



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

JOSE APOLINARIO, JR. y G.R. No. 242977  
LLAUDER

Petitioner,

Present:

-versus-

LEONEN, J., *Chairperson*,  
CARANDANG\*,  
ZALAMEDA,  
ROSARIO, and  
DIMAAMPAO\*\*, JJ.

PEOPLE OF THE PHILIPPINES,  
Respondent.

Promulgated:  
October 13, 2021  
*MisDCCBatt*

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DECISION

LEONEN, J.:

Banking institutions are corporations imbued with public interest. They are required to exercise the highest degree of diligence. By their nature, banks operate within certain restrictions and limitations,<sup>1</sup> one of which is the issuance of loans to its directors, officers, stockholders, and related interests (DOSRI). The requirements under the General Banking Law are straightforward. If all the elements provided by the law are present, erring directors and officers can be held criminally liable for violating the DOSRI law.

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\* On official leave.

\*\* Designated additional Member per Special Order No. 2839 dated September 16, 2021.

<sup>1</sup> *Philippine Savings Bank v. Sakata*, G.R. No. 229450, June 17, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66271>> [Per J. Leonen, Third Division], citing *Bank of the Philippine Islands v. Casa Montessori Internationale*, 474 Phil. 298, 318 (2004) [Per J. Panganiban, First Division].

This Court resolves a Petition for Review on Certiorari<sup>2</sup> under Rule 45 of the Rules of Court assailing the Court of Appeals Decision<sup>3</sup> and Resolution<sup>4</sup>, which, in turn, affirmed the Regional Trial Court's Joint Resolution<sup>5</sup> convicting Jose Apolinario, Jr. y Llauder (Apolinario) for violation of Section 36<sup>6</sup> of Republic Act No. 8791, or the General Banking Law of 2000, in relation to Section 36<sup>7</sup> of Republic Act No. 7653 or the New Central Bank Act. The assailed Joint Resolution denied Apolinario's Motion for Reconsideration.<sup>8</sup>

<sup>2</sup> *Rollo*, pp. 10–77.

<sup>3</sup> *Id.* at pp. 78–99. The July 10, 2018 Decision in CA-G.R. CR No. 35584 was penned by Associate Justice Nina G. Antonio-Valenzuela and concurred in by Associate Justices Priscilla J. Baltazar-Padilla (now a retired member of this Court) and Carmelita Salandanan Manahan of the Special Sixteenth Division of the Court of Appeals, Manila.

<sup>4</sup> *Id.* at 100–101. The October 25, 2018 Resolution in CA-G.R. CR No. 35584 was penned by Associate Justice Nina G. Antonio-Valenzuela and concurred in by Associate Justices Priscilla J. Baltazar-Padilla (now a retired member of this Court) and Carmelita Salandanan Manahan of the Former Special Sixteenth Division of the Court of Appeals, Manila.

<sup>5</sup> *Id.* at 229–240. The October 24, 2012 Joint Resolution in Criminal Cases Nos. 03-3631-32 was penned by Presiding Judge Cesar O. Untalan of the Regional Trial Court of Makati City, Branch 149.

<sup>6</sup> General Banking Law (2000), sec. 36 provides:

SECTION. 36. *Restriction on Bank Exposure to Directors, Officers, Stockholders, and Their Related Interests.* - No director or officer of any bank shall, directly or indirectly, for himself or as representative or agent of others, borrow from such bank nor shall he become a guarantor, indorser or surety for loans from such bank to others, or in any manner be an obligor or incur any contractual liability to the bank except with the written approval of the majority of all the directors of the bank, excluding the director concerned: Provided, That such written approval shall not be required for loans, other credit accommodations and advances granted to officers under a fringe benefit plan approved by the Bangko Sentral. The required approval shall be entered upon the records of the bank and a copy of such entry shall be transmitted forthwith to the appropriate supervising and examining department of the Bangko Sentral. Dealings of a bank with any of its directors, officers or stockholders and their related interests shall be upon terms not less favorable to the bank than those offered to others.

After due notice to the board of directors of the bank, the office of any bank director or officer who violates the provisions of this Section may be declared vacant and the director or officer shall be subject to the penal provisions of the New Central Bank Act. The Monetary Board may regulate the amount of loans, credit accommodations and guarantees that may be extended, directly or indirectly, by a bank to its directors, officers, stockholders and their related interests, as well as investments of such bank in enterprises owned or controlled by said directors, officers, stockholders and their related interests. However, the outstanding loans, credit accommodations and guarantees which a bank may extend to each of its stockholders, directors, or officers and their related interests, shall be limited to an amount equivalent to their respective unencumbered deposits and book value of their paid-in capital contribution in the bank: Provided, however, That loans, credit accommodations and guarantees secured by assets considered as non-risk by the Monetary Board shall be excluded from such limit: Provided, further, That loans, credit accommodations and advances to officers in the form of fringe benefits granted in accordance with rules as may be prescribed by the Monetary Board shall not be subject to the individual limit. The Monetary Board shall define the term "related interests." The limit on loans, credit accommodations and guarantees prescribed herein shall not apply to loans, credit accommodations and guarantees extended by a cooperative bank to its cooperative shareholders.

<sup>7</sup> New Central Bank Act (1993), sec. 36 provides:

SECTION. 36. *Proceedings Upon Violation of this Act and Other Banking Laws, Rules, Regulations, Orders, or Instructions.* Whenever a bank or quasi-bank, or whenever any person or entity willfully violates this Act or other pertinent banking laws being enforced or implemented by the Bangko Sentral or any order, instruction, rule or regulation issued by the Monetary Board, the person or persons responsible for such violation shall unless otherwise provided in this Act be punished by a fine of not less than Fifty thousand pesos (P50,000) nor more than Two hundred thousand pesos (P200,000) or by imprisonment of not less than two (2) years nor more than ten (10) years, or both, at the discretion of the court.

Whenever a bank or quasi-bank persists in carrying on its business in an unlawful or unsafe manner, the Board may, without prejudice to the penalties provided in the preceding paragraph of this section and the administrative sanctions provided in Section 37 of this Act, take action under Section 30 of this Act.

<sup>8</sup> *Rollo*, pp. 244–306.

In two separate Informations, Apolinario, Winefredo T. Capilitan (Capilitan), Motohiko Hagsaka (Hagsaka), and Elmer T. Magpantay (Magpantay), directors and officers of the Unitrust Development Bank (Unitrust), were charged with violation of Section 36 of Republic Act No. 8791, in relation to Section 36 of Republic Act No. 7653.<sup>9</sup> The accusatory portions of the Informations reads:

Criminal Case No. 03-3631

*“That on or about December 26, 2001, in Makati City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, who were then officers of Unitrust Development Bank (UDB), as Director/Corporate Secretary, Director/Acting President, Director/Executive Vice-President and Board Member, respectively, conspiring together, confederating with, and mutually helping one another, did then and there, willfully, unlawfully and feloniously, obtained/granted/released a personal loan to their co-accused Winefredo T. Capilitan, a Director/Corporate Secretary of UDB in the amount of one million pesos (P1 million) Philippine Currency, thru UDB Manager’s check No. 8278, the net proceeds of which is P997,350.00, without the written approval of the majority of all the directors of UDB, excluding the director concerned and the required approval was not entered upon the records of the UDB and a copy of such entry was not reported transmitted to the appropriate supervising and examining department of the Bangko Sentral ng Pilipinas.*

CONTRARY TO LAW.”<sup>10</sup>

Criminal Case No. 03-3632

*“That on or about December 27, 2001, in Makati City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, who were then officers of Unitrust Development Bank (UDB), as Director/Corporate Secretary, Director/Acting President, Director/Executive Vice-President and Board Member, respectively, conspiring together, confederating with, and mutually helping one another, did then and there, willfully, unlawfully and feloniously, granted/released a loan amounting to thirteen million pesos (P13 million) Philippine Currency, to G Cosmos Philippines, Inc. as evidenced by Promissory Note No. CL-3731 dated December 27, 2001, signed by accused Winefredo T. Capilitan as President of G Cosmos Philippines, Inc. and in his personal capacity, without the written approval of the majority of all the directors of UDB, excluding the director concerned and the required approval was not entered upon the records of the UDB and a copy of such entry was not reported transmitted to the appropriate supervising and examining department of the Bangko Sentral ng Pilipinas.*

CONTRARY TO LAW.”<sup>11</sup>

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<sup>9</sup> Id. at 79.

<sup>10</sup> Id.

<sup>11</sup> Id at. 79–80

Upon arraignment, Apolinario and Magpantay pleaded not guilty to the charges. Meanwhile, Hagsisaka and Capilitan remained at large.<sup>12</sup>

After pre-trial and pending trial, the Bangko Sentral ng Pilipinas and Magpantay moved to discharge the latter as an accused to become a state witness. The Regional Trial Court granted the Joint Motion, and trial on the merits then ensued.<sup>13</sup>

The prosecution presented five witnesses: (1) Marcelo J. Vasquez (Vasquez), Vice President for Loans and Credit, Unitrust; (2) Magpantay, Vice President for Branch Operations, Unitrust; (3) Daniel Quilatan (Quilatan), Vice President for Human Resources Division, Unitrust; (4) Godofredo Dela Paz (Dela Paz), Bank Officer III, Bangko Sentral ng Pilipinas; and (5) Ramon D. Abellon, Jr. (Abellon), Administrative Services Officer IV, Record Custodian, Bangko Sentral ng Pilipinas.<sup>14</sup>

Based on their collective testimonies, Apolinario, Magpantay, Quilatan, and Vasquez were hired by Unitrust. They were each given one share of stock so they could participate in Unitrust's stockholders' meeting and be elected as members of Unitrust's Board of Directors.<sup>15</sup>

On December 18, 2001,<sup>16</sup> Unitrust held a Special Stockholder's Meeting,<sup>17</sup> wherein Vasquez, Apolinario, Capilitan, Magpantay, Evelyn Mansit (Mansit), Loreta Oba (Oba) and Quilatan, were elected as members of Unitrust's Board.<sup>18</sup>

On the same day, an Organizational Meeting of the Board of Directors was held during which the following events transpired:<sup>19</sup>

1. The Unitrust Board of Directors elected Apolinario as Acting Chairman and President;<sup>20</sup>
2. Capilitan was elected as Corporate Secretary;<sup>21</sup>
3. The by-laws provision on the nationality requirement for the Board of Directors was amended in that four Japanese and three Filipinos can sit as directors, instead of the previous composition of seven Filipinos;<sup>22</sup>

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<sup>12</sup> Id. at 80.

<sup>13</sup> Id.

<sup>14</sup> Id. at 80-81.

<sup>15</sup> Id. at 81.

<sup>16</sup> Id.

<sup>17</sup> Id. at 324.

<sup>18</sup> Id.

<sup>19</sup> Id. at 43.

<sup>20</sup> Id. at 81.

<sup>21</sup> Id.

<sup>22</sup> Id.

4. Magpantay, Quilatan, and Vasquez resigned as members of the Unitrust Board of Directors;<sup>23</sup>
5. Fujinori Tada (Tada),<sup>24</sup> Hagsisaka, and Kiyoshi Haneda (Haneda) were subsequently elected as directors;<sup>25</sup>
6. Hagsisaka was nominated and elected as the Executive Vice President.<sup>26</sup>

Subsequently, Capilitan applied for a personal loan of ₱1,000,000.00.<sup>27</sup>

Vasquez, who was then the Vice President of Loans and Credit, informed Hagsisaka that without a board resolution approving the loan, Capilitan's loan application violated the rule on DOSRI loans. Hagsisaka responded that Vasquez should approve Capilitan's loan, or else he would withhold their salaries and fire them. Vasquez hesitantly processed the ₱1,000,000.00 loan of Capilitan but insisted that he be furnished with a board resolution approving it.<sup>28</sup> Atty. Evelyn Gutierrez (Gutierrez), counsel of Unitrust, then showed Vasquez the Minutes of the Board Meeting dated December 19, 2001 (December 19, 2001 Minutes) where the Board of Directors allegedly approved Capilitan's ₱1,000,000.00 loan.<sup>29</sup> The December 19, 2001 Minutes was signed by Quilatan, Vasquez, Magpantay, Apolinario, and Hagsisaka.<sup>30</sup>

The proceeds of the ₱1,000,000.00 loan were released on December 26, 2001, through the signatures of Vasquez, Hagsisaka, and Capilitan. It was covered by Promissory Note No. CSM 3730.<sup>31</sup>

According to the prosecution witnesses, the December 19, 2001 Minutes was irregularly issued due to the following grounds: (1) there was no meeting held on December 19, 2001; (2) Magpantay, Quilatan and Vasquez could not have validly signed the minutes because they have already resigned as directors as of December 18, 2001; (3) Magpantay, Quilatan, and Vasquez signed the Minutes for fear of losing their jobs;<sup>32</sup> and (4) while the approval of Capilitan's ₱1,000,000.00 loan was purportedly made on December 19, 2001, the loan application form was only submitted on December 21, 2001.<sup>33</sup>

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<sup>23</sup> Id.

