Republic of the Philippines
Supreme Court
Manila

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
SEP 16 2016

THIRD DIVISION

JESUSA T. DELA CRUZ
Petitioner,

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

G.R. No. 163494

Present:

VELASCO, JR., *J.*,
Chairperson,
PERALTA,
PEREZ,
REYES, and
JARDELEZA, *JJ.*

Promulgated:

August 3, 2016

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DECISION

REYES, *J.*:

This resolves the petition for review on *certiorari*[1] filed by Jesusa T. Dela Cruz (petitioner) under Rule 45 of the 1997 Rules of Civil Procedure assailing the Decision[2] dated November 13, 2003 and Resolution[3] dated May 4, 2004 of the Court of Appeals (CA) in CA-G.R. CR No. 26337. The CA affirmed the Decision[4] rendered by the Regional Trial Court (RTC) of Manila, Branch 2, on August 31, 2001, in Criminal Case No. 89-72064-86, convicting the petitioner for twenty-three (23) counts of violation of Batas Pambansa Bilang 22 (B.P. Blg. 22), otherwise known as the Bouncing Checks Law.

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1 *Rollo*, pp. 20-41.

2 Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Delilah Vidallon-Magtolis and Sergio L. Pestaño concurring; id. at 45-54.

3 Id. at 56.

4 Rendered by Acting Presiding Judge Leonardo P. Reyes; id. at 141-168.

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The Antecedents

The case stems from a complaint for violation of B.P. Blg. 22 filed by Tan Tiac Chiong, also known as Ernesto Tan (Tan), against the petitioner.[5] Tan entered into several business transactions with the petitioner sometime in 1984 to 1985, whereby Tan supplied and delivered to the petitioner rolls of textile materials worth ₱27,090,641.25. For every delivery made by Tan, the petitioner issued post-dated checks made payable to "Cash". When presented for payment, however, some of the checks issued by the petitioner to Tan were dishonored by the drawee-bank for being "Drawn Against Insufficient Funds" or "Account Closed". The replacement checks later issued by the petitioner were still dishonored upon presentment for payment.[6]

The fourth batch of twenty-three (23) replacement checks issued by the petitioner to Tan became the subject of his complaint. All checks were dated March 30, 1987 and drawn against Family Bank & Trust Co. (FBTC), but were issued for different amounts totaling ₱6,226,390.29,[7] to wit:

Check No.	Amount
078790	₱ 145,905.57
078791	145,905.57
078789	145,905.57
078788	145,905.58
078787	145,905.59
078786	145,905.59
078785	1,354,854.50
078784	337,380.50
078783	309,580.17
078782	411,800.15
078804	874,643.86
078803	129,448.30
078796	282,763.60
078802	129,448.36
078801	129,448.36
078800	129,448.38
078799	129,448.36
078798	129,448.36
078797	282,763.60
078795	282,763.61
078794	145,905.57

5 Records, Volume I, pp. 107-109.
6 *Rollo*, pp. 45-46.
7 Records, Vol. I, pp. 252-274.

078793	145,905.57
078792	145,905.57
	₱ 6,226,390.29

The 23 checks were still later dishonored by the drawee-bank FBTC for the reason "Account Closed". Tan informed the petitioner of the checks' dishonor through a demand letter,[8] but the amounts thereof remained unsatisfied.[9]

In March 1989, 23 informations for violation of B.P. Blg. 22 were filed in court against the petitioner. Upon arraignment, the petitioner pleaded "not guilty" to the charges. The cases were consolidated and thereafter, trial on the merits ensued.[10]

The prosecution was able to present its evidence during the trial; it rested its case on June 5, 1995. The defense, however, failed to present its evidence after it had sought several hearing postponements and resettings. In view of the petitioner's failure to appear or present evidence on scheduled dates, the RTC issued on July 27, 2000 an Order[11] that deemed the petitioner to have waived her right to present evidence. A copy of the order was received by the petitioner's counsel of record.[12]

