

**ANTHONY L. NG, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,
RESPONDENT.***G.R. No. 173905. April 23, 2010*

Ponente: VELASCO JR., J.

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This is a Petition for Review on Certiorari under Rule 45 seeking to reverse and set aside the August 29, 2003 Decision [1] and July 25, 2006 Resolution of the Court of Appeals (CA) in CA-G.R. CR No. 25525, which affirmed the Decision[2] of the Regional Trial Court (RTC), Branch 95 in Quezon City, in Criminal Case No. Q-99-85133 for Estafa under Article 315, paragraph 1(b) of the Revised Penal Code (RPC) in relation to Section 3 of Presidential Decree No. (PD) 115 or the Trust Receipts Law.

The Facts

Sometime in the early part of 1997, petitioner Anthony Ng, then engaged in the business of building and fabricating telecommunication towers under the trade name "Capitol Blacksmith and Builders," applied for a credit line of PhP 3,000,000 with Asiatruster Development Bank, Inc. (Asiatruster). In support of Asiatruster's credit investigation, petitioner voluntarily submitted the following documents: (1) the contracts he had with Islacom, Smart, and Infocom; (2) the list of projects wherein he was commissioned by the said telecommunication companies to build several steel towers; and (3) the collectible amounts he has with the said companies.[3]

On May 30, 1997, Asiatruster approved petitioner's loan application. Petitioner was then required to sign several documents, among which are the Credit Line Agreement, Application and Agreement for Irrevocable L/C, Trust Receipt Agreements,[4] and Promissory Notes. Though the Promissory Notes matured on September 18, 1997, the two (2) aforementioned Trust Receipt Agreements did not bear any maturity dates as they were left unfilled or in blank by Asiatruster.[5]

After petitioner received the goods, consisting of chemicals and metal plates from his suppliers, he utilized them to fabricate the communication towers ordered from him by his clients which were installed in three project sites, namely: Isabel, Leyte; Panabo, Davao; and Tongonan.

As petitioner realized difficulty in collecting from his client Islacom, he failed to pay his loan to Asiatruster. Asiatruster then conducted a surprise ocular inspection of petitioner's business through Villarva S. Linga, Asiatruster's representative appraiser. Linga thereafter reported to Asiatruster that he found that approximately 97% of the subject goods of the Trust Receipts were "sold-out and that only 3 % of the goods pertaining to PN No. 1963 remained." Asiatruster then endorsed petitioner's account to its Account Management Division for the possible restructuring of his loan. The parties thereafter held a series of conferences to work out the problem and to determine a way for petitioner to pay his debts. However, efforts towards a settlement failed to be reached.

On March 16, 1999, Remedial Account Officer Ma. Girlie C. Bernardez filed a Complaint-Affidavit before the

Office of the City Prosecutor of Quezon City. Consequently, on September 12, 1999, an Information for Estafa, as defined and penalized under Art. 315, par. 1(b) of the RPC in relation to Sec. 3, PD 115 or the Trust Receipts Law, was filed with the RTC. The said Information reads:

That on or about the 30[th] day of May 1997, in Quezon City, Philippines, the above-named petitioner, did then and there willfully, unlawfully, and feloniously defraud Ma. Girlie C. Bernardez by entering into a Trust Receipt Agreement with said complainant whereby said petitioner as entrustee received in trust from the said complainant various chemicals in the total sum of P4.5 million with the obligation to hold the said chemicals in trust as property of the entruster with the right to sell the same for cash and to remit the proceeds thereof to the entruster, or to return the said chemicals if unsold; but said petitioner once in possession of the same, contrary to his aforesaid obligation under the trust receipt agreement with intent to defraud did then and there misappropriated, misapplied and converted the said amount to his own personal use and benefit and despite repeated demands made upon him, said petitioner refused and failed and still refuses and fails to make good of his obligation, to the damage and prejudice of the said Ma. Girlie C. Bernardez in the amount of P2,971,650.00, Philippine Currency.

CONTRARY TO LAW.

Upon arraignment, petitioner pleaded not guilty to the charges. Thereafter, a full-blown trial ensued.

