

ERLINDA QUE, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

Ponente: BALTAZAR-PADILLA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/8c85bc33eb82/>

BALTAZAR-PADILLA, J.:

This is a petition for review under Rule 42 of the Rules of Court assailing the Decision[1] dated June 23, 2013 of the Regional Trial Court (RTC) of the City of Vigan, Ilocos Sur, Branch 20, dismissing petitioner's appeal and affirming the Decision[2] rendered by the Municipal Trial Court in Cities (MTCC) of Vigan, Ilocos Sur dated September 28, 2012 finding petitioner guilty beyond reasonable doubt of Violation of B.P. Blg. 22.

FACTS

Erlinda Navarro (Navarro) is the owner of Linda's Department Store (Linda's), a business establishment selling groceries, kitchen wares, RTW, footwear and others.

Erlinda Que (Que) is a regular client of Linda's. Sometime in 2002 until 2003, Que purchased several items from Linda's and paid for the same through several checks, to wit:

“Drawee Bank Check Number Date Amount

1. Bank of Commerce
0000001609 3-9-2003
P 53,270.00
2. Bank of Commerce 0000001612 3-18-2003 P 82,460.00
3. Bank of Commerce 0000001619 3-22-2003 P 75,240.00
4. Bank of Commerce 0000001651 3-8-2003 P 27,635.00
5. Bank of Commerce 0000001652 3-11-2003 P 37,500.00
6. Bank of Commerce 0000001659 3-12-2003 P 280,000.00
7. Bank of Commerce 0000001690 3-19-2003 P 150,000.00
8. Bank of Commerce 0000001700 3-8-2003
P 70,000.00
9. Maybank 4431575 3-15-2003 P 50,000.00
10. Maybank 4431576 3-30-2003 P 50,000.00
11. Maybank 4431581 3-14-2003 P 50,000.00
12. Maybank 4431582 3-31-2003 P 50,000.00

13. Maybank 4431648 3-9-2003
P160,000.00
14. 1[st] E Bank 0004188 3-30-2003 P100,000.00
15. 1[st] E Bank 0004189 4-1-2003 P100,000.00
16. Equitable PCI Bank 0126049 3-20-2003 P 83,150.00
17. Equitable PCI Bank 0126050 3-9-2003 P 93,250.00
18. Equitable PCI Bank 0106448 P 80,000.00“

However, upon presentment, all of the issued checks were dishonored for being drawn against a closed account.

Navarro orally notified Que about the bounced checks and the latter answered that she would pay Navarro once her properties are sold and her customers pay her. When Que failed to make good of the checks after her conversation with Navarro, the latter, through her counsel, sent a demand letter to Que dated December 20, 2005.[3]

Despite the demands, Que still failed to pay her debt, thus, Navarro filed eighteen criminal complaints for Violation of Batas Pambansa Blg. 22 (BP 22) against Que docketed as Criminal Cases Nos. 13751, 13752, 13753, 13754, 13755 13756, 13757, 13758, 13759, 13760, 13761, 13762, 13763, 13764, 13765, 13766, 13767 and 13768 with the Municipal Trial Court (MTC) of Vigan, Ilocos Sur and eighteen criminal complaints for Estafa with the Regional Trial Court (RTC) of Vigan, Ilocos Sur, Br. 21.

The accusatory portion of the information in Criminal Case No. 13751 reads as follows:

“That on or about the 9th day of March, 2003, in the City of Vigan, Province of Ilocos Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously make, issue and deliver to Erlinda Navarro for value, May Bank Vigan Branch Check No. 4431648 in the amount of ONE HUNDRED SIXTY THOUSAND PESOS ([P]160,000.00) DATED March 9, 2003 as payment of her obligation from Erlinda Navarro, the said accused, knowing fully well that at the time she issued and delivered the above-mentioned check she did not nor had deposited sufficient funds in or credit with the drawee bank for payment of such check in full upon presentment, as she did fail in her promise to deposit in advance sufficient funds therefor, such that when said check was presented for payment, said check was dishonored and returned with the notation “ACCOUNT CLOSED”, to the damage and prejudice of said Erlinda Navarro in the said amount of P160,000.00.

Contrary to Law.”

The informations in Criminal Cases No. 13752, 13753, 13754, 13755 13756, 13757, 13758, 13759, 13760, 13761, 13762, 13763, 13764, 13765, 13766, 13767 and 13768 are similarly worded as in Criminal Case No. 13751 except as to the dates of Violation of B.P. Blg. 22, check numbers and the amounts thereof.

The eighteen informations were consolidated by the MTCC.

Thereafter, joint trial ensued.

On December 9, 2011, the RTC of Vigan, Ilocos Sur, Br. 21 decided the Estafa cases in favor of Que, acquitting her of all the charges but finding her civilly liable for the total amount of the bounced checks.

On September 28, 2012, the MTCC rendered its Consolidated Decision[4] finding Que guilty of Violation of BP 22 in Criminal Cases No. 13751- 13767 but acquitting her in Criminal Case No. 13768 for failure of the prosecution to present Equitable PCI Bank Check No. 0106448, the subject bounced check, the fallo of which

states:

“WHEREFORE, premises considered, judgment is rendered finding accused ERLINDA GARCIA-QUE, as follows:

(1) Guilty beyond reasonable doubt for seventeen (17) counts of violation of Section 1 of B.P. Blg. 22, otherwise known as the Bouncing Check Law, under above-captioned Criminal Case Nos. 13751 to 13767, with the aggravating circumstance of abuse of trust and confidence appreciated against her for every violation without offsetting mitigating circumstance imposes upon her to pay a fine equivalent to the amount of each check in the aggregate amount of ONE MILLION FOUR HUNDRED NINETY TWO THOUSAND and FIVE HUNDRED FIVE PESOS (P1,492,505.00) subject to subsidiary imprisonment in case of non-payment and to pay unto the private complainant ERLINDA RECLUSDO-NAVARRO, moral damages of P20,000.00 and exemplary damages of P20,000.00 for every violation or case in the total of SIX HUNDRED EIGHTY THOUSAND PEOSS (P680,000.00) and the P21,015.00 representing filing fees and other fees; and

(2) Not Guilty under Criminal Case No. 13768 and the case is dismissed for lack of proof beyond reasonable doubt.

The costs of suit to be paid by the Accused.

SO ORDERED.”

Aggrieved, Que appealed from the said Decision. On July 23, 2013, the RTC affirmed the MTCC Decision but deleted the award of damages, the dispositive part of which states:

“WHEREFORE, the Consolidates Decision of the MTCC in these cases finding the accused Erlinda Que GUILTY beyond reasonable doubt for seventeen (17) counts of violation of Section 1 of B.P. 22 is AFFIRMED. The awards, however, of moral and exemplary damages are hereby DELETED.

SO ORDERED.”[5]

Hence, this further appeal by way of petition for review.

ISSUES

Que interposes the following grounds for Our consideration, to wit:

1. The Honorable Regional Trial Court as an appellate court erred in not dismissing the case by failing to appreciate that the 3[rd] element of the crime charged of violation of Batas Pambasa Bilang 22 was not present.
2. The Honorable Regional Trial Court as an appellate court erred in not dismissing the case by failing to appreciate the absence of a notice of dishonor which is a jurisdictional requirement in the crime of violation of Batasan Pambansa Bilang 22.

RULING

The petition is impressed with merit.

Section 1 of Batas Pambansa Bilang 22 states:

“Section 1. Checks without sufficient funds. - Any person who makes or draws and issues any check to apply on account or for value, knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, which 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, shall be punished by imprisonment of not less than thirty days but not more than one (1) year or by a fine of not less than but not more than double the amount of the check which fine shall in no case exceed Two Hundred Thousand Pesos, or both such fine and imprisonment at the discretion of the court.

The same penalty shall be imposed upon any person who, having sufficient funds in or credit with the drawee bank when he makes or draws and issues a check, shall fail to keep sufficient funds or to maintain a credit to cover the full amount of the check if presented within a period of ninety (90) days from the date appearing thereon, for which reason it is dishonored by the drawee bank.

Where the check is drawn by a corporation, company or entity, the person or persons who actually signed the check in behalf of such drawer shall be liable under this Act.”

