

JOSEPHINE M. SANCHEZ, PETITIONER, VS. FAR EAST BANK AND TRUST COMPANY, RESPONDENT.

G.R. No. 155309. November 15, 2005

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

At bottom, the resolution of this case hinges on the credibility of the witnesses and their testimonies. Since the factual findings of the lower courts are disparate, this Court painstakingly reviewed the records. It found no sufficient reason to disbelieve the well-explained findings and equally logical conclusions of the trial court. The evidence proffered by respondent even corroborated relevant portions of those of petitioner. Thus, the evidence supported the ruling of the trial court that the acquittal of petitioner was based on its reasonable finding that she had not committed the crime imputed to her. Consequently, she incurred no civil liability for the alleged offense.

The Case

Before us is a Petition for Review[2] under Rule 45 of the Rules of Court, seeking to reverse the July 31, 2001 Decision[3] and the August 30, 2002 Resolution[4] of the Court of Appeals (CA) in CA-GR CV No. 53715. The challenged Decision disposed as follows:

"WHEREFORE, the assailed order is REVERSED and SET ASIDE. [Petitioner] JOSEPHINE SANCHEZ is hereby ordered to pay [Respondent] Far East Bank and Trust Company, the amount of One Million One Hundred Eighty Seven Thousand Five Hundred Thirty Pesos and Eighty Six Centavos (P1,187,530.86) as actual damages. This is without prejudice to [petitioner]'s recourse of reimbursement from the other persons who participated in the transactions."[5]

The assailed Resolution denied reconsideration.

The Facts

The antecedents of the case are related by the CA as follows:

"It is undisputed that Kai J. Chin was the director and representative of Chemical Bank. Its subsidiary, the Chemical International Finance Limited (CIFL), was an investor in [Respondent] Far East Bank and Trust [C]ompany (FEBTC), x x x. In representing the interest of CIFL in FEBTC, Chin was made a director and sr. vice president of FEBTC. [Petitioner] Josephine Sanchez was, in turn, assigned as secretary of Chin. CIFL also maintained a checking account (CA# 0009-04212-1) in FEBTC's investment arm, the Far East Bank Investment, Inc. (FEBII). Chin was one of the authorized signatories in the said current and money market accounts.

"According to [respondent], [petitioner] made unauthorized withdrawals from the account of CIFL in FEBTC through the use of forged or falsified applications for cashier's checks which were deposited to her personal accounts. Once credited to her account, she withdrew the amounts and misappropriated, misapplied and converted them to her personal benefit and advantage, to the damage of FEBTC.

"[Petitioner supposedly] employed three modes in the said fraudulent transactions, namely:

"In the First Mode, [petitioner] caused the issuance of a cashier's check payable to 'bearer' with number 461390, dated September 29, 1992, in the sum of P250,040.86. This is the subject of Crim. Case No. 93-126175. She presented a forged letter of confirmation bearing the forged signature of Chin addressed to Beatriz Bagsit, Cash Department Head of FEBTC. This check was paid pursuant to the said confirmation. [Petitioner] immediately deposited this check to her FEBTC Savings Account No. 0101-39109-9 and on September 30, 1992, she withdrew P200,040.86.

"Under the Second Mode, [petitioner] filed applications forms to purchase cashier's checks payable to her, [with] Chin as the supposed purchaser. Said applications were accompanied by a forged memorandum of Chin confirming [petitioner] as the payee-beneficiary. After the approval by Bagsit of the applications and memoranda, checks were issued, as follows:

Check No.

Date

Amount

Exhibit

461739 10/22/92 P489,450.00 'F'

461963 04/11/92 160,550.00 'G'

464801 05/24/93 180,090.00 'H'

465405 06/30/93 107,400.00 'I'

"In compliance with bank procedures [petitioner] signs the checks twice, one as an endorsement and two as proof of receipt of the proceeds which she then deposited to her FEBTC account.

"The Third Mode, was frequently used which involved checks payable to Chin.

"[Petitioner] was designated as Chin's representative to purchase cashier's checks using applications which bore forged signatures of Chin as a purchaser and the payee.

"After Bagsit has approved the application and has checked the authenticity of Chin's signatures, a cashier's check is issued. Then [petitioner] claimed the check, left then came back soon to encash it. The check when presented for encashment already had two signatures of Chin on its dorsal side, both signatures being forged. The first forged signature represents Chin's endorsement of the check as payee and the second, Chin's purported receipt of the check's proceeds. The teller pays the value of the check only if initialed by Bagsit.

