

ANNA LERIMA PATULA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 164457. April 11, 2012

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

In the trial of every criminal case, a judge must rigidly test the State's evidence of guilt in order to ensure that such evidence adheres to the basic rules of admissibility before pronouncing an accused guilty of the crime charged upon such evidence. Nothing less is demanded of the judge; otherwise, the guarantee of due process of law is nullified. The accused need not adduce anything to rebut evidence that is discredited for failing the test. Acquittal should then follow.

Antecedents

Petitioner was charged with estafa under an information filed in the Regional Trial Court (RTC) in Dumaguete City that averred:

That on or about and during the period from March 16 to 20, 1997 and for sometime prior thereto, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, being then a saleswoman of Footlucker's Chain of Stores, Inc., Dumaguete City, having collected and received the total sum of P131,286.97 from several customers of said company under the express obligation to account for the proceeds of the sales and deliver the collection to the said company, but far from complying with her obligation and after a reasonable period of time despite repeated demands therefore, and with intent to defraud the said company, did, then and there willfully, unlawfully and feloniously fail to deliver the said collection to the said company but instead, did, then and there willfully unlawfully and feloniously misappropriate, misapply and convert the proceeds of the sale to her own use and benefit, to the damage and prejudice of the said company in the aforesaid amount of P131,286.97.

Contrary to Art. 315, par 1 (b) of the Revised Penal Code.[1]

Petitioner pled not guilty to the offense charged in the information. At pre-trial, no stipulation of facts was had, and petitioner did not avail herself of plea bargaining. Thereafter, trial on the merits ensued.

The Prosecution's first witness was Lamberto Go, who testified that he was the branch manager of Footlucker's Chain of Stores, Inc. (Footlucker's) in Dumaguete City since October 8, 1994; that petitioner was an employee of Footlucker's, starting as a saleslady in 1996 until she became a sales representative; that as a sales representative she was authorized to take orders from wholesale customers coming from different towns (like Bacong, Zamboanguita, Valencia, Lumbangan and Mabinay in Negros Oriental, and Siquijor), and to collect payments from them; that she could issue and sign official receipts of Footlucker's for the payments, which she would then remit; that she would then submit the receipts for the payments for tallying and reconciliation; that at first her volume of sales was quite high, but later on dropped, leading him to confront her; that she responded that business was slow; that he summoned the accounting clerk to verify; that the accounting clerk discovered erasures on some collection receipts; that he decided to subject her to an audit by company auditor Karen Guivencan; that he

learned from a customer of petitioner's that the customer's outstanding balance had already been fully paid although that balance appeared unpaid in Footlucker's records; and that one night later on, petitioner and her parents went to his house to deny having misappropriated any money of Footlucker's and to plead for him not to push through with a case against her, promising to settle her account on a monthly basis; and that she did not settle after that, but stopped reporting to work.[2]

On March 7, 2002, Go's cross examination, re-direct examination and re-cross examination were completed.

The only other witness for the Prosecution was Karen Guivencan, whom Footlucker's employed as its store auditor since November 16, 1995 until her resignation on March 31, 2001. She declared that Go had requested her to audit petitioner after some customers had told him that they had already paid their accounts but the office ledger had still reflected outstanding balances for them; that she first conducted her audit by going to the customers in places from Mabinay to Zamboanguita in Negros Oriental, and then in Siquijor; that she discovered in the course of her audit that the amounts appearing on the original copies of receipts in the possession of around 50 customers varied from the amounts written on the duplicate copies of the receipts petitioner submitted to the office; that upon completing her audit, she submitted to Go a written report denominated as "List of Customers Covered by Saleswoman LERIMA PATULA w/ Differences in Records as per Audit Duly Verified March 16-20, 1997" marked as Exhibit A; and that based on the report, petitioner had misappropriated the total amount of P131,286.92.[3]

During Guivencan's stint as a witness, the Prosecution marked the ledgers of petitioner's various customers allegedly with discrepancies as Exhibits B to YY and their derivatives, inclusive. Each of the ledgers had a first column that contained the dates of the entries, a second that identified the invoices by the number, a third that stated the debit, a fourth that noted the credit (or the amounts paid), and a fifth that summed the balances (debit minus credit). Only 49 of the ledgers were formally offered and admitted by the RTC because the 50[th] ledger could no longer be found.

In the course of Guivencan's direct-examination, petitioner's counsel interposed a continuing objection on the ground that the figures entered in Exhibits B to YY and their derivatives, inclusive, were hearsay because the persons who had made the entries were not themselves presented in court.[4] With that, petitioner's counsel did not anymore cross-examine Guivencan, apparently regarding her testimony to be irrelevant because she thereby tended to prove falsification, an offense not alleged in the information.

The Prosecution then formally offered its documentary exhibits, including Exhibits B to YY and their derivatives (like the originals and duplicates of the receipts supposedly executed and issued by petitioner), inclusive, the confirmation sheets used by Guivencan in auditing the accounts served by petitioner, and Guivencan's so-called Summary (Final Report) of Discrepancies.[5]

After the Prosecution rested its case, the Defense decided not to file a demurrer to evidence although it had manifested the intention to do so, and instead rested its case. The Prosecution and Defense submitted their respective memoranda, and submitted the case for decision.[6]

On January 28, 2004, the RTC, stating that inasmuch as petitioner had opted "not to present evidence for her defense" the Prosecution's evidence remained "unrefuted and uncontroverted,"[7] rendered its decision finding petitioner guilty of estafa, to wit:

Wherefore, in the light of the foregoing facts and circumstances, the Court finds ANNA LERIMA PATULA guilty beyond reasonable doubt of the crime of Estafa under Art. 315 par (1b) of the Revised Penal Code and accordingly, she is hereby sentenced to suffer an INDETERMINATE PENALTY of imprisonment of 8 years and 1 day of prision mayor as minimum to 18 years and 4 months of reclusion temporal as maximum with all

the accessory penalties provided by law and to indemnify private complainant the amount of P131,286.92 with interest at 12% per annum until fully paid and to pay the costs.

Pursuant to Sec. 2, Rule 114 of the Revised Rules of Criminal Procedure, the cash bail put up by the accused shall be effective only until the promulgation of this judgment.

