Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ROBERT CHUA,
Petitioner,

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

G.R. No. 196853

Present:

PERALTA,*
BERSAMIN,**
DEL CASTILLO,
*Acting Chairperson,****
MENDOZA, *and*
LEONEN, *JJ.*

Promulgated:
13 JUL 2015

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DECISION

DEL CASTILLO, *J.*:

Petitioner Robert Chua (Chua) was charged with 54 counts of violation of *Batas Pambansa Blg.* 22 (BP 22) for issuing checks which were dishonored for either being drawn against insufficient funds or closed account.

Factual Antecedents

Chua and private complainant Philip See (See) were long-time friends and neighbors. On different dates from 1992 until 1993, Chua issued several postdated PSBank checks of varying amounts to See pursuant to their rediscounting arrangement at a 3% rate, to wit:

	PSBANK CHECK NO.	DATED	AMOUNT
1	018062	December 25, 1993	Php300,000.00
2	018061	December 23, 1993	Php350,000.00

* Per Special Order No. 2088 dated July 1, 2015.
** Per Special Order No. 2079 dated June 29, 2015.
*** Per Special Order No. 2087 (Revised) dated July 1, 2015.

3	017996	December 16, 1993	Php100,000.00
4	017992	December 14, 1993	Php200,000.00
5	017993	December 14, 1993	Php200,000.00
6	018138	November 22, 1993	Php 6,000.00
7	018122	November 19, 1993	Php 13,000.00
8	018120	November 18, 1993	Php 6,000.00
9	018162	November 22, 1993	Php 10,800.00
10	018069	November 17, 1993	Php 9,744.25
11	018117	November 17, 1993	Php 8,000.00
12	018149	November 28, 1993	Php 6,000.00
13	018146	November 27, 1993	Php 7,000.00
14	006478	November 26, 1993	Php200,000.00
15	018148	November 26, 1993	Php300,000.00
16	018145	November 26, 1993	Php 7,000.00
17	018137	December 10, 1993	Php150,000.00
18	017991	December 10, 1993	Php150,000.00
19	018151	December 10, 1993	Php150,000.00
20	017962	December 08, 1993	Php150,000.00
21	018165	December 08, 1993	Php 14,000.00
22	018154	December 07, 1993	Php100,000.00
23	018164	December 07, 1993	Php 14,000.00
24	018157	December 07, 1993	Php600,000.00
25	018161	December 06, 1993	Php 12,000.00
26	018160	December 05, 1993	Php 12,000.00
27	018033	November 09, 1993	Php 3,096.00
28	018032	November 08, 1993	Php 12,000.00
29	018071	November 06, 1993	Php150,000.00
30	018070	November 06, 1993	Php150,000.00
31	006210	October 21, 1993	Php100,000.00
32	006251	October 18, 1993	Php200,000.00
33	006250	October 18, 1993	Php200,000.00
34	017971	October 13, 1993	Php400,000.00
35	017972	October 12, 1993	Php335,450.00
36	017973	October 11, 1993	Php464,550.00
37	006433	September 24, 1993	Php520,000.00
38	006213	August 30, 1993	Php100,000.00
39	017976	December 13, 1993	Php100,000.00
40	018139	December 13, 1993	Php125,000.00
41	018141	December 13, 1993	Php175,000.00
42	018143	December 13, 1993	Php300,000.00
43	018121	December 10, 1993	Php166,934.00
44	018063	November 12, 1993	Php 12,000.00
45	018035	November 11, 1993	Php 7,789.00
46	017970	November 11, 1993	Php600,000.00
47	018068	November 18, 1993	Php 7,800.00
48	017956	November 10, 1993	Php800,000.00
49	018034	November 10, 1993	Php 7,116.00
50	017907	December 1, 1993	Php200,000.00
51	018152	November 30, 1993	Php 6,000.00
52	018067	November 30, 1993	Php 7,800.00

53	006490	November 29, 1993	Php100,000.00
54	018150	November 29, 1993	Php 6,000.00[1]

However, See claimed that when he deposited the checks, they were dishonored either due to insufficient funds or closed account. Despite demands, Chua failed to make good the checks. Hence, See filed on December 23, 1993 a Complaint[2] for violations of BP 22 before the Office of the City Prosecutor of Quezon City. He attached thereto a demand letter[3] dated December 10, 1993.

In a Resolution[4] dated April 25, 1994, the prosecutor found probable cause and recommended the filing of charges against Chua. Accordingly, 54 counts of violation of BP 22 were filed against him before the Metropolitan Trial Court (MeTC) of Quezon City.

Proceedings before the Metropolitan Trial Court

During the course of the trial, the prosecution formally offered as its evidence[5] the demand letter dated December 10, 1993 marked as Exhibit "B."[6] Chua, however, objected[7] to its admissibility on the grounds that it is a mere photocopy and that it does not bear any proof that he actually received it. In view of these, Chua filed on April 14, 1999 a Motion to Submit Demurrer to Evidence.[8] Per Chua's allegation, however, the MeTC failed to act on his motion since the judge of said court vacated his post.

Several years later, the prosecution filed a Motion to Re-Open Presentation of Prosecution's Evidence and Motion to Allow Prosecution to Submit Additional Formal Offer of Evidence[9] dated March 28, 2003. It averred that while See was still trying to locate a demand letter dated November 30, 1993 (which it alleged to have been personally served upon Chua), the prosecution nevertheless decided to rest its case on February 24, 1999 so as not to further delay the proceedings. However, sometime in February 2002, See decided to have his house rented out such that he emptied it with all his belongings and had it cleaned. It was during this time that he found the demand letter dated November 30, 1993.[10] The prosecution thus prayed that it be allowed to submit a supplemental offer of evidence to include said demand letter dated November 30, 1993 as part of its evidence. Again, the records of the case bear no copy of an MeTC Order or

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1 CA *rollo*, pp. 136-137.
2 Id at 64-68.
3 Id. at 69-72.
4 Id. at 75-78.
5 See Formal Offer of Exhibits dated January 22, 1999, id. at 83-97.
6 Id. at 89.
7 See Comment to Prosecution's Formal Offer of Exhibits, id. at 98-102.
8 Id. at 103-104.
9 Id. at 105-106.
10 Id. at 116-118.

Resolution granting the aforesaid motion of the prosecution. Nevertheless, extant on records is a Formal Offer of Evidence[11] filed by the private prosecutor submitting the demand letter dated November 30, 1993 as additional evidence. In his objection thereto,[12] Chua averred that the papers on which the demand letter dated November 30, 1993 are written were given to him as blank papers. He affixed his signature thereon purportedly to give See the authority to retrieve a car which was supposed to serve as payment for Chua's obligation to See. In an Order[13] dated November 18, 2005, the MeTC refused to take cognizance of the supplemental formal offer on the ground that the same was filed by the private prosecutor without the conformity of the public prosecutor. Be that as it may, the demand letter dated November 30, 1993 eventually found its way into the records of this case as Exhibit "SSS."[14]

Later, the defense, with leave of court, filed a Demurrer to Evidence.[15] It again pointed out that the demand letter dated December 10, 1993 attached to See's affidavit-complaint is a mere photocopy and not accompanied with a Post Office Registry Receipt and Registry Return Receipt. Most importantly, it does not contain Chua's signature that would serve as proof of his actual receipt thereof. In view of these, the defense surmised that the prosecution fabricated the demand letter dated November 30, 1993 to remedy the lack of a proper notice of dishonor upon Chua. At any rate, it argued that while the November 30, 1993 demand letter contains Chua's signature, the same should not be given any probative value since it does not contain the date when he allegedly received the same. Hence, there is simply no way of reckoning the crucial five-day period that the law affords an issuer to make good the check from the date of his notice of its dishonor.

In an Order[16] dated January 12, 2007, the MeTC denied the defense's Demurrer to Evidence. The Motion for Reconsideration thereto was likewise denied in an Order[17] dated May 23, 2007. Hence, the trial of the case proceeded.

In a Consolidated Decision[18] dated May 12, 2008, the MeTC convicted Chua of 54 counts of violation of BP 22 after it found all the elements of the offense obtaining in the case. Anent Chua's receipt of the notice of dishonor, it ratiocinated, *viz.*:

x x x x

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11 Id. at 113-115.
12 See Admission/Objection with Comment to Additional Offer of Evidence by the Prosecution, id. at 120-121.
13 Id. at 119.
14 As mentioned in the MeTC Order dated January 12, 2007, id. at 131-133.
15 Id. at 122-130.
16 Id. at 131-133.
17 Id. at 134-135.
18 Id. at 136-140; penned by Judge Edgardo B. Bellosillo of MeTC, Branch 36, Quezon City.

> The prosecution had proved also that private complainant personally sen[t] a written notice of dishonor of the subject check to the accused and that the latter personally received the same. In fact, the defense stipulated in open court the existence of the said demand letter and the signature of the accused as reflected in the face of the demand letter. x x x In view of that stipulation, the defense is now estopped [from] denying its receipt thereof. Although there was no date when accused received the demand letter x x x the demand letter was dated, thus it is presumed that the accused received the said demand letter on the date reflected on it. It has been said that "admission verbal or written made by the party in the course of the proceedings in the same case does not require proof." x x x
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> [In spite of] receipt thereof, the accused failed to pay the amount of the checks or make arrangement for its payment "[w]ithin five (5) banking days after receiving notice that the said checks have not been paid by the drawee bank. As a result, the presumption of knowledge as provided for in Section 2 of Batas Pambansa Bilang 22 which was the basis of reckoning the crucial five (5) day period was established.[19]

Hence, the dispositive portion of the MeTC Decision:

> WHEREFORE, premises considered, this court finds accused Robert Chua GUILTY, beyond reasonable doubt, of fifty four (54) counts of Violation of Batas Pambansa Bilang 22 and hereby sentence[s] him to suffer the penalty of six (6) months imprisonment for each case and to restitute to the private complainant the total amount of the face value of all the subject checks in these cases with legal interest of 12% per annum reckoned from the filing of the informations until the full amount is fully paid and to pay the costs of suit.
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> SO ORDERED.[20]

Ruling of the Regional Trial Court (RTC)

Aggrieved, Chua appealed to the RTC where he argued that: (1) the complaint was prematurely filed since the demand letter dated December 10, 1993 had not yet been sent to him at the time of filing of the Complaint; (2) the demand letter dated November 30, 1993 has no probative value since it lacked proof of the date when Chua received the same; and, (3) since Chua was acquitted in two other BP 22 cases involving the same parties, facts and issues, he should likewise be acquitted in the present case based on the principle of *stare decisis*.

In a Decision[21] dated July 1, 2009, the RTC likewise found all the elements of BP 22 to have been sufficiently established by the prosecution, to wit:

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19 Id. at 139.
20 Id. at 140.
21 Id. at 59-61; penned by Judge Bayani V. Vargas of RTC, Branch 219, Quezon City.

(1) the making, drawing, and issuance of any check to apply for account or for value;

(2) the knowledge of the maker, drawer, or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of the check in full upon its presentment;

(3) the subsequent dishonor of the check by the drawee bank for insufficient funds or credit or dishonor for the same reason had not the drawer, without any valid cause ordered the bank to stop payment.

As to first element, the RTC held that the evidence shows that Chua issued the checks in question. Next, on the basis of the demand letter dated November 30, 1993 bearing Chua's signature as proof of receipt thereof, it was likewise established that he had knowledge of the insufficiency of his funds with the drawee bank at the time he issued the checks, thus, satisfying the second element. It expounded:

> Thus, in order to create the *prima facie* presumption that the issuer knew of the insufficiency of funds, it must be shown that he or she received a notice of dishonor and, within five banking days thereafter, failed to satisfy the amount of the check or make arrangement for its payment. x x x
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> In the present case, a demand letter (Exh. "SSS") was sent to accused-appellant informing him of the dishonor of the check and demanding he make good of the checks. The prosecution offered this in evidence, and the accused's signature thereon evidences his receipt of the said demand letter. Accused-appellant argues that there is no proof that he received the same considering that there is no date on his signature appearing on the document. But as borne out by the records of the proceedings, the defense even stipulated in open court the existence of the demand letter. x x x
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> Thus, considering that the demand letter was dated November 30, 1993, the reckoning of the crucial five day period was established. Accused failed to make arrangement for the payment of the amount of check within five-day period from notice of the checks' dishonor.[22]

Finally, the RTC ruled that the prosecution was able to prove the existence of the third element when it presented a bank employee who testified that the subject checks were dishonored due to insufficiency of funds or closed account.