Ruling of the RTC

The RTC then decided the case based on available records. On August 31, 2001, the RTC rendered its Decision[13] finding the petitioner guilty of the charges. The dispositive portion of the decision reads:

> WHEREFORE, viewed from all the foregoing, the Court finds [the petitioner] guilty beyond reasonable doubt of violation[s] of [B.P.] Blg. 22 on twenty-three (23) counts, and hereby sentences her to suffer imprisonment of one (1) year in every case, and to indemnify [Tan] the amount equal to the collective face value of all the subject checks, and to pay the costs.
>
> SO ORDERED.[14]

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8 Records, Vol. II, pp. 422-423.
9 *Rollo*, pp. 46-47.
10 Id. at 47-48.
11 Records, Vol. III, p. 159.
12 *Rollo*, pp. 48-49.
13 Id. at 141-168.
14 Id. at 168.

Dissatisfied, the petitioner appealed to the CA, arguing, among other grounds, that she was not accorded an ample opportunity to dispute the charges against her. Contrary to the RTC's declaration, the petitioner denied any intention to waive her right to present evidence.[15] In fact, she intended to present a certified public accountant to prove that she had overpayments with Tan, which then extinguished the obligations attached to the checks subject of the criminal cases.[16]

Ruling of the CA

The appeal was dismissed by the CA *via* the Decision[17] dated November 13, 2003, with dispositive portion that reads:

> **WHEREFORE**, the appeal in the above-entitled case is **DISMISSED.** The assailed Decision dated August 31, 2001 in Criminal Case Nos. U-89-72064-86, of the [RTC], Branch 2 of Manila, is **AFFIRMED *in toto.***
>
> SO ORDERED.[18]

The Present Petition

Hence, this petition for review founded on the following grounds:

I.

THE CA GRAVELY ERRED IN RULING THAT THE PETITIONER HAD BEEN ACCORDED AMPLE OPPORTUNITY TO BE HEARD AND TO PRESENT EVIDENCE.

II.

THE CA GRAVELY ERRED IN FAILING TO TAKE INTO CONSIDERATION A PREVIOUS DECISION ISSUED BY ONE OF ITS DIVISIONS.

III.

THE CA GRAVELY ERRED IN RULING THAT THE PETITIONER RECEIVED A NOTICE OF DISHONOR OF THE SUBJECT CHECKS.

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15 Id. at 216-225.
16 Id. at 187-188.
17 Id. at 45-54.
18 Id. at 54.

IV.

EVEN ASSUMING, WITHOUT CONCEDING, THAT THE PETITIONER IS LIABLE FOR VIOLATION OF B.P. BLG. 22, THE CA GRAVELY ERRED IN NOT APPLYING TO THE PETITIONER THE PROVISIONS OF ADMINISTRATIVE CIRCULAR NUMBERS 12-2000 AND 13-2001.[19]

The petitioner prays for an acquittal or, in the alternative, a remand of the case to the RTC so that she may be allowed to present evidence for her defense. She also asks the Court to take into consideration the fact that she was acquitted by the CA in another set of B.P. Blg. 22 cases on the ground that she has overpaid Tan.[20] Granting that the Court still declares her guilty of the offense, she asks for an imposition of fine in lieu of the penalty of imprisonment.[21]

In its Comment,[22] respondent People of the Philippines, through the Office of the Solicitor General (OSG), signifies that it was interposing no objection to the petitioner's alternative prayer of a case remand.[23] The OSG agrees that the petitioner was not duly notified of the hearing scheduled on July 27, 2000, to wit:

> Petitioner was not duly notified of the July 27, 2000 hearing because, one, the notice of said hearing was sent to her former address, and, two, the notice was sent on August 3, 2000, that is, one week after the scheduled date of hearing. Thus, petitioner's failure to appear at the July 27, 2000 hearing is justified by the absence of a valid service of notice of hearing to her.
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> Petitioner, who is out on bail on a personal undertaking, having posted a cash bond in lieu of a bail bond, is entitled to personal notice of every scheduled hearing, especially the hearing for her presentation of evidence. There must be clear and convincing proof that she, in fact, received the notice of hearing set on July 27, 2000 in order that the questioned Order of the trial court dated July 27, 2000 may be considered without constitutional infirmity. x x x.[24]

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19 Id. at 25.
20 Id. at 30.
21 Id. at 39.
22 Id. at 494-508.
23 Id. at 500.
24 Id. at 501-502.

