

**SAMSON CHING, PETITIONER, VS. CLARITA NICDAO AND HON.
COURT OF APPEALS RESPONDENTS. D E C I S I O N***G.R. No. 141181. April 27, 2007*

Ponente: CALLEJO, SR., J.

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Before the Court is a petition for review on certiorari filed by Samson Ching of the Decision[1] dated November 22, 1999 of the Court of Appeals (CA) in CA-G.R. CR No. 23055. The assailed decision acquitted respondent Clarita Nicdao of eleven (11) counts of violation of Batas Pambansa Bilang (BP) 22, otherwise known as "The Bouncing Checks Law." The instant petition pertains and is limited to the civil aspect of the case as it submits that notwithstanding respondent Nicdao's acquittal, she should be held liable to pay petitioner Ching the amounts of the dishonored checks in the aggregate sum of P20,950,000.00.

Factual and Procedural Antecedents

On October 21, 1997, petitioner Ching, a Chinese national, instituted criminal complaints for eleven (11) counts of violation of BP 22 against respondent Nicdao. Consequently, eleven (11) Informations were filed with the First Municipal Circuit Trial Court (MCTC) of Dinalupihan-Hermosa, Province of Bataan, which, except as to the amounts and check numbers, uniformly read as follows:

The undersigned accuses Clarita S. Nicdao of a VIOLATION OF BATAS PAMBANSA BILANG 22, committed as follows: That on or about October 06, 1997, at Dinalupihan, Bataan, Philippines, and within the jurisdiction of this Honorable Court, the said accused did then and there willfully and unlawfully make or draw and issue Hermosa Savings Loan Bank, Inc. Check No. [002524] dated October 06, 1997 in the amount of [P20,000,000.00] in payment of her obligation with complainant Samson T.Y. Ching, the said accused knowing fully well that at the time she issued the said check she did not have sufficient funds in or credit with the drawee bank for the payment in full of the said check upon presentment, which check when presented for payment within ninety (90) days from the date thereof, was dishonored by the drawee bank for the reason that it was drawn against insufficient funds and notwithstanding receipt of notice of such dishonor the said accused failed and refused and still fails and refuses to pay the value of the said check in the amount of [P20,000,000.00] or to make arrangement with the drawee bank for the payment in full of the same within five (5) banking days after receiving the said notice, to the damage and prejudice of the said Samson T.Y. Ching in the aforementioned amount of [P20,000,000.00], Philippine Currency. CONTRARY TO LAW. Dinalupihan, Bataan, October 21, 1997. (Sgd.) SAMSON T.Y. CHING Complainant

The cases were docketed as Criminal Cases Nos. 9433 up to 9443 involving the following details:

Check No

Amount

Date

Private Complainant

Reason for the Dishonor

002524[2]

P20,000,000

Oct. 6, 1997

Samson T.Y. Ching

DAIF*

008856[3]

150,000

Oct. 6, 1997

"

"

012142[4]

100,000

Oct. 6, 1997

"

"

004531[5]

50,000

Oct. 6, 1997

"

"

002254[6]

100,000

Oct. 6, 1997

"

"

008875[7]

100,000

Oct. 6, 1997

"

"

008936[8]

50,000

Oct. 6, 1997;

"

"

002273[9]

50,000

Oct. 6, 1997

"

"

008948[10]

150,000

Oct. 6, 1997

"

"

008935[11]

100,000

Oct. 6, 1997

"

"

010377[12]

100,000

Oct. 6, 1997

"

"

At about the same time, fourteen (14) other criminal complaints, also for violation of BP 22, were filed against respondent Nicdao by Emma Nuguid, said to be the common law spouse of petitioner Ching. Allegedly fourteen (14) checks, amounting to P1,150,000.00, were issued by respondent Nicdao to Nuguid but were dishonored for lack of sufficient funds. The Informations were filed with the same MCTC and docketed as Criminal Cases Nos. 9458 up to 9471.

At her arraignment, respondent Nicdao entered the plea of "not guilty" to all the charges. A joint trial was then

conducted for Criminal Cases Nos. 9433-9443 and 9458-9471.

For the prosecution in Criminal Cases Nos. 9433-9443, petitioner Ching and Imelda Yandoc, an employee of the Hermosa Savings & Loan Bank, Inc., were presented to prove the charges against respondent Nicdao. On direct-examination,[13] petitioner Ching preliminarily identified each of the eleven (11) Hermosa Savings Loan Bank (HSLB) checks that were allegedly issued to him by respondent Nicdao amounting to P20,950,000.00. He identified the signatures appearing on the checks as those of respondent Nicdao. He recognized her signatures because respondent Nicdao allegedly signed the checks in his presence. When petitioner Ching presented these checks for payment, they were dishonored by the bank, HSLB, for being "DAIF" or "drawn against insufficient funds."

Petitioner Ching averred that the checks were issued to him by respondent Nicdao as security for the loans that she obtained from him. Their transaction began sometime in October 1995 when respondent Nicdao, proprietor/manager of Vignette Superstore, together with her husband, approached him to borrow money in order for them to settle their financial obligations. They agreed that respondent Nicdao would leave the checks undated and that she would pay the loans within one year. However, when petitioner Ching went to see her after the lapse of one year to ask for payment, respondent Nicdao allegedly said that she had no cash.

Petitioner Ching claimed that he went back to respondent Nicdao several times more but every time, she would tell him that she had no money. Then in September 1997, respondent Nicdao allegedly got mad at him for being insistent and challenged him about seeing each other in court. Because of respondent Nicdao's alleged refusal to pay her obligations, on October 6, 1997, petitioner Ching deposited the checks that she issued to him. As he earlier stated, the checks were dishonored by the bank for being "DAIF." Shortly thereafter, petitioner Ching, together with Emma Nuguid, wrote a demand letter to respondent Nicdao which, however, went unheeded. Accordingly, they separately filed the criminal complaints against the latter.

On cross-examination,[14] petitioner Ching claimed that he had been a salesman of the La Suerte Cigar and Cigarette Manufacturing for almost ten (10) years already. As such, he delivered the goods and had a warehouse. He received salary and commissions. He could not, however, state his exact gross income. According to him, it increased every year because of his business. He asserted that aside from being a salesman, he was also in the business of extending loans to other people at an interest, which varied depending on the person he was dealing with.

Petitioner Ching confirmed the truthfulness of the allegations contained in the eleven (11) Informations that he filed against respondent Nicdao. Hereiterated that, upon their agreement, the checks were all signed by respondent Nicdao but she left them undated. Petitioner Ching admitted that he was the one who wrote the date, October 6, 1997, on those checks when respondent Nicdao refused to pay him.

With respect to the P20,000,000.00 check (Check No. 002524), petitioner Ching explained that he wrote the date and amount thereon when, upon his estimation, the money that he regularly lent to respondent Nicdao beginning October 1995 reached the said sum. He likewise intimated that prior to 1995, they had another transaction amounting to P1,200,000.00 and, as security therefor, respondent Nicdao similarly issued in his favor checks in varying amounts of P100,000.00 and P50,000.00. When the said amount was fully paid, petitioner Ching returned the checks to respondent Nicdao.

Petitioner Ching maintained that the eleven (11) checks subject of Criminal Cases Nos. 9433-9443 pertained to respondent Nicdao's loan transactions with him beginning October 1995. He also mentioned an instance when respondent Nicdao's husband and daughter approached him at a casino to borrow money from him. He lent them P300,000.00. According to petitioner Ching, since this amount was also unpaid, he included it in the other

amounts that respondent Nicdao owed to him which totaled P20,000,000.00 and wrote the said amount on one of respondent Nicdao's blank checks that she delivered to him.

Petitioner Ching explained that from October 1995 up to 1997, he regularly delivered money to respondent Nicdao, in the amount of P1,000,000.00 until the total amount reached P20,000,000.00. He did not ask respondent Nicdao to acknowledge receiving these amounts. Petitioner Ching claimed that he was confident that he would be paid by respondent Nicdao because he had in his possession her blank checks. On the other hand, the latter allegedly had no cause to fear that he would fill up the checks with just any amount because they had trust and confidence in each other. When asked to produce the piece of paper on which he allegedly wrote the amounts that he lent to respondent Nicdao, petitioner Ching could not present it; he reasoned that it was not with him at that time.

It was also averred by petitioner Ching that respondent Nicdao confided to him that she told her daughter Janette, who was married to a foreigner, that her debt to him was only between P3,000,000.00 and P5,000,000.00. Petitioner Ching claimed that he offered to accompany respondent Nicdao to her daughter in order that they could apprise her of the amount that she owed him. Respondent Nicdao refused for fear that it would cause disharmony in the family. She assured petitioner Ching, however, that he would be paid by her daughter.

