

EVANGELINE CABRERA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND LUIS GO, RESPONDENTS.

G.R. No. 150618. July 24, 2003

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review of the Decision[1] dated January 25, 2001, and the October 9, 2001 Resolution of the Court of Appeals in CA-G.R. CR No. 17715 affirming the Decision[2] dated January 17, 1993 of the Regional Trial Court (RTC) of Davao City, Branch 17, which found the petitioner Evangeline Cabrera guilty beyond reasonable doubt of three counts of violation of Batas Pambansa Bilang 22 (B.P. Blg. 22), otherwise known as the Bouncing Checks Law.

On August 2, 1993, three Informations were filed charging Evangeline Cabrera with violation of B.P. Blg. 22, the accusatory portion of which respectively reads as follows:

That sometime in April 1992 in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, knowing fully well that she had no sufficient funds in the drawee bank, willfully, unlawfully and feloniously issued and/or made out a Prudential Bank Check No. 665332 in the amount of P50,907.70 postdated July 11, 1992 in favor of Luis Go, in payment of an obligation; but when said check was presented to the drawee bank for encashment, the same was dishonored for the reason "Account Closed" and despite notice of dishonor and demands made upon said accused to make good the check, the same refused and failed to make payment, to the damage and prejudice of the herein complainant in the aforesaid amount of P50,907.70.

Contrary to law.[3]

That sometime in April 1992 in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, knowing fully well that she had no sufficient funds in the drawee bank, willfully, unlawfully and feloniously issued and/or made out a Prudential Bank Check No. 658049 in the amount of P72,311.75 postdated June 12, 1992 in favor of Luis Go, in payment of an obligation; but when said check was presented to the drawee bank for encashment, the same was dishonored for the reason "Account Closed" and despite notice of dishonor and demands made upon said accused to make good the check, the same refused and failed to make payment, to the damage and prejudice of the herein complainant in the aforesaid amount of P72, 311.75.

Contrary to law.[4]

That sometime in April 1992 in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, knowing fully well that she had no sufficient funds in the drawee bank, willfully, unlawfully and feloniously issued and/or made out a Prudential Bank Check No. 658034 in the amount of P67,956.00 postdated May 2, 1992 in favor of Luis Go, in payment of an obligation; but when said

check was presented to the drawee bank for encashment, the same was dishonored for the reason "Account Closed" and despite notice of dishonor and demands made upon said accused to make good the check, the same refused and failed to make payment, to the damage and prejudice of the herein complainant in the aforesaid amount of P67,956.00.

Contrary to law.[5]

The accused, now the petitioner in this case, was duly arraigned, assisted by counsel de oficio and entered a plea of not guilty to all the charges. Joint trial thereafter ensued.

The Case for the Prosecution

Luis Go was the sole proprietor of the Davao Mindanao Pioneer Hardware & Company (DMPH Co.), located at No. 63 Ramon Magsaysay Boulevard, Davao City. One of his customers was Boni Co, a travelling salesman. The two had agreed that Go would sell lumber materials and merchandise to Co on a thirty to forty-day credit basis. Go, however, required Co to issue postdated checks in payment for his purchases. Since Co had no checking account with any bank, he offered to pay for his purchases with postdated checks drawn and issued by the petitioner. Co assured Go that he and the petitioner had a business arrangement. Go made inquiries at the bank and was told that the petitioner handled her checks well. Since Go also believed that Co was a good businessman, he finally agreed to accept the postdated checks issued by the petitioner. Go and Co also agreed that on the due date of the checks, Co would either pay the amount thereof in cash by way of replacement for the same, or Go would negotiate, or deposit the checks in his account and/or the account of DMPH Co.