For a person to be found guilty of Violation of BP 22, the prosecution must prove the following:

- “1) Making, drawing, and issuance of any check to apply on account or for value;
- 2) Knowledge of the maker, drawer, or issuer that at the time of issue he 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) Subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit, or dishonor of the check for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.”[6]

In this case, there is no argument as to the presence of the first and third elements. The defense raised by Que is that the second element of the charge is lacking.

In Campos vs. People of the Philippines,[7] the Supreme Court reiterated on how the second element for violation of BP 22 can be proven by the prosecution, thus ---

“Considering that the second element involves a state of mind which is difficult to establish, Section 2 of B.P. 22 creates a presumption of knowledge of insufficiency of funds, as it reads:

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 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.”

For this presumption to arise, the prosecution must prove the following: (a) the check is presented within ninety (90) days from the date of the check; (b) the drawer or maker of the check receives notice that such check has not been paid by the drawee; and (c) the drawer or maker of the check fails to pay the holder of the check the amount due thereon, or make arrangements for payment in full within five (5) banking days after receiving notice that such check has not been paid by the drawee. In other words, the presumption is brought into existence only after it is proved that the issuer had 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 arrangements for its payment. The presumption or prima facie evidence as provided in this section cannot arise, if such notice of nonpayment by the drawee bank is not sent to the maker or drawer, or if there is no proof as to when such notice was received by the drawer, since there would simply be no way of reckoning the crucial 5-day period. A notice of dishonor received by the maker or drawer of the check is thus indispensable before a conviction can ensue.[8]

In deciding that the presence of the second element was proven by the prosecution, the RTC, in upholding the MTCC, ratiocinated in this wise:

“xxx The prosecution presented a Demand Letter addressed to the accused in her given residence (Exh. F), a Registry Return Receipt (Exh. F-1) and a Registry Return Card (Exh. F-2) with a signature appearing at the space for the addressee. To the mind of the court, this is sufficient proof of service of Notice of Dishonor, in the absence of proof to the contrary. In other words, this documentary evidence had confirmed the positive declaration of the complainant that her lawyer had sent demand letter to the accused. Also, the complainant had earlier personally talked to the accused for the payment of the bounced checks. This clear and standing testimony of the complainant remained unrefuted even when the accused took the witness stand. Meaning, the accused never denied the fact that the complainant had talked to her many times about the unpaid checks. As correctly narrated by the MTCC, thus:

“Aside from the verbal notice, a written demand letter dated December 20, 2005 signed by Navarro's lawyer, was sent to the Accused. This written demand letter, as it was sent letter, appeared a reiteration of NAVARRO'S earlier verbal demand to pay in cash. While the Accused denied receiving the said demand letter, the prosecution presented the original copy of the Registry Return Receipt addressed to Erlinda G. Que, Brgy. Bungro, Magsingal, with a signature indicating that it was duly received on January 2, 2006. The denial of the Accused of affixing the signature on the Return Receipt is self serving and not enough to overcome the presumption of regularity “That a letter duly directed and mailed was received in the regular course of the mail” pursuant to Sec. 3 (V) of Rule 131 of the Rules of Court. The defense did not present any shred of evidence to contradict the above presumption of law except a denial, which to the mind of the Court, is insufficient to overcome the presumption. Moreover, the fact that there was a delay of about three (3) years in filing these cases before the City Prosecutor's Office of Vigan City, is a circumstance indicating that Navarro acceded to the accused's repeated requests for deferment of payment based on her repeated promises, which did not materialize, to pay once the alleged land is sold.” (p.183 of the case records).

