

KOH TIECK HENG, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND COURT OF APPEALS, RESPONDENTS.

G.R. Nos. L-48535-36. December 21, 1990

Ponente: REGALADO, J.

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REGALADO, J.:

This petition for review on certiorari impugns the decision of the Court of Appeals in CA-G.R. No. 16246-47-Cr[1] which affirmed the judgment of the former Court of First Instance of Manila in Criminal Cases Nos. 15006 and 15007 convicting herein accused-petitioner of estafa and attempted estafa, respectively.

The facts as found by the trial court and adopted by respondent court are as follows:

"From the evidence extant on the record, the following facts appear undisputed: That accused Koh Tieck Heng, alias Tomas P. Flores opened Savings Account No. 26580, with the Security Bank and Trust Company, Escolta St., Manila, hereinafter called SBTC in short, with an initial deposit of P500.00, made on 21 Feb. 1973, for which he was given a pass book in his name of Tomas P. Flores (see Exh. C). He made a second deposit of P400.00 then a withdrawal of P500.00 then a deposit of P775.00, and then a withdrawal of P1,000.00 (Entries on Exh. C).

"On 13 March (sic, August) accused went to SBTC and filled up or accomplished and signed a deposit slip (Exh. B) for a deposit of P18,060.00 in check. With the deposit slip, he submitted to Urbana Ramos de Ferrer, Teller No. 2 of SBTC, his pass book (Exh. C) and a Philippine Bank of Communications Check No. U-186378, dated August 9, 1973 (Exh. A) for P18,060.00, appearing to have been signed and issued by 'F. Dyaico', who was then maintaining with the Philippine Bank of Communications, hereinafter referred also as PBC, a checking account No. 13360. This check was signed and indorsed by the accused. Upon deposit of this check for P18,060.00, the said sum was posted in the pass book (Exh. C), as shown in Exhibit C-1. (T.s.n., pp. 5-15, Oct. 10, 1973, hearing).

"On 16 August 1973, the accused withdrew from this Savings Account No. 26580, the sum of P10,000.00 upon submission to Margarita Tiongson, Teller No. 3, of a withdrawal slip (Exh. E) accomplished and signed by him. Such withdrawal was posted in the pass book (Exh. C), shown by Exhibit C-2. Upon receipt of the amount withdrawn, the teller caused the accused to sign at the back of the withdrawal slip and which signature is marked Exhibit E-1. On the next day, 17 August 1973, the accused withdrew another amount of P5,500.00 upon defendant's submission to Teller No. 3 of a withdrawal slip (Exh. F) and the pass book. The withdrawal was posted in the pass book as shown by Exhibit C-3. Upon receipt of the sum withdrawn, the teller caused the accused to sign at the back of the withdrawal slip and which signature is marked Exhibit F-1. (T.s.n., pp. 21-30; 32-39, id.).

"On 18 August 1973, the accused went again to the SBTC to deposit another Philippine Bank of Communications Check No. U-186414 (Exh. H), dated 11 August 1973 for P18,060.00 which appears to be signed by 'F. Dyaico' against Checking Account No. 13360. Accused, therefore, filled up and accomplished a deposit slip (Exh. I) for P18,060.00. After accomplishing Exhibit I, accused submitted the check (Exh. H), the passbook (Exh. C) and the deposit slip (Exh. I) to Candida Abella Villanueva, Teller No. 5. The deposit of

P18,060.00 was thus posted at the passbook (Exh. C), as shown by Exh. C-4 (T.s.n., pp. 60-70, Id.).

"Sometime in that month of August 1973, Florencio Dycaico, who maintains the Checking Account No. 13360 with the Philippine Bank of Communications saw his Statement of Account and came upon an amount of P18,060.00 debited against his account. He complained to the PBC that he never issued a check for that much. With this information PBC informed SBTC that the check, Exh. A, was a spurious check. So, SBTC officials instructed their bank tellers to watch for Tomas P. Flores. NBI agent Mamerto Espartero was also assigned to crack down on check forgers or passers in company with an informer, at the premises of SBTC, in coordination with SBTC officials. (T.s.n., pp. 3-7, 12, 16-17, Nov. 12, 1973, hearing).

