

**JAIME DICO, PETITIONER, VS. HON. COURT OF APPEALS AND
PEOPLE OF THE PHILIPPINES, RESPONDENTS.***G.R. NO. 141669. February 28, 2005*

Ponente: CHICO-NAZARIO, J.

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Before us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, seeking the reversal of the Decision[1] of the Court of Appeals dated 30 September 1999 and its Resolution[2] dated 11 January 2000 denying petitioner's motion for reconsideration.

Accused Jaime Dico, now petitioner, was charged on 28 March 1994 with three (3) counts of violation of Batas Pambansa Bilang 22 (B.P. Blg. 22), docketed as Criminal Cases No. 38254-R to No. 38256-R, before the Municipal Trial Court in Cities (MTCC), Branch 7, Cebu City.

The accusatory portion of the Information in Criminal Case No. 38254-R reads:

That on or about the 12[th] day of May, 1993 and for sometime subsequent thereto, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, knowing at the time of issue of the check she/he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, with deliberate intent, with intent of gain and of causing damage, did then and there issue, make or draw Far East Bank and Trust Co. Check No. 364903 dated May 12, 1993 in the amount of P100,000.00 payable to Equitable Banking Corp. which check was issued in payment of an obligation of said accused, but when said check was presented with said bank, the same was dishonored for reason Account Closed and despite notice and demands made to redeem or make good said check, said accused failed and refused, and up to the present time still fails and refuses to do so, to the damage and prejudice of said Equitable Card Network Inc. in the amount of P100,000.00 Philippine Currency.[3]

The two other Informations are similarly worded except for the number, date, and amount of the checks. The pertinent data in the other informations are as follows:

Case No. Check No. Date Amount

38255-R 369404 June 12, 1993 P200,000.00[4]

38256-R 369380 Jan. 15, 1993 P296,736.27[5]

When arraigned on 11 January 1995, accused pleaded "not guilty" to each of the charges. Upon agreement of the parties, pre-trial of the cases was waived.[6] The cases were consolidated and were jointly heard.

The prosecution presented Lily Canlas,[7] Collection Manager of Equitable Card Network, Inc., as its sole witness. On the other hand, the defense presented two witnesses – Debbie Dy, Manager of Equitable Card Network, Inc., Cebu Branch, as a hostile witness, and the petitioner himself.

The facts, as summarized by the MTCC, are quoted by the Court of Appeals:

The evidence of the prosecution adduced thru the testimony of Lily Canlas, collection manager of the complainant Equitable Card Network, Inc. show that the accused is a credit card holder of the said network; that the complainant filed these cases because the three (3) checks which the accused issued in its favor, and in payment of his obligation to the complainant card network all bounced, for reason "Account Closed" (Exhs. "A," "B," "C," "A-1," "B-1," and "C-1").

That the complainant sent a letter to the accused to redeem or pay the amounts of the checks but the accused refused to comply, hence, the filing of these cases in Court. (Exhs. "2," "3" and "4").

On cross-examination, Ms. Canlas testified that in 1993, the credit line of the accused with the complainant Equitable Card Network was P499,000.00; that the accused had a good record with the complainant until he issued the bouncing checks above-mentioned; that the outstanding obligation of the accused to the complainant Equitable Card Network including interests and charges thereon is P1,035,590.28 (Exh. "D" and "D-1"); and that the obligation of the accused to the complainant rose to a million because the accused abused his credit card; that in January, 1993, the accused applied with the complainant for an increase of his credit line to P699,000.00 but this was rejected by the complainant (Exh. "1"), because the amount of P499,000.00 is the highest credit line that the complainant can give the accused, and besides, the current obligation of the accused has not yet been settled.

For his defense, the accused presented Ms. Debbie Dy, Branch Manager of the local branch of the complainant Equitable Card Network as his hostile witness who testified that she is familiar with the accounts of the accused with the complainant; that including interests and other charges, the total obligation of the accused to the complainant is P1,035,590.31; that the credit line of the accused with the complainant is P499,000.00; and the accused's application for an increase of his credit line P699,000.00 was rejected by the complainant; and that the total amount of the three (3) checks issued by the accused in favor of the complainant in three (3) cases is P596,736.27.