The accused suggests that the prosecution must prove that the person who signed the space for “addressee” in the registry return card was the accused herself or any of her household. This task is near impossible. To require the prosecution to produce the person who received the demand letter would be imposing an undue hardship, taking the clear and convincing circumstance that the accused was already aware of the fact that she lacked money in the bank to pay for the checks she issued, as in fact, some of her accounts had been closed at the time of the presentment of the said checks. xxx

xxx

Also, quoting from the Memorandum of the accused, to wit: “Until business reverses overcame the accused and became financially drained. That started her debacle as businesswoman.” This all the more bolsters the presumption of knowledge on the part of the accused that she could no longer sustain the funds in her bank accounts to pay for the checks she issued to the complainant. In other words, when the accused issued the subject checks and business reverses drained her finances, she must have foreseen that the bouncing of her checks was in the offing. So when the demand letter (Exhibit F and submarkings) arrived at her known residence, she already knew it was coming. This court even takes notice that if the signatory in the space for “addressee” was not a member of the accused's household, said signatory should not have received or signed the same and at most, the demand letter should have been returned to the sender (RTS). This court holds applicable in this case the presumption of regularity in the performance of service on the part of the postal office and its postman. xxx”

WE disagree.

First, the oral notice of dishonor by Navarro to Que referred to and upheld by the lower courts is not sufficient to comply with the second requirement.

It is already a well-established doctrine that a notice of dishonor must be in writing and a mere oral notice to pay a dishonored check will not suffice.[9] As held in the case of *Ambito vs. People of the Philippines*,[10] viz ---

“The notice of dishonor of a check may be sent to the drawer or maker by the drawee bank, the holder of the check, or the offended party either by personal delivery or by registered mail. The notice of dishonor to the maker of a check must be in writing.

While, indeed, Section 2 of B.P. Blg. 22 does not state that the notice of dishonor be in writing, taken in conjunction, however with Section 3 of the law, i.e., “that where there are no sufficient funds in or credit with such drawee bank, such fact shall always be explicitly stated in the notice of dishonor or refusal,” a mere oral notice or demand to pay would appear to be insufficient for conviction under the law. The Court has previously held that both the spirit and letter of the Bouncing Checks Law would require for the act to be punished thereunder not only that the accused issued a check that is dishonored, but that likewise the accused has actually been notified in writing of the fact of dishonor. The consistent rule is that penal statutes have to be construed strictly against the State and liberally in favor of the accused.”

Second, the presentation of the registry return receipt/registry return card for the demand letter containing the notice of dishonor mailed to Que does not also suffice.

The Supreme Court expounded on this issue in the case of *Resterio vs. People of the Philippines*,^[11] to wit:

“To prove that he had sent the written notice of dishonor to the petitioner by registered mail, Villadolid presented the registry return receipt for the first notice of dishonor dated June 17, 2002 and the registry return receipt for the second notice of dishonor dated July 16, 2002. However, the petitioner denied receiving the written notices of dishonor.

The mere presentment of the two registry return receipts was not sufficient to establish the fact that written notices of dishonor had been sent to or served on the petitioner as the issuer of the check. Considering that the sending of the written notices of dishonor had been done by registered mail, the registry return receipts by themselves were not proof of the service on the petitioner without being accompanied by the authenticating affidavit of the person or persons who had actually mailed the written notices of dishonor, or without the testimony in court of the mailer or mailers on the fact of mailing. The authentication by affidavit of the mailer or mailers was necessary in order for the giving of the notices of dishonor by registered mail to be regarded as clear proof of the giving of the notices of dishonor to predicate the existence of the second element of the offense. No less would fulfill the quantum of proof beyond reasonable doubt, for, as the Court said in *Ting v. Court of Appeals*:

Aside from the above testimony, no other reference was made to the demand letter by the prosecution. As can be noticed from the above exchange, the prosecution alleged that the demand letter had been sent by mail. To prove mailing, it presented a copy of the demand letter as well as the registry return receipt. However, no attempt was made to show that the demand letter was indeed sent through registered mail nor was the signature on the registry return receipt authenticated or identified. It cannot even be gleaned from the testimony of private complainant as to who sent the demand letter and when the same was sent. In fact, the prosecution seems to have presumed that the registry return receipt was proof enough that the demand letter was sent through registered mail and that the same was actually received by petitioners or their agents.