"Then came the pay off. The accused appeared in the SBTC premises on 22 August 1973. He filled up, accomplished and signed a withdrawal slip (Exh. K) for P15,500.00, and after that he submitted his passbook (Exh. C) with the withdrawal slip to Maria Victoria Soriano, SBTC Teller No. 7. Forewarned to watch for the accused Tomas P. Flores, she asked the accused to sign his name in Exh. K, and he did sign it as requested. He signed his name of Koh Tieck Heng (See Exh. K-3). After that, Teller No. 7 brought the slip and the pass book of Tomas P. Flores. Teller No. 7 returned to her cage and then called up for Tomas P. Flores. The accused went to Teller No. 7. Teller No. 7 asked the accused to sign his name at the back, and which signature is marked Exh. K-2. After he signed Exh. K-2, the NBI agent Espartero swooped down on the accused and apprehended him. The accused was brought inside the Cashier's Office. He was interviewed and then later brought to the NBI office where he was investigated. In the course of his investigation, he executed a written statement now marked Exh. M. (T.s.n., pp. 3-20, Oct. 22, 1973, hearing)."[2]

Based on the facts narrated, appellant Koh Tieck Heng, alias Teddy Koh, alias Tomas P. Flores, was charged in Criminal Case No. 15006 before the then Court of First Instance of Manila, Branch XII, with the crime of estafa thru falsification of a commercial document in an information which reads:

"That on or about and during the period comprised between August 13, 1973 and August 17, 1973, inclusive, in the City of Manila, Philippines, the said accused, conspiring and confederating with one whose true name, identity and present whereabouts are still unknown and mutually helping each other, did then and there wilfully, unlawfully and feloniously, with intent to defraud, commit acts of falsification on a commercial document in the following manner, to wit: the said accused, after opening a savings account with the Security Bank and Trust Company, under Savings Account No. 26580 in the name of Tomas P. Flores, and having somehow illegally obtained possession of Philippine Bank of Communications Check No. U-186378, dated July 14, 1973, pay to cash, in the amount of P225.00, issued by F. DYCAICO, and therefore a commercial document, did then and there wilfully, unlawfully and feloniously forge and falsify and/or cause to be forged and falsified the aforesaid check by then and there erasing and altering and/or causing to be erased and altered the date and amount of said check and superimposing or causing to be superimposed over the original date and amount of said check the following: 'Aug. 9' after the printed word 'MANILA', the figures '73' after the figures '19', the figures 'P18,060.00' after the sign 'P' and the words 'Eighteen Thousand Sixty Only' after the printed word 'PESOS', thus causing it to appear as it did appear that said check was issued on August 9, 1973, for the amount of P18,060.00, when in truth and in fact as the said accused well knew, the correct date of said check is July 14, 1973, and the real amount of the check so drawn and issued by said F. DYCAICO is only for P225.00, thereby making or causing to be made alterations and changes in a genuine document which altered or changed its meaning: that once the aforesaid check had been forged and falsified, altered or otherwise changed in the manner above set forth, said accused affixed the signature Tomas P. Flores at the back thereof and deposited said check in his account with the Security Bank and Trust Company, Escolta Branch, this City, which check was cleared by the Philippine Bank of Communications upon presentation thereof believing that said check is genuine; and thereafter, said accused, with intent to defraud, withdrew from said account the amounts of P10,000.00 and P5,500.00 on August 16, 1973 and August 17, 1973 respectively, or a total of P15,500.00, which amount, once in his possession, said accused misappropriated, misapplied and converted to his own personal use and benefit, to the damage and prejudice of the Security Bank and Trust Company and/or the

Philippine Bank of Communications in the aforesaid amount of P15,500.00, Philippine currency." (Underscoring supplied.)(3]

