

CIELITO R. GAN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 165884. April 23, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before Us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, which seeks to set aside the Decision[1] of the Court of Appeals dated 16 June 2004 in CA-G.R. CR No. 22073 which affirmed, except for the penalties imposed, the Joint Decision[2] of Branch 26 of the Regional Trial Court (RTC) of Cabanatuan City, in Criminal Cases No. 224-AF (4682-R), 127-AF (4683-R), 225-AF (4684-R), 128-AF (4685-R), 153-AF (4686-R), 666-AF (4687-R), 155-AF (4688-R), 667-AF (4689-R), 668-AF (4690-R) and 226-AF (4691-R) dated 27 August 1997 finding petitioner Cielito R. Gan guilty of ten counts of Simple Theft, and its Resolution[3] dated 20 October 2004 denying petitioner's motion for reconsideration.

The ten informations for Qualified Theft were filed on 2 May 1985. On 14 June 1987, the Provincial Courthouse was razed causing the records of the cases to be burned. By reason thereof, the records of the cases were ordered reconstituted by the trial court. On 12 August 1987, the reconstitution of the records was terminated and all the documents submitted were approved.

The accusatory portion of the information in Crim. Case No. 224-AF (4682-R) reads:

That on or about the 15[th] day of November, 1982, in the City of Cabanatuan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above- named accused, being employed as an internal auditor of the Wesleyan University-Philippines, with intent of gain and without the knowledge of the said institution's representative, Dr. Gloria D. Lacson, President, person-in-charge of the administrative and financial matters, with serious breach of confidence reposed on him by his employer did then and there willfully, unlawfully, and feloniously take, steal and carry away the sum of FIVE THOUSAND SIX HUNDRED THIRTY PESOS & 45/100 (P5,630.45), Philippine Currency, in the following manner to wit: said accused then assigned as the internal auditor of the aforesaid Wesleyan University-Philippines, for the purpose of auditing the task performed by the accounting department thereof, as in fact said auditor did audit the "cash turn over slip" representing the part cash collection of Elsa A. Dantes, teller, for the said business day and after counting and auditing the cash, check/s embodied therein, instead of returning the same to said teller for the final turn-over to the treasurer, said accused deliberately withheld the same without any authority to do so and pocketed the sums involved, to the damage and prejudice of the Wesleyan University-Philippines in the aforementioned amount, Philippine Currency.[4]

The nine other Informations are similarly worded except for the date when the theft was committed, the amount taken, and the name of the teller whose collection was taken. The pertinent data in the other informations are as follows:

Case No.

127-AF (4683-R)
225-AF (4684-R)
128-AF (4685-R)
153-AF (4686-R)
666-AF (4687-R)
155-AF (4688-R)
667-AF (4689-R)
668-AF (4690-R)
226-AF (4691-R)

Date

13 December 1982
30 May 1983
2 June 1983
7 September 1983
7 November 1983
13 February 1984
4 June 1984
4 June 1984
23 July 1984

Amount

P17,895.00
P11,228.00
P10,500.85
P30,819.00
P13,678.00
P8,975.75
P16,820.00
P25,668.00
P9,551.60

Name of Teller

Mercedita S. Manio
Elsa A. Dantes
Mercedita S. Manio
Mercedita S. Manio
Elsa A. Dantes
Mercedita S. Manio
Elsa A. Dantes
Mercedita S. Manio
Mercedita S. Manio

When arraigned on 28 October 1987, petitioner, assisted by counsel de parte, pleaded not guilty to the charges.[5]
No pre-trial conference was conducted because appellant and his counsel did not agree to the holding thereof.[6]
Thereafter, joint trial of the cases ensued.

The prosecution presented the following witnesses: Elsa A. Dantes, Merceditas S. Manio, Jose B. Ferrer, Emely Pajarillaga, Librada D. Lacson, Inocencia Sarmenta, and Jose C. Reyes. On the other hand, the accused took the witness stand for the defense.

Elsa A. Dantes[7] testified that she has been working at the Wesleyan University-Philippines (WUP) since 1972 and has been holding the position of teller since June 1981. As teller, she receives payments from students or persons paying the school for which she issues receipts. The original copy of the official receipt is given to the person paying while she holds on to the duplicate and triplicate copies. She explains that she turns over her collection for the day to the Internal Auditor of WUP for auditing purposes. Together with the money, she turns over three copies of Cash Turn Over Slips (CTOS) and the duplicate and triplicate copies of the official receipts she had issued for the payments she had received. The Internal Auditor returns to her one copy of the CTOS, and the duplicate and triplicate copies of the official receipts which she will use as bases in making an abstract of receipts. She said it is the teller's duty to turn over the money to the Internal Auditor and it is the latter who will give it to the treasurer. Once she turns over the money to the Treasurer, she no longer knows what the Internal Auditor does to the money. She said she was on duty on 15 November 1981,[8] 30 May 1983,[9] 7 November 1983,[10] and 4 June 1984[11] where she turned over to petitioner for auditing the amounts of P5,630.45, P11,228.00, P13,6780 and P16,820, respectively, together with their corresponding CTOS and duplicate and triplicates copies of the official receipts. As proof that she prepared the CTOS, her initials[12] appear thereon. She explained that the initials[13] of petitioner on the CTOS which he affixed in her presence indicate that he has received the money from her. Since the CTOS[14] did not contain the signature of the Treasurer of WUP, it means that the money was not delivered to the Treasurer. She revealed she learned about the missing funds from Joaquin Cunanan and Company, WUP's External Auditor, when the latter discovered the same. She disclosed that there was no written instruction for her to deliver and leave the money to the Internal Auditor.

Merceditas Manio[15] took the witness stand and stated that she has been a teller at WUP since 1 July 1981. Among her duties is to receive cash payments made to the WUP whereby she issues receipts therefor. The original (first) copy of the receipts are given to the payor while the second and third copies thereof are retained by her to be given to the Internal Auditor for auditing purposes. On 13 December 1982,[16] 2 June 1983,[17] 7 September 1983,[18] 13 February 1984,[19] 4 June 1984,[20] and 23 July 1984,[21] she turned over her collections for the day in the amounts of P17,895.00, P10,500.85, P30,819.00, P8,975.75, P25,668.00, and P9,551.60, respectively. Each amount was turned over to the Internal Auditor for audit accompanied with the CTOS and the duplicate and triplicate of the official receipt. All the CTOS[22] covering the foregoing amounts contained both her signature[23] and that of petitioner which show that it was she who prepared the CTOS and that the amounts were turned over to the petitioner. She said petitioner wrote his signatures[24] or initials on the CTOS in her presence.

