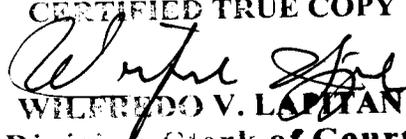




Republic of the Philippines
 Supreme Court
 Manila

CERTIFIED TRUE COPY

 WILFREDO V. LAPIDAN
 Division Clerk of Court
 Third Division

JAN 08 2016

THIRD DIVISION

ARMILYN MORILLO,
 Petitioner,

G.R. No. 198270

Present:

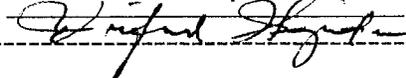
VELASCO, JR., J., *Chairperson,*
 PERALTA,
 DEL CASTILLO,*
 VILLARAMA, JR., and
 REYES, JJ.

- versus -

PEOPLE OF THE PHILIPPINES
and RICHARD NATIVIDAD,
 Respondents.

Promulgated:

December 9, 2015



X-----X

DECISION

PERALTA, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision¹ dated January 18, 2011 and Resolution² dated August 9, 2011 of the Court of Appeals (CA) in CA-G.R. CR No. 32723 which reversed and set aside the Decision³ dated February 23, 2009 and Order⁴ dated July 13, 2009, of the Regional Trial Court (RTC) in Criminal Case Nos. 08-1876-77, which, in turn, affirmed the Joint Decision⁵ dated September 3, 2008 of the Metropolitan Trial Court (MeTC) in Criminal Case Nos. 337902-03.

The antecedent facts are as follows:

* Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated September 10, 2014.

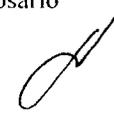
¹ Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Ricardo R. Rosario and Samuel H. Gaerlan concurring; *rollo*, pp. 31-43.

² *Id.* at 45-46.

³ Penned by Judge Maryann E. Corpus-Mañalac; *id.* at 76-81.

⁴ *Id.* at 93.

⁵ Penned by Judge Carlito B. Calpatura; *id.* at 68-74.



Sometime in July 2003, respondent Richard Natividad, Milo Malong and Bing Nanquil, introducing themselves as contractors doing business in Pampanga City under the name and style of RB Custodio Construction, purchased construction materials for their project inside the Subic Freeport Zone from petitioner Armilyn Morillo, owner of Amasea General Merchandize and Construction Supplies. The parties agreed that twenty percent (20%) of the purchases shall be paid within seven (7) days after the first delivery and the remaining eighty percent (80%) to be paid within thirty-five (35) days after the last delivery, all of which shall be via post-dated checks.⁶

Pursuant to the agreement, petitioner delivered construction materials amounting to a total of ₱500,054.00 at the construction site where respondent and his partners were undertaking their project. After the last delivery, respondent paid ₱20,000.00 in cash and issued two (2) post-dated checks, drawn from Metrobank, Pampanga branch, in the amounts of ₱393,000.00 and ₱87,054.00. Upon maturity, petitioner attempted to deposit the checks in her savings account at Equitable PCIBank, San Lorenzo, Makati City. They were, however, dishonored by the drawee bank. Immediately thereafter, petitioner communicated the dishonor to respondent and his partners and demanded for payment. Again, respondent issued two (2) post-dated Metrobank checks and assured petitioner that they will be honored upon maturity. Upon deposit in her savings account at Equitable PCIBank, Makati Branch, the checks were once again dishonored for the reason that the account from which they were drawn was already a closed account. Consequently, petitioner made several demands from respondent and his partners, but to no avail, prompting her to file a complaint with the City Prosecution Office, Makati City.⁷ Thus, on August 12, 2004, two (2) Informations were filed against respondent and Milo Malong, the accusatory portions of which read:

Criminal Case No. 337902

That on or about the 20th day of October 2003, or prior thereto, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously make out, draw and issue to AMASEA GENERAL MERCHANDIZE AND CONSTRUCTION SUPPLIES herein represented by ARMILYN MORILLO to apply on account or for value the check described below:

| | |
|-------------------|--------------------|
| Check No. | : 2960203217 |
| Drawn Against | : Metrobank |
| In the amount | : Php434,430.00 |
| Postdated / Dated | : October 20, 2003 |

⁶ *Id.* at 34.

⁷ *Id.*

Payable to : AMASEA GENERAL MERCHANDIZE
AND CONSTRUCTION SUPPLIES

said accused well knowing that at the time of issue thereof, said accused did not have sufficient funds in or credit with the drawee bank for the payment in full of the face amount of such check upon its presentment which check when presented for payment within ninety (90) days from the date thereof, was subsequently dishonored by the drawee bank for the reason "Account Closed" and despite receipt of notice of such dishonor, the said accused failed to pay said payee the face amount of said check or to make arrangement for full payment thereof within five (5) banking days after receiving notice.

CONTRARY TO LAW.