<sup>24</sup> Id. at 41.

<sup>25</sup> Id. at 81.

<sup>26</sup> Id. at 325.

<sup>27</sup> Id. at 81.

<sup>28</sup> Id. at 81-82.

<sup>29</sup> Id. at 82.

<sup>30</sup> Id.

<sup>31</sup> Id. at 231.

<sup>32</sup> Id. at 82.

<sup>33</sup> Id. at 326.

Later, Hagsaka informed Vasquez of another loan application for ₱27,000,000.00 and filed by G. Cosmos Philippines, Inc. (G. Cosmos), represented by its President, Capilitan. The Unitrust's Board allegedly approved the loan application on December 26, 2001 as evidenced by a Board Resolution (December 26, 2001 Resolution) signed by Magpantay, Apolinario, Capilitan, and Oba.<sup>34</sup>

On December 27, 2001, Capilitan received Manager's Check No. 8283 for ₱13,000,000.00, payable to G. Cosmos.<sup>35</sup> Apolinario, Capilitan and Hagsaka, released the ₱13,000,000.00 loan as evidenced by Promissory Note CL-3731 dated December 27, 2001.<sup>36</sup> The ₱13,000,000.00 represented the proceeds of the ₱27,000,000.00 loan.<sup>37</sup>

On the same day and after the two loans were released,<sup>38</sup> Bangko Sentral ng Pilipinas, through a letter from the Department of Thrift Banks and Non-Bank Financial Institutions, notified Apolinario, Hagsaka, and Capilitan that the two loans violated the DOSRI law.<sup>39</sup>

Dela Paz reviewed the documents relating to the two loans and discovered the following: (1) the loans did not contain the necessary supporting documents such as loan application/information sheet, disclosure statement, and board resolution approving the loans; and (2) both loans were effectively unsecured since they were only secured by Capilitan's Unitrust shares of stock.<sup>40</sup>

Abellon inspected the records of the two loans and found that the loans were not reported to the Bangko Sentral ng Pilipinas. However, he admitted that not all bank records were forwarded to him for permanent file.<sup>41</sup>

After Unitrust experienced a bank run, the Bangko Sentral ng Pilipinas suspended Unitrust's operations on January 4, 2002. Unitrust was placed under receivership and Philippine Deposit Insurance Company was directed by Bangko Sentral ng Pilipinas to take over.<sup>42</sup>

Following Unitrust's closure, Magpantay was approached by Apolinario and Gutierrez,<sup>43</sup> asking him to deliver a check to Philippine Deposit Insurance Company as payment for G. Cosmos' ₱13,000,000.00

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<sup>34</sup> Id. at 82.

<sup>35</sup> Id. at 83.

<sup>36</sup> Id. at 326.

<sup>37</sup> Id. at 239.

<sup>38</sup> Id. at 231.

<sup>39</sup> Id. at 326-327.

<sup>40</sup> Id. at 83.

<sup>41</sup> Id. at 235.

<sup>42</sup> Id. at 83.

<sup>43</sup> Id. at 233.

loan.<sup>44</sup> Thereafter, Apolinario asked Magpantay to sign the Minutes approving the ₱13,000,000.00 loan. Magpantay acceded thinking that the ₱13,000,000.00 loan would be regularized. He further admitted that the documentation for the ₱13,000,000.00 loan was antedated and was only prepared after the loan had been paid.<sup>45</sup>

Bangko Sentral ng Pilipinas then filed a case against the Unitrust directors and officers before the Department of Justice. The Department of Justice found probable cause against Capilitan, Hagsaka, Apolinario, Magpantay, Quilatan, and Vasquez for violation of DOSRI laws. Upon Bangko Sentral ng Pilipinas' motion for reconsideration, the Department of Justice exonerated Vasquez and Quilatan.<sup>46</sup>

For the defense, the testimonies of Apolinario and Magpantay were presented. Apolinario testified that he was hired as Vice President for Legal Affairs and was not a stockholder of Unitrust. He contended that the Stockholder's Meeting dated December 18, 2001 was simulated, and that he could not have been validly elected as Chairman of the Board as he was not a shareholder of Unitrust. He pointed to Vasquez and Atty. Gutierrez as the persons responsible for endorsing and recommending the loans' approval to the Unitrust Board.<sup>47</sup>

He admitted receiving the Bangko Sentral ng Pilipinas letter but only after the loans' proceeds had been released. He recalled that in his capacity as Unitrust's Acting President, he wrote a letter to the PDIC President offering his assistance in the investigation of Unitrust's bank run, which, according to him, showed good faith on his part.<sup>48</sup>

Meanwhile, Magpantay testified on the contents of his affidavits.<sup>49</sup>

In a Joint Resolution,<sup>50</sup> the Regional Trial Court found Apolinario guilty beyond reasonable doubt of the crimes charged. The dispositive portion reads:<sup>51</sup>

WHEREFORE, premises considered, this court is fully convinced to find the accused, JOSE LLAUDER APOLINARIO, JR., GUILTY, BEYOND REASONABLE DOUBT, AS CHARGED IN THE TWO INFORMATION. Thus, this court hereby imposes the following penalties against Jose Llauder Apolinario, Jr:

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<sup>44</sup> Id. at 327.

<sup>45</sup> Id. at 84 and 233.

<sup>46</sup> Id. at 83.

<sup>47</sup> Id. at 84.

<sup>48</sup> Id.

<sup>49</sup> Id. at 236.

<sup>50</sup> Id. at 229-240.

<sup>51</sup> Id. at 240.

Criminal Case No.	Penalty of Fine Only
03-3631	₱100,000.00
03-3632	₱200,000.00

In case of insolvency by accused Jose Llauder Apolinario, Jr., he shall be subject to a subsidiary personal liability imposed by Article 39 of the Revised Penal Code (Act No. 3815, as amended).

Cost de oficio.

**SO ORDERED.**<sup>52</sup>

In its ruling, the Regional Trial Court found that Apolinario violated Section 31<sup>53</sup> of Batas Pambansa Bilang 68 or the Corporation Code of the Philippines when he allowed the loans' release without the requisite board approval and documentation.<sup>54</sup> It noted that Apolinario signed the Minutes of the Board Meetings despite his knowledge that no board meetings were held approving the two loans.<sup>55</sup> Finally, it ruled that the prosecution established that Apolinario conspired with Capilitan in the commission of the offense.<sup>56</sup>

Apolinario moved for reconsideration and argued that the Regional Trial Court failed to appreciate the testimonies of the prosecution witnesses as exculpatory evidence to prove his innocence. He also questioned the existence of conspiracy and how the prosecution failed to present evidence that he was appointed as a Unitrust director.<sup>57</sup>

In its January 22, 2013 Order,<sup>58</sup> the Regional Trial Court denied Apolinario's motion for reconsideration.<sup>59</sup> It held that after reassessing the evidence on record and Apolinario's allegations, it found no reason to reverse its ruling.<sup>60</sup>

<sup>52</sup> Id. at 240.