Anent the defense's invocation of the principle of *stare decisis*, the RTC found the same inapplicable since there is a distinction between the present case and the other cases where Chua was acquitted. In the instant case, the prosecution,

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[22] Id., unpaginated, between pp. 60 and 61.

as mentioned, was able to establish the second element of the offense by way of the demand letter dated November 30, 1993 duly received by Chua. Whereas in the other cases where Chua was acquitted, there was no proof that he received a demand letter.

Hence, the dispositive portion of the RTC Decision:

> WHEREFORE, the appealed decision dated May 12, 2008 is hereby AFFIRMED.
>
> SO ORDERED.[23]

Ruling of the Court of Appeals (CA)

Before the CA, Chua argued against the probative value of the demand letter dated November 30, 1993 by pointing out that: (1) for more than 10 years from the time the case was filed, the prosecution never adverted to its existence. He thus surmised that this was because the document was not really missing but in fact inexistent – a mere afterthought as to make it appear that the second element of the offense is obtaining in the case; (2) the subject demand letter is not a newly discovered evidence as it could have been discovered earlier through the exercise of due diligence; and, (3) his counsel's admission of the physical existence of the subject demand letter and Chua's signature thereon does not carry with it the admission of its contents and his receipt of the same.

Unpersuaded, the CA, in its November 11, 2010 Decision[24] brushed aside Chua's arguments in this wise:

> x x x [A]s aptly pointed out by the Solicitor General, See could not have waited for a decade just to fabricate an evidence against petitioner. The contention that petitioner's counsel was tricked by the prosecution into stipulating on the admissibility of the demand letter is without basis. Once validly entered into, stipulations will not be set aside unless for good cause. They should be enforced especially when they are not false, unreasonable or against good morals and sound public policy. When made before the court, they are conclusive. And the party who validly made them can be relieved therefrom only upon a showing of collusion, duress, fraud, misrepresentation as to facts, and undue influence; or upon a showing of sufficient cause on such terms as will serve justice in a particular case. Moreover, the power to relieve a party from a stipulation validly made lies in the court's sound discretion which, unless exercised with grave abuse, will not be disturbed on appeal. [25]

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23 Id. at 61.

24 Id. at 252-262; penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Rebecca De Guia-Salvador and Amy C. Lazaro-Javier.

25 Id. at 259-260.

And just like the MeTC and the RTC, the CA concluded that the prosecution clearly established all the elements of the offense of violation of BP 22. Ultimately, it ruled as follows:

> WHEREFORE, the instant petition is hereby DENIED for lack of merit. The assailed decision dated July 1, 2009 and order dated October 30, 2009 of the RTC of Quezon City, Branch 219, are hereby AFFIRMED.
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> SO ORDERED.[26]

Chua filed a Motion for Reconsideration,[27] but the same was denied in a Resolution[28] dated May 4, 2011.

Hence, this Petition for Review on *Certiorari*.

Issues

> I
> THE COURT OF APPEALS SERIOUSLY ERRED WHEN IT UPHELD THE RULINGS OF THE TRIAL COURTS THAT THE ACCUSED AT THE TIME OF THE ISSUANCE OF THE DISHONORED CHECKS HAD KNOWLEDGE OF THE INSUFFICIENCY OF FUNDS FOR THE PAYMENT OF THE CHECKS UPON THEIR PRESENTMENT, BASED MERELY ON THE PRESUMPTION THAT THE DATE OF THE PREPARATION OF THE LETTER IS THE DATE OF RECEIPT BY THE ADDRESSEE.
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> II
> THE COURT OF APPEALS SERIOUSLY ERRED WHEN IT CONSIDERED THE DEMAND LETTER DATED 30 NOVEMBER 1993 AS A NEWLY-DISCOVERED EVIDENCE.[29]

The Parties' Arguments

Chua asserts that the second element of the offense charged, *i.e*, knowledge of the maker, drawer, or issuer that at the time of issue there are no sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, was not proved by the prosecution. He argues that the presumption that the issuer had knowledge of the insufficiency of funds only arises after it is proved that the issuer actually received a notice of dishonor and within five days from receipt thereof failed to pay the amount of the check or make arrangement for its payment. Here, the date when Chua allegedly received the demand letter

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26 Id. at 262.
27 Id. at 263-272.
28 Id. at 292.
29 *Rollo*, p. 20.

dated November 30, 1993 was not established by the prosecution. Citing *Danao v. Court of Appeals*,[30] he thus contends that since there is no date of receipt from which to reckon the aforementioned five-day period, the presumption that he has knowledge of the insufficiency of funds at the time of the issuance of the checks did not arise.

In any case, Chua argues that the demand letter dated November 30, 1993 is not a newly discovered evidence. He points out that a newly discovered evidence is one which could not have been discovered even in the exercise of due diligence in locating the same. In this case, See claims that he only found the letter after having his house cleaned. This means that he could have found it early on had he exercised due diligence, which, however, was neither shown by the prosecution.

On the other hand, respondent People of the Philippines, through the Office of the Solicitor General (OSG), avers that Chua's contention that there is no proof of the date when he actually received the demand letter dated November 30, 1993 involves a factual issue which is not within the province of a *certiorari* petition. As to the matter of whether the subject demand letter is a newly discovered evidence, the OSG calls attention to the fact that the MeTC, RTC and the CA all considered the said document as a newly discovered evidence. Hence, such finding deserves full faith and credence. Besides, Chua was correctly convicted for violation of BP 22 since all the elements of the offense were sufficiently proven by the prosecution.

Our Ruling

The Petition is impressed with merit.

The issues raised by Chua involve questions of law.

The OSG argues that the issues raised by Chua involve questions of fact which are not within the province of the present petition for review on *certiorari.* The Court, however, upon perusal of the petition, finds that the issues raised and the arguments advanced by Chua in support thereof, concern questions of law. "Jurisprudence dictates that there is a 'question of law' when the doubt or difference arises as to what the law is on a certain set of facts or circumstances; on the other hand, there is a 'question of fact' when the issue raised on appeal pertains to the truth or falsity of the alleged facts. The test for determining whether the supposed error was one of 'law' or 'fact' is not the appellation given by the parties raising the same; rather, it is whether the reviewing court can resolve the issues

[30] 411 Phil. 63 (2001).

raised without evaluating the evidence, in which case, it is a question of law; otherwise, it is one of fact. In other words, where there is no dispute as to the facts, the question of whether or not the conclusions drawn from these facts are correct is a question of law. However, if the question posed requires a re-evaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relationship to each other, the issue is factual."[31]

Chua raises two issues in this petition, to wit: (1) whether the MeTC, RTC and the CA correctly applied the legal presumption that Chua has knowledge of the insufficiency of funds at the time he issued the check based on his alleged receipt of the demand letter dated November 30, 1993 and his failure to make good the checks five days from such receipt; and (2) whether the said courts correctly considered the demand letter dated November 30, 1993 as newly discovered evidence. As to the first issue, it is not disputed that the subject demand letter, while bearing the signature of Chua, does not indicate any date as to his receipt thereof. There being no disagreement as to this fact, the propriety of the conclusion drawn from the same by the courts below, that is, the date of the said letter is considered as the date when Chua received the same for the purpose of reckoning the five-day period to make good the checks, clearly refers to a question of law. Similarly, the second issue is one concerning a question of law because it requires the application of the provision of the Rules of Court concerning a newly discovered evidence.[32]

Nevertheless, assuming that the questions posed before this Court are indeed factual, the rule that factual findings of the lower courts are not proper subject of *certiorari* petition admits of exceptions. One of these exceptions is when the lower courts failed to appreciate certain facts and circumstances which, if taken into account, would materially affect the result of the case. The Court finds the said exception applicable in the instant case. Clearly, the petition deserves the consideration of this Court.

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[31] *Bases Conversion Development Authority v. Reyes*, G.R. No. 194247, June 19, 2013, 699 SCRA 217, 225-226.

[32] Particularly Section 1(b), Rule 37 and Section 2(b), Rule 121 of the Rules of Court which provide as follows:

Rule 37

Section 1. *Grounds of and period for filing motion for new trial or reconsideration.* – Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:

x x x x

(b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.

Rule 121

Section 2. *Grounds for a new trial* – The court shall grant a new trial on any of the following grounds:

x x x x

(b) That a new and material evidence has been discovered which the accused could not with reasonable diligence have discovered and produced at the trial and which if introduced and admitted would probably change the judgment.

The prosecution failed to prove all the elements of the offenses charged.

In order to successfully hold an accused liable for violation of BP 22, the following essential elements must be present: "(1) the making, drawing, and issuance of any check to apply for account or for value; (2) the knowledge of the maker, drawer, or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of the check in full upon its presentment; and (3) the subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment."[33] "Of the three (3) elements, the second element is the hardest to prove as it involves a state of mind. Thus, Section 2 of BP 22 creates a presumption of knowledge of insufficiency of funds, which, however, arises only after it is proved that the issuer had received a written notice of dishonor and that within five days from receipt thereof, he failed to pay the amount of the check or to make arrangements for its payment.[34]

In the instant case, what is in dispute is the existence of the second element. Chua asserts that the absence of the date of his actual receipt on the face of the demand letter dated November 30, 1993 prevented the legal presumption of knowledge of insufficiency of funds from arising. On the other hand, the MeTC opined that while the date of Chua's actual receipt of the subject demand letter is not affixed thereon, it is presumed that he received the same on the date of the demand letter (November 30, 1993). Moreover, the lower courts banked on the stipulation entered into by Chua's counsel as to the existence of the demand letter and of Chua's signature thereon. By reason of such stipulation, they all held that Chua could no longer impugn the said demand letter.

In *Danao v. Court of Appeals*,[35] the Court discussed the importance of proving the date of actual receipt of the notice of dishonor, *viz*.:

> In *King vs. People*, this Court, through Justice Artemio V. Panganiban, held: "To hold a person liable under B.P. Blg. 22, *it is not enough to establish that a check issued was subsequently dishonored. It must be shown further that the person who issued the check knew 'at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment.*' Because this element involves a state of mind which is difficult to establish, Section 2 of the law creates a *prima facie* presumption of such knowledge, as follows:
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> > 'SEC 2. *Evidence of knowledge of insufficient funds* – The making, drawing and issuance of a check payment of which is refused by the drawee because of insufficient funds in or credit

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33 *Rico v. People*, 440 Phil. 540, 551 (2002).
34 *Nissan Gallery-Ortigas v. Felipe*, G.R. No.199067, November 11, 2013, 709 SCRA 215, 223.
35 Supra note 30.

> with such bank, when presented within ninety (90) days from the date of the check, shall be *prima facie* evidence of knowledge of such insufficiency of funds or credit unless such maker or drawer pays the holder thereof the amount due thereon, or makes arrangements for payment in full by the drawee of such check within five (5) banking days after receiving notice that such check has not been paid by the drawee.
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> Thus, this Court further ruled in *King*, "in order to create the *prima facie* presumption that the issuer knew of the insufficiency of funds, it must be shown that he or she *received* a notice of dishonor and, within five banking days thereafter, failed to satisfy the amount of the check or make arrangement for its payment."
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> Indeed, the *prima facie* presumption in Section 2 of B.P. Blg. 22 "gives the accused an opportunity to satisfy the amount indicated in the check and thus avert prosecution. This opportunity, as this Court stated in *Lozano vs. Martinez*, serves to mitigate the harshness of the law in its application.
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> In other words, if such notice of non-payment by the drawee bank is not sent to the maker or drawer of the bum check, or **if there is *no proof* as to *when such notice was received by the drawer*, then the presumption or *prima facie* evidence as provided in Section 2 of B.P. Blg. 22 *cannot arise*, since there would simply be *no way of reckoning the crucial 5-day period*.**"[36] (Italics in the original, emphasis supplied)

Similarly in the present case, there is no way to ascertain when the five-day period under Section 22 of BP 22 would start and end since there is no showing when Chua actually received the demand letter dated November 30, 1993. The MeTC cannot simply presume that the date of the demand letter was likewise the date of Chua's receipt thereof. There is simply no such presumption provided in our rules on evidence. In addition, from the inception of this case Chua has consistently denied having received subject demand letter. He maintains that the paper used for the purported demand letter was still blank when presented to him for signature and that he signed the same for another purpose. Given Chua's denial, it behooved upon the prosecution to present proof of his actual receipt of the November 30, 1993 demand letter. However, all that the prosecution did was to present it without, however, adducing any evidence as to the date of Chua's actual receipt thereof. It must be stressed that '[t]he prosecution must also prove actual receipt of [the notice of dishonor] because the fact of service provided for in the law is reckoned from receipt of such notice of dishonor by the accused."[37] "The burden of proving notice rests upon the party asserting its existence. Ordinarily, preponderance of evidence is sufficient to prove notice. In criminal cases, however, the quantum of proof required is proof beyond reasonable doubt. Hence, for B.P. Blg. 22 cases, there should be clear proof of notice"[38] which the Court finds wanting in this case.