Ms. Manio further narrated that she learned her duties as teller from petitioner and that from the time she started working as a teller in June 1981, she turned over her collections to petitioner. She said it was through the External Auditor, Joaquin Cunanan and Company, that she found out about the missing funds. She added that although there was no written instruction from the management of the WUP to turn over the collections to the Internal Auditor, it was the usual procedure for tellers to turn over the collections to petitioner. She stressed that the signature of petitioner in the CTOS means he audited the collection and took the money. Of the two copies of the CTOS retained by petitioner, petitioner is supposed to deliver a copy to the Treasurer who will sign the copy to be kept by petitioner.

Jose B. Ferrer[25] testified that he has been the Accountant of WUP since June 1974. As such, his duties, among other things, are to record in the General Ledger the monthly transactions reflected in the cash disbursement book,

cash receipts book, and receivables from students and employees. He said that the Internal Auditor is not the custodian of funds and the tellers are not supposed to turn over their collections to the Internal Auditor. However, there was an order from the Internal Auditor to turn over the collections to him. He explained that although there was no written order, memo or circular requiring the collections of the tellers to be turned over to the internal auditor, the tellers still followed the order of the Internal Auditor to turn over to him their collections. Having full trust in him as representative of the Office of the President, they followed him because they believed that whatever is being ordered by him comes from the President. When petitioner was appointed Internal Auditor in 1979, he disclosed that the latter began to change all their procedures. He added that the Internal Auditor checks the work of the tellers, Accountant and the Treasurer and whatever corrections he makes on the work of the Treasurer, he considers to be conclusively correct because he trusts him, he being a Certified Public Accountant.

Emely Pajarillaga[26] narrated that she has been the Bookkeeper of the WUP since May 1980. As bookkeeper, her duties include recording cash disbursements based on paid vouchers, collections based on abstracts given by the tellers, and official receipts in the cash receipts book. She said she does not know about the collections of Elsa A. Dantes and Merceditas Manio on 15 November 1982 and the succeeding dates mentioned in the informations. It was through Joaquin Cunanan and Company that she, together with the school, learned about the missing funds. She explained that she is under the Accounting Department headed by Jose Ferrer, which is separate from the Internal Auditing Office headed by petitioner. The Internal Auditing Office, she declared, is not under the supervision of the Accounting Office.

Librada D. Lacson[27] testified that she has been an employee of the WUP and is the younger sister of the President of WUP, Dr. Gloria D. Lacson. He knows petitioner to be the former Internal Auditor of WUP. She narrated that after three years of looking for petitioner because of the criminal cases filed against him, petitioner was arrested in Paraisaque by two policemen from Baclaran. At the time of petitioner's arrest, she said she was a few meters away. They thereafter brought petitioner to Cabanatuan City and entrusted him to the Cabanatuan City Police Department. For the apprehension of petitioner, the reward of P20,000.00 given by Dr. Gloria D. Lacson was divided among her, the two policemen, the driver, and another civilian. She explained that when petitioner was apprehended, the arresting officers were armed with a warrant of arrest which she said was issued sometime between the years 1986 and 1987 after petitioner disappeared.

Inocencia Sarmenta[28] testified that she is the Treasurer of WUP and has known petitioner since 1981. Her duties, among other things, are to take custody of the school's monies which come to her possession and to see to it that its obligations are paid. In handling the monies, she keeps receipts which she has signed together with the deposit slips and passbook. As Treasurer, she explained that the procedure of the flow of money from the teller up to the time it reaches her possession is that the teller turns over the money to Cielito Gan who is supposed to turn over the monies to her. She said that this was the procedure prescribed by petitioner when the latter was appointed Internal Auditor and it was the latter who instructed the tellers thereof. As evidence of the teller that the money is turned over to the Internal Auditor, the teller prepares a CTOS which the teller gives to the Internal Auditor, together with the money. After the money is audited by the Internal Auditor, he is supposed to turn it over to her on the same date. After she receives the money, she prepares the four copies of the deposit slip and then deposits the money in their depository bank. Prior to the appointment of petitioner as Internal Auditor, the procedure was for the tellers to turn over the money to the Treasurer. She disclosed that she did come across the CTOS marked Exhibits "A" to "J." Since the monies were not turned over to her, it only means that the same went to petitioner. She added that being a co-employee, she knows the signature of the petitioner and that his signature appears in the CTOS.

Ms. Sarmenta said that when the new procedure was implemented, she did not take any step to question it because

petitioner was directly under the Office of the President and as Internal Auditor, he has the authority to implement it. She learned in the later part of August 1984 from the school's External Auditor, Joaquin Cunanan and Company, that the CTOS involved in this case were not turned over to her. When she learned of the loss, she was not able to talk to petitioner because he was already absent without official leave (AWOL) and was no longer in the office. She talked to the tellers who informed her that they gave the money covered by the subject CTOS to petitioner. The President of WUP, she said, asked that petitioner be located. She added that a Fact Finding Committee was formed by the school and that petitioner was found to be at fault. Finally, she said the money that was not missing was deposited by her in the bank.

Jose C. Reyes,[29] a partner of the Joaquin Cunanan and Company, testified that the company has been the External Auditor of WUP since 1977. It conducted yearly audit on WUP and in the audit of the 31 May 1984 financial statement, the auditors became suspicious because they noted that collections remained undeposited contrary to the 31 May 1984 bank reconciliation. After informing the president of the suspicious entries, they widened the scope of their examination and asked for the CTOS. The company was hired for a special audit in September 1984. They focused only on cash and discovered that P1.7 million covering the period 1981 to 1984 cannot be accounted for. Said finding was contained in their report.[30]

He revealed that although he had no personal participation in the preparation of the report, they did the actual examination since he was still there and that the result is in their possession. The report, he said, is based on the working papers consisting of documents, CTOS and receipts. The CTOS[31] involved in this case, except for one,[32] are included in the report.

