



Republic of the Philippines
Supreme Court
Baguio City

THIRD DIVISION

MAYCEL BALUCERO NANZAN, **G.R. No. 262084**
Petitioner,

Present:

- versus -

CAGUIOA, J., *Chairperson*,
INTING,
GAERLAN,
DIMAAMPAO, and
SINGH, JJ.

Promulgated:

PEOPLE OF THE PHILIPPINES,
Respondent.

April 3, 2024

MispDCB at

DECISION

DIMAAMPAO, J.:

This Petition for Review on *Certiorari*¹ inveighs against the Decision² and the Resolution³ of the Court of Appeals (CA), which found petitioner Maycel Balucero Nanzan (Nanzan) guilty beyond reasonable doubt of the crime of other deceits, as defined and penalized under the first paragraph of Article 318 of the Revised Penal Code (RPC), and which denied her Motion for Reconsideration⁴ thereof, respectively, in CA-G.R. CR No. 43447.

On January 21, 2015, Nanzan, along with four other individuals,⁵ were charged with the crime of estafa,⁶ defined and penalized under paragraph 2(a),

¹ *Rollo*, pp. 3–31.

² *Id.* at 33–44. The March 15, 2022 Decision was penned by Associate Justice Carlito B. Calpatura, with the concurrence of Associate Justices Maria Elisa Sempio Diy and Alfonso C. Ruiz II of the Seventeenth Division, Court of Appeals, Manila.

³ *Id.* at 83–84. Dated July 6, 2022.

⁴ *CA rollo*, pp. 153–161.

⁵ RTC records, vol. 1, p. 3. The four other individuals charged were Rodella D. Alterado, Frederick Alterado, Mario Balucero a.k.a. Joemarie Nanzan, and Vanessa Misa.

⁶ *Id.*

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Article 315 of the RPC, under the following Information,⁷ docketed as Crim. Case No. 15-534:

On 27th day of June 2013, or sometime prior or subsequent thereto, in the [C]ity of Makati, the Philippines, [the] accused, conspiring and confederating together, with intent to defraud and by means of false pretenses, misrepresentations and fraudulent acts made or executed prior to or simultaneously with the commission of fraud, did then and there willfully, unlawfully and feloniously defraud complainant, Oaña Credit Solutions, Inc. [(Oaña Credit)], herein represented by Rommelito S. Tolentino, in the following manner: accused, in order to convince [Oaña Credit] to grant them a bridge financing loan represented to [Oaña Credit] that they will cause the release to [Oaña Credit] or its representative the proceeds of the pre-approved loan with PS Bank Zapote Branch, but such representations were false, the truth being that accused never had [the] intention to release the proceeds of the PSBank loan to Oaña [Credit], but rather keep the proceeds to themselves and profit therefrom, which representations were solely made to convince [Oaña Credit] to approve the bridge loan, and release to accused the amount of [PHP] 2,565,325[.00], but accused do not intend to pay or honor the same, as in fact said amount was not paid to [Oaña Credit], nor the proceeds of the PSBank loan released to [Oaña Credit], to the damage and prejudice of the latter in the aforesaid amount of [PHP] 2,565,325[.00].

CONTRARY TO LAW.⁸

The prosecution averred that Nanzan and her co-accused Rodella Alterado (Rodella) applied for a bridge financing loan with private complainant Oaña Credit Solutions, Inc. (Oaña Credit) in the amount of PHP 2,565,325.00.⁹ Nanzan is the registered owner of a property covered by Transfer Certificate of Title No. 057-2013005908,¹⁰ which was mortgaged to a certain Adoracion Belo. Nanzan and Rodella explained to Oaña Credit that they needed the loan to secure the release of the mortgage and to facilitate its sale to Rodella.¹¹ They misrepresented that Rodella and her husband, co-accused Frederick Alterado (Frederick) had a pre-approved loan with PS Bank in the amount of PHP 2,900,000.00.¹² Thereafter, Rodella executed a document authorizing the credit investigator of Oaña Credit to verify this fact.¹³ After making inquiries, co-accused Vanessa Misa (Misa), a PS Bank supervisor, confirmed the existence of a pre-approved loan in favor of Rodella and Frederick (spouses Alterado).¹⁴ Subsequently, the Loan Agreement¹⁵ was executed with Nanzan as the borrower, Oaña Credit as the lender, and spouses Alterado as the beneficiaries—Rodella acted as Frederick's attorney-in-fact.

