

FIRST DIVISION

[G.R. NO. 151895, February 16, 2005]

**BANK OF COMMERCE, PETITIONER, VS. TERESITA S. SERRANO,
RESPONDENT.**

DECISION

QUISUMBING, J.:

For our review on certiorari is the civil aspect of the Court of Appeals' *Decision*,^[1] dated September 28, 2001, in CA-G.R. CR No. 24570 as well as its *Resolution*,^[2] dated January 17, 2002, denying petitioner's motion for reconsideration. The Court of Appeals set aside the *Decision*^[3] dated May 31, 2000, of the Regional Trial Court (RTC) Branch 105 of Quezon City.

The facts are as follows:

Petitioner Bank of Commerce (formerly Boston Bank of the Philippines) is a private domestic banking institution. Respondent Teresita S. Serrano is the General Manager and Treasurer of Via Moda International, Inc., a domestic business entity primarily engaged in the import and export of textile materials and fabrics.

Via Moda International, represented by respondent, obtained an export packing loan from petitioner, Bank of Commerce (BOC)-Diliman, Quezon City Branch, in the amount of US\$50,000 (P1,382,250), secured by a Deed of Assignment over Irrevocable Transferable Letter of Credit No. 100072119. Respondent Serrano executed in favor of BOC Promissory Note No. 94/086 for US\$50,000 dated May 6, 1994 with maturity date on July 14, 1994. Via Moda then opened a deposit account for the proceeds of the said loan.^[4]

On March 15, 1994, BOC issued to Via Moda, Irrevocable Letter of Credit No. BCZ-940051, in the amount of US\$56,735, for the purchase and importation of fabric and textile products from Tiger Ear Fabric Co. Ltd. of Taiwan. To secure the release of the goods covered, respondent, in representation of Via Moda, executed Trust Receipt No. 94-22221 dated April 21, 1994 with due date on July 20, 1994 for US\$55,944.73 (P1,554,424.32).^[5]

Under the terms of the trust receipt, Via Moda agreed to hold the goods in trust for petitioner as the latter's property and to sell the same for the latter's account. In case of sale, the proceeds are to be remitted to the bank as soon as it is received, but not later than the maturity date. Said proceeds are to be applied to the relative acceptances, with interest at the rate of 26% per annum, with a penalty of 36% per annum of the total amount due until fully paid in case of non-payment of the trust receipt and relative acceptance at maturity date or, in the alternative, to return the goods in case of non-sale.^[6]

The goods covered by the trust receipt were shipped by Via Moda to its consignee in New Jersey, USA, who sent an Export Letter of Credit issued by the Bank of New York, in favor of BOC. The Regional Operations Officer of BOC signed the export declarations to show consent to the shipment. The total value of the entrusted goods which were shipped per export declaration was US\$81,987 (P2,246,443.80). The proceeds of the entrusted goods sold were not credited to the trust receipt but, were applied by the bank to the principal, penalties and interest of the export packing loan. The excess P472,114.85 was applied to the trust receipt, leaving a balance of P1,444,802.28 as of November 15, 1994.^[7]

On November 16, 1994, petitioner sent a demand letter to Via Moda to pay the said amount plus interest and penalty charges, or to return the goods covered by Trust Receipt No. 94-22221 within 5 days from receipt. The demand was not heeded. As of December 15, 1998, the outstanding balance of Via Moda was P4,783,487.15.^[8]

On March 8, 1998, respondent was charged with the crime of estafa under Article 315 (b) of the Revised Penal Code in relation to Presidential Decree No. 115.^[9]

On May 31, 2000, the trial court rendered judgment and the dispositive portion of which reads:

WHEREFORE, in the light of the foregoing, the Court finds accused Teresita S. Serrano GUILTY beyond reasonable doubt of the crime charged in the Information filed in this case and sentences her to serve the indeterminate penalty of imprisonment from EIGHT (8) YEARS AND ONE (1) DAY OF PRISION MAYOR, AS MINIMUM, TO TWENTY (20) YEARS OF RECLUSION TEMPORAL, AS MAXIMUM, including the accessory penalties. She is ordered to pay her civil liability to Bank of Commerce in the amount of P4,783,487.15, with interest until fully paid, and the costs of this suit.

SO ORDERED.^[10]

Respondent appealed to the Court of Appeals which rendered a decision dated September 28, 2001, reversing the trial court's decision. The Court of Appeals held that the element of misappropriation or conversion in violation of P.D. No. 115, in relation to the crime of estafa, was absent in this case, thereby acquitting the respondent and deleting her civil liability. The decretal portion of the decision reads as follows:

WHEREFORE, premises considered, the appealed decision is hereby REVERSED, and the accused-appellant ACQUITTED of the crime charged. The civil liability adjudged by the court a quo is hereby deleted, there being no showing that accused-appellant bound herself personally liable with respect to the loan secured by the trust receipt.

SO ORDERED.^[11]

Petitioner filed a Motion for Reconsideration which was denied. Petitioner now comes to this Court submitting the following issues for our resolution: