

**EVANGELINE P. DORAO, PETITIONER, VS. HON. ROBERTO O. RUDIO,
PAIRING RTC JUDGE, BR. 42, DAGUPAN CITY AND RODOLFO
BANGSAL, RESPONDENTS.**

CA-G.R. SP No. 111866, July 28, 2010

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Court of Appeals

The Case

Assailed by petitioner Evangeline P. Dorao ("Dorao") in this Petition for Certiorari[1] are the April 03, 2009 Decision[2] and October 1, 2009 Order[3] of the Regional Trial Court ("RTC") in Crim. Cases No. 2008-0599-D and 2008-0600-D entitled "PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, versus RODOLFO J. BANGSAL, Accused-Appellant", the dispositive portions of which read:

(1) April 03, 2009 Decision:

"WHEREFORE, the Decision of the lower court dated August 8, 2008 is hereby REVERSED. Accused-appellant Rodolfo J. Bangsal is ACQUITTED of the charge of Violation of B.P. 22 on the ground of reasonable doubt. However, he is ordered to pay the private complainant the amount of Php 61,100.00 representing the three (3) postdated Planters Bank Checks plus interest at the legal rate from the filing of the informations until full payment thereof, and costs of this suit.

SO ORDERED."[4] (emphasis supplied); and

(2) October 1, 2009 Order:

"WHEREFORE, the Motion for Reconsideration is hereby DENIED for lack of merit.

SO ORDERED."[5]

The Facts

The antecedent facts as culled from the records of the case are as follows:

Petitioner Dorao and private respondent Rodolfo J. Bangsal ("Bangsal") belong to a socio-civic organization in Dagupan City, Pangasinan. Dorao alleges that sometime on June 13, 2005, Bangsal went to her office and requested for the re-discounting of his PSBank checks, i.e., Check Nos. 0118826 dated July 13, 2005 in the amount of P50,000.00 and 011836 dated July 24, 2005 in the amount of P7,500.00.6 Dorao accepted the checks and gave Bangsal the corresponding cash. However, when Dorao deposited the checks, they were dishonored and stamped "Account Closed".[7] Dorao alleged that she informed Bangsal of the dishonor and demanded payment thereon both verbally and through a demand letter.[8] Despite Dorao's demands, Bangsal failed to pay and make good the value of the checks. Through an Affidavit-Complaint,[9] she thus sued Bangsal with two (2) counts of violation of Batas Pambansa Big. 22. As a result, two (2) Informations,[10] dated March 20, 2007, were filed against Bangsal.

In his Counter-Affidavit,[11] Bangsal denied Dorao's allegations. Bangsal claimed that Dorao enticed him to borrow money from her; he informed Dorao that he is no longer maintaining any checking account as his account with PSBank had already been closed, to which, Dorao countered that Bangsal just give her two checks from his closed account in order that she will have security and evidence of his indebtedness; as a result, Bangsal received P50,000.00 from Dorao. Bangsal thus alleges that he was surprised when he later learned that Dorao filed a case against him on the subject checks. He likewise denied receiving any demand letter from Dorao.[12]

The prosecution filed its formal offer of evidence[13] and the same was opposed[14] by the defense. On June 27, 2008, the defense filed a Demurrer to Evidence[15] alleging that as proof of his indebtedness and in replacement of the two previous PSBank checks, Bangsal further issued three (3) Planters Bank checks. Having been accepted by Dorao, this consequently obliterated his liability for violation of BP 22. Novation simply took place.[16]

On August 08, 2008, the Municipal Trial Court in Cities (Branch 2) of Dagupan City rendered a Decision[17] finding Bangsal guilty of violation of BP 22, viz.:

"WHEREFORE, judgment is hereby rendered declaring the accused GUILTY beyond reasonable doubt of the crime of violation of B.P. 22, otherwise known as 'The Bouncing Checks Law', for which he is sentenced to a penalty of fine in the amount of P7,500.00 in Criminal Case No. 49723 and P50,000.00 in Criminal Case No. 49724, both with subsidiary penalty of imprisonment in case of insolvency. Likewise, he is ordered to pay the private complainant the amount of P57,000.00 representing the two dishonored checks with interest at the legal rate from the date of filing of these cases.

SO ORDERED."[18]

Aggrieved, Bangsal appealed[19] said decision to the RTC. In his Memorandum of Appeal,[20] Bangsal argues that the MCTC gravely abused its discretion when it denied his motion for leave to file a demurrer to evidence. He, consequently, was deprived of due process. Bangsal also contends that after his two (2) PSBank checks were dishonored, he proposed to Dorao to pay the same on a staggered basis. As part of his proposal, and as collateral, Bangsal tendered three (3) Planters Bank checks to replace the two (2) PSBank checks. Since the checks were accepted by Dorao, novation consequently took place and the rediscounting agreement became an ordinary loan obligation.[21] Bangsal thus concludes that the novation prevented the rise of any criminal liability under BP 22.[22]

On the other hand, in her Memorandum for the Appellee,[23] Dorao points out that violation of BP 22 cases are covered by the Rules on Summary Procedure, and any perceived attempt of the accused to delay the proceedings such as the filing of a leave of court to file demurrer to evidence is a dilatory motion and a prohibited pleading.[24] Also, Dorao disagrees with Bangsal's contention that novation took place when she accepted the three (3) Planters Bank checks as violation of BP 22 is considered a *malum prohibitum*.[25]

On April 03, 2009, the RTC rendered the assailed Decision[26] acquitting Bangsal.

The Ruling of the RTC

In rendering its assailed decision, the RTC explained:

"RULING

With these premises at hand, the Court is persuaded that there exists a reasonable doubt that must be appreciated in favor of the accused-appellant. Corollarily, where evidence is not sufficient to establish the guilt of the accused-appellant beyond reasonable doubt, the accused is entitled to an acquittal (*People vs. Tuazon*, 159 SCRA 315). Prosecution must rely on the strength of its evidence rather than the weakness of the defense. (*People vs. Co*, 163 SCRA 453).

This Court cannot just simply close the door against the accused-appellant considering that there are sufficient reasons to open it.

Firstly, the accused-appellant must be acquitted because there were apparently dense 'dark clouds' that enveloped the factual antecedents of this case.

One cloud of doubt is the novation that effectively took place between the accused-appellant and the private complainant. The Court concurs with the accused-appellant arguments (sic) 'that novation had set in regarding the initial transaction between private complainant and the accused-appellant which is rediscounting of check which was transformed into a loan obligation.'

Another cloud of doubt surrounding this appealed case was the outright denial of the motion for leave to file demurrer to evidence by the trial court where accused-appellant was left with no recourse but to file said demurrer to evidence without leave of court. This actuation on the part of the lower court is tantamount to denial of due process considering the fact that demurrer to evidence is not one of those expressly enumerated prohibited pleadings under the Rules on Summary Procedure. This hasty prosecution of the accused-appellant cannot just simply place in the backseat the well-defined rights of the accused in our fundamental law.

Speaking in the light of our jurisprudence, the accused's constitutional right to due process or to have his day in court and a rigid and inflexible adherence to the wording or literal import of the Rules of Court, the former should be given paramount consideration over and above the latter in order to enable the accused to prove his innocence.

To support this pronouncement, the Honorable Supreme Court had the occasion to state in the case of *Dado vs. People* 392 SCRA 46, the following:

"Under the equipoise rule, where the evidence on an issue of fact is in equipoise or there is doubt on which side the evidence preponderates, the party having the burden of proof loses.

The equipoise rule finds application if, as in this case, the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, for then the evidence does not fulfill the test of moral certainty, and does not suffice to produce a conviction. Briefly stated, the needed quantum of proof to convict the accused of the crime charged is found lacking."

It is a well-entrenched rule that an acquittal based on reasonable doubt does not preclude the award of civil damages. The judgment of acquittal extinguishes the liability of the accused for damages, only when it includes a declaration that the facts from which the civil liability might arise did not exist. Thus, civil liability is not extinguished by acquittal where the acquittal is based on lack of proof beyond reasonable doubt, since only preponderance of evidence is required. To put it succinctly, the extinction of the penal action does not carry with it extinction of the civil, unless the extinction proceeds from a declaration in a final judgment that the fact from which the civil might arise did not exist."^[27] (italics supplied)

Aggrieved, Dorao moved^[28] for reconsideration which, however, was opposed^[29] by Bangsal. Parties likewise filed their respective Reply^[30] and Rejoinder.^[31]

On October 1, 2009, the RTC, through its other assailed Order, denied^[32] Dorao's motion for reconsideration.

Hence, the instant petition.

Issues

Dorao, now petitioner, argues in this petition:

"1.) The Hon. RTC Judge Robert Rudio, committed grave abuse of discretion amounting to lack or excess of

jurisdiction when he ignored and disregarded the ruling of the Hon. Supreme Court that the Crime of Violation of BP-22 is considered *malum prohibitum*

2.) That the Hon. RTC Judge Rudio committed grave abuse of discretion amounting to lack or excess of jurisdiction when he rendered the decision of acquittal based on the alleged existence of dense clouds of doubt, when the court *aquo* (sic), denied outright accused counsel oral motion asking for leave of court to file accused demurrer to evidence, (sic) Thus accordingly accused was denied of his right to due process because under the rules of summary procedure the filing of said motion is not prohibited pleading, (sic)

3.) That the Hon. RTC Judge Rudio committed grave abuse of discretion amounting to lack or excess of jurisdiction when in his decision, he applied the principle of novation, when he is fully aware that the replacement checks were likewise (sic) dishonored by reason of account closed and that the original or old obligation of accused-appellant in the total amount of P57,500.00 was not extinguish (sic) because there was no payment made by accused-appellant.