On the same date, appellant was also charged in Criminal Case No. 15007 with attempted estafa thru falsification of a commercial document before the same court under the following information:

"That on or about and during the period comprised between August 18, 1973 and August 22, 1973, inclusive, in the City of Manila, Philippines, the said accused, being then a depositor of the Security Bank and Trust Company, Escolta Branch, this City, under Savings Account No. 26580, conspiring and confederating together with one whose true name, identity and present whereabouts are still unknown and mutually helping each other, with intent to defraud, commenced the commission of the crime of estafa thru falsification of commercial document directly by overt acts, to wit: the said accused having somehow obtained possession of Philippine Bank of Communications Check No. U-186414, dated August 11, 1973, pay to cash, in the amount of P2,030.00 issued by F. DYCAICO, and therefore a commercial document, did then and there wilfully, unlawfully and feloniously forge and falsify and/or cause to be forged and falsified the aforesaid check by then and there erasing and altering and/or causing to be erased and altered the amount of said check and superimposing or causing to be superimposed over the original amount of said check the figures 'P18,060.00' after the sign 'P' and the words 'Eighteen Thousand Sixty Only' after the printed word 'Pesos', thus causing it to appear, as in fact it did appear, that said check was issued for the amount of P18,060.00, when in truth and in fact as the accused well knew, the correct and real amount of the check so drawn and issued by said F. DYCAICO is only for P2,030.00, thereby making or causing to be made alterations and changes in a genuine document which altered or changed its meaning; that once the aforesaid check had been forged and falsified, altered or otherwise changed in the manner above set forth, said accused affixed the signature Tomas P. Flores at the back of said check and deposited the same in his account with the Security Bank and Trust Company, the latter believing that said check is genuine, accepted the same for deposit, and thereafter, the said accused with intent to defraud, accomplished a withdrawal slip for the sum of P15,500.00 and presented the same to the teller of the Security Bank and Trust Company for the purpose of withdrawing the said amount, but the said accused did not perform all the acts of execution which should have produced the crime of estafa thru falsification of a commercial document by reason of some cause other than his own spontaneous desistance, that is, by the timely discovery made by the officials and/or employees of said bank of the forgery and falsification made on the aforesaid check before payment could be made which led then and there to the apprehension of said accused." (Emphasis ours.)(4]

Appellant pleaded not guilty when arraigned in both cases, which were subsequently ordered consolidated. In his defense at the trial, and later adopted for the same purpose in his brief, appellant claims:

"That on August 9, 1973, he went to the Supersonic Auto Supply, situated at the corner of España and P. Leoncio Sts., Sampaloc, Manila. He went there to buy auto spare parts as he is engaged in the buying and selling of auto spare parts. When he was at this store, a person whom accused claimed to know later as Jimmy Go, was also buying tires. The store did not have tires for sale, and so the tire salesman pointed to the accused as one who is selling such stuff. So, this man went to the accused and asked him if he had tires for sale. Accused asked the man who introduced himself to the accused as Jimmy Go, how many tires he needed. This man told the accused he needed twenty-four (24) pieces of tires. Accused told this 'Jimmy Go' that he had the 24 tires but that he needed cash. Accused told 'Jimmy Go' that he does not accept checks for payment, especially he did not know him. Accused claims that that was the first time he had met this man 'Jimmy Go'. 'Jimmy Go', however, told the accused that he can issue the check and he can deliver the tires only after having encashed the same. To this proposition, the accused agreed. 'Jimmy Go', therefore, brought out a check, now Exh. A, and then signed it in his presence. He signed the name 'F. Dycaico'. He then crossed the check at the upper left hand corner of the check. Accused claims that except the signature and the lines used to cross the check as aforementioned all the other handwritten portions of the check were already there when 'Jimmy Go' signed it.

