NELSON T. UY, PETITIONER, VS. PEOPLE OF THE PHILIPPINES RESPONDENT.

Ponente: INGLES, G. T., J.

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INGLES, G. T., J.:

The Case

This is a petition for review filed by petitioner Nelson Uy of the Decision[1] dated September 24, 2010 of the Regional Trial Court, Seventh Judicial Region, Branch 11, Cebu City in Criminal Case Nos. CBU-83714 to CBU-83730 which affirmed with modification the Decision[2] dated October 5, 2007, of the Municipal Trial Court in Cities, Seventh Judicial Region, Cebu City, Branch 4, finding petitioner guilty beyond reasonable doubt of the crime of Violation of BP Blg. No. 22 on fifteen (15) counts while acquitting him in Crim. Case Nos. 117104-R and 117113-R.

The Facts

Version of the Prosecution

Petitioner Nelson T. Uy issued seventeen (17) checks and delivered them to Jose Dy at the latter's residence at President Roxas St. Kasambagan, Cebu City drawn against Equitable PCI Bank, Cebu Borromeo-Magallanes Branch.

On November 10, 2000, petitioner and his wife, Magdalena Uy, executed a promissory note undertaking to pay their indebtedness in the amount of P 470,000.00 with 4% interest per month.

Upon presenting said checks for payment, these were dishonored by the drawee bank for the reason that the checks were either drawn against insufficient funds or his account was closed as reflected in the subject checks and the debit memo check return slips.

After the dishonor of the checks, demand letters dated August 7, 2001 and March 25, 2002 were sent to petitioner and received by him as evidenced by a certification from the Philippine Postal Corporation and letter of accused-appellant's counsel, Atty. Roland Mangubat addressed to Jose Dy's lawyer, Atty. Joey Luis B. Wee acknowledging receipt of the two demand letters and at the same time informing the latter that petitioner had filed a petition for voluntary insolvency with the RTC, Cebu on August 13, 2001.

The Charge

In the separate, similarly-worded Informations (except for the dates of commission, the check numbers, the dates and the amounts of said checks) filed against him, petitioner was charged with the crime of BP Blg. 22 on seventeen (17) counts, as follows:

> "That sometime in the month of November 2000, and for sometime subsequent thereto, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, knowing at the time of issue of the check, he do (sic) have sufficient funds in or credit with the drawee bank for the payment of such check

> in full upon its presentment, with deliberate intent, with intent of gain and of causing damage, did then and there issue, make or draw Equitable PCI Bank Check No. 0419704 dated February 10, 2001 in the amount of P50,000.00 payable to Jose Dy, which check was issued in payment of an obligation of said accused, but when said check was presented with the bank, the same was dishonored for reason "ACCOUNT CLOSED" and despite notice and demands made to redeem or make good such check, said accused failed and refused and up to the present time still fails and refuses to do so, to the damage and prejudice of Jose Uy in the amount of aforestated.
>
> CONTRARY TO LAW."

The particulars of the Criminal Case Nos. with the respective checks, are enumerated as follows:

CRIM CASE NO. CHECK NO. DATE AMOUNT

Crim Case No. 117098-R

0419704

February 10, 2001

P 50,000.00

Crim Case No. 117099-R

0419706

April 10, 2001

P 50,000.00

Crim Case No. 117100-R

0419708

April 10, 2001

P 50,000.00

Crim Case No. 117101-R

0419710

May 10, 2001

P 50,000.00

Crim Case No.117102-R

0419712

June 10, 2001

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P 50,000.00

Crim Case No. 117103-R

0419704

July 10, 2001

P 50,000.00

Crim Case No. 117104-R

0419716

August 10, 2001

P 50,000.00

Crim Case No. 117105-R

0419718

September 10, 2001

P 50,000.00

Crim Case No. 117106-R

0419702

January 10, 2001

P 50,000.00

Crim Case No. 117107-R

0419705

February 10, 2001

P 14,306.31

Crim Case No. 117108-R

0419707

March 10, 2001

P 13,226.34

Crim Case No. 117109-R

0419709

April 10, 2001

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P 10,799.73

Crim Case No. 117110-R

0419711

March 10, 2001

P 10,799.73

Crim Case No. 117111-R

0419713

June 10, 2011

P 6,799.83

Crim Case No. 117112-R

0419715

July 10, 2001

P 4,959.88

Crim Case No. 117113-R

0419717

August 10, 2001

P 2,893.26

Crim Case No. 117114-R

0419703

January 10, 2001

P 4,959.88

Subsequently, petitioner was arraigned and pleaded “not guilty” to the crimes charged.

Trial ensued. The prosecution and the defense presented their respective pieces of evidence.

Version of the Defense

Petitioner narrated that he is engaged in the business of selling surplus spare parts in Cebu City and had a long standing business relation with complainant Jose Dy who is in the business of rediscounting checks. He used to refer persons to Jose Dy who wanted to have their checks rediscounted which included a certain Richard Ellis.

Under an agreement with Jose Dy, petitioner would be entitled to a commission for every client he referred to the former. He was also required to issue his own checks to guarantee the check of the clients he referred to Jose Dy. Petitioner admitted issuing seventeen checks to replace a check in the amount of P 470,000.00 which he issued to the latter that bounced. Petitioner issued said checks after Jose Dy went to his office and asked him to execute a

promissory note which included therein the interest. Petitioner's wife also signed the promissory note because Jose Dy threatened to file a case against him if he refused. He added that he did not receive the amount from Jose Dy when he issued the checks amounting to P 470,000.00, said checks being a guarantee for other checks in the same amount which were rediscounted by Jose Dy. Petitioner claimed that it was Mr. Ellis who received the amount. The total face value of the seventeen checks which he subsequently issued covered the amount of the check which was replaced plus the 4% monthly interest thereon.

Petitioner averred that all the checks he issued to Joel Dy bounced because Mr. Ellis's customer who issued the check did not give him funds therefor. Jose Dy and Mr. Ellis signed a contract in the office of Atty. Wee wherein Mr. Ellis agreed to replace all the checks which bounced in relation to the checks amounting to P 470,000.00 issued by a costumer of Mr. Ellis. Said contract freed him from any liability for the 17 checks he issued which bounced. Further, petitioner posited that Jose Dy wanted to recover twice for the same transaction from him and Mr. Ellis when the complainant also filed cases against Mr. Ellis for the replacement checks which bounced.

Petitioner attested that he and his wife filed a petition for voluntary insolvency with the RTC wherein they enumerated the names of the creditors which included therein Jose Dy and a list of checks which he issued to the latter,

THE MTCC Ruling

On October 5, 2007, the Municipal Trial Court in Cities, Seventh Judicial Region, Cebu City, Branch 4, rendered a Decision,[3] convicting petitioner on fifteen (15) counts of Violation of BP No. 22, in Criminal Case Nos. CBU-83714 to CBU 83730, the dispositive portion of which reads:

> "WHEREFORE, foregoing considered, accused is hereby declared GUILTY beyond reasonable doubt of violation of BP Blg. 22 on fifteen counts, all the elements of the offense having been established. He is hereby sentenced to FOUR (4) months of imprisonment for each count.
>
> He is ACQUITTED in Crim Case Nos. 117104-R and 117113-R in view of the failure of the prosecution to establish the element of knowledge of the insufficiency of his funds or credit with the drawee bank.
>
> Further, he is hereby ordered to pay the private complainant civil liability in the amount of the face value of the seventeen (17) checks subject hereof plus legal interest of 12%per annum from August 10, 2001 until fully paid and the amount of P5,870.00 for the legal fees paid by the complainant in filing these cases.
>
> SO ORDERED."

Dismayed, petitioner filed an appeal with the Regional Trial Court, Seventh Judicial Region, Branch 11, Cebu City.

The RTC Ruling

On September 24, 2010, the RTC, Branch 11, Cebu City denied the appeal and affirmed with modification the MTCC Decision, the pertinent portion of which is as follows:

> "WHEREFORE, premises considered, the Decision of Municipal Trial Court in Cities, Branch 4, Cebu City, is affirmed with modification. The penalty of imprisonment is modified to penalty of fine in an amount equal to the amount of each check issued but in no case shall exceed the total amount of Php 200,000.00 with the commensurate subsidiary imprisonment in case of insolvency.
>
> SO ORDERED."

Petitioner filed a Motion[4] for Reconsideration which was denied in an Order[5] dated February 16, 2011.

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Aggrieved, petitioner now comes to this Court seeking a reversal of his conviction and assigning the following errors:

> I.“WHETHER OR NOT THE HONORABLE REGIONAL TRIAL COURT ERRED IN PARTIALLY AFFIRMING THE DECISION OF THE MUNICIPAL TRIAL COURT FINDING CONVICTING (SIC) ACCUSED-APPELLANT FOR VIOLATION OF BP BLG 22;
>
> II.WHETHER OR NOT THE HONORABLE REGIONAL TRIAL COURT ERRED IN PARTIALLY AFFIRMING THE DECISION OF THE MUNICIPAL TRIAL COURT FINDING THE ACCUSED-APPELLANT CIVILLY LIABLE ON ALL COUNTS; and
>
> III.WHETHER OF NOT THE HONORABLE TRIAL COURT ERRED FOR ITS FAILURE TO DETERMINE NOVATION.”

Petitioner's Contentions:

The RTC erred in convicting petitioner for violation of BP Blg No. 22 because he issued the subject checks merely as a guaranty and not as payment to the complainant; (2) the elements of BP Blg No. 22 were not sufficiently proven by the prosecution and (3) that novation had already absolved petitioner from criminal liability.

THIS COURT'S RULING:

I.
Elements of BP Blg 22
established by the prosecution

Petitioner contends that his conviction is improper because not all the elements for violation of BP 22 were proven by the prosecution. First, petitioner asserts that the subject checks were not issued on account or for value but were issued to private complainant to replace a check he had issued to the latter worth P470,000.00. He stresses that he issued the checks only as a guaranty for a customer check of Richard Ellis. Petitioner posits that while it has been held in many cases that guaranty checks still fall within the contemplation of BP 22, these do not find application in the cases at bar. He explained that he issued the 17 checks after complainant came to his office and asked him to execute a promissory note that included the amount of the interest due. He had no choice but to sign the promissory note with his wife and thereafter issued the 17 checks upon threats of the complainant. Said total amount of the checks were to cover the amount of P470,000.00 plus 4% interest per month. Petitioner emphasizes that it was Richard Ellis who received the amount of P470,000.00 and not him. According to petitioner, these facts were not even rebutted by the prosecution.

Petitioner maintains that complainant knew all along that he never received the consideration and that the checks he issued were not for his account. But Jose Dy still encashed the check petitioner initially issued.

We are not persuaded.

In order to be liable for violation of BP Blg. 22, the following elements must be present:

1. a person makes or draws and issues a check to apply on account or for value;
2. the person who makes or draws and issues the check knows at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the full payment of the check upon its presentment; and
3. the check is subsequently dishonored by the drawee bank for insufficiency of funds or credit, or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment. [6]

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Here, it has been established by the prosecution that the promissory note executed by petitioner and his wife constitutes as proof that the checks he issued to complainant were issued on account or for value as payment for the debt he incurred. A promissory note in the hands of the creditor, after all, is proof of indebtedness rather than proof of payment.[7] Thus, the first element is satisfied.

Another essential element for violation of BP 22 is the drawer's knowledge that he has insufficient funds or credit with the drawee bank to cover his check. Because this involves a state of mind that is difficult to establish, BP 22 creates the prima facie presumption that once the check is dishonored, the drawer of the check gains knowledge of the insufficiency, unless within five banking days from receipt of the notice of dishonor, the drawer pays the holder of the check or makes arrangements with the drawee bank for the payment of the check. The service of the notice of dishonor gives the drawer the opportunity to make good the check within those five (5) days to avert his prosecution for violating BP 22.[8]

In the instant case, the prosecution submitted in evidence the registry return cards, certification from the post office, receipt of notice of dishonor and letter dated August 15, 2001 addressed to Atty. Joey Luis Wee sent by Atty. Roldan Mangubat who signed it as accused-appellant's counsel. In the said letter, Atty. Mangubat informed Atty. Wee that petitioner referred to him the two letters which he sent, one of which demanded from him the payment for the checks in the amount of P531,544.89. The failure of petitioner to pay until now the value of the checks despite receiving notice of dishonor and that the subject checks were presented for payment within ninety (90) days from their due dates give rise to the prima facie presumption of his knowledge of insufficiency of funds or credit in the drawee bank. Therefore, we can conclude that petitioner knew fully well that he did not have sufficient funds with the drawee bank for the full payment of the checks issued upon their presentment.

Lastly, the checks issued by petitioner were dishonored for the reason that they were drawn against insufficient funds and/or his account was closed. There is no dispute that petitioner signed the checks and that the bank dishonored the checks because of insufficient funds. Notice of dishonor was properly given, but he failed to pay the checks or make arrangements for their payment within five (5) days from notice. The prima facie presumption that the drawer has knowledge of the insufficiency of funds or credit at the time of the issuance, or on the presentment for payment, of the check may be rebutted by payment of the value of the check either by the drawer or by the drawee bank within five banking days from notice of the dishonor given to the drawer. The payment thus becomes a complete defense regardless of the strength of the evidence offered by the prosecution. It must be presupposed, then, that the issuer received a notice of dishonor and that, within five days from receipt thereof, he failed to pay the amount of the check or to make arrangement for its payment. [9] In the case at bar, petitioner failed to pay the checks or make arrangements for his payment within five (5) days from notice.

With all the above elements duly proven, petitioner cannot escape the civil and criminal liabilities that BP 22 imposes for its breach.

II. Checks issued as mere guaranty
is immaterial in holding the accused liable under BP

Anent petitioner's submission that he merely issued the subject checks as guaranty for the check issued by Mr. Ellis cannot free him from liability under BP 22. We are guided by the ruling in Ngo vs People, GR No. 155815, July 14, 2004 wherein the High Court declared that the cause or reason for the issuance of a check is inconsequential in determining criminal culpability under BP 22.

Verily, in Ong v. People, G.R. No. 139006, 27 November 2000, the Supreme Court held that what the law punishes is the issuance of a bouncing check, not the purpose for which it was issued nor the terms and conditions relating to its issuance. The mere act of issuing a worthless check is malum prohibitum, provided the other

elements of the offense are properly proved.[10]

In effect, the fact that petitioner issued the subject checks knowing the inadequacy of his funds in the bank to cover said checks makes him liable under B.P. 22. In Meriz v. People, G.R. No. 134498, 13 November 2001, the Supreme Court explained that:

> "The Court has consistently declared that the cause or reason for the issuance of the check is inconsequential in determining criminal culpability under BP 22. The Court has since said that 'a check issued as an evidence of debt, although not intended for encashment, has the same effect like any other check' and must thus be held to be 'within the contemplation of BP 22.' Once a check is presented for payment, the drawee bank gives it the usual course whether issued in payment of an obligation or just as a guaranty of an obligation. BP 22 does not concern itself with what might actually be envisioned by the parties, its primordial intention being to instead ensure the stability and commercial value of checks as being virtual substitutes for currency. It is a policy that can easily be eroded if one has yet to determine the reason for which checks are issued, or the terms and conditions for their issuance, before an appropriate application of legislative enactment can be made. The gravamen of the offense under BP 22 is the act of making or issuing a worthless check or a check that is dishonored upon presentment for payment. The act effectively declares the offense to be one of malum prohibitum. The only valid query then is whether the law has been breached, i.e., by the mere act of issuing a bad check, without so much regard as to the criminal intent of the issuer."

Hence, petitioner's defense that he issued the subject checks merely as a guaranty of an obligation cannot help his cause because it is still within the contemplation of BP 22.

III.
Novation does not absolve
criminal liability under BP 22

The following requisites must be present for novation to take place: (1) a previous valid obligation; (2) agreement of all the parties to the new contract; (3) extinguishment of the old contract; and (4) validity of the new one.[11] Not all the requisites are present in the circumstances of this case.

Well-settled is the rule that novation is not a mode of extinguishing criminal liability and criminal liability, once incurred, cannot be compromised. Indeed, there was no novation under the circumstances of the case, and even if there was, petitioner's liability under B.P. Blg. 22 was not thereby extinguished. Novation may prevent the rise of criminal liability as long as it occurs prior to the filing of the criminal information in court. In other words, novation does not extinguish criminal liability but may only prevent its rise.[12]

Thus, any partial payment of the indebtedness or a compromise made between the parties is not a valid defense against the Violation of BP 22, the gravemen of the crime being the issuance of worthless checks.[13] Too, it was not even shown that there was an unmistakable intent to extinguish the original relationship. Such intent cannot be inferred from the partial satisfaction or payment of the amount agreed upon in the contract or agreement. In any event, novation could not extinguish petitioner's criminal liability for a public offense.

IV.
Penalties

In Jao Yu vs People, GR No. 134172, September 20, 2004, the Supreme Court elucidated on the ramifications of Administrative Circular No. 12-2000. In Administrative Circular No. 13-2001, issued on February 14, 2001, the High Court explained the imposition of imprisonment for violations of Batas Pambansa Blg. 22 and subsidiary imprisonment upon the accused found guilty but is unable to pay the fine he is sentenced to pay. In clarifying the imposition of subsidiary imprisonment, the Circular states that if the accused is unable to pay the fine imposed by

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the trial court, there is no legal obstacle to the application of the Revised Penal Code provisions on subsidiary imprisonment. To quote AC No. 13-2001, thus:

> "The clear tenor and intention of Administrative Circular No. 12-2000 is not to remove imprisonment as an alternative penalty, but to lay down a rule of preference in the application of the penalties provided for in B.P. Blg. 22.
>
> The pursuit of this purpose clearly does not foreclose the possibility of imprisonment for violators of B.P. Blg. 22. Neither does it defeat the legislative intent behind the law.
>
> Thus, Administrative Circular No. 12-2000 establishes a rule of preference in the application of the penal provisions of B.P. Blg. 22 such that where the circumstances of both the offense and the offender clearly indicate good faith or a clear mistake of fact without taint of negligence, the imposition of a fine alone should be considered as the more appropriate penalty. Needless to say, the determination of whether the circumstances warrant the imposition of a fine alone rests solely upon the Judge. Should the Judge decide that imprisonment is the more appropriate penalty, Administrative Circular No. 12-2000 ought not be deemed a hindrance.
>
> It is, therefore, understood that:
>
> 1. Administrative Circular 12-2000 does not remove imprisonment as an alternative penalty for violations of B.P. Blg. 22;
> 2. The Judges concerned may, in the exercise of sound discretion, and taking into consideration the peculiar circumstances of each case, determine whether the imposition of a fine alone would best serve the interests of justice or whether forbearing to impose imprisonment would depreciate the seriousness of the offense, work violence on the social order, or otherwise be contrary to the imperatives of justice;
> 3. Should only a fine be imposed and the accused be unable to pay the fine, there is no legal obstacle to the application of the Revised Penal Code provisions on subsidiary imprisonment."

Applying the said provisions, We deem it appropriate to impose a fine equal to the amount of the check issued in each of these fifteen (15) cases with the commensurate subsidiary imprisonment in case of insolvency. Likewise, petitioner is ordered to indemnify Jose Dy, the total amount of the face value of the fifteen subject checks.

WHEREFORE, the appeal is DENIED. The Decision dated September 24, 2010 of the Regional Trial Court, Seventh Judicial Region, Branch 11, Cebu City in Criminal Case Nos. CBU-83714 to CBU-83730 is AFFIRMED with MODIFICATION to state:

Crim Case No. 117098-R to pay a fine of P50,000.00 and indemnify Jose Dy P 50,000.00;
Crim Case No. 117099-R to pay a fine of P50,000.00 and indemnify Jose Dy P 50,000.00;
Crim Case No. 117100-R to pay a fine of P50,000.00 and indemnify Jose Dy P 50,000.00;
Crim Case No. 117101-R to pay a fine of P50,000.00and indemnify Jose Dy P 50,000.00;
Crim Case No. 117102-R to pay a fine of P50,000.00 and indemnify Jose Dy P 50,000.00;
Crim Case No. 117103-R to pay a fine of P50,000.00 and indemnify Jose Dy P 50,000.00;
Crim Case No. 117105-R to pay a fine of P 50,000.00 and indemnify Jose Dy P 50,000.00;
Crim Case No. 117106-R to pay a fine of P 50,000.00 and indemnify Jose Dy 50,000.00;
Crim Case No. 117107-R to pay a fine of P 14,306.31 and indemnify Jose Dy P 14,306.31;
Crim Case No. 117108-R to pay a fine of P 13,226.34 and indemnify Jose Dy P 13,226.34;
Crim Case No. 117109-R to pay a fine of P 10,799.73 and indemnify Jose Dy P 10,799.73;
Crim Case No. 117110-R to pay a fine of P 10,799.73 and indemnify Jose Dy P 10,799.73;
Crim Case No. 117111-R to pay a fine of P 6,799.83 and indemnify Jose Dy P 6,799.83;
Crim Case No. 117112-R to pay a fine of P 4,959.88 and indemnify Jose Dy P 4,959.88; and
Crim Case No. 117114-R to pay a fine of P 4,959.88 and indemnify Jose Dy P 4,959.88

and to suffer subsidiary imprisonment in case of non-payment of the fine in each of the above-entitled cases.

Costs against petitioner.

SO ORDERED.

Maxino, P.A.A., and Francisco, R.C., JJ., concur.

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[1] Rollo, p. 30

[2] Rollo, p. 36

[3] Rollo, p. 36

[4] Rollo, p. 39

[5] Rollo, p. 35

[6] Mitra vs People, GR No. 191404, July 5, 2010

[7] BPI vs Royeca, 559 SCRA 207

[8] Sia vs People, GR No. 149695, April 28, 2004

[9] Abarques vs Court of Appeals, GR No. 148557, August 7, 2003

[10] Caras v. CA, G.R. No. 129900, 2 October 2001,

[11] Isip vs People, GR No. 170298, June 26, 2007

[12] Diongzon vs Court of Appeals, GR No. 114823, December 23, 1999

[13] Medalla vs Laxa GR No. 193362, December 18, 2012

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