The accused Jaime Dico testifying on direct examination admits having issued in favor of the complainant Equitable Card Network FEBTC Check No. 369380 dated January 15, 1993 in the amount of P296,736.27 (Exh. "A"); FEBTC Check No. 369403 dated May 12, 1993 in the amount of P100,000.00 (Exh. "B") and FEBTC Check No. 369404 dated June 12, 1993 in the amount of P200,000.00 (Exh. "C").

That due to the conflicts and inconsistencies in the billings made upon him by the complainant with regard(s) to amounts reflected in his accounts, he advised the Branch Manager then, Bernard Chua not to present to the bank the checks that he has issued until all the said conflicts and inconsistencies in his accounts shall have been reconciled.

That since 1985, he is a credit card holder of the complainant Equitable Card Network, Inc., and when he issued the checks in question, he was holding the position of sales manager of the Yap Auto Supply, Cebu City; and because of the nature of his work which is to travel in the Visayas and Mindanao, he needed a credit card in his trips.

That as of January, 1993, his credit limit with the complainant was exactly P499,000.00; and the reconciliation of his billings which he has asked the complainant over the years [was] not heeded; that because P596,736.27 is quite a big amount, he did not redeem the checks he issued because he wanted to be sure that he would be paying the right amount.

That with respect to the check (Exh. "B") dated May 12, 1993, in the amount of P100,000.00, he issued said check on April 7, 1993; and because of the inconsistencies in his billings, and because he was billed every month, he proposed to the Branch Manager then, Bernard Chua that pending reconciliation of his accounts, he will issue four (4) checks; the three (3) of which are the checks marked as the prosecution's Exhs. "A," "B," and "C" and subject of these cases, and another check; that he issued above-mentioned four (4) checks in addition to his cash payment of P100,000.00 which he has paid to Bernard Chua; that in his proposal dated

April 7, 1993 (Exh. "12"), he included the above-mentioned four (4) post dated checks as a sign of good faith; and as a way of commitment to pay his outstanding balance to the complainant which is to [be] amortized as follows: May 12, 1993 – P100,000.00; June 12, 1993 - P200,000.00; July 12, 1993 – P300,000.00; and on August 12, 1993 – P300,000.00; but his proposal was rejected by the complainant's top management in Manila; that based on Exh. "8" which is the Summary furnished by Debbie Dy, incumbent Branch Manager of the complainant network in Cebu City, his outstanding balance to the complainant is P752,389.19, but with the payment of P100,000.00 he made on April 7, 1993, his balance to the complainant is P652,389.19.

That he does not understand why his total obligation to the complainant has already reached P1,035,589.28 when his credit line is only P499,000.00; hence, he approached the complainant's manager to reconcile his accounts and find out where the complainant was mistaken; that even if his accounts were reconciled, he cannot admit that his obligation to the complainant has already reached millions; and that the problem with the complainant is that it did not return to him the checks which he sent to the complainant together with his proposal to reconcile his accounts.

On cross-examination, the accused testified that on April 6, 1993, he made a cash payment of P100,000.00 to the complainant; then on January 15, 1993, he issued the check Exh. "A"; then on April 7, 1993, he issued the checks Exhs. "B" and "C"; and then on April 30, 1993, he issued two (2) other checks to the complainant; and the total out of these five (5) checks which he has issued in favor of the complainant is P1,881,000.12.

That on May 31, 1993, he filed a Petition For Insolvency with the Regional Trial Court, Cebu City (Exh. "B"); that attached to the said Petition is Schedule "A" which contains a Statement of his Assets and Liabilities; that as reflected in the Schedule of Creditors (Exh. "E-3"), one of his creditors is the Equitable Card Network (Exh. "E-3-A") which is the complainant in these cases; and the nature of his obligation to the said creditor is a loan in the amount of P1,888,181.29 (Exh. "B-3-A").