As adverted to earlier, it is necessary in cases for violation of Batas Pambansa Blg. 22, that the prosecution prove that the issuer had received a notice of dishonor. It is a general rule that when service of notice is an issue, the person alleging that the notice was served must prove the fact of service (58 Am Jur 2d, Notice, § 45). The burden of proving notice rests upon the party asserting its existence. Now, ordinarily, preponderance of evidence is sufficient to prove notice. In criminal cases, however, the quantum of proof required is proof beyond reasonable doubt. Hence, for Batas Pambansa Blg. 22 cases, there should be clear proof of notice. Moreover, it is a general rule that, when service of a notice is sought to be made by mail, it should appear that the conditions on which the validity of such service depends had existence, otherwise the evidence is insufficient to establish the fact of service (C.J.S., Notice, § 18). In the instant case, the prosecution did not

present proof that the demand letter was sent through registered mail, relying as it did only on the registry return receipt. In civil cases, service made through registered mail is proved by the registry receipt issued by the mailing office and an affidavit of the person mailing of facts showing compliance with Section 7 of Rule 13 (See Section 13, Rule 13, 1997 Rules of Civil Procedure). If, in addition to the registry receipt, it is required in civil cases that an affidavit of mailing as proof of service be presented, then with more reason should we hold in criminal cases that a registry receipt alone is insufficient as proof of mailing. In the instant case, the prosecution failed to present the testimony, or at least the affidavit, of the person mailing that, indeed, the demand letter was sent. xxx

Moreover, petitioners, during the pre-trial, denied having received the demand letter (p. 135, Rollo). Given petitioners' denial of receipt of the demand letter, it behooved the prosecution to present proof that the demand letter was indeed sent through registered mail and that the same was received by petitioners. This, the prosecution miserably failed to do. Instead, it merely presented the demand letter and registry return receipt as if mere presentation of the same was equivalent to proof that some sort of mail matter was received by petitioners. Receipts for registered letters and return receipts do not prove themselves; they must be properly authenticated in order to serve as proof of receipt of the letters (*Central Trust Co. v. City of Des Moines*, 218 NW 580).

Likewise, for notice by mail, it must appear that the same was served on the addressee or a duly authorized agent of the addressee. In fact, the registry return receipt itself provides that "[a] registered article must not be delivered to anyone but the addressee, or upon the addressee's written order, in which case the authorized agent must write the addressee's name on the proper space and then affix legibly his own signature below it." In the case at bar, no effort was made to show that the demand letter was received by petitioners or their agent. All that we have on record is an illegible signature on the registry receipt as evidence that someone received the letter. As to whether this signature is that of one of the petitioners or of their authorized agent remains a mystery. From the registry receipt alone, it is possible that petitioners or their authorized agent did receive the demand letter. Possibilities, however, cannot replace proof beyond reasonable doubt. There being insufficient proof that petitioners received notice that their checks had been dishonored, the presumption that they knew of the insufficiency of the funds therefor cannot arise.

As we stated in *Savage v. Taypin* (G.R. No. 134217, May 11, 2000, 311 SCRA 397), "penal statutes must be strictly construed against the State and liberally in favor of the accused." Likewise, the prosecution may not rely on the weakness of the evidence for the defense to make up for its own blunders in prosecuting an offense. Having failed to prove all the elements of the offense, petitioners may not thus be convicted for violation of *Batas Pambansa Blg. 22*." (Emphasis supplied)

In this case, there was no authenticating affidavit of the person who had actually mailed the written notices of dishonor, or his/her testimony in court regarding the fact of mailing of the notice.

Third, the alleged personal knowledge of Que that she did not have sufficient funds in the bank to make good the checks upon presentment does not dispense with the requisite notice of dishonor.

The same issue was already resolved by the Supreme Court in the case of *Yu Oh vs. Court of Appeals*,^[12] to wit:

"B.P. Blg. 22 or the Bouncing Check's Law seeks to prevent the act of making and issuing checks with the knowledge that at the time of issue, the drawer does not have sufficient funds in or credit with the bank for payment and the checks were subsequently dishonored upon presentment.

xxx

For liability to attach under B.P. Blg. 22, it is not enough that the prosecution establishes that checks were issued and that the same were subsequently dishonored. The prosecution must also prove that the issuer, at the time of the check's issuance, had knowledge that he did not have enough funds or credit in the bank of payment

thereof upon its presentment.