<sup>53</sup> Corporation Code of the Philippines (1980), sec. 31 provides:  
SECTION 31. *Liability of directors, trustees or officers.* Directors or trustees who wilfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.

When a director, trustee or officer attempts to acquire or acquires, in violation of his duty, any interest adverse to the corporation in respect of any matter which has been reposed in him in confidence, as to which equity imposes a disability upon him to deal in his own behalf, he shall be liable as a trustee for the corporation and must account for the profits which otherwise would have accrued to the corporation.

<sup>54</sup> *Rollo*, p. 236.

<sup>55</sup> Id. at 239.

<sup>56</sup> Id. at 238.

<sup>57</sup> Id. at 242.

<sup>58</sup> Id. at 242-243. The January 22, 2013 Order in Criminal Cases Nos. 03-3631-32 was penned by Presiding Judge Cesar O. Untalan of the Regional Trial Court of Makati City, Branch 149.

<sup>59</sup> Id. at 242-243.

<sup>60</sup> Id. at 242.

Aggrieved, Apolinario appealed to the Court of Appeals.<sup>61</sup>

Apolinario insisted that the prosecution's witnesses offered exculpatory testimonies that absolved him from the charge.<sup>62</sup> He also averred that there was no documentary evidence proving that he was a Unitrust officer who obtained loans for himself or as Capilitan's representative.<sup>63</sup> He likewise argued that the prosecution failed to prove that he conspired with the other accused to commit the offense charged.<sup>64</sup>

Meanwhile, the prosecution countered that there was proof beyond reasonable doubt to convict Apolinario for violation of Section 36 of Republic Act No. 8791. It insisted that all the elements were present and that Apolinario conspired with Capilitan in committing the crime. It likewise contended that the appeal should be dismissed outright for failure to comply with the Rules of Court.<sup>65</sup>

In its assailed Decision,<sup>66</sup> the Court of Appeals sustained Apolinario's conviction, thus:

Considering the foregoing, the RTC correctly convicted the appellant for violation of Section 36 of R.A. No. 8791, in relation to Section 36 of R.A. No. 7653.

The RTC did not err in imposing the penalty of fine in the amount of Php 100,000.00 (in Civil Case No. 03-3631), and Php 200,000.00 (in Civil Case No. 03-3632), consonant with the penalties provided in Section 36, R.A. No. 7653.

We **DISMISS** the appeal.

**IT IS SO ORDERED.**<sup>67</sup>

The Court of Appeals ruled that all the elements of the crime charged were established. (1) Apolinario was a director and officer of Unitrust; (2) Apolinario conspired with Capilitan in obtaining the two loans from Unitrust;<sup>68</sup> (3) the two loans were approved and released without the valid written approval by the majority of Unitrust's Board;<sup>69</sup> and (4) the required approval of the Unitrust's Board was not entered into the records of Unitrust, and a copy of the approval was not transmitted to the Bangko Sentral ng Pilipinas' supervising and examining department.<sup>70</sup>

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<sup>61</sup> Id. at 335.

<sup>62</sup> Id. at 86.

<sup>63</sup> Id. at 87.

<sup>64</sup> Id. at 89.

<sup>65</sup> Id. at 91-92.

<sup>66</sup> Id. at 78-99.

<sup>67</sup> Id. at 98.

<sup>68</sup> Id. at 94-96.

<sup>69</sup> Id.

<sup>70</sup> Id. at 97-98.

Apolinario sought for reconsideration, but it was denied in the assailed Court of Appeals' Resolution.

Dissatisfied with the decision, Apolinario filed a Petition for Review before this Court.

Petitioner assails the lower courts' factual findings and insists that they erred in their appreciation of the evidence presented. He maintains that the case falls under the exceptions laid down in *Burgos v. Pascual*<sup>71</sup> and asks this Court to review the facts of the case.<sup>72</sup> Petitioner further argues that the Court of Appeals erred in not appreciating the prosecution witnesses' testimonies as exculpatory evidence of his guilt.<sup>73</sup> He likewise claims that the prosecution failed to prove the elements of the offense and contends that: (1) he is not a director of Unitrust;<sup>74</sup> (2) he is neither a bank borrower nor did he incur any contractual liability from the bank for himself or others;<sup>75</sup> (3) he could not have approved the loans as he was neither a stockholder nor a director but a mere employee of the bank;<sup>76</sup> and (4) assuming that the first three elements are present, Unitrust could no longer report because of its subsequent closure.<sup>77</sup>

In its March 13, 2019 Resolution, this Court directed the respondent People of the Philippines, through the Office of the Solicitor General, to file its Comment.<sup>78</sup>

In its Comment, respondent argues that the petition should be dismissed outright because it raises questions of fact beyond the ambit of a Rule 45 petition.<sup>79</sup> It claims that the Regional Trial Court correctly ruled that all the elements of the offense are present and have been established.<sup>80</sup> It also maintains that the facts surrounding the case proved the existence of conspiracy.<sup>81</sup>

The main issue for this Court's resolution is whether or not the prosecution proved beyond reasonable doubt the guilt of petitioner Jose Apolinario Jr. y Llauder for violation of Section 36 of Republic Act No. 8791, in relation to Section 36 of Republic Act No. 7653.

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<sup>71</sup> *Burgos v. Pascual*, 776 Phil 167 (2016). [Per J. Leonen, Second Division]

<sup>72</sup> *Rollo*, pp. 17-18.

<sup>73</sup> *Id.* at 18-26.

<sup>74</sup> *Id.* at 26.

<sup>75</sup> *Id.* at 57.

<sup>76</sup> *Id.* at 61-62.

<sup>77</sup> *Id.* at 62.

<sup>78</sup> *Id.* at 307-308.

<sup>79</sup> *Id.* at 336.

<sup>80</sup> *Id.* at 337-338.

<sup>81</sup> *Id.* at 338.

Subsumed in this issue are the following:

First, whether or not this Court may review the factual findings of the Regional Trial Court and the Court of Appeals; and

Second, whether or not the elements of the offense have been sufficiently established and proven by the prosecution.

The petition is unmeritorious.

