

JUANITA NEGRE, PETITIONER-APPELLANT, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT-APPELLEE.

Ponente: QUIJANO-PADILLA, J.

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This is a petition for review[1] under Rule 42 of the Rules of Court seeking the reversal of the Decision[2] dated April 30, 2013 of the Regional Trial Court (RTC), Branch 58, Cebu City in Criminal Cases Nos. CBU-96571, CBU-96572, and CBU-96573, which affirmed in toto the Decision[3] of the Municipal Trial Court in Cities (MTCC) finding the Juanita Negre (“petitioner Negre”) guilty of three counts of violation of Batas Pambansa Blg. 22 (BP 22), otherwise known as the Bouncing Checks Law.

Private complainant, Rafael Marigomen, Jr. (“Rafael”) is in the business of lending money and rediscounting of checks. One of his clients was Cresencia M. Lumayag (“Cresencia”). Rafael's transactions with Cresencia involving rediscounting of checks had gone well until he received from the latter the following Bank of Cebu checks (“subject checks”):

Check Number

Amount

Date of Check

1707300

P59,000.00

- July 25, 2003

1711599

P41,500.00

- August 8, 2003

1711600

P38,000.00

- August 10, 2003

Total

P138,500.00

Cresencia informed Rafael the subject checks were issued by petitioner Negre for value.

However, upon deposit of the subject checks after they matured, Rafael was surprised that the checks were dishonored for the reason of “Account Closed”. Hence, Rafael contacted Cresencia and petitioner Negre to

inform them of the fact of dishonor. He demanded from them for replacement of the checks, but the two refused.

Rafael, thus, sent notices of dishonor to Cresencia and petitioner Negre. When the notice was handed to petitioner Negre, she refused to receive the same.

Because his demands were unheeded, Rafael was left without recourse but to file a complaint against petitioner Negre.

Three Informations[4] were filed against petitioner Negre. Except for the check numbers, dates and amounts of the checks issued by petitioner Negre, each Information uniformly charged as follows:

“That in July 2003, and for sometime prior or 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 and that he/she did not 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 The Bank of Cebu Check bearing No. _____* dated _____** in the amount of P_____*** payable to Rafael G. Marigomen, Jr. which check was issued on account or for value, but when said check was presented to the drawee bank for encashment, the same was dishonored for [the] reason of “Account Closed”, and despite notice of dishonor and demands said accused failed and refused and up to the present still fails and refuses to redeem said check, to the damage and prejudice of said Rafael G. Marigomen, jr. in the amount aforestated.

CONTRARY TO LAW.”[5]

During trial, petitioner Negre admitted that she issued the subject checks but not in favor of Cresencia nor of Rafael. She claimed that she issued these checks for payment of her obligation to one Perpetua Causin for medicines she bought from the latter as stocks in her pharmacy. She narrated that these checks were stolen after she left the same on top of the table inside Perpetua Causin's office. She likewise claimed that she did not know Rafael nor Cresencia and never had transactions with them. She also denied receiving any notice of dishonor. She also presented Perpetua Causin to testify on the circumstances how the subject checks were stolen.[6]

Finding that all the elements of the crime charged were proven beyond reasonable doubt, the MTCC convicted petitioner Negre of three counts of violation of BP 22 and found her civilly liable to private complainant Rafael for the total face value of the subject checks. In its March 21, 2012 Decision[7], the MTCC disposed:

“WHEREFORE, this Court finds JUANITA NEGRE GUILTY beyond reasonable doubt for the offense of violation of Batas Pambansa Blg. 22, and hereby imposes a penalty of imprisonment of thirty (30) days of arresto menor for each count in Criminal Cases No. 129410-R, 129411-R and 129412-R.

Juanita Negre is likewise ordered to pay Rafael Marigomen the total face value of the three (3) Bank of Cebu Checks No. 1707300, 1711599 and 1711600 in the amount of ONE HUNDRED THIRTY EIGHT THOUSAND FIVE HUNDRED PESOS (Php138,500.00), Philippine Currency, as her civil liability, with one percent (1%) interest per month reckoned from filing the Information in Court on October 28, 2004, until obligation is fully paid.”[8]

Petitioner challenged this adverse Decision through an appeal with the RTC. She questioned the finding of her guilt considering (a) that she never issued the subject checks to Cresencia nor Rafael for value; (b) that she closed her account because the subjects were reportedly stolen; (c) that she never received a notice of dishonor; and, (d) that, assuming she is guilty, she should have been penalized with fine only and not with imprisonment. Aside from these, she also raised the error of MTCC in reinstating the cases against her after previously issuing an order of dismissal for lack of probable cause.[9]

The RTC found no merit on petitioner Negre's appeal and affirmed in toto the MTCC Decision. Its April 30, 2013 Decision[10] reads:

“IN FINE, this court finds no reversible error committed by the court a quo.