"In this mode, 16 checks were issued, to wit:

Check No. Date Amount Exhibit

461417 10/13/93 P100,000.00 'K'

461488 10/20/92 150,000.00 'L'

462197 11/17/92 50,000.00 'M'

461318 11/26/92 190,000.00 'N'

462420 12/09/92 200,400.00 'O'
462482 12/12/92 220,000.00 'P'
462717 01/04/93 210,000.00 'Q'
462946 01/18/93 200,000.00 'R'
463241 02/01/93 180,000.00 'S'
463606 02/26/93 180,000.00 'T'
463776 03/08/93 200,000.00 'U'
463850 03/19/93 200,000.00 'V'
464108 04/01/93 150,000.00 'W'
464329 04/20/93 100,000.00 'X'
464432 04/27/93 150,000.00 'Y'
464620 05/13/93 150,000.00 'Z'

"[Petitioner allegedly] confessed to Chin that she tampered with the CIFL account. Chin referred the matter to the FEBTC's audit division for further investigation. All the cashier's checks, funded by an unauthorized debit against the CIFL account, as well as the corresponding applications for their issuance were examined at the Philippine National Police Crime Laboratory. All of Chin's signatures borne on all the checks and applications were found to have been good forgeries. With the damage done, FEBTC had to reimburse the CIFL account and ultimately suffered the total misappropriated amount of P3,787,530.86." [6]

The main defense of petitioner consisted of a denial of the forgeries. She asserted that she had deposited the checks to her account, under the authority and instructions of Kai Chin. Afterwards, petitioner withdrew the amounts and gave them to him. [7]

Kai Chin denied that he had given that authority to her, and insisted that she had signed the subject documents. However, he did not rebut her testimony that she had turned over the proceeds of the checks to him.

Ruling of the Trial Court

The Regional Trial Court (RTC) did not find Kai Chin to be a credible witness. According to the RTC, FEBTC's records showed that, contrary to his testimony, he had expressly authorized petitioner to transact matters concerning Chemical Bank's account. [8]

The trial judge doubted the integrity of the findings and the report of the PNP handwriting expert. He noted the nonuse during the handwriting analysis of Kai Chin's contemporaneous signatures. Besides, the examination was initiated unilaterally by FEBTC officials, who had submitted sample signatures of their own choice. [9]

The RTC added that the allegedly fraudulent transactions had occurred from September 1992 to June 1993, with the use of documents bearing the signatures of other officials and employees of respondent. In other words, all the questioned transactions had been approved and allowed by the bank officials concerned, despite apparent procedural infirmities. [10] Yet, only petitioner was indicted.

Thus, the RTC disposed as follows:

"FOR ALL THE FOREGOING CONSIDERATIONS, the Court finds and so holds that the prosecution failed to prove the culpability of the accused in any of these cases with moral certainty, and consequently acquits her

from all the charges, with costs de oficio. Her bail bonds are released and the hold departure order as well as the order of attachment are lifted." [11]

Subsequently, respondent filed a Motion for Reconsideration of the civil aspect of the RTC Decision. In an Order [12] dated March 20, 1996, the trial court denied reconsideration. Quoting portions of its Decision, the RTC said in its Order that the acquittal of the accused "was not exactly on the ground of 'reasonable doubt,' but that she was not the author of the frauds allegedly perpetrated (sic)." Thus, it held that "no civil liability against her may properly be made."

Ruling of the Court of Appeals

Granting respondent's appeal, the appellate court ruled that the trial court's judgment of acquittal did not preclude recovery of civil indemnity based on a quasi delict. [13] The CA held that the outcome of the criminal case, whether conviction or acquittal, was inconsequential in adjudging civil liability arising from the same act that could also be considered a quasi delict. Moreover, FEBTC did not have to reserve its right to file a separate civil action for damages, because the law had already made that reservation on respondent's behalf. [14]

The CA further held that, contrary to the trial court's clarifications in its March 20, 1996 Order, petitioner had been acquitted merely on reasonable doubt arising from insufficiency of evidence to establish her identity as perpetrator of the crime. Her acquittal was not due to the nonexistence of the crime for which civil liability could arise. [15] Although it agreed with the RTC that forgery had not been satisfactorily proven by FEBTC, the CA nonetheless found petitioner liable for her failure to turn over to respondent the proceeds of the checks. The failure supposedly constituted an actionable fraud. [16]

Thus, the appellate court ordered petitioner to pay respondent P1,187,530.86 as actual damages, representing the value of the checks that had been paid in her name and to her account. [17]

Hence, this Petition. [18]

The Issues

Petitioner raises the following issues for this Court's consideration:

"(1) Whether the judgment of conviction had already become final at the time the motion for reconsideration of the civil aspect was filed by the complainant-appellant?

"(2) Whether an appeal on the civil aspect may be made from a decision in a criminal case acquitting the accused for being not the author of the crime?