## I

Settled is the rule that this Court is not a trier of facts. When a case is brought to this Court via a Petition for Review on Certiorari under Rule 45, the jurisdiction of this Court shall be limited to reviewing and correcting errors of law committed by the lower courts. This Court need not review the factual issues nor reexamine and reevaluate the evidence presented by the parties.<sup>82</sup> In *Philippine Savings Bank v. Sakata*,<sup>83</sup> this Court explained:

The general rule is that only questions of law or “those which ask to resolve which law applies on a given set of facts” may be raised in a Petition for Review on Certiorari under Rule 45 of the Rules of Court. Meanwhile, questions of fact — or those which require a review of the evidence to determine “the truth or falsehood of alleged facts” or involve the correctness of the lower courts’ appreciation of the evidence — are not proper in a Petition for Review on Certiorari. The function of the Court, not being a trier of facts, is limited to reviewing errors of law committed by the lower courts. Thus, it accords finality to the factual findings of the trial court, especially when such findings are affirmed by the appellate court.

While the general rule admits of exceptions, the party raising questions of fact must not only allege the exception but should also prove and substantiate that its case clearly falls under the exception.<sup>84</sup> (Citations omitted)

This rule is not without exception. Petitioner cites *Pascual*<sup>85</sup> wherein this Court enumerated the instances where a factual review of the lower court’s findings may be permitted:<sup>86</sup>

At present, there are 10 recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr.*:

<sup>82</sup> *Manotok Realty, Inc. v. CLT Realty Development Corp.*, 512 Phil. 679, 706 (2005) [Per J. Sandoval-Gutierrez, Third Division].

<sup>83</sup> G.R. No. 229450, June 17, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66271>> [Per J. Leonen, Third Division].

<sup>84</sup> *Id.*

<sup>85</sup> 776 Phil. 167 (2016) [Per J. Leonen, Second Division].

<sup>86</sup> *Rollo*, p.18.

(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a 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) 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 facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.<sup>87</sup> (Citations omitted)

Among these exceptions, petitioner cites the following: (1) there is grave abuse of discretion on the part of the Court of Appeals; (2) its conclusion is grounded on speculation, surmises, and conjectures; (3) its judgment is based on a misapprehension of facts; (4) "the findings of facts are conclusions without citation of specific evidence on which they are based"; and (5) the law allegedly violated has been incorrectly interpreted and applied.<sup>88</sup>

Petitioner fails to convince this Court that this case falls under any of the exceptions.

Petitioner hinges his arguments on how the testimonies of the prosecution witnesses allegedly exculpate him.<sup>89</sup> In his petition, he reproduced the affidavits and testimonies of the prosecution witnesses but did not explain how the Regional Trial Court and Court of Appeals erred in appreciating them.<sup>90</sup> He made sweeping statements but then failed to substantiate with cogent reasons why the enumerated exceptions apply to the case. In the absence of proof that the findings of the lower courts are manifestly erroneous, his bare allegations deserve no merit.<sup>91</sup>

This Court stresses that the assessment of the witnesses' credibility is a task best performed by the trial court. In *People v. Sapigao, Jr.*,<sup>92</sup> we explained:

It is well settled that the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its *unique opportunity to observe the witnesses firsthand and to note*

<sup>87</sup> *Pascual v. Burgos, et al.*, 776 Phil. 167, 182–183 (2016) [Per J. Leonen, Second Division].

<sup>88</sup> *Rollo*, pp. 18–19.

<sup>89</sup> *Id.* at 18–25.

<sup>90</sup> *Id.*

<sup>91</sup> *Parcon-Song v. Parcon*, G.R. No. 199582, July 7, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66525> > [Per J. Leonen, En Banc].

<sup>92</sup> 614 Phil 589 (2009) [Per J. Quisumbing, Second Division].

*their demeanor, conduct, and attitude under grilling examination.* These are important in determining the truthfulness of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. For, indeed, the emphasis, gesture, and inflection of the voice are potent aids in ascertaining the witness' credibility, and the trial court has the opportunity and can take advantage of these aids. These cannot be incorporated in the record so that all that the appellate court can see are the cold words of the witness contained in transcript of testimonies with the risk that some of what the witness actually said may have been lost in the process of transcribing. As correctly stated by an American court, "There is an inherent impossibility of determining with any degree of accuracy what credit is justly due to a witness from merely reading the words spoken by him, even if there were no doubt as to the identity of the words. However artful a corrupt witness may be, there is generally, under the pressure of a skillful cross-examination, something in his manner or bearing on the stand that betrays him, and thereby destroys the force of his testimony. Many of the real tests of truth by which the artful witness is exposed in the very nature of things cannot be transcribed upon the record, and hence they can never be considered by the appellate court."<sup>93</sup> (Emphasis supplied; citations omitted)

In any case, a review of the records of the case reveals that the Regional Trial Court and the Court of Appeals were correct in their appreciation of the evidence and that petitioner's guilt has been proven beyond reasonable doubt.

## II

Banking institutions are businesses deemed imbued with public interest. "It is an industry where the general public's trust and confidence in the system is of paramount importance."<sup>94</sup> In its declaration of policy, the General Banking Law recognizes the fiduciary nature of banks and imposes upon them the highest standards of integrity and performance. Section 2 of Republic Act No. 8791 states:

Section 2. *Declaration of Policy.* The State recognizes the vital role of banks providing an environment conducive to the sustained development of the national economy and the fiduciary nature of banking that requires high standards of integrity and performance. In furtherance thereof, the State shall promote and maintain a stable and efficient banking and financial system that is globally competitive, dynamic, and responsive to the demands of a developing economy.

This Court echoed this statement of policy in a long line of cases. In *Westmont Bank v. Dela Rosa-Ramos*:<sup>95</sup>

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<sup>93</sup> Id. at 599

<sup>94</sup> *Land Bank of the Phils. v. Kho*, 789 Phil. 306, 314-315 (2016) [Per J. Brion, Second Division].

<sup>95</sup> 698 Phil. 23 (2012) [Per J. Mendoza, Third Division].