SO ORDERED.[8]

Petitioner filed a motion for reconsideration, but the RTC denied the motion on May 7, 2004.[9]

Issues

Insisting that the RTC's judgment "grossly violated [her] Constitutional and statutory right to be informed of the nature and cause of the accusation against her because, while the charge against her is estafa under Art. 315, par. 1 (b) of the Revised Penal Code, the evidence presented against her and upon which her conviction was based, was falsification, an offense not alleged or included in the Information under which she was arraigned and pleaded not guilty," and that said judgment likewise "blatantly ignored and manifestly disregarded the rules on admission of evidence in that the documentary evidence admitted by the trial court were all private documents, the due execution and authenticity of which were not proved in accordance with Sec. 20 of Rule 132 of the Revised Rules on Evidence," petitioner has directly appealed to the Court via petition for review on certiorari, positing the following issues, to wit:

1. WHETHER THE ACCUSED OR ANY ACCUSED FOR THAT MATTER , CHARGED OF ESTAFA UNDER ART. 315, PAR. 1 (B) OF THE REVISED PENAL CODE CAN BE CONVICTED UPON OR BY EVIDENCE OF FALSIFICATION WHICH IS EVEN (SIC) NOT ALLEGED IN THE INFORMATION.
2. WHETHER THE ACCUSED'S CONSTITUTIONAL AND STATUTORY RIGHT TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION AGAINST HER WAS VIOLATED WHEN SHE WAS CONVICTED UPON OR BY EVIDENCE OF FALSIFICATION CONSIDERING THAT THE CHARGE AGAINST HER IS ESTAFA THROUGH MISAPPROPRIATION UNDER ART. 315, PAR. 1 (B) OF THE REVISED PENAL CODE.
3. WHETHER OR NOT THE TRIAL COURT ERRED IN ADMITTING IN EVIDENCE, EXHIBITS "B" TO "YY"- "YY-2", ALL PRIVATE DOCUMENTS, THE DUE EXECUTION AND AUTHENTICITY OF WHICH WERE NOT PROVED IN ACCORDANCE WITH SEC. 20, RULE 132 OF THE SAID REVISED RULES ON EVIDENCE ASIDE FROM THE FACT THAT SAID EXHIBITS TEND TO PROVE FALSIFICATION BY THE ACCUSED, A CRIME NEITHER CHARGED NOR ALLEGED IN THE INFORMATION.
4. WHETHER OR NOT THE TRIAL COURT ERRED IN ADMITTING THE TESTIMONY OF KAREN GUIVENCAN DESPITE THE OBJECTION THAT SAID TESTIMONY WHICH TRIED TO PROVE THAT THE ACCUSED FALSIFIED EXHIBITS "B" TO "YY"- "YY-2" INCLUSIVE VIOLATED THE ACCUSED'S CONSTITUTIONAL RIGHT TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION AGAINST HER, FOR BEING IRRELEVANT AND IMMATERIAL SINCE THE CHARGE AGAINST THE ACCUSED IS ESTAFA UNDER ART. 315, PAR. 1 (B) OF THE REVISED PENAL CODE.
5. WHETHER OR NOT THE TRIAL COURT ERRED IN CONCLUDING THAT THE EVIDENCE OF THE PROSECUTION "REMAINS UNREFUTED AND UNCONTROVERTED" DESPITE ACCUSED'S OBJECTION THAT SAID EVIDENCE IS IMMATERIAL AND IRRELEVANT TO THE CRIME CHARGED.
6. WHETHER OR NOT THE DEFENSE'S NOT CROSS-EXAMINING KAREN GUIVENCAN FOR THE REASON THAT HER TESTIMONY IS IMMATERIAL AND IRRELEVANT AS IT TENDED TO PROVE

AN OFFENSE NOT CHARGED IN INFORMATION RESULTED IN THE ADMISSION OF SAID TESTIMONY AS BEING “UNREFUTED AND UNCONTROVERTED”, AND WHETHER OR NOT THE DEFENSE’S OBJECTION WOULD NOT BE CONSIDERED WAIVED IF THE DEFENSE CROSS-EXAMINED SAID WITNESS.

7. WHETHER OR NOT THE TRIAL COURT ERRED IN RULING THAT EXHIBIT “A”, WHICH IS THE LIST OF CUSTOMERS COVERED BY SALESWOMAN LERIMA PATULA WITH DIFFERENCE IN RECORD IS NOT HEARSAY AND SELF-SERVING.[10]

The foregoing issues are now restated as follows:

- Whether or not the failure of the information for estafa to allege the falsification of the duplicate receipts issued by petitioner to her customers violated petitioner’s right to be informed of the nature and cause of the accusation;
- Whether or not the RTC gravely erred in admitting evidence of the falsification of the duplicate receipts despite the information not alleging the falsification;
- Whether or not the ledgers and receipts (Exhibits B to YY, and their derivatives, inclusive) were admissible as evidence of petitioner’s guilt for estafa as charged despite their not being duly authenticated;and
- Whether or not Guivencan’s testimony on the ledgers and receipts (Exhibits B to YY, and their derivatives, inclusive) to prove petitioner’s misappropriation or conversion was in admissible for being hearsay.

Ruling

The petition is meritorious.

I

Failure of information to allege falsification
did not violate petitioner’s right to be informed
of the nature and cause of the accusation

Petitioner contends that the RTC grossly violated her Constitutional right to be informed of the nature and cause of the accusation when: (a) it held that the information did not have to allege her falsification of the duplicate receipts, and (b) when it convicted her of estafa under Article 315, paragraph 1(b) of the Revised Penal Code by relying on the evidence on falsification.

The contention of petitioner cannot be sustained.

The Bill of Rights guarantees some rights to every person accused of a crime, among them the right to be informed of the nature and cause of the accusation, viz:

Section 14. (1) No person shall be held to answer for a criminal offense without due process of law.

