



Republic of the Philippines  
**Supreme Court**  
 Manila

SUPREME COURT OF THE PHILIPPINES  
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**FIRST DIVISION**

**BANCO DE ORO UNIBANK,  
 INC.**

**G.R. No. 255367**

Petitioner,

Present:

- versus -

GESMUNDO, C.J.,  
*Chairperson,*  
 HERNANDO,  
 INTING,\*  
 ROSARIO, and  
 MARQUEZ, JJ.

**THE PEOPLE OF THE  
 PHILIPPINES, and RUBY O.  
 ALDA,**

Promulgated:

Respondents.

**OCT 02 2024**

[Signature]

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**DECISION**

**HERNANDO, J.:**

This Petition for Review on *Certiorari*<sup>1</sup> assails the Resolutions<sup>2</sup> of the Court of Appeals (CA) in CA-G.R. CR No. 39969, which denied Banco De Oro Unibank, Inc.’s (BDO) motion to intervene in the appealed criminal case docketed as Criminal Case No. 09-2643 titled, “*People of the Philippines v. Ruby O. Alda, Elizabeth O. Alda, and Michael S. Bungque.*”

\* Designated additional Member vice Justice Rodil V. Zalameda per Raffle dated April 11, 2024.

<sup>1</sup> *Rollo*, vol. 1, pp. 26–124 (sans annexes).

<sup>2</sup> *Id.* at 129–135 and 138–142. The September 8, 2020 Resolution in CA-G.R. CR No. 39969 was penned by Associate Justice Maria Elisa Sempio Diy and concurred in by Associate Justices Ramon M. Bato, Jr., and Carlito B. Calpatura of the Sixth Division, Court of Appeals, Manila. The January 15, 2021 Resolution in CA-G.R. CR No. 39969 was penned by Associate Justice Maria Elisa Sempio Diy and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Alfredo D. Ampuan of the Fourth Division, Court of Appeals, Manila.

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*Antecedent Facts*

Upon a complaint of BDO, an Information dated August 28, 2009 was filed against Ruby O. Alda (Ruby), together with Elizabeth O. Alda (Elizabeth) and Michael S. Bungque (Bungque), for *Estafa* through Misappropriation under Article 315(1)(b),<sup>3</sup> of the Revised Penal Code,<sup>4</sup> as follows:

On or about and during the period from March 2008 to November 2008, in the city of Makati, the Philippines, the above-named accused, conspiring, confederating, and mutually aiding and helping one another, received in trust from the complainant Banco de Oro, represented by Ismael G. Estela Jr., the sum of [PHP] 46,829,806.14 resulting from the over-crediting of money to the Fast [C]ard account of [Ruby], with the concomitant obligation or duty on the part of the accused to return and/or account said amount to the complainant, but accused, far from complying with their obligation, with intent to gain and with unfaithfulness and abuse of confidence, did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert to their own personal use and benefit the said amount of P[HP] 46,829,806.14 and despite repeated demands, accused failed to account or return the same, to the damage and prejudice of the complainant in the aforementioned amount of P[HP] 46,829,806.14.

CONTRARY TO LAW.<sup>5</sup>

The case was raffled to the Regional Trial Court (RTC) of Makati City, Branch 143. Ruby and Bungque were arraigned on March 21, 2011 where they both pleaded not guilty, while their co-accused, Elizabeth, remained at large.<sup>6</sup> Evidence for the prosecution consisted of testimonial and documentary evidence.<sup>7</sup>

The prosecution presented seven witnesses: (1) Atty. Mary Ann D. Morales, Chief Clerk of Company Monitoring Division of the Securities and Exchange Commission;<sup>8</sup> (2) Ismael Estela, Jr., Senior Vice President of BDO and Head of BDO Transaction Banking Group;<sup>9</sup> (3) Atty. Marichelle Gerardo

<sup>3</sup> **Article 315. Swindling (*Estafa*).** – Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

.....

1. With unfaithfulness or abuse of confidence, namely:

(b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

<sup>4</sup> REV. PEN. CODE (1930), An Act Revising the Penal Code and Other Penal Laws.

<sup>5</sup> *Rollo*, vol. 4, p. 1874.

<sup>6</sup> *Rollo*, vol. 1, p. 328.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 328–331.

of the Legal Office Group of BDO;<sup>10</sup> (4) Grace Granatin, Senior Vice President of BDO;<sup>11</sup> (5) Rolino Bucao, Jr., First Vice President of BDO I.T. Department;<sup>12</sup> (6) Atty. Francisco Gerardo Llamas, Assistant Vice President for Legal Services of BDO;<sup>13</sup> and (7) Atty. Ma. Cecilia Salazar Santos, First Vice President of BDO.<sup>14</sup>

The prosecution established that sometime in 2006, Elizabeth applied for an E-card Premium Equitable Fast Card with Equitable PCI Bank (EPCI) under account number 4559-687238-662036 in Taiwan.<sup>15</sup> The Fast Card is a reloadable peso prepaid card that functions like an ATM Debit Card. It can be used, among others, to make cash withdrawals and inquiries as to the available balance locally and internationally.<sup>16</sup>

In May 2007, EPCI merged with BDO, with the latter as the surviving corporation.<sup>17</sup> As a result, BDO acquired, among others, EPCI's entire accounts, products, and services portfolio, including, among others, the Fast Card Accounts of EPCI.<sup>18</sup>

The said Fast Card account opened by Elizabeth was for the benefit of her daughter, Ruby, who, at that time, was working in Dubai, United Arab Emirates (UAE).<sup>19</sup> From November 2007 to September 2008, Elizabeth, who was then in Taiwan, made several deposits of Taiwan Dollars in the Fast Card account for Ruby's use in Dubai.<sup>20</sup> Accordingly, Ruby, and at times, her boyfriend and co-accused, Bungque, made several withdrawals in Dubai Dirham from the said Fast Card account in Dubai.<sup>21</sup>

Being an international transaction, the same is registered or covered by International Switch Log.<sup>22</sup> At the end of the day, VISA, the global ATM network that is doing the switching for BDO, will summarize the transactions made and provide a daily settlement report.<sup>23</sup> Then, BDO pays VISA the amount indicated therein.<sup>24</sup>

Later, BDO Transaction Banking Group that is in charge of authorizing payments for withdrawals from Fast Card accounts, noticed that Ruby's daily

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<sup>10</sup> *Id.* at 331–332.

<sup>11</sup> *Id.* at 332–333.

<sup>12</sup> *Id.* at 333–334.

<sup>13</sup> *Id.* at 334.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 347.

<sup>16</sup> *Id.* at 38.

<sup>17</sup> *Id.* at 347.

<sup>18</sup> *Id.* at 37.