Petitioner Ching reiterated that after the lapse of one (1) year from the time respondent Nicdao issued the checks to him, he went to her several times to collect payment. In all these instances, she said that she had no cash. Finally, in September 1997, respondent Nicdao allegedly went to his house and told him that Janette was only willing to pay him between P3,000,000.00 and P5,000,000.00 because, as far as her daughter was concerned, that was the only amount borrowed from petitioner Ching. On hearing this, petitioner Ching angrily told respondent Nicdao that she should not have allowed her debt to reach P20,000,000.00 knowing that she would not be able to pay the full amount.

Petitioner Ching identified the demand letter that he and Nuguid sent to respondent Nicdao. He explained that he no longer informed her about depositing her checks on his account because she already made that statement about seeing him in court. Again, he admitted writing the date, October 6, 1997, on all these checks.

Another witness presented by the prosecution was Imelda Yandoc, an employee of HSLB. On direct-examination,[15] she testified that she worked as a checking account bookkeeper/teller of the bank. As such, she received the checks that were drawn against the bank and verified if they were funded. On October 6, 1997, she received several checks issued by respondent Nicdao. She knew respondent Nicdao because the latter maintained a savings and checking account with them. Yandoc identified the checks subject of Criminal Cases Nos. 9433-9443 and affirmed that stamped at the back of each was the annotation "DAIF". Further, per the bank's records, as of October 8, 1997, only a balance of P300.00 was left in respondent Nicdao's checking account and P645.83 in her savings account. On even date, her account with the bank was considered inactive.

On cross-examination,[16] Yandoc stated anew that respondent Nicdao's checks bounced on October 7, 1997 for being "DAIF" and her account was closed the following day, on October 8, 1997. She informed the trial court that there were actually twenty-five (25) checks of respondent Nicdao that were dishonored at about the same time. The eleven (11) checks were purportedly issued in favor of petitioner Ching while the other fourteen (14) were purportedly issued in favor of Nuguid. Yandoc explained that respondent Nicdao or her employee would usually call the bank to inquire if there was an incoming check to be funded.

For its part, the defense proffered the testimonies of respondent Nicdao, Melanie Tolentino and Jocelyn Nicdao. On direct-examination,[17] respondent Nicdao stated that she only dealt with Nuguid. She vehemently denied the allegation that she had borrowed money from both petitioner Ching and Nuguid in the total amount of

P22,950,000.00. Respondent Nicdao admitted, however, that she had obtained a loan from Nuguid but only for P2,100,000.00 and the same was already fully paid. As proof of such payment, she presented a Planters Bank demand draft dated August 13, 1996 in the amount of P1,200,000.00. The annotation at the back of the said demand draft showed that it was endorsed and negotiated to the account of petitioner Ching.

In addition, respondent Nicdao also presented and identified several cigarette wrappers^[18] at the back of which appeared computations. She explained that Nuguid went to the grocery store everyday to collect interest payments. The principal loan was P2,100,000.00 with 12% interest per day. Nuguid allegedly wrote the payments for the daily interests at the back of the cigarette wrappers that she gave to respondent Nicdao.

The principal loan amount of P2,100,000.00 was allegedly delivered by Nuguid to respondent Nicdao in varying amounts of P100,000.00 and P150,000.00. Respondent Nicdao refuted the averment of petitioner Ching that prior to 1995, they had another transaction.

With respect to the P20,000,000.00 check, respondent Nicdao admitted that the signature thereon was hers but denied that she issued the same to petitioner Ching. Anent the other ten (10) checks, she likewise admitted that the signatures thereon were hers while the amounts and payee thereon were written by either Jocelyn Nicdao or Melanie Tolentino, who were employees of Vignette Superstore and authorized by her to do so.

Respondent Nicdao clarified that, except for the P20,000,000.00 check, the other ten (10) checks were handed to Nuguid on different occasions. Nuguid came to the grocery store everyday to collect the interest payments. Respondent Nicdao said that she purposely left the checks undated because she would still have to notify Nuguid if she already had the money to fund the checks.

Respondent Nicdao denied ever confiding to petitioner Ching that she was afraid that her daughter would get mad if she found out about the amount that she owed him. What allegedly transpired was that when she already had the money to pay them (presumably referring to petitioner Ching and Nuguid), she went to them to retrieve her checks. However, petitioner Ching and Nuguid refused to return the checks claiming that she (respondent Nicdao) still owed them money. She demanded that they show her the checks in order that she would know the exact amount of her debt, but they refused. It was at this point that she got angry and dared them to go to court.

After the said incident, respondent Nicdao was surprised to be notified by HSLB that her check in the amount of P20,000,000.00 was just presented to the bank for payment. She claimed that it was only then that she remembered that sometime in 1995, she was informed by her employee that one of her checks was missing. At that time, she did not let it bother her thinking that it would eventually surface when presented to the bank.

Respondent Nicdao could not explain how the said check came into petitioner Ching's possession. She explained that she kept her checks in an ordinary cash box together with a stapler and the cigarette wrappers that contained Nuguid's computations. Her saleslady had access to this box. Respondent Nicdao averred that it was Nuguid who offered to give her a loan as she would allegedly need money to manage Vignette Superstore. Nuguid used to run the said store before respondent Nicdao's daughter bought it from Nuguid's family, its previous owner. According to respondent Nicdao, it was Nuguid who regularly delivered the cash to respondent Nicdao or, if she was not at the grocery store, to her saleslady. Respondent Nicdao denied any knowledge that the money loaned to her by Nuguid belonged to petitioner Ching.

At the continuation of her direct-examination,^[19] respondent Nicdao said that she never dealt with petitioner Ching because it was Nuguid who went to the grocery store everyday to collect the interest payments. When shown the P20,000,000.00 check, respondent Nicdao admitted that the signature thereon was hers but she denied issuing it as a blank check to petitioner Ching. On the other hand, with respect to the other ten (10) checks, she

also admitted that the signatures thereon were hers and that the amounts thereon were written by either Josie Nicdao or Melanie Tolentino, her employees whom she authorized to do so. With respect to the payee, it was purposely left blank allegedly upon instruction of Nuguid who said that she would use the checks to pay someone else.

On cross-examination,[20] respondent Nicdao explained that Josie Nicdao and Melanie Tolentino were caretakers of the grocery store and that they manned it when she was not there. She likewise confirmed that she authorized them to write the amounts on the checks after she had affixed her signature thereon. She stressed, however, that the P20,000,000.00 check was the one that was reported to her as lost or missing by her saleslady sometime in 1995. She never reported the matter to the bank because she was confident that it would just surface when it would be presented for payment.

Again, respondent Nicdao identified the cigarette wrappers which indicated the daily payments she had made to Nuguid. The latter allegedly went to the grocery store everyday to collect the interest payments. Further, the figures at the back of the cigarette wrappers were written by Nuguid. Respondent Nicdao asserted that she recognized her handwriting because Nuguid sometimes wrote them in her presence. Respondent Nicdao maintained that she had already paid Nuguid the amount of P1,200,000.00 as evidenced by the Planters Bank demand draft which she gave to the latter and which was subsequently negotiated and deposited in petitioner Ching's account. In connection thereto, respondent Nicdao refuted the prosecution's allegation that the demand draft was payment for a previous transaction that she had with petitioner Ching. She clarified that the payments that Nuguid collected from her everyday were only for the interests due. She did not ask Nuguid to make written acknowledgements of her payments.

Melanie Tolentino was presented to corroborate the testimony of respondent Nicdao. On direct-examination,[21] Tolentino stated that she worked at the Vignette Superstore and she knew Nuguid because her employer, respondent Nicdao, used to borrow money from her. She knew petitioner Ching only by name and that he was the "husband" of Nuguid.

As an employee of the grocery store, Tolentino stated that she acted as its caretaker and was entrusted with the custody of respondent Nicdao's personal checks. Tolentino identified her own handwriting on some of the checks especially with respect to the amounts and figures written thereon. She said that Nuguid instructed her to leave the space for the payee blank as she would use the checks to pay someone else. Tolentino added that she could not recall respondent Nicdao issuing a check to petitioner Ching in the amount of P20,000,000.00. She confirmed that they lost a check sometime in 1995. When informed about it, respondent Nicdao told her that the check could have been issued to someone else, and that it would just surface when presented to the bank.

Tolentino recounted that Nuguid came to the grocery store everyday to collect the interest payments of the loan. In some instances, upon respondent Nicdao's instruction, Tolentino handed to Nuguid checks that were already signed by respondent Nicdao. Sometimes, Tolentino would be the one to write the amount on the checks. Nuguid, in turn, wrote the amounts on pieces of paper which were kept by respondent Nicdao.