The OSG, nonetheless, argues that the petitioner's acquittal in another CA case failed to render applicable the rule on conclusiveness of judgment because there was no identity of subject matter and cause of action between the two sets of cases.[25] As regards the petitioner's alleged failure to receive a notice of dishonor, the OSG maintains that the defense should have been raised at the first instance before the RTC.[26]

Tan filed his own Comment/Opposition,[27] refuting the arguments raised in the petition for review.

Ruling of the Court

The Court finds the petitioner entitled to an acquittal.

Questions of fact under Rule 45

The petition was filed under Rule 45 of the Rules of Court. The general rule is that petitions for review on *certiorari* filed under this rule shall raise only questions of law that must be distinctly set forth. Questions of fact, which exist when the doubt centers on the truth or falsity of the alleged facts, are not reviewable.[28]

Pertinent to this limitation are the petitioner's arguments that delve on *first*, the claim that she was not properly notified of the proceedings before the RTC and, *second*, her alleged non-receipt of a notice of dishonor from Tan. Being questions of fact, the Court, as a rule, finds those unsuitable to review the issues, and instead adheres to the findings already made by the RTC and affirmed by the CA. This is consistent with jurisprudence providing that a trial court's factual findings that are affirmed by the appellate court are generally conclusive and binding upon this Court, for it is not our function to analyze and weigh the parties' evidence all over again except when there is a serious ground to believe a possible miscarriage of justice would thereby result.[29]

By jurisprudence, the following instances may however be considered exceptions to the application of the general rule that bar a review of factual findings: (1) when the factual findings of the CA and the trial court are contradictory; (2) when the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (3) when the inference made by the CA

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25 Id. at 503-505.
26 Id. at 505-506.
27 Id. at 410-434.
28 *Uyboco v. People*, G.R. No. 211703, December 10, 2014, 744 SCRA 688, 692, citing *Microsoft Corp. v. Maxicorp, Inc.*, 481 Phil. 550, 561 (2004).
29 *Medalla v. Laxa*, 679 Phil. 457, 461 (2012).

from the findings of fact is manifestly mistaken, absurd or impossible; (4) when there is grave abuse of discretion in the appreciation of facts; (5) when the appellate court, in making its findings, went beyond the issues of the case, and such findings are contrary to the admissions of both appellant and appellee; (6) when the judgment of the CA is premised on misapprehension of facts; (7) when the CA failed to notice certain relevant facts which, if properly considered, would justify a different conclusion; (8) when the findings of fact are themselves conflicting; (9) when the findings of fact are conclusions without citation of the specific evidence on which they are based; and (10) when the findings of fact of the CA are premised on the absence of evidence but such findings are contradicted by the evidence on record.[30]

Taking into consideration the petitioner's allegations that hinge on the RTC's and CA's alleged errors in their factual findings that could fall under exceptions (2), (3), (6) and (7), and which if considered could materially alter the manner by which the petitioner's guilt was determined, the Court finds it vital to look into these matters.

The petitioner was notified of scheduled hearings

The Court rejects the petitioner's claim that she was not duly notified of scheduled hearing dates by the RTC. It is material that the petitioner was represented by counsel during the proceedings with the trial court. Fundamental is the rule that notice to counsel is notice to the client. When a party is represented by a counsel in an action in court, notices of all kinds, including motions and pleadings of all parties and all orders of the court must be served on his counsel.[31]

Particularly challenged in the instant case was the RTC's service of the notice for the July 27, 2000 hearing, when the petitioner's and her counsel's absence prompted the trial court to deem a waiver of the presentation of evidence for the defense. While the petitioner, and the OSG in its Comment, referred to a belated sending of notice of hearing to the petitioner's supposedly old address, it appears that her counsel, Atty. Lorenzo B. Leynes, Jr. (Atty. Leynes), was sufficiently notified prior to July 27, 2000.[32]

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30 *Treñas v. People,* 680 Phil. 368, 378 (2012).