[P]ublic interest is intimately carved into the banking industry because the primordial concern here is the trust and confidence of the public. This fiduciary nature of every bank's relationship with its clients/depositors impels it to exercise the highest degree of care, definitely more than that of the standard diligence required under the law.<sup>96</sup>

Likewise in *Philippine Savings Bank v. Sakata*:<sup>97</sup>

Banking institutions are imbued with public interest, and the trust and confidence of the public to them are of paramount importance. As such they are expected to exercise the highest degree of diligence, and high standards of integrity and performance.<sup>98</sup>

Like any other corporation, banks act through their directors, officers, and employees. It follows, therefore, that the degree of diligence required of banks also applies to their directors and officers. In *Westmont Bank* this Court explained:

Considering that banks can only act through their officers and employees, the fiduciary obligation laid down for these institutions necessarily extends to their employees. Thus, banks must ensure that their employees observe the same high level of integrity and performance for it is only through this that banks may meet and comply with their own fiduciary duty. It has been repeatedly held that "a bank's liability as an obligor is not merely vicarious, but primary" since they are expected to observe an equally high degree of diligence, not only in the selection, but also in the supervision of its employees. Thus, even if it is their employees who are negligent, the bank's responsibility to its client remains paramount making its liability to the same to be a direct one.<sup>99</sup> (Citations omitted)

To further safeguard the interest of the public, several restrictions and limitations on banks and its employees have been enacted, one of which is the restriction on DOSRI loans.

DOSRI loans refer to borrowings incurred by the bank's directors, officers, stockholders, and their related interests. The restriction is described under Section 36 of the General Banking Law, which states:

Section 36. *Restriction on Bank Exposure to Directors, Officers, Stockholders and Their Related Interests.*— No director or officer of any bank shall, directly or indirectly, for himself or as the representative or agent of others, borrow from such bank nor shall he become a guarantor, endorser or surety for loans from such bank to others, or in any manner be

<sup>96</sup> Id. at 30-31.

<sup>97</sup> G.R. No. 229450, June 17, 2020, < <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66271> > [Per J. Leonen, Third Division] citing *Bank of the Philippine Islands v. Casa Montessori Internationale*, 474 Phil. 298, 318 (2004) [Per J. Panganiban, First Division].

<sup>98</sup> Id.

<sup>99</sup> *Westmont Bank v. Dela Rosa-Ramos*, 698 Phil. 23, 31 (2012). [Per J. Mendoza, Third Division].

an obligor or incur any contractual liability to the bank except with the written approval of the majority of all the directors of the bank, excluding the director concerned: Provided, That such written approval shall not be required for loans, other credit accommodations and advances granted to officers under a fringe benefit plan approved by the Bangko Sentral. The required approval shall be entered upon the records of the bank and a copy of such entry shall be transmitted forthwith to the appropriate supervising and examining department of the Bangko Sentral[.]

In relation, Section 36 of Republic Act No. 7653 or the New Central Bank Act provides for the penalty for violation of the restriction on DOSRI loans:

Section 36. *Proceedings Upon Violation of This Act and Other Banking Laws, Rules, Regulations, Orders or Instructions.*— Whenever a bank or quasi-bank, or whenever any person or entity willfully violates this Act or other pertinent banking laws being enforced or implemented by the Bangko Sentral or any order, instruction, rule or regulation issued by the Monetary Board, the person or persons responsible for such violation shall unless otherwise provided in this Act be punished by a fine of not less than Fifty thousand pesos (P50,000) nor more than Two hundred thousand pesos (P200,000) or by imprisonment of not less than two (2) years nor more than ten (10) years, or both, at the discretion of the court.

Whenever a bank or quasi-bank persists in carrying on its business in an unlawful or unsafe manner, the Board may, without prejudice to the penalties provided in the preceding paragraph of this section and the administrative sanctions provided in Section 37 of this Act, take action under Section 30 of this Act.

*Soriano v. People*<sup>100</sup> explains the rationale behind this restriction:

The essence of the crime is becoming an obligor of the bank without securing the necessary written approval of the majority of the bank's directors. The DOSRI law was enacted as the Congress deemed it essential to impose certain restrictions on the borrowings undertaken by directors and officers in order to protect the public, especially the depositors. Such restriction is necessary because of the advantage these bank officers have because of their position, in acquiring loans or borrowing funds from the bank funds. Indeed, banks were not created for the benefit of their directors and officers; they cannot use the assets of the bank for their own benefit, except as may be permitted by law. (Citations omitted)

## II (A)

To sustain a conviction for violation of the DOSRI restriction, the prosecution must prove the existence of the following elements beyond reasonable doubt:

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<sup>100</sup> G.R. No. 240458, January 8, 2020. <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65980>> [Per J. J.C. Reyes, Jr., First Division].

. . . (1) the offender is a director or officer of any banking institution; (2) the offender, either directly or indirectly, for himself or as a representative or agent of another, performs any of the following acts: (a) he borrows any of the deposits or funds of such bank; or (b) he becomes a guarantor, indorser, or surety for loans from such bank to others; or (c) he becomes in any manner an obligor for money borrowed from bank or loaned by it; and (3) the offender has performed any of such acts without the written approval of the majority of the directors of the bank, excluding the offender, as the director concerned.<sup>101</sup> (Citations omitted)

The first and third elements being intertwined, this Court shall discuss them simultaneously.

Petitioner argues that the prosecution failed to establish with sufficient proof that he was a Director and Acting President of Unitrust. He enumerates the following circumstances which allegedly disprove his directorship: (1) the prosecution failed to present a stock certificate in his name or Unitrust's stock and transfer book to show that he owns a Unitrust stock; (2) no Notice of Election of Board of Directors was submitted to the Securities and Exchange Commission nor was a Notice of Election reported to the Bangko Sentral ng Pilipinas; (3) no General Information Sheet to prove his election was submitted to the Securities and Exchange Commission; and (4) no evidence was presented to show that Securities and Exchange Commission has approved Unitrust's amendments of its by-laws.<sup>102</sup>

He likewise claims that the testimonies of the prosecution witnesses prove that he was a mere employee and not a director of Unitrust.<sup>103</sup>

Petitioner's arguments are unmeritorious.

This Court stresses that the determination of whether the prosecution established petitioner's directorship is a factual issue beyond this Court's power of judicial review. The resolution of this question requires this Court to review the pieces of evidence presented by both parties. In *Pascual*, we emphasized that only questions of law may be raised in a Rule 45 petition. The factual findings of the lower court and Court of Appeals shall be deemed binding and conclusive upon this Court when supported by substantial evidence.<sup>104</sup>

Here, the Regional Trial Court found petitioner to be a *bona fide* Unitrust director after it considered the evidence presented by the parties,

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<sup>101</sup> Id.

<sup>102</sup> *Rolla*, pp. 35-38.

<sup>103</sup> Id. at 41-56.