Criminal Case No. 337903

That on or about the 20th day of October 2003, or prior thereto, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously make out, draw and issue to AMASEA GENERAL MERCHANDIZE AND CONSTRUCTION SUPPLIES herein represented by ARMILYN MORILLO to apply on account or for value the check described below:

Check No. : 2960203218
Drawn Against : Metrobank
In the amount : Php13,032.00
Postdated / Dated : October 20,2003
Payable to : AMASEA GENERAL MERCHANDIZE
AND CONSTRUCTION SUPPLIES

said accused well knowing that at the time of issue thereof, said accused did not have sufficient funds in or credit with the drawee bank for the payment in full of the face amount of such check upon its presentment which check when presented for payment within ninety (90) days from the date thereof, was subsequently dishonored by the drawee bank for the reason "Account Closed" and despite receipt of notice of such dishonor, the said accused failed to pay said payee the face amount of said check or to make arrangement for full payment thereof within five (5) banking days after receiving notice.

CONTRARY TO LAW.⁸

On September 15, 2004, the Assistant City Prosecutor issued a Resolution recommending that respondent and his partners be charged in court with the crime of Estafa under Article 315, paragraph 2(d) of the Revised Penal Code as well as for Violation of Batas Pambansa No. 22 (*BP 22*), which was later docketed as Criminal Case Nos. 337902-03.

⁸ *Id.* at 32-33.

On September 3, 2008, the MeTC rendered its Joint Decision, finding that the prosecution had proven all the elements of violation of BP 22 as against respondent, the dispositive portion of which reads:

WHEREFORE, judgment is rendered in Criminal Cases Nos. 337902-03 finding the accused, RICHARD NATIVIDAD, GUILTY beyond reasonable doubt of the offense of Violation of Batas Pambansa Blg. 22 and is sentenced to pay a fine equivalent to Two Hundred Thousand Pesos (Php200,000.00), for Check No. 2960203217 and Thirteen Thousand Thirty-Two Pesos for Check No. 2960203218 or a total penalty of Two Hundred Thousand Thirteen Thousand Thirty Two Pesos (Php213,032.00), with subsidiary imprisonment in case of insolvency. However, accused MILO MALONG, is ACQUITTED on the ground of reasonable doubt. Both accused Malong and Natividad are ordered to jointly pay the private complainant the total sum of Four Hundred Forty-Seven Thousand Four Hundred Sixty-Two Pesos (Php447,462.00) which are the face value of the two (2) checks issued, subject of these cases, with interest at twelve percent (12%) per annum and three percent (3%) penalty per month as stipulated in the invoices, reckoned from the date of receipt of the demand on February 28, 2004, until the amount is fully paid, plus the costs of suit.

All other claims are DISMISSED for lack of evidence.

SO ORDERED.⁹

Respondent appealed the decision of the MeTC to the RTC arguing that the MeTC of Makati City had no jurisdiction over the case. He asserted that since the subject checks were issued, drawn, and delivered to petitioner in Subic, the venue of the action was improperly laid for none of the elements of the offense actually transpired in Makati City. Respondent also pointed out that during the retaking of petitioner's testimony on March 14, 2008, the records of the case did not show that the public prosecutor manifested his presence in court and that he delegated the prosecution of the case to the private prosecutor. Thus, since there was no appearance for the public prosecutor, nor was there a proper delegation of authority, the proceedings should be declared null and void.¹⁰

On February 23, 2009, the RTC affirmed the MeTC ruling in the following wise:

Since accused Natividad failed to raise before the court [*a quo*] the issue of authority of the private prosecutor to present witness Morillo in the absence of the public prosecutor during the March 14, 2008 proceeding, and only did so after obtaining an adverse judgment, it would be an injustice if all the proceedings had in the case would be set aside.

⁹ *Id.* at 73-74.

¹⁰ *Id.* at 36.

The second issue raised on appeal also holds no ground. A violation of BP 22 is a continuing or transitory offense, which is oft-repeated in our jurisprudence. Under this doctrine, jurisdiction may be had in several places where one of the acts material to the crime occurred.

Accused Natividad postulates that since the checks were presented and dishonored in Makati City, which is not the place where it was issued and delivered, the court [*a quo*] lacks jurisdiction. This argument is, at best, specious. The fact remains that the bank where it was presented for payment is in Makati City. These checks passed through this bank for clearance, confirmation, and or validation processes. Moreover, the eventual dishonour indeed took place or was completed at the end of the collecting bank in Makati City, where the private complainant maintains her account over which the court [*a quo*] has jurisdiction.

WHEREFORE, finding no merit on accused-appellant Natividad's appeal, the same is hereby dismissed. Accordingly, the appealed decision of the court [*a quo*] is hereby AFFIRMED in full.

SO ORDERED.¹¹

On appeal, however, the Court of Appeals, in its January 18, 2011 Decision, reversed the lower courts' rulings and dismissed the case without prejudice to its refile in the proper venue, the pertinent portions of said Decision state:

In this case, records will reveal that the first element of the offense happened in Pampanga. It was indisputably established that the subject checks were issued to private complainant at petitioner's office in Pampanga. Said checks were drawn from petitioner's account in Metrobank, Pampanga branch.

The second element of the offense or the knowledge of dishonor of the checks by the maker also transpired in Pampanga. After private complainant was informed of the dishonor of the checks, she immediately proceeded to petitioner's office in Pampanga, personally informed him and his companions of the dishonor of the checks and tendered a demand letter for the payment of the construction materials.

Finally, the third element or dishonor of the checks by the drawee bank also happened in Pampanga. Upon maturity of the subject checks, private complainant deposited the same in her savings account at Equitable PCIBank, Makati Branch. Subsequently, she was informed by the latter bank that the subject checks were dishonored by the drawee bank, Metrobank, Pampanga branch.

Clearly, all the essential elements of the offense happened in Pampanga. Consequently, the case can only be filed in said place. Unfortunately, private complainant filed the case in Makati City, under the erroneous assumption that since she deposited the subject

¹¹ *Id.* at 80-81. (Emphasis ours)

checks in Equitable PCIBank, Makati City, and was informed of the dishonor of the checks by the same bank, the case may be filed in Makati City. However, as correctly argued by the OSG, the act of depositing the check is not an essential element of BP 22. Likewise, the fact that private complainant was informed of the dishonor of the checks at her bank in Makati City did not vest the MeTC, Makati City with jurisdiction to take cognizance of the case. To reiterate, a transitory crime can only be filed in any of the places where its constitutive elements actually transpired. And, knowledge of the payee of the dishonor of the checks is not an element of BP 22. The law speaks only of the subsequent dishonor of the checks by the drawee bank and the knowledge of the fact of dishonor by the maker. Consequently, none of the elements of the offense can be considered to have transpired in Makati City. Thus, the venue of the instant case was improperly laid.¹²

Aggrieved, petitioner filed the instant action invoking the following argument:

I.

THE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT THE METROPOLITAN TRIAL COURT OF MAKATI CITY DID NOT HAVE JURISDICTION OVER THE CASE DESPITE A CLEAR SHOWING THAT THE OFFENSE WAS COMMITTED WITHIN THE JURISDICTION OF SAID COURT.¹³

Petitioner maintains that the MeTC of Makati City, the place where the dishonored checks were deposited, had jurisdiction over the instant case. In support of her contention, petitioner cites the ruling in *Nieva, Jr. v. Court of Appeals*,¹⁴ wherein it was held that since the check drawn in violation of BP 22 was deposited and presented for encashment with the Angeles City Branch of the Bank of the Philippine Islands, the RTC of Pampanga clearly had jurisdiction over the crime of which accused therein was charged.¹⁵ Thus, petitioner asserts that the appellate court erred in ruling that the Makati MeTC did not have jurisdiction to try the instant case. That none of the essential elements of the crime of violation of BP 22 occurred in the City of Makati is belied by the *Nieva* doctrine recognizing the jurisdiction of the court of the place where the check was deposited and/or presented for encashment.

Petitioner went on to state that all the elements of violation of BP 22 were duly proven beyond reasonable doubt. First, the prosecution sufficiently established that the respondent issued the subject checks as shown by the documentary evidence submitted. They were issued for value,

¹² *Id.* at 40-41.

¹³ *Id.* at 18.

¹⁴ 338 Phil. 529 (1997).

¹⁵ *Nieva, Jr. v. Court of Appeals, supra*, at 541.

as payment for the construction supplies and materials which petitioner delivered to the accused.

As to the second and third elements, petitioner posits that it was clearly shown that respondent had knowledge of the insufficiency of funds in or credit with the drawee bank, which subsequently dishonored the subject checks. Section 2 of BP 22 provides that “the dishonor of a check when presented within ninety (90) days from the date of the check shall be *prima facie* evidence of knowledge of 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.” In this case, petitioner states that the prosecution was able to sufficiently show that the subject checks were presented within the time period required by law. In fact, written demand relaying the fact that the drawee bank dishonored the subject checks was even personally delivered by petitioner to respondent as evidenced by the demand letter signed by respondent. Thus, respondent cannot deny that he had knowledge of the insufficiency of funds in his account with the drawee bank and that the subject checks were subsequently dishonored for the reason that the account from which they were drawn was already a closed account.

For its part, the Office of the Solicitor General (*OSG*), representing the State, is in line with the appellate court’s and respondent’s stance that the MeTC had no jurisdiction over the instant case. According to the *OSG*, the act of depositing the check is not an essential element of the offense under the Bouncing Checks Law. Citing the ruling in *Rigor v. People*,¹⁶ the *OSG* posited that the place of deposit and the place of dishonor are distinct from each other and that the place where the check was issued, delivered, and dishonored is the proper venue, not the place where the check was deposited, *viz.*:

The evidence clearly shows that the undated check was issued and delivered at the Rural Bank of San Juan, Metro Manila. xxx The check was deposited with PS Bank, San Juan Branch, Metro Manila. xxx The information at bar effectively charges San Juan as the place of drawing and issuing. The jurisdiction of courts in criminal cases is determined by the allegations of the complaint or information. Although the check was dishonored by the drawee, Associated Bank, in its Tarlac Branch, appellant has drawn, issued and delivered it at RBSJ, San Juan. The place of issue and delivery was San Juan and knowledge, as an essential part of the offense, was also overtly manifested in San Juan. There is no question that crimes committed in San Juan are triable by the RTC stationed in Pasig.¹⁷

¹⁶ 485 Phil. 125, (2004).

¹⁷ *Rollo*, pp. 204-205. (Emphasis omitted)

On the basis of the pronouncement in *Rigor*, the OSG thus claimed that the MeTC of Makati City did not have jurisdiction over the instant case for none of the essential elements of violation of BP 22 occurred therein.

The contention is untenable.

It is well settled that violations of BP 22 cases are categorized as transitory or continuing crimes, meaning that some acts material and essential thereto and requisite in their consummation occur in one municipality or territory, while some occur in another. In such cases, the court wherein any of the crime's essential and material acts have been committed maintains jurisdiction to try the case; it being understood that the first court taking cognizance of the same excludes the other. Thus, a person charged with a continuing or transitory crime may be validly tried in any municipality or territory where the offense was in part committed.¹⁸

The OSG, relying on our ruling in *Rigor v. People*, concluded that “the Supreme Court regarded the place of deposit and the place of dishonor as distinct from one another and considered the place where the check was issued, delivered and dishonored, and not where the check was deposited, as the proper venue for the filing of a B.P. Blg. 22 case.” The Court, however, cannot sustain such conclusion.

In said case, the accused therein obtained a loan from the Rural Bank of San Juan, Metro Manila, and in payment thereof, he issued a check drawn against Associated Bank of Tarlac. Thereafter, Rural Bank deposited the check at PS Bank, San Juan, but the same was returned for the reason that it had been dishonored by Associated Bank of Tarlac. When all other efforts to demand the repayment of the loan proved futile, Rural Bank filed an action against the accused for violation of BP 22 at the RTC of Pasig City, wherein crimes committed in San Juan are triable. The accused, however, contends that the RTC of Pasig had no jurisdiction thereon since no proof had been offered to show that his check was issued, delivered, dishonored or that knowledge of insufficiency of funds occurred in the Municipality of San Juan. The Court, however, disagreed and held that while the check was dishonored by the drawee, Associated Bank, in its Tarlac Branch, evidence clearly showed that the accused had drawn, issued and delivered it at Rural Bank, San Juan, *viz.*:

Lastly, petitioner contends that the Regional Trial Court of Pasig had no jurisdiction over this case since no proof has been offered that his check was issued, delivered, dishonored or that knowledge of

¹⁸ *Yalong v. People*, G.R. No. 187174, August 28, 2013, 704 SCRA 195, 205; citing *Rigor v. People*, *supra* note 16, at 138.

insufficiency of funds occurred in the Municipality of San Juan, Metro Manila.

The contention is untenable.

x x x x.

The evidence clearly shows that the undated check was issued and delivered at the Rural Bank of San Juan, Metro Manila on November 16, 1989, and subsequently the check was dated February 16, 1990 thereat. On May 25, 1990, the check was deposited with PS Bank, San Juan Branch, Metro Manila. Thus, the Court of Appeals correctly ruled:

Violations of B.P. 22 are categorized as transitory or continuing crimes. A suit on the check can be filed in any of the places where any of the elements of the offense occurred, that is, where the check is drawn, issued, delivered or dishonored. x x x

The information at bar effectively charges San Juan as the place of drawing and issuing. The jurisdiction of courts in criminal cases is determined by the allegations of the complaint or information. Although, the check was dishonored by the drawee, Associated Bank, in its Tarlac Branch, appellant has drawn, issued and delivered it at RBSJ, San Juan. The place of issue and delivery was San Juan and knowledge, as an essential part of the offense, was also overtly manifested in San Juan. There is no question that crimes committed in November, 1989 in San Juan are triable by the RTC stationed in Pasig. In short both allegation and proof in this case sufficiently vest jurisdiction upon the RTC in Pasig City.¹⁹

The bone of contention in *Rigor*, therefore, was whether the prosecution had offered sufficient proof that the check drawn in violation of BP 22 was issued, delivered, dishonored or that knowledge of insufficiency of funds occurred in the Municipality of San Juan, thereby vesting jurisdiction upon the RTC of Pasig City. Nowhere in the cited case, however, was it held, either expressly or impliedly, that the place where the check was deposited is not the proper venue for actions involving violations of BP 22. It is true that the Court, in *Rigor*, acknowledged the fact that the check was issued and delivered at the Rural Bank of San Juan while the same was deposited with the PS Bank of San Juan. But such differentiation cannot be taken as basis sufficient enough to conclude that the court of the place of deposit cannot exercise jurisdiction over violations of BP 22. In the absence, therefore, of any ground, jurisprudential or otherwise, to sustain the OSG's arguments, the Court cannot take cognizance of a doctrine that is simply inapplicable to the issue at hand.

¹⁹ *Rigor v. People*, *supra* note 16.

In contrast, the ruling in *Nieva, Jr. v. Court of Appeals*²⁰ cited by petitioner is more squarely on point with the instant case. In *Nieva*, the accused delivered to Ramon Joven a post-dated check drawn against the Commercial Bank of Manila as payment for Joven's dump truck. Said check was deposited in the Angeles City Branch of the Bank of Philippine Islands. Joven was advised, however, that the Commercial Bank of Manila returned the check for the reason that the account against which the check was drawn is a "closed account." Consequently, the accused was charged with violation of BP 22 before the RTC of Pampanga. On the contention of the accused that said court had no jurisdiction to try the case, the Court categorically ruled:

As to petitioner's contention that the Regional Trial Court of Pampanga has no jurisdiction to try the cases charged herein as none of the essential elements thereof took place in Pampanga, suffice it to say that such contention has no basis. The evidence discloses that the check was deposited and/or presented for encashment with the Angeles City Branch of the Bank of the Philippine Islands. This fact clearly confers jurisdiction upon the Regional Trial Court of Pampanga over the crimes of which petitioner is charged. It must be noted that violations of B.P. Blg. 22 are categorized as transitory or continuing crimes and so is the crime of estafa. The rule is that a person charged with a transitory crime may be validly tried in any municipality or territory where the offense was in part committed.²¹

In fact, in the more recent *Yalong v. People*,²² wherein the modes of appeal and rules of procedure were the issues at hand, the Court similarly inferred:

Besides, even discounting the above-discussed considerations, Yalong's appeal still remains dismissible on the ground that, *inter alia*, the MTCC had properly acquired jurisdiction over Criminal Case No. 45414. It is well-settled that violation of BP 22 cases is categorized as transitory or continuing crimes, which means that the acts material and essential thereto occur in one municipality or territory, while some occur in another. Accordingly, the court wherein any of the crime's essential and material acts have been committed maintains jurisdiction to try the case; it being understood that the first court taking cognizance of the same excludes the other. Stated differently, a person charged with a continuing or transitory crime may be validly tried in any municipality or territory where the offense was in part committed. Applying these principles, a criminal case for violation of BP 22 may be filed in any of the places where any of its elements occurred – in particular, the place where the check is drawn, issued, delivered, or dishonored.

²⁰ *Supra* note 14.

²¹ *Nieva, Jr. v. Court of Appeals*, *supra* note 14, at 13-14. (Emphasis ours)

²² *Supra* note 18.

In this case, while it is undisputed that the subject check was drawn, issued, and delivered in Manila, records reveal that Ylagan presented the same for deposit and encashment at the LBC Bank in Batangas City where she learned of its dishonor. As such, the MTCC [of Batangas City] correctly took cognizance of Criminal Case No. 45414 as it had the territorial jurisdiction to try and resolve the same. In this light, the denial of the present petition remains warranted.²³

Guided by the foregoing pronouncements, there is no denying, therefore, that the court of the place where the check was deposited or presented for encashment can be vested with jurisdiction to try cases involving violations of BP 22. Thus, the fact that the check subject of the instant case was drawn, issued, and delivered in Pampanga does not strip off the Makati MeTC of its jurisdiction over the instant case for it is undisputed that the subject check was deposited and presented for encashment at the Makati Branch of Equitable PCIBank. The MeTC of Makati, therefore, correctly took cognizance of the instant case and rendered its decision in the proper exercise of its jurisdiction.

It may be argued, however, that the instant petition ought to be dismissed outright due to certain procedural infirmities. Section 35 (1), Chapter 12, Title III, Book IV of the 1987 Administrative Code provides that the OSG shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. Specifically, it shall represent the Government in all criminal proceedings before the Supreme Court and the Court of Appeals.²⁴ Thus, as a general rule, if a criminal case is dismissed by the trial court or if there is an acquittal, the appeal on the criminal aspect of the case must be instituted by the Solicitor General on behalf of the State.²⁵

There have been instances, however, where the Court permitted an offended party to file an appeal without the intervention of the OSG, such as when the offended party questions the civil aspect of a decision of a lower

²³ *Yalong v. People*, *supra* note 18, at 205. (Emphasis ours)

²⁴ Section 35 (1), Chapter 12, Title III, Book IV of the 1987 Administrative Code provides:

Section 35. Powers and Functions. — The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. When authorized by the President or head of the office concerned, it shall also represent government owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of lawyers. It shall have the following specific powers and functions:

(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings ; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.

²⁵ *Villareal v. Aliga*, G.R. No. 166995, January 13, 2014, 713 SCRA 52, 64.

court,²⁶ when there is denial of due process of law to the prosecution and the State or its agents refuse to act on the case to the prejudice of the State and the private offended party,²⁷ when there is grave error committed by the judge, or when the interest of substantial justice so requires.²⁸

Corollary, a judgment of acquittal may be assailed through a petition for *certiorari* under Rule 65 of the Rules of Court showing that the lower court, in acquitting the accused, committed not merely reversible errors of judgment, but also exercised grave abuse of discretion amounting to lack or excess of jurisdiction, or a denial of due process, thereby rendering the assailed judgment null and void. If there is grave abuse of discretion, granting the aggrieved party's prayer is not tantamount to putting the accused in double jeopardy,²⁹ in violation of the general rule that the prosecution cannot appeal or bring error proceedings from a judgment rendered in favor of the defendant in a criminal case. This is because a judgment of acquittal is immediately final and executory, and the prosecution is barred from appealing lest the constitutional prohibition against double jeopardy be violated.³⁰

Thus, it may be argued that since the instant petition is one for review on *certiorari* under Rule 45 of the Rules of Court, not under Rule 65, and was not filed by the OSG representing the interest of the Republic, the same should be summarily dismissed. The unique and special circumstances attendant in the instant petition, however, justify an adjudication by the Court on the merits and not solely on technical grounds.

First of all, the Court stresses that the appellate court's dismissal of the case is not an acquittal of respondent. Basic is the rule that a dismissal of a case is different from an acquittal of the accused therein. Except in a dismissal based on a Demurrer to Evidence filed by the accused, or for violation of the right of the accused to a speedy trial, the dismissal of a criminal case against the accused will not result in his acquittal.³¹ In the oft-cited *People v. Salico*,³² the Court explained:

This argument or reasoning is predicated on a confusion of the legal concepts of dismissal and acquittal. **Acquittal is always based on the merits, that is, the defendant is acquitted because the evidence**

²⁶ *Heirs of Delgado, et al. v. Gonzalez*, 612 Phil. 817, 844 (2009), citing *People v. Judge Santiago*, 255 Phil. 851 (1989).

²⁷ *Id.*

²⁸ *Anlud Metal Recycling Corporation, etc. v. Joaquin Ang*, G.R. No. 182157, August 17, 2015, citing *Cariño v. De Castro*, 576 Phil. 634 (2008).

²⁹ *People of the Philippines and AAA v. Court of Appeals, 21st Division, Mindanao Station, et al.* G.R. No. 183652, February 25, 2015.

³⁰ *Id.*

³¹ *People v. Sandiganbayan*, 482 Phil. 613, 632 (2004).

³² 84 Phil. 722 (1949).

does not show that defendant's guilt is beyond a reasonable doubt; but dismissal does not decide the case on the merits or that the defendant is not guilty. Dismissal terminates the proceeding, either because the court is not a court of competent jurisdiction, or the evidence does not show that the offense was committed within the territorial jurisdiction of the court, or the complaint or information is not valid or sufficient in form and substance, etc. The only case in which the word dismissal is commonly but not correctly used, instead of the proper term acquittal, is when, after the prosecution has presented all its evidence, the defendant moves for the dismissal and the court dismisses the case on the ground that the evidence fails to show beyond a reasonable doubt that the defendant is guilty; for in such case the dismissal is in reality an acquittal because the case is decided on the merits. **If the prosecution fails to prove that the offense was committed within the territorial jurisdiction of the court and the case is dismissed, the dismissal is not an acquittal, inasmuch as if it were so the defendant could not be again prosecuted before the court of competent jurisdiction; and it is elemental that in such case, the defendant may again be prosecuted for the same offense before a court of competent jurisdiction.**³³

Thus, when the appellate court herein dismissed the instant case on the ground that the MeTC lacked jurisdiction over the offense charged, it did not decide the same on the merits, let alone resolve the issue of respondent's guilt or innocence based on the evidence proffered by the prosecution.³⁴ The appellate court merely dismissed the case on the erroneous reasoning that none of the elements of BP 22 was committed within the lower court's jurisdiction, and not because of any finding that the evidence failed to show respondent's guilt beyond reasonable doubt. Clearly, therefore, such dismissal did not operate as an acquittal, which, as previously discussed, may be repudiated only by a petition for *certiorari* under Rule 65 of the Rules of Court showing a grave abuse of discretion.

Thus, petitioner's resort to Rule 45 of the Rules of Court cannot be struck down as improper. In a petition for review on *certiorari* under Rule 45, the parties raise only questions of law because the Court, in its exercise of its power of review, is not a trier of facts. There is a question of law when the doubt or difference arises as to what the law is on certain state of facts and which does not call for an existence of the probative value of the evidence presented by the parties-litigants.³⁵ In *De Vera v. Spouses Santiago*,³⁶ the Court categorically ruled that the issue of whether the appellate court erred in annulling the RTC Decision for lack of jurisdiction is a question of law, to wit:

³³ *People v. Salico, supra.* at 732-733. (Emphasis ours)

³⁴ *Consino v. People of the Philippines*, G.R. No. 200465, April 20, 2015.

³⁵ *De Vera, et al. v. Spouses Santiago, et al.*, G.R. No. 179457, June 22, 2015, citing *Samson v. Spouses Gabor, et al.*, G.R. No. 182970, July 23, 2014, 730 SCRA 490, 497.

³⁶ *Supra.*

Undeniably, the issue whether the CA erred in annulling the RTC Decision for lack of jurisdiction is a question of law. The resolution of such issue rests solely on what the law [B.P. Blg. 129, as amended] provides on the given set of circumstances as alleged in petitioners' complaint for reconveyance of ownership and possession with damages.³⁷

In the instant case, the lone issue invoked by petitioner is precisely “whether the Court of Appeals erred when it ruled that the Metropolitan Trial Court of Makati City did not have jurisdiction over the case despite clear showing that the offense was committed within the jurisdiction of said court.” Evidently, therefore, the instant petition was filed within the bounds of our procedural rules for the issue herein rests solely on what the law provides on the given set of circumstances insofar as the commission of the crime of BP 22 is concerned. In criminal cases, the jurisdiction of the court is determined by the averments of the complaint or Information, in relation to the law prevailing at the time of the filing of the complaint or Information, and the penalty provided by law for the crime charged at the time of its commission.³⁸ Thus, when a case involves a proper interpretation of the rules and jurisprudence with respect to the jurisdiction of courts to entertain complaints filed therewith, it deals with a question of law that can be properly brought to this Court under Rule 45.³⁹

More importantly, moreover, since the dismissal of the instant case cannot be considered as an acquittal of respondent herein, he cannot likewise claim that his constitutional right to protection against double jeopardy will be violated. In *Paulin v. Hon. Gimenez*,⁴⁰ the Court held:

Jurisprudence on double jeopardy as well as the exceptions thereto which finds application to the case at bar has been laid down by this Court as follows:

. . . However, an appeal by the prosecution from the order of dismissal (of the criminal case) by the trial court shall not constitute double jeopardy if (1) the dismissal is made upon motion, or with the express consent of the defendant; (2) the dismissal is not an acquittal or based upon consideration of the evidence or of the merits of the case; and (3) the question to be passed upon by the appellate court is purely legal so that should the dismissal be found incorrect, the case would have to be remanded to the court of origin for further proceedings, to determine the guilt or innocence of the defendant.⁴¹

³⁷ *De Vera v. Spouses Santiago*, *supra* note 35. (Emphasis ours)

³⁸ *Consino v. People*, *supra* note 34, citing *Guinhawa v. People*, 505 Phil. 383, 401-402 (2005).

³⁹ *Padilla v. Globe Asiatique Realty Holdings Corporation*, G.R. No. 207376, August 6, 2014, 732 SCRA 416, 431.

⁴⁰ G.R. No. 103323, January 21, 1993, 217 SCRA 386

⁴¹ *Paulin v. Hon. Gimenez*, *supra*, at 390, citing *People v. Hon. Villalon*, 270 Phil. 637, 645 (1990). (Emphasis ours)

A cursory review of the records would readily reveal the presence of the foregoing requisites. *First*, as early as the stage of respondent's appeal of the MeTC's decision to the RTC, respondent had already been moving for the dismissal of the case alleging the ground of lack of jurisdiction. Accordingly, the CA's dismissal on said ground can rightly be considered to have been with respondent's express consent. *Second*, as earlier mentioned, the dismissal herein is not an acquittal or based upon a consideration of the merits. *Third*, the question raised in this case is based purely on a question of law. In view therefore of the presence of all three requisites, the Court finds that petitioner's appeal of the appellate court's dismissal cannot be barred by double jeopardy.

As to the issue of petitioner's legal standing to file the instant petition in the absence of the OSG's participation, the circumstances herein warrant the Court's consideration. In *Narciso v. Sta. Romana-Cruz*,⁴² the Court gave due regard to the ends of substantial justice by giving due course to a petition filed before it by the private offended party, *viz.*:

Citing the "ends of substantial justice," *People v. Calo*, however, provided an exception to the above doctrines in this manner:

While the rule is, as held by the Court of Appeals, only the Solicitor General may bring or defend actions on behalf of the Republic of the Philippines, or represent the People or the State in criminal proceedings pending in this Court and the Court of Appeals (Republic vs. Partisala, 118 SCRA 320 [1982]), **the ends of substantial justice would be better served, and the issues in this action could be determined in a more just, speedy and inexpensive manner, by entertaining the petition at bar. As an offended party in a criminal case, private petitioner has sufficient personality and a valid grievance against Judge Adao's order granting bail to the alleged murderers of his (private petitioner's) father.**

X X X X

The ends of substantial justice indeed require the affirmation of the appellate court's ruling on this point. Clearly, the assailed Order of Judge Santiago was issued in grave abuse of discretion amounting to lack of jurisdiction. A void order is no order at all. It cannot confer any right or be the source of any relief. This Court is not merely a court of law; it is likewise a court of justice.

To rule otherwise would leave the private respondent without any recourse to rectify the public injustice brought about by the trial court's Order, leaving her with only the standing to file administrative charges for ignorance of the law against the judge and the prosecutor.

⁴²

385 Phil. 208 (2000).

A party cannot be left without recourse to address a substantive issue in law.⁴³

In a similar manner, the Court finds that in the interest of substantial justice, it must give due course to the instant petition and consequently rule on the merits of the same. The circumstances surrounding this case left petitioner with no other suitable recourse but to appeal the case herself. Not only was there an absence of support from the OSG, said government office also took a position in contrast to the rights and interests of petitioner. Moreover, as discussed above, the arguments which ran counter to petitioner's interest as well as the grounds used to support them were simply inapplicable to the issue at hand. In fact, these erroneous contentions were adopted by the appellate court in their entirety, dismissing the instant case in a manner not in accord with law and applicable jurisprudence. For the Court, now, to apply procedural rules in their strict and literal sense by similarly dismissing, as the CA had, petitioner's action poses serious consequences tantamount to a miscarriage of justice. To rule that the accused can postpone criminal prosecution and delay the administration of justice at petitioner's expense on the erroneous ground of lack of jurisdiction would create a hazardous precedent and open loopholes in our criminal justice system.⁴⁴

Indeed, the unique and exceptional circumstances in the instant case demand that the Court forego a rigid application of the technicalities under the law so as to prevent petitioner from suffering a grave injustice. As disclosed by the records, petitioner had already fulfilled her end of the agreement in giving respondent, as early as in the year 2003, construction materials amounting to half a million pesos and yet up until now, she has not been paid therefor. In fact, after having sufficiently proven to the satisfaction of both the MeTC and the RTC her right allegedly violated by respondent, the CA simply dismissed, albeit without prejudice to the re-filing of the case with the appropriate court, her action for the incorrect ground of wrong venue. On the mistaken reasoning that the MeTC of Makati City did not have jurisdiction over the instant case, the CA, without providing any legal or jurisprudential basis, would have petitioner start from the very beginning and re-file her complaint before the same court which already had jurisdiction in the first place.

Thus, when there exists meritorious grounds to overlook strict procedural matters, the Court cannot turn a blind eye thereto lest the administration of justice be derailed by an overly stringent application of the rules.⁴⁵ Rules of procedure are meant to be tools to facilitate a fair and

⁴³ *Narciso v. Sta. Romana-Cruz*, *supra*, at 222-223, citing *People v. Calo, Jr.*, 264 Phil. 1007, 1012-1013 (1990).

⁴⁴ See Separate Concurring Opinion, Associate Justice Arturo D. Brion in *De la Cuesta v. Sandiganbayan, First Division*, G.R. Nos. 164068-69, November 19, 2013, 709 SCRA 631, 673.

⁴⁵ *Civil Service Commission v. Almojuela*, G.R. No. 194368, April 2, 2013, 694 SCRA 441, 463.

orderly conduct of proceedings. Strict adherence thereto must not get in the way of achieving substantial justice. As long as their purpose is sufficiently met and no violation of due process and fair play takes place, the rules should be liberally construed.⁴⁶ Dismissal of appeals purely on technical grounds is frowned upon where the policy of the court is to encourage hearings of appeals on their merits and the rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override substantial justice. It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.⁴⁷

WHEREFORE, premises considered, the instant petition is **GRANTED**. The Decision dated January 18, 2011 and Resolution dated August 9, 2011 of the Court Appeals in CA-G.R. CR No. 32723 are **REVERSED** and **SET ASIDE**. The Decision dated February 23, 2009 and Order dated July 13, 2009, of the Regional Trial Court in Criminal Case Nos. 08-1876-77, which affirmed the Joint Decision dated September 3, 2008 of the Metropolitan Trial Court in Criminal Case Nos. 337902-03 are hereby **REINSTATED**.

SO ORDERED.



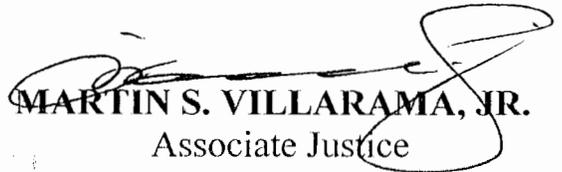
DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



MARIANO C. DEL CASTILLO
Associate Justice



MARTIN S. VILLARAMA, JR.
Associate Justice

⁴⁶ *Regional Agrarian Reform Adjudication Board, et al. v. CA, et al.*, 632 Phil. 191, 197 (2010).

⁴⁷ *Peñoso v. Dona*, 549 Phil. 39, 46 (2007), citing *Aguam v. Court of Appeals*, 388 Phil. 587, 594 (2000).


BIENVENIDO L. REYES
Associate Justice

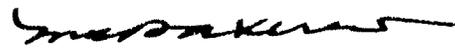
ATTESTATION

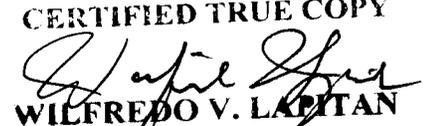
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division 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

CERTIFIED TRUE COPY

WILFREDO V. LAPID
Division Clerk of Court
Third Division

JAN 08 2016