

## FIRST DIVISION

**[ G.R. No. 112550, February 05, 2001 ]**

**DICK L. GO, PETITIONER, VS. COURT OF APPEALS AND  
SECURITY BANK & TRUST COMPANY, RESPONDENTS.**

### DECISION

**YNARES-SANTIAGO, J.:**

This is a petition for review of the decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CV No. 15268, which reversed and set aside the decision<sup>[2]</sup> of the Regional Trial Court, Branch 88 of Quezon City in Civil Case No. Q-35744.

The following facts were found by the trial court:

National Steel Corporation (NSC) purchased two Philippine National Bank (PNB) Manager's Checks to wit: Check No. J-81-006142, dated May 11, 1982 in the sum of P911,981.00 (hereinafter, the "first check"); and Check No. J-81-00698, dated May 14, 1982 in the sum of P1,511,293.00 (hereinafter, the "second check"), as payment for customs duties and taxes due on NSC's importation of steel plates. Both checks bore the notation: "For Payee's Account", and were made payable to the Collector of Customs. One Edmund Ulibarri, an NSC official, delivered the checks to LMC Brokerage Firm. Consequently, the steel plates were released from the Bureau of Customs and the official receipts, supposedly indicating payment, were delivered to NSC.

On May 31, 1982, the first check was deposited with private respondent Security Bank and Trust Company (SBTC), Caloocan City Branch, and credited on June 1, 1982 in Current Account No. 2110-0282-47, maintained by a certain Robert Santos with SBTC, Congressional Branch, Quezon City, which was opened only the day before, on May 31, 1982.

On June 21, 1982, another account in the name of Roberto Santos (C/A No. 3310-0031-03) was opened in SBTC's Caloocan City Branch. On the same day, the second check was deposited in C/A No. 2110-0282-47 in the Congressional Branch, but credited to the newly opened C/A No. 3310-0031-03. The Congressional Branch accepted the check and sent it for clearing, and forwarded the deposit slip and the receipt for transfer of the account to the Caloocan City Branch. Thereafter, withdrawals of funds for the two Robert Santos accounts were made.

The NSC learned that the official receipts issued to it for payment of customs duties and taxes were fake, and was required to pay the customs duties a second time. Meanwhile, SBTC, after discovering the anomaly, paid PNB the sum of P2,352,966.00 as reimbursement for the proceeds of the two checks which PNB had to refund to NSC.

SBTC caused the conduct of an internal investigation, which revealed the participation of petitioner Dick Go, Assistant Manager-in-charge of SBTC Congressional Branch Accounting Department, together with his co-accused Eduardo L. Lauchengco and Generoso B. Fermin, in the opening of the Robert Santos accounts, the deposit in said accounts of the subject two checks although payable to the Collector of Customs, and the siphoning of the proceeds of the checks.

Thereafter, two (2) criminal informations for estafa through falsification of commercial documents were filed against petitioner, Eduardo L. Lauchengco and Generoso B. Fermin. At the same time, a complaint for sum of money was filed against petitioner together with Spouses Herminio and Clara Lauchengco, Luisito Honorio, Danilo Fiesta, B.S. Santos and Eugene Gan, docketed as Civil Case No. Q-35744. The two criminal cases were tried jointly with the civil case.

The lower court rendered judgment acquitting petitioner Dick Go and his co-accused of the crime of estafa for failure of the prosecution to prove their guilt beyond reasonable doubt. The court likewise dismissed SBTC's complaint for recovery of sum of money against petitioner and his co-defendants, as well as petitioner's counterclaim.

On appeal, the Court of Appeals reversed and set aside the decision of the trial court, disposing thus:

WHEREFORE, premises considered, the decision appealed from dismissing plaintiff-appellant's complaint in Civil Case No. Q-35744, and ordering plaintiff-appellant to return and/or release to defendant-appellant Dick Go all funds in its control under the account of said Dick Go, including accrued earnings, if any, and lifting and setting aside all attachments and/or garnishments issued by reason of the case is REVERSED and SET ASIDE and a new one entered ordering defendant-appellant Dick Go and defendant Eduardo Lauchengco to pay, jointly and severally, to plaintiff-appellant the amount of P1,307,811.62, with interest at the legal rate from September 7, 1982 until fully paid. In all other respects, the decision appealed from is affirmed. With costs against defendant-appellant.

In reversing and setting aside the decision of the lower court, the Court of Appeals affirmed the lower court's factual findings but made "corrections and deletions" therein, thus:

The two PNB checks were traced to have been deposited in the accounts of one Robert Santos at the SBTC Congressional Branch in Quezon City and in the SBTC Caloocan City Branch. The Congressional Branch Account (CA-2110-0282-47) was opened on May 31, 1982 (not on May 3, 1982), admittedly with the participation of Dick Go who, however, insisted that he met a real live person who was a walk-in-client, contrary to the prosecution's claim that the name Robert Santos and Dick Go are one and the same person. At the time the Congressional Branch account was opened, Dick Go was Assistant Manager-in-charge of Accounting Department, Nora Isidro was Branch Manager, and Dolores Satuito was Assistant Manager-in-charge of Cash Department which also superintended the New Accounts Department.

On June 21, 1982 (not sometime before June 18, 1982), Current Account No. CA-3310-0031-03 (not No. CA-33100031) in the name of Robert Santos was also opened at the SBTC Caloocan City Branch where accused Eduardo Lauchengco was then employed as bookkeeper. The account was opened with the intervention of Eduardo Lauchengco who reserved and opened the account without accomplishing the necessary papers, and received the corresponding checkbook which he then delivered to defendant-appellee Dick Go (TSN, November 16, 1984, pp. 10-17, (not that it is not clear under what circumstances the Caloocan City Branch account was opened) xxx.

Earlier, on June 3, 1982, a bank account in the name of Fernando Cruz was opened with the Philippine Bank of Communication (PBC for short) by accused Generoso Fermin who at that time was a bank officer at the PBC. Fermin admitted opening the fictitious account and making withdrawals therein but claimed that this was to accommodate Dick Go who was a former officemate -- Dick Go having previously worked with PBC. Eventually, the total sum of P902,500.00 was withdrawn from the Congressional Branch Account and P536,722.00 from the Caloocan City Branch Account. Some of the funds were later traced to have been deposited in the Fernando Cruz Account, in the account of Eduardo Lauchengco's mother, and others in the name of the other defendants in the civil action who were not charged in the criminal cases. (Decision, pp. 4-5, Rollo, pp. 76-77).<sup>[3]</sup>

In addition to the above corrections and deletions in the lower court's factual findings, the Court of Appeals found the following "additional facts to complete the story":

The first check, Exhibit H, was deposited on May 31, 1982 with plaintiff-appellant's Caloocan Branch, with the intervention of defendant-appellee Eduardo Lauchengco, and credited on June 1, 1982 to the Robert Santos account (No. 2110-0282-47) in the SBTC's Congressional Branch (TSN, November 16, 1984, p. 5-8) which was opened just a day before. On June 21, 1982 (the same day the Caloocan account of Robert Santos was opened), the second check, Manager's Check No. J81-006142, Exhibit A, for P1,511,293.00, was deposited in Robert Santos' account (CA #2110-0282-47) in SBTC's Congressional branch and credited to the newly opened Robert Santos' account (CA #3310-0031-03) in the Caloocan City Branch. Thus, SBTC's Congressional Branch accepted the check and sent it for clearing, and transmitted merely the deposit slip for the check, as well as the receipt of transfer of the account, to the Caloocan City Branch (TSN, March 21, 1984, p. 9).

From June 3, 1982 up to June 24, 1982, withdrawals from the two accounts of Robert Santos through clearing, as well as encashments over the counter, and deposits to various account, including those to Fernando Cruz' account with the PBCom, were made as follows: (Listing of checks omitted)<sup>[4]</sup>

In this petition for review, petitioner submits the following errors allegedly committed by the Court of Appeals:

## I

The Court of Appeals gravely abused its discretion when it disregarded the findings of fact of the trial court and, thereafter, reversed and set aside the decision of the trial court, on the basis of mere conclusions without support in, nor citation of, specific evidence, or that its findings and decision are premised on the absence of evidence and are contradicted by the evidence on record, or that it overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different result;

## II

The Court of Appeals committed an error of law in allowing the respondent bank to recover from petitioner the amounts it paid to the Philippine National Bank (PNB) representing the proceeds of the two (2) PNB manager's checks placed in the Robert Santos account.<sup>[5]</sup>

Petitioner contends that the Court of Appeals made additional findings not supported by the evidence on record and that it abused its discretion in disregarding the factual findings of the lower court. He argues that the Court of Appeals' reversal of the decision of the lower court was based on unsupported conclusions and despite the absence of contrary evidence; and that it misappreciated the facts, thereby necessitating a review of factual matters by this Court.

In *Reyes v. Court of Appeals*,<sup>[6]</sup> this Court held that factual findings of the trial court, when adopted and confirmed by the Court of Appeals, are final and conclusive and may not be reviewed on appeal; except: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is a grave abuse of discretion; (3) when the finding is grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the Court of Appeals is based on 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) when 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 Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (10) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.

While the Court of Appeals characterized the lower court's factual findings as "accurate" and observed that the antecedent facts as found by the lower court were "not disputed" by the parties, it reached a different conclusion as regards petitioner's civil liability. The issue, therefore, is whether, on the basis of the same factual findings, petitioner can be held civilly liable. Stated differently, the issue is whether from the evidence adduced before the lower court, there is sufficient proof as to the indispensable participation of petitioner in the opening of the accounts in the name of one allegedly inexistent and fictitious Robert Santos, the depositing of the PNB checks in said accounts, and the siphoning of the proceeds of said checks

as charged in private respondent's complaint.

In civil cases, the party having the burden of proof must establish his case by 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 worthy of belief than that which is offered in opposition thereto.<sup>[7]</sup> Rule 133, Section 1 of the Rules of Court provides the guidelines in determining preponderance of evidence, thus:

In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

In the case at bar, the judge who heard and saw the witnesses testify was not the same judge who penned the decision. As such, this Court is deprived of some important details necessary to determine the weight of evidence for either party. Be that as it may, this Court shall endeavour to weigh the evidence based on other factors available to this Court as can be gleaned principally from the recorded testimonies and the cold, hard transcripts of this case.

SBTC alleged that: 1) petitioner took advantage of his position as Assistant Branch Manager in facilitating the opening of Current Account No. 2110-0282-47 with the SBTC Congressional Branch in the name of one Robert Santos with full knowledge that he was inexistent; 2) petitioner took advantage of his position in processing the deposit in the Robert Santos account of a crossed PNB Manager's Check No. J-81-00698 in the amount of P911,981.00 with the notation "For Payee's Account Only", and made payable to the Collector of Customs; 3) petitioner took advantage of his position in causing the deposit in the Robert Santos account of a crossed PNB Manager's Check No. J-81-006142, with the notation "For Payee's Account Only", in the amount of P1,511,293.00, payable to the Collector of Customs; and 4) petitioner appropriated the proceeds of said checks despite knowledge that said checks were payable to the Collector of Customs, hence, were government funds which cannot be accepted by SBTC for deposit pursuant to a Central Bank prohibition.

In holding petitioner civilly liable, the Court of Appeals found the following facts: (a) petitioner initiated the opening of the Robert Santos account; and (b) Robert Santos is a fictitious or inexistent person, implying that petitioner and Robert Santos are one and the same person. The Court of Appeals based its finding on the testimony of petitioner himself on cross-examination, stating that he did not bother to find out if Robert Santos actually exists, and that he failed to get in touch with Robert Santos at his given address despite attempts to do so.<sup>[8]</sup> It also relied on the testimony of