During the pendency of the abovementioned case, conferences between petitioner and Asiatrust's Remedial Account Officer, Daniel Yap, were held. Afterward, a Compromise Agreement was drafted by Asiatrust. One of the requirements of the Compromise Agreement was for petitioner to issue six (6) postdated checks. Petitioner, in good faith, tried to comply by issuing two or three checks, which were deposited and made good. The remaining checks, however, were not deposited as the Compromise Agreement did not push through.

For his defense, petitioner argued that: (1) the loan was granted as his working capital and that the Trust Receipt Agreements he signed with Asiatrust were merely preconditions for the grant and approval of his loan; (2) the Trust Receipt Agreement corresponding to Letter of Credit No. 1963 and the Trust Receipt Agreement corresponding to Letter of Credit No. 1964 were both contracts of adhesion, since the stipulations found in the documents were prepared by Asiatrust in fine print; (3) unfortunately for petitioner, his contract worth PhP 18,000,000 with Islacom was not yet paid since there was a squabble as to the real ownership of the latter's company, but Asiatrust was aware of petitioner's receivables which were more than sufficient to cover the obligation as shown in the various Project Listings with Islacom, Smart Communications, and Infocom; (4) prior to the Islacom problem, he had been faithfully paying his obligation to Asiatrust as shown in Official Receipt Nos. 549001, 549002, 565558, 577198, 577199, and 594986,[6] thus debunking Asiatrust's claim of fraud and bad faith against him; (5) during the pendency of this case, petitioner even attempted to settle his obligations as evidenced by the two United Coconut Planters Bank Checks[7] he issued in favor of Asiatrust; and (6) he had already paid PhP 1.8 million out of the PhP 2.971 million he owed as per Statement of Account dated January 26, 2000.

Ruling of the Trial Court

After trial on the merits, the RTC, on May 29, 2001, rendered a Decision, finding petitioner guilty of the crime of Estafa. The fallo of the Decision reads as follows:

WHEREFORE, judgment is hereby rendered finding the petitioner, Anthony L. Ng GUILTY beyond reasonable doubt for the crime of Estafa defined in and penalized by Article 315, paragraph 1(b) of the Revised Penal Code in relation to Section 3 of Presidential Decree 115, otherwise known as the Trust Receipts Law, and is hereby sentenced to suffer the indeterminate penalty of from six (6) years, eight (8) months, and twenty one (21) days of prision mayor, minimum, as the minimum penalty, to twenty (20) years of reclusion temporal maximum, as the maximum penalty.

The petitioner is further ordered to return to the Asiatruster Development Bank Inc. the amount of Two Million, Nine Hundred Seventy One and Six Hundred Fifty Pesos (P2,971,650.00) with legal rate of interest computed from the filing of the information on September 21, 1999 until the amount is fully paid.

IT IS SO ORDERED.

In rendering its Decision, the trial court held that petitioner could not simply argue that the contracts he had entered into with Asiatruster were void as they were contracts of adhesion. It reasoned that petitioner is presumed to have read and understood and is, therefore, bound by the provisions of the Letters of Credit and Trust Receipts. It said that it was clear that Asiatruster had furnished petitioner with a Statement of Account enumerating therein the precise figures of the outstanding balance, which he failed to pay along with the computation of other fees and charges; thus, Asiatruster did not violate Republic Act No. 3765 (Truth in Lending Act). Finally, the trial court declared that petitioner, being the entruster stated in the Trust Receipts issued by Asiatruster, is thus obliged to hold the goods in trust for the entruster and shall dispose of them strictly in accordance with the terms and conditions of the trust receipts; otherwise, he is obliged to return the goods in the event of non-sale or upon demand of the entruster, failing thus, he evidently violated the Trust Receipts Law.

Ruling of the Appellate Court

Petitioner then elevated the case to the CA by filing a Notice of Appeal on August 6, 2001. In his Appellant's Brief dated March 25, 2002, petitioner argued that the court a quo erred: (1) in changing the name of the offended party without the benefit of an amendment of the Information which violates his right to be informed of the nature and cause of accusation against him; (2) in making a finding of facts not in accord with that actually proved in the trial and/or by the evidence provided; (3) in not considering the material facts which if taken into account would have resulted in his acquittal; (4) in being biased, hostile, and prejudiced against him; and (5) in considering the prosecution's evidence which did not prove the guilt of petitioner beyond reasonable doubt.