⁷ *Id.* at 3–7.

⁸ *Id.* at 4.

⁹ *Id.*, vol. 3, p. 1044, Loan Agreement.

¹⁰ *Id.* at 1037–1039.

¹¹ *Id.*, vol. 6, p. 197, RTC Decision.

¹² *Id.* at 198.

¹³ *Id.*, vol. 3, p. 1043. Authorization to Conduct Credit Background Investigation.

¹⁴ *Id.*, vol. 6, p. 197.

¹⁵ *Id.*, vol. 3, pp. 1044–1050.

The loan agreement provided that the debt would be paid from the proceeds of the pre-approved loan with PS Bank.¹⁶ For their part, Rodella agreed that the loan proceeds would go directly to Nanzan, who would then turn over the same to Oaña Credit.¹⁷ Oaña Credit then released the loan amount to Nanzan.¹⁸ Eventually, the PS Bank loan proceeds were released to spouses Alterado and they conveyed the same to Nanzan,¹⁹ who then executed the Deed of Assignment of Loan Proceeds²⁰ in favor of Oaña Credit. However, Oaña Credit never received such loan proceeds,²¹ impelling it to demand payment from Nanzan. In response, she wrote a PS Bank check to Oaña Credit.²² The check, nonetheless, was dishonored for “insufficient fund.”²³ The final demand letter²⁴ sent by Oaña Credit remained unheeded; this eventually led to the institution of the abovementioned Information, which was initially raffled off to Branch 146 of the Regional Trial Court (RTC) of Makati City.²⁵

Upon her arraignment, Nanzan refused to enter a plea, which resulted in the trial court entering a plea of “not guilty” for her.²⁶ When mediation efforts to settle the civil liability failed,²⁷ the case was re-raffled to Branch 62 where trial ensued.²⁸ After the prosecution presented its evidence, Nanzan filed a demurrer to evidence,²⁹ which the RTC denied in its Joint Order³⁰ for lack of merit. Ensuingly, she moved for the inhibition of the presiding judge³¹ and the case was re-raffled anew to Branch 138.³² When the case was set for the defense to present its evidence, Nanzan, through counsel, manifested that she was waiving her right to present evidence as doing so would be inconsistent with her position that she was only civilly liable.³³

In due course, the RTC found Nanzan guilty beyond reasonable doubt of the crime of estafa,³⁴ disposing in this wise:

¹⁶ *Id.* at 1046.

¹⁷ *Id.*, vol. 6, p. 198.

¹⁸ *Id.*, vol. 3, pp. 1054–1055. Check Voucher and Acknowledgement.

¹⁹ *Id.* at 1164–1166. PS Bank Letter.

²⁰ *Id.*, vol. 3, p. 1058.

²¹ *Id.*, vol. 6, p. 198.

²² *Id.*, vol. 3, p. 1157.

²³ *Id.* at 1160. Demand Letter.

²⁴ *Id.*

²⁵ *Id.*, vol. 6, p. 192.

²⁶ *Id.*, vol. 1, p. 529. Certificate of Arraignment.

²⁷ *Id.*, vol. 2, p. 749. Mediator’s Report.

²⁸ *Id.*, vol. 6, p. 193.

²⁹ *Id.*, vol. 3, pp. 1192–1203.

