Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

- *versus* -

GILBERT REYES WAGAS,
Accused-Appellant.

G.R. No. 157943

Present:

SERENO, *C.J.*
BERSAMIN,
VILLARAMA, JR.,
REYES, and
*PERLAS-BERNABE, *JJ.*:

Promulgated:

SEP 04 2013

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DECISION

BERSAMIN, *J.*:

The Bill of Rights guarantees the right of an accused to be presumed innocent until the contrary is proved. In order to overcome the presumption of innocence, the Prosecution is required to adduce against him nothing less than proof beyond reasonable doubt. Such proof is not only in relation to the elements of the offense, but also in relation to the identity of the offender. If the Prosecution fails to discharge its heavy burden, then it is not only the right of the accused to be freed, it becomes the Court's constitutional duty to acquit him.

The Case

Gilbert R. Wagas appeals his conviction for *estafa* under the decision rendered on July 11, 2002 by the Regional Trial Court, Branch 58, in Cebu City (RTC), meting on him the indeterminate penalty of 12 years of *prision mayor*, as minimum, to 30 years of *reclusion perpetua*, as maximum.

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* Vice Associate Justice Teresita J. Leonardo-De Castro, who is on official trip for the Court to attend the Southeast Asia Regional Judicial Colloquium on Gender Equality Jurisprudence and the Role of the Judiciary in Promoting Women's Access to Justice, in Bangkok, Thailand, per Special Order No. 1529 dated August 29, 2013.

Antecedents

Wagas was charged with *estafa* under the information that reads:

> That on or about the 30th day of April, 1997, and for sometime prior and subsequent thereto, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, with intent to gain and by means of false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud, to wit: knowing that he did not have sufficient funds deposited with the Bank of Philippine Islands, and without informing Alberto Ligaray of that circumstance, with intent to defraud the latter, did then and there issue Bank of the Philippine Islands Check No. 0011003, dated May 08, 1997 in the amount of ₱200,000.00, which check was issued in payment of an obligation, but which check when presented for encashment with the bank, was dishonored for the reason "drawn against insufficient funds" and inspite of notice and several demands made upon said accused to make good said check or replace the same with cash, he had failed and refused and up to the present time still fails and refuses to do so, to the damage and prejudice of Alberto Ligaray in the amount aforestated.
>
> CONTRARY TO LAW.[1]

After Wagas entered a plea of *not guilty*,[2] the pre-trial was held, during which the Defense admitted that the check alleged in the information had been dishonored due to insufficient funds.[3] On its part, the Prosecution made no admission.[4]

At the trial, the Prosecution presented complainant Alberto Ligaray as its lone witness. Ligaray testified that on April 30, 1997, Wagas placed an order for 200 bags of rice over the telephone; that he and his wife would not agree at first to the proposed payment of the order by postdated check, but because of Wagas' assurance that he would not disappoint them and that he had the means to pay them because he had a lending business and money in the bank, they relented and accepted the order; that he released the goods to Wagas on April 30, 1997 and at the same time received Bank of the Philippine Islands (BPI) Check No. 0011003 for ₱200,000.00 payable to cash and postdated May 8, 1997; that he later deposited the check with Solid Bank, his depository bank, but the check was dishonored due to insufficiency of funds;[5] that he called Wagas about the matter, and the latter told him that he would pay upon his return to Cebu; and that despite repeated demands, Wagas did not pay him.[6]

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1 Records, pp. 1-2.
2 Id. at 32.
3 Id. at 41-42.
4 Id. at 42-43.
5 TSN, May 4, 2000.
6 TSN, May 25, 2000.