On August 29, 2003, the CA rendered a Decision affirming that of the RTC, the fallo of which reads:

WHEREFORE, the foregoing considered, the instant appeal is DENIED. The decision of the Regional Trial Court of Quezon City, Branch 95 dated May 29, 2001 is AFFIRMED.

SO ORDERED.

The CA held that during the course of the trial, petitioner knew that the complainant Bernardez and the other co-witnesses are all employees of Asiatruster and that she is suing in behalf of the bank. Since petitioner transacted with the same employees for the issuance of the subject Trust Receipts, he cannot feign ignorance that Asiatruster is not the offended party in the instant case. The CA further stated that the change in the name of the complainant will not prejudice and alter the fact that petitioner was being charged with the crime of Estafa in relation to the Trust Receipts Law, since the information clearly set forth the essential elements of the crime charged, and the constitutional right of petitioner to be informed of the nature and cause of his accusations is not violated.[8]

As to the alleged error in the appreciation of facts by the trial court, the CA stated that it was undisputed that petitioner entered into a trust receipt agreement with Asiatruster and he failed to pay the bank his obligation when it became due. According to the CA, the fact that petitioner acted without malice or fraud in entering into the transactions has no bearing, since the offense is punished as *malum prohibitum* regardless of the existence of intent or malice; the mere failure to deliver the proceeds of the sale or the goods if not sold constitutes the criminal offense.

With regard to the failure of the RTC to consider the fact that petitioner's outstanding receivables are sufficient to cover his indebtedness and that no written demand was made upon him hence his obligation has not yet become

due and demandable, the CA stated that the mere query as to the whereabouts of the goods and/or money is tantamount to a demand.[9]

Concerning the alleged bias, hostility, and prejudice of the RTC against petitioner, the CA said that petitioner failed to present any substantial proof to support the aforementioned allegations against the RTC.

After the receipt of the CA Decision, petitioner moved for its reconsideration, which was denied by the CA in its Resolution dated July 25, 2006. Thereafter, petitioner filed this Petition for Review on Certiorari. In his Memorandum, he raised the following issues:

Issues:

- The prosecution failed to adduce evidence beyond a reasonable doubt to satisfy the 2nd essential element that there was misappropriation or conversion of subject money or property by petitioner.
- The state was unable to prove the 3rd essential element of the crime that the alleged misappropriation or conversion is to the prejudice of the real offended property.
- The absence of a demand (4th essential element) on petitioner necessarily results to the dismissal of the criminal case.

The Court's Ruling

We find the petition to be meritorious.

Essentially, the issues raised by petitioner can be summed up into one--whether or not petitioner is liable for Estafa under Art. 315, par. 1(b) of the RPC in relation to PD 115.

It is a well-recognized principle that factual findings of the trial court are entitled to great weight and respect by this Court, more so when they are affirmed by the appellate court. However, the rule is not without exceptions, such as: (1) when the conclusion is a finding grounded entirely on speculations, surmises, and conjectures; (2) the inferences made are manifestly mistaken; (3) there is grave abuse of discretion; and (4) the judgment is based on misapprehension of facts or premised on the absence of evidence on record.[10] Especially in criminal cases where the accused stands to lose his liberty by virtue of his conviction, the Court must be satisfied that the factual findings and conclusions of the lower courts leading to his conviction must satisfy the standard of proof beyond reasonable doubt.

In the case at bar, petitioner was charged with Estafa under Art. 315, par. 1(b) of the RPC in relation to PD 115. The RPC defines Estafa as:

ART. 315. Swindling (estafa).--Any person who shall defraud another by any of the means mentioned hereinbelow x x x

1. With unfaithfulness or abuse of confidence, namely:

a. x x x

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 x x x.[11]

Based on the definition above, the essential elements of Estafa are: (1) that money, goods or other personal

property is received by the offender in trust or on commission, or for administration, or under any obligation involving the duty to make delivery of or to return it; (2) that there be misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt; (3) that such misappropriation or conversion or denial is to the prejudice of another; and (4) there is demand by the offended party to the offender.[12]

Likewise, Estafa can also be committed in what is called a "trust receipt transaction" under PD 115, which is defined as:

Section 4. What constitutes a trust receipts transaction.--A trust receipt transaction, within the meaning of this Decree, is any transaction by and between a person referred to in this Decree as the entruster, and another person referred to in this Decree as trustee, whereby the entruster, who owns or holds absolute title or security interests over certain specified goods, documents or instruments, releases the same to the possession of the trustee upon the latter's execution and delivery to the entruster of a signed document called a "trust receipt" wherein the trustee binds himself to hold the designated goods, documents or instruments in trust for the entruster and to sell or otherwise dispose of the goods, documents or instruments with the obligation to turn over to the entruster the proceeds thereof to the extent of the amount owing to the entruster or as appears in the trust receipt or the goods, documents or instruments themselves if they are unsold or not otherwise disposed of, in accordance with the terms and conditions specified in the trust receipt, or for other purposes substantially equivalent to any of the following:

1. In the case of goods or documents: (a) to sell the goods or procure their sale; or (b) to manufacture or process the goods with the purpose of ultimate sale: Provided, That, in the case of goods delivered under trust receipt for the purpose of manufacturing or processing before its ultimate sale, the entruster shall retain its title over the goods whether in its original or processed form until the trustee has complied full with his obligation under the trust receipt; or (c) to load, unload, ship or transship or otherwise deal with them in a manner preliminary or necessary to their sale; or

2. In the case of instruments: (a) to sell or procure their sale or exchange; or (b) to deliver them to a principal; or (c) to effect the consummation of some transactions involving delivery to a depository or register; or (d) to effect their presentation, collection or renewal.

The sale of good, documents or instruments by a person in the business of selling goods, documents or instruments for profit who, at the outset of transaction, has, as against the buyer, general property rights in such goods, documents or instruments, or who sells the same to the buyer on credit, retaining title or other interest as security for the payment of the purchase price, does not constitute a trust receipt transaction and is outside the purview and coverage of this Decree.

In other words, a trust receipt transaction is one where the trustee has the obligation to deliver to the entruster the price of the sale, or if the merchandise is not sold, to return the merchandise to the entruster. There are, therefore, two obligations in a trust receipt transaction: the first refers to money received under the obligation involving the duty to turn it over (*entregarla*) to the owner of the merchandise sold, while the second refers to the merchandise received under the obligation to "return" it (*devolvera*) to the owner.[13] A violation of any of these undertakings constitutes Estafa defined under Art. 315, par. 1(b) of the RPC, as provided in Sec. 13 of PD 115, viz:

Section 13. Penalty Clause.-- The failure of an trustee to turn over the proceeds of the sale of the goods, documents or instruments covered by a trust receipt to the extent of the amount owing to the entruster or as appears in the trust receipt or to return said goods, documents or instruments if they were not sold or disposed of in accordance with the terms of the trust receipt shall constitute the crime of estafa, punishable under the provisions of Article Three hundred fifteen, paragraph one (b) of Act Numbered Three thousand eight hundred

and fifteen, as amended, otherwise known as the Revised Penal Code. x x x (Emphasis supplied.)

A thorough examination of the facts obtaining in the instant case, however, reveals that the transaction between petitioner and Asiatrust is not a trust receipt transaction but one of simple loan.

PD 115 Does Not Apply

It must be remembered that petitioner was transparent to Asiatrust from the very beginning that the subject goods were not being held for sale but were to be used for the fabrication of steel communication towers in accordance with his contracts with Islacom, Smart, and Infocom. In these contracts, he was commissioned to build, out of the materials received, steel communication towers, not to sell them.

The true nature of a trust receipt transaction can be found in the "whereas" clause of PD 115 which states that a trust receipt is to be utilized "as a convenient business device to assist importers and merchants solve their financing problems." Obviously, the State, in enacting the law, sought to find a way to assist importers and merchants in their financing in order to encourage commerce in the Philippines.

As stressed in *Samo v. People*,^[14] a trust receipt is considered a security transaction intended to aid in financing importers and retail dealers who do not have sufficient funds or resources to finance the importation or purchase of merchandise, and who may not be able to acquire credit except through utilization, as collateral, of the merchandise imported or purchased. Similarly, American Jurisprudence demonstrates that trust receipt transactions always refer to a method of "financing importations or financing sales."^[15] The principle is of course not limited in its application to financing importations, since the principle is equally applicable to domestic transactions.^[16] Regardless of whether the transaction is foreign or domestic, it is important to note that the transactions discussed in relation to trust receipts mainly involved sales.

Following the precept of the law, such transactions affect situations wherein the entruster, who owns or holds absolute title or security interests over specified goods, documents or instruments, releases the subject goods to the possession of the entrustee. The release of such goods to the entrustee is conditioned upon his execution and delivery to the entruster of a trust receipt wherein the former binds himself to hold the specific goods, documents or instruments in trust for the entruster and to sell or otherwise dispose of the goods, documents or instruments with the obligation to turn over to the entruster the proceeds to the extent of the amount owing to the entruster or the goods, documents or instruments themselves if they are unsold. Similarly, we held in *State Investment House v. CA, et al.* that the entruster is entitled "only to the proceeds derived from the sale of goods released under a trust receipt to the entrustee."^[17]

Considering that the goods in this case were never intended for sale but for use in the fabrication of steel communication towers, the trial court erred in ruling that the agreement is a trust receipt transaction.

In applying the provisions of PD 115, the trial court relied on the Memorandum of Asiatrust's appraiser, Linga, who stated that the goods have been sold by petitioner and that only 3% of the goods remained in the warehouse where it was previously stored. But for reasons known only to the trial court, the latter did not give weight to the testimony of Linga when he testified that he merely presumed that the goods were sold, viz:

COURT (to the witness)

Q

So, in other words, when the goods were not there anymore. You presumed that, that is already sold?

A

Yes, your Honor.

Undoubtedly, in his testimony, Linga showed that he had no real personal knowledge or proof of the fact that the goods were indeed sold. He did not notify petitioner about the inspection nor did he talk to or inquire with petitioner regarding the whereabouts of the subject goods. Neither did he confirm with petitioner if the subject goods were in fact sold. Therefore, the Memorandum of Linga, which was based only on his presumption and not any actual personal knowledge, should not have been used by the trial court to prove that the goods have in fact been sold. At the very least, it could only show that the goods were not in the warehouse.

Having established the inapplicability of PD 115, this Court finds that petitioner's liability is only limited to the satisfaction of his obligation from the loan. The real intent of the parties was simply to enter into a simple loan agreement.

To emphasize, the Trust Receipts Law was created to "to aid in financing importers and retail dealers who do not have sufficient funds or resources to finance the importation or purchase of merchandise, and who may not be able to acquire credit except through utilization, as collateral, of the merchandise imported or purchased." Since Asiatrust knew that petitioner was neither an importer nor retail dealer, it should have known that the said agreement could not possibly apply to petitioner.

Moreover, this Court finds that petitioner is not liable for Estafa both under the RPC and PD 115.

Goods Were Not Received in Trust

The first element of Estafa under Art. 315, par. 1(b) of the RPC requires that the money, goods or other personal property must be 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 it. But as we already discussed, the goods received by petitioner were not held in trust. They were also not intended for sale and neither did petitioner have the duty to return them. They were only intended for use in the fabrication of steel communication towers.

No Misappropriation of Goods or Proceeds

The second element of Estafa requires that there be misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt.

This is the very essence of Estafa under Art. 315, par. 1(b). The words "convert" and "misappropriated" connote an act of using or disposing of another's property as if it were one's own, or of devoting it to a purpose or use different from that agreed upon. To misappropriate for one's own use includes not only conversion to one's personal advantage, but also every attempt to dispose of the property of another without a right.[18]

Petitioner argues that there was no misappropriation or conversion on his part, because his liability for the amount of the goods subject of the trust receipts arises and becomes due only upon receipt of the proceeds of the sale and not prior to the receipt of the full price of the goods.

Petitioner is correct. Thus, assuming *arguendo* that the provisions of PD 115 apply, petitioner is not liable for Estafa because Sec. 13 of PD 115 provides that an entrustee is only liable for Estafa when he fails "to turn over the proceeds of the sale of the goods x x x covered by a trust receipt to the extent of the amount owing to the entruster or as appears in the trust receipt x x x in accordance with the terms of the trust receipt."