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

Rule 110 of the Revised Rules of Court, the rule then in effect when the information was filed in the RTC, contained the following provisions on the proper manner of alleging the nature and cause of the accusation in the information, to wit:

Section 8. Designation of the offense.— Whenever possible, a complaint or information should state the designation given to the offense by the statute, besides the statement of the acts or omissions constituting the same, and if there is no such designation, reference should be made to the section or subsection of the statute punishing it. (7)

Section 9. Cause of accusation. — The acts or omissions complained of as constituting the offense must be stated in ordinary and concise language without repetition, not necessarily in the terms of the statute defining the offense, but in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment. (8)

The importance of the proper manner of alleging the nature and cause of the accusation in the information should never be taken for granted by the State. An accused cannot be convicted of an offense that is not clearly charged in the complaint or information. To convict him of an offense other than that charged in the complaint or information would be violative of the Constitutional right to be informed of the nature and cause of the accusation.[11] Indeed, the accused cannot be convicted of a crime, even if duly proven, unless the crime is alleged or necessarily included in the information filed against him.

The crime of estafa charged against petitioner was defined and penalized by Article 315, paragraph 1 (b), Revised Penal Code, viz:

Article 315. Swindling (estafa). — Any person who shall defraud another by any of the means mentioned herein below shall be punished by:

1st. The penalty of prision correccional in its maximum period to prision mayor in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed under the provisions of this Code, the penalty shall be termed prision mayor or reclusion temporal, as the case may be.

2nd. The penalty of prision correccional in its minimum and medium periods, if the amount of the fraud is over 6,000 pesos but does not exceed 12,000 pesos;

3rd. The penalty of arresto mayor in its maximum period to prision correccional in its minimum period if such amount is over 200 pesos but does not exceed 6,000 pesos; and

4th. By arresto mayor in its maximum period, if such amount does not exceed 200 pesos, provided that in the four cases mentioned, the fraud be committed by any of the following means:

xxx

1. With unfaithfulness or abuse of confidence, namely:

xxx

(b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

xxx

The elements of the offense charged were as follows:

(a)

That the offender received money, goods or other personal property in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return, the same;

(b)

That the offender misappropriated or converted such money, goods or other personal property, or denied his part in its receipt;

(c)

That the misappropriation or conversion or denial was to the prejudice of another; and

(d)

That the offended party made a demand on the offender for the delivery or return of such money, goods or other personal property.[12]

According to the theory and proof of the Prosecution, petitioner misappropriated or converted the sums paid by her customers, and later falsified the duplicates of the receipts before turning such duplicates to her employer to show that the customers had paid less than the amounts actually reflected on the original receipts. Obviously, she committed the falsification in order to conceal her misappropriation or conversion. Considering that the falsification was not an offense separate and distinct from the estafa charged against her, the Prosecution could legitimately prove her acts of falsification as its means of establishing her misappropriation or conversion as an essential ingredient of the crime duly alleged in the information. In that manner, her right to be informed of the nature and cause of the accusation against her was not infringed or denied to her.

We consider it inevitable to conclude that the information herein completely pleaded the estafa defined and penalized under Article 315, paragraph 1 (b), Revised Penal Code within the context of the substantive law and the rules. Verily, there was no necessity for the information to allege the acts of falsification by petitioner because falsification was not an element of the estafa charged.

Not surprisingly, the RTC correctly dealt in its decision with petitioner's concern thus wise:

In her Memorandum, it is the contention of [the] accused that [the] prosecution's evidence utterly fails to prove the crime charged. According to the defense, the essence of Karen Guivencan's testimony is that the accused falsified the receipts issued to the customers served by her by changing or altering the amounts in the duplicates of the receipts and therefore, her testimony is immaterial and irrelevant as the charge is misappropriation under Art. 315, paragraph (1b) of the Revised Penal Code and there is no allegation whatsoever of any falsification or alteration of amounts in the [i]nformation under which the accused was arraigned and pleaded NOT GUILTY. Accused, thus, maintains that the testimony of Karen Guivencan should therefore not be considered at all as it tended to prove an offense not charged or included in the [i]nformation and would violate [the] accused's constitutional and statutory right to be informed of the nature and cause of the accusation against her. The Court is not in accord with such posture of the accused.

It would seem that the accused is of the idea that because the crime charged in the [i]nformation is merely [e]stafa and not [e]stafa [t]hru [f]alsification of documents, the prosecution could not prove falsification. Such argumentation is not correct. Since the information charges accused only of misappropriation pursuant to Art. 315, par. (1b) of the Revised [P]enal Code, the Court holds that there is no necessity of alleging the falsification in the Information as it is not an element of the crime charged.

Distinction should be made as to when the crimes of Estafa and Falsification will constitute as one complex crime and when they are considered as two separate offenses. The complex crime of Estafa Through Falsification of Documents is committed when one has to falsify certain documents to be able to obtain money

or goods from another person. In other words, the falsification is a necessary means of committing estafa. However, if the falsification is committed to conceal the misappropriation, two separate offenses of estafa and falsification are committed. In the instant case, when accused collected payments from the customers, said collection which was in her possession was at her disposal. The falsified or erroneous entries which she made on the duplicate copies of the receipts were contrived to conceal some amount of her collection which she did not remit to the company xxx.[13]

II

Testimonial and documentary evidence, being hearsay, did not prove petitioner's guilt beyond reasonable doubt

Nonetheless, in all criminal prosecutions, the Prosecution bears the burden to establish the guilt of the accused beyond reasonable doubt. In discharging this burden, the Prosecution's duty is to prove each and every element of the crime charged in the information to warrant a finding of guilt for that crime or for any other crime necessarily included therein.[14] The Prosecution must further prove the participation of the accused in the commission of the offense.[15] In doing all these, the Prosecution must rely on the strength of its own evidence, and not anchor its success upon the weakness of the evidence of the accused. The burden of proof placed on the Prosecution arises from the presumption of innocence in favor of the accused that no less than the Constitution has guaranteed.[16] Conversely, as to his innocence, the accused has no burden of proof,[17] that he must then be acquitted and set free should the Prosecution not overcome the presumption of innocence in his favor. In other words, the weakness of the defense put up by the accused is inconsequential in the proceedings for as long as the Prosecution has not discharged its burden of proof in establishing the commission of the crime charged and in identifying the accused as the malefactor responsible for it.

Did the Prosecution adduce evidence that proved beyond reasonable doubt the guilt of petitioner for the estafa charged in the information?

To establish the elements of estafa earlier mentioned, the Prosecution presented the testimonies of Go and Guivencan, and various documents consisting of: (a) the receipts allegedly issued by petitioner to each of her customers upon their payment, (b) the ledgers listing the accounts pertaining to each customer with the corresponding notations of the receipt numbers for each of the payments, and (c) the confirmation sheets accomplished by Guivencan herself.[18] The ledgers and receipts were marked and formally offered as Exhibits B to YY, and their derivatives, inclusive.

On his part, Go essentially described for the trial court the various duties of petitioner as Footlucker's sales representative. On her part, Guivencan conceded having no personal knowledge of the amounts actually received by petitioner from the customers or remitted by petitioner to Footlucker's. This means that persons other than Guivencan prepared Exhibits B to YY and their derivatives, inclusive, and that Guivencan based her testimony on the entries found in the receipts supposedly issued by petitioner and in the ledgers held by Footlucker's corresponding to each customer, as well as on the unsworn statements of some of the customers. Accordingly, her being the only witness who testified on the entries effectively deprived the RTC of the reasonable opportunity to validate and test the veracity and reliability of the entries as evidence of petitioner's misappropriation or conversion through cross-examination by petitioner. The denial of that opportunity rendered the entire proof of misappropriation or conversion hearsay, and thus unreliable and untrustworthy for purposes of determining the guilt or innocence of the accused.

To elucidate why the Prosecution's hearsay evidence was unreliable and untrustworthy, and thus devoid of probative value, reference is made to Section 36 of Rule 130, Rules of Court, a rule that states that a witness can testify only to those facts that she knows of her personal knowledge; that is, which are derived from her own

perception, except as otherwise provided in the Rules of Court. The personal knowledge of a witness is a substantive prerequisite for accepting testimonial evidence that establishes the truth of a disputed fact. A witness bereft of personal knowledge of the disputed fact cannot be called upon for that purpose because her testimony derives its value not from the credit accorded to her as a witness presently testifying but from the veracity and competency of the extrajudicial source of her information.

In case a witness is permitted to testify based on what she has heard another person say about the facts in dispute, the person from whom the witness derived the information on the facts in dispute is not in court and under oath to be examined and cross-examined. The weight of such testimony then depends not upon the veracity of the witness but upon the veracity of the other person giving the information to the witness without oath. The information cannot be tested because the declarant is not standing in court as a witness and cannot, therefore, be cross-examined.

It is apparent, too, that a person who relates a hearsay is not obliged to enter into any particular, to answer any question, to solve any difficulties, to reconcile any contradictions, to explain any obscurities, to remove any ambiguities; and that she entrenches herself in the simple assertion that she was told so, and leaves the burden entirely upon the dead or absent author.[19] Thus, the rule against hearsay testimony rests mainly on the ground that there was no opportunity to cross-examine the declarant.[20] The testimony may have been given under oath and before a court of justice, but if it is offered against a party who is afforded no opportunity to cross-examine the witness, it is hearsay just the same.[21]

Moreover, the theory of the hearsay rule is that when a human utterance is offered as evidence of the truth of the fact asserted, the credit of the assert or becomes the basis of inference, and, therefore, the assertion can be received as evidence only when made on the witness stand, subject to the test of cross-examination. However, if an extrajudicial utterance is offered, not as an assertion to prove the matter asserted but without reference to the truth of the matter asserted, the hearsay rule does not apply. For example, in a slander case, if a prosecution witness testifies that he heard the accused say that the complainant was a thief, this testimony is admissible not to prove that the complainant was really a thief, but merely to show that the accused uttered those words.[22] This kind of utterance is hearsay in character but is not legal hearsay.[23] The distinction is, therefore, between (a) the fact that the statement was made, to which the hearsay rule does not apply, and (b) the truth of the facts asserted in the statement, to which the hearsay rule applies.[24]

Section 36, Rule 130 of the Rules of Court is understandably not the only rule that explains why testimony that is hearsay should be excluded from consideration. Excluding hearsay also aims to preserve the right of the opposing party to cross-examine the original declarant claiming to have a direct knowledge of the transaction or occurrence.[25] If hearsay is allowed, the right stands to be denied because the declarant is not in court.[26] It is then to be stressed that the right to cross-examine the adverse party's witness,

being the only means of testing the credibility of witnesses and their testimonies, is essential to the administration of justice.

To address the problem of controlling inadmissible hearsay as evidence to establish the truth in a dispute while also safeguarding a party's right to cross-examine her adversary's witness, the Rules of Court offers two solutions. The first solution is to require that all the witnesses in a judicial trial or hearing be examined only in court under oath or affirmation. Section 1, Rule 132 of the Rules of Court formalizes this solution, viz:

Section 1. Examination to be done in open court. - The examination of witnesses presented in a trial or hearing shall be done in open court, and under oath or affirmation. Unless the witness is incapacitated to speak, or the question calls for a different mode of answer, the answers of the witness shall be given orally. (1a)

The second solution is to require that all witnesses be subject to the cross-examination by the adverse party. Section 6, Rule 132 of the Rules of Court ensures this solution thusly:

Section 6. Cross-examination; its purpose and extent. – Upon the termination of the direct examination, the witness may be cross-examined by the adverse party as to any matters stated in the direct examination, or connected therewith, with sufficient fullness and freedom to test his accuracy and truthfulness and freedom from interest or bias, or the reverse, and to elicit all important facts bearing upon the issue. (8a)

Although the second solution traces its existence to a Constitutional precept relevant to criminal cases, i.e., Section 14, (2), Article III, of the 1987 Constitution, which guarantees that: “In all criminal prosecutions, the accused shall xxx enjoy the right xxx to meet the witnesses face to face xxx,” the rule requiring the cross-examination by the adverse party equally applies to non-criminal proceedings.

We thus stress that the rule excluding hearsay as evidence is based upon serious concerns about the trustworthiness and reliability of hearsay evidence due to its not being given under oath or solemn affirmation and due to its not being subjected to cross-examination by the opposing counsel to test the perception, memory, veracity and articulateness of the out-of-court declarant or actor upon whose reliability the worth of the out-of-court statement depends.[27]

Based on the foregoing considerations, Guivencan’s testimony as well as Exhibits B to YY, and their derivatives, inclusive, must be entirely rejected as proof of petitioner’s misappropriation or conversion.