It is also confirmed by the accused that in the Schedule List of Check issued (Exh. "E-4"), the seven (7) checks mentioned therein (Exh. "E-4-A") include the checks which issued to the complainant in these cases and marked as Exhs. "A," "B," and "C."

The accused further testified on cross-examination that although he could not agree on his outstanding obligation to the complainant, he nevertheless placed his total liability to the complainant in his Petition, because he was made to understand in the insolvency proceedings that he has to list down the checks that he has issued but were never returned to him; and since the complainant did not return to him the checks subject of these cases, he has to include said checks in his assets and liabilities in his petition for insolvency.[8]

In a decision dated 19 June 1996, Amado B. Bajarias, Sr., Presiding Judge of the MTCC, Branch 7, Cebu City, convicted petitioner of the crimes charged. The dispositive portion of which reads:

WHEREFORE, the Court finds the accused Jaime Dico guilty beyond reasonable doubt of the crime of violation of BP Blg. 22 as defined and penalized under Sec. 1 of the said law and as charged in the above-entitled three (3) Informations, and hereby imposes upon the accused; the following penalties:

- 1) For Crim. Case No. 38254-R, to suffer imprisonment of six (6) months, and to indemnify the complainant, the sum of P100,000.00;
- 2) For Crim. Case No. 38255-R, to suffer imprisonment of six (6) months, and to indemnify the complainant, the sum of P200,000.00; and
- 3) For Crim. Case No. 3856-R,[9] to suffer imprisonment of six (6) months, and to indemnify the complainant the sum of P296,736.27.[10]

On 25 July 1996, petitioner filed a Motion for Reconsideration[11] which the prosecution opposed.[12] In an order dated 26 August 1996, the motion was denied.[13]

On 30 August 1996, petitioner appealed to the Regional Trial Court (RTC) by filing a notice of appeal.[14]

In a Judgment dated 20 February 1997, Ferdinand J. Marcos, Presiding Judge of the RTC of Cebu City, Branch 20, affirmed en toto the decision of the MTCC.[15] Petitioner moved for its reconsideration[16] which was opposed by the prosecution.[17] On 23 June 1997, the motion for reconsideration was denied.[18]

By way of Petition for Review, accused Dico went up to the Court of Appeals seeking the reversal of the Judgment of the RTC which affirmed the decision of the MTCC.[19]

In its Comment to the Petition for Review, the Office of the Solicitor General asked for the dismissal of the petition on the ground that the same had no merit.[20]

In its Decision dated 30 September 1999, the Court of Appeals, in acquitting petitioner in one of the cases, said:

However, with respect to subject FEBTC Check No. 369380 dated January 15, 1993, which was dishonored when presented for payment on May 17, 1993 or beyond ninety (90) days from date thereof, no such prima facie evidence of knowledge of insufficiency of funds or credit exists. Hence, it is incumbent upon the prosecution to adduce evidence to prove that petitioner has “knowledge of the insufficiency of his funds or credit at the time he issued FEBTC Check No. 369380 dated January 15, 1993.” Unfortunately, the prosecution failed to present evidence to establish such “knowledge of insufficiency of funds or credit on the part of the petitioner” regarding the said check, as the record is bereft of any evidence to prove the existence thereof. Perforce, petitioner cannot be convicted of violation of B.P. Blg. 22 with respect to subject FEBTC Check No. 369380 dated January 15, 1993. This, notwithstanding, the petitioner is nevertheless liable to pay private complainant Equitable the amount of P296,736.27 appearing on the face of said check as it was preponderantly proven in the civil aspect of the case that said check was one of the unpaid checks issued by petitioner to settle his standing obligation which up to the present remains unpaid.[21]

The Decision disposes:

WHEREFORE, premises considered, the challenged decision via petition for review is MODIFIED to read as follows:

(1) Petitioner Jaime Dico is ACQUITTED in Criminal Case No. 38256-R but is, nevertheless, ordered to indemnify private complainant the sum of P296,736.27 representing his unpaid obligation covered by FEBTC Check No. 369380 dated January 15, 1993.