31 *Rosvee C. Celestial v. People of the Philippines*, G.R. No. 214865, August 19, 2015; *People v. Gabriel,* 539 Phil. 252, 256-257 (2006).

32 *Rollo*, p. 155.

Cited in the RTC decision was a timely receipt by Atty. Leynes of the notice, a matter which the petitioner failed to sufficiently refute. Even after several postponements and case resettings had been previously sought by the defense, counsel and the petitioner still failed to appear or come prepared during the hearing.[33] The RTC decision narrates the antecedents, to wit:

> On August 24, 1998, the cases were set for reception of defense evidence, but counsel arrived late causing the resetting to September 24, 1998.
>
> On November 5, 1998, on motion of the defense, on the ground [that] its witness was not available, the hearing was transferred to November 19, 1998. Due to the unavailability of the public prosecutor, hearing was reset to January 12, 1999.
>
> On January 12, 1999, upon urgent motion filed by the defense on the alleged ground [that] defense counsel was suffering from emotional and psychological trauma, hearing was reset to February 9, 1999. Thereafter, hearing was postponed to February 23, 1999. With the commitment of defense counsel, Atty. Jerry D. Bañares, that he will rest his case at the next setting, hearing was reset to March 9, 1999.
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> On March 9, 1999, Atty. Bañares[,] instead of complying with his commitment, withdrew as counsel. Thereafter, a new counsel, [Atty. Leynes], entered his appearance, and filed an urgent motion for postponement.
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> On March 15, 1999, [Atty. Leynes,] instead of continuing with the presentation of defense evidence[,] opted to file a motion for voluntary inhibition and postponement. The motion was granted and the cases were re-raffled to Branch 2 on April 26, 1999.
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> Meanwhile, on March 12, 1999, [Tan] filed a motion for issuance of a writ of preliminary attachment.
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> On April 20, 1999, [Atty. Leynes] filed a Motion to Declare the Entire Proceedings Null and Void.
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> On June 9, 1999, the Court, thru Judge Florante A. Cipres, jointly resolved the motions by granting the issuance of a writ of attachment and denying the motion to declare null and void the entire proceedings.
>
> On July 24, 1999, Atty. Bernardo Fernandez entered his appearance as co-counsel, asking that he be served with copies of all the pleadings and other court processes.
>
> After entering his appearance, Atty. Fernandez, on August 4, 1999, filed a Motion for Reconsideration of the Order denying the Motion to Declare Null and Void the Entire Proceedings with [Atty. Leynes] as movant. The motion was denied for lack of merit, with a copy thereof furnished [Atty. Leynes].

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33 Id. at 154-156.

On January 25, 2000, reception of defense evidence was set. However, the [petitioner] and her counsel failed to appear compelling Judge Cipres to reset the hearing to March 24, 2000 and to April 6 and 13, 2000 at 8:30 a.m. and to issue a warrant of arrest for the apprehension of [the petitioner].

Unfortunately, Judge Cipres became indisposed and eventually retired. Thus, Judge Rebecca G. Salvador as Pairing Judge of Branch 2, took over.

Accordingly, the hearing for reception of evidence was again reset to July 27, August 17 and 24, 2000.

The Office of [Atty. Leynes] was notified of the hearing dates. Notices were received by one Edwin Gamba and Atty. Virgilio Leynes.

On July 27, 2000, defense counsel and the [petitioner] again failed to appear. Hence, Judge Salvador decreed that "the [petitioner] is considered to have waived presentation of evidence in her defense".

A copy of the Order was furnished the Office of [Atty. Leynes]. Same was received by Atty. Virgilio Leynes.