III

Lack of their proper authentication rendered

Exhibits B to YY and their derivatives

inadmissible as judicial evidence

Petitioner also contends that the RTC grossly erred in admitting as evidence Exhibits B to YY, and their derivatives, inclusive, despite their being private documents that were not duly authenticated as required by Section 20, Rule 132 of the Rules of Court.

Section 19, Rule 132 of the Rules of Court distinguishes between a public document and a private document for the purpose of their presentation in evidence, viz:

Section 19. Classes of documents. – For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

- (a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;
- (b) Documents acknowledged before a notary public except last wills and testaments, and
- (c) Public records, kept in the Philippines, of private documents required by law to be entered therein.

All other writings are private.

The nature of documents as either public or private determines how the documents may be presented as evidence in court. A public document, by virtue of its official or sovereign character, or because it has been acknowledged before a notary public (except a notarial will) or a competent public official with the formalities required by law, or because it is a public record of a private writing authorized by law, is self-authenticating and requires no further authentication in order to be presented as evidence in court. In contrast, a private document is any other writing, deed, or instrument executed by a private person without the intervention of a notary or other person legally

authorized by which some disposition or agreement is proved or set forth. Lacking the official or sovereign character of a public document, or the solemnities prescribed by law, a private document requires authentication in the manner allowed by law or the Rules of Court before its acceptance as evidence in court. The requirement of authentication of a private document is excused only in four instances, specifically: (a) when the document is an ancient one within the context of Section 21,[28] Rule 132 of the Rules of Court; (b) when the genuineness and authenticity of an actionable document have not been specifically denied under oath by the adverse party;[29] (c) when the genuineness and authenticity of the document have been admitted;[30] or (d) when the document is not being offered as genuine.[31]

There is no question that Exhibits B to YY and their derivatives were private documents because private individuals executed or generated them for private or business purposes or uses. Considering that none of the exhibits came under any of the four exceptions, they could not be presented and admitted as evidence against petitioner without the Prosecution dutifully seeing to their authentication in the manner provided in Section 20 of Rule 132 of the Rules of Court, viz:

Section 20. Proof of private documents. – Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:

- (a) By anyone who saw the document executed or written; or
- (b) By evidence of the genuineness of the signature or handwriting of the maker.

Any other private document need only be identified as that which it is claimed to be.

The Prosecution attempted to have Go authenticate the signature of petitioner in various receipts, to wit:

ATTY. ABIERA:

Q.

Now, these receipts which you mentioned which do not tally with the original receipts, do you have copies of these receipts?

A.

Yes, I have a copy of these receipts, but it's not now in my possession.

Q.

But when asked to present those receipts before this Honorable Court, can you assure this

(Next Page)

ATTY ABIERA (continuing):

Honorable Court that you will be able to present those receipts?

A.

Yes.

Q.

You are also familiar with the signature of the accused in this case, Anna Lerima Patula?

A.

Yes.

Q.

Why are you familiar with the signature of the accused in this case?

A.

I used to see her signatures in the payroll and in the receipts also.

Q.

Okay, I have here a machine copy of a receipt which we would present this, or offer the same as soon as the original receipts can be presented, but for purposes only of your testimony, I'm going to point to you a certain signature over this receipt number FLDT96 20441, a receipt from Cirila Askin, kindly go over the signature and tell the Honorable Court whether you are familiar with the signature?

A.

Yes, that is her signature.

INTERPRETER:

Witness is pointing to a signature above the printed word "collector".

(Next Page)

ATTY. ABIERA:

Q.

Is this the only receipt wherein the name, the signature rather, of the accused in this case appears?

A.

That is not the only one, there are many receipts.

ATTY. ABIERA:

In order to save time, Your Honor, we will just be presenting the original receipts Your Honor, because it's quite voluminous, so we will just forego with the testimony of the witness but we will just present the same using the testimony of another witness, for purposes of identifying the signature of the accused. We will request that this signature which has been identified to by the witness in this case be marked, Your Honor, with the reservation to present the original copy and present the same to offer as our exhibits but for the meantime, this is only for the purposes of recording, Your Honor, which we request the same, the receipt which has just been identified awhile ago be marked as our Exhibit "A" Your Honor.

COURT:

Mark the receipt as Exhibit "A".

ATTY. ABIERA:

And the signature be bracketed and be marked as Exhibit "A-1".

(Next Page)

COURT:

Bracket the signature & mark it as Exh. "A-1". What is the number of that receipt?

ATTY. ABIERA:

Receipt No. 20441 dated August 4, 1996 the statement that: received from Cirila Askin.[32]

x x x

As the excerpts indicate, Go's attempt at authentication of the signature of petitioner on the receipt with serial number FLDT96 No. 20441 (a document that was marked as Exhibit A, while the purported signature of petitioner thereon was marked as Exhibit A-1) immediately fizzled out after the Prosecution admitted that the document was a mere machine copy, not the original. Thereafter, as if to soften its failed attempt, the Prosecution expressly promised to produce at a later date the originals of the receipt with serial number FLDT96 No. 20441 and other receipts. But that promise was not even true, because almost in the same breath the Prosecution offered to authenticate the signature of petitioner on the receipts through a different witness (though then still unnamed). As matters turned out in the end, the effort to have Go authenticate both the machine copy of the receipt with serial number FLDT96 No. 20441 and the signature of petitioner on that receipt was wasteful because the machine copy was inexplicably forgotten and was no longer even included in the Prosecution's Offer of Documentary Evidence.

It is true that the original of the receipt bearing serial number FLDT96 No. 20441 was subsequently presented as Exhibit B through Guivencan. However, the Prosecution did not establish that the signature appearing on Exhibit B was the same signature that Go had earlier sought to identify to be the signature of petitioner (Exhibit A-1) on the machine copy (Exhibit A). This is borne out by the fact that the Prosecution abandoned Exhibit A as the marking nomenclature for the machine copy of the receipt bearing serial number FLDT96 No. 20441 for all intents and purposes of this case, and used the same nomenclature to refer instead to an entirely different document entitled "List of Customers covered by ANA LERIMA PATULA w/difference in Records as per Audit duly verified March 16-20, 1997."