(2) The judgment convicting Petitioner Jaime Dico in Criminal Cases Nos. 38254-R and 38255-R and penalizing him to suffer imprisonment of six (6) months in each of the said cases and ordering him to indemnify private complainant in the amount of P100,000.00 and P200,000.00 representing his unpaid obligation covered by FEBTC Check Nos. 369403 (dated May 12, 1993) and 369404 (dated June 12, 1993) is AFFIRMED in toto.[22]

On 11 January 2000, the Court of Appeals denied[23] the Motion for Reconsideration[24] filed by petitioner.

On 14 February 2000, accused Dico filed the instant petition.[25] He prays that the decision and resolution of the Court of Appeals be reversed and set aside, and that he be acquitted in Criminal Cases No. 38254-R and No. 38255-R, or in the alternative, the penalty of imprisonment be deleted, and in lieu thereof, a fine be imposed.

The petition makes the following submissions:

I

THE COURT OF APPEALS’ VERDICT CONVICTING PETITIONER IN TWO OF THE THREE VIOL. OF B.P. 22 CASES VIOLATES PETITIONER’S RIGHT AGAINST NON- IMPRISONMENT FOR A DEBT, AS SUBJECT CHECKS ARE BEYOND THE APPLICATION OF B.P. 22 IN THAT:

A. ELEMENT NO. 2 (KNOWLEDGE OF INSUFFICIENCY OF FUNDS OR CREDIT) OF B.P. 22 IS OSTENSIBLY ABSENT; AND

B. THERE ARE ABUNDANT UNCONTRADICTED YET MISAPPRECIATED EVIDENCE EFFECTIVELY BELYING THE EXISTENCE OF ELEMENT NO. 1 OF B.P. 22 THAT THE CHECKS WERE ISSUED TO APPLY TO ACCOUNT OR FOR VALUE.

II

IT WAS HIGHLY ERRONEOUS FOR THE COURT OF APPEALS TO RELY ON PETITIONER'S/ACCUSED'S OWN EVIDENCE, DESPITE THE PROSECUTION'S SCANT AND WEAK EVIDENCE, TO SUPPORT HIS CONVICTION.

III

THE COURT OF APPEALS FAILED TO APPLY THE BENEFIT OF AN OBVIOUS CLOUD OF DOUBT IN FAVOR OF PETITIONER/ACCUSED.

IV

THE PENALTY OF IMPRISONMENT IS A HARSH AND CRUEL PENALTY CONSIDERING THE ATTENDANT CIRCUMSTANCES.[26]

The resolution of the cases revolves around the question: Was the prosecution able to prove all the elements of B.P. Blg. 22?

The essential elements of the offense penalized under Section 1, B.P. Blg. 22 are as follows: (1) the making, drawing and issuance of any check to apply to account or for value; (2) the knowledge of the maker, drawer or issuer that at the time of issue he does not have sufficient funds or credit with the drawee bank for the payment of such check in full upon its presentment; and (3) subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.[27] The prosecution has the burden to prove all the elements of the crime beyond reasonable doubt. Failure to do so will necessarily result in exoneration.

In the cases at bar, petitioner argues that the first and second elements of the crime are not present.

Re: Criminal Case No. 38254-R

It is axiomatic that where an accused appeals the decision against him, he throws open the whole case for review and it then becomes the duty of the Supreme Court to correct any error as may be found in the appealed judgment, whether it was made the subject of assignment of errors or not.[28]

In the information filed by Felipe C. Belciña, Prosecutor II, the check involved is described as Far East Bank and Trust Company (FEBTC) Check No. 364903 dated 12 May 1993 in the amount of P100,000 payable to Equitable Banking Corporation.[29] However, after going over the records of the case, the parties, including the courts, overlooked the fact that the check being identified in court was different from that described in the information. The prosecution marked as its Exhibit "B" FEBTC Check No. 369403 dated 12 May 1993 in the amount of P100,000 payable to Equitable Banking Corporation. The issue as to the identity of the check, though not raised as an error, should be considered in favor of the petitioner.

The variance in the identity of the check nullifies petitioner's conviction. The identity of the check enters into the first element of the offense under Section 1 of B.P. Blg. 22 – that a person draws or issues a check on account or for value. There being a discrepancy in the identity of the checks described in the information and that presented

in court, petitioner's constitutional right to be informed of the nature of the offense charged will be violated if his conviction is upheld.

In the case of *Alonto v. People*,^[30] this Court had this to say when there was a variance involving the date as regards the check described in the information and that adduced in evidence:

This Court notes, however, that under the third count, the information alleged that petitioner issued a check dated 14 May 1992 whereas the documentary evidence presented and duly marked as Exhibit "I" was BPI Check No. 831258 in the amount of P25,000 dated 05 April 1992. Prosecution witness Fernando Sardes confirmed petitioner's issuance of the three BPI checks (Exhibits G, H, and I), but categorically stated that the third check (BPI Check No. 831258) was dated 14 May 1992, which was contrary to that testified to by private complainant Violeta Tizon, i.e., BPI check No. 831258 dated 05 April 1992. In view of this variance, the conviction of petitioner on the third count (Criminal Case No. Q-93-41751) cannot be sustained. It is on this ground that petitioner's fourth assignment of error is tenable, in that the prosecution's exhibit, i.e., Exhibit "I" (BPI Check No. 831258 dated 05 April 1992 in the amount of P25,000) is excluded by the law and the rules on evidence. Since the identity of the check enters into the first essential element of the offense under Section 1 of B.P. 22, that is, that a person makes, draws or issues a check on account or for value, and the date thereof involves its second element, namely, that at the time of issue the maker, drawer or issuer knew that he or she did not have sufficient funds to cover the same, there is a violation of petitioner's constitutional right to be informed of the nature of the offense charged in view of the aforesaid variance, thereby rendering the conviction for the third count fatally defective.

As the FEBTC Check No. 369403 dated 12 May 1993 in the amount of P100,000.00 was the check adduced in evidence and used as payment for petitioner's unpaid obligation to Equitable Card Network, Inc., petitioner cannot be held civilly liable therefor considering that this is not the check described in the information.^[31]

Re: Criminal Case No. 38255-R

As regards FEBTC Check No. 369404^[32] dated 12 June 1993 which was deposited on 14 June 1993, petitioner maintains that the notice of dishonor given for said check was not the one required by law since said notice was given before the check became due and before it was deposited.

The record of the case shows the only letter received by petitioner involving the three checks subject of these cases was the one dated 08 June 1993.^[33] This letter sent by the counsel of private complainant asked petitioner to make good the checks within five (5) days from receipt thereof, otherwise, criminal charges for violation of B.P. Blg. 22 will be filed against him.

From the evidence presented, it has been proved that FEBTC Check No. 369404 was dishonored when presented for payment on the ground of "Account Closed."

To hold a person liable under B.P. Blg. 22, the prosecution must not only establish that a check was issued and that the same was subsequently dishonored, it must further be shown that accused knew at the time of the issuance of the check that he did not have sufficient funds or credit with the drawee bank for the payment of such check in full upon its presentment.

This knowledge of insufficiency of funds or credit at the time of the issuance of the check is the second element of the offense. Inasmuch as this element involves a state of mind of the person making, drawing or issuing the check which is difficult to prove, Section 2 of B.P. Blg. 22 creates a prima facie presumption of such knowledge. Said section reads:

SEC. 2. Evidence of knowledge of insufficient funds. – The making, drawing and issuance of a check payment of which is refused by the drawee because of insufficient funds in or credit with such bank, when presented

within ninety (90) days from the date of the check, shall be prima facie evidence of knowledge of such insufficiency of funds or credit unless such maker or drawer pays the holder thereof the amount due thereon, or makes arrangements for payment in full by the drawee of such check within five (5) banking days after receiving notice that such check has not been paid by the drawee.

For this presumption to arise, the prosecution must prove the following: (a) the check is presented within ninety (90) days from the date of the check; (b) the drawer or maker of the check receives notice that such check has not been paid by the drawee; and (c) the drawer or maker of the check fails to pay the holder of the check the amount due thereon, or make arrangements for payment in full within five (5) banking days after receiving notice that such check has not been paid by the drawee. In other words, the presumption is brought into existence only after it is proved that the issuer had received a notice of dishonor and that within five days from receipt thereof, he failed to pay the amount of the check or to make arrangements for its payment.[34] The presumption or prima facie evidence as provided in this section cannot arise, if such notice of nonpayment by the drawee bank is not sent to the maker or drawer, or if there is no proof as to when such notice was received by the drawer, since there would simply be no way of reckoning the crucial 5-day period.[35]

A notice of dishonor received by the maker or drawer of the check is thus indispensable before a conviction can ensue. The notice of dishonor may be sent by the offended party or the drawee bank.[36] The notice must be in writing.[37] A mere oral notice to pay a dishonored check will not suffice. The lack of a written notice is fatal for the prosecution.

The requirement of notice, its sending to, and its actual receipt by, the drawer or maker of the check gives the latter the option to prevent criminal prosecution if he pays the holder of the check the amount due thereon, or makes arrangements for payment in full by the drawee of such check within five (5) banking days after receiving notice that the check has not been paid.

This Court, in *Ting v. Court of Appeals*,^[38] citing *Lao v. Court of Appeals*, said:

. . . [W]e emphasized that “the full payment of the amount appearing in the check within five banking days from notice of dishonor is a ‘complete defense.’ The absence of a notice of dishonor necessarily deprives an accused an opportunity to preclude a criminal prosecution. Accordingly, procedural due process clearly enjoins that a notice of dishonor be actually served on petitioner. Petitioner has a right to demand – and the basic postulate of fairness require – that the notice of dishonor be actually sent to and received by her to afford her the opportunity to avert prosecution under B.P. 22.”

As already stated above, the only notice received by petitioner for the three checks involved in these cases was that dated 08 June 1993. There is no dispute that there was indeed a demand letter from the counsel of Equitable Card Network, Inc., but the same was received by petitioner before the check’s maturity or due date on 12 June 1993. As testified to by prosecution witness Lily Canlas, the demand letter was sent to petitioner on 08 June 1993^[39] and the check was deposited on 14 June 1993.^[40] The demand letter was sent four days before the date of the check and six days before said check was deposited.

This Court rules that as regards FEBTC Check No. 369404,^[41] petitioner did not receive the notice of dishonor contemplated by the law. There was no valid notice of dishonor to speak of. The term “notice of dishonor” denotes that a check has been presented for payment and was subsequently dishonored by the drawee bank. This means that the check must necessarily be due and demandable because only a check that has become due can be presented for payment and subsequently be dishonored. A postdated check cannot be dishonored if presented for payment before its due date.

The failure of Equitable Card Network, Inc., to send another letter demanding that FEBTC Check No. 369404 be

paid within five days after it has been dishonored prevents the disputable presumption - that petitioner had knowledge of the insufficiency of his funds at the time he issued the check -from arising. Absent such presumption, the burden of evidence shifts to the prosecution to prove such knowledge.[42]

There being no evidence presented by the prosecution to show that petitioner had knowledge of the insufficiency of his funds at the time he issued the check, the second element of the offense was not satisfied. Accordingly, having failed to prove all the elements of B.P. Blg. 22, petitioner must, perforce, be acquitted in Criminal Case No. 38255-R. The decisions convicting petitioner of violation of B.P. Blg. 22 before the Court of Appeals, the RTC and the MTCC are reversed and set aside.

The evidence on record, both testimonial and documentary, shows that petitioner still has an outstanding balance on his credit card with Equitable Card Network, Inc. We, therefore, sustain the finding of the Court of Appeals holding petitioner liable for the amount of P200,000 which is the amount reflected on FEBTC Check No. 369404 representing part of his unpaid obligation to Equitable Card Network, Inc. He is ordered to pay Equitable Card Network, Inc., the amount of P200,000.00 with 12% legal interest per annum, from the filing of the information until the finality of this decision, the sum of which, inclusive of interest shall be subject thereafter to 12% per annum interest until the amount is fully paid.[43]

WHEREFORE, the Court of Appeals Decision dated 30 September 1999 and Resolution dated 11 January 2000 affirming the 19 June 1996 Decision of the Municipal Trial Court in Cities, Branch 7, Cebu City, and the 20 February 1997 Decision of the Regional Trial Court, Branch 20, Cebu City, in Criminal Cases No. 38254-R and No. 38255-R, convicting petitioner JAIME DICO of violation of B.P. Blg. 22 are hereby REVERSED and SET ASIDE, and another one entered ACQUITTING petitioner of the crimes charged on the ground that his guilt has not been proved beyond reasonable doubt.

Petitioner is ordered to pay Equitable Card Network, Inc., the amount of P200,000.00, representing the face value of FEBTC Check No. 369404, with 12% legal interest per annum, from the filing of the information until the finality of this decision, the sum of which, inclusive of interest shall be subject thereafter to 12% per annum interest until the amount is fully paid. Costs de oficio.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

[1] Court of Appeals Rollo, pp. 71-84; Penned by Associate Justice Quirino D. Abad Santos, Jr., with Associate Justices Romeo J. Callejo, Sr. (now Supreme Court Associate Justice) and Mariano M. Umali, concurring.

[2] Id. at 105.

[3] Records, p. 1.

[4] Id. at 12.

[5] Id. at 20.

[6] Id. at 37.

[7] TSN, 08 March 1995.

[8] CA Rollo, pp. 72-76.

[9] Should be 38256-R.

- [10] Records, p. 124.
- [11] Id. at 126-132.
- [12] Id. at 133-134.
- [13] Id. at 136.
- [14] Id. at 139.
- [15] Id. at 312-315.
- [16] Id. at 316-318.
- [17] Id. at 319.
- [18] Id. at 323.
- [19] CA Rollo, pp. 1-44.
- [20] Id. at 57-64.
- [21] Id. at 82.
- [22] Id. at 83.
- [23] Id. at 105.
- [24] Id. at 87-103.
- [25] Rollo, pp. 4-39.
- [26] Id. at 16-17.
- [27] Abarquez v. Court of Appeals, G.R. No. 148557, 07 August 2003, 408 SCRA 500, 506; Lao v. Court of Appeals, G.R. No. 119178, 20 June 1997, 274 SCRA 572, 584; Cabrera v. People, G.R. No. 150618, 24 July 2003, 407 SCRA 247, 256; Rigor v. People, G.R. No. 144887, 17 November 2004; Alonto v. People, G.R. No. 140078, 09 December 2004.
- [28] Tangan v. Court of Appeals, G.R. No. 105830, 15 January 2002, 373 SCRA 119, 122; Nagrampa v. People, G.R. No. 146211, 06 August 2002, 386 SCRA 412, 427; People v. De Leon, G.R. No. 126287, 16 April 2001, 356 SCRA 471, 480.
- [29] Records, p. 1.
- [30] G.R. No. 140078, 09 December 2004.
- [31] Records, p. 1.
- [32] Exhibit C; Crim. Case No. 38255-R.
- [33] Exhibit D; Ibid.
- [34] Ting v. Court of Appeals, G.R. No. 140665, 13 November 2000, 344 SCRA 551, 558.
- [35] Yu Oh v. Court of Appeals, G.R. No. 125297, 06 June 2003, 403 SCRA 300, 313.
- [36] Lao v. Court of Appeals, *supra*, note 27 at 592.

[37] Domagsang v. Court of Appeals, G.R. No. 139292, 05 December 2000, 347 SCRA 75, 83.

[38] Supra, note 34 at 559.

[39] Tsn, 08 March 1995, p. 6.

[40] Id. at 19.

[41] Crim. Case No. 38255-R.

[42] Caras v. Court of Appeals, G.R. No. 129900, 02 October 2001, 366 SCRA 371, 383.

[43] Cabrera v. People, supra, note 27.

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