"After signing Exh. A, 'Jimmy Go' handed it to the accused. Seeing the amount to be big, as the cost price of the 24 pieces of tires was only about P3,000.00, more or less, the accused told 'Jimmy Go' that he has no cash to return for the difference. 'Jimmy Go' told him to just deliver the difference after he has encashed it. So the accused got the check and they parted.

"He claimed he went to the SBTC on 13 August 1973 as he deposited the check (Exh. A) in his bank account (passbook, Exh. C), filling up therefor a deposit slip (Exh. B.). The accused claimed that on 13 August 1973, he went to withdraw P10,000.00, accomplishing Exh. E. After withdrawing P10,000.00, the accused went to España St. and delivered to 'Jimmy Go' the P10,000.00. He delivered the tires in the afternoon. On that same day, 'Jimmy Go' told the accused that he needed the balance of the money and so he said that he delivered the balance of P5,500.00 on 16 August 1973. On this date, 16 Aug. 1973, as per his claim, 'Jimmy Go' again delivered to him another check (Exh. H) as 'Jimmy Go' was buying another fifty (50) pieces of tires. So, he took the check and deposited it with SBTC on his account (passbook, Exh. C). He claims he could not get the proceeds of the checks because at the time he was withdrawing from his deposit, two men approached him and immediately handcuffed him."[5]

On November 26, 1973 the trial court rendered judgment[6] finding appellant guilty beyond reasonable doubt of the felonies charged in both cases, the decretal portion of its decision reading as follows:

"IN VIEW OF THE FOREGOING CONSIDERATIONS, the Court finding the guilt of the accused for the crime charged in both cases (No. 15006 and 15007) to have been proved beyond reasonable doubt, and there being neither mitigating nor aggravating circumstances to affect his penal liability, hereby imposes upon the accused and sentences him to suffer:

(a) In Crim. Case No. 15006

an indeterminate penalty of from FOUR (4) years and TWO (2) months of prision correccional, as minimum, to EIGHT (8) years and ONE (1) day of prision mayor, as maximum, with all the accessory penalties of the law, and to indemnify the Security Bank and Trust Company the sum of P18,060.00, sans subsidiary imprisonment in case of insolvency, and to pay the costs; and

(b) In Crim. Case No. 15007

an indeterminate penalty of from TWO (2) years, FOUR (4) months of prision correccional, as minimum, to SIX (6) years of prision correccional, as maximum, with all the accessory penalties of the law, and to pay a fine of P5,000.00 and to suffer a subsidiary imprisonment in case of insolvency at the rate of P8.00 a day, but in no case shall it exceed one-third (1/3) of the term of the sentence nor shall it continue for more than one year, and to pay the costs.

"The accused shall first serve the sentence imposed in Crim. Case No. 15006, to which shall be credited four-fifths (4/5) of his preventive imprisonment in the service of his sentence.

SO ORDERED."[7]

Not satisfied therewith, petitioner interposed an appeal with respondent Court of Appeals, docketed therein as CA-G.R. No. 16246-47-Cr. Respondent court, in a decision promulgated on September 26, 1977, affirmed the judgment of conviction but modified the penalties in both cases as follows:

"In Criminal Case No. 15006

to suffer an indeterminate penalty of four (4) years and two (2) months of prision correccional, as minimum, to six (6) years, eight (8) months and twenty (20) days of prision mayor, as maximum, with all the accessory penalties of the law; to indemnify the Security Bank and Trust Company in the sum of P18,060.00, without subsidiary imprisonment in case of insolvency; and to pay the costs; and

In Criminal Case No. 15007

to suffer the penalty of four (4) months and twenty (20) days of arresto mayor, and to pay the costs.

"The Accused shall first serve the sentence imposed in Criminal Case No. 15006 and shall be credited with the term of his preventive imprisonment in accordance with Article 29 of the Revised Penal Code, as amended by R.A. No. 6127.