"(3) Whether a separate civil action is necessary to be instituted after the accused is acquitted in a criminal case based on reasonable doubt?

"(4) Whether the civil aspect of the criminal offenses where the accused was acquitted may be pursued by a party other than the offended parties? Otherwise stated, whether the civil liability may be pursued by a party which is not a real party in interest after the acquittal of the accused of the offenses charged?" [19]

The Court's Ruling

The Petition is meritorious.

First Issue:

Timeliness of the Motion for Reconsideration

Because the RTC Decision had been promulgated on December 15, 1995, and respondent's Motion for

Reconsideration was filed two months after, on February 14, 1996, petitioner instantly concludes that the Motion was filed out of time.

Respondent, however, contends that the time for filing the Motion should be counted from February 1, 1996 -- when it received the trial court's Decision -- not from the date of notice to the public prosecutor.[20] To determine the period for filing from the latter date would undermine the dual aspects of a criminal litigation, in which the right of the offended party to appeal the civil aspect is independent of the decision of the accused on whether or not to appeal the case.[21]

We uphold respondent on this issue. Section 6 of Rule 122 of the Rules of Court states as follows:

"SEC. 6. When appeal to be taken. – An appeal must be taken within fifteen (15) days from promulgation of the judgment or from notice of the final order appealed from. This period for perfecting an appeal shall be suspended from the time a motion for new trial or reconsideration is filed until notice of the order overruling the motion has been served upon the accused or his counsel at which time the balance of the period begins to run." [22]

Clearly, the period available to the accused for filing an appeal is fifteen (15) days from the promulgation of the judgment or from notice of the final order appealed from. As early as *Landicho v. Tan*, [23] the Court has held that one who desires a review of a criminal case must appeal within fifteen days from the date the decision or judgment was announced in open court in the presence of the accused, or was promulgated in the manner set forth in Section 6 of Rule 116 (now Section 6 [24] of Rule 120) of the Rules of Court. This ruling was reiterated in *People v. Tamani*, [25] in which the Court has further clarified that the word promulgation in the old provision should be construed as referring to "judgment;" and notice, to "order." [26]

The above ruling, however, is relevant and applicable to the accused who appeals. In the present case, we are confronted with the Motion filed by the private offended party for reconsideration of the civil aspect of the RTC judgment. It should also be noted that she was not required to be present during the promulgation of the judgment.

In a long line of cases [27] as far back as *People v. Ursua*, [28] this Court has ruled that the appeal period accorded to the accused should also be available to the offended party who seeks redress of the civil aspect of a decision. Similarly, courts may apply this ruling to the filing of a motion for reconsideration of a judgment. For them to do so will be consistent with this Court's policy of giving lower tribunals a chance to rectify their possible errors [29] and thereby promote the speedy and just disposition of controversies.

The relevant question is, when should the period for the filing of a motion by a private offended party begin? In *Neplum v. Orbeso*, [30] this Court explained that the period begins to toll upon service of the notice of judgment upon the offended party. Thus:

"Indeed, the rules governing the period of appeal in a purely civil action should be the same as those covering the civil aspects of criminal judgments. If these rules are not completely identical, the former may be supplementary to the latter. x x x. Being akin to a civil action, the present appeal may be guided by the Rules on Civil Procedure." [31]

In the case before us, respondent undisputedly claims that petitioner received notice of the RTC Decision only on February 1, 1996. Records show that FEBTC filed its Motion for Reconsideration on February 14, 1996. The Motion was thus filed within the reglementary period.

Second, Third and Fourth Issues: Civil Liability in Case of Acquittal

Being interrelated, the second, third and fourth issues will be discussed together.

Petitioner contends that her acquittal was not based merely on reasonable doubt, but on the determination that she was not the author of the imputed felonies. She reiterates the trial court's ruling in its March 20, 1996 Order that she could not be held civilly liable, because she was not responsible for the crimes charged.

Arguing on the assumption that she was acquitted on the basis of reasonable doubt, petitioner explains that the appellate court was nevertheless precluded from taking cognizance of the civil aspect of the case, as a separate civil action should have been filed after the judgment of acquittal. She contends that Article 29 of the Civil Code, which mandates the courts to make a finding on the civil liability in case of an acquittal based on reasonable ground, applies only to situations when a crime has been committed but the accused is exempt from criminal liability under the instances enumerated in Article 12 of the Revised Penal Code (RPC).[32]

Petitioner finally argues that the real party-in-interest is not respondent, but Chemical Bank and/or Kai Chin, the owners of the accounts from which the withdrawals were made.[33]

Respondent, on the other hand, asserts that the offended party may appeal the civil aspect of the criminal proceeding despite the judgment of acquittal.[34]

Civil Action Deemed Instituted in the Criminal Proceeding

Article 100 of the RPC states that every person criminally liable for a felony is also civilly liable. This rule holds true, except in instances when no actual damage results from an offense, such as espionage, violation of neutrality, flight to an enemy country, and crime against popular representation.[35]

Clearly, the extinction of the penal liability does not always carry with it the extinction of the civil.[36] According to Article 29 of the Civil Code, if the acquittal is made on the ground that the guilt has not been proved beyond reasonable doubt, the accused may be held civilly liable for damages arising from the same act or omission constituting the offense. As in any ordinary civil case, the liability may be established by a mere preponderance of evidence.