On September 5, 2000, Atty. Bernardo Fernandez[,] who claimed he did not receive any court [o]rder or process, filed a Motion for Reconsideration setting [the] same to September 8, 2000.

On September 8, 2000, Atty. Fernandez did not appear. Instead, it was Atty. Virgilio Leynes who showed up.

On March 5, 2001, this Court, thru Judge Leonardo P. Reyes, Acting Presiding Judge of Branch 2, denied the Motion for Reconsideration.[34] (Emphasis ours)

These were reiterated in the CA decision, to wit:

After the prosecution rested its case on June 5, 1995, the presentation of the defense's evidence was set but was postponed and reset several times. Notably, the postponements were mostly at the instance of the defense. However, despite due notice and warrant of arrest, the [petitioner] and her counsel failed to appear on the scheduled dates for presentation of the defense's evidence. This prompted the court ***a quo*** to issue an order dated July 27, 2000, considering the [petitioner] to have waived her right to present evidence. Copy of the said order was sent to the Office of [Atty. Leynes] and the same was received by Atty. Virgilio Leynes, Jr., the [petitioner's] counsel of record.[35] (Citations omitted)

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34 Id.

35 Id. at 48-49.

The records support the finding that the petitioner was duly notified of the scheduled hearings. Specifically for the July 27, 2000 hearing, notice was received by Atty. Leynes. Minutes of the hearing scheduled on May 23, 2000, indicating that the next hearing was reset to July 27, 2000, bore the signature of Atty. Leynes.[36] A notice of hearing dated July 20, 2000 for the July 27, 2000 schedule also indicated receipt for Atty. Leynes by one Edwin Gamba on July 25, 2000.[37] It was not the service to the petitioner that should determine the sufficiency of the notice because she was then represented by counsel, upon whom all court notices should be addressed and served.

The petitioner was deemed to have waived right to present evidence

The petitioner claims that she had sufficient evidence to support her plea for acquittal, but was unduly deprived the right to present such evidence.

The Court has explained the reasons in sustaining the RTC's and CA's declarations that the petitioner was sufficiently apprised of the schedule of hearing dates for the defense's presentation of evidence. Notwithstanding the opportunity given to the defense, hearings were repeatedly postponed at the instance of the petitioner and her counsels.

The question now is whether the trial court committed a reversible error in issuing the Order dated July 27, 2000, by which the petitioner was considered to have waived her right to present evidence in her defense.

The Court answers in the negative.

In *People v. Subida*,[38] the Court reminded judges to be on guard against motions for postponements by the accused which are designed to derail and frustrate the criminal proceedings. Just as the accused is entitled to a speedy disposition of the case against him or her, the State should not be deprived of its inherent prerogative in prosecuting criminal cases and in seeing to it that justice is served.[39] Thus, parties cannot expect, much less insist, that their pleas for postponement or cancellation of scheduled hearings will be favored by the courts. In the event that their motions are denied, they need to bear the consequences of the denial. "The strict judicial policy on postponements applies with more force and greater reason to prosecutions involving violations of [B.P. Blg.] 22, whose prompt resolution

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36 Records, Vol. III, p. 156.
37 Id. at 157.
38 526 Phil. 115 (2006).
39 Id. at 128.

has been ensured by their being now covered by the *Rule on Summary Procedure*."[40]

Thus, in the instant case, the RTC judge could not have allowed the case to continually drag upon the defense's requests. In *Paz T. Bernardo, substituted by Heirs, Mapalad G. Bernardo, Emilie B. Ko, Marilou B. Valdez, Edwin T. Bernardo and Gervy B. Santos v. People of the Philippines*,[41] the Court emphasized that the postponement of the trial of a case to allow the presentation of evidence is a matter that lies with the discretion of the trial court; but it is a discretion that must be exercised wisely, considering the peculiar circumstances of each case and with a view to doing substantial justice.[42]

Corollary to this rule on the disposition of motions for postponement during trial is a rule that addresses an accused's waiver of the right to present evidence. By jurisprudence, the Court has affirmed a trial court's ruling that the accused was deemed to have waived her right to present defense evidence following her and counsel's repeated absences. Such waiver was deemed made after it was determined that the accused was afforded ample opportunity to present evidence in her defense but failed to give the case the serious attention it deserved.[43] The Court has after all consistently held that the essence of due process is simply an opportunity to be heard, or an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.[44]

Violation of B.P. Blg. 22

The Court now explains why the petitioner's acquittal is warranted.