SO ORDERED."[8]

Culled from the submissions of both parties in the present appeal and the established facts of these cases, the issues raised and submitted for determination by us may be synthesized into whether or not respondent court erred -

(1) In supposedly changing the tenor and/or nature of the accusation and convicting appellant on the basis of this new accusation without having informed him of the nature and cause of the accusation;

(2) In holding that there is a crime of attempted estafa and convicting appellant of such crime in the absence of the essential elements of deceit and damage; and

(3) In arriving at a conclusion of guilt of the crimes of attempted estafa and estafa, both thru falsification of commercial documents, on the basis merely of a presumption of law, despite the absence of evidence showing that appellant committed, or had knowledge of, the crimes charged, in violation of the constitutional presumption of innocence and doctrinal jurisprudence on proof beyond reasonable doubt in favor of appellant.

Parenthetically, this petition for review on certiorari was formerly denied in a Resolution of this Court, dated August 18, 1978,[9] but was later on given due course on a Motion for Reconsideration and/or for New Trial,[10] based inter alia, on an alleged letter of one Jimmy Go dated August 14, 1978, which appellant supposedly received on August 21, 1978 and which he claims he could not have discovered and produced during the trial of the cases despite diligent efforts to produce the same. Mere xerox copies of the supposed letter and the mailing envelope were appended to said motion.

We do not, however, deem it proper to include the aforesaid matter in the issues above enumerated considering that the requirement in the 1964 Rules of Court[11], which was then in force, to the effect that a motion for new trial must be supported by affidavits of the witnesses by whom such evidence is expected to be given, has not been complied with; and (b) the judgment of conviction will not in any way be affected by such evidence the authenticity and credibility whereof have not been established, aside from the obvious fact that the tenor thereof is inherently improbable and such a letter could easily be concocted.

Coming now to the first issue, appellant alleges that there is a variance between the allegations in the information and the evidence adduced, thereby depriving him of the right to be informed of the nature and cause of the accusation against him.

The rule that an accused cannot be convicted of an offense not charged or included in the information is based upon the right to be informed of the true nature and cause of the accusation against him.[12] However, respondent court exhaustively discussed this issue and lucidly explained the facts upon which its judgment of conviction was predicated, thus:

"It is a fact that under the two informations, the mode of falsification attributed to the Accused is that of having erased and altered the dates and amounts of the checks in question, and superimposing or causing to be superimposed over the original dates and amount of said checks other dates and amounts, thereby making alterations and changes in genuine documents which changed their meaning. Clearly, therefore, the offense

charged is that penalized under Article 172 in relation to Article 171 (6) of the Revised Penal Code.

"It is to be noted, however, that presented in evidence by the prosecution for the First Case were two checks, Exhs. 'A' and 'O', which both bear the identical Check No. U-186378 but the former bears the amount of P225.00, while the latter that of P18,060.00, both drawn and issued by 'F. Dycaico'. For the Second Case, two checks were likewise presented, Exhs. 'H' and 'P' which bear the identical Check No. U-186414, but the former bears the amount of P2,030.00, while the latter that of P18,060.00, both drawn and issued by 'F. Dycaico'.

"Prosecution witness, Florencio Dycaico, admitted that he issued the checks, Exhs. 'O' and 'P', in the amounts of P225.00 and P2,030.00, respectively, but denied having issued at all the checks, Exhibits 'A' and 'H', both in the respective amounts of P18,060.00.

"It has to be conceded, therefore, as alleged by the defense, and as likewise admitted by the People, that considering the evidence adduced, there were no erasures nor alterations nor superimpositions as alleged in both Informations, but that Exhibits 'A' and 'H' were forgeries in toto. In other words, while the Accused has been charged of Estafa and Attempted Estafa thru Falsification of a commercial document under Article 172 in relation to Article 171, paragraph 6 of the Revised Penal Code, reading -

'Art. 171. x x x shall falsify a document by committing any of the following acts:

'x x x

'6. Making any alterations or intercalation in a genuine document which changes its meaning,'

based on the evidence, the accusation would fall under either paragraph 1 or 2 of Article 171 of the same Code which reads:

'1. Counterfeiting or imitating any handwriting, signature or rubric;

'2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate.'