On cross-examination,[22] Tolentino confirmed that she was authorized by respondent Nicdao to fill up the checks and hand them to Nuguid. The latter came to the grocery store everyday to collect the interest payments. Tolentino claimed that in 1995, in the course of chronologically arranging respondent Nicdao's check booklets, she noticed that a check was missing. Respondent Nicdao told her that perhaps she issued it to someone and that it would just turn up in the bank. Tolentino was certain that the missing check was the same one that petitioner Ching presented to the bank for payment in the amount of P20,000,000.00.

Tolentino stated that she left the employ of respondent Nicdao sometime in 1996. After the checks were

dishonored in October 1997, Tolentino got a call from respondent Nicdao. After she was shown a fax copy thereof, Tolentino confirmed that the P20,000,000.00 check was the same one that she reported as missing in 1995.

Jocelyn Nicdao also took the witness stand to corroborate the testimony of the other defense witnesses. On direct-examination,[23] she averred that she was a saleslady at the Vignette Superstore from August 1994 up to April 1998. She knew Nuguid as well as petitioner Ching.

Jocelyn Nicdao further testified that respondent Nicdao was indebted to Nuguid. Jocelyn Nicdao used to fill up the checks of respondent Nicdao that had already been signed by her and give them to Nuguid. The latter came to the grocery store everyday to pick up the interest payments. Jocelyn Nicdao identified the checks on which she wrote the amounts and, in some instances, the name of Nuguid as payee. However, most of the time, Nuguid allegedly instructed her to leave as blank the space for the payee.

Jocelyn Nicdao identified the cigarette wrappers as the documents on which Nuguid acknowledged receipt of the interest payments. She explained that she was the one who wrote the minus entries and they represented the daily interest payments received by Nuguid.

On cross-examination,[24] Jocelyn Nicdao stated that she was a distant cousin of respondent Nicdao. She stopped working for her in 1998 because she wanted to take a rest. Jocelyn Nicdao reiterated that she handed the checks to Nuguid at the grocery store.

After due trial, on December 8, 1998, the MCTC rendered judgment in Criminal Cases Nos. 9433-9443 convicting respondent Nicdao of eleven (11) counts of violation of BP 22. The MCTC gave credence to petitioner Ching's testimony that respondent Nicdao borrowed money from him in the total amount of P20,950,000.00. Petitioner Ching delivered P1,000,000.00 every month to respondent Nicdao from 1995 up to 1997 until the sum reached P20,000,000.00. The MCTC also found that subsequent thereto, respondent Nicdao still borrowed money from petitioner Ching. As security for these loans, respondent Nicdao issued checks to petitioner Ching. When the latter deposited the checks (eleven in all) on October 6, 1997, they were dishonored by the bank for being "DAIF."

The MCTC explained that the crime of violation of BP 22 has the following elements: (a) the making, drawing and issuance of any check to apply to account or for value; (b) 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 such check in full upon its presentment; and (c) 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 stoppayment.[25] According to the MCTC, all the foregoing elements are present in the case of respondent Nicdao's issuance of the checks subject of Criminal Cases Nos. 9433-9443. On the first element, respondent Nicdao was found by the MCTC to have made, drawn and issued the checks. The fact that she did not personally write the payee and date on the checks was not material considering that under Section 14 of the Negotiable Instruments Law, "where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a prima facie authority to fill it up as such for any amount x x x." Respondent Nicdao admitted that she authorized her employees to provide the details on the checks after she had signed them.

The MCTC disbelieved respondent Nicdao's claim that the P20,000,000.00 check was the same one that she lost in 1995. It observed that ordinary prudence would dictate that a lost check would at least be immediately reported to the bank to prevent its unauthorized endorsement or negotiation. Respondent Nicdao made no such report to the

bank. Even if the said check was indeed lost, the MCTC faulted respondent Nicdao for being negligent in keeping the checks that she had already signed in an unsecured box.

The MCTC further ruled that there was no evidence to show that petitioner Ching was not a holder in due course as to cause it (the MCTC) to believe that the said check was not issued to him. Respondent Nicdao's admission of indebtedness was sufficient to prove that there was consideration for the issuance of the checks.

The second element was also found by the MCTC to be present as it held that respondent Nicdao, as maker, drawer or issuer, had knowledge that at the time of issue she did not have sufficient funds in or credit with the drawee bank for the payment in full of the checks upon their presentment.

As to the third element, the MCTC established that the checks were subsequently dishonored by the drawee bank for being "DAIF" or drawn against insufficient funds. Stamped at the back of each check was the annotation "DAIF." The bank representative likewise testified to the fact of dishonor.

Under the foregoing circumstances, the MCTC declared that the conviction of respondent Nicdao was warranted. It stressed that the mere act of issuing a worthless check was *malum prohibitum*; hence, even if the checks were issued in the form of deposit or guarantee, once dishonored, the same gave rise to the prosecution for and conviction of BP 22.[26] The decretal portion of the MCTC decision reads:

WHEREFORE, in view of the foregoing, the accused is found guilty of violating Batas Pambansa Blg. 22 in 11 counts, and is hereby ordered to pay the private complainant the amount of P20,950,000.00 plus 12% interest per annum from date of filing of the complaint until the total amount had been paid. The prayer for moral damages is denied for lack of evidence to prove the same. She is likewise ordered to suffer imprisonment equivalent to 1 year for every check issued and which penalty shall be served successively. SO ORDERED.[27]

Incidentally, on January 11, 1999, the MCTC likewise rendered its judgment in Criminal Cases Nos. 9458-9471 and convicted respondent Nicdao of the fourteen (14) counts of violation of BP 22 filed against her by Nuguid.

On appeal, the Regional Trial Court (RTC) of Dinalupihan, Bataan, Branch 5, in separate Decisions both dated May 10, 1999, affirmed in toto the decisions of the MCTC convicting respondent Nicdao of eleven (11) and fourteen (14) counts of violation of BP 22 in Criminal Cases Nos. 9433-9443 and 9458-9471, respectively.

Respondent Nicdao forthwith filed with the CA separate petitions for review of the two decisions of the RTC. The petition involving the eleven (11) checks purportedly issued to petitioner Ching was docketed as CA-G.R. CR No. 23055 (assigned to the 13[th] Division). On the other hand, the petition involving the fourteen (14) checks purportedly issued to Nuguid was docketed as CA-G.R. CR No. 23054 (originally assigned to the 7[th] Division but transferred to the 6[th] Division). The Office of the Solicitor General (OSG) filed its respective comments on the said petitions. Subsequently, the OSG filed in CA-G.R. CR No. 23055 a motion for its consolidation with CA-G.R. CR No. 23054. The OSG prayed that CA-G.R. CR No. 23055 pending before the 13[th] Division be transferred and consolidated with CA-G.R. CR No. 23054 in accordance with the Revised Internal Rules of the Court of Appeals (RIRCA).

Acting on the motion for consolidation, the CA in CA-G.R. CR No. 23055 issued a Resolution dated October 19, 1999 advising the OSG to file the motion in CA-G.R. CR No. 23054 as it bore the lowest number. Respondent Nicdao opposed the consolidation of the two cases. She likewise filed her reply to the comment of the OSG in CA-G.R. CR No. 23055.

On November 22, 1999, the CA (13[th] Division) rendered the assailed Decision in CA-G.R. CR No. 23055 acquitting respondent Nicdao of the eleven (11) counts of violation of BP 22 filed against her by petitioner Ching.

The decretal portion of the assailed CA Decision reads:

WHEREFORE, being meritorious, the petition for review is hereby GRANTED. Accordingly, the decision dated May 10, 1999, of the Regional Trial Court, 3rd Judicial Region, Branch 5, Bataan, affirming the decision dated December 8, 1998, of the First Municipal Circuit Trial Court of Dinalupihan-Hermosa, Bataan, convicting petitioner Clarita S. Nicdao in Criminal Cases No. 9433 to 9443 of violation of B.P. Blg. 22 is REVERSED and SET ASIDE and another judgment rendered ACQUITTING her in all these cases, with costs de oficio. SO ORDERED.[28]

On even date, the CA issued an Entry of Judgment declaring that the above decision has become final and executory and is recorded in the Book of Judgments.

In acquitting respondent Nicdao in CA-G.R. CR No. 23055, the CA made the following factual findings:

Petitioner [respondent herein] Clarita S. Nicdao, a middle-aged mother and housekeeper who only finished high school, has a daughter, Janette Boyd, who is married to a wealthy expatriate.

Complainant [petitioner herein] Samson Ching is a Chinese national, who claimed he is a salesman of La Suerte Cigar and Cigarette Factory.

Emma Nuguid, complainant's live-in partner, is a CPA and formerly connected with Sycip, Gorres and Velayo. Nuguid used to own a grocery store now known as the Vignette Superstore. She sold this grocery store, which was about to be foreclosed, to petitioner's daughter, Janette Boyd. Since then, petitioner began managing said store. However, since petitioner could not always be at the Vignette Superstore to keep shop, she entrusted to her salesladies, Melanie Tolentino and Jocelyn Nicdao, pre-signed checks, which were left blank as to amount and the payee, to cover for any delivery of merchandise sold at the store. The blank and personal checks were placed in a cash box at Vignette Superstore and were filled up by said salesladies upon instruction of petitioner as to amount, payee and date.