Co purchased merchandise from Go and delivered postdated checks drawn against the petitioner's checking account with the Davao City Branch of Prudential Bank, bearing the following particulars:

Check Number

Amount

Date

658034 P67,956.00 May 02, 1992

658049 P72,311.75 June 12, 1992

665332 P50,907.70 July 12, 1992

When Co failed to pay for his purchases, Go deposited the three postdated checks in his account with the Far East Bank & Trust Company (FEBTC) on August 3, 1992. As of July 31, 1999, the petitioner had P700.00 in her account. When the checks were deposited, the petitioner's account with the bank had a balance of only P100.04. The bank had closed the petitioner's account on August 4, 1992 after applying the said amount to the payment of bank charges. The drawee bank thus dishonored the petitioner's postdated checks, and duly stamped "Account Closed" on the front and dorsal portions of each check. The drawee bank returned the checks to the FEBTC with the corresponding check return slips. Nevertheless, Go continued selling merchandise to Co, who likewise continued to draw and issue postdated checks; this time drawn against his personal account. Go accepted Co's personal checks, hoping that he would eventually be paid. Co's personal checks were all dishonored by the drawee bank.

Go notified the petitioner that her three checks were dishonored by the drawee bank. She saw Go in his office and confirmed that she and Co had a business arrangement. She asked Go to give Co more time to redeem the postdated checks with cash. Go agreed. However, Co again failed to redeem the checks. The petitioner likewise failed to pay the amounts of the checks despite Go's repeated demands.

The Petitioner's Evidence

Boni Co testified that he was engaged in the business of buying and selling merchandise from DMPH Co. Go had agreed that Co would pay for his purchases on a thirty to forty-day credit basis to be guaranteed by postdated checks. Since Co had no checking account, Go agreed to accept blank checks drawn against the petitioner's checking account with the Prudential Bank. Go also agreed to the arrangement that Co would pay for his purchases after the merchandise was sold and the latter had collected from his customers. Co had paid Go the amount of P120,000.00 for his purchases, but Go did not issue any receipt therefor because of mutual trust and confidence. Go, however, failed to return the three postdated checks issued by the petitioner.

The petitioner admitted that she was the drawer of the three postdated checks, but averred that she did not receive any valuable consideration when she issued the same. She merely affixed her signature on the said checks without filling up the names of the payees, the amounts and the corresponding dates therefor. She and Co had agreed that the checks would not be encashed or deposited, but would merely serve as guarantee for the payment of the stocks purchased by Co. Evidently, the petitioner acted in good faith when she issued the checks and delivered them to Co, and as such should not be held guilty of violating B.P. Blg. 22.

The petitioner also admitted that she spoke to Go but denied having received any notice of dishonor, or any demand letter from the latter or from the DMPH Co., informing her of the dishonor of the checks and demanding payment of the amounts thereof. She only learned that the checks were dishonored when she received a subpoena pertaining to the same.[6]

On January 17, 1993, the trial court rendered a decision finding the petitioner guilty beyond reasonable doubt of three counts of violation of B.P. Blg. 22, the dispositive portion of which reads:

WHEREFORE, finding the evidence of the prosecution more than sufficient, to prove beyond reasonable doubt, the guilt of accused, Evangeline Cabrera, for Violation of Batas Pambansa Blg. 22, pursuant to Section 1 of BP Blg. 22, accused EVANGELINE CABRERA, is sentenced to pay a FINE of P50,907.70, in favor of the government under Crim. Case 30,806-93; under Crim. Case 30,807-93 a FINE of P72,311.75; and under Crim. Case 30,808-93, to pay a FINE of P67,956.00 in favor of the government, with costs.

Moreover, pursuant to Art. 100 in relation to Art. 104 of the Revised Penal Code, governing civil indemnity, accused is furthermore ordered, to pay the amount of:

In Criminal Case 30,806-93, the amount of P50,907.70;

In Criminal Case 30,807-93, the amount of P72,311.75; and

In Criminal Case 30,808-93, the amount of P67,956.00, in favor of Luis Go, with subsidiary imprisonment in case of insolvency, in accordance with the provisions of Art. 39, of the Revised Penal Code, as amended by Republic Act No. 5455, approved on April 21, 1969.[7]

The trial court ruled that the evidence on record showed that the petitioner voluntarily issued the checks in question. Notwithstanding her claim that the said checks were issued merely to accommodate Co and to guarantee the latter's obligations, she is guilty of violation of B.P. Blg. 22 which prohibits and penalizes the mere issuance of a bouncing check. The trial court did not rule on the petitioner's claim that she did not receive any notice of dishonor from the drawee bank or from the private complainant, or any letter of demand notifying her of such dishonor and demanding payment of the amounts of the checks.

Aggrieved, the petitioner interposed an appeal before the Court of Appeals (CA). Therein, she asserted that:

THE TRIAL COURT ERRED IN HOLDING THAT THERE WAS A VALID ISSUANCE OF THE CHECKS IN QUESTION;

THE TRIAL COURT ERRED IN NOT CONSIDERING THE EVIDENCE THAT THE CHECKS IN QUESTION WERE NOT ISSUED FOR A VALID CONSIDERATION IN SO FAR AS THE ACCUSED IS CONCERNED;

THE TRIAL COURT ERRED IN NOT CONSIDERING THAT THE PROSECUTION HAD NOT ESTABLISHED THE ELEMENT OF FRAUD OR DECEIT;

THE TRIAL COURT ERRED IN HOLDING THE ACCUSED LIABLE TO PAY A FINE EQUIVALENT TO THE AMOUNT OF THE CHECKS IN QUESTION; AND

THE TRIAL COURT ERRED IN HOLDING THE ACCUSED LIABLE TO PAY THE COMPLAINANT THE TOTAL SUM OF P191,175.45 NOTWITHSTANDING THE EVIDENCE THAT SHE DID NOT RECEIVE ANY MERCHANDISE.[8]

The petitioner argued in her brief that the prosecution failed to prove that she received any notice of dishonor of the subject checks:

In fact under the law, a drawer of a check is entitled to a notice of dishonor and only if said drawer fails to make good the same within five (5) banking days from receipt of said notice that bad faith or fraud is prima facie presumed to exist.

In the case at bar, no such notice of dishonor was afforded the accused. Hence, for lack of bad faith or fraudulent intent, the accused may not be convicted of the offense charged.

Moreover, the accused may not be said to have knowledge[d] that she has no funds in the bank at the time of issuance because when subject checks were borrowed from her, the obligation of Boni Co and its maturity was not yet fixed.[9]

On January 25, 2001, the CA rendered a decision affirming the decision of the trial court.

WHEREFORE, in the light of the foregoing consideration, the assailed decision is hereby AFFIRMED in toto. Without pronouncement as to costs.[10]

The CA ruled that the petitioner voluntarily and validly issued the blank checks. Thus, the presumption is that the checks were issued for valuable consideration, notwithstanding the claim that they were issued merely as a form of deposit or guaranty.

The CA stressed that the failure of the prosecution to prove that the petitioner was motivated by fraud or deceit in issuing the said checks was of no moment since fraud is not an element of violation of B.P. Blg. 22. The CA emphasized that the act of issuing a worthless check is malum prohibitum; hence, fraud is not an essential element of the crime. However, the CA failed to resolve the petitioner's plea of acquittal for failure of the prosecution to prove that she received any notices of dishonor of the subject checks from the private respondent or from the drawee bank.

Dissatisfied, the petitioner filed a motion for reconsideration of the decision, but the CA resolved on October 9, 2001 to deny the same.[11]

In the petition at bar, the petitioner ascribes several errors to the CA. However, this Court believes that the threshold issue to be resolved is whether or not the petitioner is liable for violation of B.P. Blg. 22, on her plea that:

In fact under the law, a drawer of a check is entitled to a notice of dishonor and only if said drawer fails to make good the same within five (5) banking days from receipt of said notice that bad faith or fraud is prima facie presumed to exist.

In the case at bar, no such notice of dishonor was afforded the accused. Hence, for lack of bad faith or fraudulent intent, the accused may not be convicted of the offense charged.

Moreover, the accused may not be said to have knowledge that she has no funds in the bank at the time of issuance because when subject checks were borrowed from her, the obligation of Boni Co and its maturity was not fixed.

Under the foregoing facts and circumstances, it is unjust for the accused to be fined the total sum of P191,175.45 as a penalty for alleged violation of Batas Pambansa Blg. 22.[12]

The petition is impressed with merit.

Section 1 of B.P. Blg. No. 22 provides that:

SECTION 1. Checks without sufficient funds.--Any person who makes or draws and issues any check to apply on account or for value, knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, which check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment, shall be punished by imprisonment of not less than thirty days but not more than one (1) year or by a fine of not less than but not more than double the amount of the check which fine shall in no case exceed Two Hundred Thousand pesos, or both such fine and imprisonment at the discretion of the court.

The same penalty shall be imposed upon any person who having sufficient funds in or credit with the drawee bank when he makes or draws and issues a check, shall fail to keep sufficient funds or to maintain a credit to cover the full amount of the check if presented within a period of ninety (90) days from the date appearing thereon, for which reason it is dishonored by the drawee bank.

Where the check is drawn by a corporation, company or entity, the person or persons who actually signed the check in behalf of such drawer shall be liable under this Act.

The law enumerates the elements of the offense penalized under B.P. Blg. 22 as follows: (1) the drawing, making 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 (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. The barefaced fact that the petitioner was the signatory to the checks that were subsequently dishonored merely gave rise to a prima facie presumption that she knew of the insufficiency of funds; it did not render her automatically liable for violating B.P. Blg. 22. The prosecution is burdened to prove all the elements of the crime beyond reasonable doubt. [13]

To prove the first and third elements of the crime, Section 3 of the law provides that the introduction in evidence of the unpaid or dishonored check, having the drawee's refusal to pay stamped or written thereon, or attached thereto, with the reason therefor as aforesaid shall be prima facie evidence of the making or issuing of the said checks and the due presentment to the drawee for payment and the dishonor thereof, and that the same was properly dishonored for the reason written, stamped or attached thereto by the drawee on such dishonored checks.[14] It is difficult for the prosecution to prove the second element because knowledge involves a state of mind.[15] Hence, Section 2 of the law provides that:

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.[16]

In order to create the prima facie presumption, that the issuer knew of the insufficiency of funds, it must be shown that he or she received a notice of dishonor and within five banking days thereafter, failed to satisfy the amount of the check or shall arrange for its payment.[17] The prosecution is burdened to prove the acts that gave rise to the prima facie presumption. On the other hand, the drawer has the right to adduce evidence to rebut the same. It is important to stress that this presumption is not conclusive, or one that forecloses or precludes the presentation of evidence to the contrary.[18] Thus, the drawer of the check can still overturn the prima facie presumption by proving that the holder thereof was paid the amount due thereon, or that arrangements were made for payment in full by the drawee of the check within five banking days after receipt of notice that such check has not been paid by the drawee bank.

In *Lao vs. Court of Appeals*,[19] this Court ruled that the full payment of the amount of the check within five banking days from receipt of notice of dishonor is a complete defense. Hence, the absence of a notice of dishonor necessarily deprives the drawer of the check the opportunity to preclude criminal prosecution:

It has been observed that the State, under this statute, actually offers the violator "a compromise by allowing him to perform some act which operates to preempt the criminal action, and if he opts to perform it the action is abated." This was also compared to "certain laws allowing illegal possessors of firearms a certain period of time to surrender the illegally possessed firearms to the Government, without incurring any criminal liability." In this light, 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 postulates 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. Blg. 22.[20]

In *Domagsang vs. Court of Appeals*,[21] this Court held that a mere oral notice or demand to pay is insufficient compliance with the requirements of the law:

Petitioner counters that the lack of a written notice of dishonor is fatal. The Court agrees.