The trust receipt entered into between Asiatrust and petitioner states:

In case of sale I/we agree to hand the proceeds as soon as received to the BANK to apply against the relative acceptance (as described above) and for the payment of any other indebtedness of mine/ours to ASIATRUST

DEVELOPMENT BANK.[19] (Emphasis supplied.)

Clearly, petitioner was only obligated to turn over the proceeds as soon as he received payment. However, the evidence reveals that petitioner experienced difficulties in collecting payments from his clients for the communication towers. Despite this fact, petitioner endeavored to pay his indebtedness to Asiatruster, which payments during the period from September 1997 to July 1998 total approximately PhP 1,500,000. Thus, absent proof that the proceeds have been actually and fully received by petitioner, his obligation to turn over the same to Asiatruster never arose.

What is more, under the Trust Receipt Agreement itself, no date of maturity was stipulated. The provision left blank by Asiatruster is as follows:

x x x and in consideration thereof, I/we hereby agree to hold said goods in Trust for the said Bank and as its property with liberty to sell the same for its account within _____ days from the date of execution of the Trust Receipt x x x[20]

In fact, Asiatruster purposely left the space designated for the date blank, an action which in ordinary banking transactions would be noted as highly irregular. Hence, the only way for the obligation to mature was for Asiatruster to demand from petitioner to pay the obligation, which it never did.

Again, it also makes the Court wonder as to why Asiatruster decided to leave the provisions for the maturity dates in the Trust Receipt agreements in blank, since those dates are elemental part of the loan. But then, as can be gleaned from the records of this case, Asiatruster also knew that the capacity of petitioner to pay for his loan also hinges upon the latter's receivables from Islacom, Smart, and Infocom where he had ongoing and future projects for fabrication and installation of steel communication towers and not from the sale of said goods. Being a bank, Asiatruster acted inappropriately when it left such a sensitive bank instrument with a void circumstance on an elementary but vital feature of each and every loan transaction, that is, the maturity dates. Without stating the maturity dates, it was impossible for petitioner to determine when the loan will be due.

Moreover, Asiatruster was aware that petitioner was not engaged in selling the subject goods and that petitioner will use them for the fabrication and installation of communication towers. Before granting petitioner the credit line, as aforementioned, Asiatruster conducted an investigation, which showed that petitioner fabricated and installed communication towers for well-known communication companies to be installed at designated project sites. In fine, there was no abuse of confidence to speak of nor was there any intention to convert the subject goods for another purpose, since petitioner did not withhold the fact that they were to be used to fabricate steel communication towers to Asiatruster. Hence, no malice or abuse of confidence and misappropriation occurred in this instance due to Asiatruster's knowledge of the facts.

Furthermore, Asiatruster was informed at the time of petitioner's application for the loan that the payment for the loan would be derived from the collectibles of his clients. Petitioner informed Asiatruster that he was having extreme difficulties in collecting from Islacom the full contracted price of the towers. Thus, the duty of petitioner to remit the proceeds of the goods has not yet arisen since he has yet to receive proceeds of the goods. Again, petitioner could not be said to have misappropriated or converted the proceeds of the transaction since he has not yet received the proceeds from his client, Islacom.

This Court also takes judicial notice of the fact that petitioner has fully paid his obligation to Asiatruster, making the claim for damage and prejudice of Asiatruster baseless and unfounded. Given that the acceptance of payment by Asiatruster necessarily extinguished petitioner's obligation, then there is no longer any obligation on petitioner's part to speak of, thus precluding Asiatruster from claiming any damage. This is evidenced by Asiatruster's Affidavit of Desistance [21] acknowledging full payment of the loan.

Reasonable Doubt Exists

In the final analysis, the prosecution failed to prove beyond reasonable doubt that petitioner was guilty of Estafa under Art. 315, par. 1(b) of the RPC in relation to the pertinent provision of PD 115 or the Trust Receipts Law; thus, his liability should only be civil in nature.

While petitioner admits to his civil liability to Asiatrust, he nevertheless does not have criminal liability. It is a well-established principle that person is presumed innocent until proved guilty. To overcome the presumption, his guilt must be shown by proof beyond reasonable doubt. Thus, we held in *People v. Mariano* [22] that while the principle does not connote absolute certainty, it means the degree of proof which produces moral certainty in an unprejudiced mind of the culpability of the accused. Such proof should convince and satisfy the reason and conscience of those who are to act upon it that the accused is in fact guilty. The prosecution, in this instant case, failed to rebut the constitutional innocence of petitioner and thus the latter should be acquitted.

At this point, the ruling of this Court in *Colinares v. Court of Appeals* is very apt, thus:

The practice of banks of making borrowers sign trust receipts to facilitate collection of loans and place them under the threats of criminal prosecution should they be unable to pay it may be unjust and inequitable, if not reprehensible. Such agreements are contracts of adhesion which borrowers have no option but to sign lest their loan be disapproved. The resort to this scheme leaves poor and hapless borrowers at the mercy of banks, and is prone to misinterpretation x x x.[23]

Such is the situation in this case.

Asiatrust's intention became more evident when, on March 30, 2009, it, along with petitioner, filed their Joint Motion for Leave to File and Admit Attached Affidavit of Desistance to qualify the Affidavit of Desistance executed by Felino H. Esquivas, Jr., attorney-in-fact of the Board of Asiatrust, which acknowledged the full payment of the obligation of the petitioner and the successful mediation between the parties.

From the foregoing considerations, we deem it unnecessary to discuss and rule upon the other issues raised in the appeal.

WHEREFORE, the CA Decision dated August 29, 2003 affirming the RTC Decision dated May 29, 2001 is SET ASIDE. Petitioner ANTHONY L. NG is hereby ACQUITTED of the charge of violation of Art. 315, par. 1(b) of the RPC in relation to the pertinent provision of PD 115.

SO ORDERED.

Corona, (Chairperson), Abad[*], and Perez[**], JJ., concur.
Mendoza, J., in the result.

[*] Designated as additional member in lieu of Associate Justice Diosdado M. Peralta, per raffle dated March 29, 2010.

[**] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per raffle dated April 7, 2010.

[1] Penned by Associate Justice Elvi John S. Asuncion and concurred in by Associate Justices Eugenio S. Labitoria and Lucas P. Bersamin (now member of the Court).

[2] Penned by then Presiding Judge Diosdado Madarang Peralta (now member of the Court).

- [3] Rollo, pp. 61-69.
- [4] Trust Receipt Agreements under Letter of Credit Nos. 1963 and 1964.
- [5] Rollo, pp. 58 & 60.
- [6] Exhibits "1" & "1-A."
- [7] Check Nos. 5094129 and 5094133 dated January 31, 2000 and May 31, 2000, respectively.
- [8] *Abaca v. Court of Appeals*, G.R. No. 127162, June 5, 1998, 290 SCRA 657.
- [9] *Barrameda v. Court of Appeals*, G.R. No. 96428, September 2, 1999, 313 SCRA 477.
- [10] *Cosep v. People*, G.R. No. 110353, May 21, 1998, 290 SCRA 378.
- [11] *Murao v. People*, G.R. No. 141485, June 30, 2005, 462 SCRA 366.
- [12] *Salazar v. People*, G.R. No. 149472, August 18, 2004, 437 SCRA 41, 46.
- [13] *People v. Cuevo*, 191 Phil. 622 (1981).
- [14] Nos. L-17603-04, May 31, 1962, 5 SCRA 354.

[15] 49 A.L.R. 282.

- [16] *Id.*
- [17] G.R. No. 130365, July 14, 2000, 335 SCRA 703.
- [18] *Luces v. Damole*, G.R. No. 150900, March 14, 2008, 548 SCRA 373.
- [19] Rollo, p. 60.
- [20] *Id.* at 58.
- [21] Joint Motion for Leave to File and Admit Attached Affidavit of Desistance, March 30, 2009, Annex "A"; Corporate Resolution No. 4155 (s. 2009)--"Authorized signatory for the Affidavit of Desistance pertaining to the Settlement Agreement for the account of Anthony Ng/Capitol Blacksmith," March 26, 2009.
- [22] G.R. No. 134309, November 17, 2000, 345 SCRA 1.
- [23] G.R. No. 90828, September 5, 2000, 339 SCRA 609.

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