The petitioner's acquittal in another set of B.P. Blg. 22 cases fails to exonerate her from the indictment for the 23 subject checks. While the petitioner claims that another division of the CA, specifically the Special Former Fifth Division, acquitted her in CA-G.R. CR No. 13844 for four counts of violation of B.P. Blg. 22 following a finding that the petitioner had overpayments with Tan, it is not established that the overpayments similarly apply to the obligations that are covered by the subject checks. In light of applicable law and prevailing jurisprudence, the conviction of the petitioner is nevertheless reversed.

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40 *Sevilla v. Judge Lindo,* 657 Phil. 278, 286 (2011).
41 G.R. No. 182210, October 5, 2015.
42 Id.
43 Id.
44 *Resurreccion v. People,* G.R. No. 192866, July 9, 2014, 729 SCRA 508, 524.

"To be liable for violation of B.P. [Blg.] 22, the following essential elements must be present: (1) the making, drawing, and issuance of any check to apply for account or for value; (2) the knowledge of the maker, drawer, or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of the check in full upon its presentment; and (3) the subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment."[45]

As between the parties to this case, the dispute only pertains to the presence or absence of the second element. In order to support her plea for an acquittal, the petitioner particularly insists that she failed to receive any notice of dishonor on the subject checks, which rendered absent the element of knowledge of insufficient funds.

Although a notice of dishonor is not an indispensable requirement in a prosecution for violation of B.P. Blg. 22 as it is not an element of the offense, evidence that a notice of dishonor has been sent to and received by the accused is actually sought as a means to prove the second element. Jurisprudence is replete with cases that underscore the value of a notice of dishonor in B.P. Blg. 22 cases, and how the absence of sufficient proof of receipt thereof can be fatal in the prosecution's case.

In *Yu Oh v. CA*,[46] the Court explained that since the second element involves a state of mind which is difficult to establish, Section 2 of B.P. Blg. 22 created a *prima facie* presumption of such knowledge, as follows:

> SEC. 2. *Evidence of knowledge of insufficient funds.*—The making, drawing and issuance of a check payment of which is refused by the drawee because of insufficient funds in or credit with such bank, when presented within ninety (90) days from the date of the check, shall be *prima facie* evidence of knowledge of such insufficiency of funds or credit unless such maker or drawer pays the holder thereof the amount due thereon, or makes arrangements for payment in full by the drawee of such check within five (5) banking days after receiving notice that such check has not been paid by the drawee.
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> Based on this section, the presumption that the issuer had knowledge of the insufficiency of funds is brought into existence *only after it is proved that the issuer had received a notice of dishonor* and that within five days from receipt thereof, he failed to pay the amount of the check or to make arrangement for its payment. The presumption or *prima facie* evidence as provided in this section cannot arise, if such notice of

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45 *Campos v. People*, G.R. No. 187401, September 17, 2014, 735 SCRA 373, 377.

46 451 Phil. 380 (2003).