He explained that there is a ruling in Accounting that no one or no person shall be in-charge of all phases of the transaction. In the case of WUP, petitioner, as Internal Auditor, was able to get hold of the collections and this is "a very strong violation" of a good internal audit and accounting, because the internal auditor can easily manipulate the records. The ordinary procedure of WUP was for the teller who receives the collections to turn over the same directly to the treasurer and then the treasurer deposits the money in the bank. From the CTOS they examined, they learned that this procedure was not followed by petitioner because the collections still passed through him. He added there was a turnover of CTOS to the treasurer but not actually the amounts received from the teller.

He further explained that the anomaly was discovered only during the regular audit for 1984. During the special audit, as noted in their report, they tried to account for all the CTOS that the tellers prepared, but neither the tellers' copy nor the treasurer's copy can be accounted for.

Petitioner Cielito R. Gan testified that prior to his appointment in June 1979 as Internal Auditor of WUP, he was a student assistant in the Accounting Office from 1973 to 1974 and bookkeeper from 1974 until he was appointed Internal Auditor. As Internal Auditor, he emphasized it is not his duty to have custody of funds. It is the Treasurer who is the custodian of all school funds and the primary duty of the tellers is to turn over their collections to the Treasurer. He explained that when he conducts an audit on the collections of the tellers, the tellers who make the turn over of the collections are present. In conducting his audit which usually takes three to five minutes, he said that in the presence of the tellers he physically counts the cash to determine if the CTOS tallies with the receipts. If it does, he affixes his signature in the middle portion of the CTOS signifying that he audited that particular CTOS, and then he returns the cash, CTOS and official receipts to the teller concerned. His signature on the CTOS does not mean he received the money. He does not get a copy of the CTOS because it is the Treasurer who gives him a copy thereof after the money has been deposited in the bank by the Treasurer and that he receives it within three to five days. After his audit, he said he presumes that the tellers turn over the cash, CTOS and official receipts to the Treasurer because that is their duty. He audits the cash deposits of the Treasurer and he does this by

comparing the CTOS with the deposit slip which documents are furnished him by the Treasurer. He added that if the Bank Reconciliation Statement, made up of the account of the school and the record of the bank, is balanced and tallies, there is no missing account. It is the Accountant of the school who prepares this document which is noted by the Treasurer. As far as he knows, the Bank Reconciliation Statement of the school from 1982 to 1984 tallied.

Petitioner insisted the charges are not true. He claimed he had no participation in the losses. He admitted getting hold of the money/collection together with the CTOS and official receipts for audit, but claimed he returned them to the tellers who then turn them over to the Treasurer who is the custodian of the funds of the school. He maintained that he had nothing to do with the change of policy as regards the flow of money in WUP. If there is a change of policy, the approval of the WUP President is required because it is not part of his authority to do so. He said that sometime in 1982, the tellers told him their file of CTOS was not complete because they had not received their copies of the CTOS from the Treasurer. During the period 1982 to 1984, he claims the tellers did not complain about any missing fund.

Petitioner disclosed he came to know about the missing funds when the External Auditor, Joaquin Cunanan and Company, reported it in 1984. Prior to the report, he did not know there were missing funds because he assumed that the funds were intact because the Monthly Bank Reconciliation Statement always tallied. He was not able to take steps to locate the missing funds because he was the one being pointed to by the people in the Accounting Office as the perpetrator. As the one being blamed for the loss, he filed his resignation on 31 August 1984 without clearing his name. He claimed he was not able to clear himself in an investigation because at the time he left, there was no investigation yet. The only reason he could think of why he was being accused is jealousy. He said he started as a mere student assistant, but through his efforts, he reached the position of Internal Auditor.

He said he did not give any written explanation before he resigned and that he was not aware that a complaint against him was forthcoming. He said that while the external audit was being conducted, the Treasurer, Ms. Inocencia Sarmenta, told him there were missing funds and that they were blaming him for them. He said he also did not personally approach any of the external auditors to verify what the missing funds were. He resigned because of the pressure and intrigues due to the anomalies that were uncovered and were being blamed on him. He admitted that his resignation was not accepted and that the WUP President, Dr. Lacson, wrote him informing him of some problems that should be cleared. When he went to Dr. Lacson's house, he was told to pay the lost amount but he replied he did not make it because he did not handle the cash. Thereafter, on October 3 or 4, 1984, he left without clearance from the school.

He said that after he left the WUP in Nueva Ecija, he stayed or resided in San Antonio, Cagayan, and Parañaque. He traveled a lot because he was trying to earn a living and never bothered to work in Cabanatuan City because he was being threatened that if he was seen there, something bad will happen to him. He said he did not know that his drawer was opened in the presence of police officers and the investigators found copies of CTOS which he allegedly falsified.

He added that he does not know if the school trusted him, but he believes he was hired because of his ability. He said the President of WUP trusted the Treasurer and the Accountant more than him and that he felt like a dummy in his office. Though he was familiar with the activities in the Treasurer, Accounting and Bookkeeping Offices, he never changed the manner of transaction in these offices. If ever changes or amendments are to be made, the same will come from the President's Office. When he became Internal Auditor, he said he merely continued or retained the system or scheme that was being implemented since he was still a student assistant. He said he cannot remember any occasion when he personally handed over to the Treasurer money handed over to him by the tellers.

Petitioner said he merely kept silent and did not object to the finding of the External Auditor that he is the most logical perpetrator of the irregularity, because he had no more time to comment since the prosecution was already presenting its evidence when he was able to read the report.

