Penal Code," approved on August 29, 2017.

this is more favorable to petitioner than the penalty of fine of not more than ₱1,000,000.00 under the present law.⁵¹

Upon taking into consideration the mitigating circumstance of voluntary surrender, the penalty to be imposed in each case is the minimum of *prision mayor* which is from six (6) years and one (1) day to eight (8) years. The range of penalty under the Indeterminate Sentence Law is *prision correccional* in any of its periods, as minimum, to the minimum period of *prision mayor*, as maximum. Hence, the penalty imposed by the Sandiganbayan which is imprisonment of six (6) months and one (1) day of *prision correccional*, as minimum, to six (6) years and one (1) day of *prision mayor*, as maximum, is in accordance with law.

Considering the foregoing, the other issues raised in the petition need not be discussed.

WHEREFORE, the petition is **DENIED**. The assailed Decision dated April 24, 2018 and the Order dated May 25, 2018 of the Sandiganbayan, Fifth Division, are **AFFIRMED**.

1. For Criminal Case Nos. SB-10-CRM-0045, 0046, 0047, 0049, 0052, 0053, 0060, 0062, 0064, 0068, 0072, 0073, 0075, 0076, 0077, 0078, 0079, 0080, 0081, and 0082, petitioner Cesar P. Alpay is **ACQUITTED**.

2. For Criminal Case Nos. SB-10-CRM-0048, 0050, 0051, 0054, 0055, 0056, 0057, 0058, 0059, 0061, 0063, 0065, 0066, 0067, 0069, 0070, 0071, 0074, and 0083, petitioner Cesar P. Alpay is found **GUILTY** beyond reasonable doubt for the crime of Falsification by Public Officer, Employee or Notary or Ecclesiastic Minister under Article 171 of the Revised Penal Code, and sentencing him to suffer the penalty of imprisonment of six (6) months and one (1) day of *prision correccional*, as minimum, to six (6) years and one (1) day of *prision mayor*, as maximum, to be served consecutively, and ordering him to pay a fine of ₱5,000.00 in each of the case.

⁵¹ *Desmoparan v. People*, G.R. No. 233598, March 27, 2019.



SO ORDERED.


HENRI JEAN PAUL B. INTING

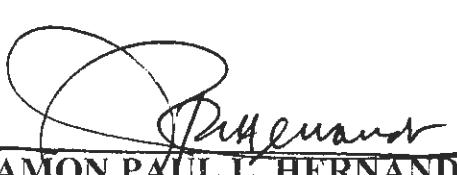
Associate Justice

WE CONCUR:


MARVIC M.V.F. LEONEN

Associate Justice

Chairperson


RAMON PAUL L. HERNANDO

Associate Justice


EDGARDO L. DELOS SANTOS

Associate Justice


JHOSEP LOPEZ

Associate Justice

ATTESTATION

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


MARVIC M.V.F. LEONEN

Associate Justice

Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution 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