<sup>104</sup> *Pascual v. Burgos*, 776 Phil. 167, 182 (2016) [Per J. Leonen, Second Division]

particularly those of petitioner's, thus:

. . . Moreover, accused Apolinario also put up the issue that this court must resolve the question of whether he is a bona fide director of Unitrust. Accused Apolinario miserably failed to deny and rebut the positive declaration of Mr. Quilatan that during the stockholders' meeting held on December 18, 2001; Mr. Quilatan nominated accused Apolinario, as the Acting Chairperson of Unitrust. And then, later, on the same Board Meeting, accused Apolinario was elected as the Acting President. Furthermore, Exhibits 11 and 15 clearly declared accused Apolinario, as Director and Acting President of Unitrust, respectively. Therefore, this [C]ourt hereby appreciates and holds against accused Apolinario his owned Exhibits 11 and 15. Finally, accused Apolinario declared and represented himself, as Acting President before Mr. Norberto C. Nazareno, Jr., President and CEO of PDIC, as declared and announced to the whole world, per his owned Exhibit 13. Therefore, such issue has been resolved by the very owned exhibits offered in evidence by accused Apolinario. In addition to his admission that he was duly elected Director of the bank during the stockholders' meeting held on December 18, 2001; and, then, he was duly elected as the Chairperson of Unitrust. . . Thus, Section 4, Rule 129 of the Revised Rules of Court is quite crystal clear on this point, it declares: "An Admission, verbal or written, made by party in the course of the proceedings in the same case, does not require proof."<sup>105</sup>

Further, it must be underscored that while petitioner insists that the board meetings were simulated, he never denied signing the Minutes of the Board Meetings approving the two loans.

Among the pieces of evidence presented by Apolinario was a copy of the minutes of the board meeting approving the ₱27,000,000.00 loan which was marked as Exhibit 11. After the Regional Trial Court compared Exhibit 11 with the same minutes of the board meeting presented by the prosecution marked as Exhibit S, it noticed that Exhibit 11 lacked Oba's signature, which proves that the ₱27,000,000.00 was released without the board's prior approval.<sup>106</sup> It held:

Finally, by way of testimonial evidence, the prosecution was able to prove and establish the following pertinent and relevant material facts:

1. Mr. Daniel Quilatan declared the P1.0 million loan was released without prior Board approval. . .

2. Mr. Elmer Magpantay also declared that the P1.0 million loan was released without Board approval including the P13.0 million loan. . .

Moreover, Exhibit S clearly manifested and demonstrated that the subject Minutes of the alleged Board meeting held on December 26, 2001

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<sup>105</sup> *Rollo*, p. 240.

<sup>106</sup> *Id.* at 238.

is not complete in order to make it valid as an act of the Board of Directors of Unitrust, because there are only three (3) signatures of the seven listed members of the Board, who signed it. The signature of the director-borrower Capilitan is excluded, as the subject law mandates and requires. However, the signature of Mr. Elmer Magpantay could not be considered because he had already resigned, as member of the Board prior to December 26, 2001 to give way for the Japanese investors. Moreover, Mr. Magpantay has declared, in open court, that he affixed his signature on Exhibit S after the P13.0 million loan had been paid to PDIC, hence the documentation of the P13.0 million loan was ante-dated. . . Furthermore, comparing Exhibit S with Exhibit 11, it appears that Exhibit 11 does not contain the signature of one, Lorena N. Oba, hence the exhibit (Exhibit 11) of accused Apolinario distinctly and clearly established the fact of lack of prior approval of the P13.0 million loan before its release. Finally, Exhibit P, the check evidencing the release of the P13.0 million loan was made on December 27, 2001. The check appeared to be duly signed by accused Apolinario. . . It must be noted that at this particular time of the life of Unitrust, the bank was experiencing a bank run, hence accused Apolinario, as Acting President, was indeed quite acting in unison and in cooperation with the implementation of the illegal and prohibitory act of borrowing by accused-director Capilitan. Accused Apolinario acted more than a conspirator, considering further his knowledge of the law. Accused Apolinario has participated directly in approving the two loans and the released of the same to accused Capilitan in clear violation of R.A. No. 8791, Section 36 thereof.<sup>107</sup> (Citations omitted.)

Finally, this Court notes that the December 19, 2001 Minutes approving the ₱1,000,000.00 loan contained the signatures of petitioner, Magpantay, Quilatan, and Vasquez. On the other hand, the signatures appearing on the December 26, 2001 Minutes approving the ₱27,000,000.00 loan were those of petitioner, Capilitan, Magpantay, and Oba. However, it must be recalled that Magpantay, Quilatan, and Vasquez resigned as directors on December 18, 2001.<sup>108</sup> As of the date of their resignation, they ceased to be part of the Unitrust's Board of Directors. Accordingly, the signatures of these individuals cannot be considered for purposes of the loans' approval. With the exclusion of their signatures, Unitrust's Board of Directors could not have validly approved the loans with only one or two out of the seven directors signing the resolutions.

## II (B)

Petitioner likewise insists that the second element is not present. He maintains that Quilatan and Magpantay's testimonies as well as Dela Paz's affidavit prove that he neither borrowed from the bank nor incurred any contractual liability from the bank for himself or for others. He alleges that Vasquez was the one who processed and approved the loans under Hagsisaka's threats.<sup>109</sup> He further maintains that the non-filing of a case

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<sup>107</sup> Id. at 237-238.

<sup>108</sup> Id at 97.

<sup>109</sup> Id. at 57-58.

against Vasquez has the “cloth of being a selective persecution and prosecution.”<sup>110</sup>

Petitioner’s arguments fail to persuade.

This Court stresses that under the Informations filed against petitioner, he is charged with committing the crimes in conspiracy with Capilitan. Thus, in determining whether the second element exists, this Court shall ascertain if conspiracy was duly established.

Article 8 of the Revised Penal Code states that “[a] conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.” Once conspiracy is established, all accused shall be deemed responsible for the acts of all conspirators. In *People v. Peralta*,<sup>111</sup> this Court explained:

Once an express or implied conspiracy is proved, all of the conspirators are liable as co-principals regardless of the extent and character of their respective active participation in the commission of the crime or crimes perpetrated in furtherance of the conspiracy because in contemplation of law the act of one is the act of one is the all. The foregoing rule is anchored on the sound principle that “when two or more persons unite to accomplish a criminal object, whether through the physical volition of one, or all, proceeding severally or collectively, each individual whose evil will actively contributes to the wrong-doing is in law responsible for the whole, the same as though performed by himself alone.” Although it is axiomatic that no one is liable for acts other than his own, “when two or more persons agree or conspire to commit a crime, each is responsible for all the acts of the others, done in furtherance of the agreement or conspiracy.”<sup>112</sup> (Citations omitted.)