³⁰ *Id.* at 1219–1231. The January 23, 2018 Joint Order in Crim. Case Nos. 15-534 & 15-535 was signed by Judge Selma Palacio Alaras.

³¹ *Id.*, vol. 4, pp. 1471–1486. Motion for Inhibition.

³² *Id.*, vol. 6, p. 196.

³³ *Id.* at 197.

³⁴ *Id.*, vol. 6, pp. 191–200. The November 9, 2018 Decision in Crim. Case No. 15-534 was penned by Presiding Judge Josefino A. Subia. The case against co-accused Mario Balucero a.k.a. Joemarie Nanzan was dismissed owing to his death in the August 30, 2017 RTC Joint Order; *id.*, vol. 2, p. 1002. The case against co-accused Vanessa Misa was dismissed for insufficiency of evidence in the January 23, 2018 RTC Joint Order; *id.*, vol. 3, pp. 1219–1231. The co-accused spouses Alterado remain at large; *id.*, vol. 2, p. 824; *id.*, vol. 6, p. 193.

WHEREFORE, in view of the foregoing, the prosecution having proven the guilt of the accused beyond reasonable doubt, [Nanzan] is found **GUILTY** of the crime of Estafa under Article 315, paragraph 2 (a) of the [RPC] and hereby sentenced her the indeterminate prison term of 6 months and 1 day of *prision correccional*, as minimum, to 4 years, 2 months and 1 day of *prision correccional*[.] as the maximum. [Nanzan] is also ordered to civilly indemnify the complainant, Oaña Credit Solutions, Inc. the sum of [PHP] 2,565,325.00 plus interest at the rate of six (6%) percent per annum computed from the date of [sic] the demand was made until the said amount is fully paid and to pay the costs of the suit.

As regards [the] accused [Rodella] and [Frederick] who remained [sic] at-large despite the warrant of arrest, the case against them is sent to the archives subject to its revival upon their respective arrest.

SO ORDERED.³⁵

The RTC found that the prosecution was able to prove all the elements of the crime charged. Nanzan made a fraudulent misrepresentation that the bridge financing loan would be paid from the proceeds of the PS Bank loan extended to spouses Alterado. Relying on this misrepresentation, Oaña Credit granted the bridge financing loan. However, the PS Bank loan proceeds were never turned over to it, in contravention of the terms of their agreement. This prejudiced Oaña Credit in the amount of PHP 2,565,325.00.³⁶ The RTC brushed aside Nanzan's contention that she should only be held civilly liable given that the loan agreement was allegedly covered by a real estate mortgage in favor of Oaña Credit for her failure to formally offer the real estate mortgage contract as evidence. Had any such mortgage actually existed, she could have easily presented the same; instead, she waived her right to do so.³⁷

Nanzan's bid for reconsideration³⁸ of the foregoing disposition having been denied by the RTC,³⁹ she appealed to the CA.⁴⁰

In the impugned Decision,⁴¹ the CA denied the appeal but modified her criminal liability to other deceits under Article 318 of the RPC. Accordingly, she was sentenced to suffer a lower penalty than that imposed by the RTC—

WHEREFORE, premises considered, the appeal is **DENIED**. The *Decision* dated November [9], 2018, of the [RTC], Branch 138, Makati City, in Criminal Case No. 15-534 is **AFFIRMED** with **MODIFICATION**. [Nanzan] is guilty beyond reasonable doubt of the crime of other deceits, as defined under Article 318 of the [RPC]. She is sentenced to suffer the penalty of two (2) months and one (1) day to four

³⁵ *Id.* at 200. (Emphasis in the original)

³⁶ *Id.* at 199.

³⁷ *Id.* at 199–200.

³⁸ *Id.* at 265–278. Motion for Reconsideration.

³⁹ *Id.* at 315–316. The January 30, 2019 Order was signed by Presiding Judge Josefino A. Subia.

⁴⁰ *Id.* at 337–338. Notice of Appeal.