<sup>19</sup> *Id.* at 347.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

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transactions involved millions of pesos which is remarkably not characteristic of a Fast Card account.<sup>25</sup> It prompted them to go to Dubai to investigate.<sup>26</sup>

Estela, Head of the BDO Transaction Banking Group who was tasked to investigate anomalies and fraud transactions involving the products and services of BDO, declared that from March 2008 to November 2008, there was an over-crediting of money to the Fast Card of Ruby. According to him, the amount of PHP 1,662,483.57 was the money actually reloaded/deposited in the Fast Card.<sup>27</sup> However, the total anomalous ATM transactions, which include the amount withdrawn as well as the corresponding service charge, amounted to PHP 64,123,974.42.<sup>28</sup> The Fast Card account of Ruby was used to withdraw an amount of PHP 62,461,490.85 which was beyond the actual amount deposited into the Fast Card.<sup>29</sup>

When confronted with the fact of their receipt of the amount over-credited, and the demand for the return of the same, Ruby and Bungque voluntarily admitted the fact that they had conspired and actually carried out a plan to continuously withdraw large sums of money using the Fast Card of Ruby and devote the same for their own personal use.<sup>30</sup>

Thereafter, Ruby executed a Deed of Dation in Payment dated October 22, 2008, wherein she voluntarily returned to BDO several properties including bank accounts, a Toyota Fortuner, insurance proceeds, a parcel of land, and memorial lots.<sup>31</sup>

On the part of Bungque, on October 23, 2008, and upon his instructions, the amount of PHP 5,281,000.00 was deposited in BDO Angeles City as evidenced by a Transaction Slip dated October 23, 2008 showing on its face an annotation that it is for the payment of obligation by "S. Bungque" or for "Michael S. Bungque."<sup>32</sup>

Nevertheless, both Ruby and Bungque were able to account for the amount of PHP 15,631,684.71 only and failed to account for the remaining over-credited amount of PHP 46,829,806.14.<sup>33</sup> Hence, the suit for *Estafa* through Misappropriation under Article 315(1)(b),<sup>34</sup> of the Revised Penal Code was filed

<sup>25</sup> *Id.* at 347-348.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 348.

<sup>28</sup> *Rollo*, vol. 13, p. 6482.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 6483.

<sup>34</sup> **Article 315. Swindling (*Estafa*).** – Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

.....  
1. With unfaithfulness or abuse of confidence, namely:

.....

before the RTC of Makati City.

On their part, Ruby and Bungque alleged that the RTC does not have jurisdiction over the case since the complained acts, i.e., withdrawal of the amounts, were made in an ATM in Dubai.<sup>35</sup> The withdrawal was approved in Dubai as the same was in dollars and not in pesos.<sup>36</sup> According to them, it was BDO that approved the withdrawal in dollars which was immediately converted into dirhams which is the currency in Dubai.<sup>37</sup> Moreover, Ruby asserted that she had already returned as much as PHP 21 million of the money she honestly believed belongs to her as evidenced by the Deed she executed before the case was filed in court.<sup>38</sup> She also asserted that BDO was not able to prove that the money deposited in Ruby's Fast Card account did not belong to the latter; or that the money was "received in trust" by Ruby from BDO.<sup>39</sup>

#### *Ruling of the Regional Trial Court*

On April 26, 2017, the trial court rendered its Decision,<sup>40</sup> the dispositive of which reads:

**WHEREFORE**, viewed in light of the foregoing, this Court finds accused RUBY O. ALDA, **GUILTY** beyond reasonable doubt of the crime charged and she is hereby sentenced to suffer the penalty of imprisonment of, after applying the indeterminate sentence law, of [sic] **Four (4) Years of [Prision Correccional] Maximum as the minimum period to Twenty (20) Years of [Reclusion Temporal] Maximum as the maximum period** and all its accessory penalties under the law.

Accused [Ruby] O. Alda is also ordered to pay BDO the amount of Forty Five Million Seven Hundred Ninety Nine Thousand Seven Pesos and Twenty Eight Centavos ([PHP] 45,799.007.28) as and by way of actual damages and One Hundred Thousand Pesos ([PHP] 100,000.00) as moral damages. She is also ordered to pay attorney's fees in the amount of One Hundred Thousand Pesos ([PHP] 100,000) and the cost of suit.

On the other hand, for insufficiency of evidence, accused MICHAEL S. BUNGQUE is acquitted of the crime charged.

Meanwhile, issue [an] alias warrant of arrest against accused ELIZABETH ALDA, who is still at large.

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- (b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

<sup>35</sup> *Rollo*, vol. 13, pp. 6483–6468.

<sup>36</sup> *Id.* at 6464.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 6469.

<sup>39</sup> *Id.* at 6469–6470.

<sup>40</sup> *Rollo*, vol. 1, pp. 328–341. The April 26, 2017 Decision in Crim. Case No. 09-2643 was penned by Presiding Judge Maximo M. De Leon of Branch 143, Regional Trial Court, Makati City.

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**SO ORDERED.**<sup>41</sup> (Emphasis in the original)

In finding Ruby guilty of *Estafa* through Misappropriation, the trial court held that all the elements of the crime have been established and proven beyond a reasonable doubt by the prosecution, and We quote:

[T]his [c]ourt is convinced that the above elements of the crime of [*estafa*] were duly established by the prosecution. Evidence for the prosecution shows that the [two] accused [Ruby and Bungque] had indeed received (using the Fast [C]ard) *money with a correlative obligation or duty to make delivery of, or to return* the same, for said money is not their money, the same is in excess of the amount which was actually remitted to them by accused [Elizabeth]. Evidence also tends to show that the accused had *misappropriated* or *converted* the money for their own use and benefit. In fact, the evidence is clear that they even returned the portion of the money amounting to P[HP] 15,000,000.00. They also did not deny having withdrawn money more than the amount which was actually remitted to them by accused [Elizabeth]. In exactly the same way, said misappropriation or conversion is *to the prejudice* of the complaining bank. The evidence is also clear that there is *demand* made by the offended party (bank) to the two (2) accused [Ruby and Bungque].

Furthermore, evidence tends to show that there were [a] series of transactions (withdrawals and inquiries) made under the Fast Card under the account of accused [Ruby]. There is no doubt that there were transactions using the Fast [C]ard of [Ruby] showing the date, time, type of the transaction, amount debited and credited and the balance before and after the transa[c]tion ... for international transaction made in the years 2007 and 2008. These documentary evidence [show] the withdrawals using the Fast Card of accused [Ruby] were never rebutted by the defense. In fact, these were even admitted. Be that as it may, if accused [Ruby] had no intention to defraud the bank, she could have asked her mother if she remitted much money in her account. Otherwise stated, after the said inquiries, accused [Ruby] came to know for herself that there was an excess of money in her account and that is her duty to make it known to her mother or the bank itself. She has the duty to report it. Suffice it to state that all the elements of the crime were sufficiently established by the prosecution as against accused [Ruby].

[W]hen accused [Ruby] repeatedly withdrew money, knowing for herself that the amount she only had in her account is only [PHP 1,662,483.57], and her withdrawals reached the amount [of] more than [PHP 62,000,000], these acts of accused [Ruby] made her criminally liable and there is no doubt that she really intended to defraud the complaining bank. Otherwise stated[,] if accused [Ruby] had no intention to defraud the complaining bank, she could have easily stopped withdrawing money since she knew that [the] money in her account is only about [PHP 1,662,483.57] or she could have easily contacted and inquired from her mother (accused [Elizabeth]) and asked the latter her actual remittance. These, under the circumstances obtaining, makes the [c]ourt convinced that the withdrawals of money made by accused [Ruby] in excess of [PHP 1,662,483.57] was deliberate and attended with bad faith . . . she appropriated for herself the said amount to the prejudice of the complaining bank.<sup>42</sup> (Emphasis in the

<sup>41</sup> *Id.* at 341.

<sup>42</sup> *Id.* at 338–340.

original)

Both Ruby and Elizabeth appealed to the CA on May 8, 2017. In a Resolution<sup>43</sup> dated May 31, 2018, the appellate court held that the trial court never acquired jurisdiction over Elizabeth. Thus, although Elizabeth filed a notice of appeal from the Decision dated April 26, 2017, there was no judgment of the trial court over which the CA could exercise its appellate jurisdiction.

Meanwhile, in her appellant's brief,<sup>44</sup> Ruby reiterated that the trial court had no jurisdiction since the complained acts of withdrawal were committed in Dubai; there was no showing of criminal or malicious intent on her part when she withdrew money from her own account; a substantial amount has already been returned; and that there was an agreement to return the money and BDO would no longer pursue any action against her.<sup>45</sup>

Instead of filing an appellee's brief, the People, through the Office of the Solicitor General (OSG), filed a Manifestation In Lieu of Appellee's Brief<sup>46</sup> dated November 20, 2018 (Manifestation), where it recommended the acquittal of Ruby and Elizabeth.

The OSG manifested that the trial court had no jurisdiction to hear and decide the case since Elizabeth deposited the amounts in Taiwan, and Ruby withdrew the same in Dubai.<sup>47</sup> Moreover, the OSG argued that the prosecution failed to establish all the essential elements of the crime by proof beyond a reasonable doubt; and that the relationship between a bank and its depositor is one of debtor and creditor, and any overpayment that may have been made by the debtor to the creditor results only to a civil liability.<sup>48</sup>

The OSG also stated that it was BDO's system that provided inaccurate or erroneous conversion in foreign currency to Philippine Peso and back to foreign currency, which resulted to over-crediting in Ruby's account;<sup>49</sup> and that it was not proven that Ruby performed any fraudulent machinations in causing the erroneous transfer to her Fast Card account.<sup>50</sup> The withdrawals made by Ruby and Bungque were all approved by VISA as intermediary bank due to the erroneous conversion and glitch in the BDO system.<sup>51</sup> The OSG asserted that the over-crediting in Ruby's account and her withdrawal of the over-credited

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<sup>43</sup> *Rollo*, vol.13, pp. 6656–6660. The May 31, 2018 Resolution in CA-G.R. CR No. 39969 was penned by Associate Justice Maria Elisa Sempio Diy and concurred in by Associate Justices Franchito N. Diamante and Rodil V. Zalameda (now a Member of the Court) of the Special Fourth Division, Court of Appeals, Manila.

<sup>44</sup> *Id.* at 6581–6604.

<sup>45</sup> *Id.*

<sup>46</sup> *Rollo*, vol. 1, pp. 344–366.

<sup>47</sup> *Id.* at 352.

<sup>48</sup> *Id.* at 353.

<sup>49</sup> *Id.* at 348, 362.

<sup>50</sup> *Id.* at 362.

<sup>51</sup> *Id.* at 355.

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amount is a payment by mistake by the bank as debtor;<sup>52</sup> and that the element of juridical possession is glaringly absent, as the recipients of the erroneous payments cannot assert their possession as against the money's rightful owner.<sup>53</sup>

The OSG also pointed out that BDO did not categorically deny that there was an agreement between Ruby and the bank that should she return the money that she excessively withdrew, the bank would no longer press criminal charges against her.<sup>54</sup> In any case, the OSG opined that assuming *arguendo* that Ruby's withdrawal of the erroneous payment is considered asportation or unlawful taking with *animus lucrandi*, the fact that the same was committed abroad divests our local trial courts of jurisdiction to hear the case for *estafa*.<sup>55</sup> Ruby later adopted the OSG's Manifestation.<sup>56</sup> The CA then issued a Minute Resolution<sup>57</sup> dated March 20, 2019 submitting the case for decision.

In view of the OSG's Manifestation, BDO's private counsel, the law office of *Cruz Marcelo & Tenefrancia*, filed an Entry of Appearance with Motion for Intervention and Time to File Brief in Intervention<sup>58</sup> dated October 15, 2019 (Motion for Intervention), where it prayed that it be allowed to intervene based on the following grounds:

- a. grave violation of due process to the prejudice of BDO as well as to the State considering that Ruby has been convicted by the trial court, and Elizabeth has not yet been tried;<sup>59</sup>
- b. the trial court clearly had jurisdiction over the criminal case considering that BDO's system processes the information surrounding the questioned transactions in Makati City, and the damage to BDO occurred in Makati City;<sup>60</sup>
- c. the liability of Ruby is criminal and not only civil as all the elements of *Estafa* through Misappropriation are present and proven;<sup>61</sup>
- d. an agreement to return the over-credited amount misappropriated by Ruby does not, in any way, exculpate her from criminal liability,<sup>62</sup> and
- e. BDO has an interest in the civil aspect of the case which warrants its intervention.<sup>63</sup>

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<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 357.

<sup>54</sup> *Id.* at 360.

<sup>55</sup> *Id.* at 363.

<sup>56</sup> *Id.* at 131.

<sup>57</sup> No copy attached.

<sup>58</sup> *Rollo*, vol. 1, pp. 145–177.

<sup>59</sup> *Id.* at 147–153.

<sup>60</sup> *Id.* at 153–155.

<sup>61</sup> *Id.* at 155–171.

<sup>62</sup> *Id.* at 172–173.

<sup>63</sup> *Id.* at 173–174.

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In a Minute Resolution<sup>64</sup> dated November 26, 2019, BDO's motion was referred to Ruby and the OSG for comment. On December 17, 2019, Ruby filed a Compliance with Comment<sup>65</sup> stating that BDO's motion should be denied; while the OSG no longer filed any comment.<sup>66</sup>

*Ruling of the Court of Appeals*

On September 8, 2020, the CA issued the assailed Resolution<sup>67</sup> where it denied BDO's Motion for Intervention, viz.:

**WHEREFORE**, premises considered, the motion for intervention filed by Banco de Oro Unibank, Inc. is **DENIED**. The entry of appearance of Cruz Marcelo & Tenefrancia as counsel for Banco de Oro Unibank, Inc. is **NOTED**.

This Court's Minute Resolution dated March 20, 2019, insofar as it declared the case submitted for decision, is **RECALLED**.

The "Compliance with Comment" filed by accused-appellant Ruby O. Alda on December 17, 2019 is **NOTED**.

Per CMIS verification report dated June 25, 2020, plaintiff-appellee *People of the Philippines* has yet to file its comment to the "Entry of Appearance with Motion for Intervention and Time to File Brief in Intervention". In view of the lapse of time given to plaintiff-appellee within which to file its comment, plaintiff-appellee is thus deemed to have waived its right to file the same.

Accordingly, the instant case is deemed submitted for decision anew as of the date of this Resolution.

**SO ORDERED.**<sup>68</sup> (Emphasis in the original)

In denying BDO's motion, the appellate court held that BDO should have intervened before the rendition of judgment by the RTC, and not belatedly at the appellate court's level.<sup>69</sup> Noteworthy too, is BDO's failure to attach a pleading-in-intervention to its motion.<sup>70</sup>

The CA further declared that BDO is not an indispensable party since the true aggrieved party in a criminal case is the People of the Philippines whose collective sense of morality, decency and justice has been outraged;<sup>71</sup> at any rate, even assuming that the trial court lacks territorial jurisdiction over the case, the rights of BDO may be fully protected in a separate proceeding.<sup>72</sup>

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<sup>64</sup> No copy attached.

<sup>65</sup> No copy attached.

<sup>66</sup> *Rollo*, vol. 1, p. 132.

<sup>67</sup> *Id.* at 129-135.

<sup>68</sup> *Id.* at 134.

<sup>69</sup> *Id.* at 133.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

Unsatisfied, BDO filed a Motion [For: Reconsideration of the Resolution dated 08 September 2020] -and- [For: Leave to File and Admit Attached Brief-in-Intervention]<sup>73</sup> dated October 7, 2020 (Motion for Reconsideration), arguing that although no motion for intervention was filed before the lower court, it had actively participated in the trial; and that intervention is warranted considering the denial of its, as well as, the prosecution's, right to due process.<sup>74</sup> Ruby filed her Opposition<sup>75</sup> arguing that the motion was only filed to delay the proceedings, contrary to her right to speedy trial.<sup>76</sup>

The appellate court, however, denied BDO's Motion for Reconsideration in its January 15, 2021 Resolution<sup>77</sup> stating that the arguments and issues therein are a mere rehash of its Motion for Intervention, which have been already passed upon in its September 8, 2020 Resolution.<sup>78</sup>

Discontented with the appellate court's denial of its motions, BDO now comes before this Court *via* the instant Petition with the following issues:

- a. Whether BDO timely filed its Motion for Intervention on account of its active participation in the trial court, as the private prosecutor;<sup>79</sup> and
- b. Whether BDO's and the State's right to due process was gravely deprived by the CA's denial of BDO's Motion for Intervention.<sup>80</sup>

In further support of its Petition, BDO presented the following errors:

THE COURT OF APPEALS COMMITTED GRAVE AND SERIOUS ERROR, DECIDING IN A WAY NOT IN ACCORD WITH LAW AND THE APPLICABLE DECISIONS OF THE HONORABLE COURT WHEN IT RULED IN THE QUESTIONED *RULINGS DENYING PETITIONER BDO'S MOTION FOR INTERVENTION AND MOTION FOR RECONSIDERATION*, CONSIDERING THAT:

- A. PETITIONER BDO ACTUALLY PARTICIPATED IN CRIMINAL CASE NO. 09-2643 [TITLED] "*PEOPLE OF THE PHILIPPINES [V.] RUBY O. ALDA ET AL.*" WITH UNDERSIGNED COUNSEL AS PRIVATE PROSECUTOR BEFORE THE TRIAL COURT *A QUO*. HOWEVER, WHEN THE *DECISION* DATED 26 APRIL 2017 WAS RENDERED CONVICTING RESPONDENT RUBY, AND AN APPEAL WAS FILED, THE OSG AS COUNSEL FOR THE *PEOPLE* ON APPEAL TOOK OVER. NECESSARILY, IT WAS A

<sup>73</sup> *Id.* at 180-325.

<sup>74</sup> *Id.* at 139.

<sup>75</sup> No copy attached.

<sup>76</sup> *Rollo*, vol. 1, p. 140.

<sup>77</sup> *Id.* at 138-142.

<sup>78</sup> *Id.* at 140.

<sup>79</sup> *Id.* at 33.

<sup>80</sup> *Id.* at 34

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NATURAL EXPECTATION THAT IT SHALL REPRESENT THE INTEREST OF THE PROSECUTION. IT WAS, THUS, A COMPLETE SURPRISE WHEN IT DID NOT, WHICH WARRANTED INTERVENTION[; AND]

B. INTERVENTION IS HIGHLY WARRANTED CONSIDERING THE DENIAL OF DUE PROCESS RIGHTS OF PETITIONER BDO, THE STATE AND THE PROSECUTION.<sup>81</sup>

### *Issue*

For Our resolution is the issue of whether the CA erred in denying BDO's motion to intervene in the appealed criminal case.

### *Our Ruling*

We find the Petition meritorious.

Prefatorily, the Court observes that the Petition included a lengthy discussion of the criminal aspect of the case that is still pending before the CA. However, it is important to note that the issue in the present case is limited to whether the CA erred in denying BDO's motion to intervene. Hence, the Court shall limit its ruling on the issue of intervention and no longer delve on other matters.

Intervention is a remedy by which a third party, who is not originally impleaded in a proceeding, becomes a litigant for purposes of protecting his or her right or interest that may be affected by the proceedings.<sup>82</sup> Intervention is not an absolute right but may be granted by the court when the movant shows facts which satisfy the requirements of the statute authorizing intervention.<sup>83</sup> The allowance or disallowance of a motion to intervene is within the sound discretion of the court.<sup>84</sup>

Moreover, Rule 19, Section 1<sup>85</sup> of the Rules of Court provides that a court may allow intervention (a) if the movant has legal interest or is otherwise qualified, and (b) if the intervention will not unduly delay or prejudice the adjudication of rights of the original parties and if the intervenor's rights may

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<sup>81</sup> *Id.* at 93.

<sup>82</sup> *Republic v. Rubin*, 887 Phil. 600, 611 (2020) [Per J. Lazaro-Javier, First Division].

<sup>83</sup> *Id.*, citing *Office of the Ombudsman v. Bongais*, 836 Phil. 978, 987 (2018) [Per J. Perlas-Bernabe, Second Division].

<sup>84</sup> *Id.*

<sup>85</sup> **Section 1. Who may intervene.** — A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.

not be protected in a separate proceeding. Both requirements must concur.<sup>86</sup>

A movant for intervention must have a legal interest either (i) in the matter in litigation, (ii) in the success of either of the parties, or (iii) against both parties.<sup>87</sup> The movant may also intervene if he or she is (iv) so situated as to be adversely affected by a distribution or other disposition of property in the court's custody.<sup>88</sup> Legal interest is present when the intervenor will either gain or lose as a direct effect of the judgment.<sup>89</sup> The legal interest must be actual, material, direct, and immediate.<sup>90</sup>

*BDO has legal interest to warrant its intervention*

We hold that BDO has actual, material, direct, and immediate interest as to the civil aspect of the case to intervene before the appellate court, as the latter's judgment on the appeal will directly affect BDO.

To recall, BDO is claiming that Ruby, together with her co-accused, was able to take away, through a series of withdrawals from her Fast Card account, a total of PHP 62,461,490.85 representing the over-credited amount. Even after Ruby's return of some of the amount, a total of PHP 45,799,007.28, as found by the trial court, remains unaccounted for,<sup>91</sup> and which the trial court has ordered Ruby to return to BDO.<sup>92</sup> BDO claims that its ownership over the over-credited amount had been established during trial;<sup>93</sup> and that Ruby cannot possibly own the same considering her salaries at that time,<sup>94</sup> even with support from her mother.<sup>95</sup>

It is submitted that the debtor-creditor relationship between BDO and Ruby, respectively, is *only insofar as the amount of money that actually belongs to Ruby in her Fast Card account*.

In *Central Bank of the Philippines v. Citytrust Banking Corporation*,<sup>96</sup> the Court, citing *Consolidated Bank and Trust Corporation v. Court of Appeals*,<sup>97</sup> held that the contract between the bank and its depositor is governed by the Civil Code provisions on simple loan, thus:

<sup>86</sup> *Neptune Metal Scrap Recycling, Inc., v. Manila Electric Company*, 789 Phil. 30, 38 (2016) [Per J. Brion, Second Division].

<sup>87</sup> RULES OF COURT, Rule 19, sec. 1, as amended by A.M. No. 19-10-20-SC, May 1, 2020.

<sup>88</sup> *Id.*

<sup>89</sup> *Republic v. Rubin*, 887 Phil. 600, 612 (2020) [Per J. Lazaro-Javier, First Division], citing *Executive Secretary v. Northeast Freight Forwarders, Inc.*, 600 Phil. 789, 799 (2009) [Per J. Chico-Nazario, Third Division].

<sup>90</sup> *Id.*

<sup>91</sup> *Rollo*, vol. 1, p. 32.

<sup>92</sup> *Id.* at 328-341.

<sup>93</sup> *Id.* at 47-49.

<sup>94</sup> *Id.* at 50-51.

<sup>95</sup> *Id.* at 52-53.

<sup>96</sup> 597 Phil. 609, 615 (2009) [Per J. Carpio-Morales, Second Division].

<sup>97</sup> 457 Phil. 688, 705 (2003) [Per J. Carpio, First Division].

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Article 1980 of the Civil Code expressly provides that ‘... savings ... deposits of money in banks and similar institutions shall be governed by the provisions concerning simple loan.’ There is a debtor-creditor relationship between the bank and its depositor. The bank is the debtor and the depositor is the creditor. *The depositor lends the bank money and the bank agrees to pay the depositor on demand. The savings deposit agreement between the bank and the depositor is the contract that determines the rights and obligations of the parties.* (Emphasis supplied)

Here, Ruby became a creditor, and BDO a debtor, as to the amount actually intended to be deposited to her Fast Card account or only insofar as the amount that actually belonged to her. It is that amount which Ruby actually intended to be lent to BDO. However, as to the over-credited amount which was mistakenly added or which erroneously augmented Ruby’s money in her Fast Card account, the principles on simple loan which govern the relationships of banks with their depositors cannot apply.

BDO cannot be a debtor of the over-credited amount since it is the owner thereof as found by the trial court.<sup>98</sup> Nor can Ruby be a debtor, and BDO a creditor, of the over-credited amount, since there was no loan obligation created between the parties as BDO did not intend to be a creditor of the said amount. Indeed, BDO sent the over-credited amount by mistake, obviously without any intention of lending the same to Ruby.

Considering that BDO is asserting ownership over the over-credited amount, it has material, direct, and immediate interest in the outcome of the appellate court’s decision which warrants its intervention.

*BDO’s intervention would not unduly delay or prejudice the adjudication of the rights of the accused and of the State; in fact, intervention would avoid multiplicity of suits and save the court’s time and resources*

In *Executive Secretary v. Northeast Freight Forwarders, Inc.*,<sup>99</sup> the Court placed the burden on the oppositors to argue that the intervention would delay the proceedings and that the intervenor’s rights would not be protected in a separate case. The Court noted that the oppositors focused their arguments on the intervenor’s lack of legal interest such that they failed to allege or present any evidence to meet the second requirement in granting intervention. Thus, the Court has no basis to rule that the intervention will delay the adjudication of rights of the original parties. It also noted that the intervention is more beneficial

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<sup>98</sup> *Rollo*, vol. 1, pp. 47–49.

<sup>99</sup> 600 Phil. 789, 799–800 (2009) [Per J. Chico-Nazario, Third Division].

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and convenient for petitioners and the courts as it will avoid multiplicity of suits and clogging of the court dockets.

Here, the OSG failed to allege or present any evidence, as it opted not to file any comment on BDO's Motion for Intervention that would show that the intervention will only delay the proceedings or that BDO may adequately protect its rights in a separate case.

If at all, requiring BDO to institute a separate civil case and go through trial once again, and asking its witnesses, and Ruby or her co-accused, to be subjected to the witness stand once again, would be unduly prejudicial to the interests of both parties, not to mention, wasteful of the court's time and resources. Besides, after an exhaustive trial, the trial court has found Ruby guilty of the crime and has found her civilly liable for the return of the over-credited amount. It would thus be circuitous to require BDO to file a separate civil case just to prove once again the anomalous transactions and Ruby's civil liability, when the same had already been tried and proven in the court *a quo*.

Allowing BDO to intervene in the *estafa* case, in fact, would aid the appellate court in ascertaining whether all the essential elements of the crime of *estafa* were proven, including damage to the offended party, which may be crucial in determining whether the trial court correctly exercised jurisdiction over the case. The appellate court could also ascertain whether the trial court was correct in determining BDO's ownership over the over-credited amounts and in ordering Ruby to return the same to BDO.

Verily, intervention even at the appellate stage of the criminal case would avoid and prevent circuity of action, not to mention, declog court dockets, as the entire controversy between the parties will be litigated and finally determined in one action. As We have held, intervention is allowed to avoid multiplicity of suits more than on due process considerations.<sup>100</sup>

*BDO's intervention after trial is recognized by jurisprudence and allowed under the Revised Rules of Criminal Procedure*

To recall, the CA denied BDO's Motion for Intervention based on Rule 19, Section 2<sup>101</sup> of the Rules of Court which requires a movant to file the motion for intervention before the RTC renders its judgment, and to attach a pleading-

<sup>100</sup> *Province of Bataan v. Escalada, Jr.*, G.R. No. 181311, November 24, 2021 [Per J. Carandang, Third Division], citing *Risos-Vidal v. Commission on Elections*, 751 Phil. 479, 601-602 (2015).

<sup>101</sup> **Section 2. Time to intervene.** — The motion to intervene may be filed at any time before rendition of judgment by the trial court. A copy of the pleading-in-intervention shall be attached to the motion and served on the original parties.

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in-intervention. Under the same rule, the court may allow intervention after rendition of judgment if the movant is an indispensable party.<sup>102</sup>

As a general rule, intervention is legally possible only “before or during a trial”; hence, a motion for intervention filed after trial - and, *a fortiori*, when the case has already been submitted, when judgment has been rendered, or worse, when judgment is already final and executory - should be denied.<sup>103</sup> As every rule, however, this is not without exceptions.<sup>104</sup>

In the early case of *Director of Lands v. Court of Appeals*,<sup>105</sup> intervention was allowed in order to avoid injustice even when the petition for review of the assailed judgment was already submitted for decision in the Supreme Court. In *Tahanan Development Corporation v. Court of Appeals*,<sup>106</sup> the Court allowed intervention almost at the end of the proceedings. In *Mago v. Court of Appeals*,<sup>107</sup> the Court granted intervention despite the fact that the case had become final and executory, thus:

[The] facts should have convinced the trial court and the Court of Appeals that a less stringent application of the Rules of Court was the more prudent recourse. Indeed, the exercise of discretion has often been characterized as odious; but where the necessity exists for its exercise, a judge is bound not to shirk from the responsibility devolving in him. For it is in relaxing the rules that we ultimately serve the ends of equity and justice based not on folly grounds but on substance and merit.<sup>108</sup>

Likewise, the Court, in *Pinlac v. Court of Appeals*,<sup>109</sup> allowed intervention even after it had rendered its decision and the resolution denying the motion for reconsideration.

Meanwhile, Rule 110, Section 16 of the Revised Rules of Criminal Procedure provides:

Section 16. *Intervention of the offended party in criminal action.* — Where the civil action for recovery of civil liability is instituted in the criminal action pursuant to Rule 111, *the offended party may intervene by counsel in the prosecution of the offense.* (Emphasis supplied)

An offended party is allowed to intervene in a criminal case pursuant to

<sup>102</sup> *Pinlac v. Court of Appeals*, 457 Phil. 527, 537 (2003) [Per J. Ynares-Santiago, Special First Division]; and *Looyuko v. Court of Appeals*, 413 Phil. 445, 463 (2001) [Per J. Kapunan, First Division].

<sup>103</sup> *Office of the Ombudsman v. Miedes, Sr.*, 570 Phil. 464, 471 (2008) [Per J. Austria-Martinez, *En Banc*], citing *Looyuko v. Court of Appeals*, 413 Phil. 445, 460–461 (2001) [Per J. Kapunan, First Division].

<sup>104</sup> *Id.*

<sup>105</sup> 181 Phil. 432, 439 (1979) [Per J. Guerrero, First Division].

<sup>106</sup> 203 Phil. 652, 690 (1982) [Per J. Guerrero, Second Division].

<sup>107</sup> 363 Phil. 225 (1999) [Per J. Bellosillo, Second Division].

<sup>108</sup> *Id.* at 238.

<sup>109</sup> 457 Phil. 527, 534 (2003) [Per J. Ynares-Santiago, Special First Division].

the principle that “[e]very person criminally liable is also civilly liable.”<sup>110</sup> Rule 111, Section 1<sup>111</sup> of the Revised Rules of Criminal Procedure also provides that the civil liability arising from the offense charged is deemed instituted with the criminal action, except when a) the offended party waives the civil action, b) reserves the right to institute it separately, or c) institutes the civil action prior to the criminal action.

Notably, Rule 110, Section 16 of the Revised Rules of Criminal Procedure does not specify when an offended party may be allowed to intervene in a criminal action; unlike Rule 19, Section 2 of the Rules of Court where it is mandated that the movant should file their intervention before the rendition by the trial court of its judgment.

In *Neptune Metal Scrap Recycling, Inc. v. Manila Electric Company*<sup>112</sup> which involved the crime of theft, the Court allowed Neptune’s intervention before the appellate court, even after the trial court has rendered judgment, considering that Neptune has a legal interest over the subject matter of the crime and has been allowed by the trial court to participate in the court proceedings.<sup>113</sup> The Court ruled thus:

*In the present case, Neptune filed a motion denominated as “motion for intervention” only before the CA or only after the RTC had rendered its judgment. Neptune argues that the entry with motion it filed with the RTC is tantamount to a motion for intervention. The OSG, on the other hand, argues that the entry with motion cannot constitute as a motion for intervention because it lacked the pleading-in-intervention required by the Rules.*

We rule in Neptune’s favor and hold that the entry with motion effectively constitutes a motion for intervention.

*The rules on intervention are procedural rules, which are mere tools designed to expedite the resolution of cases pending in court. Courts can avoid a strict and rigid application of these rules if such application would result in technicalities that tend to frustrate rather than promote substantial justice.*

In the present case, Neptune only filed a special appearance with a motion to inspect the container van before the RTC. At that time, Neptune was still uncertain whether it owned or it had legal interest over the container van’s contents. After the inspection, however, it ascertained that it indeed owned the scrap copper wires and thus continued to participate in the case. *Notably, the RTC allowed Neptune to appear, file pleadings, and represent itself in the court proceedings. All these amount to intervention as contemplated under the rules . .*

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<sup>110</sup> REV. PEN. CODE, art. 100.

<sup>111</sup> Section 1. *Institution of criminal and civil actions.* — (a) When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action.

<sup>112</sup> 789 Phil. 30 (2016) [Per J. Brion, Second Division].

<sup>113</sup> *Id.* at 41.



*Undeniably, the RTC allowed Neptune to intervene in the case via the entry with motion, albeit without filing a motion specifically denominated as a “motion for intervention.” Thus, Neptune complied with the requirement of filing an intervention prior to the RTC’s rendition of judgment.*

All told, the CA erred when it denied Neptune’s motion for intervention on the grounds that it lacked legal interest to intervene and that it filed the intervention beyond the prescribed period.<sup>114</sup> (Emphasis supplied)

Similarly, there is no reason for Us not to allow BDO’s intervention at the appellate level or after the trial court has already rendered its judgment. Here, the trial court allowed BDO to actively participate in the court proceedings through its entry of appearance and presentation of its witnesses, and upheld its legal interest over the subject matter by holding that BDO is the owner of the over-credited amount.

Based on the records, BDO, through counsel, entered its appearance before the trial court, and actively participated as a private prosecutor during the arraignment of Ruby and Bungque.<sup>115</sup> Seven of the prosecution’s witnesses are BDO’s key officers who were all duly cross-examined by Ruby and Bungque;<sup>116</sup> and BDO clearly and actively participated throughout the trial.<sup>117</sup> These were considered by the trial court in rendering its April 26, 2017 Decision finding Ruby guilty and ordering her to pay the over-credited amount plus costs of suit and damages. Thus, not only was the offended party represented by a private prosecutor in the criminal action, but the action went through trial on the merits. In fact, as can be gleaned from the records, it was the private prosecutor who actually handled the case.

When the case reached the CA, the OSG took over and filed its Manifestation, instead of an appellee’s brief, taking a position that is inconsistent with the trial court’s rulings and BDO’s interests; this prompted BDO to formally intervene in the case.

It is true that BDO’s participation during trial as a private prosecutor cannot equate to the formal intervention required under the Rules. However, We agree with BDO that it did not see any need to formally intervene during trial since BDO’s and the public prosecutor’s interests to prosecute the accused for the crimes charged and to order the return of the over-credited amount were aligned during the trial proceedings. It was only when the OSG manifested an inconsistent position with that of the trial court, that BDO was prompted to file its formal Motion for Intervention to protect its interests. Notably, BDO later attached to its Motion for Reconsideration its Brief-in-Intervention, which to Our mind, substantially complies with the rules.

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<sup>114</sup> *Id.* at 40–41.

<sup>115</sup> *Rollo*, vol. 1, p. 97.

<sup>116</sup> *Id.* at 86–87.

<sup>117</sup> *Id.* at 98–99.

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In any case, as the Court held, the rules on intervention are procedural rules, which are mere tools designed to expedite the resolution of cases pending in court.<sup>118</sup> Courts can avoid a strict and rigid application of these rules if such application would result in technicalities that tend to frustrate rather than promote substantial justice.<sup>119</sup>

As We have also noted, nowhere in the Revised Rules of Criminal Procedure does it specifically provide when or within what period, an offended party may be allowed to intervene in a criminal case. We can only be guided by Rule 111, Section 1<sup>120</sup> of the Revised Rules of Criminal Procedure which provides that an offended party may intervene in the prosecution of a crime except in the following instances: (1) when, from the nature of the crime and the law defining and punishing it, no civil liability arises in favor of a private offended party; and (2) when, from the nature of the offense, the offended parties are entitled to civil indemnity, but (a) they waive the right to institute a civil action, (b) expressly reserve the right to do so or (c) the suit has already been instituted.

The reason of the law in not permitting the private offended party to intervene in the prosecution of the offense if they had waived or reserved their right to institute the civil action is that by such action their interest in the criminal case has disappeared.<sup>121</sup> In any of these instances, the criminal prosecution becomes the sole function of the public prosecutor.<sup>122</sup>

The Court laid down in *People v. Santiago*<sup>123</sup> the extent of the right of the private complainant in a criminal case, to wit:

*It is well settled that in criminal cases where the offended party is the State, the interest of the private complainant or the private offended party is limited to the civil liability. Thus, in the prosecution of the offense, the complainant's role is limited to that of a witness for the prosecution. If a criminal case is dismissed by the trial court or if there is an acquittal, an appeal therefrom on the criminal aspect may be undertaken only by the State through the Solicitor General. Only the Solicitor General may represent the People of the Philippines on appeal. The private offended party or complainant may not take such appeal. However, the*

<sup>118</sup> *Al-Amanah Islamic Investment Bank of the Philippines v. Celebrity Travel and Tours, Incorporated*, 479 Phil. 1041, 1052 (2004) [Per J. Callejo, Sr., Second Division].

<sup>119</sup> *Id.*

<sup>120</sup> Section 1. *Institution of criminal and civil actions.* — (a) When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action.

<sup>121</sup> *Roa v. Segunda*, 107 Phil. 8, 11–12 (1960) [Per J. Gutierrez David, Second Division], *citing Gorospe v. Gamaitan*, 98 Phil. 600, 602 (1956) [Per J. Bautista Angelo, First Division].

<sup>122</sup> *Id.*

<sup>123</sup> 255 Phil. 851 (1989) [Per J. Gancayco, First Division].

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*said offended party or complainant may appeal the civil aspect despite the acquittal of the accused.*<sup>124</sup> (Emphasis supplied)

In the present case, however, the trial court convicted Ruby and found her not only criminally but likewise civilly, liable. Ruby appealed her conviction in the criminal case to the CA, as well as her liability on the civil aspect of the case. Thus, when Ruby elevated the case to the CA, both the criminal and civil aspects of the case were carried such that BDO, as the private complainant, still has an interest to protect even when the case reached the appellate court.

In *Lim Tek Goan v. Yatco*,<sup>125</sup> it was held:

The law on this point is clear. Section 4, Rule 106, provides that “all criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of the fiscal” and, as a corollary, it is also provided that “*unless the offended party has waived the civil action or expressly reserved the right to institute it after the termination of the criminal case, . . . he may intervene, personally or by attorney, in the prosecution of the offense.*” (Section 15, Rule 106.) From these provisions we can clearly infer that while criminal actions as a rule are prosecuted under the direction and control of the fiscal, however, an offended party may intervene in the proceeding, personally or by attorney, specially in cases of offenses which cannot be prosecuted except at the instance of the offended party. (People vs. Dizon, 44 Phil., 267; Herrero vs. Diaz, 75 Phil., 489.) *The only exception to this rule is when the offended party waives [their] right to civil action or expressly reserves [their] right to institute it after the termination of the case, in which case [they lose their] right to intervene upon the theory that [they are] deemed to have lost [their] interest in its prosecution.*<sup>126</sup> (Emphasis supplied, citation omitted)

**We hold, therefore, that a private offended party may intervene at any stage of the proceedings, even after the trial court has rendered its judgment or while the case is on appeal, as long as the civil action has not been waived, has been reserved, or is already being tried in a separate proceeding instituted prior to the criminal action.** None of these exceptions are present in the instant case. Hence, BDO cannot be barred from intervening in the *estafa* case, which at present, is on appeal with the CA.

In *Rodriguez v. Ponferrada*,<sup>127</sup> the Court likewise allowed the intervention of the private offended party in the suit for *estafa* as it carries with it a civil action, thus:

This is the import of *Banal v. Tadeo*, which we quote in part as follows:

Generally, the basis of civil liability arising from crime is the fundamental postulate of our law that ‘Every man [or woman] criminally liable is also civilly liable’ (Art. 100, The Revised Penal

<sup>124</sup> *Id.* at 861–862.

<sup>125</sup> 94 Phil. 197 (1953) [Per J. Bautista Angelo, *En Banc*].

<sup>126</sup> *Id.* at 200.

<sup>127</sup> 503 Phil. 306 (2005) [Per J. Panganiban, Third Division].

Code). Underlying this legal principle is the traditional theory that when a person commits a crime he [or she] offends two entities namely (1) the society in which he [or she] lives in or the political entity called the State whose law he [or she] had violated; and (2) the individual member of that society whose person, right, honor, chastity or property was actually or directly injured or damaged by the same punishable act or omission. However, this rather broad and general provision is among the most complex and controversial topics in criminal procedure. It can be misleading in its implications especially where the same act or omission may be treated as a crime in one instance and as a tort in another or where the law allows a separate civil action to proceed independently of the course of the criminal prosecution with which it is intimately intertwined. Many legal scholars treat as a misconception or fallacy the generally accepted notion that the civil liability actually arises from the crime when, in the ultimate analysis, it does not. *While an act or omission is felonious because it is punishable by law, it gives rise to civil liability not so much because it is a crime but because it caused damage to another. Viewing things pragmatically, we can readily see that what gives rise to the civil liability is really the obligation and the moral duty of everyone to repair or make whole the damage caused to another by reason of his [or her] own act or omission, done intentionally or negligently, whether or not the same be punishable by law.* In other words, criminal liability will give rise to civil liability only if the same felonious act or omission results in damage or injury to another and is the direct and proximate cause thereof. *Damage or injury to another is evidently the foundation of the civil action.* Such is not the case in criminal actions for, to be criminally liable, it is enough that the act or omission complained of is punishable, regardless of whether or not it also causes material damage to another.

....

*In promulgating the Rules, this Court did not intend to leave the offended parties without any remedy to protect their interests in [estafa] cases. Its power to promulgate the Rules of Court is limited in the sense that rules "shall not diminish, increase or modify substantive rights." Private complainant's intervention in the prosecution of [estafa] is justified not only for the prosecution of her interests, but also for the speedy and inexpensive administration of justice as mandated by the Constitution.<sup>128</sup> (Emphasis supplied, citation omitted)*

It is clear, therefore, that BDO's intervention in the *estafa* case is not only recognized by the rules and jurisprudence, but is likewise justified considering the extent of the damage or injury involved. Indeed, this wrong caused against BDO by the alleged criminal acts of Ruby and her co-accused fuels the civil action in the *estafa* case, which as mentioned, has not been waived, reserved, or instituted separately by BDO.

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<sup>128</sup> *Id.* at 314-320.

*Despite the OSG's Manifestation, the CA can make an independent determination on whether the accused should be acquitted*

Anent BDO's assertion, however, that the State will be deprived of its right to prosecute the accused by the OSG's Manifestation recommending the acquittal of both Ruby and Elizabeth, We find the same untenable.

While the OSG represents the interests of the State, its agencies, and instrumentalities, and its officials and agents in any litigation, proceeding, or investigation,<sup>129</sup> the CA is not precluded from making an independent determination on the liability of the accused based on the records and the evidence. Under Rule 124, Section 11<sup>130</sup> of the Rules of Court, an appeal in a criminal case opens the entire case for review on any question, including one not raised by the parties; thus, the CA is not bound by the OSG's Manifestation and it may reverse, affirm, or modify the judgment of the trial court based on its own independent assessment of the records.

Here, the Office of the City Prosecutor found probable cause to indict the accused for the crime of *Estafa* through Misappropriation, which prompted the filing of the Information in court. Moreover, the trial court found that all the elements of *Estafa* through Misappropriation are present and that Ruby is guilty beyond a reasonable doubt of the crime charged; this is after an exhaustive trial where several witnesses were presented and were duly cross-examined by both parties. These findings can be taken into consideration by the CA, independent of the OSG's Manifestation, in determining the liability of Ruby and/or Elizabeth, if any.

Thus, while it is the OSG's position to acquit both Ruby and Elizabeth, the State would not be deprived of its right to prosecute the accused since the CA can either adopt the OSG's recommendation or not, and make its own judgment based on its independent assessment of the entire records of the case. In order to avoid miscarriage of justice, therefore, it is important that these considerations and the evidence on record, as well as the findings of the trial court, be thoroughly assessed by the appellate court in deciding the appeal.

**ACCORDINGLY**, the Petition is **GRANTED**. The Resolutions dated September 8, 2020 and January 15, 2021 of the Court of Appeals in CA-G.R. CR No. 39969, are **REVERSED** and **SET ASIDE**.


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<sup>129</sup> REV. ADM. CODE, Book IV, Title III, Chapter 12, Sec. 35(I).

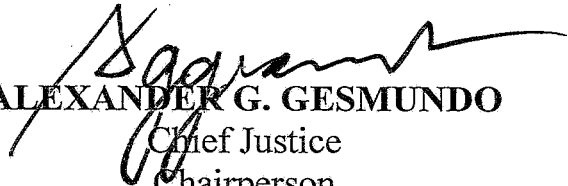
<sup>130</sup> **Section 11. Scope of judgment.** — The Court of Appeals may reverse, affirm, or modify the judgment and increase or reduce the penalty imposed by the trial court, remand the case to the Regional Trial Court for new trial or retrial, or dismiss the case.

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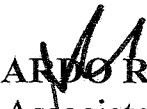
**SO ORDERED.**

  
**RAMON PAUL L. HERNANDO**  
Associate Justice  
Working Chairperson

WE CONCUR:

  
**ALEXANDER G. GESMUNDO**  
Chief Justice  
Chairperson

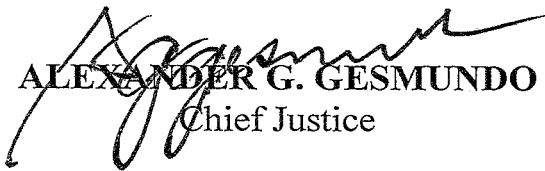
  
**HENRI JEAN PAUL B. INTING**  
Associate Justice

  
**RICARDO R. ROSARIO**  
Associate Justice

  
**JOSE MIDAS P. MARQUEZ**  
Associate Justice

**CERTIFICATION**

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

  
**ALEXANDER G. GESMUNDO**  
Chief Justice