In its decision dated 27 August 1997, the trial court found petitioner guilty of 10 counts of Simple Theft, the dispositive portion of which reads:

PREMISES CONSIDERED, and finding the accused CIELITO R. GAN guilty beyond reasonable doubt of the crime of Theft in each of ten (10) cases, is hereby sentenced to suffer the penalty of:

- In Crim. Case No. 224-AF (4682-R), and applying the Indeterminate Sentence Law, FOUR (4) MONTHS and ONE (1) DAY OF Arresto Mayor, as minimum, to FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of prision correccional, as maximum, and to pay the offended party the amount of P5,630.45;
- In Crim. Case No. 127-AF (4683-R), and applying the Indeterminate Sentence Law, FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of prision correccional, as minimum, to TEN (10) YEARS as maximum, and to pay the offended party the amount of P17,895.00;
- In Crim. Case No. 225-AF (4684-R), and applying the Indeterminate Sentence Law, the penalty of FOUR (4) MONTHS and ONE (1) DAY of Arresto Mayor, as minimum, to FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of prision correccional, as maximum, and to pay the offended party the amount of P11,228.00;
- In Crim. Case No. 128-AF (4685-R), and applying the Indeterminate Sentence Law, FOUR (4) MONTHS and ONE (1) DAY of Arresto Mayor, as minimum, to FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of prision correccional, as maximum, and to pay the offended party the amount of P10,500.85;
- In Crim. Case No. 153-AF (4686-R), and applying the Indeterminate Sentence Law, EIGHT (8) YEARS and ONE (1) DAY of prision mayor, as minimum, to TWENTY (20) YEARS of reclusion temporal, as maximum, and to pay the offended party the amount of P30,819.00;
- In Crim. Case No. 666-AF (4687-R), and applying the Indeterminate Sentence Law, FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of prision correccional, as minimum, to TEN (10) YEARS of prision Mayor, as maximum, and to pay the offended party the amount of P13,678.00;
- In Crim. Case No. 155-AF (4688-R), and applying the Indeterminate Sentence Law, FOUR (4) MONTHS and ONE (1) DAY of Arresto Mayor, as minimum, to FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY to SIX (6) YEARS, of prision correccional, as maximum, and to pay the offended party the amount of P8,915.75;
- In Crim. Case No. 667-AF (4689-R), and applying the Indeterminate Sentence Law, FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of prision correccional, as minimum, to TWELVE (12) YEARS of prision mayor, as maximum, and to pay the offended party the amount of P16,820.00;
- In Crim. Case No. 668-AF (4690-R), and applying the Indeterminate Sentence Law, EIGHT (8) YEARS and ONE (1) DAY of prision mayor, as minimum, to TWENTY (20) YEARS of reclusion temporal, as maximum, and to pay the offended party the amount of P25,668.00;
- In Crim. Case No. 226-AF (4691-R), and applying the Indeterminate Sentence Law, FOUR (4) MONTHS and ONE (1) DAY of Arresto Mayor, as minimum, to FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of prision correccional, as maximum, and to pay the offended party the amount of P9,551.60;
- And to pay the cost of suit.[33]

The trial court justified its ruling in this wise:

A careful scrutiny and analysis of the evidence presented by the prosecution and defense, this Court has reached the inevitable conclusion that the evidence of the prosecution is more credible than that of the accused and is sufficient to establish the guilt of the accused beyond reasonable doubt in the ten (10) cases. In fact, it was shown that when it was pointed out that the accused was responsible for the missing funds, he did not take any step at all to clear his name, but instead he resigned and although there is no official action yet on his resignation, he left the University without any leave of absence, that is, he went AWOL. As a matter of fact, when a warrant for his arrest was already issued, accused Cielito Gan was no longer in Cabanatuan City, as he was apprehended in Parañaque by a team commissioned by the University. From the aforesaid actuation of the accused, the Court cannot comprehend any positive result but rather construe the flight of the accused as indicative of his guilt and awareness that he has no tenable defense (PP vs. Mercado, 190 SCRA 452). Likewise, when the accused took the witness stand, he did not give any explanation as to the missing funds rather he made merely denials which cannot stand in the instant cases where there are direct and specific accusation and for failure of the accused to deny the same also by specific and direct circumstances, then the same can be regarded as quasi confession (PP vs. Magdadaro, 197 SCRA 151). The bare denial in open Court by the accused of the charges against him cannot be given evidentiary weight as the prosecution witnesses affirmatively testified to the culpability of the accused (PP vs. dela Torre, 198 SCRA 663); denial is like alibi which is inherently a weak defense and cannot prevail over the positive and credible testimony of the prosecution witnesses that the accused committed the crimes (PP vs. Belibet, 199 SCRA 587).

Finally, the Court cannot close its eyes to the fact that when the accused went on AWOL, an investigation was conducted and the people from the University in the presence of some police officers found in the drawer of the accused copies of Cash Turn Over Slips which were falsified by the accused, so the conclusion reached by the Court is fortified. Nevertheless, the Court did not find any clear evidence to support the allegation of the prosecution of trust and confidence on the accused, as in fact, the accused said that he does not know if trust and confidence was reposed on him, although, as stated above, the guilt of the accused is proved beyond reasonable doubt for Theft on the ten (10) counts as it is clearly proved that the amount of money stated in the information were taken by the accused with intent of gain.[34]

After the promulgation of the decision of the trial court, petitioner, who was on provisional liberty by virtue of the bailbonds he posted, was taken into custody. Thereafter, he filed a Petition for Bail[35] which the trial court denied in an Order dated 19 December 1997.[36]

A Notice of Appeal having been filed by petitioner, the trial court transmitted the complete records of the cases to the Court of Appeals.[37]

Petitioner filed anew a Petition for Bail[38] before the Court of Appeals which the latter denied in a resolution dated 3 March 1999.[39] The Motion for Reconsideration filed by petitioner was likewise denied on 19 April 2000.[40]

On 16 June 2004, the Court of Appeals rendered its decision affirming the conviction of petitioner but modified the penalties imposed as follows:

WHEREFORE, in the light of the foregoing, the court a quo's Joint Decision promulgated on September 29, 1997 is hereby MODIFIED to reflect, as it hereby reflects, that:

- In Criminal Case No. 224-AF (4682-R), accused-appellant is sentenced to suffer an indeterminate penalty of four (4) months and one (1) day of arresto mayor, as minimum, to two (2) years of prision correccional, as maximum; and to pay private complainant Wesleyan University-Philippines the amount of Five Thousand Six Hundred Thirty Pesos and Forty-Five Centavos (P5,630.45);
- In Criminal Case No. 127-AF (4683-R), accused-appellant is sentenced to suffer an indeterminate penalty of four (4) years, two (2) months and one (1) day of prision correccional, as minimum, to eight (8) years of prision

mayor, as maximum; and to pay private complainant Wesleyan University-Philippines the amount of Seventeen Thousand Eight Hundred Ninety-Five Pesos (P17,895.00);

- In Criminal Case No. 666-AF (4687-R), accused-appellant is sentenced to suffer an indeterminate penalty of four (4) years, two (2) months and one (1) day of prision correccional, as minimum, to eight (8) years of prision mayor, as maximum; and to pay the private complainant Wesleyan University-Philippines the amount of Thirteen Thousand Six Hundred Seventy-Eight Pesos (P13,678.00);

- In Criminal Case No. 667-AF (4689-R), accused-appellant is sentenced to suffer an indeterminate penalty of four (4) years, two (2) months and one (1) day of prision correccional, as minimum, to eight (8) years of prision mayor, as maximum; and to pay the private complainant Wesleyan University-Philippines the amount of Sixteen Thousand Eight Hundred Twenty Pesos (P16,820.00);

- In Criminal Case No. 153-AF (4686-R), accused-appellant is sentenced to suffer an indeterminate penalty of eight (8) years and one (1) day of prision mayor, as minimum, to eleven (11) years of prision mayor, as maximum; and to pay private complainant Wesleyan University-Philippines the amount of Thirty Thousand Eight Hundred Nineteen Pesos (P30,819.00);

- In Criminal Case No. 668-AF (4690-R), accused-appellant is sentenced to suffer an indeterminate penalty of eight (8) years and one (1) day of prision mayor, as minimum, to eleven (11) years of prision mayor, as maximum; and to pay private complainant Wesleyan University-Philippines the amount of Twenty-Five Thousand Six Hundred Sixty-Eight Pesos (P25,668.00); and

- In Criminal Case No. 155-AF (4688-R), accused-appellant is sentenced to suffer an indeterminate penalty of four (4) months and one (1) day of arresto mayor, as minimum, to four (4) years, two (2) months and one (1) day of prision correccional, as maximum; and to pay private complainant Wesleyan University-Philippines the amount of Eight Thousand Nine Hundred Fifteen Pesos and Seventy-Five Centavos (P8,915.75);

The aforesaid Decision is AFFIRMED in all other respects.[41]

Petitioner filed a Motion for Reconsideration[42] which was denied in a resolution dated 20 October 2004.[43]

Petitioner is now before us raising the following arguments:

- THE COURT OF APPEALS GRAVELY ERRED IN CONVICTING THE ACCUSED DESPITE THE FAILURE OF THE PROSECUTION TO PASS THE TEST UNDER SEC. 4, RULE 133, RULES OF COURT.
- THE COURT OF APPEALS GRAVELY ERRED IN BASING THE JUDGMENT OF CONVICTION ON MERE PRESUMPTION OF GUILT.

On the first assigned error, petitioner contends that the prosecution failed to show the unbroken chain of circumstantial evidence to prove the guilt of petitioner, because petitioner could not have taken the money subject matter of this case in light of the alleged admission of Treasurer Inocencia Sarmenta that petitioner turned over the money to her.

We find such contention to be untenable.

There is no dispute that the prosecution failed to adduce direct evidence showing that petitioner took the money mentioned in the ten informations because no one saw him in flagrante delicto, that is, in the very act of committing a crime. However, the lack or absence of direct evidence does not necessarily mean that the guilt of an accused cannot be proved by evidence other than direct evidence. Direct evidence is not the sole means of establishing guilt beyond reasonable doubt since circumstantial evidence, if sufficient, can supplant its absence.[44] The crime charged may also be proved by circumstantial evidence, sometimes referred to as indirect

or presumptive evidence.[45] Circumstantial evidence has been defined as that which "goes to prove a fact or series of facts other than the facts in issue, which, if proved, may tend by inference to establish a fact in issue." [46] Circumstantial evidence may be resorted to when to insist on direct testimony would ultimately lead to setting felons free.[47]

The standard that should be observed by the courts in appreciating circumstantial evidence was extensively discussed in the case of *People v. Modesto*,[48] thus:

No general rule can be laid down as to the quantity of circumstantial evidence which in any case will suffice. All the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt.

It has been said, and we believe correctly, that the circumstances proved should constitute an unbroken chain which leads to one fair and reasonable conclusion which points to the accused, to the exclusion of all others, as the guilty person. From all the circumstances, there should be a combination of evidence which in the ordinary and natural course of things, leaves no room for reasonable doubt as to his guilt. Stated in another way, where the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with innocence and the other with guilt, the evidence does not fulfill the test of moral certainty and is not sufficient to convict the accused.

In the case at bar, the prosecution adduced the following circumstantial evidence to show that petitioner, without authority, pocketed the amounts stated in the informations:

- As Internal Auditor of WUP, petitioner changed the procedure as regards the flow of money from the tellers to the Treasurer. Prior to his appointment as Internal Auditor, the procedure was that the tellers directly turn over their collections to the Treasurer without passing through the Internal Auditor. After petitioner became Internal Auditor, the collections of the tellers are turned over to him and then it is he who turns over the money to the Treasurer after audit.

[49]

- WUP tellers Elsa A. Dantes[50] and Merceditas S. Manio[51] categorically stated they turned over the money involved in these cases to petitioner for audit. As evidence thereof, the signature[52] of petitioner appears on the ten CTOS.

- WUP Treasurer Inocencia Sarmenta emphatically declared that she has not come across the Cash Turn Over Slips (CTOS)[53] involved in these cases and has not received from petitioner the amounts mentioned therein.[54]

- Monies mentioned in the informations were not turned over by petitioner to Treasurer Sarmenta.[55]

- A special audit was conducted by Joaquin Cunanan and Company with a finding that the amount of P1,714,889.28, which included, among other things, the amounts alleged in the informations, was misappropriated and not deposited with the bank.[56]

- When the special audit was still being conducted, petitioner submitted his letter of resignation. Not having secured his clearance from WUP, petitioner left without making any action to clear his name.[57]

In this case, we hold that the circumstantial evidence presented by the prosecution warrants the finding of guilt of petitioner. Under Rule 133, Section 4, of the Rules of Court, it is stated that there is sufficiency of circumstantial evidence when: (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[58] The circumstances above-mentioned upon which the conviction of petitioner is anchored, satisfactorily

meet the requirements of the rules.

The defense of petitioner is denial. He denies changing the procedure in the flow of money from the tellers to the Treasurer. His statement that it is the tellers who directly turn over the collections for the day to the Treasurer is belied by the tellers and the Treasurer. The two tellers and the Treasurer are one in saying that the collections for the day pass through petitioner first for audit before the latter turns them over to the Treasurer. They affirm that such procedure was implemented and followed when petitioner assumed the office of Internal Auditor of WUP. Ms. Sarmenta explained that even though there was no written order to effect the new procedure, they followed the procedure prescribed by petitioner because they believed he had the authority to do so as Internal Auditor he being directly under the Office of the President.[59]

We find the evidence of the prosecution to be more credible than that adduced by petitioner. When it comes to credibility, the trial court's assessment deserves great weight, and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The reason is obvious. Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate properly testimonial evidence.[60] It is to be noted that the Court of Appeals affirmed the findings of the RTC. In this regard, it is settled that when the trial court's findings have been affirmed by the appellate court, said findings are generally conclusive and binding upon this Court. We find no compelling reason to deviate from their findings.[61]

Petitioner's denial that he changed the procedure in the flow of money and that he returned the monies he audited to the tellers cannot prevail over the affirmative and categorical testimonies of Elsa A. Dantes, Merceditas S. Manio and Inocencia Sarmenta that they merely followed the procedure that was laid down by petitioner when he took over as Internal Auditor. Dantes and Manio positively testified that their collections were left with petitioner and that the same were not returned to them after petitioner audited the monies because the latter was the one who would turn them over to the Treasurer. Sarmenta was firm in saying she had not come across the CTOS involved and that the monies therein mentioned were not received by her from petitioner. Denial is a self-serving negative evidence that cannot be given greater weight than the declaration of a credible witness who testified on affirmative matters.[62] Like alibi, denial is inherently a weak defense and cannot prevail over the positive and credible testimony of the prosecution witnesses.[63]

Further, denial cannot prevail over the positive testimony of prosecution witnesses who were not shown to have any ill-motive to testify against petitioner. In this case, petitioner tried to discredit the prosecution witnesses, more particularly Dantes, Manio and Sarmenta, by saying that these people tried to attribute to him the missing funds because they are jealous of him for attaining such a lofty position considering that he merely started as a student assistant. Such attempt will not prosper there being no competent evidence to buttress such claim. On the contrary, his mere position as Internal Auditor, even without any written order or memorandum, was sufficient justification for these people to change the present set-up and to follow what he prescribed. From the actuations of these people, we find not jealousy, but trust and respect for petitioner.

Petitioner's claim that prosecution witness Inocencia Sarmenta admitted that she received the amounts contained in the informations from petitioner deserves scant consideration. Nowhere in the testimony of Ms. Sarmenta had she admitted that the amounts involved were turned over to her by petitioner. What Ms. Sarmenta said is she never came across the ten CTOS, which means she never received the amounts therein mentioned.[64] Petitioner would like to make this Court believe that Ms. Sarmenta received from him the amounts subject matter of this case. We quote from the petition:

ATTY. BELTRAN

Q As Treasurer of the Wesleyan University Philippines, will you please tell us the procedure of the flow of the money of the University coming from the teller up to the time it will reach your possession?

A The teller turn (sic) over to Cielito Gan the cash including the checks, then afterwards, after Cielito Gan received the monis (sic) including checks, he is supposed to turn over the same, sir.

x x x x

ATTY. MERCADO

To you.

WITNESS

A Yes, sir. (TSN, September 4, 1990, p. 10)

x x x x

ATTY. BELTRAN

Q And after the Cash Turn Over (sic) slips with the money and the checks is (sic) turned over to Cielito Gan(,) what will happen to the monies(,) if you know?

A He is suppose (sic) to turn (them) over to me, sir.

x x x x

Q When did Cielito Gan turn over to you the cash turn over (sic) slips, the moneys and the checks turned over to him by the tellers?

A He is suppose (sic) to turn over the moneys and checks on the same date to me after he received and audited the same, sir. (TSN, September 4, 1990, p. 15).

One copy of the CTOS, though, shall be returned to the Internal Auditor as his copy, containing the signature of the treasurer as proof that possession of the other copy of the CTOS as well as the cash/checks collection have been turned over to the treasurer. x x x (DECISION — pp. 12-13)

Upon receipt by the treasurer of the cash/check collection and the other copy of the CTOS, the treasurer deposits the cash/checks collection in the bank. Inocencia Sarmenta testified:

ATTY. BELTRAN

Q Now, when you received the cash turn over (sic) slips, the moneys, the checks from Cielito Gan, what will you do with it (sic)?

A I prepare the deposit slip and deposit it in our depository bank (September 4, 1990, pp. 15-16) (DECISION — p. 14).[65]

A reading of the testimony shows what procedure is being followed in the WUP. Ms. Sarmenta explained that after the tellers turn over their collection to petitioner, the latter, after auditing the same, will turn over the same to her so that she will deposit it in the depository bank. It is clear that Ms. Sarmenta used the word "supposed" because what should be done by petitioner is to deliver or turn over the money to Ms. Sarmenta. In the case at bar, the procedure which petitioner himself prescribed, was not followed. He himself did not follow the procedure when he, without authority, pocketed the amounts stated in the informations.

Petitioner argues that the Court of Appeals erred in basing his conviction on mere presumption of guilt.

We do not agree. Both the trial court and the Court of Appeals convicted him because the prosecution was able to prove all the elements of the crime of Theft. The essential elements of theft are: (1) there was a taking of personal property; (2) the property belongs to another; (3) the taking was without the consent of the owner; (4) the taking was done with intent to gain; and (5) the taking was accomplished without violence or intimidation against the person or force upon things. [66] Clearly, all these elements have been shown. The Court of Appeals has this to say:

Considering, then, from the totality of the prosecution's testimonial evidence that accused-appellant changed the procedure in regard to the receipt, audit and custody of cash/checks paid to the Wesleyan; that the subject funds were physically turned over by tellers Elsa A. Dantes and Mercedita S. Manio to accused-appellant but that said funds were not physically turned over by accused-appellant to treasurer Inocencia Sarmenta; and that the special external audit report confirmed the losses during the period indicated in the Informations, the conclusion that the funds were taken by accused-appellant is inevitable. Said circumstances, like pieces in a puzzle that fit in the right place, give such inference as they clearly show that actual physical possession of the subject funds last came in the hands of accused-appellant.[67]

Petitioner argues there was no proof that the checks, as stated in the assailed decision, were encashed by him. This time, petitioner is correct that there is no evidence showing that he encashed the checks because the checks are not included in the cases filed against him. The subject matter of the ten informations filed against him are all cash as mentioned in the ten CTOS.

Petitioner maintains that the testimonies of Elsa Dantes and Merceditas Manio that they delivered cash/checks to petitioner are discordant with the testimony of Inocencia Sarmenta that petitioner delivered them to her for deposit with the bank.

We find nothing inconsistent with their testimonies. As discussed above, Inocencia Sarmenta never said that the amounts mentioned in the informations were delivered to her. What she meant was that petitioner was "supposed" to deliver the tellers' collections to her pursuant to his prescribed procedure after the tellers delivered them to him for auditing. In other words, Inocencia Sarmenta could not have deposited the amounts involved in the bank for the simple reason that petitioner did not turn over to her the monies that the tellers left with petitioner.

Petitioner argues that since Inocencia Sarmenta did not come across the ten CTOS, it does not mean he stole the amounts mentioned therein.

Such argument does not persuade. The statement of Ms. Sarmenta that she did not come across the ten CTOS must not be considered on its own but should be considered together with all the other circumstantial evidence. By itself, it cannot establish the fact that it was petitioner who took the monies. However, if the other circumstances aforementioned are taken into account, the picture becomes clear that it is, indeed, petitioner who pocketed the monies, he being the last person that got hold of them.

Petitioner tries to exonerate himself by saying that he cannot be held responsible for the missing funds because External Auditor Jose Reyes admitted that the funds collected on 30 May 1984 were deposited on 1 June 1984 which means that Ms. Sarmenta actually received the funds and deposited them in the bank.

Such an admission will not absolve him of liability. The admission is not relevant in the present case. It is to be noted that what were deposited on 1 June 1984 were the funds collected on 30 May 1984. A look at any of the ten informations filed does not show that collections for 30 May 1984 or those that petitioner pocketed are involved.

Petitioner tried to exploit the fact that nothing in the External Report[68] and/or in the testimony of Auditor Jose Reyes points to him as the perpetrator. In such a case, he insisted that he should be acquitted. The fact that he was not singled out by the report does not mean he should be set free. The report, by itself, does not prove that he

committed the crime charged. The report merely established that something has been lost and that said loss was committed during his incumbency as Internal Auditor of WUP. However, if the other pieces of circumstantial evidence are considered, together with the report, his liability is apparent.

Petitioner contends that he cannot be held liable for the charges on the ground that he was not caught in possession of the missing funds. This is clutching at straws. To be caught in possession of the stolen property is not an element of the corpus delicti in theft. Corpus delicti means the "body or substance of the crime, and, in its primary sense, refers to the fact that the crime has been actually committed." [69] In theft, corpus delicti has two elements, namely: (1) that the property was lost by the owner, and (2) that it was lost by felonious taking. [70] In the case before us, these two elements were established. The amounts involved were lost by WUP because petitioner took them without authority to do so.

Petitioner slammed the prosecution when it failed to present the tellers' copies of the CTOS. This will not exonerate him. It must be stressed that the procedure followed in WUP is for the Internal Auditor to turn over to the Treasurer after audit the collections given to him by the tellers. It is not the duty of the tellers to directly give their collections to the Treasurer because the same have to pass through the Internal Auditor first for audit, and it is the latter who would give the monies to the Treasurer. This Court rules that it should be the petitioner who should have presented his copy of the CTOS to show if the Treasurer, indeed, received the collections from him. This, he did not do. If the Treasurer received the monies from him, the Treasurer's acceptance thereof can be seen in his copy of the CTOS because the Treasurer's signature can be seen thereon. Even if the tellers' CTOS were presented, the signature of the Treasurer cannot be found there for the simple reason that the tellers remit their collections not to the Treasurer but to petitioner pursuant to the procedure prescribed by him.

Petitioner faults the prosecution for not giving him a copy of the Report of the External Auditor and for not allowing him to explain his side. These will not exonerate him. Petitioner testified he was not able to object to the findings of the External Auditor because it was during the trial of the cases that the report was made. [71] We find this statement to be misleading. The Report of the External Auditor was not made or finished when the cases were already being heard. The report [72] is dated 5 December 1984. Petitioner was not furnished a copy thereof and was not called to explain because when the audit was being conducted, it was then that he went into hiding after he resigned from WUP without getting any clearance from the school. If only he did not take flight, he could have stayed and answered the charges. This, he did not do.

Finally, petitioner's argument that the fact that he was arrested in Parañaque does not mean he fled because he had no knowledge that there were warrants for his arrest does not hold water. It must be stressed that petitioner, after learning that he was the one being pointed to as the culprit during the conduct of the external audit, suddenly resigned and left the school without securing any clearance. He was apprehended only after more than two years of searching. Jurisprudence has repeatedly declared that flight is an indication of guilt. The flight of an accused, in the absence of a credible explanation, would be a circumstance from which an inference of guilt may be established 'for a truly innocent person would normally grasp the first available opportunity to defend himself and to assert his innocence.' [73] Under the circumstances, it is clear that petitioner tried to evade responsibility for the money that he took. Knowing fully well that he is the suspect, he suddenly disappeared without any clearance from the school. He did not even try to clear his name considering that the external audit was already on-going when he fled. Such actuation clearly indicates he is guilty. It does not matter if he does not know about the warrants for his arrest because his purpose is precisely to avoid liability for his actions. The explanation proffered by petitioner that he resigned because of the pressure coming from Dantes, Manio and Sarmenta who pointed to him as the culprit, is flimsy and does not deserve any consideration.

Going now to the penalties imposed on petitioner, except for the penalties in Criminal Cases No. 153-AF

(4686-R) and 668-AF (4690-R), we find them to be in order.

In Criminal Cases No. 153-AF (4686-R) and 668-AF (4690-R), the amounts stolen were P30,819.00 and P25,668.00, respectively. Accordingly, the penalties to be imposed shall be that prescribed in Article 309(1) of the Revised Penal Code which reads:

ART. 309. Penalties. — Any person guilty of theft shall be punished by:

1. The penalty of prision mayor in its minimum and medium periods, if the value of the thing stolen is more than 12,000 pesos but does not exceed 22,000 pesos; but if the value of the thing stolen exceed the latter amount, the penalty shall be the maximum period of the one prescribed in this paragraph, and one year for each additional ten thousand pesos, but the total of the penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed prision mayor or reclusion temporal, as the case may be.