In her case, Guivencan's identification of petitioner's signature on two receipts based alone on the fact that the signatures contained the legible family name of Patula was ineffectual, and exposed yet another deep flaw infecting the documentary evidence against petitioner. Apparently, Guivencan could not honestly identify petitioner's signature on the receipts either because she lacked familiarity with such signature, or because she had not seen petitioner affix her signature on the receipts, as the following excerpts from her testimony bear out:

ATTY. ZERNA to witness:

Q.

There are two (2) receipts attached here in the confirmation sheet, will you go over these Miss witness?

A.

This was the last payment which is fully paid by the customer. The other receipt is the one showing her payment prior to the last payment.

COURT:

Q.

Where did you get those two (2) receipts?

A.

From the customer.

Q.

And who issued those receipts?

A.

The saleswoman, Miss Patula.

ATTY. ZERNA:

We pray, Your Honor, that this receipt identified be marked as Exhibit “B-3”, receipt number 20441.

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COURT:

Mark it.

ATTY. ZERNA:

The signature of the collector be marked as –

Q.

By the way, there is a signature above the name of the collector, are you familiar with that signature? (shown to witness)

A.

Yes.

Q.

Whose signature is that?

A.

Miss Patula.

Q.

How do you know?

A.

It can be recognized because of the word Patula.

Q.

Are you familiar with her signature?

A.

Yes.

ATTY. ZERNA:

We pray that the signature be bracketed and marked as Exhibit “B-3-a”

COURT:

Mark it.

ATTY. ZERNA:

The other receipt number 20045 be marked as Exhibit “B-4” and the signature as Exhibit “B-4-a”.

COURT:

Mark it.[33]

xxx

ATTY. ZERNA:

Q.

Ms. Witness, here is a receipt colored white, number 26603 issued to one Divina Cadilig. Will you please identify this receipt if this is the receipt of your office?

A.

Yes.

Q.

There is a signature over the portion for the collector. Whose signature is this?

A.

Ms. Patula.

Q.

How do you know that this is her signature?

A.

Because we can read the Patula.[34]

We also have similar impressions of lack of proper authentication as to the ledgers the Prosecution presented to prove the discrepancies between the amounts petitioner had allegedly received from the customers and the amounts she had actually remitted to Footlucker’s. Guivencan exclusively relied on the entries of the unauthenticated ledgers to support her audit report on petitioner’s supposed misappropriation or conversion, revealing her lack of independent knowledge of the veracity of the entries, as the following excerpts of her testimony show:

ATTY. ZERNA to witness:

Q.

What is your basis of saying that your office records showed that this Cecilia Askin has an account of P10,791.75?

ATTY. DIEZ:

The question answers itself, Your Honor, what is the basis, office record.

COURT:

Let the witness answer.

WITNESS:

A.

I made the basis on our ledger in the office. I just copied that and showed it to the customers for confirmation.

ATTY. ZERNA to witness:

Q.

What about the receipts?

COURT:

Make a follow-up question and what was the result when you copied that amount in the ledger and you had it confirmed by the customers, what was the result when you had it confirmed by the customers?

WITNESS:

A.

She has no more balance but in our office she has still a balance of P10,971.75.

ATTY. ZERNA to witness:

Q.

Do you have a-what's the basis of saying that the balance of this customer is still P10,971.75

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ATTY. ZERNA (continuing):

[i]n your office?

COURT:

That was already answered pañero, the office has a ledger.

Q.

Now, did you bring the ledger with you?

A.

No, Ma'am.[35]

(Continuation of the Direct Examination of Karen Guivencan on August 13, 2002)

ATTY. ZERNA to witness:

Q.

Okay, You said there are discrepancies between the original and the duplicate, will you please enlighten the Honorable Court on that discrepancy which you said?

A.

Like in this case of Cirila Askin, she has already fully paid. Her ledger shows a zero balance she has fully paid while in the original

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WITNESS (continuing):

[r]eceipt she has a balance of Ten Thousand Seven hundred Ninety-one Pesos and Seventy-five Centavos (10,791.75).

COURT:

Q.

What about the duplicate receipt, how much is indicated there?

A.

The customer has no duplicate copy because it was already forwarded to the Manila Office.

Q.

What then is your basis in the entries in the ledger showing that it has already a zero balance?

A.

This is the copy of the customer while in the office, in the original receipt she has still a balance.

x x x

ATTY. ZERNA:

The confirmation sheet ---

COURT:

The confirmation sheet was the one you referred to as the receipt in your earlier testimony? Is that what you referred to as the receipts, the original receipts?

A.

This is what I copied from the ledger.

Q.

So where was that(sic) original receipt which you said showed that that particular customer still has a balance of Ten Thousand something?

A.

The receipt is no longer here.

Q.

You mean the entry of that receipt was already entered in the ledger?

A.

Yes.[36]

In the face of the palpable flaws infecting the Prosecution's evidence, it should come as no surprise that petitioner's counsel interposed timely objections. Yet, the RTC mysteriously overruled the objections and allowed the Prosecution to present the unauthenticated ledgers, as follows:

(Continuation of the Direct Examination of

Witness Karen Guivencan on September 11, 2002)

ATTY. ZERNA:

CONTINUATION OF DIRECT-EXAMINATION

Q –

Ms. Witness, last time around you were showing us several ledgers. Where is it now?

A –

It is here.

Q –

Here is a ledger of one Divina Cadilig. This Divina Cadilig, how much is her account in your office?

ATTY. DIEZ:

Your Honor please before the witness will proceed to answer the question, let me interpose our objection on the ground that this ledger has not been duly identified to by the person who made the same. This witness will be testifying on hearsay matters because the supposed ledger was not identified to by the person who made the same.

COURT:

Those ledgers were already presented in the last hearing. I think they were already duly identified by this witness. As a matter of fact, it was she who brought them to court

(Next Page)

COURT (cont.):

because these were the ledgers on file in their office.

ATTY. DIEZ

That is correct, Your Honor, but the person who made the entries is not this witness, Your Honor. How do we know that the entries there is (sic) correct on the receipts submitted to their office.

COURT:

Precisely, she brought along the receipts also to support that. Let the witness answer.

WITNESS:

A –

It's the office clerk in-charge.

COURT:

The one who prepared the ledger is the office clerk.

ATTY. ZERNA:

She is an auditor, Your Honor. She has been qualified and she is the auditor of Footluckers.

COURT:

I think, I remember in the last setting also, she testified where those entries were taken. So, you answer the query of counsel.

x x x

ATTY. DIEZ:

Your Honor please, to avoid delay, may I interpose a continuing objection to the questions profounded (sic) on those ledgers on the ground that, as I have said, it is hearsay.

COURT:

Okey(sic). Let the continuing objection be noted.

Q –

(To Witness) The clerk who allegedly was the one who prepared the entries on those ledgers, is she still connected with Footluckers?

A –

She is no longer connected now, Your Honor,

COURT:

Alright proceed.

(Next Page)

ATTY. ZERNA:

Your Honor, these are entries in the normal course of business. So, exempt from the hearsay rule.

COURT:

Okey(sic), proceed.[37]

The mystery shrouding the RTC's soft treatment of the Prosecution's flawed presentation was avoidable simply by the RTC adhering to the instructions of the rules earlier quoted, as well as with Section 22 of Rule 132 of the Rules of Court, which contains instructions on how to prove the genuineness of a handwriting in a judicial proceeding, as follows:

Section 22. How genuineness of handwriting proved. – The handwriting of a person may be proved by any witness who believes it to be the handwriting of such person because he has seen the person write, or has seen writing purporting to be his upon which the witness has acted or been charged, and has thus acquired knowledge of the handwriting of such person. Evidence respecting the handwriting may also be given by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge. (Emphases supplied)

If it is already clear that Go and Guivencan had not themselves seen the execution or signing of the documents, the Prosecution surely did not authenticate Exhibits B to YY and their derivatives conformably with the aforequoted rules. Hence, Exhibits B to YY, and their derivatives, inclusive, were inescapably bereft of probative value as evidence. That was the only fair and just result, as the Court held in *Malayan Insurance Co., Inc. v. Philippine Nails and Wires Corporation*: [38]

On the first issue, petitioner *Malayan Insurance Co., Inc.*, contends that Jeanne King's testimony was hearsay because she had no personal knowledge of the execution of the documents supporting respondent's cause of

action, such as the sales contract, invoice, packing list, bill of lading, SGS Report, and the Marine Cargo Policy. Petitioner avers that even though King was personally assigned to handle and monitor the importation of Philippine Nails and Wires Corporation, herein respondent, this cannot be equated with personal knowledge of the facts which gave rise to respondent's cause of action. Further, petitioner asserts, even though she personally prepared the summary of weight of steel billets received by respondent, she did not have personal knowledge of the weight of steel billets actually shipped and delivered.

At the outset, we must stress that respondent's cause of action is founded on breach of insurance contract covering cargo consisting of imported steel billets. To hold petitioner liable, respondent has to prove, first, its importation of 10,053.400 metric tons of steel billets valued at P67,156,300.00, and second, the actual steel billets delivered to and received by the importer, namely the respondent. Witness Jeanne King, who was assigned to handle respondent's importations, including their insurance coverage, has personal knowledge of the volume of steel billets being imported, and therefore competent to testify thereon. Her testimony is not hearsay, as this doctrine is defined in Section 36, Rule 130 of the Rules of Court. However, she is not qualified to testify on the shortage in the delivery of the imported steel billets. She did not have personal knowledge of the actual steel billets received. Even though she prepared the summary of the received steel billets, she based the summary only on the receipts prepared by other persons. Her testimony on steel billets received was hearsay. It has no probative value even if not objected to at the trial.

On the second issue, petitioner avers that King failed to properly authenticate respondent's documentary evidence. Under Section 20, Rule 132, Rules of Court, before a private document is admitted in evidence, it must be authenticated either by the person who executed it, the person before whom its execution was acknowledged, any person who was present and saw it executed, or who after its execution, saw it and recognized the signatures, or the person to whom the parties to the instruments had previously confessed execution thereof. In this case, respondent admits that King was none of the aforementioned persons. She merely made the summary of the weight of steel billets based on the unauthenticated bill of lading and the SGS report. Thus, the summary of steel billets actually received had no proven real basis, and King's testimony on this point could not be taken at face value.

xxx Under the rules on evidence, documents are either public or private. Private documents are those that do not fall under any of the enumerations in Section 19, Rule 132 of the Rules of Court. Section 20 of the same law, in turn, provides that before any private document is received in evidence, its due execution and authenticity must be proved either by anyone who saw the document executed or written, or by evidence of the genuineness of the signature or handwriting of the maker. Here, respondent's documentary exhibits are private documents. They are not among those enumerated in Section 19, thus, their due execution and authenticity need to be proved before they can be admitted in evidence. With the exception concerning the summary of the weight of the steel billets imported, respondent presented no supporting evidence concerning their authenticity. Consequently, they cannot be utilized to prove less of the insured cargo and/or the short delivery of the imported steel billets. In sum, we find no sufficient competent evidence to prove petitioner's liability.

That the Prosecution's evidence was left uncontested because petitioner decided not to subject Guivencan to cross-examination, and did not tender her contrary evidence was inconsequential. Although the trial court had overruled the seasonable objections to Guivencan's testimony by petitioner's counsel due to the hearsay character, it could not be denied that hearsay evidence, whether objected to or not, had no probative value.[39] Verily, the flaws of the Prosecution's evidence were fundamental and substantive, not merely technical and procedural, and were defects that the adverse party's waiver of her cross-examination or failure to rebut could not set right or cure. Nor did the trial court's overruling of petitioner's objections imbue the flawed evidence with any virtue and value.

Curiously, the RTC excepted the entries in the ledgers from the application of the hearsay rule by also tersely stating that the ledgers "were prepared in the regular course of business." [40] Seemingly, the RTC applied

Section 43, Rule 130 of the Rules of Court, to wit:

Section 43. Entries in the course of business. – Entries made at, or near the time of the transactions to which they refer, by a person deceased, or unable to testify, who was in a position to know the facts therein stated, may be received as prima facie evidence, if such person made the entries in his professional capacity or in the performance of duty and in the ordinary or regular course of business or duty.

This was another grave error of the RTC. The terse yet sweeping manner of justifying the application of Section 43 was unacceptable due to the need to show the concurrence of the several requisites before entries in the course of business could be excepted from the hearsay rule. The requisites are as follows:

(a)

The person who made the entry must be dead or unable to testify;

(b)

The entries were made at or near the time of the transactions to which they refer;

(c)

The entrant was in a position to know the facts stated in the entries;

(d)

The entries were made in his professional capacity or in the performance of a duty, whether legal, contractual, moral, or religious;

(e)

The entries were made in the ordinary or regular course of business or duty.[41]

The Court has to acquit petitioner for failure of the State to establish her guilt beyond reasonable doubt. The Court reiterates that in the trial of every criminal case, a judge must rigidly test the State's evidence of guilt in order to ensure that such evidence adhered to the basic rules of admissibility before pronouncing an accused guilty of the crime charged upon such evidence. The failure of the judge to do so herein nullified the guarantee of due process of law in favor of the accused, who had no obligation to prove her innocence. Her acquittal should follow.

IV

No reliable evidence on damage

Conformably with finding the evidence of guilt unreliable, the Court declares that the disposition by the RTC ordering petitioner to indemnify Footlucker's in the amount of P131,286.92 with interest of 12% per annum until fully paid was not yet shown to be factually founded. Yet, she cannot now be absolved of civil liability on that basis. Her acquittal has to be declared as without prejudice to the filing of a civil action against her for the recovery of any amount that she may still owe to Footlucker's.

WHEREFORE, the Court SETS ASIDE AND REVERSES the decision convicting ANNA LERIMA PATULA of estafa as charged, and ACQUITS her for failure of the Prosecution to prove her guilt beyond reasonable doubt, without prejudice to a civil action brought against her for the recovery of any amount still owing in favor of Footlucker's Chain of Stores, Inc.

No pronouncement on costs of suit.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Del Castillo, and Villarama, Jr., JJ., concur.

[1] Rollo, p. 22.

[2] TSN, September 15, 2000; March 7 and 30, 2001.

[3] TSN, April 4, 2002; August 13, 2002; September 11, 2002; September 12, 2002; and November 20, 2002.

[4] TSN, September 11, 2002, pp. 3-7

[5] Rollo, p. 23-27.

[6] Id., p. 27.

[7] Id., p. 40.

[8] Id., p. 43.

[9] Id., pp. 45-46.

[10] Id., p. 10.

[11] People v. Manalili, G. R. No. 121671, August 14, 1998, 294 SCRA 220, 252; People v. Ortega, Jr., GR No. 116736, July 24, 1997, 276 SCRA 166, 187; People v. Guevarra, G.R. No. 66437, December 4, 1989, 179 SCRA 740, 751; Matilde, Jr. v. Jabson, No. L-38392, December 29, 1975, 68 SCRA 456, 261; United States v. Campo, No. 7321, 23 Phil. 368, 371-372 (1912).

[12] Barrameda v. Court of Appeals, G.R. No. 96428, September 2, 1999, 313 SCRA 477, 484.

[13] Rollo, pp. 41-42 (bold emphasis supplied).

[14] Andaya v. People, G.R. No. 168486, June 27, 2006, 493 SCRA 539, 556-557.

[15] People v. Esmale, G.R. Nos. 102981-82, April 21, 1995, 243 SCRA 578, 592.

[16] Section 14, (2), Article III (Bill of Rights).

[17] People v. Arapok, G.R. No. 134974, December 8, 2000, 347 SCRA 479, 498.

[18] Supra, at note 1.

[19] 5 Moran, Comments on the Rules of Court, 1963 Edition, pp. 267-268; citing Coleman v. Southwick, 9 Johnson (N.Y.), 45, 50, 6 Am. Dec. 253.

[20] Id., citing Minea v. St. Louis Corp., 179 Mo. A., 705, 716, 162 S.W. 741.

[21] Id., p. 268.

[22] Wigmore, Sec. 1766; Tracy's Handbook, 62 Ed., pp. 220-221.

[23] Id.

[24] 20 Am Jur 404.

[25] People v. Pagkaliwagan, 76 Phil. 457, 460 (1946).

[26] *Donnelly v. United States*, 228 US 243.

[27] *Gulam v. Santos*, G.R. No. 151458, August 31, 2006, 500 SCRA 463, 473.

[28] Section 21. When evidence of authenticity of private document not necessary. - Where a private document is more than thirty years old, is produced from a custody in which it would naturally be found if genuine, and is unblemished by any alterations or circumstances of suspicion, no other evidence of its authenticity need be given. (22 a)

[29] Section 8, Rule 8, Rules of Court, which states:

Section 8. How to contest such documents. — When an action or defense is founded upon a written instrument, copied in or attached to the corresponding pleading as provided in the preceding section, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath, specifically denies them, and sets forth what he claims to be the facts; but the requirement of an oath does not apply when the adverse party does not appear to be a party to the instrument or when compliance with an order for an inspection of the original instrument is refused. (8a)

[30] Section 4, Rule 129, Rules of Court, which provides:

Section 4. Judicial admissions. - An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made. (2a)

[31] Section 20, Rule 132, Rules of Court.

[32] TSN, September 15, 2000, pp. 13-16.

[33] TSN, August 13, 2002, pp. 15-16.

[34] TSN, September 11, 2002, p. 9.

[35] TSN, April 4, 2002, pp. 20-21.

[36] TSN, August 13, 2002, pp. 10-14.

[37] TSN, September 11, 2002, pp. 3-7

[38] G.R. No. 138084, April 10, 2002, 380 SCRA 374, 378-379.

[39] *Id.*, citing *Eugenio v. Court of Appeals*, G.R. No. 103737, December 15, 1994, 239 SCRA 207, 220.

[40] *Rollo*, p. 42.

[41] *II Regalado, Remedial Law Compendium*, Ninth Edition, p. 652.

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