Section 1 of Rule 111 of the 1985 Rules of Court, the prevailing law during the trial of this case below,[37] provided the consequences of acts that produced both civil and criminal liabilities, as follows:

"SECTION 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.

"Such civil action includes 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 x x x x."

Clearly, under the foregoing 1985 rule, an action for the recovery of civil liability arising from an offense charged is necessarily included in the criminal proceedings, unless (1) there is an express waiver of the civil action, or (2) there is a reservation to institute a separate one, or (3) the civil action was filed prior to the criminal complaint.

For this purpose, the offended parties are allowed to intervene in the criminal proceedings, but solely to enforce their right to claim indemnification for damages arising from the criminal act.[38] In *Roa v. De la Cruz*,[39] in which the offended party failed to submit evidence of damages despite having participated in the criminal proceedings, we had the occasion to rule in this wise:

"x x x. For such failure, she has only herself or her counsel to blame. Of course, she could have still filed a motion for reconsideration or an appeal to rectify the error. But this she failed to do, thus allowing the decision

to become final and executory. Under the principle of *res judicata*, that judgment is conclusive as to future proceedings at law not only as to every matter which was offered and received to sustain the claim or demand, but as to any other admissible matter that could have been offered for that purpose."

In the present case, the original action involved a prosecution for estafa or swindling through falsification of commercial documents, an offense defined under the RPC. Records do not show -- and respondent does not claim -- the presence of any of the three instances precluding the automatic institution of the civil action together with the criminal complaint. Ineluctably, respondent's right to damages, if any, was deemed prosecuted in the criminal proceeding. Thus, a separate civil action may no longer be instituted.

Appeal of the Civil Aspect of the Decision Acquitting the Accused

The consequences of an acquittal on the civil liability of the accused are discussed by the Court in *Manantan v. CA*[40] in this wise:

"Our law recognizes two kinds of acquittal, with different effects on the civil liability of the accused. First is an acquittal on the ground that the accused is not the author of the act or omission complained of. This instance closes the door to civil liability, for a person who has been found to be not the perpetrator of any act or omission cannot and can never be held liable for such act or omission. There being no delict, civil liability *ex delicto* is out of the question, and the civil action, if any, which may be instituted must be based on grounds other than the delict complained of. This is the situation contemplated in Rule 111 of the Rules of Court. The second instance is an acquittal based on reasonable doubt on the guilt of the accused. In this case, even if the guilt of the accused has not been satisfactorily established, he is not exempt from civil liability which may be proved by preponderance of evidence only. This is the situation contemplated in Article 29 of the Civil Code, where the civil action for damages is 'for the same act or omission.' x x x."

In *Salazar v. People*,[41] the Court further expounded thus:

"The acquittal of the accused does not prevent a judgment against him on the civil aspect of the case where (a) 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; (c) where the civil liability of the accused does not arise from or is not based upon the crime of which the accused was 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 acts 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."

Based on the foregoing jurisprudence, it is settled that the private offended party may appeal the civil aspect of the judgment despite the acquittal of the accused. But this recourse may prosper only if the nature of the trial court's judgment falls under any of the three categories stated in *Salazar*.

Acquittal of Petitioner Due to the Noncommission of the Imputed Acts

A close scrutiny of the RTC Decision and Order leads us to the conclusion that petitioner did not commit the crime imputed to her. Hence, her acquittal likewise extinguished the action for her civil liability.

In support of this conclusion, we initially quote at length these findings of the trial court:

"Re: Crim. Cases No. 93-126175. – This case involves the bearer check for the amount of P250,040.86[.] This is the earliest questionable transaction allegedly committed by the accused as it happened on 29 September

1992. According to FEBTC records, this was the initial transaction concerning the Chemical account wherein a cashier's check payable to Chemical (CIF) was used by the accused to purchase another cashier's check payable to 'bearer' which was later deposited to the account of accused. During the investigation by the bank's Investigation Committee, Mrs. Bagsit averred that she confirmed the transaction with Kai Chin and which was later on supported by an authorization letter from Kai Chin. (p. 11, Exh. 1).

"There is no dispute that the check was deposited to the personal account of the accused (Exhs. C, C-1 and D) and part of the amount thereof was subsequently withdrawn by her (Exh. E), but accused asserted that the deposit of said check to her account and the subsequent withdrawal of its amount were upon the authority and instructions of Kai Chin, and that the withdrawn amount was actually given by her to Kai Chin.

"Although Kai Chin denied having signed the confirmation memorandum (Exh. B), there is absolutely no evidence on record that the money was never turned over to Kai Chin. Kai Chin did not testify, on direct evidence or on rebuttal, concerning this aspect of the case. x x x.

"Re: Crim. Cases Nos. 93-126172, 93-126178, 93-126189 and 93-126190. -- These four cases involve the Cashier's Checks applied for and made payable to the accused (Exhs. G-1, F-2, H-2 and I-2). Exhs. G-1 and F-2 were encashed by the accused because they bear at their back two signatures of hers, and according to the witnesses for the prosecution the first of such signatures constitutes the indorsement while the second signifies receipt of the proceeds of the payment thereof. On the other hand, Exhs. H-2 and I-2 were deposited by her in her personal account. According to the accused the drawing of the checks in her name and their encashments and deposit to her account were upon the authority and instructions of Kai Chin, and that the values thereof were all turned over to Kai Chin.

x x x x x x x x

"Re: Crim. Case No. 93-126171. -- This case involves a Cashier's Check applied for and made payable to Kai Chin, signed twice at the back but accused nonetheless signed for the receipt of the payment thereof. x x x While Kai Chin denied on direct evidence that he signed the application for the purchase of this check and also the back of the check itself, there is also no showing that the value thereof did not reach him. Accused asserted that this check was applied for and encashed upon the authority and instruction of Kai Chin, and that the value thereof was turned over to the latter.

x x x x x x x x

"Re: the rest of the other criminal cases. -- The remaining fifteen other cases involve checks applied for and drawn in the name of Kai Chin and twice signed at the back. As intimated earlier, the first signature at the back of the check constitutes the indorsement thereof while the second signifies receipt of the payment of the value.

"The only intervention of the accused concerning these checks, as appearing in the documentary exhibits, was her being named as the representative of the purchaser and she must have picked up the checks for and in behalf of the purchaser. (See Exhs. P, N, O, K, L, S, T, M, U, V, W, X, Y and Z). There is no indication, at least from the documents of the prosecution, that accused had a hand in the encashments of the checks, otherwise, she should have been made to sign, as what was done in the case of the check marked as Exh. Q-1." [42]

As can be clearly gleaned from the above, petitioner consistently claimed that she had acted merely upon the instructions and authority of her superior, Kai Chin. While admitting that she had deposited the proceeds of some of the checks to her personal account, she firmly insisted that she subsequently withdrew the cash proceeds and turned them over to him. She denied -- and the records do not show -- that she had ever appropriated those moneys for her personal gain.

On the other hand, as the trial judge clearly noted, Kai Chin did not even bother to rebut the statement of

petitioner that she had turned over the proceeds of the checks to him.[43] All he asserted was that he had neither signed the applications for the purchase of the checks nor endorsed those checks. His credibility was assessed by the judge thus:

"Credibility of Kai Chin. – It must be noticed that, with the exception of the 'bearer' check involved in Crim. Case No. 93-126175, the value of the Cashier's Checks involve[d] were debited from the Chemical account. Kai Chin is undisputably one of the authorized signatories to the Chemical account, and under ordinary course of things, he must be the payee and/or beneficiary of the checks.

"Initially, Kai Chin sweepingly testified as follows:

'Q:

In her capacity as your secretary, when she was your secretary did Josephine Sanchez have anything to do with the Chemical International Finance account?

'A: No, sir. (tsn, p. 9, 8 Nov 1994)'

"The records of the bank and FEBII, however, show otherwise. Thus, as early as April, 1992, Kai Chin had already authorized the accused to transact matters concerning the Chemical account, through a memorandum he sent to Mrs. Beatriz Bagsit and one Ms. Enriquez, reading as follows:

'This is to request for the following:

'1) Ms. Enriquez to partially terminate the amount of P250,000.00 from the CIF's placement (P3M) and credit the same to SA#0101-58459-8 maintained at Intramuros Branch.

'2) Ms. Bagsit to debit SA#0101-58459-8 for P290,000.00 and entrust the same to my Secretary, Ms. Jo Sanchez for proper disposition.

'In view of my home leave/business trip scheduled on April 29-June 8, 1992, the above requests will be confirmed by Ms. Sanchez upon my instructions before the end of May, 1992. (Memo [dated] 28 April 1992, attached as Annex B to Exh. 2.)'

"Kai Chin never denied his signature on this document, either on direct evidence or on rebuttal (as he was not presented as a rebuttal witness)."[44]

The authority conferred by Kai Chin upon petitioner was also borne out by the reports of the FEBTC Investigating Committee, pertinent parts of which were quoted in the RTC Decision as follows:

"4. Initial interview with the officers of FEBII disclosed the following:

'4.1 In January, 1992, Mr. Kai Chin personally went to the office of MS. URSULA A. ALANO, Vice President of FEBII and allegedly informed the latter that he will directly manage the CIF [also referred to as CIFI or Chemical] account. Mr. Chin informed MS ALANO that instructions concerning the account will either originate from his or his representative, MS. J. M. SANCHEZ;

'Based on Mr. Chin's instructions, placements /preterminations/payments of the account were transacted by Mr. Chin himself or his authorized representative, J. SANCHEZ. (p. 9, Exh. 1, underscoring supplied; see also p. 11 of the same exhibit.)'

"These facts were recited in the Memorandum of Ms. U.A. Ulano, attached as Annex 'B' to Exh. 1, which reads as follows:

'Facts: Due to the transfer of Mr. Kai Chin to FEBTC Head Office in Intramuros last January 1992, he personally went to see me in my office to inform me that he was directly managing the CIF account. He also

informed me that instructions concerning the account will either originate from him or his authorized representative, Ms. J. M. Sanchez.

'Based on the given instructions of Mr. Kai Chin, placements/preterminations/payments of the account were transacted by Mr. Kai Chin himself or his authorized representative, Ms. J. M. Sanchez. [Underscoring by the RTC.]'"[45]

The above evidence led the trial court to conclude that "Kai Chin, definitely, was less candid to the [c]ourt when he testified"[46] that petitioner had nothing to do with the CIFL account.

As regards petitioner's testimony, the trial judge observed that she had firmly and straightforwardly echoed the material allegations in her Counter-Affidavit; and that, furthermore, her testimony had been "corroborated by the People's exhibits themselves." [47] Indeed, her claim that she had prior authorization from Kai Chin to undertake the questioned transactions was supported by no less than the prosecution evidence.

Thus, the trial court emphatically concluded that petitioner "was not the author of the frauds allegedly perpetrated [sic]," [48] if any. The Court of Appeals concurred in that conclusion when it categorically held thus: "We rule out the issue of forgery as this was not satisfactorily proved x x x." [49]

Under Section 2(b) of Rule 111 of the Revised Rules of Court, a finding in a final judgment that the fact from which civil liability may arise does not exist carries with it the extinction of the liability. Thus, the critical issue in the present appeal is this: was the civil liability of petitioner duly established by the evidence?

Answering in the affirmative, the CA explained that a single act or omission may produce two forms of civil liability: one is for ex delicto or that which arises from a crime under our penal statutes; and the other is for a quasi delict or culpa extra-contractual. In the present case, civil liability ex delicto was foreclosed by the acquittal. Nonetheless, "[a]lthough the act from which the civil liability might arise did not exist due to [petitioner's] acquittal, [respondent's] cause of action makes out a case of quasi delict." [50]

Contrary to the trial court, the CA disbelieved petitioner's assertions that she had turned over the proceeds of the checks to Kai Chin. Granting that she was authorized to encash the checks, she supposedly had no like authority to deposit the proceeds to her personal bank account. The appellate court concluded that, in breach of Article 33[51] of the Civil Code, "she abused the confidence reposed in her by [respondent] in the performance of her duty." [52] Thus, the CA ordered her to pay respondent the amount of P1,187,530.86 as actual damages, representing the total value of five checks paid in her name and to her account. [53]

In view of the conflicting findings of the lower courts as regards the credibility of the witnesses, we invoke the time-honored rule that "the assessment of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and note their demeanor, conduct and attitude under grilling examination. These are the most significant factors in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. Through its observations during the entire proceedings, the trial court can be expected to determine, with reasonable discretion, whose testimony to accept and which witness to disbelieve." [54]

Barring arbitrariness and oversight of facts that might affect the result of the case otherwise, the RTC's assessment of the witnesses and their testimonies in this case binds even this Court. [55] In any event, we scoured the records and, unlike the CA, we found no sufficient reason to reject the trial court's assessment. There was no arbitrariness or oversight of any fact or circumstance of weight and influence to justify a different conclusion.

Moreover, the CA based its imposition of civil liability upon petitioner on her supposed abuse of her employer's confidence. Granting for the sake of argument that she indeed forged the checks and misappropriated the proceeds

to her personal benefit, it must be recalled that it was Kai Chin's signatures that she purportedly forged; and CIFL's account that she, in effect, misappropriated. Be it remembered that respondent's own documentary evidence unequivocally concurred in the assertion of petitioner that Kai Chin had given her express authority to transact CIFL's account on his behalf. Consequently, it was his, not respondent's, confidence that she had exploited. In other words, the factual premises of the CA did not support its conclusion.

In sum, we hold that petitioner's acquittal was based on the fact that she had not committed the offense imputed to her. Consequently, she cannot be held civilly liable. In concluding that she, as well as her testimony, was credible, the trial court cannot be faulted with arbitrariness or negligence. Tellingly, her testimony that she turned over the proceeds of the subject checks to Kai Chin stands un rebutted.

WHEREFORE, the Petition is hereby GRANTED, and the assailed CA Decision and Resolution SET ASIDE. The December 15, 1995 Decision and the March 20, 1996 Order of the Regional Trial Court of Manila, Branch 52, are hereby REINSTATED. No pronouncement as to costs.

SO ORDERED.

Corona, Carpio-Morales, and Garcia, JJ., concur.
Sandoval-Gutierrez, J., on official leave.

[1] The Petition named the Court of Appeals as a respondent. The Court deleted it from the title, pursuant to Section 4 of Rule 45 of the Rules of Court governing petitions for review.

[2] Rollo, pp. 7-20.

[3] Id., pp. 22-47. Special Eleventh Division. Penned by Justice Ruben T. Reyes (Division chair) and concurred in by Justices Mercedes Gozo-Dadole and Juan Q. Enriquez Jr. (members).

[4] Id., p. 54.

[5] CA Decision, pp. 26-27; rollo, pp. 46-47.

[6] Id., pp. 3-8 & 24-29. Citations omitted.

[7] RTC Decision penned by Judge David G. Nitafan, p. 16; rollo, p. 112.

[8] Id., pp. 19-22 & 115-118.

[9] Id., pp. 23-25, 28-29 & 119-121, 124-125.

[10] Id., pp. 28, 31 & 124, 127.

[11] RTC Decision, p. 32; rollo, p. 128.

[12] Rollo, pp. 69-75.

[13] CA Decision, pp. 15-16; rollo, pp. 35-36.

[14] Id., pp. 16-17 & 36-37.

[15] Id., pp. 18 & 38.

[16] Id., pp. 21-22 & 41-42.

[17] Id., pp. 24-26 & 44-46.

[18] This case was deemed submitted for decision on November 11, 2004, upon this Court's receipt of respondent's Memorandum, signed by Atty. Justino M. Marquez III. Petitioner's Memorandum, signed by Atty. Arturo M. de Castro, was received by this Court on April 10, 2003.

[19] Petitioner's Memorandum, p. 5; rollo, p. 91.

[20] Respondent's Memorandum, pp. 12-13; rollo, pp. 162-163.

[21] *Id.*, pp. 12-13 & 162-163.

[22] The provision, while not identical, is similar to §6 of Rule 122 of the 1985 Rules. The only difference is that the present provision makes clear that promulgation refers to "judgment"; and notice, to "final order appealed from." *Neplum, Inc. v. Orbeso*, 384 SCRA 466, 479, July 11, 2002.

[23] 87 Phil. 601, 605, November 16, 1950.

[24] "SEC. 6. Promulgation of judgment. – The judgment is promulgated by reading the same in the presence of the accused and any judge of the court in which it was rendered. However, if the conviction is for a light offense, the judgment may be pronounced in the presence of his counsel or representative. When the judge is absent or outside of the province or city, the judgment may be promulgated by the clerk of court.

"If the accused is confined or detained in another province or city, the judgment may be promulgated by the executive judge of the Regional Trial Court having jurisdiction over the place of confinement or detention upon request of the court that rendered the judgment. The court promulgating the judgment shall have authority to accept the notice of appeal and to approve the bail bond pending appeal.

"The proper clerk of court shall give notice to the accused personally or through his bondsman or warden and counsel, requiring him to be present at the promulgation of the decision. In case the accused fails to appear thereat the promulgation shall consist in the recording of the judgment in the criminal docket and a copy thereof shall be served upon the accused or counsel. If the judgment is for conviction, and the accused's failure to appear was without justifiable cause, the court shall further order the arrest of the accused, who may appeal within fifteen (15) days from notice of the decision to him or his counsel."

[25] 55 SCRA 153, January 21, 1974.

[26] *Id.*, p. 157, per Aquino, J.

[27] *People v. Rodriguez*, 97 Phil. 349, July 29, 1955; *People v. Coloma*, 105 Phil. 1287, April 29, 1959; *Torrijos v. Court of Appeals*, 67 SCRA 395, October 24, 1975; *Heirs of Tito Rillorta v. Firme*, 157 SCRA 518, January 29, 1988.

[28] 60 Phil. 252, August 1, 1934.

[29] *Lopez Development v. CA*, GR No. 148470, April 29, 2005; *Madrigal Transport, Inc. v. Lapanday Holdings Corp.*, 436 SCRA 123, August 11, 2004.

[30] *Supra*, p. 480.

[31] *Id.*, p. 481, per Panganiban, J.

[32] Petitioner's Memorandum, p. 7; rollo, p. 93.

[33] *Id.*, pp. 9 & 95.

[34] *Id.*, pp. 13-14 & 163-164.

[35] Regalado, Florenz D., *Criminal Law Conspectus* (1sted., 2000), p. 258 (citing *People v. Orais*, 65 Phil. 744, June 30, 1938.)

[36] §2(b) of Rule 111 of the Rules of Court; *People v. Velez*, 77 Phil. 1026, February 25, 1947. See *Sapiera v. CA*, 373 Phil. 148, September 14, 1999; *Sesbreño v. CA*, 330 Phil. 909, September 23, 1996.

[37] The Rules on Criminal Procedure were amended in 2000. With respect to the changes in Section 1, the Court explained in *Philippine Rabbit Line, Inc. v. People* (427 SCRA 456, April 14, 2004, per Panganiban, J.) thus:

"Section 1 of Rule 111 of the current Rules of Criminal Procedure provides:

"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."

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"Only the civil liability of the accused arising from the crime charged is deemed impliedly instituted in a criminal action, that is, unless the offended party waives the civil action, reserves the right to institute it separately, or institutes it prior to the criminal action. Hence, the subsidiary civil liability of the employer under Article 103 of the Revised Penal Code may be enforced by execution on the basis of the judgment of conviction meted out to the employee.

"It is clear that the 2000 Rules deleted the requirement of reserving independent civil actions and allowed these to proceed separately from criminal actions. Thus, the civil actions referred to in Articles 32, 33, 34 and 2176 of the Civil Code shall remain 'separate, distinct and independent' of any criminal prosecution based on the same act. Here are some direct consequences of such revision and omission:

"1. The right to bring the foregoing actions based on the Civil Code need not be reserved in the criminal prosecution, since they are not deemed included therein.

"2. The institution or the waiver of the right to file a separate civil action arising from the crime charged does not extinguish the right to bring such action.

"3. The only limitation is that the offended party cannot recover more than once for the same act or omission.

"What is deemed instituted in every criminal prosecution is the civil liability arising from the crime or delict per se (civil liability ex delicto), but not those liabilities arising from quasi-delicts, contracts or quasi-contracts. In fact, even if a civil action is filed separately, the ex delicto civil liability in the criminal prosecution remains, and the offended party may -- subject to the control of the prosecutor -- still intervene in the criminal action, in order to protect the remaining civil interest therein."

[38] *Roa v. De la Cruz*, 107 Phil. 8, February 13, 1960. Citations omitted.

[39] *Supra*, p. 13, per Gutierrez David, J. (citing *Miranda v. Tiangco*, 96 Phil. 526; 51 Off. Gaz., [3] 1366; *NAMARCO v. Judge Macadaeg*, 98 Phil. 185; 52 Off. Gaz. 182.)

[40] 350 SCRA 387, January 29, 2001, per Quisumbing, J.

[41] 411 SCRA 598, 606, September 23, 2003, per Callejo Sr., J.

[42] RTC Decision, pp. 15-19; rollo, pp. 111-115. Underscoring in the original.

[43] *Id.*, pp. 27 & 297.

[44] *Id.*, pp. 19-20 & 115-116.

[45] Id., pp. 21-22 & 117-118.

[46] Id., pp. 22 & 118.

[47] Id., pp. 27 & 123.

[48] RTC Order, p. 4; rollo, p. 72.

[49] Assailed Decision, p. 21; rollo, p. 41.

[50] Id., pp. 16 & 36.

[51] "ART. 33. In cases of defamation, fraud, and physical injuries, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, shall require only a preponderance of evidence."

[52] Id., pp. 23 & 43.

[53] Assailed Decision, p. 21; rollo, p. 44.

[54] People v. Ombrog, 268 SCRA 93, 100-101, February 12, 1997, per Panganiban, J.; Bugatti v. Court of Appeals, 343 SCRA 335, October 17, 2000; Lorenzana v. People, 353 SCRA 396, March 1, 2001.

[55] People v. Corea, 269 SCRA 76, 86, March 3, 1997; People v. Basquez, 366 SCRA 154, September 27, 2001.

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