> non-payment by the drawee bank is not sent to the maker or drawer, or if there is no proof as to when such notice was received by the drawer, since there would simply be no way of reckoning the crucial 5-day period.[47] (Citations omitted)

Further, the Court held:

> Indeed, **this requirement [on proof of receipt of notice of dishonor] cannot be taken lightly because Section 2 provides for an opportunity for the drawer to effect full payment of the amount appearing on the check, within five banking days *from notice of dishonor*. The absence of said notice therefore deprives an accused of an opportunity to preclude criminal prosecution. In other words, procedural due process demands that a notice of dishonor be actually served on petitioner.** In the case at bar, appellant has a right to demand and the basic postulate of fairness requires – that the notice of dishonor be actually sent to and received by her to afford her the opportunity to aver prosecution under B.P. Blg. 22.[48] (Citation omitted and emphasis ours)

To support its finding that the petitioner knew of the insufficiency of her funds with the drawee bank, the RTC merely relied on the fact that replacement checks had been issued, in lieu of those that were originally issued to pay for the petitioner's obligation with Tan.[49] The Court finds the conclusion misplaced, considering that the last batch of replacement checks, which eventually became the subject of these cases, were precisely intended to address and preclude any dishonor. Thus, the replacement checks dated March 30, 1987 were purposely drawn against a different checking account with FBTC, different from the old checks that were drawn against another drawee bank.

The prosecution also attempted to prove the petitioner's receipt of a notice of dishonor by referring to a demand letter[50] dated August 8, 1987, along with a registry receipt[51] showing that the letter was sent by registered mail, and the registry return card[52] showing its receipt by a certain Rolando Villanueva on August 25, 1987. Given the circumstances and the manner by which the documents were presented during the trial, the presumption that could lead to evidence of knowledge of insufficient funds failed to arise. The Court emphasized in *Alferez v. People, et al.*[53] the manner by which receipt of a notice of dishonor should be established, to wit:

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47 Id. at 392-393.
48 Id. at 395.
49 *Rollo*, p. 166.
50 Records, Vol. II, pp. 422-423.
51 Id. at 424.
52 Id.
53 656 Phil. 116 (2011).

In *Suarez v. People*, x x x [w]e explained that:

> The presumption arises when it is proved that the issuer had received this notice, and that within five banking days from its receipt, he failed to pay the amount of the check or to make arrangements for its payment. The full payment of the amount appearing in the check within five banking days from notice of dishonor is a complete defense. Accordingly, procedural due process requires that a notice of dishonor be sent to and received by the petitioner to afford the opportunity to aver prosecution under B.P. Blg. 22.
>
> x x x. **[I]t is not enough for the prosecution to prove that a notice of dishonor was sent to the petitioner. It is also incumbent upon the prosecution to show "that the drawer of the check received the said notice** because the fact of service provided for in the law is reckoned from receipt of such notice of dishonor by the drawee of the check.["]
>
> A review of the records shows that the prosecution did not prove that the petitioner received the notice of dishonor. **Registry return cards must be authenticated to serve as proof of receipt of letters sent through registered mail.**

In this case, the prosecution merely presented a copy of the demand letter, together with the registry receipt and the return card, allegedly sent to petitioner. However, there was **no attempt to authenticate or identify the signature on the registry return card.** Receipts for registered letters and return receipts do not by themselves prove receipt; they must be properly authenticated to serve as proof of receipt of the letter, claimed to be a notice of dishonor. **To be sure, the presentation of the registry card with an unauthenticated signature, does not meet the required proof beyond reasonable doubt that petitioner received such notice.** It is not enough for the prosecution to prove that a notice of dishonor was sent to the drawee of the check. The prosecution must also prove actual receipt of said notice, because the fact of service provided for in the law is reckoned from receipt of such notice of dishonor by the drawee of the check. The burden of proving notice rests upon the party asserting its existence. Ordinarily, preponderance of evidence is sufficient to prove notice. In criminal cases, however, the quantum of proof required is proof beyond reasonable doubt. Hence, for B.P. Blg. 22 cases, there should be clear proof of notice. Moreover, for notice by mail, it must appear that the same was served on the addressee or a duly authorized agent of the addressee. **From the registry receipt alone, it is possible that petitioner or his authorized agent did receive the demand letter. Possibilities, however, cannot replace proof beyond reasonable doubt.** The consistent rule is that penal statutes have to be construed strictly against the State and liberally in favor of the accused. The absence of a notice of dishonor necessarily deprives the accused an opportunity to preclude a criminal prosecution. As there is insufficient proof that petitioner received the notice of dishonor, the