ACCORDINGLY, the decision appealed from is hereby affirmed in toto.

SO ORDERED.”[11]

Her Motion for Reconsideration[12] having been denied in the January 7, 2014 Order[13] of the RTC, petitioner Negre filed this petition for review assigning to the RTC which exercised its appellate jurisdiction the following errors:

I. “THE REGIONAL TRIAL COURT SERIOUSLY ERRED IN FINDING THAT THE TRIAL COURT COMMITTED NO REVERSIBLE ERROR IN HOLDING THE ACCUSED GUILTY OF THE CRIME CHARGED AND IN AFFIRMING ITS DECISION IN TOTO.

II. THE REGIONAL TRIAL COURT COMMITTED A SERIOUS ERROR IN DENYING OUTRIGHTLY THE MOTION FOR RECONSIDERATION FILED BY THE ACCUSED.

III. THE REGIONAL TRIAL COURT GRAVELY ERRED IN AFFIRMING THE TRIAL COURT'S DECISION IMPOSING THE ACCUSED A PENALTY OF IMPRISONMENT ASSUMING WITHOUT ADMITTING THAT THE ACCUSED IS GUILTY OF THE CRIME CHARGED AGAINST HER.”[14]

Petitioner Negre's discussion in support of her assignment of errors echoes substantially the same arguments and issues she raised before the trial courts.

We affirm petitioner Negre's conviction.

Foremost, We tackle petitioner Negre's argument that the MTCC erred in reinstating the cases against her even after the same was previously dismissed. She argues that this issue, though raised in her appeal was not addressed by the RTC. This argument fails to impress.

We quote with approval the discussion of the RTC in its Decision, to wit:

“The court notes that the reason for the initial dismissal of these cases was that the affidavit of the offended party's credit and collection manager, Wilson Bawiga, was not attached to the record. However, as correctly pointed out by the prosecution in its motion for reconsideration, the non-attachment of the affidavit of Mr. Bawiga is material only during the trial on the merits but is not essential for the determination of probable cause.”[15]

Indeed, the proceedings before the MTCC when it reinstated the cases only involve the determination of probable cause. The affidavit of the witness Wilson Bawiga is evidentiary in nature in order for the prosecution to support the crime charged. Its non-attachment will not prevent the finding of probable cause.

Probable cause, for purposes of filing a criminal information, has been defined as “such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof, and should be held for trial.”[16] “The term does not mean “actual or positive cause” nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus, a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge.”[17]

Now on the substantive merits.

Liability for violation of B.P. 22 attaches when the prosecution establishes proof beyond reasonable doubt of the existence of the following elements:

1. The accused makes, draws or issues any check to apply to account or for value;
2. The accused knows at the time of the issuance that he or she does not have sufficient funds in, or credit with, the drawee bank for the payment of the check in full upon its presentment; and
3. The check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or it would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment.[18]

To prove the first and third elements of the crime, Section 3 of BP 22 provides that the introduction in evidence of the unpaid or dishonored check, having the drawee's refusal to pay stamped or written thereon, or attached thereto, with the reason therefor as aforesaid shall be prima facie evidence of the making or issuing of the said checks and the due presentment to the drawee for payment and the dishonor thereof, and that the same was properly dishonored for the reason written, stamped or attached thereto by the drawee on such dishonored checks.[19]

Meanwhile, in proving the second element, Section 2 of the law provides that:

SEC. 2. Evidence of knowledge of insufficient funds.—The making, drawing and issuance of a check payment of which is refused by the drawee because of insufficient funds in or credit with such bank, when presented within ninety (90) days from the date of the check, shall be prima facie evidence of knowledge of such insufficiency of funds or credit unless such maker or drawer pays the holder thereof the amount due thereon, or makes arrangements for payment in full by the drawee of such check within five (5) banking days after receiving notice that such check has not been paid by the drawee.

Jurisprudence has noted that “knowledge of insufficiency of funds or credit at the time of the issuance of the check involves a state of mind of the person making, drawing or issuing the check which is difficult to prove.”[20] Thus, in order to create the prima facie presumption, that the issuer knew of the insufficiency of funds, it must be shown that he or she received a notice of dishonor and within five (5) banking days thereafter, he or she failed to satisfy the amount of the check or to arrange for its payment.[21]

The evidence on record clearly demonstrates the presence of all three elements.

