Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

MARIA NYMPHA MANDAGAN,
Petitioner,

- versus -

JOSE M. VALERO CORPORATION,
Respondent.

G.R. No. 215118

Present:

CARPIO, *J.*, *Chairperson*,
PERLAS-BERNABE,
CAGUIOA,
J. REYES, JR., and
LAZARO-JAVIER, *JJ.*

Promulgated:

19 JUN 2019

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DECISION

CAGUIOA, *J.*:

This is an appeal by *certiorari*[1] under Rule 45 of the Rules of Court (Petition) questioning the Decision[2] dated June 16, 2014 and Resolution[3] dated October 29, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 119814. The CA Decision annulled the Decision[4] dated February 15, 2011 of the Regional Trial Court of Manila, Branch 10 (RTC), in Criminal Case Nos. 10-276006 to 276013, which acquitted herein petitioner Maria Nympha Mandagan (petitioner Mandagan) of eight (8) counts of violation of Batas Pambansa Blg. (B.P.) 22.

The Facts

The antecedents, as summarized by the CA, are as follows:

> JMV Corporation (JMV), herein private complainant, agreed to grant an accommodation in favor of the accused by allowing her to use its corporate name and account for a car loan intended for her personal use.

[1] *Rollo*, pp. 21-35.
[2] Id. at 36-44. Penned by Associate Justice Leoncia Real-Dimagiba, with Associate Justices Amelita G. Tolentino and Ricardo R. Rosario concurring.
[3] Id. at 45-46. Penned by Associate Justice Leoncia Real-Dimagiba, with Associate Justices Ricardo R. Rosario and Priscilla J. Baltazar-Padilla concurring.
[4] Id. at 56-75. Penned by Judge Virgilio M. Alameda.

The accommodation was extended to accused when she still enjoyed the good graces of company director, Mrs. Rosie V. Gutierrez (RVG), being her client. Upon full payment of [the] car, the accused would in turn purchase the same from JMV Corporation.

On July 28, 2001, JMV Corporation, represented by its executive officer, Ramon Ricardo V. Gutierrez, the son of RVG, entered into a lease-to-own arrangement with BPI Leasing Corporation (BPI) covering a 2001 Kia Rio sedan. Under the lease-to-own arrangement, BPI Leasing Corporation will remain the registered owner of the vehicle until full payment by JMV Corporation. Earlier, on July 11, 2001, JMV paid the down payment of Php87,922.00, guarantee deposit of Php3,078.00, initial rental of Php12,796.00 and notarial fee of Php200.00. Likewise, on July 28, 2001, JMV gave the possession and use of the Kia vehicle to accused Maria Nympha Mandagan (Mandagan), who in turn, issued and delivered to JMV thirty four (34) postdated checks against her bank account (Equitable-PCI). Said checks were all payable to JMV representing Mandagan's monthly payment of P12,796.00. In addition, Mandagan explicitly agreed that ownership over the Kia vehicle will only be transferred to her after full payment of the costs of the vehicle to JMV.

Fourteen (14) out of the thirty (34) checks in the amount of Php12,796.00 each totaling to Php179,144.00 were deposited by JMV with BPI and were honored by the bank. However, the following eleven (11) checks, when deposited on their respective due dates were dishonored for reason drawn against insufficient funds or account closed. BPI advised Ms. Marcelina Balmeo, JMV's Treasury Head, every time the checks were dishonored, who in turn immediately communicated the dishonor of said checks to Mandagan and demanded for payment which were all unheeded by Mandagan.

JMV's General Account Supervisor, Ms. Rosemarie Edora, also started communicating with Mandagan sometime in April 2003, repeatedly informing the latter of the dishonored checks and reminding her of her outstanding obligations with JMV. Mandagan responded by requesting for photocopies of the dishonored checks and gave assurance that she would replace them with new ones and even promised that she will immediately settle her obligations with JMV by one-time payment, after she acknowledged receipt of her requested photocopies of the dishonored checks.

Meanwhile, all the checks issued by JMV to BPI as payment for its monthly amortization of the Kia vehicle were all honored.

On June 30, 2003, JMV's counsel demanded from Mandagan the payment of the elven (11) checks that were dishonored plus 12.75% or to return the Kia vehicle, plus the amount of Php119,434.67 to cover depreciation costs. Mandagan was given five (5) days to comply with the demands of JMV. This was unheeded, however.

Thus JMV was constrained to institute the corresponding legal action against Mandagan. After preliminary investigation, the City Prosecutor's Office of Manila found probable cause against Mandagan for eight (8) counts of Violation of B.P. 22 and filed the corresponding informations before the Metropolitan Trial Court (MTC) of Manila.

Charges representing the three (3) other checks were dismissed for insufficiency of evidence.[5]

Ruling of the MeTC[6]

In a Decision[7] dated December 28, 2009, the MeTC found petitioner Mandagan guilty of eight (8) counts of violation of B.P. 22:

> WHEREFORE, upon a careful consideration of the foregoing evidence, the Court finds the same to be sufficient to support a conviction of the accused beyond reasonable doubt of violation of Batas Pambansa Bilang 22. Accordingly, this Court hereby sentences accused Myrna Nympha Mandagan to pay a fine of twenty five thousand five hundred ninety two pesos (P25,592), plus cost, for each of the eight counts charged, with subsidiary imprisonment in case of insolvency.
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> The accused is further ordered to pay complainant JMV Corporation the amount of one hundred two thousand three hundred sixty eight pesos (P102,368) representing the value of Equitable Bank PCI Bank Check Nos. 0025328, 0025338, 0025343, 0025344, 0089351, 0089352, 0089354 and 0089355 with interest thereon at 12% per annum from the filing of the Information until the finality of this decision; and the sum of which, inclusive of interest, shall thereafter incur 12% per annum interest until the amount due is fully paid.
>
> **SO ORDERED.**[8]

Aggrieved, petitioner Mandagan appealed her conviction to the RTC.

Ruling of the RTC

In the Decision dated February 15, 2011, the RTC **reversed** the MeTC Decision and **acquitted** petitioner Mandagan of all criminal charges but, at the same time, held her civilly liable to respondent JMV Corporation. Thus:

> WHEREFORE[, i]n light of [the] foregoing, the Decision dated December 28, 2009 rendered by the Metropolitan Trial Court (MTC), Branch 4, Manila, convicting the accused for violation of BP. 22 is hereby reversed and set aside. Accordingly, the accused is hereby acquitted of the crime charged on ground of reasonable doubt. However, the Decision of the MTC imposing civil liability upon the accused is hereby retained with the modification only that no compound interest shall be imposed. Hence, the accused is hereby ordered to pay JMV Corporation the amount of P102,368.00 representing the value of the eight (8) Equitable PCI Bank checks with interest thereon at 12% per annum from the filing of the information until the amount due is fully paid, and to pay the costs of suit.
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> SO ORDERED.[9]

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5 Id. at 36-38.
6 Metropolitan Trial Court of Manila, Branch 4.
7 *Rollo*, pp. 48-55. Penned by Presiding Judge Alfonso C. Ruiz II.
8 Id. at 55.
9 Id. at 75.

The RTC found that the MeTC erred in relying on admissions allegedly made by petitioner Mandagan during the preliminary conference proceedings and in her Counter-Affidavit dated November 26, 2006.[10] The RTC held in particular that while the defense admitted to the genuineness and due execution of a demand letter from respondent JMV Corporation in the Pre-Trial Order of the MeTC, there was no mention, much less any admission, that petitioner Mandagan actually received such demand letter.[11] Moreover, any purported admissions contained in the said Pre-Trial Order were not binding on petitioner Mandagan as she did not sign the same and neither did her counsel.[12]

In the same vein, any alleged admission of receipt of such demand letter by petitioner Mandagan in her Counter-Affidavit was inconclusive as it was unclear whether she came to know of the demand letter *before* the case was filed against her and not just by reason of the criminal complaint as she had insisted.[13] In fine, the RTC concluded that the prosecution failed to prove the fact of petitioner Mandagan's receipt of a notice of dishonor, thus negating the existence of the crime charged.[14]

Aggrieved, respondent JMV Corporation brought the case before the CA via Rule 65 petition for *certiorari*, claiming grave abuse of discretion on the part of the RTC in acquitting petitioner Mandagan. Respondent JMV Corporation argued that the prosecution was indeed able to prove that the demand letter precipitating the complaint was received by petitioner Mandagan long before its filing.[15]

Ruling of the CA

In its Decision dated June 16, 2014, the CA **granted** the petition, **annulled** the Decision dated February 15, 2011 of the RTC and **reinstated** the Decision dated December 28, 2009 of the MeTC:

> **WHEREFORE**, premises considered, We **GRANT** the petition and **ANNUL** the assailed decision of the Regional Trial Court dated February 15, 2011. Accordingly, We **AFFIRM** the Decision of the Metropolitan Trial Court dated December 28, 2009. No costs.
>
> **SO ORDERED**.[16]

A motion for reconsideration filed by petitioner Mandagan was denied by the CA in the Resolution[17] dated October 29, 2014.

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10 Id. at 61-62.
11 Id. at 69-70.
12 Id.
13 Id. at 70.
14 Id. at 69.
15 Id. at 11.
16 Id. at 15.
17 Id. at 45-46.

Hence, this Petition.

Before the Court, petitioner Mandagan raises the following issues: (i) that the CA erred in giving due course to respondent JMV's petition for *certiorari* considering that public respondent, Hon. Judge Virgilio M. Almeda, did not commit grave abuse of discretion,[18] and (ii) that the CA erred in ignoring her acquittal by public respondent.[19]

Issue

Simplified, the issue to be resolved is simply whether the CA committed reversible error in annulling the Decision dated February 15, 2011 of the RTC.

The Court's Ruling

The Petition is meritorious.

Finality of judgment of acquittal; exception

In criminal cases, no rule is more settled than that a judgment of acquittal is immediately final and unappealable.[20] Such rule proceeds from the accused's constitutionally-enshrined right against prosecution if the same would place him under double jeopardy.[21] Thus, a judgment in such cases, once rendered, may no longer be recalled for correction or amendment — regardless of any claim of error or incorrectness.[22]

The Court is not unaware that, in some situations, it had allowed a review from a judgment of acquittal through the extraordinary remedy of a Rule 65 petition for *certiorari*.[23] A survey of these exceptional instances would, however, show that such review was only allowed **where the prosecution was denied due process or where the trial was a sham**.[24] In *People v. Court of Appeals*,[25] the Court made the following rulings:

> x x x [F]or an acquittal to be considered tainted with grave abuse of discretion, **there must be a showing that the prosecution's right to due process was violated or that the trial conducted was a sham.**
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> Although the dismissal order is not subject to appeal, it is still reviewable but only through *certiorari* under Rule 65

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18 Id. at 26.
19 Id.
20 *People v. Tria-Tirona*, 502 Phil. 31, 38 (2005).
21 See *Philippine Savings Bank v. Spouses Bermoy*, 508 Phil. 96, 109-111 (2005).
22 *People v. Alejandro*, G.R. No. 223099, January 11, 2018.
23 See *People v. Sandiganbayan*, G.R. No. 198119, September 27, 2017, 840 SCRA 639, 653-655.
24 Id. at 654-655.
25 691 Phil. 783 (2012). See also *People v. Ting*, G.R. No. 221505, December 5, 2018.

> of the Rules of Court. For the writ to issue, the trial court must be shown to have acted with grave abuse of discretion amounting to lack or excess of jurisdiction such as where the prosecution was denied the opportunity to present its case or where the trial was a sham thus rendering the assailed judgment void. **The burden is on the petitioner to clearly demonstrate that the trial court blatantly abused its authority to a point so grave as to deprive it of its very power to dispense justice.** (Citations omitted)
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> The petition is bereft of any allegation, much less, evidence that the prosecution's right to due process was violated **or the proceedings before the CA were a mockery such that Ando's acquittal was a foregone conclusion**. **Accordingly, notwithstanding the alleged errors in the** interpretation of the applicable law or **appreciation of evidence that the CA may have committed in ordering Ando's acquittal, absent any showing that the CA acted with caprice or without regard to the rudiments of due process, the CA's findings can no longer be reversed, disturbed and set aside without violating the rule against double jeopardy**. x x x[26] (Emphasis and underscoring supplied)

Thus, the Court therein stressed that a re-examination of the evidence without a finding of mistrial will violate the right of an accused as protected by the rule against double jeopardy.[27]

In this case, petitioner Mandagan faults the CA in granting the petition for *certiorari* of respondent JMV Corporation and reversing her acquittal. While petitioner Mandagan agrees that the rule on double jeopardy is not without exceptions, she nevertheless maintains that no grave abuse of discretion was attributable to the RTC in rendering the Decision dated February 15, 2011.[28]

The Court agrees.

The CA erred in finding that the RTC committed grave abuse of discretion in rendering the Decision dated February 15, 2011

To recall, the CA's annulment of the Decision dated February 15, 2011 was predicated on the RTC's perceived error in appreciating the evidence:

> In the present case, the Regional Trial Court opined as follows: "*Under the circumstances, therefore, the accused may not be convicted for violation of B.P. 22 for failure of the prosecution to prove all the elements of said crime. The evidence presented by the prosecution is insufficient to*

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26 Id. at 787-788.
27 Id. at 787.
28 See *rollo*, p. 31.

> *prove her guilt beyond reasonable doubt absent any showing that the lawyer's letter of demand was sent to the accused and actually received by her. There is no evidence presented against the accused to prove the receipt of the demand letter other than the alleged admissions made during the preliminary conference and in her counter affidavit. As mentioned, such admissions cannot be used against the accused and are inadmissible in evidence against her. As such the admissions made in the preliminary conference and in her pleading are excluded and deemed suppressed.*"
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> x x x x
>
> **The Regional Trial Court erred in holding that the prosecution failed in proving all the elements of the crime of B.P. 22, as it did not accept the admissions made by the accused during the preliminary conference, and in her counter affidavit and the acknowledgment made by accused, as well as her counsel.** Herein lies the grave abuse of discretion envisioned by law and jurisprudence.[29] (Emphasis supplied; italics in the original)

The CA, in taking cognizance of the petition for *certiorari* of respondent JMV Corporation, thus reasoned that such error of judgment on the part of the RTC "unfolded" into one of jurisdiction, allegedly due to a misappreciation of the evidence.[30] This is egregious error.

The office of a writ of *certiorari* is narrow in scope and does not encompass an error of law or a mistake in the appreciation of evidence.[31] As a corrective writ, the extraordinary remedy of *certiorari* is reserved only for jurisdictional errors and cannot be used to correct a lower tribunal's factual findings.[32] The Court in *People v. Sandiganbayan*[33] succinctly stated:

> x x x Judicial review in *certiorari* proceedings shall be confined to the question of whether the judgment for acquittal is *per se* void on jurisdictional grounds. The court will look into the decision's validity — if it was rendered by a court without jurisdiction or if the court acted with grave abuse of discretion amounting to lack or excess of jurisdiction — not on its legal correctness. x x x
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> x x x x
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> **Even if the court *a quo* committed an error in its review of the evidence or application of the law, these are merely errors of judgment.** We reiterate that the extraordinary writ of *certiorari* may only correct errors of jurisdiction including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction. **For as long as the court acted within its jurisdiction, an error of judgment that it may commit in the exercise thereof is not correctable through the special civil action of *certiorari*. The review of the records and evaluation of**

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29 Id. at 41-42.
30 See id. at 42, 43.
31 *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC*, 716 Phil. 500, 517 (2013).
32 See *Garcia v. House of Representatives Electoral Tribunal*, 371 Phil. 280, 291-292 (1999).
33 Supra note 23.

> **the evidence anew will result in a circumvention of the constitutional proscription against double jeopardy**.[34] (Additional emphasis supplied)

As long as a court acts within its jurisdiction, any alleged errors committed in the exercise of its discretion is not reviewable via *certiorari* for being nothing more than errors of judgment.[35]

Guided by the foregoing, the Court so finds that the CA committed reversible error when it annulled the RTC Decision dated February 15, 2011 based merely on errors of jurisdiction. The Court explains.

In cases for violation of B.P. 22, the following essential elements must be established:

> (1) The making, drawing, and issuance of any check to apply for account or for value;
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> (2) The knowledge of the maker, drawer, or issuer that at the time of issue there were no sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment; and
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> (3) The dishonor of the check by the drawee bank for insufficiency of funds or credit or the dishonor for the same reason had not the drawer, without any valid cause, ordered the drawee bank to stop payment.[36]

Here, the existence of the first and third elements are no longer in contention; there being concurrent findings of fact between the MeTC, RTC, and CA on this score, the Court finds no cogent reason to disturb such findings at this stage.[37] Perforce, only the presence of the second element remains disputed. Case law has laid down the following guidelines in establishing the existence of such element:

> To establish the existence of the second element, the State should present the giving of a written notice of the dishonor to the drawer, maker or issuer of the dishonored check. The rationale for this requirement is rendered in *Dico v. Court of Appeals*, to wit:
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> > To hold a person liable under B.P. Blg. 22, the prosecution must not only establish that a check was issued and that the same was subsequently dishonored, **it must further be shown that accused knew at the time of the issuance of the check that he did not have sufficient funds or credit with the drawee bank for the payment of such check in full upon its presentment**.

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34 Id. at 655-656.
35 Id.
36 *Resterio v. People*, 695 Phil. 693, 701 (2012).
37 See *rollo*, pp. 71-75.

This knowledge of insufficiency of funds or credit at the time of the issuance of the check is the second element of the offense. Inasmuch as this element involves a state of mind of the person making, drawing or issuing the check which is difficult to prove, Section 2 of B.P. Blg. 22 creates a *prima facie* presumption of such knowledge. Said section reads:

> 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 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.

For this presumption to arise, the prosecution must prove the following: (a) the check is presented within ninety (90) days from the date of the check; (b) the drawer or maker of the check receives notice that such check has not been paid by the drawee; and (c) **the drawer or maker of the check fails to pay the holder of the check the amount due thereon, or make arrangements for payment in full within five (5) banking days after receiving notice that such check has not been paid by the drawee**. In other words, **the presumption is brought into existence only after it is proved that the issuer had received a 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. **The presumption or *prima facie* evidence as provided in this section cannot arise, if such notice of nonpayment by the drawee bank is not sent to the maker or drawer, or if there is no proof as to when such notice was received by the drawer, since there would simply be no way of reckoning the crucial 5-day period.**

A notice of dishonor received by the maker or drawer of the check is thus indispensable before a conviction can ensue. The notice of dishonor may be sent by the offended party or the drawee bank. The notice must be in writing. A mere oral notice to pay a dishonored check will not suffice. The lack of a written notice is fatal for the prosecution. x x x

The giving of the written notice of dishonor does not only supply the proof for the second element arising from the presumption of knowledge the law puts up but also affords the offender due process.

> The law thereby allows the offender to avoid prosecution if she pays the holder of the check the amount due thereon, or makes arrangements for the payment in full of the check by the drawee within five banking days from receipt of the written notice that the check had not been paid. The Court cannot permit a deprivation of the offender of this statutory right by not giving the proper notice of dishonor. x x x[38] (Additional emphasis and underscoring supplied)

Applied to this case, in the Decision dated February 15, 2011, the RTC found that the prosecution failed to present any documentary evidence to prove receipt by petitioner Mandagan of the notice of dishonor (*i.e.*, the Letter dated June 20, 2003). The RTC found that the admissions relied upon by the MTC in convicting petitioner Mandagan could not be used as specific admissions of her receipt of a notice of dishonor:

> **It appears in this case that the agreement or admissions made or entered during the preliminary conference were not reduced in writing and signed by the accused and her counsel, hence, such agreement or admissions cannot be used against the accused.** Likewise, it remains unclear whether the alleged admission made by the accused was approved by the Court. The pertinent portion of the Order of the MTC in pre-trial conference, reads:
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> > "The parties admitted the jurisdiction of the Court. The defense admitted the genuineness (sic) and due execution of the subject checks in question and also the demand letter but subject to their defense that the same were all paid. The defense further manifested that they will just present and mark the documents to prove the fact of payment in the course of the trial."
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> The MTC mentioned in the Order that the defense admitted the gennuiness (*sic*) and due execution of the demand letter subject to their defense that the amount of the checks were all paid. **There is no mention, however, in the Order that the defense admitted that the accused received the demand letter.** Besides, **the accused and her counsel did not sign the pre-trial order issued by the MTC. This being the case, any agreement or admissions made and entered during the preliminary conference which was not signed by the accused and her counsel cannot be used against said accused.** In short, such admission as to the receipt of the demand letter is not admissible in evidence against the accused. **Further, the alleged admission by the accused that she received the demand letter is not binding upon her since it appears that the same was not approved by the Court in the pre-trial order.**
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> Now the private complainant has taken to task the accused on her alleged admission made in her counter affidavit that she received the demand letter. The pertinent portion of the counter affidavit of the accused reads:
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> > "Again, in April 2003, when Rosemarie Edora (employee of JMV Corp.) communicated to me the dishonor of the checks, I requested her to collate all the

[38] *Resterio v. People*, supra note 36, at 704-705.

> dishonored checks so that I could make a proper accounting thereof, and make a one time payment. **I was waiting for their reply, but JMV Corporation's reply to my request was a demand letter from JMV's counsel (Annex "V" of Complaint Affidavit).**"
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> Admissions made by the accused in the pleadings submitted in the same case do not require further proof, especially so when such admission is categorical and definite. **However, it will be noted that the accused executed the counter affidavit at a time when the private complainant has already filed the complaint for violation of B.P. 22 against her. It is unclear whether the accused came to know of the demand letter before the filing of the complaint against her. By all indications, she may have known about the demand letter when she received the copy of the complaint-affidavit and its annexes from the private complainant.** In order to hold liable the accused for violation of BP 22, it is necessary that the notice of dishonor or demand letter must be served upon the accused before the filing of the complaint. Precisely, the purpose of the notice of dishonor is to give opportunity to the accused to pay the amount of the bouncing checks to avert criminal prosecution. **If such admission was made after the filing of the complaint, any admission made by the accused in the pleadings without any referral as to the time when she received the demand letter would not prejudice her. To be admissible against the accused, the admission made must be categorical and definite.** Likewise, reminders or oral demands are not sufficient to bind the accused. The notice of dishonor or demand must be in writing as required under Sec. 3 of B.P. 22.
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> Under the circumstances, therefore, the accused may not be convicted for violation of B.P. 22 for failure of the prosecution to prove all the elements of said crime. **The evidence presented by the prosecution is insufficient to prove her guilt beyond reasonable doubt absent any showing that the lawyer's letter of demand was sent to the accused and actually received by her**. There is no evidence presented against the accused to prove the receipt of the demand letter other than the alleged admissions made during the preliminary conference and in her counter affidavit. x x x[39] (Emphasis supplied)

The CA, however, annulled the foregoing findings of the RTC and instead found that the records showed that a notice of dishonor was in fact received by Mandagan:

> We quote with favor portions of the Decision of the Metropolitan Trial Court, to wit: "*The accused tried to contradict the presumption by raising as a defense that no notice of dishonor was actually sent to and received by her. Contrary to her allegation, the receipt of the demand letter was admitted by the defense during preliminary conference proceedings and in her Counter-Affidavit dated November 26, 2006*".
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> **Records will show that the demand letter dated June 20, 2003 was received by Mandagan. This was evidenced by the June 27, 2003 letter of Mandagan's counsel in its "*reply to demand letter dated 20 June 2003*" where the first paragraph states: "*In response to your***

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[39] *Rollo*, pp. 69-71.

letter dated June 20, 2003 addressed to our client Atty. Maria Nympha Mandagan, x x x x".

Again, We quote portions of the assailed decision, to wit: "*A few days after their conversation, Ms. Edora called accused Mandagan to remind her once again on her promise to replace the dishonored checks with the new checks. During the said conversation,* ***accused Mandagan acknowledged her receipt of the requested photocopies of the dishonored checks and promised that she will immediately settle her obligations to JMV Corporation by one-time payment".*** x x x

What other proof of knowledge and receipt of the notice of dishonor is required, other than the above acknowledgment made by Mandagan's counsel, acting for and in behalf of the accused and by the accused herself?

The Regional Trial Court erred in holding that the prosecution failed in proving all the elements of the crime of B.P. 22, as it did not accept the admissions made by the accused during the preliminary conference, and in her counter affidavit and the acknowledgment made by accused, as well as her counsel. Herein lies the grave abuse of discretion envisioned by law and jurisprudence.[40] (Additional emphasis supplied; italics in the original)

In sum, the CA overturned the RTC's acquittal based solely on the following proof: (i) a Reply-Letter dated June 27, 2003, purportedly written by petitioner Mandagan's counsel in response to the Letter dated June 20, 2003, and (ii) an alleged admission by petitioner Mandagan during a phone conversation with a certain Rosemarie Edora (Edora), a representative of respondent JMV Corporation.

Anent the Reply-Letter dated June 27, 2003, **it was gross error for the CA to consider the same as it was not formally offered by the prosecution in the first place**. In the Order[41] dated September 19, 2006 of the MeTC, which admitted the evidence of the prosecution, nowhere is such a letter found. On this subject, the Court's pronouncements in *Candido v. Court of Appeals*,[42] are compelling:

We are not persuaded. It is settled that courts will only consider as evidence that which has been formally offered. The affidavit of petitioner Natividad Candido mentioning the provisional rate of rentals was never formally offered; neither the alleged certification by the Ministry of Agrarian Reform. **Not having been formally offered, the affidavit and certification cannot be considered as evidence**. Thus the trial court as well as the appellate court correctly disregarded them. **If they neglected to offer those documents in evidence, however vital they may be, petitioners only have themselves to blame, not respondent who was not even given a chance to object as the documents were never offered in evidence.**

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40 Id. at 41-42.

41 Id. at 76-77.

42 323 Phil. 95 (1996).

> A document, or any article for that matter, is not evidence when it is simply marked for identification; it must be formally offered, and the opposing counsel given an opportunity to object to it or cross-examine the witness called upon to prove or identify it. **A formal offer is necessary since judges are required to base their findings of fact and judgment only — and strictly — upon the evidence offered by the parties at the trial. To allow a party to attach any document to his pleading and then expect the court to consider it as evidence may draw unwarranted consequences. The opposing party will be deprived of his chance to examine the document and object to its admissibility.** The appellate court will have difficulty reviewing documents not previously scrutinized by the court below. The pertinent provisions of the Revised Rules of Court on the inclusion on appeal of documentary evidence or exhibits in the records cannot be stretched as to include such pleadings or documents not offered at the hearing of the case.[43] (Emphasis supplied)

Hence, in this case, even assuming that the Reply-Letter dated June 27, 2003 was appended to the records, the fact still remains that the court cannot consider evidence which was not formally offered.[44] As such, any statement allegedly made on behalf of petitioner Mandagan in the said letter could not be considered an admission of receipt of a notice of dishonor as the same has no evidentiary value whatsoever.[45] Verily, the RTC could not be faulted, much less accused of capriciousness, in appreciating the evidence without the Reply-Letter dated June 27, 2003.

On the other hand, with respect to the alleged admission of petitioner Mandagan over the phone, the Court notes that neither the MeTC nor the RTC considered the same as evidence of receipt of a notice of dishonor. The Court thus finds the same severely deficient to support a moral conviction that a crime had been committed; such self-serving and uncorroborated statements hardly constitute an admission as they were based on the representations of Edora in her affidavit, more so in the presence of contrary declarations by petitioner Mandagan.[46] Nonetheless, as already stressed above, it was still error on the part of the CA to have entertained such issue as this merely involved the appreciation of the evidence.

Time and again, it has been ruled that the prosecution has the burden of proving each and every element of the crime with evidence sufficient to prove the guilt of the accused beyond reasonable doubt. The evidence for the prosecution must stand or fall on its own merit; it cannot draw strength from the weakness of the defense.[47] **Hence, if the evidence falls short of such threshold, an acquittal should come as a matter of course.**[48]

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43 Id. at 99-100.
44 See *Concepcion v. Court of Appeals*, 505 Phil. 529, 542 (2005).
45 Id. at 542.
46 See *rollo*, pp. 28-29.
47 See *Santiago v. Court of Appeals*, 356 Phil. 647, 650 and 670 (1998).
48 *Reyes v. Court of Appeals*, 686 Phil. 137, 153 (2012).

With the foregoing, the Court finds the totality of evidence insufficient to establish the critical element of receipt of notice of dishonor; hence, the CA erred in annulling the Decision dated February 15, 2011 of the RTC based on grave abuse of discretion.

Finally, anent the civil liability of petitioner Mandagan, the Court affirms the same with modification to conform with existing jurisprudence.[49]

WHEREFORE, in view of the foregoing, the Petition is **GRANTED**. The Decision dated June 16, 2014 and Resolution dated October 29, 2014 of the Court of Appeals in CA-G.R. SP No. 119814 are hereby **REVERSED** and **SET ASIDE**. The Decision dated February 15, 2011 of the Regional Trial Court of Manila, Branch 10, in Criminal Case Nos. 10-276006 to 276013 is hereby **REINSTATED** and petitioner Maria Nympha Mandagan is hereby **ACQUITTED**.

Petitioner Maria Nympha Mandagan is further **ORDERED TO PAY** respondent Jose M. Valero Corporation the amount of One Hundred Two Thousand Three Hundred Sixty-Eight Pesos (₱102,368.00) with interest thereon at twelve percent (12%) per annum from the filing of the Information until June 30, 2013, and six percent (6%) per annum from July 1, 2013 until finality of this Decision, and the total amount of the foregoing shall, in turn, earn interest at the rate of six percent (6%) per annum from finality of this Decision until full payment thereof.

SO ORDERED.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

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[49] *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

ESTELA M. PERLAS-BERNABE
Associate Justice

JOSE C. REYES, JR.
Associate Justice

AMY C. LAZARO-JAVIER
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.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second 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.

LUCAS P. BERSAMIN
Chief Justice