> presumption that he had knowledge of insufficiency of funds cannot arise.[54] (Citations omitted and emphasis ours)

Similarly, in the instant case, the prosecution failed to sufficiently prove the actual receipt by the petitioner of the demand letter sent by Tan. No witness testified to authenticate the registry return card and the signature appearing thereon. The return card provides that the letter was received by one Rolando Villanueva, without even further proof that the said person was the petitioner's duly authorized agent for the purpose of receiving the correspondence.

The OSG contends that the argument on the petitioner's failure to receive a notice of dishonor could not be raised at this stage. The Court disagrees. While the question may seemingly present a factual issue that is beyond the scope of a petition for review on *certiorari*, it is in essence a question of law as it concerns the correct application of law or jurisprudence to a certain set of facts. It addresses the question of whether or not the service and alleged receipt by the petitioner of the notice of dishonor, as claimed by the prosecution, already satisfies the requirements of the law.

Clearly, the prosecution failed to establish the presence of all the elements of violation of B.P. Blg. 22. The petitioner is acquitted from the 23 counts of the offense charged. The failure of the prosecution to prove the receipt by the petitioner of the requisite written notice of dishonor and that she was given at least five banking days within which to settle her account constitutes sufficient ground for her acquittal.[55]

Even the petitioner's waiver of her right to present evidence is immaterial to this ground cited by the Court for her acquittal. The basis relates to the prosecution's own failure to prove all the elements of the offense that could warrant the petitioner's conviction, rather than on an action or argument that should have emanated from the defense. The burden of proving beyond reasonable doubt each element of the crime is upon the prosecution, as its case will rise or fall on the strength of its own evidence. Any doubt shall be resolved in favor of the accused.[56]

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54 Id. at 123-125.

55 *Moster v. People,* 569 Phil. 616, 628 (2008).

56 Id.

Civil liability of the petitioner

Notwithstanding the petitioner's acquittal, she remains liable for the payment of civil damages equivalent to the face value of the 23 subject checks, totaling ₱6,226,390.29. In a line of cases, the Court has emphasized that acquittal from a crime does not necessarily mean absolution from civil liability.[57]

It was not established that the petitioner had paid the amounts covered by the checks. The Court has explained that the overpayments that were determined by the CA in another set of B.P. Blg. 22 cases against the petitioner could not be applied to this case. The petitioner failed to present any evidence that would prove the extinguishment of her obligations. Thus, the petitioner should pay Tan the amount of ₱6,226,390.29, plus legal interest at the rate of six percent (6%) *per annum* to be computed from the date of finality of this Decision until full satisfaction thereof.

WHEREFORE, the Decision dated November 13, 2003 and Resolution dated May 4, 2004 of the Court of Appeals in CA-G.R. CR No. 26337 are **REVERSED** and **SET ASIDE**. Petitioner Jesusa T. Dela Cruz is **ACQUITTED** of the crime of violation of Batas Pambansa Bilang 22 on twenty-three (23) counts on the ground that her guilt was not established beyond reasonable doubt. She is, nonetheless, ordered to pay complainant Tan Tiac Chiong, also known as Ernesto Tan, the face value of the subject checks totaling Six Million Two Hundred Twenty-Six Thousand Three Hundred Ninety Pesos and 29/100 (₱6,226,390.29), with interest of six percent (6%) *per annum* from the date of finality of this Decision until full payment.

SO ORDERED.

BIENVENIDO L. REYES
Associate Justice

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[57] *Lim v. Mindanao Wines & Liquor Galleria*, 690 Phil. 206, 208 (2012); *Alferez v. People, et al.*, supra note 53, at 125; *Moster v. People,* id.

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

FRANCIS H. JARDELEZA
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.

PRESBITERO J. VELASCO, JR.
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 Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice

TRUE COPY

WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
SEP 16 2016