The first element is present: the issuance of the check is for value.

Petitioner Negre's defense that the subject checks were stolen hence they cannot be considered issued for value must fail.

The MTCC correctly noted, as affirmed by the RTC, that private complainant Rafael was a holder in due course, so valid delivery of the subject checks to him is conclusively presumed. Section 52 of the Negotiable Instruments Law defines a holder in due course as a holder who has taken the instrument under the following conditions:

- (a) That it is complete and regular upon its face;
- (b) That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact;
- (c) That he took it in good faith and for value;
- (d) That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

No evidence to the contrary was presented, hence Rafael as a holder in due course received the subject checks for value. Whether Cresencia, the immediate party has no title to the checks will not matter because Rafael did not have any notice of such defect in her title.

In any case, We affirm the findings of the trial courts that petitioner Negre's allegation that the subject checks were stolen was not sufficiently proven by evidence. Evidence pertaining to such allegation was hearsay, thus, inadmissible.

The MTCC, as affirmed by the, RTC aptly weighed Perpetua Causin's testimony to prove that the subject checks were stolen from her office, thus:

During her examination, Perpetua testified that – she was not at her office (pharmacy) when Juanita left the three (3) checks on top of the table at her (Perpetua's) office and was just informed by her Tindera/ Saleslady and Juanita by phonecall (but later on testified that she cannot remember whether Juanita told or informed her that the latter left checks on the table of her office); she did not see the three (3) checks, subject matter of these cases; she did not see Cresencia (sic) Lumayag at her office (pharmacy) during that time when said checks were allegedly left by Juanita on top of the table at her office; she did not see Cresencia (sic) took or stole the said checks; she was just informed by her Tindera/ Secretary that Cresencia Lumayag (sic) went to her office (pharmacy) and took a nap; the Tindera/Saleslady did not see that Cresencia Lumayag took nor (sic) stole the said checks; the Tindera/Saleslady did not issue a receipt for the said checks neither did Juanita demanded for a receipt of the checks she left on the table; then she (Perpetua) later on testified that she forgot the incidents that transpired “because of the lapse of time”. Clearly Perpetua Causin has no personal knowledge of the facts relevant to these cases, such as the fact of the issuance of the checks, and that said checks were (allegedly) stolen, hence, hearsay.[22]

Moreover, petitioner Negre's allegation that the checks were stolen is rendered doubtful because she presented no evidence, aside from her bare allegation, to prove her claim that she reported the stolen checks to the Bank. If indeed the incident was reported, there was no more need to close her account as the Bank could have used its mechanism to secure its client. We are also wary of her claim that she left the checks on top of Perpetua Causin's table considering that the same were complete in all its particulars. Ordinary prudence would dictate that, especially that petitioner Negre is a businesswoman, checks being an instrument to substitute for money should be handled with all care and caution.

Anent the third element, there is no dispute that the subject checks were dishonored. Petitioner Negre herself admitted that she caused the closure of the account where the checks would be drawn.

Accordingly, the prosecution established beyond reasonable doubt the first and third elements of the crime charged.

Moving on to the second element, petitioner Negre argues that the prosecution failed to establish the same because, except from prosecution witness Wilson Bawiga's claim that he served the notice of dishonor to petitioner Negre only that the latter refused to receive the same, no other proof was presented to prove the fact of petitioner Negre's actual receipt or actual notice of such dishonor. She notes then the absence of her signature in the exhibits constituting the notices of dishonor presented by the prosecution which bear only the signature of Wilson Bawiga.

We find no merit to this argument.

We affirm the findings of both MTCC and RTC in ruling that the prosecution clearly proved that a notice of dishonor was actually sent to and received by petitioner Negre.

We note the trial court was satisfied with the candor and integrity of witness Wilson Bawiga who testified that he

went to petitioner Negre to serve the notices of dishonor on different dates but the latter refused to acknowledge receipt of such notices.

Petitioner Negre cannot insist that the prosecution failed to prove that written notice of dishonor was not sent to her because of the absence of her signature signifying receipt in the exhibits of the prosecution. This defense would only bear truth to Wilson Bawiga's testimony that she refused to receive the notices and refused to sign acknowledgment thereof. Wilson Bawiga would not need to go to petitioner Negre four times just to feign service of the notice of dishonor. Wilson Bawiga's visit to petitioner Negre four times would reveal that he was earnest to give the notice of dishonor only that petitioner Negre continued refusing to receive the same.

Since it is unrefuted that petitioner Negre failed to make good the checks within five banking days, the presumption of "knowledge" on her part at the time she issued the subject checks has been established. We must also reiterate that petitioner Negre herself admitted that she actually caused the closure of her account to prevent the drawing of the checks against it. It is clear therefore that she knew of the insufficiency of the funds.

Considering that all three elements of the offense punished under the first paragraph of Section 1 of BP 22 are present in the instant case, We find no error in the RTC's affirmation of the MTCC's decision convicting petitioner Negre of violation of BP 22.

Finally, while We sustain petitioner Negre's conviction, We deem it proper to modify the penalty imposed, pursuant to Supreme Court Administrative Circular No. 12-2000,[23] as clarified by Administrative Circular No. 13-2001.[24]

Echoing the Supreme Court,[25] considering the absence of proof or allegation by the prosecution to show that petitioner Negre is not a first-time offender, We find that the interests of justice would be best served if petitioner Negre would simply be fined, double the amount of the subject check but not more than P200,000.00, instead of being imprisoned, to enable her to find ways to settle her civil obligations to private complainant Rafael, not to mention the fine imposed on her.

In addition, private complainant Rafael is entitled to legal interest of six per cent (6%) per annum from filing of the Information until the finality of herein decision the amount of which, inclusive of interest, shall thereon be subject to six percent (6%) interest until fully paid.²⁶

WHEREFORE, the assailed Decisions of the RTC and MTCC are AFFIRMED with MODIFICATIONS, thus:

In lieu of imprisonment, petitioner Juanita Negre is ordered to pay a FINE in the amount of Two Hundred Thousand Pesos (P200,000.00), with subsidiary imprisonment in case of insolvency, pursuant to Section 1 of R.A. No. 10159.[27]

Petitioner Negre is also ORDERED to INDEMNIFY private complainant, Rafael Marigomen, the amount of One Hundred Thirty Eight Thousand Five Hundred Pesos (P138,500.00), representing the amount of the dishonored checks, with six (6%) percent interest from date of filing of the Information until the finality of this Decision, the amount of which, inclusive of the interest, is then subject to six percent (6%) interest until fully paid.

SO ORDERED.

Hernando, J., Chairperson, and Azcarraga-Jacob, J., concur.

[1] Rollo, pp. 10-21.

[2] Rollo, pp. 22-26.

- [3] Rollo, pp. 37-53.
- [4] See MTC Decision, Rollo, pp. 37-38.
- [5] Criminal Case No. 129410-R: *1707300; ** July 25, 2003; *** P59,000.00.
Criminal Case No. 129411-R: * 1711600; ** August 10, 2003; *** P38,000.00.
Criminal Case No. 129412-R: * 1711599; ** August 8, 2003; *** P41,500.00.
- [6] See MTC Decision, Rollo, pp. 39-41.
- [7] Supra, note 3.
- [8] Rollo, p. 53.
- [9] See Memorandum of Appeal, Rollo, pp. 54-62.
- [10] Supra, note 2.
- [11] Rollo, p. 26.
- [12] Rollo, pp. 27-29.
- [13] Rollo, p. 30.
- [14] Rollo, pp. 14-15.
- [15] Rollo, pp. 23-24.
- [16] Clay and Feather International v. Lichaytoo, G.R. No. 193105, May 30, 2011.
- [17] Metropolitan Bank & Trust Company v. Hon. Secretary of Justice, G.R. No. 180165, April 7, 2009. Underscoring supplied.
- [18] Azarcon v. People, G.R. No. 185906, June 29, 2010.
- [19] Cabrera v. CA, G.R. No. 150618, July 24, 2003.
- [20] Azarcon v. People, G.R. No. 185906, June 29, 2010, citing Dico v. Court of Appeals, G.R. No. 141669, February 28, 2005.
- [21] Young v. CA, G.R. No. 140425, March 10, 2005.
- [22] Rollo, p. 46. Underscoring supplied.
- [23] Penalty for Violation of B.P. Blg. 22.
- [24] Clarification of Administrative Circular No. 12-2000 on the Penalty for Violation of B.P. Blg. 22.
- [25] Young v. Court of Appeals and People, G.R. No. 140425, March 10, 2005.
- [26] Nacar v. Gallery Frames, G.R. No. 189871, August 13, 2013.
- [27] An Act Amending Article 39 of Act No. 3815, as Amended, Otherwise Known as the Revised Penal Code.

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