On cross-examination, Ligaray admitted that he did not personally meet Wagas because they transacted through telephone only; that he released the 200 bags of rice directly to Robert Cañada, the brother-in-law of Wagas, who signed the delivery receipt upon receiving the rice.[7]

After Ligaray testified, the Prosecution formally offered the following: (*a*) BPI Check No. 0011003 in the amount of ₱200,000.00 payable to "*cash;*" (*b*) the return slip dated May 13, 1997 issued by Solid Bank; (*c*) Ligaray's affidavit; and (*d*) the delivery receipt signed by Cañada. After the RTC admitted the exhibits, the Prosecution then rested its case.[8]

In his defense, Wagas himself testified. He admitted having issued BPI Check No. 0011003 to Cañada, his brother-in-law, not to Ligaray. He denied having any telephone conversation or any dealings with Ligaray. He explained that the check was intended as payment for a portion of Cañada's property that he wanted to buy, but when the sale did not push through, he did not anymore fund the check.[9]

On cross-examination, the Prosecution confronted Wagas with a letter dated July 3, 1997 apparently signed by him and addressed to Ligaray's counsel, wherein he admitted owing Ligaray ₱200,000.00 for goods received, to wit:

> This is to acknowledge receipt of your letter dated June 23, 1997 which is self-explanatory. It is worthy also to discuss with you the environmental facts of the case for your consideration, to wit:
>
> 1. It is true that I obtained goods from your client worth ₱200,000.00 and I promised to settle the same last May 10, 1997, but to no avail. On this point, let me inform you that I sold my real property to a buyer in Manila, and promised to pay the consideration on the same date as I promised with your client. Unfortunately, said buyer likewise failed to make good with such obligation. Hence, I failed to fulfill my promise resultant thereof. (sic)
>
> 2. Again, I made another promise to settle said obligation on or before June 15, 1997, but still to no avail attributable to the same reason as aforementioned. (sic)
>
> 3. To arrest this problem, we decided to source some funds using the subject property as collateral. This other means is resorted to for the purpose of settling the herein obligation. And as to its status, said funds will be rele[a]sed within thirty (30) days from today.

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7 Id.
8 Records, pp. 59-60.
9 TSN, October 5, 2000.

> In view of the foregoing, it is my sincere request and promise to settle said obligation on or before August 15, 1997.
>
> Lastly, I would like to manifest that it is not my intention to shy away from any financial obligation.
>
> x x x x
>
> Respectfully yours,
>
> (SGD.)
> GILBERT R. WAGAS[10]

Wagas admitted the letter, but insisted that it was Cañada who had transacted with Ligaray, and that he had signed the letter only because his sister and her husband (Cañada) had begged him to assume the responsibility.[11] On redirect examination, Wagas declared that Cañada, a seafarer, was then out of the country; that he signed the letter only to accommodate the pleas of his sister and Cañada, and to avoid jeopardizing Cañada's application for overseas employment.[12] The Prosecution subsequently offered and the RTC admitted the letter as rebuttal evidence.[13]

Decision of the RTC

As stated, the RTC convicted Wagas of *estafa* on July 11, 2002, *viz*:

> WHEREFORE, premises considered, the Court finds the accused GUILTY beyond reasonable doubt as charged and he is hereby sentenced as follows:
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> 1. To suffer an indeterminate penalty of from twelve (12) years of pris[i]on mayor, as minimum, to thirty (30) years of reclusion perpetua as maximum;
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> 2. To indemnify the complainant, Albert[o] Ligaray in the sum of ₱200,000.00;
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> 3. To pay said complainant the sum of ₱30,000.00 by way of attorney's fees; and
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> 4. the costs of suit.
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> SO ORDERED.[14]

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10 Records, p. 92.
11 TSN, August 20, 2001, pp. 2-5.
12 Id. at 5-7.
13 Records, p. 113.
14 *Rollo*, p. 26.

The RTC held that the Prosecution had proved beyond reasonable doubt all the elements constituting the crime of *estafa*, namely: (*a*) that Wagas issued the postdated check as payment for an obligation contracted at the time the check was issued; (*b*) that he failed to deposit an amount sufficient to cover the check despite having been informed that the check had been dishonored; and (*c*) that Ligaray released the goods upon receipt of the postdated check and upon Wagas' assurance that the check would be funded on its date.

Wagas filed a motion for new trial and/or reconsideration,[15] arguing that the Prosecution did not establish that it was he who had transacted with Ligaray and who had negotiated the check to the latter; that the records showed that Ligaray did not meet him at any time; and that Ligaray's testimony on their alleged telephone conversation was not reliable because it was not shown that Ligaray had been familiar with his voice. Wagas also sought the reopening of the case based on newly discovered evidence, specifically: (*a*) the testimony of Cañada who could not testify during the trial because he was then out of the country, and (*b*) Ligaray's testimony given against Wagas in another criminal case for violation of *Batas Pambansa Blg*. 22.

On October 21, 2002, the RTC denied the motion for new trial and/or reconsideration, opining that the evidence Wagas desired to present at a new trial did not qualify as newly discovered, and that there was no compelling ground to reverse its decision.[16]

Wagas appealed directly to this Court by notice of appeal.[17]

Prior to the elevation of the records to the Court, Wagas filed a petition for admission to bail pending appeal. The RTC granted the petition and fixed Wagas' bond at ₱40,000.00.[18] Wagas then posted bail for his provisional liberty pending appeal.[19]

The resolution of this appeal was delayed by incidents bearing on the grant of Wagas' application for bail. On November 17, 2003, the Court required the RTC Judge to explain why Wagas was out on bail.[20] On January 15, 2004, the RTC Judge submitted to the Court a so-called *manifestation and compliance* which the Court referred to the Office of the Court Administrator (OCA) for evaluation, report, and recommendation.[21] On July

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15 Records, pp. 149-163.
16 Id. at 243-244.
17 Id. at 246.
18 Id. at 269-270.
19 Id. at 272.
20 *Rollo*, p. 36.
21 Id. at 149.

5, 2005, the Court, upon the OCA's recommendation, directed the filing of an administrative complaint for simple ignorance of the law against the RTC Judge.[22] On September 12, 2006, the Court directed the OCA to comply with its July 5, 2005 directive, and to cause the filing of the administrative complaint against the RTC Judge. The Court also directed Wagas to explain why his bail should not be cancelled for having been erroneously granted.[23] Finally, in its memorandum dated September 27, 2006, the OCA manifested to the Court that it had meanwhile filed the administrative complaint against the RTC Judge.[24]

Issues

In this appeal, Wagas insists that he and Ligaray were neither friends nor personally known to one other; that it was highly incredible that Ligaray, a businessman, would have entered into a transaction with him involving a huge amount of money only over the telephone; that on the contrary, the evidence pointed to Cañada as the person with whom Ligaray had transacted, considering that the delivery receipt, which had been signed by Cañada, indicated that the goods had been "Ordered by ROBERT CAÑADA," that the goods had been received by Cañada in good order and condition, and that there was no showing that Cañada had been acting on behalf of Wagas; that he had issued the check to Cañada upon a different transaction; that Cañada had negotiated the check to Ligaray; and that the element of deceit had not been established because it had not been proved with certainty that it was him who had transacted with Ligaray over the telephone.

The circumstances beg the question: did the Prosecution establish beyond reasonable doubt the existence of all the elements of the crime of *estafa* as charged, as well as the identity of the perpetrator of the crime?

Ruling

The appeal is meritorious.

Article 315, paragraph 2(*d*) of the *Revised Penal Code*, as amended, provides:

> Article 315. *Swindling (estafa).* — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

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22 Id. at 157.
23 Id. at 163-170.
24 Id. at 171.

> x x x x
>
> 2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:
>
> x x x x
>
> (d) By postdating a check, or issuing a check in payment of an obligation when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check. The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack or insufficiency of funds shall be *prima facie* evidence of deceit constituting false pretense or fraudulent act.

In order to constitute *estafa* under this statutory provision, the act of postdating or issuing a check in payment of an obligation must be the efficient cause of the defraudation. This means that the offender must be able to obtain money or property from the offended party by reason of the issuance of the check, whether dated or postdated. In other words, the Prosecution must show that the person to whom the check was delivered would not have parted with his money or property were it not for the issuance of the check by the offender.[25]

The essential elements of the crime charged are that: (*a*) a check is postdated or issued in payment of an obligation contracted at the time the check is issued; (*b*) lack or insufficiency of funds to cover the check; and (*c*) damage to the payee thereof.[26] It is the criminal fraud or deceit in the issuance of a check that is punishable, not the non-payment of a debt.[27] *Prima facie* evidence of deceit exists by law upon proof that the drawer of the check failed to deposit the amount necessary to cover his check within three days from receipt of the notice of dishonor.

The Prosecution established that Ligaray had released the goods to Cañada because of the postdated check the latter had given to him; and that the check was dishonored when presented for payment because of the insufficiency of funds.

In every criminal prosecution, however, the identity of the offender, like the crime itself, must be established by proof beyond reasonable doubt.[28] In that regard, the Prosecution did not establish beyond reasonable doubt that it was Wagas who had defrauded Ligaray by issuing the check.

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[25] *Timbal v. Court of Appeals*, G.R. No. 136487, December 14, 2001, 372 SCRA 358, 362-363.
[26] *Dy v. People*, G.R. No. 158312, November 14, 2008, 571 SCRA 59, 70.
[27] *Recuerdo v. People*, G.R. No. 168217, June 27, 2006, 493 SCRA 517, 532.
[28] *People v. Caliso*, G.R. No. 183830, October 19, 2011, 659 SCRA 666, 675; *People v. Pineda*, G.R. No. 141644, May 27, 2004, 429 SCRA 478; *Tuason v. Court of Appeals*, G.R. Nos. 113779-80, February 23, 1995, 241 SCRA 695.

Firstly, Ligaray expressly admitted that he did not personally meet the person with whom he was transacting over the telephone, thus:

> Q: On April 30, 1997, do you remember having a transaction with the accused in this case?
>
> A: Yes, sir. He purchased two hundred bags of rice from me.
>
> Q: How did this purchase of rice transaction started? (sic)
>
> A: **He talked with me over the phone and told me that he would like to purchase two hundred bags of rice and he will just issue a check**.[29]

Even after the dishonor of the check, Ligaray did not personally see and meet whoever he had dealt with and to whom he had made the demand for payment, and that he had talked with him only over the telephone, to wit:

> Q: After the check was (sic) bounced, what did you do next?
>
> A: I made a demand on them.
>
> Q: **How did you make a demand?**
>
> A: **I called him over the phone.**
>
> Q: **Who is that "him" that you are referring to?**
>
> A: **Gilbert Wagas.**[30]

Secondly, the check delivered to Ligaray was made payable to cash. Under the *Negotiable Instruments Law*, this type of check was payable to the bearer and could be negotiated by mere delivery without the need of an indorsement.[31] This rendered it highly probable that Wagas had issued the check not to Ligaray, but to somebody else like Cañada, his brother-in-law, who then negotiated it to Ligaray. Relevantly, Ligaray *confirmed* that he did not himself see or meet Wagas at the time of the transaction and thereafter,

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[29] TSN, May 4, 2000, lines 54-57.

[30] TSN, May 25, 2000, p. 4.

[31] Section 9 and Section 30 of the Negotiable Instruments Law provide as follows:

Section 9. *When payable to bearer.* - The instrument is payable to bearer:

(a) When it is expressed to be so payable; or

(b) When it is payable to a person named therein or bearer; or

(c) When it is payable to the order of a fictitious or non-existing person, and such fact was known to the person making it so payable; or

(d) When the name of the payee does not purport to be the name of any person; or

(e) When the only or last indorsement is an indorsement in blank.

Section 30. *What constitutes negotiation.* - An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer, it is negotiated by delivery; if payable to order, it is negotiated by the indorsement of the holder and completed by delivery.

and expressly stated that the person who signed for and received the stocks of rice was Cañada.

It bears stressing that the accused, to be guilty of *estafa* as charged, must have used the check in order to defraud the complainant. What the law punishes is the fraud or deceit, not the mere issuance of the worthless check. Wagas could not be held guilty of *estafa* simply because he had issued the check used to defraud Ligaray. The proof of guilt must still clearly show that it had been Wagas as the drawer who had defrauded Ligaray by means of the check.

Thirdly, Ligaray admitted that it was Cañada who received the rice from him and who delivered the check to him. Considering that the records are bereft of any showing that Cañada was then acting on behalf of Wagas, the RTC had no factual and legal bases to conclude and find that Cañada had been acting for Wagas. This lack of factual and legal bases for the RTC to infer so obtained despite Wagas being Cañada's brother-in-law.

Finally, Ligaray's declaration that it was Wagas who had transacted with him over the telephone was not reliable because he did not explain how he determined that the person with whom he had the telephone conversation was really Wagas whom he had not yet met or known before then. We deem it essential for purposes of reliability and trustworthiness that a telephone conversation like that one Ligaray supposedly had with the buyer of rice to be first authenticated before it could be received in evidence. Among others, the person with whom the witness conversed by telephone should be first satisfactorily identified by voice recognition or any other means.[32] Without the authentication, incriminating another person just by adverting to the telephone conversation with him would be all too easy. In this respect, an identification based on familiarity with the voice of the caller, or because of clearly recognizable peculiarities of the caller would have sufficed.[33] The identity of the caller could also be established by the caller's self-identification, coupled with additional evidence, like the context and timing of the telephone call, the contents of the statement challenged, internal patterns, and other distinctive characteristics, and disclosure of knowledge of facts known peculiarly to the caller.[34]

Verily, it is only fair that the caller be reliably identified first before a telephone communication is accorded probative weight. The identity of the caller may be established by direct or circumstantial evidence. According to one ruling of the Kansas Supreme Court:

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[32] *Sandoval II v. House of Representatives Electoral Tribunal,* G.R. No. 149380, July 3, 2002, 383 SCRA 770, 784.

[33] 29A Am Jur 2d Evidence § 1403.

[34] *United States v. Orozco-Santillan,* 903 F.2d 1262 (9th Cir. Cal. 1990).

> Communications by telephone are admissible in evidence where they are relevant to the fact or facts in issue, and admissibility is governed by the same rules of evidence concerning face-to-face conversations except the party against whom the conversations are sought to be used must ordinarily be identified. It is not necessary that the witness be able, at the time of the conversation, to identify the person with whom the conversation was had, provided subsequent identification is proved by direct or circumstantial evidence somewhere in the development of the case. **The mere statement of his identity by the party calling is not in itself sufficient proof of such identity, in the absence of corroborating circumstances so as to render the conversation admissible. However, circumstances preceding or following the conversation may serve to sufficiently identify the caller. The completeness of the identification goes to the weight of the evidence rather than its admissibility, and the responsibility lies in the first instance with the district court to determine within its sound discretion whether the threshold of admissibility has been met.**[35] (Bold emphasis supplied)

Yet, the Prosecution did not tender any plausible explanation or offer any proof to definitely establish that it had been Wagas whom Ligaray had conversed with on the telephone. The Prosecution did not show through Ligaray during the trial as to how he had determined that his caller was Wagas. All that the Prosecution sought to elicit from him was whether he had known and why he had known Wagas, and he answered as follows:

> Q: Do you know the accused in this case?
>
> A: Yes, sir.
>
> Q: If he is present inside the courtroom […]
>
> A: No, sir. He is not around.
>
> **Q: Why do you know him?**
>
> **A: I know him as a resident of Compostela because he is an ex-mayor of Compostela**.[36]

During cross-examination, Ligaray was allowed another opportunity to show how he had determined that his caller was Wagas, but he still failed to provide a satisfactory showing, to wit:

> Q: Mr. Witness, you mentioned that you and the accused entered into [a] transaction of rice selling, particularly with these 200 sacks of rice subject of this case, through telephone conversation?
>
> A: Yes, sir.

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[35] *State v. Williamson*, 210 Kan. 501 (Kan 1972).
[36] TSN, May 4, 2000, lines 41-47 (emphasis supplied).

Q: **But you cannot really ascertain that it was the accused whom you are talking with?**

A: **I know it was him because I know him**.

Q: **Am I right to say [that] that was the first time that you had a transaction with the accused through telephone conversation, and as a consequence of that alleged conversation with the accused through telephone he issued a check in your favor?**

A: **No. Before that call I had a talk[ ] with the accused.**

Q: **But still through the telephone?**

A: **Yes, sir.**

Q: **There was no instant (sic) that the accused went to see you personally regarding the 200 bags rice transaction?**

A: **No. It was through telephone only.**

Q: **In fact[,] you did not cause the delivery of these 200 bags of rice through the accused himself?**

A: **Yes. It was through Robert.**

Q: **So, after that phone call[,] you deliver[ed] th[ose] 200 sacks of rice through somebody other than the accused?**

A: **Yes, sir**.[37]

Ligaray's statement that he could tell that it was Wagas who had ordered the rice because he "know[s]" him was still vague and unreliable for not assuring the certainty of the identification, and should not support a finding of Ligaray's familiarity with Wagas as the caller by his voice. It was evident from Ligaray's answers that Wagas was not even an acquaintance of Ligaray's prior to the transaction. Thus, the RTC's conclusion that Ligaray had transacted with Wagas had no factual basis. Without that factual basis, the RTC was speculating on a matter as decisive as the identification of the buyer to be Wagas.

The letter of Wagas did not competently establish that he was the person who had conversed with Ligaray by telephone to place the order for the rice. The letter was admitted exclusively as the State's rebuttal evidence to controvert or impeach the denial of Wagas of entering into any transaction with Ligaray on the rice; hence, it could be considered and appreciated only for that purpose. Under the law of evidence, the court shall consider evidence solely for the purpose for which it is offered,[38] not for any other

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[37] TSN, May 25, 2000, pp. 7-8.

[38] *Ragudo v. Fabella Estate Tenants Association, Inc*., G.R. No. 146823, August 9, 2005, 466 SCRA 136, 148; *People v. Lapay*, G.R. No. 123072, October 14, 1998, 298 SCRA 62, 79.

purpose.[39] Fairness to the adverse party demands such exclusivity. Moreover, the high plausibility of the explanation of Wagas that he had signed the letter only because his sister and her husband had pleaded with him to do so could not be taken for granted.

It is a fundamental rule in criminal procedure that the State carries the *onus probandi* in establishing the guilt of the accused beyond a reasonable doubt, as a consequence of the tenet *ei incumbit probation, qui dicit, non qui negat*, which means that he who asserts, not he who denies, must prove,[40] and as a means of respecting the presumption of innocence in favor of the man or woman on the dock for a crime. Accordingly, the State has the burden of proof to show: (1) the correct identification of the author of a crime, and (2) the actuality of the commission of the offense with the participation of the accused. All these facts must be proved by the State beyond reasonable doubt on the strength of its evidence and without solace from the weakness of the defense. That the defense the accused puts up may be weak is inconsequential if, in the first place, the State has failed to discharge the *onus* of his identity and culpability. The presumption of innocence dictates that it is for the Prosecution to demonstrate the guilt and not for the accused to establish innocence.[41] Indeed, the accused, being presumed innocent, carries no burden of proof on his or her shoulders. For this reason, the first duty of the Prosecution is not to prove the crime but to prove the identity of the criminal. For even if the commission of the crime can be established, without competent proof of the identity of the accused beyond reasonable doubt, there can be no conviction.[42]

There is no question that an identification that does not preclude a reasonable possibility of mistake cannot be accorded any evidentiary force.[43] Thus, considering that the circumstances of the identification of Wagas as the person who transacted on the rice did not preclude a reasonable possibility of mistake, the proof of guilt did not measure up to the standard of proof beyond reasonable doubt demanded in criminal cases. Perforce, the accused's constitutional right of presumption of innocence until the contrary is proved is not overcome, and he is entitled to an acquittal,[44] even though his innocence may be doubted.[45]

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[39] *Uniwide Sales Realty and Resources Corporation v. Titan-Ikeda Construction and Development Corporation*, G.R. No. 126619, December 20, 2006, 511 SCRA 335, 357.

[40] *People v. Subingsubing*, G.R. Nos. 104942-43, November 25, 1993, 228 SCRA 168, 174 .

[41] *People v. Arapok*, G.R. No. 134974, December 8, 2000, 347 SCRA 479, 498.

[42] *People v. Esmale*, G.R. Nos. 102981-82, April 21, 1995, 243 SCRA 578, 592.

[43] *Natividad v. Court of Appeals*, No. L-40233, June 25, 1980, 98 SCRA 335, 346, citing *People v. Beltran*, No. L-31860, November 29, 1974, 61 SCRA 246, 250; *People v. Manambit*, G.R. Nos. 72744-45, April 18, 1997, 271 SCRA 344, 377, citing *People v. Maongco*, G.R. Nos. 108963-65, March 1, 1994, 230 SCRA 562, 575.

[44] *Natividad v. Court of Appeals*, No. L-40233, June 25, 1980, 98 SCRA 335, 346.

[45] *Pecho v. People*, G.R. No. 111399, September 27, 1996, 262 SCRA 518, 533; *United States v. Gutierrez*, 4 Phil. 493 (1905); *People v. Sadie*, No. L-66907, April 14, 1987, 149 SCRA 240, 244; *Perez v. Sandiganbayan*, G.R. Nos. 76203-04, December 6, 1989, 180 SCRA 9, 13.

Nevertheless, an accused, though acquitted of *estafa*, may still be held civilly liable where the preponderance of the established facts so warrants.[46] Wagas as the admitted drawer of the check was legally liable to pay the amount of it to Ligaray, a holder in due course.[47] Consequently, we pronounce and hold him fully liable to pay the amount of the dishonored check, plus legal interest of 6% *per annum* from the finality of this decision.

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the decision rendered on July 11, 2002 by the Regional Trial Court, Branch 58, in Cebu City; and **ACQUITS** Gilbert R. Wagas of the crime of *estafa* on the ground of reasonable doubt, but **ORDERS** him to pay Alberto Ligaray the amount of ₱200,000.00 as actual damages, plus interest of 6% *per annum* from the finality of this decision.

No pronouncement on costs of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

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[46] *People v. Reyes,* G.R. No. 154159, March 31, 2005, 454 SCRA 635, 651; *Eusebio-Calderon v. People,* G.R. No. 158495, October 21, 2004, 441 SCRA 137, 147; *Serona v. Court of Appeals,* G.R. No. 130423, November 18, 2002, 392 SCRA 35, 45; *Sapiera v. Court of Appeals,* G.R. No. 128927, September 14, 1999, 314 SCRA 370, 378.

[47] Section 61 of the *Negotiable Instruments Law* provides:

Section 61. *Liability of Drawer.*—The drawer by drawing the instrument admits the existence of the payee and his then capacity to indorse; and engages that, on due presentment, the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonoured and the necessary proceedings on dishonour be duly taken, he will pay the amount thereof to the holder or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negativing or limiting his own liability to the holder.

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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