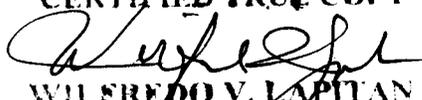




CERTIFIED TRUE COPY

 WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division

Republic of the Philippines
 Supreme Court
 Manila

OCT 19 2018

THIRD DIVISION

LYDIA CU,
 Petitioner,

G.R. No. 224567

Present:

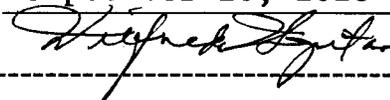
PERALTA, J., *Acting Chairperson,*
 LEONEN,*
 CAGUIOA,**
 GESMUNDO, and
 REYES, J., JR., JJ.

- versus -

Promulgated:

TRINIDAD VENTURA,
 Respondent.

September 26, 2018



X-----X

DECISION

PERALTA, J.:

This is to resolve the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, dated July 1, 2016, of petitioner Lydia Cu that seeks to reverse and set aside the Resolution¹ dated December 11, 2015 and Resolution² dated May 13, 2016 of the Court of Appeals (CA) in CA-G.R. CR No. 37691 dismissing petitioner's appeal on the ground that as a private complainant, she is not authorized to represent the State in an appeal from a criminal action.

The facts follow.

* On wellness leave.

** Additional member in lieu of Associate Justice Andres B. Reyes, Jr., per Special Order No. 2588-E dated September 18, 2018; on official business.

¹ Penned by Associate Justice Romeo F. Barza, with then Presiding Justice Andres B. Reyes, Jr. (now a member of this Court) and Associate Justice Zenaida T. Galapate-Laguilles, concurring.

² *Id.*



Petitioner filed a Complaint-Affidavit for violation of *Batas Pambansa Blg. 22*³ (BP 22) against respondent before the Office of the City Prosecutor of Quezon City. Eventually, the Office of the City Prosecutor found probable cause and an Information was filed with the Metropolitan Trial Court (*MeTC*) of Quezon City against respondent for violation of BP 22.

After trial on the merits, the MeTC, Branch 37 of Quezon City found the respondent guilty beyond reasonable doubt of violation of BP 22. The dispositive portion of the Decision dated January 10, 2014 reads as follows:

The foregoing manifests clearly that the accused has violated beyond reasonable doubt, *Batas Pambansa Bilang 22*. In view thereof, he is hereby ordered to:

1. Pay the total amount of the check which is for P2,000,000.00 and pay an interest of 12% per annum from the date of the check, up to the time that is fully paid;
2. Pay a fine of P200,000.00;
3. Suffer an imprisonment of sixty (60) days;
4. Pay the costs of suit, including Attorney's Fees and per appearance fee, should there be any.

The accused is to suffer, subsidiary imprisonment in case of insolvency.

SO ORDERED.

Respondent filed a Notice of Appeal and on December 3, 2014, the Regional Trial Court (*RTC*), Branch 87, Quezon City reversed and set aside the decision of the MeTC. The dispositive portion of the Decision acquitting the respondent reads as follows:

WHEREFORE, viewed in the light of the foregoing, the Decision dated January 10, 2014 of the Court *a quo* is hereby reversed and set aside and a new one rendered ACQUITTING the accused TRINIDAD VENTURA, of the crime of Violation of *Batas Pambansa Bilang 22*.

The civil aspect of the case is DISMISSED for failure of the private complainant to prove the requisite quantum of evidence preponderance of evidence.

SO ORDERED.

Petitioner, through her counsel, filed a motion for reconsideration, but it was denied by the RTC in its Resolution dated May 5, 2015. Thereafter, she

³ *An Act Penalizing the Making or Drawing and Issuance of a Check Without Sufficient Funds or Credit and For Other Purposes.*

filed a Motion for Extension of Time to File a Petition for Review under Rule 42 of the Rules of Court with the CA. On July 20, 2015, she filed her Petition for Review under Rule 42 with the CA.

The CA, in its Resolution dated December 11, 2015, dismissed the appeal. The CA disposed of the case as follows:

WHEREFORE, the instant appeal is hereby DISMISSED.

SO ORDERED.

According to the CA, in criminal actions brought before the Court of Appeals, or the Supreme Court, the authority to represent the State is solely vested in the Office of the Solicitor General (*OSG*). Petitioner filed a motion for reconsideration which was denied by the CA in its Resolution dated May 13, 2016.

Hence, the present petition with the following issues presented:

I.

WHETHER OR NOT RESPONDENT TRINIDAD VENTURA IS GUILTY OF B.P. 22.

II.

WHETHER OR NOT RESPONDENT IS LIABLE TO PETITIONER FOR THE CIVIL ASPECT.

Petitioner contends that respondent has been proven to have violated BP 22 beyond reasonable doubt as all the elements of the offense were proven by the prosecution. She also insists that in the petition for review that she filed with the CA, she questioned the civil aspect of the decision of the RTC and, thus, there is no need for the representation of the *OSG*.

In her Comment dated August 30, 2016, respondent argues that petitioner was actually assailing both the criminal and civil aspect of the appealed decision of the RTC when she filed an appeal with the CA. Respondent further contends that petitioner has no legal standing to file the present petition because the subject check was actually deposited not in her account but into the account of MC Nova Apparel Export Corporation which is a family-owned corporation with separate and distinct personality, and petitioner has not presented any authority or board resolution to prove that she was authorized to represent the said corporation.

The petition is without merit.



The Rules of Court requires that only questions of law should be raised in petitions filed under Rule 45.⁴ This Court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are "final, binding[,] or conclusive on the parties and upon this [c]ourt"⁵ when supported by substantial evidence.⁶ Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this court.⁷

However, these rules do admit exceptions. Over time, the exceptions to these rules have expanded. At present, there are ten (10) recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr.*:⁸

(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.⁹

These exceptions similarly apply in petitions for review filed before this court involving civil,¹⁰ labor,¹¹ tax,¹² or criminal cases.¹³

⁴ Rules of Court, Rule 45, Sec. 1.

⁵ *Commissioner of Internal Revenue v. Embroidery and Garments Industries (Phil.), Inc.*, 364 Phil. 541, 546 (1999) [Per J. Pardo, First Division].

⁶ *Siasat v. Court of Appeals*, 425 Phil. 139, 145 (2002) [Per J. Pardo, First Division]; *Tabaco v. Court of Appeals*, 239 Phil. 485, 490 (1994) [Per J. Bellosillo, First Division]; and *Padilla v. Court of Appeals*, 241 Phil. 776, 781 (1988) [Per J. Paras, Second Division].

⁷ *Bank of the Philippine Islands v. Leobrera*, 461 Phil. 461, 469 (2003) [Per J. Ynares-Santiago, Special First Division].

⁸ 269 Phil. 225 (1990) [Per J. Bidin, Third Division].

⁹ *Id.* at 232.

¹⁰ *Dichoso, Jr., et al. v. Marcos*, 663 Phil. 48 (2011) [Per J. Nachura, Second Division] and *Spouses Caoili v. Court of Appeals*, 373 Phil. 122, 132 (1999) [Per J. Gonzaga-Reyes, Third Division].

¹¹ *Go v. Court of Appeals*, 474 Phil. 404, 411 (2004) [Per J. Ynares-Santiago, First Division] and *Arriola v. Pilipino Star Ngayon, Inc., et al.*, 741 Phil. 171 (2014) [Per J. Leonen, Third Division].

¹² *Commissioner of Internal Revenue v. Embroidery and Garments Industries (Phil.), Inc.*, 364 Phil. 541, 546-547 (1999) [Per J. Pardo, First Division].

¹³ *Macayan, Jr. v. People*, 756 Phil. 202 (2015) [Per J. Leonen, Second Division]; *Benito v. People*, 753 Phil. 616 (2015) [Per J. Leonen, Second Division].

A question of fact requires this court to review the truthfulness or falsity of the allegations of the parties.¹⁴ This review includes assessment of the "probative value of the evidence presented."¹⁵ There is also a question of fact when the issue presented before this court is the correctness of the lower courts' appreciation of the evidence presented by the parties.¹⁶

In this case, the first issue raised by petitioner obviously asks this Court to review the evidence presented during the trial. She has laid down in the present petition the reasons as to why this Court should find respondent guilty of the crime charged against her and reverse the latter's acquittal by the RTC. Clearly, this is not the role of this Court because the issue she presented is factual in nature. Thus, the present petition must fail.

The CA dismissed petitioner's Petition for Review under Rule 42 of the Rules of Court because she is not the proper party to appeal in a criminal case. It ruled that in criminal cases or proceedings, only the Solicitor General may bring or defend actions on behalf of the Republic of the Philippines, or represent the People or State. This is in compliance with the provisions of Section 35(1), Chapter 12, Title III, Book III of the Administrative Code of 1987, as amended, thus:

Section 35. *Power 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 a lawyer. 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 service of a lawyer. It shall have the following specific power 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.

The above, however, is not without any exception. The two exceptions are: (1) 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, and (2) when the private offended party questions the civil aspect of a decision of a lower court.¹⁷

¹⁴ *Republic v. Ortigas and Company Limited Partnership*, 728 Phil. 277, 287-288 (2014) [Per J. Leonen, Third Division] and *Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.*, 665 Phil. 784, 788 (2011) [Per J. Carpio Morales, Third Division].

¹⁵ *Republic v. Ortigas and Company Limited Partnership*, *supra* note 14, at 288 [Per J. Leonen, Third Division].

¹⁶ *Pascual v. Burgos, et al.*, 776 Phil. 167, 183 (2016).

¹⁷ *Heirs of Delgado, et al. v. Gonzalez, et al.*, 612 Phil. 817, 844 (2009).

According to petitioner, she falls under the second because in the petition for review that she filed before the CA, what she questioned was the civil aspect of the decision of the RTC.

In the second exception, it is assumed that a decision on the merits had already been rendered by the lower court and it is the civil aspect of the case which the offended party is appealing.¹⁸ The offended party, who is not satisfied with the outcome of the case, may question the amount of the grant or denial of damages made by the court below even without the participation of the Solicitor General.¹⁹

In *Mobilia Products, Inc. v. Umezawa*,²⁰ the Court ruled that in criminal cases, the State is the offended party and the private complainant's interest is limited to the civil liability arising therefrom, thus:

Hence, if a criminal case is dismissed by the trial court or if there is an acquittal, a reconsideration of the order of dismissal or acquittal may be undertaken, whenever legally feasible, insofar as the criminal aspect thereof is concerned and may be made only by the public prosecutor; or in the case of an appeal, by the State only, through the OSG. The private complainant or offended party may not undertake such motion for reconsideration or appeal on the criminal aspect of the case. However, the offended party or private complainant may file a motion for reconsideration of such dismissal or acquittal or appeal therefrom but only insofar as the civil aspect thereof is concerned.

In *De la Rosa v. Court of Appeals*,²¹ citing *People v. Santiago*,²² the Court held:

In a special civil action for certiorari filed under Section 1, Rule 65 of the Rules of Court wherein it is alleged that the trial court committed a grave abuse of discretion amounting to lack of jurisdiction or on other jurisdictional grounds, the rules state that the petition may be filed by the person aggrieved. In such case, the aggrieved parties are the State and the private offended party or complainant. The complainant has an interest in the civil aspect of the case so he may file such special civil action questioning the decision or action of the respondent court on jurisdictional grounds. In so doing, complainant should not bring the action in the name of the People of the Philippines. The action may be prosecuted in (the) name of said complainant.

¹⁸ *Id.*
¹⁹ *Id.*
²⁰ 493 Phil. 85, 108 (2005).
²¹ 323 Phil. 596, 605 (1996).
²² 255 Phil. 851, 862 (1989).



The respondent, however, argues that what petitioner prayed for in her petition was for the CA to rule that respondent be guilty of violation of BP 22 and be made liable for the amount of Two Million Four Hundred Thousand Pesos (₱2,400,000.00), plus interests, thus:

WHEREFORE, the above premises considered, it is respectfully prayed that the assailed Decision dated December 3, 2014 and the Order dated May 5, 2015 be set aside and a new one be rendered finding respondent guilty of violation of BP 22 and be made liable for the amount of TWO MILLION FOUR HUNDRED THOUSAND PESOS (P2,400,000.00) in favor of the petitioner, plus interests.

Nothing in the above prayer does it mention nor is categorical in its statement that petitioner only seeks the review of the civil aspect of the case. The fact that petitioner filed a petition for review under Rule 42, or ordinary appeal with the CA, is already an indication that what she was seeking was the reversal of the entire decision of the RTC, in both its criminal and civil aspects. Petitioner could have filed a special civil action for *certiorari* had she intended to merely preserve her interest in the civil aspect of the case.

Nevertheless, granting that what petitioner questioned was the civil aspect of the case, the petition must still fail. A close reading of the records would show that the prosecution was not able to prove and establish its case, not only in its criminal aspect but also in its civil aspect where the required proof needed is only a preponderance of evidence. "Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term 'greater weight of the evidence' or 'greater weight of the credible evidence.' Preponderance of evidence is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthier of belief than that which is offered in opposition thereto."²³ As correctly ruled by the RTC:

The Court holds that the existence of accused-appellant's civil liability to plaintiff-appellee representing the face value of the dishonored check has not been sufficiently established by [preponderance of] evidence. Plaintiff-appellee mainly relied [on] her testimony before the court [*a quo*] to establish the existence of this unpaid obligation. In gist, she testified that the accused-appellant obtained a loan from her in the amount of \$100,000.00 and as partial payment of her obligation, accused-appellant issued the subject MetroBank Check No. 018049 dated June 15, 2007 in the amount of P2,400,000.00. When the accused-appellant allegedly refused to pay her obligation, she deposited the check for payment but the same bounced for the reason that it was drawn against insufficient funds. Unfortunately, plaintiff-appellee's testimony alone does not constitute preponderant evidence to establish accused-appellant's liability to her. Apart from the dishonored check, she failed to adduce any other documentary evidence to prove that the accused has still an unpaid

²³

Evangelista v. Spouses Andolong, et al., 800 Phil. 189, 195 (2016).

obligation to her. Unsubstantiated evidence are not equivalent to proof under the Rules.

In contrast, accused-appellant's defense consisted in, among others, her allegation that she had already paid the face value of the check through the private complainant Lydia Cu. Accused-appellant presented documents consisting of an Agreement between her and Lydia Cu, the authorized representative of Jun Yupitun showing that she obtained a loan from Mr. Yupitun through Lydia Cu in the amount of \$31,000.00 (Exhibit "2") and the acknowledgment receipt dated July 22, 2014 (Exhibit "2-a") signed by Lydia Cu showing that the principal loan obligation of the accused-appellant was fully paid and gave her instruction to her secretary to just tear the subject check or leave the same to her. The existence and due execution of those documents were not rebutted by the prosecution. Thus, considering the presentation of these documents which were not rebutted by the prosecution through the presentation of a rebuttal witness, it is logical to conclude that absent any evidence to the contrary, it formed part of accused-appellant's evidence of payment of her loan obligation, which includes the face value of the dishonored check.²⁴

Again, jurisprudence holds that if there is a dismissal of a criminal case by the trial court, or if there is an acquittal of the accused, it is only the OSG that may bring an appeal on the criminal aspect representing the People.²⁵ The rationale therefor is rooted in the principle that the party affected by the dismissal of the criminal action is the People and not the petitioners who are mere complaining witnesses.²⁶ For this reason, the People are deemed as the real parties-in-interest in the criminal case and, therefore, only the OSG can represent them in criminal proceedings pending in the CA or in this Court.²⁷ In view of the corollary principle that every action must be prosecuted or defended in the name of the real party-in-interest who stands to be benefited or injured by the judgment in the suit, or by the party entitled to the avails of the suit,²⁸ an appeal of the criminal case not filed by the People as represented by the OSG is perforce dismissible. The private complainant or the offended party may, however, file an appeal without the intervention of the OSG, but only insofar as the civil liability of the accused is concerned.²⁹ He may also file a special civil action for *certiorari* even without the intervention of the OSG, but only to the end of preserving his interest in the civil aspect of the case.³⁰



²⁴ CA rollo, pp. 15-16.

²⁵ See *Soriano v. Judge Angeles*, 393 Phil. 769, 776 (2000); and *Bangayan, Jr. v. Bangayan*, 675 Phil. 656, 664 (2011).

²⁶ *Malayan Insurance Company, Inc., et al. v. Philip Piccio, et al.*, 740 Phil. 616, 622 (2014).

²⁷ *Jimenez v. Judge Sorongon, et al.*, 700 Phil. 316, 325 (2012).

²⁸ *Id.* at 324.

²⁹ *Villareal v. Aliga*, 724 Phil. 47, 57 (2014).

³⁰ See *Ong v. Genio*, 623 Phil. 835 (2009).

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, dated July 1, 2016, of petitioner Lydia Cu is **DENIED** and the Resolution dated December 11, 2015 and the Resolution dated May 13, 2016 of the Court of Appeals in CA-G.R. CR No. 37691 are **AFFIRMED**.

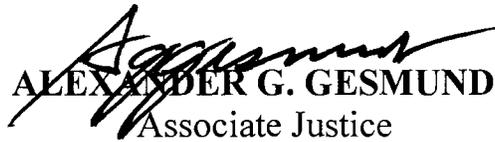
SO ORDERED.


DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

On wellness leave
MARVIC M. V. F. LEONEN
Associate Justice

On official business
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice


JOSE C. REYES, JR.
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.


DIOSDADO M. PERALTA
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.


TERESITA J. LEONARDO-DE CASTRO
Chief Justice