While, indeed, Section 2 of B.P. Blg. 22 does not state that the notice of dishonor be in writing, taken in conjunction, however, with Section 3 of the law, i.e., "that where there are no sufficient funds in or credit with such drawee bank, such fact shall always be explicitly stated in the notice of dishonor or refusal," a mere oral notice or demand to pay would appear to be insufficient for conviction under the law. The Court is convinced that both the spirit and letter of the Bouncing Checks Law would require for the act to be punished thereunder not only that the accused issued a check that is dishonored, but that likewise the accused has actually been notified in writing of the fact of dishonor. The consistent rule is that penal statutes have to be construed strictly against the State and liberally in favor of the accused.

Evidently, the appellate court did not give weight and credence to the assertion that a demand letter was sent by a counsel of the complainant because of the failure of the prosecution to formally offer it in evidence. Courts are bound to consider as part of the evidence only those which are formally offered for judges must base their findings strictly on the evidence submitted by the parties at the trial. Without the written notice of dishonor, there can be no basis, considering what has heretofore been said, for establishing the presence of "actual knowledge of insufficiency of funds." [22]

It is not enough for the prosecution to prove that a notice of dishonor was sent to the drawee of the check. It must also show that the drawer of the check received the said notice because the fact of service provided for in the law

is reckoned from receipt of such notice of dishonor by the drawee of the check.

As adverted to earlier, it is necessary in cases for violation of Batas Pambansa Blg. 22, that the prosecution prove that the issuer had received a notice of dishonor. It is a general rule that when service of notice is an issue, the person alleging that the notice was served must prove the fact of service. (58 Am. Jur. 2d, Notice §45). The burden of proving notice rests upon the party asserting its existence. Now, ordinarily, preponderance of evidence is sufficient to prove notice. In criminal cases, however, the quantum of proof required is proof beyond reasonable doubt. Hence, for Batas Pambansa Blg. 22 cases, there should be clear proof of notice. Moreover, it is a general rule that, when service of a notice is sought to be made by mail, it should appear that the conditions on which the validity of such service depends had existence, otherwise the evidence is insufficient to establish the fact of service (C.J.S., Notice, § 18). In the instant case, the prosecution did not present proof that the demand letter was sent through registered mail, relying as it did only on the registry return receipt. In civil cases, service made through registered mail is proved by the registry receipt issued by the mailing office and an affidavit of the person mailing of facts showing compliance with Section 7 of Rule 13 (See Section 13, Rule 13, 1997 Rules of Civil Procedure). If, in addition to the registry receipt, it is required in civil cases that an affidavit of mailing as proof of service be presented, then with more reason should we hold in criminal cases that a registry receipt alone is insufficient as proof of mailing. In the instant case, the prosecution failed to present the testimony, or at least the affidavit, of the person mailing that, indeed, the demand letter was sent.[23]

In this case, the prosecution failed to adduce in evidence any notice of dishonor of the three postdated checks or any letter of demand sent to and received by the petitioner. The bare testimony of Luis Go that he sent letters of demand to the petitioner notifying her of the dishonor of her checks is utterly insufficient.

For failure of the prosecution to show that notices of dishonor of the three postdated checks were served on the petitioner, or at the very least, that she was sent a demand letter notifying her of the said dishonor, the prima facie presumption under Section 2 of B.P. Blg. 22 that she knew of the insufficiency of funds cannot arise. Thus, there can be no basis for establishing the presence of "actual knowledge of insufficiency of funds."

In light of such failure, we find and so declare that the prosecution failed to prove beyond reasonable doubt all the elements of violation of B.P. Blg. 22. Hence, the need to reverse and set aside the decisions of both the Court of Appeals and the trial court convicting the petitioner of the crime of violation of B.P. Blg. 22.

However, we uphold the decision of the CA affirming the trial court's decision ordering the petitioner to pay to the private respondent the total face value of the checks in the amount of P209,175.45. We stress that a check is an evidence of debt against the drawer, and although may not be intended to be presented, has the same effect as an ordinary check, and if passed upon to a third person, will be valid in his hands like any other check.[24] Hence, the petitioner is obliged to pay to the private respondent Luis Go the said amount of P209,175.45 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 due is fully paid, conformably to our ruling that when an obligation is breached, and it consists in the payment of a sum of money, i.e. a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. In the absence of such stipulation, the rate shall be 12% per annum computed from default, i.e. judicial or extrajudicial demand.[25] In this case, the rate of interest was not stipulated in writing by the petitioner, the private respondent and Boni Co. Thus, the applicable interest rate is 12% per annum.

WHEREFORE, the assailed January 25, 2001 Decision and October 9, 2001 Resolution of the Court of Appeals in C.A-G.R. CR No. 17715 affirming the January 17, 1993 Decision of the Regional Trial Court of Davao City, Branch 17, in Criminal Cases Nos. 30,806-93, 30,807-93 and 30,808-93 convicting the petitioner of violation of B.P. Blg. 22 are hereby REVERSED and SET ASIDE. Petitioner Evangeline Cabrera is ACQUITTED of

violations of B.P. Blg. 22 on the ground that her guilt for the said crimes has not been proved beyond reasonable doubt. The petitioner is hereby directed to pay to the private respondent the total amount of P209,175.45 at 12% interest per annum from the filing of the Informations until the finality of this Decision, the sum of which, inclusive of the interest, shall be subject thereafter to 12% per annum interest until the amount due is fully paid. Costs de officio.

SO ORDERED.

Bellosillo, (Chairman), Austria-Martinez, and Tinga, JJ., concur.
Quisumbing, J., on official leave.

[1] Penned by Justice Josefina Guevarra-Salonga, with Associate Justices Delilah Vidallon-Magtolis and Teodoro P. Regino concurring.

[2] Penned by Judge Renato A. Fuentes.

[3] Rollo, p. 34

[4] Id., at 36.

[5] Id., at 39.

[6] Rollo, p. 47

[7] Rollo, pp. 50-51

[8] CA Rollo, pp 25-26

[9] Records, p. 27.

[10] CA Rollo, p.76

[11] Rollo, p. 72.

[12] Rollo, p. 27.

[13] Lao v. Court of Appeals, 274 SCRA 572 (1997).

[14] SEC. 3. Duty of drawee; rules of evidence.--It shall be the duty of the drawee of any check, when refusing to pay the same to the holder thereof upon presentment, to cause to be written, printed or stamped in plain language thereon, or attached thereto, the reason for drawee's dishonor or refusal to pay the same: Provided, That where there are no sufficient funds in or credit with such drawee bank, such fact shall always be explicitly stated in the notice of dishonor or refusal. In all prosecutions under this Act, the introduction in evidence of any unpaid and dishonored check, having the drawee's refusal to pay stamped or written thereon, or attached thereto, with the reason therefor as aforesaid, shall be prima facie evidence of the making or issuance of said check, and the due presentment to the drawee for payment and the dishonor thereof, and that the same was properly dishonored for the reason written, stamped or attached by the drawee on such dishonored check.

Notwithstanding receipt of an order to stop payment, the drawee shall state in the notice that there were no sufficient funds in or credit with such bank for the payment in full of such check, if such be the fact.

[15] Llamado v. Court of Appeals, 270 SCRA 423 (1997).

[16] Idem, supra.

[17] King v. People, 319 SCRA 654 (1999).

[18] Lao v. Court of Appeals, *supra*.

[19] *Id.*

[20] *Id.*, at 594.

[21] 347 SCRA 75 (2000).

[22] *Id.*, at 83-84.

[23] Ting vs. Court of Appeals, 344 SCRA 551 (2000).

[24] People vs. Judge Nitafan, 215 SCRA 79 (1992).

[25] Franciso v. Court of Appeals, 319 SCRA 354 (1999); People v. Domagsang, 347 SCRA 75, reiterating the doctrine in Eastern Shipping Lines, Inc. v. Court of Appeals, 243 SCRA 78 (1994); Philippine National Bank v. Court of Appeals, 263 SCRA 766 (1996); Philippine Airlines, Inc. v. Court of Appeals, 275 SCRA 621 and Keng Hua Paper Products Co., Inc. vs. Court of Appeals, 286 SCRA 257 (1998).

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