⁴¹ *Rollo*, pp. 33–44, CA Decision.

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(4) months of *arresto mayor* in its medium period, and to pay a fine of [PHP] 2,565,325.00.

SO ORDERED.⁴²

The CA ratiocinated that the “other similar deceits” contemplated under Article 315, paragraph 2(a) of the RPC are those in the same class as the ones enumerated in the same provision. In this case, however, Nanzan neither used a fictitious name nor did she pretend to possess power, influence, qualifications, property, credit, agency or business, or any other form of deceit of a similar nature in obtaining the bridge financing loan from Oaña Credit. Thence, the RTC erred in holding her liable under Article 315, paragraph 2(a).⁴³ Nevertheless, she could still be held liable under Article 318 of the same law for other deceits as this provision was specifically intended to cover any other kind of conceivable deceits other than those mentioned in Articles 315 to 317.⁴⁴ The CA ruled that all of the elements under Article 318 obtained in this case. Nanzan’s false misrepresentations as to how the bridge financing loan would be paid induced Oaña Credit to release the loan in her favor. Regrettably, she never remitted to Oaña Credit the PS Bank loan proceeds she received, resulting in the latter’s damage and prejudice amounting to PHP 2,565,325.00.⁴⁵ While Nanzan was originally charged under Article 315, she may still be convicted of violating Article 318 under the variance doctrine in Section 4, Rule 120 of the Revised Rules of Criminal Procedure.⁴⁶ The CA also concurred with the RTC that the purported real estate mortgage was not determinative of her guilt. In the first place, her allegation was unsubstantiated in that she failed to present the said instrument as evidence. In any case, the existence of the real estate mortgage would not alter the reality that she employed deceit to secure the bridge financing loan from to Oaña Credit, which is the gravamen of the crime charged.⁴⁷

Undaunted, Nanzan moved for reconsideration,⁴⁸ but this was denied by the CA in the oppugned Resolution.⁴⁹ Hence, she instituted the instant Petition⁵⁰ before the Court.

Issue

Did the CA err in finding petitioner Nanzan guilty of other deceits under Article 318 of the RPC?

⁴² *Id.* at 43. (Emphasis in the original)

⁴³ *Id.* at 38.

⁴⁴ *Id.* at 38–40.

⁴⁵ *Id.* at 40.

⁴⁶ *Id.*

⁴⁷ *Id.* at 41–42.

⁴⁸ CA *rollo*, pp. 153–161.

⁴⁹ *Rollo*, pp. 83–84.

⁵⁰ *Id.* at 3–31.



The Court's Ruling

The Petition is denied for lack of merit.

At the outset, the Court reiterates that only questions of law may be entertained in a petition for review on *certiorari* under Rule 45, and an examination of questions of facts is allowed only in exceptional circumstances.⁵¹ “The determination of whether the elements of the crimes charged exist pertains to question of facts as this requires the recalibration of the whole evidence presented.”⁵² Petitioner seeks to overturn the findings of the lower courts on the ground that “facts of weight and substance have been overlooked, misapprehended, or misapplied,” specifically that the CA sustained her conviction by “conveniently ignoring and glossing over the existence of the [real estate mortgage] in this whole matter.”⁵³

Indeed, Nanzan bemoans the purported failure of the courts *a quo* to duly consider the existence of the real estate mortgage executed between the parties, which, if taken into account, would have supposedly negated her criminal liability.⁵⁴ She insists that the presentation of the real estate mortgage itself was unnecessary since the contents thereof are not in issue; hence, substitutionary evidence may suffice to prove its existence. In this case, petitioner argues that the loan agreement itself proves the existence of the real estate mortgage since it makes specific reference thereto in its provisions.⁵⁵

Nanzan's thesis cannot pass judicial muster.