"Be that as it may, as pointed out by the State, the aforementioned variance affects solely the charge of Falsification, of which the Accused should not have been convicted under the time-honored rule that an Accused should be informed of the true nature and cause of the accusation against him. However, with respect to the charges of Estafa and Attempted Estafa, respectively, (complexed under the two Informations with Falsification of a Commercial Document) conviction would still be proper, the two essential requisites of Estafa, namely fraud or deceit and damage to another, having been charged and proven." [13]

On the second issue, appellant contends that respondent court erred in convicting him of attempted estafa in Criminal Case No. 15007 when it admitted in its decision that appellant was not able to withdraw the value of the second check as he was apprehended in the act of withdrawing the same. From this, he argues that having failed to withdraw the sum as part value of the second check, no amount whatsoever was taken by him, hence no damage or prejudice was suffered by the bank. Absent such damage, he concludes, he can not be convicted of attempted estafa.

This is specious argumentation.

Basically, the two essential requisites of fraud or deceit and damage or injury must be established by sufficient and competent evidence in order that the crime of estafa may be established. [14] Deceit is the false representation of a matter of fact (whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed) which deceives or is intended to deceive another so that he shall act upon it to his legal injury. [15] The fact that appellant was the possessor and utterer of the checks in question (Exhibits "A"

and "H") and having benefited from the subsequent withdrawals, as well as having attempted to gain by trying to withdraw an amount thereon: the inevitable conclusion would be that he was the one who falsified said Exhibits "A" and "H." Ineluctably, the use of the spurious checks is by itself fraud or deceit.

Although one of the essential elements of estafa is damage or prejudice to the offended party,[16] in the absence of proof thereof the offender would at least be guilty of attempted estafa. Appellant commenced the commission of the crime of estafa but he failed to perform all the acts of execution which would produce the crime, not by reason of his own spontaneous desistance but because of his apprehension by the authorities before he could obtain the amount. Since only the intent to cause damage and not the damage itself has been shown, respondent court correctly convicted appellant of attempted estafa:

Lastly, appellant insists that there is no evidence whatsoever pointing to him as the person who falsified the two checks in question (Exhs. "A" and "H"), as the prosecution failed to refute his version regarding the circumstances under which he allegedly took possession of the said checks. He further posits the view that while the courts may apply the presumptions of law in some cases, the presumption that the possessor of a falsified document is presumed to be the forger does not constitute proof beyond reasonable doubt and can not be applied in his case, allegedly because the provisions not only of the Constitution but also of the Rules of Court must be the basis of the judgment.

We disagree.

While it may appear that the prosecution failed to directly contradict the claim of appellant as to how he came into possession of the two checks, it is understandable that the prosecution would not always have the means for obtaining such direct evidence to confute acts contrived clandestinely. Undoubtedly, too, as a general rule, positive testimony as to a particular fact, uncontradicted by anyone, should control the decision of the court. Where, however, there is such an inherent improbability in the testimony or theory of the witness, the court may properly disregard such evidence, even in the absence of any direct conflicting testimony. We agree with respondent court that the People's version of the facts deserves more credence and it is more in consonance with human experience.

As repeatedly expounded by this Court, evidence to be worthy of credit, must not only proceed from a credible source but must, in addition, be credible in itself. And by this is meant that it shall be natural, reasonable and probable as to make it easy to believe.[17] No better test has yet been found to determine the value of the testimony of a witness than its conformity to the knowledge and common experience of mankind.[18] As bewailed by the court below, the theory espoused by appellant "is taxing too much the credulity of this Court, an insult to the humble intelligence and the common sense of this Court." [19]

The checks in question (Exhibits "A" and "H") were undeniably spurious, or were forgeries in toto. Prosecution witness Florencio Dyaico categorically testified that he did not issue said checks but only those checks in the amounts of P225.00 and P2,030.00 (Exhibits "O" and "P"). The disclaimer by Dyaico of his alleged signatures on the aforesaid checks is prima facie evidence of falsification and consequently shifts the burden of evidence to appellant to prove otherwise, but which burden appellant has not discharged.

The court a quo, as well as respondent court, posed the question as to the identity of the forger, and we are satisfied that both courts did not err in relying upon the presumption that the possessor of a falsified document is presumed to be the author thereof. It is an established rule that when it is proved that a person has in his possession a falsified document and makes use of the same, the presumption or inference is justified that such person is the forger.[20] The petitioner has been shown to have been the possessor and utterer of the two checks (Exhibits "A" and "H") when he made use of and benefited therefrom by his withdrawals of and attempt to

withdraw funds through said checks. The circumstance, therefore, that appellant made use of and benefited from the falsified document is a strong evidence that he either himself falsified it or caused the same to be falsified,[21] he being criminally responsible in either case.[22] Since appellant is the only person who stood to be benefited by the falsification of the document that was found in his possession, it is presumed that he is the material author of such falsification.[23]

It is thus apparent that the refusal of respondent Court of Appeals to give credence to the theory of the defense is substantially supported by the ambient circumstances and the evidence on record. Besides, this being a petition for review on certiorari of a decision of respondent court rendered in the exercise of its exclusive appellate jurisdiction over the decision of the trial court, said decision of respondent court is "final," subject only to our power of review on questions of law.[24]

WHEREFORE, the petition is DENIED and the appealed judgment of respondent Court of Appeals is hereby AFFIRMED in toto.

SO ORDERED.

Paras, Padilla, and Sarmiento, JJ., concur.

Melencio-Herrera, J., (Chairman), no part. "Ponente" in Court of Appeals.

[1] Penned by Associate Justice Ameurfina A. Melencio-Herrera, with Associate Justices Vicente G. Ericta and Simeon M. Gopengco concurring.

[2] Rollo, 44-47.

[3] Original Records, 4-5.

[4] *ibid.*, 6, 7.

[5] Rollo, 47-49.

[6] Per Judge Elias B. Asuncion.

[7] Original Records, 23-24.

[8] Rollo, 58.

[9] *Ibid.*, 84.

[10] *Ibid.*, 85-100.

[11] Sec. 3, Rule 121.

[12] *U.S. vs. Campo*, 23 Phil. 368 (1912); *Esguerra vs. People*, 108 Phil. 1078 (1960); *People vs. Despavellador*, 1 SCRA 205 (1961).

[13] Rollo, 51-54.

[14] *Sales vs. Court of Appeals, et al.*, 164 SCRA 717 (1988).

[15] *People vs. Castillo, et al.*, 76 Phil. 72 (1946).

[16] *Buaya vs. Polo, etc., et al.*, 169 SCRA 471 (1989).

[17] *People vs. Baquiran*, 20 SCRA 451 (1967); *Vda. de Bonifacio, et al. vs. B.L.T. Bus Co., Inc., etc., et al.*, 34

SCRA 618 (1970); *People vs. Macaso*, 64 SCRA 659 (1975); *People vs. Peruelo*, 105 SCRA 226 (1981).

[18] *People vs. Aldana*, 175 SCRA 635 (1989).

[19] Original Records, 20.

[20] *People vs. De Lara, etc.*, 45 Phil. 754 (1924); *People vs. Cu Unjieng, et al.*, 61 Phil. 906 (1935); *People vs. Manansala*, 105 Phil. 1253 (1959); *People vs. Sendaydiego, et al.*, 81 SCRA 120 (1978).

[21] *U.S. vs. Castillo*, 6 Phil. 453 (1906).

[22] *People vs. Manansala*, *supra*.

[23] *Sarep vs. Sandiganbayan*, 177 SCRA 440 (1989).

[24] *People vs. Caragao*, 30 SCRA 993 (1969).

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