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36 Id. at 72-73.

37 *San Mateo v. People*, G.R. No. 200090, March 6, 2013, 692 SCRA 660, 667.

38 *Alferez v. People*, 656 Phil. 116, 124 (2011).

Anent the stipulation entered into by Chua's counsel, the MeTC stated:

> In the course of the said proceedings, the defense counsel manifested that he is willing to stipulate as to the existence of the demand letter and the signature of the accused as reflected on the face of the demand letter. x x x
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> x x x x
>
> The prosecution had proved also that private complainant personally sent a written notice of dishonor of the subject checks to the accused and that the latter personally received the same. In fact, the defense stipulated in open court the existence of the said demand letter and the signature of the accused as reflected in the face of the demand letter. x x x In view of that stipulation, the defense is now estopped in denying its receipt thereof.[39]

As earlier mentioned, this ruling of the MeTC was affirmed by both the RTC and the CA.

The Court, however, disagrees with the lower courts. It is plain that the stipulation only refers to the existence of the demand letter and of Chua's signature thereon. In no way can an admission of Chua's receipt of the demand letter be inferred therefrom. Hence, Chua cannot be considered estopped from claiming non-receipt. Also, the Court observes that Chua's admission with respect to his signature on the demand letter is consistent with his claim that See made him sign blank papers where the contents of the demand letter dated November 30, 1993 were later intercalated.

In view of the above discussion, the Court rules that the prosecution was not able to sufficiently prove the existence of the second element of BP 22.

At any rate, the demand letter dated November 30, 1993 deserves no weight and credence not only because it does not qualify as a newly discovered evidence within the purview of the law but also because of its doubtful character.

As may be recalled, the prosecution had already long rested its case when it filed a Motion to Re-Open Presentation of Prosecution's Evidence and Motion To Allow Prosecution To Submit Additional Formal Offer of Evidence dated March 28, 2003. Intending to introduce the demand letter dated November 30, 1993 as a newly discovered evidence, See attached to the said motion an affidavit[40] of even

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39 CA *rollo*, pp. 138-139.

40 Id. at 107.

date where he stated the circumstances surrounding the fact of his location of the same, *viz.*:

> 2. When we initially presented our evidence in support of these criminal complaints, I was already looking for a copy of the demand letter personally served by the affiant (See) and duly received by [Chua];
>
> 3. That despite diligent efforts to locate the demand letter x x x dated November 30, 1993, the same was not located until sometime in February 2002 when I was having our old house/office located at C-5 Christian Street, Grace Village, Quezon City, cleaned and ready to be rented out;
>
> 4. x x x [upon] showing the same to the new handling public prosecutor, he advised the affiant to have it presented in Court.[41]

In *Ybiernas v. Tanco-Gabaldon,*[42] the Court held that:

> x x x The question of whether evidence is newly discovered has two aspects: a temporal one, i.e., when was the evidence discovered, and a predictive one, *i.e.*, when should or could it have been discovered. It is to the latter that the requirement of due diligence has relevance. We have held that in order that a particular piece of evidence may be properly regarded as newly discovered to justify new trial, what is essential is not so much the time when the evidence offered first sprang into existence nor the time when it first came to the knowledge of the party now submitting it; what is essential is that the offering party had exercised reasonable diligence in seeking to locate such evidence before or during trial but had nonetheless failed to secure it.
>
> The Rules do not give an exact definition of due diligence, and whether the movant has exercised due diligence depends upon the particular circumstances of each case. Nonetheless, it has been observed that the phrase is often equated with "reasonable promptness to avoid prejudice to the defendant." In other words, the concept of due diligence has both a time component and a good faith component. The movant for a new trial must not only act in a timely fashion in gathering evidence in support of the motion; he must act reasonably and in good faith as well. Due diligence contemplates that the defendant acts reasonably and in good faith to obtain the evidence, in light of the totality of the circumstances and the facts known to him.[43]

"Under the Rules of Court, the requisites for newly discovered evidence are: (a) the evidence was discovered after trial; (b) such evidence could not have been discovered and produced at the trial with reasonable diligence; and (c) it is material, not merely cumulative, corroborative or impeaching, and is of such weight that, if admitted, will probably change the judgment."[44]

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41 Id.
42 G.R. No. 178925, June 1, 2011, 650 SCRA 154.
43 Id. at 170, citing *Custodio v. Sandiganbayan,* 493 Phil. 194, 206 (2005).
44 *Heirs of Pacencia Racaza v. Abay-abay*, G.R. No. 198402, June 13, 2012, 672 SCRA 622, 629.

In this case, the Court holds that the demand letter dated November 30, 1993 does not qualify as a newly discovered evidence within the purview of the law. Per See's statements in his affidavit, the said evidence was already known to him at the time he filed his complaint against Chua. It was also apparently available considering that it was just kept in his house. Undeniably, had See exercised reasonable diligence, he could have promptly located the said demand letter and presented it during trial. However, the circumstances suggest otherwise.

Curiously, while See claims that the demand letter dated November 30, 1993 was already existing at the time he filed the complaint, the same was not mentioned therein. Only the demand letter dated December 10, 1993 was referred to in the complaint, which per See's own allegations, was also not actually received by Chua. In addition, the prosecution failed to present the original copy of the demand letter dated December 10, 1993 during trial. Clearly on the basis of the demand letter dated December 10, 1993 alone, the prosecution cannot possibly establish the existence of the second element of the offense. Indeed, the surrounding circumstances and the doubtful character of the demand letter dated November 30, 1993 make it susceptible to the conclusion that its introduction was a mere afterthought – a belated attempt to fill in a missing component necessary for the existence of the second element of BP 22.

It may not be amiss to add at this point that out of the 54 cases for violation of BP 22 filed against Chua, 22 involve checks issued on November 30, 1993 or thereafter. Hence, the lower courts grievously erred in convicting Chua for those 22 cases on the basis of a purported demand letter written and sent to Chua prior to the issuance of said 22 checks. Checks can only be dishonored after they have been issued and presented for payment. Before that, dishonor cannot take place. Thus, a demand letter that precedes the issuance of checks cannot constitute as sufficient notice of dishonor within the contemplation of BP 22. It is likewise significant to note that aside from the absence of a date, the signature of Chua appearing on the questioned November 30, 1993 demand letter is not accompanied by any word or phrase indicating that he affixed his signature thereon to signify his receipt thereof. Indeed, "conviction must rest upon the strength of the evidence of the prosecution and not on the weakness of the evidence for the defense."[45] In view of the foregoing, the Court cannot accord the demand letter dated November 30, 1993 any weight and credence. Consequently, it cannot be used to support Chua's guilt of the offenses charged.

All told, the Court cannot convict Chua for violation of BP 22 with moral certainty.

Chua's acquittal, however, does not entail the extinguishment of his civil

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[45] *Cabugao v. People*, 479 Phil. 546, 561 (2004).

liability for the dishonored checks.[46] "An acquittal based on lack of proof beyond reasonable doubt does not preclude the award of civil damages."[47] For this reason, Chua must be directed to restitute See the total amount of the face value of all the checks subject of the case with legal interest at the rate of 12% *per annum* reckoned from the time the said checks became due and demandable up to June 30, 2013 and 6% *per annum* from July 1, 2013 until fully paid.[48]

WHEREFORE, the Court **GRANTS** the Petition. The assailed Decision dated November 11, 2010 of the Court of Appeals in CA-G.R. CR No. 33079 which affirmed the Decisions of the Metropolitan Trial Court of Quezon City, Branch 36 and the Regional Trial Court of Quezon City, Branch 219 finding petitioner Robert Chua guilty beyond reasonable doubt of 54 counts of Violation of *Batas Pambansa Blg.* 22 is **REVERSED and SET ASIDE**. Petitioner Robert Chua is hereby **ACQUITTED** on the ground that his guilt has not been established beyond reasonable doubt and ordered **RELEASED** immediately unless he is detained for some other legal cause. He is ordered, however, to indemnify the private complainant Philip See the total value of the 54 checks subject of this case plus legal interest of 12% *per annum* from the time the said sum became due and demandable until June 30, 2013 and 6% *per annum* from July 1, 2013 until fully paid.

SO ORDERED.

MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Associate Justice

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46 *San Mateo v. People*, supra note 37 at 668.
47 Id.
48 *Nacar v. Gallery Frames*, G.R. No. 189871, August 13, 2013, 703 SCRA 439, 454-456.

LUCAS P. BERSAMIN
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIANO C. DEL CASTILLO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice