

## THIRD DIVISION

[ G.R. No. 122539, March 04, 1999 ]

**JESUS V. TIOMICO, PETITIONER, VS. THE HON. COURT OF APPEALS (FORMER FIFTH DIVISION AND PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### D E C I S I O N

**PURISIMA, J.:**

This is a petition for review by *certiorari* under Section 2, Rule 125, in relation to Section 1, Rule 45 of the Rules of Court to correct, reverse and annul the decision<sup>[1]</sup> of the Court of Appeals which affirmed the judgment<sup>[2]</sup> of the trial court convicting the petitioner herein for a violation of the Trust Receipts Law.

Petitioner Jesus V. Tiomico, (*Tiomico*) opened a Letter of Credit with the Bank of the Philippine Islands (*BPI*) for \$5,600 to be used for the importation of two (2) units of Forklifts, Shovel loader and a truck mounted with crane. On October 29, 1982, the said machineries were received by the accused, as evidenced by the covering trust receipt. Upon maturity of the trust receipt, on December 28, 1982, he made a partial payment of US\$855.94, thereby leaving an unpaid obligation of US\$4,770.46. As of December 21, 1989, Tiomico owed BPI US\$4,770.46. or P109,386.65, computed at P22.93 per US dollar, the rate of exchange at the time. Failing to pay the said amount or to deliver subject machineries and equipments, despite several demands, the International Operations Department of BPI referred the matter to the Legal Department of the bank. But the letter of demand sent to him notwithstanding, Tiomico failed to satisfy his monetary obligation sued upon.

Consequently, he was accused of a violation of PD 115, otherwise known as the Trust Receipts Law, under an Information<sup>[3]</sup> alleging :

"That on or about the 29th day of October, 1982, in the Municipality of Makati, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, executed a Trust Receipt Agreement for and in behalf of Paramount Calibrators Merchandising of which he is the sole proprietor in favor of the Bank of the Philippine Islands in consideration of the receipt by the said accused of three (3) bares one unit Forklift Model FD-30 Toyota Branch 2-J70 Hp and one unit Forklift Model LM-301 Toyota Branch 2-J 70 Hp, and one unit shovel loader Model SOT 130 HP, 6 Cyl-LC #2-16860, for which there is now due the sum of US\$5600.00, wherein the accused agreed to sell the same and with the express obligation to remit to the complainant-bank the proceeds of the sale, and/or to turn over the same if not sold, on demand, but the accused once in possession of the said items, far from complying with his obligation, with unfaithfulness and abuse of confidence, did then and there wilfully, unlawfully and feloniously

misappropriate, misapply and convert the same to his own personal use and benefit despite repeated demands, failed and refused and still fails and refuses to account for and/or remit the proceeds of the sale thereof, to the damage and prejudice of the said complainant-bank as represented by Lourdes V. Palomo in the aforementioned amount of US \$5600 or its equivalent in Philippine currency.

Contrary to law."

Arraigned thereunder, Tiomico entered a plea of Not Guilty, at which juncture, Assistant Provincial Prosecutor John B. Egana manifested that he was authorizing the private prosecutor, Atty. Jose B. Soncuya, to prosecute the case subject to his direction, supervision and control.

On October 16, 1989, Gretel S. Donato was presented to testify for the prosecution. According to her, she worked for the Bank of the Philippine Islands (*BPI*) in 1981 and in 1982, she was assigned as one of the Letter of Credit processors in the International Operations Department of BPI. Her duty, among others, was to process letter of credit applications which included that of Tiomico. The trust receipt executed by the latter was given to her as part of the documents supporting his Letter of Credit.

The following documents presented in the course of the testimony of Donato were identified by her as follows :

- (1) Exhibit "A" - Letter of Credit;
- (2) Exhibit "B" - Pro Forma Invoice;
- (3) Exhibit "C" - Letter of Credit Confirmation;
- (4) Exhibit "D" -Trust Receipt; Exhibit D1-D4 - signatures thereon;
- (5) Exhibit "E"- Statement of Account, the amount of P306,708.17 appearing therein, as Exhibit E-1, and the signature thereto of an unidentified bank officer, as Exhibit E-2;
- (6) Exhibit "F" Letter of Demand of the bank's legal department; a return card, as Exhibit F-1, and the signature of the addressee's agent, as Exhibit F-1 A.

Counsel for petitioner objected to the admission of Exhibits "A", "B", "C" and "D" on the ground that witness failed to identify the said documents inasmuch as her testimony regarding the signatures appearing therein were evidently hearsay. But the trial court admitted the said documentary evidence, despite the objections raised thereto by the defense. Thereafter, the prosecution rested.

After the People rested its case, petitioner begged leave to file a demurrer to the evidence, theorizing that the evidence on record does not suffice to prove beyond reasonable doubt the accusation against him. But instead of granting the said motion of the defense, the trial court ordered a re-opening of the case, so as to enable the prosecution to adduce more evidence. The defense objected but to no avail. The trial court proceeded with the continuation of trial "in the interest of

justice".

On September 5, 1990, the lower court denied the demurrer to evidence. The Motion for Reconsideration of the defense met the same fate. It was denied. The case was then set for continuation of trial on December 12, 1990. Reception of evidence for the defense was set on January 7, 1991. But on January 4, 1991, three days before the scheduled continuation of trial, the defense counsel filed an Urgent Motion for Postponement for the given reason that he had to appear before Branch 12 of the Metropolitan Trial Court of Manila on January 7, 1991.

On January 7, 1991, the lower court denied the Urgent Motion for Postponement and adjudged petitioner to have waived the right to introduce evidence on his behalf.

On January 30, 1991, the trial court promulgated its decision finding petitioner guilty of a violation of PD 115, and sentencing him accordingly.

On appeal, the Court of Appeals came out with a judgment of affirmance, the dispositive portion of which, is to the following effect:

"WHEREFORE, the Court finds JESUS V. TIOMICO guilty beyond reasonable doubt of violation of PD 115 and is hereby sentenced to suffer an indeterminate penalty of ten (10) years of prision mayor , as minimum, to fifteen (15) years of reclusion temporal as maximum; to indemnify Bank of the Philippine Islands the sum of P109,386.65 and to pay the costs.

SO ORDERED."<sup>[4]</sup>

Undaunted, petitioner found his way to this Court via the Petition for Review by *Certiorari* at bar, seeking to annul the decision<sup>[5]</sup> of the Court of Appeals; raising as issues:

(1) WHETHER OR NOT PD 115 OR TRUST RECEIPTS LAW IS UNCONSTITUTIONAL;

(2) WHETHER OR NOT A TESTIMONY CAN BE ADMITTED DESPITE THE ABSENCE OF FORMAL OFFER AS REQUIRED BY SECTIONS 34 AND 35, RULE 132, OF THE REVISED RULES OF COURT;

(3) WHETHER OR NOT THE TESTIMONY OF WITNESS WITH REGARD TO THE LETTER OF CREDIT AND OTHER DOCUMENT IS HEARSAY; AND

(4) WHETHER OR NOT THERE WAS DEPRIVATION OF DUE PROCESS ON THE RIGHTS OF THE ACCUSED WHEN THE TRIAL COURT DENIED THE MOTION FOR POSTPONEMENT BY THE DEFENSE COUNSEL.

As regards the first issue, the Court has repeatedly upheld the validity of the Trust Receipts Law and consistently declared that the said law does not violate the constitutional proscription against imprisonment for non-payment of debts. (*People vs. Cuevo*, 104 SCRA 312; *People vs. Nitafan*, 207 SCRA 726; *Lee vs. Rodil*, 175 SCRA 100). Such pronouncement was thoroughly explained in *Lee vs. Rodil (supra)* thus:

"Verily, PD 115 is a declaration by the legislative authority that, as a matter of public policy, the failure of a person to turn over the proceeds of the sale of goods covered by a trust receipt or to return said goods if not sold is a public nuisance to be abated by the imposition of penal sanctions. As held in *Lozano vs Martinez* (146 SCRA 323, 338):

xxx certainly, it is within the authority of the lawmaking body to prescribe certain acts deemed pernicious and inimical to public welfare. Acts mala in se are not the only acts that the law can punish. An act may not be considered by society as inherently wrong, hence, not malum in se, but because of the harm that it inflicts on the community, it can be outlawed and criminally punished as malum prohibitum. The State can do this in the exercise of its police power.

In fine, PD 115 is a valid exercise of police power and is not repugnant to the constitutional provision of non-imprisonment for non-payment of debt."

In a similar vein, the case of *People vs. Nitafan (supra)* held:

"The Trust Receipts Law punishes the dishonesty and abuse of confidence in the handling of money or goods to the prejudice of another regardless of whether the latter is the owner or not. The law does not seek to enforce payment of a loan. Thus, there can be no violation of the right against imprisonment for non-payment of a debt."

Anent the second issue, the pivotal question is: Should the testimony of a witness be admitted despite the failure of the proponent to offer it formally in evidence, as required by Section 34 of Rule 132<sup>[6]</sup> We rule on this issue in the affirmative.

Records disclose that the private prosecutor stated the purpose of the testimony in question although he did not formally offer the same. The proceedings<sup>[7]</sup> went on as follows:

"ATTY. SONCUYA:

The purpose of the testimony of the witness is to prove that the accused applied for a letter of credit, for the opening of a letter of credit and for the importation of machinery from Japan and that those machinery were delivered and received by the accused as evidenced by the trust receipt and that the accused failed to comply with the terms and conditions of the said trust receipt, your Honor.

COURT:

All right, proceed."

As aptly stressed by the Solicitor General in his Comment,<sup>[8]</sup> "the absence of the words, 'we are formally offering the testimony for the purpose of...' " should be considered merely as an excusable oversight on the part of the private prosecutor.

It should be borne in mind that the rationale behind Section 34 of Rule 132<sup>[9]</sup> is to

inform the Court of the purpose of the testimony, to enable the judge to rule whether the said testimony is necessary or is irrelevant or immaterial.

In the case under scrutiny, since the purpose of subject testimony was succinctly stated, the reason behind the requirement for its formal offer has been substantially complied with. What the defense counsel should have done should have been to interpose his objection the moment the private respondent was called to testify, on the ground that there was no prior offer made by the proponent.<sup>[10]</sup>

The tendency of the rules on evidence, is towards substantial justice rather than strict adherence to technicalities. To condemn the disputed testimony as inadmissible due to the failure of the private prosecutor to properly observe the rules on presentation of evidence, would render nugatory, and defeat the proceedings before the lower court.

On the third issue - whether or not the witness can testify on subject documents introduced as evidence despite her admission that she did not see the accused sign the said exhibits, we likewise rule in the affirmative.

As aptly held by the appellate court:<sup>[11]</sup>

"Gretel Donato testified that she was not present when appellant affixed his signature on the documents in question (p. 22, *ibid*). She, however, identified the signatures thereon (Exhs. "A-1", "A-2", "D-1", "D-2" and "D-3", Letter of Credit; Exhibit B - Pro Forma Invoice; Exhibit C - Letter of Credit Confirmation; Exhibit D -Trust Receipt; Exhibit D1-D4 - signatures thereon; pp 129 and 132 of Orig. Rec.) as those of the appellant Jesus V. Tiomico arising from her familiarity therewith inasmuch as she was the one who processed the papers pertinent to the transactions between the appellant and the complainant bank (TSN, Feb. 5, 1990, pp 4-6). Her testimony, therefore, cannot be considered hearsay because it is principally based on her personal knowledge of bank transactions and the documents and records which she processes in the regular course of the bank's business operations."

It is not essential to the competence of a lay witness to express opinions on the genuineness of handwritings that he did see the person in question write.<sup>[12]</sup> It is enough that the witness has so adopted the same into business transactions as to induce a reasonable presumption and belief of genuineness of the document. This is due to the fact that in the ordinary course of business, documents purporting to be written or signed by that person have been habitually submitted to the witness, or where knowledge of handwriting is acquired by him in an official capacity.<sup>[13]</sup>

Did the witness gain familiarity with the signature of the accused? The answer is yes. Exhibits "A" to "D": Letter of Credit, Pro-Forma Invoice, Letter of Credit Confirmation and Trust Receipt, respectively, were all familiar to the witness since the said documents bearing the signature of the accused were all submitted to her for processing. It is therefore beyond cavil that she acquired sufficient familiarity to make witness competent to testify on the signatures appearing in subject documents. From the time of the application to its approval and when Tiomico defaulted, she (*witness*) was the one who had overseen the transactions and recommended the actions to be taken thereon. As a matter of fact, she was the one