4.) That the Hon. RTC Judge Rudio committed grave abuse of discretion amounting to lack or excess of jurisdiction, when in his decision, he ordered accused-appellant the sum of (sic) P61,100.00 a representing (sic) the total amount of the replacement checks, plus interest at the legal rate, from the time of the filing of information, when the said replacement checks were not the same checks subjects of appeal, (sic) Truth to tell, private complainant did not file any criminal complaint with respect to the three (3) replacement checks. As such, no criminal information regarding the three (3) replacement checks were filed against accused-appellant." [33] (emphasis supplied)

In fine, what We shall resolve is the question of whether or not the RTC gravely abused its discretion when it issued the assailed April 03, 2009 decision and October 1, 2009 Order.

Our Ruling

We firstly note that the petition which assails private respondent's acquittal was filed by the private prosecutor without the participation of the Office of the Solicitor General.

The petitioner argues, mainly, that the RTC gravely abused its discretion when it acquitted private respondent Bangsal; that it filed the instant petition for certiorari as appeal is not an appropriate remedy at law. However, it is a settled rule that an appeal from an acquittal in a criminal case is the exclusive concern of the State, through the Office of the Solicitor General, [34] not by a private complainant such as petitioner Dorao in this case. That the State, through the OSG, did not bother to question said acquittal, private complainant Dorao's petition here must already be dismissed.

If at all, Dorao, as offended party or private complainant may appeal the civil aspect despite the acquittal of the accused. [35] She has an interest in the civil aspect of the case so she may file a special civil action questioning the decision or action of the respondent court on jurisdictional grounds. [36] But what We have here is not an appeal but a petition for certiorari under Rule 65 of the Rules of Court, praying that We declare the RTC to have gravely abused its discretion when "it acquitted the accused". [37] For certiorari is an extraordinary remedy which is not and should not be a substitute for lost appeal. [38] Devoid of legal personality to file this petition, We have no choice but to dismiss it.

WHEREFORE, the petition is DISMISSED.

SO ORDERED.

Acosta and Gaerlan,[*] JJ., concur.

[*] Acting Junior Member; Per Office Order No. 179-10-ABR dated July 7,2010.

- [1] Rollo,pp. 3-18.
- [2] Ibid., pp. 58-62.
- [3] Ibid., p. 75.
- [4] Rollo, p. 62.
- [5] Ibid., p. 75.
- [6] Rollo,p. 19.
- [7] Ibid., p. 21.
- [8] Ibid., p. 20.
- [9] Ibid., p. 19.
- [10] Ibid., pp. 22-23.
- [11] Ibid., pp. 24-26.
- [12] Rollo, p. 25.
- [13] Ibid., pp. 27-28.
- [14] Ibid., p. 29.
- [15] Ibid., pp. 31-33.
- [16] Ibid., p. 32.
- [17] Ibid., pp. 34-39.
- [18] Ibid., p. 38.
- [19] Rollo, p. 40.
- [20] Ibid., pp. 44-51.
- [21] Ibid., p. 49.
- [22] Ibid.
- [23] Ibid., pp. 53-57.
- [24] Ibid., p. 55.
- [25] Ibid., p. 56.
- [26] Note 2, supra.
- [27] Rollo,pp.61-62.

[28] Rollo, pp. 63-66.

[29] Ibid., pp. 67-69.

[30] Ibid., pp. 70-72.

[31] Ibid., pp. 73-74.

[32] Ibid., p. 75.

[33] Rollo, pp. 9-10.

[34] Mobilia Products, Inc. vs. Umezawa, 452 SCRA 736, 757 (2005).

[35] Ong vs. Genio, G.R. No. 182336, December 23, 2009, citing Rodriguez vs. Gadiane, G.R. No. 152903, July 17, 2006, 495 SCRA 368, 374, citing People v. Santiago, G.R. No. 80778, June 20, 1989, 174 SCRA 143.

[36] Ibid.

[37] Rollo, p. 16.

[38] Elsie Ang v. Dr. Erniefel Grageda, G.R. No. 166239, June 8, 2006, citing Conejos v. Court of Appeals, 435 Phil. 849, 855 (2002); Del Mar v. Court of Appeals, 429 Phil. 19, 30 (2002).

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