The penalty imposable is the maximum period of prision mayor in its minimum and medium periods. Applying the Indeterminate Sentence Law, the penalty to be imposed in each is anywhere from two (2) years, four (4) months and one (1) day of prision correccional to six (6) years of prision correccional, as minimum, to anywhere from eight (8) years, eight (8) months and one (1) day of prision mayor to ten (10) years of prision mayor, as maximum.

WHEREFORE, premises considered, the decision of the Court of Appeals dated 16 June 2004 in CA-G.R. CR No. 22073 is **AFFIRMED** with the **MODIFICATION** that in each of Criminal Cases No. 153-AF (4686-R) and 668-AF (4690-R), petitioner is sentenced to a prison term of four (4) years, nine (9) months and eleven (11) days of prision correccional, as minimum, to eight (8) years, eight (8) months and one (1) day of prision mayor, as maximum.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, and Nachura, JJ., concur.

[1] Penned by Associate Justice Jose C. Reyes, Jr. with Associate Justices Conrado M. Vasquez, Jr. and Rebecca De Guia-Salvador, concurring. Rollo, pp. 22-58.

[2] Records, Vol. II, pp. 334-354.

[3] Rollo, p. 60

[4] Records, Vol. I, p. 3.

[5] Id. at 60.

[6] Before the passage of the Speedy Trial Act of 1998 (Republic Act No. 8493), and its implementation by Supreme Court Circular No. 38-98 (effectivity: 15 September 1998), pre-trial in criminal cases is not mandatory.

[7] TSN, 28 October 1987, 9 December 1987, 15 December 1987 and 18 January 1989.

[8] Exh. A, Records, Vol. III, p. 399.

[9] Exh. B, id. at 400.

[10] Exh. C, id at 401.

[11] Exh. D, id. at 402.

- [12] Exhs. A-1, B-1, C-1, and D-1, id. at 399-402.
- [13] Exhs. A-2, B-2, C-2 and D-2, *ibid*.
- [14] Exhs. A-D, *ibid*.
- [15] TSN, 7 March 1989 and 14 March 1989.
- [16] Exh. E, Records, Vol. III, p. 403.
- [17] Exh. F, id. at 404.
- [18] Exh. G, id. at 405.
- [19] Exh. H, id. at 406.
- [20] Exh. I, id. at 407.
- [21] Exh. J, id. at 408.
- [22] Exhs. E to J, id. at 403-408.
- [23] Exhs. E-1, F-1, G-1, H-1, I-1 and J-1, *ibid*.
- [24] Exhs. E-2, F-2, G-2, H-2, I-2 and J-2, *ibid*.
- [25] TSN, 21 June 1989, 27 June 1989, 15 August 1989 and 22 August 1989.
- [26] TSN, 3 October 1989, 19 December 1989 and 31 January 1990.
- [27] TSN, 27 March 1990.
- [28] TSN, 4 September 1990, 12 March 1991, 19 November 1991 and 4 March 1992.
- [29] TSN, 26 August 1992 and 17 February 1993.
- [30] Exh. X and X-1, Records, Vol. III, pp. 454-456.
- [31] Exhs. A-J, id. at 399-408.
- [32] Exh. H, id. at 406.
- [33] Records, Vol. 2, pp. 353-354.
- [34] Id. at 352-353.
- [35] Id. at 362-363.
- [36] Id. at 393.
- [37] Id. at 394.
- [38] CA rollo, pp. 27-30.
- [39] Id. at 68-74.
- [40] Id. at 141.
- [41] Id. at 358-360.
- [42] Id. at 363-370.

- [43] Id. at 405.
- [44] *People v. Caparas*, G.R. No. 134633, 14 April 2004, 427 SCRA 286, 296.
- [45] *People v. Buntag*, G.R. No. 123070, 14 April 2004, 427 SCRA 180, 189.
- [46] *People v. Modesto*, 134 Phil. 38, 43 (1968).
- [47] *Alvarez v. Court of Appeals*, 412 Phil. 137, 144 (2001).
- [48] *Supra* note 46 at 44.
- [49] TSN, 4 September 1990, p. 12, 12 March 1991, p. 9, 9 December 1987, p. 35, 15 December 1987, pp. 26-27, 14 March 1989, p. 27.
- [50] TSN, 28 October 1987, pp. 13-32; Exhs. A to D, Records, Vol. III, pp. 399-402.
- [51] TSN, 7 March 1989, pp. 8-42; Exhs. E to J, *id.* at 403-408.
- [52] Exhs. A-2 to J-2, *id.* at 399-408.
- [53] Exhs. A to J, *ibid.*
- [54] TSN, 4 September 1990, pp. 17-19.
- [55] TSN, 4 September 1990, p. 19.
- [56] Exh. X-2, Records, Vol. III, p. 456.
- [57] TSN, 8 December 1995, pp. 27-29, 5 February 1996, pp. 9-10, 12-13.
- [58] *Ungsod v. People*, G.R. No. 158904, 16 December 2005, 428 SCRA 282, 293.
- [59] TSN, 12 March 1991, pp. 9-13.
- [60] *People v. Escultor*, G.R. Nos. 149366-67, 27 May 2004, 429 SCRA 651, 661.
- [61] *People v. Aguila*, G.R. No. 171017, 6 December 2006.
- [62] *People v. Watiwat*, 457 Phil. 411, 425-426 (2003).
- [63] *People v. Macagaling*, G.R. Nos. 109131-33, 3 October 1994, 237 SCRA 299, 315.
- [64] TSN, 4 September 1990, pp. 17-19.
- [65] Rollo, pp. 14-15.
- [66] *People v. Bago*, 386 Phil. 310, 334-335 (2000).
- [67] CA rollo, pp. 351-352.
- [68] Exh. X, records, Vol. III, p. 454.
- [69] *People v. Roluna*, G.R. No. 101797, 24 March 1994, 231 SCRA 446, 452.
- [70] *Tan v. People*, 372 Phil. 93, 105 (1999).
- [71] TSN, 12 April 1996, p. 3.
- [72] Exh. X, Records, Vol. III, p. 454.

[73] People v. Diaz, 443 Phil. 67, 88 (2003).

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