It is an inviolable principle that the “[t]he court shall consider no evidence which has not been formally offered.”⁵⁶ Nanzan continuously harps on the real estate mortgage as the legal mooring of her innocence, however, the lower courts could not appreciate the same for the simple reason that such instrument was never even offered as evidence. As the RTC correctly adjudged, “it is technically and legally speaking not on record.”⁵⁷

Moreover, assuming *arguendo* that the Court concedes that there exists a real estate mortgage as referenced in the loan agreement, it does not necessarily mean that Nanzan is correct in saying that its contents are not in question. If her line of reasoning is that Oaña Credit did not rely on her representations about the PS Bank proceeds in approving the bridge financing loan, but on the security afforded by the real estate mortgage, then an examination of the terms of the real estate mortgage would, perforce, be

⁵¹ See *Magalona v. People*, 880 Phil. 116, 124 (2020) [Per J. Reyes, Jr., First Division].

⁵² *Id.* at 126.

⁵³ *Rollo*, p. 17, Petition for Review on *Certiorari*.

⁵⁴ *Id.* at 21.

⁵⁵ *Id.* at 22.

⁵⁶ REVISED RULES ON EVIDENCE, Rule 132, sec. 34, as amended by A.M. No. 19-08-15-SC, August 10, 2019.

⁵⁷ RTC records, vol. 6, p. 199.

unavoidable. Insisting that Oaña Credit was induced to grant the loan by the sheer existence of the real estate mortgage, barring any indication as to the favorability of its terms or whether the amount of the loan is sufficiently covered, is a baseless assumption that deserves scant consideration. While the burden of proof in criminal cases never shifts away from the prosecution,⁵⁸ the burden of evidence to rebut a fact in issue,⁵⁹ such as the precise motivation for Oaña Credit to grant the bridge financing loan, shifted to Nanzan once it was established by the prosecution's evidence that Oaña Credit was, in fact, induced by the promise of the forthcoming PS Bank loan proceeds. Instead of overturning this burden, Nanzan opted to waive her right to present evidence.⁶⁰

On this score alone, the Petition may already be denied. In any event, the CA correctly ruled that the gravamen of the offense is employing fraud or deceit to damage or prejudice another.⁶¹ As will be explained below, this has been sufficiently proven by the evidence on record.

The CA found Nanzan liable for other deceits, which is defined and penalized under paragraph 1, Article 318 of the RPC, *viz.* :

ART. 318. Other deceits. — The penalty of *arresto mayor* and a fine of not less than the amount of the damage caused and not more than twice such amount shall be imposed upon any person who shall defraud or damage another by any other deceit not mentioned in the preceding articles of this chapter.

The Information⁶² charged Nanzan with the crime of estafa under paragraph 2(a), Article 315 of the RPC. She, however, may still be convicted of violation of Article 318 of the same law under the variance rule, embodied in Section 4,⁶³ Rule 120 of the Revised Rules of Criminal Procedure. It is already established that Article 318 is necessarily included under a charge of paragraph 2(a), Article 315.⁶⁴

Undoubtedly, Article 318 is broad in application and is intended to operate as a catch-all provision to cover all other kinds of deceit not falling under Articles 315, 316, and 317 of the RPC.⁶⁵

⁵⁸ See REVISED RULES ON EVIDENCE, Rule 131, sec. 1, as amended by A.M. No. 19-08-15-SC, August 10, 2019.

⁵⁹ See *People v. POI Lumikid*, 875 Phil. 467, 481 (2020) [Per C.J. Peralta, First Division].

⁶⁰ RTC records, vol. 6, pp. 199–200.

⁶¹ *Rollo*, p. 42.

⁶² RTC records, vol. 1, pp. 3–7.

⁶³ REVISED RULES OF CRIMINAL PROCEDURE, Rule 120, sec. 4 reads:

Section 4. Judgment in Case of Variance between Allegation and Proof. — When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

⁶⁴ See *Osorio v. People*, 834 Phil. 768, 783 (2018) [Per J. Leonen, Third Division].

⁶⁵ See *id.* at 770.

To sustain a conviction under Article 318, the following elements must be proved: (a) the accused makes a false pretense, fraudulent act or pretense other than those in Articles 315, 316, and 317; (b) such false pretense, fraudulent act or pretense was made or executed prior to or simultaneously with the commission of the fraud; and (c) as a result, the offended party suffered damage or prejudice.⁶⁶ It is likewise essential that such false statement or fraudulent representation constitutes the very cause or the only motive for the complainant to part with their property.⁶⁷

All the elements obtain in this case.

First. In connivance with spouses Alterado, Nanzan made overt misrepresentations to Oaña Credit that the payment of the bridge financing loan they applied for would be sourced from the proceeds of the pre-approved loan of spouses Alterado with PS Bank as, in actual fact, this payment scheme was integrated into the terms of the Loan Agreement.⁶⁸ The falsity of these representations materialized when petitioner received the PS Bank proceeds⁶⁹ but never relayed the same to Oaña Credit, despite the execution of the Deed of Assignment of Loan Proceeds,⁷⁰ and even after due demand.⁷¹ Worse, Nanzan even issued a check which was dishonored for “insufficient fund.”⁷² Indeed, this may be appreciated as further *indicia* that she never intended to pay Oaña Credit.

Second. It was by virtue of the foregoing false pretenses made during the application process that Oaña Credit agreed to extend the loan and disburse the sum to Nanzan.⁷³

Third. The foregoing machinations resulted in damage and prejudice to Oaña Credit in the amount of PHP 2,565,325.00.⁷⁴ It was also proven by the documentary and testimonial evidence proffered by the prosecution that Nanzan’s misrepresentation was the very cause why Oaña Credit granted her the bank financing loan.⁷⁵

While Nanzan insists that the real estate mortgage constituted a secondary motive for Oaña Credit to part with their money, this was never proven as a fact. To reiterate, there is nothing on record which the Court may look to in order bolster this claim.

⁶⁶ See *id.* at 783.

⁶⁷ See *Marcos v. People*, G.R. No. 252839, November 10, 2021 [Per J. Carandang, Third Division].

⁶⁸ RTC records, vol. 3, p. 1046.

⁶⁹ *Id.* at 1164–1166.

⁷⁰ *Id.* at 1058.

⁷¹ *Id.* at 1160.

⁷² *Id.*

⁷³ *Id.* at 1054–1055.

⁷⁴ *Rollo*, p. 40.

⁷⁵ *Id.*

All told, the CA committed no reversible error in sustaining Nanzan's conviction and in imposing a straight penalty of two (2) months and one (1) day to four (4) months of *arresto mayor* in its medium period.⁷⁶

It likewise erred not in imposing a fine equal to the damages suffered by Oaña Credit in the amount of PHP 2,565,325.00. Article 318 of the RPC expressly provides that the penalty to be imposed for other deceits shall be “*arresto mayor and a fine of not less than the amount of the damage caused and not more than twice such amount*[.]”⁷⁷ “When the language of the law is clear and explicit, there is no room for interpretation, only application.”⁷⁸ While it may appear harsh, the Court is duty bound to apply the law in full force; *dura lex sed lex*.⁷⁹

To clarify, however, this fine is wholly separate and distinct from the civil indemnity awarded by the RTC,⁸⁰ which appears to have been omitted in the *fallo* of the challenged CA Decision. A fine is a distinct penalty imposed by law, whether straight or alternative;⁸¹ whereas civil indemnity is “awarded to the offended party as a kind of monetary restitution or compensation to the victim for the damage or infraction that was done to the latter by the accused, which in a sense only covers the civil aspect.”⁸² A fine under the RPC is criminal in nature and may even be classified as afflictive, correctional, or light, depending on the imposable amount.⁸³ Civil indemnity, regardless of whether it takes the form of restitution, reparation, or indemnification for consequential damages, is civil in nature.⁸⁴ A fine may be extinguished by an Executive pardon, but the same shall not exempt the accused from paying civil indemnities.⁸⁵ The civil indemnity may be extinguished in the same manner as obligations under the Civil Code.⁸⁶ It may also be extinguished by the express waiver of the offended party, but the same shall not extinguish the criminal action.⁸⁷

To obviate any doubt, it bears stressing that Nanzan remains liable to pay civil indemnity to Oaña Credit in the form of actual damages. Considering that the underlying obligation in this instance is in the nature of a loan, prevailing jurisprudence⁸⁸ dictates that compensatory interest may be awarded at the stipulated rate of the parties, reckoned from the date of judicial or

⁷⁶ *Id.* at 43.

⁷⁷ Emphasis supplied.

⁷⁸ *Revilla v. Sandiganbayan (First Division)*, 837 Phil. 17, 59 (2018) [Per J. Carpio, *En Banc*].

⁷⁹ *See Nieto v. People*, G.R. No. 241872, October 13, 2021 [Per J. Zalameda, Third Division].

⁸⁰ *See Corpuz v. People*, 734 Phil. 353, 416 [Per J. Peralta, *En Banc*].

⁸¹ *See* REVISED PENAL CODE, arts. 25 and 26.

⁸² *See Corpuz v. People*, 734 Phil. 353, 417 [Per J. Peralta, *En Banc*].

⁸³ *See* REVISED PENAL CODE, art. 26.

⁸⁴ *See* REVISED PENAL CODE, arts. 100 and 104.

⁸⁵ *See* REVISED PENAL CODE, art. 36.

⁸⁶ *See* REVISED PENAL CODE, art. 112.

⁸⁷ *See* REVISED PENAL CODE, art. 23.

⁸⁸ *See Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.*, G.R. No. 225433, September 20, 2022 [Per A.C.J. Leonen, *En Banc*].



extrajudicial demand until full payment. However, when the stipulated rate, i.e., 3.75% per month,⁸⁹ is unconscionable, the Court may adjust the same to the prevailing legal interest rate of 6% per annum.⁹⁰ Notably, there is proof of extrajudicial demand on September 24, 2013,⁹¹ which shall serve as the reckoning point for the applicable interest.

While the interest due in the payment of loans may also earn interest as a form of penalty,⁹² the Court withholds the imposition of the same given that Oaña Credit did not appeal the civil aspect of the decisions of the courts *a quo*.⁹³ Well-settled is the rule that it is the private complainant who must preserve their interest in the civil aspect of a criminal case,⁹⁴ which Oaña Credit failed to do in this instance.

Nevertheless, the fine imposed by the CA, unlike the civil indemnity awarded by the RTC, shall not earn interest. While a fine “is among the pecuniary liabilities which may be imposed against a convict, it is not considered as a civil liability from which an award of interest may spring.”⁹⁵ Additionally, the consequence of failure to pay the fine is subsidiary imprisonment under Article 39 of the RPC.

As a final point, the Court finds itself disturbed by the resulting imposition on Nanzan following a strict application of Article 318 of the RPC. Indeed, by prescribing that an accused should be held liable for imprisonment *and* a fine, the provision exacts from petitioner the amount of PHP 2,565,325.00 twice over—which is excessive given the circumstances of the case. The Court is bound to apply the letter of the law, lest it invade the exclusive sphere of the legislative in defining crimes and prescribing their corresponding penalties.⁹⁶ Nevertheless, Article 5 of the RPC allows the Court to make a recommendation to the Executive for the exercise of clemency or a reduction of the penalty.⁹⁷ In the spirit thereof, the Court formally recommends that Nanzan’s sentence be partially reduced or pardoned by the removal of the imposable fine in order that she be subjected to imprisonment only, as well as the payment of the civil indemnity to Oaña Credit.

ACCORDINGLY, the Petition for Review on *Certiorari* is hereby **DENIED** for lack of merit. The March 15, 2022 Decision and the July 6, 2022 Resolution of the Court of Appeals in CA-G.R. CR No. 43447 are

⁸⁹ RTC records, vol. 3, p. 1047.

⁹⁰ *See Lara’s Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.*, G.R. No. 225433, September 20, 2022 [Per A.C.J. Leonen, *En Banc*].

⁹¹ RTC records, vol. 3, p. 1160.

⁹² *See Lara’s Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.*, G.R. No. 225433, September 20, 2022 [Per A.C.J. Leonen, *En Banc*].

⁹³ *See Sioland Development Corp. v. Fair Distribution Center Corp.*, G.R. No. 199539, August 9, 2023 [Per C.J. Gesmundo, First Division].

⁹⁴ *See Austria v. AAA*, G.R. No. 205275, June 28, 2022 [Per J. M. Lopez, *En Banc*].

⁹⁵ *People v. Dapitan*, G.R. No. 253975, September 27, 2021 [Per J. Perlas-Bernabe, Second Division].

⁹⁶ *See People v. Siton*, 616 Phil. 449, 473 (2009) [Per J. Ynares-Santiago, Third Division].

⁹⁷ *See People v. Estoista*, 93 Phil. 647, 654 (1953) [Per J. Tuason]. *See also* REVISED PENAL CODE, art. 5.

AFFIRMED with MODIFICATION. Petitioner Maycel Balucero Nanzan is found **GUILTY** of the crime of other deceits, as defined under Article 318 of the Revised Penal Code. She is sentenced to suffer the penalty of two months and one day to four months of *arresto mayor* in its medium period, and to pay a fine of PHP 2,565,325.00. Pursuant to paragraph 1, Article 39 of the Revised Penal Code, she is likewise subject to subsidiary imprisonment in case of failure to pay the fine at the rate of one day for each amount equivalent to the highest minimum wage rate prevailing in the Philippines at the time of the rendition of judgment of conviction by the trial court, but in no case shall it exceed one-third of the four months of *arresto mayor* in its medium period herein imposed, and no fraction or part of a day shall be counted against the prisoner.

Petitioner Maycel Balucero Nanzan is further **ORDERED to PAY** private complainant Oaña Credit Solutions, Inc. actual damages in the amount of PHP 2,565,325.00 plus compensatory interest at the rate of 6% per annum from the date of extrajudicial demand on September 24, 2013 until full payment.

In the event that the properties of petitioner Maycel Balucero Nanzan are insufficient to cover the payment of these pecuniary liabilities, the payment of the fine and civil indemnity imposed in this Decision shall follow the order of preference under Article 38 of the Revised Penal Code.

Let a copy of this Decision be forwarded to the Office of the President, through the Department of Justice, for appropriate action based on the Court's formal recommendation for a partial reduction or pardon of petitioner Maycel Balucero Nanzan's sentence.

SO ORDERED.



JAPAR B. DIMAAMPAO
Associate Justice

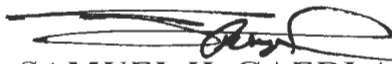
WE CONCUR:



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



HENRI JEAN PAUL B. INTING
Associate Justice



SAMUEL H. GAERLAN
Associate Justice

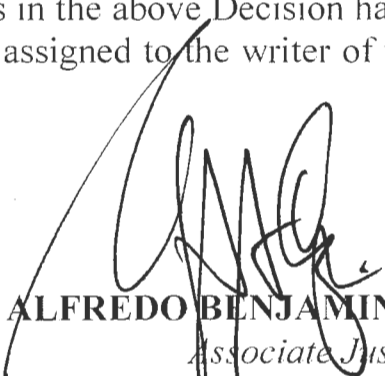


MARIA FILOMENA D. SINGH
Associate Justice



ATTESTATION

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



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of this Court.



ALEXANDER G. GESMUNDO
Chief Justice