In establishing conspiracy, the presentation of direct evidence is not necessary. Its existence may be proven by circumstantial evidence. In *People v. Albaran*,<sup>113</sup> we held:

*Conspiracy need not be proved by direct evidence. It may be inferred from the concerted acts of the accused, indubitably revealing their unity of purpose, intent and sentiment in committing the crime. Thus, it is not required that there was an agreement for an appreciable period prior to the occurrence, it is sufficient that the accused acted in concert at the time of the commission of the offense and that they had the same purpose or common design, and that they were united in its execution.*<sup>114</sup> (Emphasis supplied; citations omitted)

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<sup>110</sup> Id. at 60.

<sup>111</sup> 134 Phil. 703 (1968) [Per Curiam, En Banc].

<sup>112</sup> Id. at 718.

<sup>113</sup> G.R. No. 233194, September 14, 2020. <  
<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/166477>> [Per C.J. Peralta, First Division].

<sup>114</sup> Id.

This Court agrees with the Regional Trial Court and the Court of Appeals that petitioner acted in conspiracy with Capilitan.<sup>115</sup>

First, petitioner does not dispute that Capilitan, a Unitrust director, obtained two loans from Unitrust.<sup>116</sup> While petitioner denies participation in the loan's approval and insists that it was Vasquez who approved the loan,<sup>117</sup> it has been established that Vasquez approved the loans under duress.<sup>118</sup> Further, petitioner admitted that the Vice President for Loans and Credit merely recommends a loan's approval and the final decision rests on the board.<sup>119</sup> Accordingly, since petitioner signed the minutes of the board meetings during which the loans were allegedly approved, he had the "principal and indispensable role" in their approval and release.<sup>120</sup>

Second, by reproducing the prosecution's witnesses' testimonies in his petition, petitioner admitted that after the Bangko Sentral ng Pilipinas investigation and the bank run, he contacted Magpantay to pay Philippine Deposit Insurance Company the ₱13,000,000.00 loan of G. Cosmos.<sup>121</sup>

Finally, as the Regional Trial Court<sup>122</sup> and the Court of Appeals correctly pointed out, petitioner is a lawyer who is presumed to know the law.<sup>123</sup> This notwithstanding, he signed the minutes of the board meetings and participated in the preparation of the remedial documents after the loans had been released.<sup>124</sup>

## II (C)

Under the General Banking Law, for a DOSRI loan to be valid, it is necessary that the written approval of the majority of the bank's directors be entered into the bank's records. In addition, a copy of the entry must be transmitted to the appropriate supervising and examining department of the Bangko Sentral ng Pilipinas.

Here, petitioner does not deny that the loans were not reported to the Bangko Sentral ng Pilipinas. However, he claims that they could not have met this requirement because of Bangko Sentral ng Pilipinas and Philippine Deposit Insurance Company's subsequent takeover of Unitrust. He argues that the takeover effectively dissolved Unitrust's operations, making it

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<sup>115</sup> *Rollo*, p. 96 and 239.

<sup>116</sup> *Id.* at 91.

<sup>117</sup> *Id.* at 59-60.

<sup>118</sup> *Id.* at 82.

<sup>119</sup> *Id.* at 60.

<sup>120</sup> *Id.* at 96.

<sup>121</sup> *Id.* at 61.

<sup>122</sup> *Id.* at 239.

<sup>123</sup> *Id.* at 96.

<sup>124</sup> *Id.* at 238.

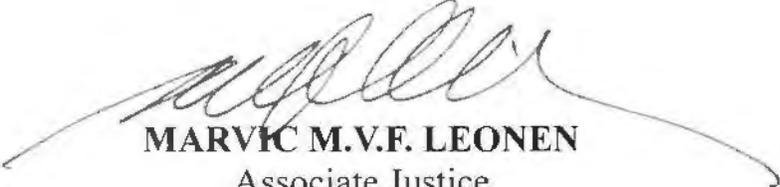
impossible for them to report the loans to Bangko Sentral ng Pilipinas.<sup>125</sup> He also maintains that since Dela Paz was then assigned as an examiner at Unitrust from October 2001 until January 2002, he should have been aware of the loans' existence.<sup>126</sup>

This argument is bereft of merit.

It must be stressed that the responsibility of entering upon its records the required written approval and of transmitting a copy of the entry to the Bangko Sentral ng Pilipinas is on the subject bank, which in this case is Unitrust. While Dela Paz, a Bangko Sentral ng Pilipinas Assisting Examiner, was then assigned at Unitrust at the time material to this case, his job was to monitor the transfer of ownership from the previous owners of Bank of Makati to the Japanese group. Accordingly, his presence at Unitrust alone cannot equate to his knowledge of the circumstances surrounding the two loans. Further, assuming that Dela Paz had acquired information regarding these loans, Unitrust still had the duty to comply with the reportorial requirements of the law.<sup>127</sup>

**WHEREFORE**, the Petition for Review on Certiorari is **DENIED**. The assailed Court of Appeals' July 10, 2018 Decision and October 25, 2018 Resolution in CA-G.R. CR No. 35584 are **AFFIRMED**. Petitioner Jose Apolinario, Jr. y Llauder is **CONVICTED** of violating Section 36 of Republic Act No. 8791, otherwise known as The General Banking Law of 2000, in relation to Section 36 of Republic Act No. 7653, otherwise known as The New Central Bank Act. He is **ORDERED** to pay a fine of ₱100,000.00 in Criminal Case No. 03-3631 and ₱200,000.00 in Criminal Case No. 03-3632, with subsidiary imprisonment in case of insolvency.

**SO ORDERED.**

  
**MARVIC M.V.F. LEONEN**  
Associate Justice

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<sup>125</sup> Id. at 62.

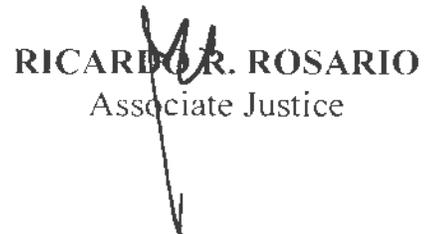
<sup>126</sup> Id. at 32–33.

<sup>127</sup> Id. at 235.

WE CONCUR:

  
**ROSMARI D. CARANADA**  
Associate Justice

  
**RODIL N. ZALAMEDA**  
Associate Justice

  
**RICARDO R. ROSARIO**  
Associate Justice

  
**JAPAR B. DIMAAMPAO**  
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.

  
**MARVIC M.V.F. LEONEN**  
Associate Justice  
Chairperson

**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.

  
**ALEXANDER G. GESMUNDO**  
Chief Justice