Soon thereafter, Emma Nuguid befriended petitioner and offered to lend money to the latter which could be used in running her newly acquired store. Nuguid represented to petitioner that as former manager of the Vignette Superstore, she knew that petitioner would be in need of credit to meet the daily expenses of running the business, particularly in the daily purchases of merchandise to be sold at the store. After Emma Nuguid succeeded in befriending petitioner, Nuguid was able to gain access to the Vignette Superstore where petitioner's blank and pre-signed checks were kept.[29]

In addition, the CA also made the finding that respondent Nicdao borrowed money from Nuguid in the total amount of P2,100,000.00 secured by twenty-four (24) checks drawn against respondent Nicdao's account with HSLB. Upon Nuguid's instruction, the checks given by respondent Nicdao as security for the loans were left blank as to the payee and the date. The loans consisted of (a) P950,000.00 covered by ten (10) checks subject of the criminal complaints filed by petitioner Ching (CA-G.R. CR No. 23055); and (b) P1,150,000.00 covered by fourteen (14) checks subject of the criminal complaints filed by Nuguid (CA-G.R. CR No. 23054). The loans totaled P2,100,000.00 and they were transacted between respondent Nicdao and Nuguid only. Respondent Nicdao never dealt with petitioner Ching.

Against the foregoing factual findings, the CA declared that, based on the evidence, respondent Nicdao had already fully paid the loans. In particular, the CA referred to the Planters Bank demand draft in the amount of P1,200,000.00 which, by his own admission, petitioner Ching had received. The appellate court debunked petitioner Ching's allegation that the said demand draft was payment for a previous transaction. According to the CA, petitioner Ching failed to adduce evidence to prove the existence of a previous transaction between him and respondent Nicdao.

Apart from the demand draft, the CA also stated that respondent Nicdao made interest payments on a daily basis to Nuguid as evidenced by the computations written at the back of the cigarette wrappers. Based on these computations, as of July 21, 1997, respondent Nicdao had made a total of P5,780,000.00 payments to Nuguid for the interests alone. Adding up this amount and that of the Planters Bank demand draft, the CA placed the payments made by respondent Nicdao to Nuguid as already amounting to P6,980,000.00 for the principal loan amount of only P2,100,000.00.

The CA negated petitioner Ching's contention that the payments as reflected at the back of the cigarette wrappers could be applied only to the interests due. Since the transactions were not evidenced by any document or writing, the CA ratiocinated that no interests could be collected because, under Article 1956 of the Civil Code, "no interest shall be due unless it has been expressly stipulated in writing."

The CA gave credence to the testimony of respondent Nicdao that when she had fully paid her loans to Nuguid, she tried to retrieve her checks. Nuguid, however, refused to return the checks to respondent Nicdao. Instead, Nuguid and petitioner Ching filled up the said checks to make it appear that: (a) petitioner Ching was the payee in five checks; (b) the six checks were payable to cash; (c) Nuguid was the payee in fourteen (14) checks. Petitioner Ching and Nuguid then put the date October 6, 1997 on all these checks and deposited them the following day. On October 8, 1997, through a joint demand letter, they informed respondent Nicdao that her checks were dishonored by HSLB and gave her three days to settle her indebtedness or else face prosecution for violation of BP 22. With the finding that respondent Nicdao had fully paid her loan obligations to Nuguid, the CA declared that she could no longer be held liable for violation of BP 22. It was explained that to be held liable under BP 22, it must be established, *inter alia*, that the check was made or drawn and issued to apply on account or for value. According to the CA, the word "account" refers to a pre-existing obligation, while "for value" means an obligation incurred simultaneously with the issuance of the check. In the case of respondent Nicdao's checks, the pre-existing obligations secured by them were already extinguished after full payment had been made by respondent Nicdao to Nuguid. Obligations are extinguished by, among others, payment.^[30] The CA believed that when petitioner Ching and Nuguid refused to return respondent Nicdao's checks despite her total payment of P6,980,000.00 for the loans secured by the checks, petitioner Ching and Nuguid were using BP 22 to coerce respondent Nicdao to pay a debt which she no longer owed them.

With respect to the P20,000,000.00 check, the CA was not convinced by petitioner Ching's claim that he delivered P1,000,000.00 every month to respondent Nicdao until the amount reached P20,000,000.00 and, when she refused to pay the same, he filled up the check, which she earlier delivered to him as security for the loans, by writing thereon the said amount. In disbelieving petitioner Ching, the CA pointed out that, contrary to his assertion, he was never employed by the La Suerte Cigar and Cigarette Manufacturing per the letter of Susan Resurreccion, Vice-President and Legal Counsel of the said company. Moreover, as admitted by petitioner Ching, he did not own the house where he and Nuguid lived.

Moreover, the CA characterized as incredible and contrary to human experience that petitioner Ching would, as he claimed, deliver a total sum of P20,000,000.00 to respondent Nicdao without any documentary proof thereof, e.g., written acknowledgment that she received the same. On the other hand, it found plausible respondent Nicdao's version of the story that the P20,000,000.00 check was the same one that was missing way back in 1995. The CA opined that this missing check surfaced in the hands of petitioner Ching who, in cahoots with Nuguid, wrote the amount P20,000,000.00 thereon and deposited it in his account. To the mind of the CA, the inference that the check was stolen was anchored on competent circumstantial evidence. Specifically, Nuguid, as previous manager/owner of the grocery store, had access thereto. Likewise applicable, according to the CA, was the presumption that the person in possession of the stolen article was presumed to be guilty of taking the stolen

article.[31]

The CA emphasized that the P20,000,000.00 check was never delivered by respondent Nicdao to petitioner Ching. As such, the said check without the details as to the date, amount and payee, was an incomplete and undelivered instrument when it was stolen and ended up in petitioner Ching's hands. On this point, the CA applied Sections 15 and 16 of the Negotiable Instruments Law:

SEC. 15. Incomplete instrument not delivered. - Where an incomplete instrument has not been delivered, it will not, if completed and negotiated without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery.

SEC. 16. Delivery; when effectual; when presumed. - Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting or indorsing, as the case may be; and, in such case, the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.

The CA held that the P20,000,000.00 check was filled up by petitioner Ching without respondent Nicdao's authority. Further, it was incomplete and undelivered. Hence, petitioner Ching did not acquire any right or interest therein and could not assert any cause of action founded on the stolen checks.[32] Under these circumstances, the CA concluded that respondent could not be held liable for violation of BP 22.

The Petitioner's Case

As mentioned earlier, the instant petition pertains and is limited solely to the civil aspect of the case as petitioner Ching argues that notwithstanding respondent Nicdao's acquittal of the eleven (11) counts of violation of BP 22, she should be held liable to pay petitioner Ching the amounts of the dishonored checks in the aggregate sum of P20,950,000.00.

He urges the Court to review the findings of facts made by the CA as they are allegedly based on a misapprehension of facts and manifestly erroneous and contradicted by the evidence. Further, the CA's factual findings are in conflict with those of the RTC and MCTC.

Petitioner Ching vigorously argues that notwithstanding respondent Nicdao's acquittal by the CA, the Supreme Court has the jurisdiction and authority to resolve and rule on her civil liability. He invokes Section 1, Rule 111 of the Revised Rules of Court which, prior to its amendment, provided, in part:

SEC. 1. Institution of criminal and civil actions. - When a criminal action is instituted, the civil action for the recovery of civil liability is impliedly instituted with the criminal action, unless the offended party waives the civil action, reserves his right to institute it separately, or institutes the civil action prior to the criminal action.

Such civil action includes the recovery of indemnity under the Revised Penal Code, and damages under Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines arising from the same act or omission of the accused. x x x

Supreme Court Circular No. 57-97[33] dated September 16, 1997 is also cited as it provides in part:

- The criminal action for violation of Batas Pambansa Blg. 22 shall be deemed to necessarily include the corresponding civil action, and no reservation to file such civil action separately shall be allowed or recognized. x

x x

Petitioner Ching theorizes that, under Section 1, Rule 111 of the Revised Rules of Court, the civil action for the recovery of damages under Articles 32, 33, 34, and 2176 arising from the same act or omission of the accused is impliedly instituted with the criminal action. Moreover, under the above-quoted Circular, the criminal action for violation of BP 22 necessarily includes the corresponding civil action, which is the recovery of the amount of the dishonored check representing the civil obligation of the drawer to the payee.

In seeking to enforce the alleged civil liability of respondent Nicdao, petitioner Ching maintains that she had loan obligations to him totaling P20,950,000.00. The existence of the same is allegedly established by his testimony before the MCTC. Also, he asks the Court to take judicial notice that for a monetary loan secured by a check, the check itself is the evidence of indebtedness.

He insists that, contrary to her protestation, respondent Nicdao also transacted with him, not only with Nuguid. Petitioner Ching pointed out that during respondent Nicdao's testimony, she referred to her creditors in plural form, e.g. "[I] told them, most checks that I issued I will inform them if I have money." Even respondent Nicdao's employees allegedly knew him; they testified that Nuguid instructed them at times to leave as blank the payee on the checks as they would be paid to someone else, who turned out to be petitioner Ching.

It was allegedly erroneous for the CA to hold that he had no capacity to lend P20,950,000.00 to respondent Nicdao. Petitioner Ching clarified that what he meant when he testified before the MCTC was that he was engaged in dealership with La Suerte Cigar and Cigarette Manufacturing, and not merely its sales agent. He stresses that he owns a warehouse and is also in the business of lending money. Further, the CA's reasoning that he could not possibly have lent P20,950,000.00 to respondent Nicdao since petitioner Ching and Nuguid did not own the house where they live, is allegedly non sequitur.

Petitioner Ching maintains that, contrary to the CA's finding, the Planters Bank demand draft for P1,200,000.00 was in payment for respondent Nicdao's previous loan transaction with him. Apart from the P20,000,000.00 check, the other ten (10) checks (totaling P950,000.00) were allegedly issued by respondent Nicdao to petitioner Ching as security for the loans that she obtained from him from 1995 to 1997. The existence of another loan obligation prior to the said period was allegedly established by the testimony of respondent Nicdao's own witness, Jocelyn Nicdao, who testified that when she started working in Vignette Superstore in 1994, she noticed that respondent Nicdao was already indebted to Nuguid.

Petitioner Ching also takes exception to the CA's ruling that the payments made by respondent Nicdao as reflected on the computations at the back of the cigarette wrappers were for both the principal loan and interests. He insists that they were for the interests alone. Even respondent Nicdao's testimony allegedly showed that they were daily interest payments. Petitioner Ching further avers that the interest payments totaling P5,780,000.00 can only mean that, contrary to respondent Nicdao's claim, her loan obligations amounted to much more than P2,100,000.00. because she willingly paid the same.

Petitioner Ching also harps on respondent Nicdao's silence when she received his and Nuguid's demand letter to her. Through the said letter, they notified her that the twenty-five (25) checks valued at P22,100,000.00 were dishonored by the HSLB, and that she had three days to settle her indebtedness with them, otherwise, face prosecution. Respondent Nicdao's silence, i.e., her failure to deny or protest the same by way of reply, vis-à-vis the demand letter, allegedly constitutes an admission of the statements contained therein.

On the other hand, the MCTC's decision, as affirmed by the RTC, is allegedly based on the evidence on record; it has been established that the checks were respondent Nicdao's personal checks, that the signatures thereon were

hers and that she had issued them to petitioner Ching. With respect to the P20,000,000.00 check, petitioner Ching assails the CA's ruling that it was stolen and was never delivered or issued by respondent Nicdao to him. The issue of the said check being stolen was allegedly not raised during trial. Further, her failure to report the alleged theft to the bank to stop payment of the said lost or missing check is allegedly contrary to human experience. Petitioner Ching describes respondent Nicdao's defense of stolen or lost check as incredible and, therefore, false.

Aside from the foregoing substantive issues that he raised, petitioner Ching also faults the CA for not acting and ordering the consolidation of CA-G.R. CR No. 23055 with CA-G.R. CR No. 23054. He informs the Court that latter case is still pending with the CA.

In fine, it is petitioner Ching's view that the CA gravely erred in disregarding the findings of the MCTC, as affirmed by the RTC, and submits that there is more than sufficient preponderant evidence to hold respondent Nicdao civilly liable to him in the amount of P20,950,000.00. He thus prays that the Court direct respondent Nicdao to pay him the said amount plus 12% interest per annum computed from the date of written demand until the total amount is fully paid.

The Respondent's Counter-Arguments

Respondent Nicdao urges the Court to deny the petition. She posits preliminarily that it is barred under Section 2(b), Rule 111 of the Revised Rules of Court which states:

SEC. 2. Institution of separate of civil action. - Except in the cases provided for in Section 3 hereof, after the criminal action has been commenced, the civil action which has been reserved cannot be instituted until final judgment in the criminal action.

x x x x

(b) Extinction of the penal action does not carry with it extinction of the civil, unless the extinction proceeds from a declaration in a final judgment that the fact from which the civil might arise did not exist.

According to respondent Nicdao, the assailed CA decision has already made a finding to the effect that the fact upon which her civil liability might arise did not exist. She refers to the ruling of the CA that the P20,000,000.00 check was stolen; hence, petitioner Ching did not acquire any right or interest over the said check and could not assert any cause of action founded on the said check. Consequently, the CA held that respondent Nicdao had no obligation to make good the stolen check and cannot be held liable for violation of BP 22. She also refers to the CA's pronouncement relative to the ten (10) other checks that they were not issued to apply on account or for value, considering that the loan obligations secured by these checks had already been extinguished by her full payment thereof.

To respondent Nicdao's mind, these pronouncements are equivalent to a finding that the facts upon which her civil liability may arise do not exist. The instant petition, which seeks to enforce her civil liability based on the eleven (11) checks, is thus allegedly already barred by the final and executory decision acquitting her.

In any case, respondent Nicdao contends that the CA did not commit serious misapprehension of facts when it found that the P20,000,000.00 check was a stolen check and that she never made any transaction with petitioner Ching. Moreover, the other ten (10) checks were not issued to apply on account or for value. These findings are allegedly supported by the evidence on record which consisted of the respective testimonies of the defense witnesses to the effect that: respondent Nicdao had the practice of leaving pre-signed checks placed inside an unsecured cash box in the Vignette Superstore; the salesladies were given the authority to fill up the said checks as to the amount, payee and date; Nuguid beguiled respondent Nicdao to obtain loans from her; as security for the loans, respondent Nicdao issued checks to Nuguid; when the salesladies gave the checks to Nuguid, she instructed

them to leave blank the payee and date; Nuguid had access to the grocery store; in 1995, one of the salesladies reported that a check was missing; in 1997, when she had fully paid her loans to Nuguid, respondent Nicdao tried to retrieve her checks but Nuguid and petitioner Ching falsely told her that she still owed them money; they then maliciously filled up the checks making it appear that petitioner Ching was the payee in the five checks and the six others were payable to "cash"; and knowing fully well that these checks were not funded because respondent Nicdao already fully paid her loans, petitioner Ching and Nuguid deposited the checks and caused them to be dishonored by HSLB.

It is pointed out by respondent Nicdao that her testimony (that the P20,000,000.00 check was the same one that she lost sometime in 1995) was corroborated by the respective testimonies of her employees. Another indication that it was stolen was the fact that among all the checks which ended up in the hands of petitioner Ching and Nuguid, only the P20,000,000.00 check was fully typewritten; the rest were invariably handwritten as to the amounts, payee and date.

Respondent Nicdao defends the CA's conclusion that the P20,000,000.00 check was stolen on the ground that an appeal in a criminal case throws open the whole case to the appellate court's scrutiny. In any event, she maintains that she had been consistent in her theory of defense and merely relied on the disputable presumption that the person in possession of a stolen article is presumed to be the author of the theft.

Considering that it was stolen, respondent Nicdao argues, the P20,000,000.00 check was an incomplete and undelivered instrument in the hands of petitioner Ching and he did not acquire any right or interest therein. Further, he cannot assert any cause of action founded on the said stolen check. Accordingly, petitioner Ching's attempt to collect payment on the said check through the instant petition must fail.

Respondent Nicdao describes as downright incredible petitioner Ching's testimony that she owed him a total sum of P20,950,000.00 without any documentary proof of the loan transactions. She submits that it is contrary to human experience for loan transactions involving such huge amounts of money to be devoid of any documentary proof. In relation thereto, respondent Nicdao underscores that petitioner Ching lied about being employed as a salesman of La Suerte Cigar and Cigarette Manufacturing. It is underscored that he has not adequately shown that he possessed the financial capacity to lend such a huge amount to respondent Nicdao as he so claimed.

Neither could she be held liable for the ten (10) other checks (in the total amount of P950,000,000.00) because as respondent Nicdao asseverates, she merely issued them to Nuguid as security for her loans obtained from the latter beginning October 1995 up to 1997. As evidenced by the Planters Bank demand draft in the amount of P1,200,000.00, she already made payment in 1996. The said demand draft was negotiated to petitioner Ching's account and he admitted receipt thereof. Respondent Nicdao belies his claim that the demand draft was payment for a prior existing obligation. She asserts that petitioner Ching was unable to present evidence of such a previous transaction.

In addition to the Planters Bank demand draft, respondent Nicdao insists that petitioner Ching received, through Nuguid, cash payments as evidenced by the computations written at the back of the cigarette wrappers. Nuguid went to the Vignette Superstore everyday to collect these payments. The other defense witnesses corroborated this fact. Petitioner Ching allegedly never disputed the accuracy of the accounts appearing on these cigarette wrappers; nor did he dispute their authenticity and accuracy.

Based on the foregoing evidence, the CA allegedly correctly held that, computing the amount of the Planters Bank demand draft (P1,200,000.00) and those reflected at the back of the cigarette wrappers (P5,780,000.00), respondent Nicdao had already paid petitioner Ching and Nuguid a total sum of P6,980,000.00 for her loan obligations totaling only P950,000.00, as secured by the ten (10) HSLB checks excluding the stolen

P20,000,000.00 check.

Respondent Nicdao rebuts petitioner Ching's argument (that the daily payments were applied to the interests), and claims that this is illegal. Petitioner Ching cannot insist that the daily payments she made applied only to the interests on the loan obligations, considering that there is admittedly no document evidencing these loans, hence, no written stipulation for the payment of interests thereon. On this point, she invokes Article 1956 of the Civil Code, which proscribes the collection of interest payments unless expressly stipulated in writing.

Respondent Nicdao emphasizes that the ten (10) other checks that she issued to Nuguid as security for her loans had already been discharged upon her full payment thereof. It is her belief that these checks can no longer be used to coerce her to pay a debt that she does not owe.

On the CA's failure to consolidate CA-G.R. CR No. 23055 and CA-G.R. CR No. 23054, respondent Nicdao proffers the explanation that under the RIRCA, consolidation of the cases is not mandatory. In fine, respondent Nicdao urges the Court to deny the petition as it failed to discharge the burden of proving her civil liability with the required preponderance of evidence. Moreover, the CA's acquittal of respondent Nicdao is premised on the finding that, apart from the stolen check, the ten (10) other checks were not made to apply to a valid, due and demandable obligation. This, in effect, is a categorical ruling that the fact from which the civil liability of respondent Nicdao may arise does not exist.

The Court's Rulings

The petition is denied for lack of merit.

Notwithstanding respondent Nicdao's acquittal, petitioner Ching is entitled to appeal the civil aspect of the case within the reglementary period

It is axiomatic that "every person criminally liable for a felony is also civilly liable."^[34] Under the pertinent provision of the Revised Rules of Court, the civil action is generally impliedly instituted with the criminal action. At the time of petitioner Ching's filing of the Informations against respondent Nicdao, Section 1,^[35] Rule 111 of the Revised Rules of Court, quoted earlier, provided in part:

SEC. 1. Institution of criminal and civil actions. — When a criminal action is instituted, the civil action for the recovery of civil liability is impliedly instituted with the criminal action, unless the offended party waives the civil action, reserves his right to institute it separately, or institutes the civil action prior to the criminal action.

Such civil action includes the recovery of indemnity under the Revised Penal Code, and damages under Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines arising from the same act or omission of the accused.

x x x x

As a corollary to the above rule, an acquittal does not necessarily carry with it the extinguishment of the civil liability of the accused. Section 2(b)^[36] of the same Rule, also quoted earlier, provided in part:

(b) Extinction of the penal action does not carry with it extinction of the civil, unless the extinction proceeds from a declaration in a final judgment that the fact from which the civil might arise did not exist.

It is also relevant to mention that judgments of acquittal are required to state "whether the evidence of the prosecution absolutely failed to prove the guilt of the accused or merely failed to prove his guilt beyond reasonable doubt. In either case, the judgment shall determine if the act or omission from which the civil liability

might arise did not exist." [37] In *Sapiera v. Court of Appeals*, [38] the Court enunciated that the civil liability is not extinguished by acquittal: (a) where the acquittal is based on reasonable doubt; (b) where the court expressly declares that the liability of the accused is not criminal but only civil in nature; and (c) where the civil liability is not derived from or based on the criminal act of which the accused is acquitted. Thus, under Article 29 of the Civil Code —

ART. 29. When the accused in a criminal prosecution is acquitted on the ground that his guilt has not been proved beyond reasonable doubt, a civil action for damages for the same act or omission may be instituted. Such action requires only a preponderance of evidence. Upon motion of the defendant, the court may require the plaintiff to file a bond to answer for damages in case the complaint should be found to be malicious.

If in a criminal case the judgment of acquittal is based upon reasonable doubt, the court shall so declare. In the absence of any declaration to that effect, it may be inferred from the text of the decision whether or not the acquittal is due to that ground.

The Court likewise expounded in *Salazar v. People* [39] the consequences of an acquittal on the civil aspect in this wise:

The acquittal of the accused does not prevent a judgment against him on the civil aspect of the criminal case where: (a) the acquittal is based on reasonable doubt as only preponderance of evidence is required; (b) the court declared that the liability of the accused is only civil; (c) the civil liability of the accused does not arise from or is not based upon the crime of which the accused is acquitted. Moreover, the civil action based on the delict is extinguished if there is a finding in the final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist or where the accused did not commit the act or omission imputed to him.

If the accused is acquitted on reasonable doubt but the court renders judgment on the civil aspect of the criminal case, the prosecution cannot appeal from the judgment of acquittal as it would place the accused in double jeopardy. However, the aggrieved party, the offended party or the accused or both may appeal from the judgment on the civil aspect of the case within the period therefor.

From the foregoing, petitioner Ching correctly argued that he, as the offended party, may appeal the civil aspect of the case notwithstanding respondent Nicdao's acquittal by the CA. The civil action was impliedly instituted with the criminal action since he did not reserve his right to institute it separately nor did he institute the civil action prior to the criminal action.

Following the long recognized rule that "the appeal period accorded to the accused should also be available to the offended party who seeks redress of the civil aspect of the decision," the period to appeal granted to petitioner Ching is the same as that granted to the accused. [40] With petitioner Ching's timely filing of the instant petition for review of the civil aspect of the CA's decision, the Court thus has the jurisdiction and authority to determine the civil liability of respondent Nicdao notwithstanding her acquittal.

In order for the petition to prosper, however, it must establish that the judgment of the CA acquitting respondent Nicdao falls under any of the three categories enumerated in *Salazar* and *Sapiera*, to wit:

- (a) where the acquittal is based on reasonable doubt as only preponderance of evidence is required;
- (b) where the court declared that the liability of the accused is only civil; and
- (c) where the civil liability of the accused does not arise from or is not based upon the crime of which the accused is acquitted.

Salazar also enunciated that the civil action based on the delict is extinguished if there is a finding in the final

judgment in the criminal action that the act or omission from which the civil liability may arise did not exist or where the accused did not commit the act or omission imputed to him.

For reasons that will be discussed shortly, the Court holds that respondent Nicdao cannot be held civilly liable to petitioner Ching.

The acquittal of respondent Nicdao likewise effectively extinguished her civil liability

Apainstaking review of the case leads to the conclusion that respondent Nicdao's acquittal likewise carried with it the extinction of the action to enforce her civil liability. There is simply no basis to hold respondent Nicdao civilly liable to petitioner Ching.

First, the CA's acquittal of respondent Nicdao is not merely based on reasonable doubt. Rather, it is based on the finding that she did not commit the act penalized under BP 22. In particular, the CA found that the P20,000,000.00 check was a stolen check which was never issued nor delivered by respondent Nicdao to petitioner Ching. As such, according to the CA, petitioner Ching "did not acquire any right or interest over Check No. 002524 and cannot assert any cause of action founded on said check,"[41] and that respondent Nicdao "has no obligation to make good the stolen check and cannot, therefore, be held liable for violation of B.P. Blg. 22."[42]With respect to the ten (10) other checks, the CA established that the loans secured by these checks had already been extinguished after full payment had been made by respondent Nicdao. In this connection, the second element for the crime under BP 22, i.e., "that the check is made or drawn and issued to apply on account or for value," is not present.

Second, in acquitting respondent Nicdao, the CA did not adjudge her to be civilly liable to petitioner Ching. In fact, the CA explicitly stated that she had already fully paid her obligations. The CA computed the payments made by respondent Nicdao vis-à-vis her loan obligations in this manner:

Clearly, adding the payments recorded at the back of the cigarette cartons by Emma Nuguid in her own handwriting totaling P5,780,000.00 and the P1,200,000.00 demand draft received by Emma Nuguid, it would appear that petitioner [respondent herein] had already made payments in the total amount of P6,980,000.00 for her loan obligation of only P2,100,000.00 (P950,000.00 in the case at bar and P1,150,000.00 in CA-G.R. CR No. 23054).[43]

On the other hand, its finding relative to the P20,000,000.00 check that it was a stolen check necessarily absolved respondent Nicdao of any civil liability thereon as well.

Third, while petitioner Ching attempts to show that respondent Nicdao's liability did not arise from or was not based upon the criminal act of which she was acquitted (ex delicto) but from her loan obligations to him (ex contractu), however, petitioner Ching miserably failed to prove by preponderant evidence the existence of these unpaid loan obligations. Significantly, it can be inferred from the following findings of the CA in its decision acquitting respondent Nicdao that the act or omission from which her civil liability may arise did not exist. On the P20,000,000.00 check, the CA found as follows:

True, indeed, the missing pre-signed and undated check no. 002524 surfaced in the possession of complainant Ching who, in cahoots with his paramour Emma Nuguid, filled up the blank check with his name as payee and in the fantastic amount of P20,000,000.00, dated it October 6, 1997, and presented it to the bank on October 7, 1997, along with the other checks, for payment. Therefore, the inference that the check was stolen is anchored on competent circumstantial evidence. The fact already established is that Emma Nuguid, previous owner of the store, had access to said store. Moreover, the possession of a thing that was stolen, absent a credible

reason, as in this case, gives rise to the presumption that the person in possession of the stolen article is presumed to be guilty of taking the stolen article (*People v. Zafra*, 237 SCRA 664).

As previously shown, at the time check no. 002524 was stolen, the said check was blank in its material aspect (as to the name of payee, the amount of the check, and the date of the check), but was already pre-signed by petitioner. In fact, complainant Ching himself admitted that check no. 002524 in his possession was a blank check (TSN, Jan. 7, 1998, pp. 24-27, Annex J, Petition).

Moreover, since it has been established that check no. 002524 had been missing since 1995 (TSN, Sept. 9, 1998, pp. 14-15, Annex DD, Petition; TSN, Sept. 10, 1998, pp. 43-46, Annex EE, Petition), it is abundantly clear that said check was never delivered to complainant Ching. Check no. 002524 was an incomplete and undelivered instrument when it was stolen and ended up in the hands of complainant Ching. Sections 15 and 16 of the Negotiable Instruments Law provide:

x x x x

In the case of check no. 002524, it is admitted by complainant Ching that said check in his possession was a blank check and was subsequently completed by him alone without authority from petitioner. Inasmuch as check no. 002524 was incomplete and undelivered in the hands of complainant Ching, he did not acquire any right or interest therein and cannot, therefore, assert any cause of action founded on said stolen check (*Development Bank of the Philippines v. Sima We*, 219 SCRA 736, 740).

It goes without saying that since complainant Ching did not acquire any right or interest over check no. 002524 and cannot assert any cause of action founded on said check, petitioner has no obligation to make good the stolen check and cannot, therefore, be held liable for violation of B.P. Blg. 22.[44]

Anent the other ten (10) checks, the CA made the following findings:

Evidence sufficiently shows that the loans secured by the ten (10) checks involved in the cases subject of this petition had already been paid. It is not controverted that petitioner gave Emma Nuguid a demand draft valued at P1,200,000 to pay for the loans guaranteed by said checks and other checks issued to her. Samson Ching admitted having received the demand draft which he deposited in his bank account. However, complainant Samson Ching claimed that the said demand draft represents payment for a previous obligation incurred by petitioner. However, complainant Ching failed to adduce any evidence to prove the existence of the alleged obligation of the petitioner prior to those secured by the subject checks.

Apart from the payment to Emma Nuguid through said demand draft, it is also not disputed that petitioner made cash payments to Emma Nuguid who collected the payments almost daily at the Vignette Superstore. As of July 21, 1997, Emma Nuguid collected cash payments amounting to approximately P5,780,000.00. All of these cash payments were recorded at the back of cigarette cartons by Emma Nuguid in her own handwriting, the authenticity and accuracy of which were never denied by either complainant Ching or Emma Nuguid.

Clearly, adding the payments recorded at the back of the cigarette cartons by Emma Nuguid in her own handwriting totaling P5,780,000.00 and the P1,200,000.00 demand draft received by Emma Nuguid, it would appear that petitioner had already made payments in the total amount of P6,980,000.00 for her loan in the total amount of P6,980,000.00 for her loan obligation of only P2,100,000.00 (P950,000.00 in the case at bar and P1,150,000.00 in CA-G.R. CR No. 23054).[45]

Generally checks may constitute evidence of indebtedness.[46] However, in view of the CA's findings relating to the eleven (11) checks - that the P20,000,000.00 was a stolen check and the obligations secured by the other ten (10) checks had already been fully paid by respondent Nicdao - they can no longer be given credence to establish respondent Nicdao's civil liability to petitioner Ching. Such civil liability, therefore, must be established by preponderant evidence other than the discredited checks.

After a careful examination of the records of the case,[47] the Court holds that the existence of respondent Nicdao's civil liability to petitioner Ching in the amount of P20,950,000.00 representing her unpaid obligations to the latter has not been sufficiently established by preponderant evidence. Petitioner Ching mainly relies on his testimony before the MCTC to establish the existence of these unpaid obligations. In gist, he testified that from October 1995 up to 1997, respondent Nicdao obtained loans from him in the total amount of P20,950,000.00. As security for her obligations, she issued eleven (11) checks which were invariably blank as to the date, amounts and payee. When respondent Nicdao allegedly refused to pay her obligations despite his due demand, petitioner filled up the checks in his possession with the corresponding amounts and date and deposited them in his account. They were subsequently dishonored by the HSLB for being "DAIF" and petitioner Ching accordingly filed the criminal complaints against respondent Nicdao for violation of BP 22.

It is a basic rule in evidence that the burden of proof lies on the party who makes the allegations - *Et incumbit probatio, qui dicit, non qui negat; cum per rerum naturam factum negantis probatio nulla sit* (The proof lies upon him who affirms, not upon him who denies; since, by the nature of things, he who denies a fact cannot produce any proof).[48] In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of evidence" or "greater weight of the credible evidence." Preponderance of evidence is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[49] Section 1, Rule 133 of the Revised Rules of Court offers the guidelines in determining preponderance of evidence:

SEC. 1. Preponderance of evidence, how determined. - In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

Unfortunately, petitioner Ching's testimony alone does not constitute preponderant evidence to establish respondent Nicdao's civil liability to him amounting to P20,950,000.00. Apart from the discredited checks, he failed to adduce any other documentary evidence to prove that respondent Nicdao still has unpaid obligations to him in the said amount. Bare allegations, unsubstantiated by evidence, are not equivalent to proof under our Rules.[50]

In contrast, respondent Nicdao's defense consisted in, among others, her allegation that she had already paid her obligations to petitioner Ching through Nuguid. In support thereof, she presented the Planters Bank demand draft for P1,200,000.00. The said demand draft was negotiated to petitioner Ching's account and he admitted receipt of the value thereof. Petitioner Ching tried to controvert this by claiming that it was payment for a previous transaction between him and respondent Nicdao. However, other than his self-serving claim, petitioner Ching did not proffer any documentary evidence to prove the existence of the said previous transaction. Considering that the Planters Bank demand draft was dated August 13, 1996, it is logical to conclude that, absent any evidence to the contrary, it formed part of respondent Nicdao's payment to petitioner Ching on account of the loan obligations that she obtained from him since October 1995.

Additionally, respondent Nicdao submitted as evidence the cigarette wrappers at the back of which were written the computations of the daily payments that she had made to Nuguid. The fact of the daily payments was

corroborated by the other witnesses for the defense, namely, Jocelyn Nicdao and Tolentino. As found by the CA, based on these computations, respondent Nicdao had made a total payment of P5,780,000.00 to Nuguid as of July 21, 1997.[51] Again, the payments made, as reflected at the back of these cigarette wrappers, were not disputed by petitioner Ching. Hence, these payments as well as the amount of the Planters Bank demand draft establish that respondent Nicdao already paid the total amount of P6,980,000.00 to Nuguid and petitioner Ching.

The Court agrees with the CA that the daily payments made by respondent Nicdao amounting to P5,780,000.00 cannot be considered as interest payments only. Even respondent Nicdao testified that the daily payments that she made to Nuguid were for the interests due. However, as correctly ruled by the CA, no interests could be properly collected in the loan transactions between petitioner Ching and respondent Nicdao because there was no stipulation therefor in writing. To reiterate, under Article 1956 of the Civil Code, "no interest shall be due unless it has been expressly stipulated in writing."

Neither could respondent Nicdao be considered to be estopped from denying the validity of these interests. Estoppel cannot give validity to an act that is prohibited by law or one that is against public policy.[52] Clearly, the collection of interests without any stipulation therefor in writing is prohibited by law. Consequently, the daily payments made by respondent Nicdao amounting to P5,780,000.00 were properly considered by the CA as applying to the principal amount of her loan obligations.

With respect to the P20,000,000.00 check, the defense of respondent Nicdao that it was stolen and that she never issued or delivered the same to petitioner Ching was corroborated by the other defense witnesses, namely, Tolentino and Jocelyn Nicdao.

All told, as between petitioner Ching and respondent Nicdao, the requisite quantum of evidence - preponderance of evidence - indubitably lies with respondent Nicdao. As earlier intimated, she cannot be held civilly liable to petitioner Ching for her acquittal; under the circumstances which have just been discussed lengthily, such acquittal carried with it the extinction of her civil liability as well.

The CA committed no reversible error
in not consolidating CA-G.R. CR No.
23055 and CA-G.R. CR No. 23054

During the pendency of CA-G.R. CR No. 23055 and CA-G.R. CR No. 23054 in the CA, the pertinent provision of the RIRCA on consolidation of cases provided:

SEC. 7. Consolidation of Cases. - Whenever two or more allied cases are assigned to different Justices, they may be consolidated for study and report to a single Justice.

(a) At the instance of any party or Justice to whom the case is assigned for study and report, and with the conformity of all the Justices concerned, the consolidation may be allowed when the cases to be consolidated involve the same parties and/or related questions of fact and/or law.[53]

The use of the word "may" denotes the permissive, not mandatory, nature of the above provision. Thus, no grave error could be imputed to the CA when it proceeded to render its decision in CA-G.R. CR No. 23055, without consolidating it with CA-G.R. CR No. 23054.

WHEREFORE, premises considered, the Petition is DENIED for lack of merit.

SO ORDERED.

Ynares-Santiago, Austria-Martinez, Chico-Nazario and Nachura, JJ., we concur.

[1] Penned by Associate Justice Artemio G. Tuquero, with Associate Justices Eubulo G. Verzola and Elvi John S. Asuncion concurring; rollo, pp. 58-67.

[2] Criminal Case No. 9433.

[3] Criminal Case No. 9434. [4] Criminal Case No. 9435.

[5] Criminal Case No. 9436.

[6] Criminal Case No. 9437.

[7] Criminal Case No. 9438.

[8] Criminal Case No. 9439.

[9] Criminal Case No. 9440.

[10] Criminal Case No. 9441.

[11] Criminal Case No. 9442.

[12] Criminal Case No. 9443.

[13] TSN, December 10, 1997, pp. 9-36.

[14] TSN, January 7, 1998, pp. 5-39.

[15] TSN, January 28, 1998, pp. 7-15.

[16] Id. at 16-20.

[17] TSN, August 5, 1998, pp. 10-36.

[18] Exhibits "7" to "14". Also referred to as "cigarette cartons".

[19] TSN, August 19, 1998, pp. 8-14.

[20] TSN, September 9, 1998, pp. 10-32.

[21] TSN, September 30, 1998, pp. 14-35.

[22] Id. at 37-53.

[23] TSN, October 21, 1998, pp. 4-16.

[24] Id. at 17-21.

[25] Citing *Navarro v. Court of Appeals*, G.R. Nos. 112389-90, August 1, 1994, 234 SCRA 639, 643-644.

[26] Citing *Cruz v. Court of Appeals*, G.R. No. 108738, June 17, 1994, 233 SCRA 301, 308.

[27] Rollo (Vol. I), p. 80.

[28] Id. at 66-67.

[29] Id. at 60-61.

[30] Citing Civil Code, Art. 1231, par. 1.

[31] Citing *People v. Zafra*, G.R. No. 110079, October 19, 1994, 237 SCRA 664, 667.

[32] Citing *Development Bank of the Philippines v. Sima Wei*, G.R. No. 85419, March 9, 1993, 219 SCRA 736, 741.

[33] Rules and Guidelines in the Filing and Prosecution of Criminal Cases under Batas Pambansa Bilang 22.

[34] Revised Penal Code, Article 100.

[35] In 2000, the Supreme Court amended the Rules on Criminal Procedure. Section 1, Rule 111 now reads in full:

SEC. 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.

The reservation of the right to institute separately the civil action shall be made before the prosecution starts presenting its evidence and under circumstances affording the offended party a reasonable opportunity to make such a reservation.

When the offended party seeks to enforce civil liability against the accused by way of moral, nominal, temperate, or exemplary damages without specifying the amount thereof in the complaint or information, the filing fees therefor shall constitute a first lien on the judgment awarding such damages.

Where the amount of damages, other than actual, is specified in the complaint or information, the corresponding filing fees shall be paid by the offended party upon the filing thereof in court.

Except as otherwise provided in these Rules, no filing fees shall be required for actual damages.

No counterclaim, cross-claim or third-party complaint may be filed by the accused in the criminal case, but any cause of action which could have been the subject thereof may be litigated in a separate civil action.

(b) The criminal action for violation of Batas Pambansa Blg. 22 shall be deemed to include the corresponding civil action. No reservation to file such civil action separately shall be allowed.

Upon filing of the aforesaid joint criminal and civil actions, the offended party shall pay in full the filing fees based on the amount of the check involved, which shall be considered as the actual damages claimed.

Where the complaint or information also seeks to recover liquidated, moral, nominal, temperate or exemplary damages, the offended party shall pay additional filing fees based on the amounts alleged therein. If the amounts are not so alleged but any of these damages are subsequently awarded by the court, the filing fees based on the amount awarded shall constitute a first lien on the judgment.

Where the civil action has been filed separately and trial thereof has not yet commenced, it may be consolidated with the criminal action upon application with the court trying the latter case. If the application is granted, the trial of both actions shall proceed in accordance with section 2 of this Rule governing consolidation of the civil and criminal actions.

[36] As amended, Section 2, Rule 111 now reads:

SEC. 2. When separate civil action is suspended. - After the criminal action has been commenced, the separate civil action arising therefrom cannot be instituted until final judgment has been entered in the criminal action.

If the criminal action is filed after the said civil action has already been instituted, the latter shall be suspended in whatever stage it may be found before judgment on the merits. The suspension shall last until final judgment is rendered in the criminal action. Nevertheless, before judgment on the merits is rendered in the civil action, the same may, upon motion of the offended party, be consolidated with the criminal action in the court trying the criminal action. In case of consolidation, the evidence already adduced in the civil action shall be deemed automatically reproduced in the criminal action without prejudice to the right of the prosecution to cross-examine the witnesses presented by the offended party in the criminal case and of the parties to present

additional evidence. The consolidated criminal and civil actions shall be tried and decided jointly.

During the pendency of the criminal action, the running of the period of prescription of the civil action which cannot be instituted separately or whose proceeding has been suspended shall betolled.

The extinction of the penal action does not carry with it extinction of the civil action. However, the civil action based on delict shall be deemed extinguished if there is a finding in a final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist.

[37] Revised Rules of Court, Rule 120, Sec. 2, last paragraph.

[38] 373 Phil. 150, 153 (1999).

[39] 458 Phil. 504, 515 (2003).[40] Sanchez v. Far East Bank and Trust Company, G.R. No. 115308, November 15, 2005, 475 SCRA 97, 109 citing, among others, People v. Ursua, 60 Phil. 252 (1934); People v. Rodriguez, 97 Phil. 349 (1955). [41] CA Decision, p. 9; rollo (Vol. I), p. 66.

[42] Id.; id.

[43] Id. at 5; id. at 62.[44] CA Decision, pp. 8-9; rollo, pp. 65-66.[45] Id. at 4-5; id. at 61-62.

[46] Go v. Bacaron, G.R. No. 159048, October 11, 2005, 472 SCRA 339, 349.

[47] Ordinarily, questions of facts are not taken up in a petition for review in certiorari under Rule 45 of the Rules of Court. However, the Court has been constrained to review the factual issues in this case, as they fall under one of the recognized exceptions to this rule, in particular, the findings of the CA in this case are contrary to those of the MCTC and RTC. See, for example, Menchavez v. Teves, Jr., G.R. No. 153201, January 26, 2005, 449 SCRA 380, 395.

[48] Acabal v. Acabal, G.R. No. 148376, March 31, 2005, 454 SCRA 555, 569.

[49] Republic v. Orfinada, Sr., G.R. No. 141145, November 12, 2004, 442 SCRA 342, 351-352.[50] Manzano v. Perez, Sr., 414 Phil. 728, 738 (2001).[51] CA Decision, p. 5; rollo (vol. I), p. 62.[52] Ouano v. Court of Appeals, 446 Phil. 690, 708 (2003). [53] Rule 3 of the 1994 Revised IRCA. In the 2002 RIRCA, the pertinent provision (Section 3, Rule 3) on consolidation now reads:

SEC. 3. Consolidation of Cases. - When related cases are assigned to different Justices, they may be consolidated and assigned to one Justice.

(a) At the instance of a party with notice to the other party; or at the instance of the Justice to whom the case is assigned, and with the conformity of the Justice to whom the cases shall be consolidated, upon notice to the parties, consolidation may be allowed when the cases involve the same parties and/or related questions of facts or law.

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