Since the second element involves a state of mind which is difficult to establish, Section 2 of B.P. Blg. 22 created a prima facie presumption of such knowledge, as follows:

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.

Based on this section, the presumption that the issuer had knowledge of the insufficiency of funds is brought into existence only after it is proved that the issuer had 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. The presumption or prima facie evidence as provided in this section cannot arise, if such notice of non-payment by the drawee bank is not sent to the maker or drawer, or if there is no proof as to when such notice was received by the drawer, since there would simply be no way of reckoning the crucial 5-day period.

In this case, it is not disputed that checks were issued by petitioner and said checks were subsequently dishonored. The question however is, was petitioner furnished a notice of dishonor? If not, is it sufficient justification to exonerate petitioner from her criminal and civil liabilities for issuing the bouncing checks?

The trial court ruled that the second element is present because:

... the accused knew at the time of issuance of the checks that she did not have sufficient funds in or credit with her drawee bank for the payment of the checks in full upon their presentment [as admitted by her in the Counter-Affidavit she executed during the preliminary investigation of these criminal cases, to wit:

4. That the time of the issuance of the said checks, due notice and information had been so given to Solid Gold anent the actual status of the checks that the same might not be able to cover the amount of the said checks so stated therein ... (Exhibit "N", "1", underscoring supplied).

xxx

Although the trial court in its decision, mentioned that herein petitioner received notices of dishonor, nowhere in the records is there proof that the prosecution ever presented evidence that petitioner received or was furnished a notice of dishonor. The notices of dishonor that were presented in court and marked as Exhibits "D-2", "E-2", "F-2", "G-2", "H-2", "I-2", "J-2", "K-2", "L-2", "C-2"⁴⁵ were all sent to the private complainant, Solid Gold, and not to petitioner. In convicting petitioner, the trial court, gave probative weight on the admission of petitioner in her Counter-Affidavit which she submitted during the preliminary investigation that at the time of issuance of the subject checks, she was aware and even told private complainant that the checks might not be able to cover the amount stated therein.

The Court of Appeals sustained the RTC, to wit:

. . . Neither can We agree that accused-appellant was still entitled to notice of dishonor of the bouncing checks as she had no more checking account with the drawee bank at the time of the dishonor of the ten checks in question. Accused-appellant must have realized that by closing her checking account after issuing the ten postdated checks, all of said checks would bounce. Knowing that she had already closed her checking account with the drawee bank, certainly accused-appellant would not have expected, even in her wildest imagination, that her postdated checks would be honored by the drawee bank. Thus, accused-appellant need not be notified anymore of the obvious dishonor of her rubber checks.

Based on the law and existing jurisprudence, we find that the appellate court erred in convicting petitioner.

In cases for violation of B.P. Blg. 22, it is necessary that the prosecution prove that the issuer had received a notice of dishonor. Since service of notice is an issue, the person alleging that the notice was served must prove the fact of service. Basic also is the doctrine that in criminal cases, the quantum of proof required is proof beyond reasonable doubt. Hence, for cases of B.P. Blg. 22 there should be clear proof of notice.

Indeed, this requirement cannot be taken lightly because Section 2 provides for an opportunity for the drawer to effect full payment of the amount appearing on the check, within five banking days from notice of dishonor. The absence of said notice therefore deprives an accused of an opportunity to preclude criminal prosecution. In other words, procedural due process demands that a notice of dishonor be actually served on petitioner. In the case at bar, appellant has a right to demand – and the basic postulate of fairness requires – that the notice of dishonor be actually sent to and received by her to afford her the opportunity to avert prosecution under B.P. Blg. 22.

The Solicitor General contends that notice of dishonor is dispensable in this case considering that the cause of the dishonor of the checks was "Account Closed" and therefore, petitioner already knew that the checks will bounce anyway. This argument has no merit. The Court has decided numerous cases where checks were dishonored for the reason, "Account Closed" and we have explicitly held in said cases that "it is essential for the maker or drawer to be notified of the dishonor of her check, so she could pay the value thereof or make arrangements for its payment within the period prescribed by law" and omission or neglect on the part of the prosecution to prove that the accused received such notice of dishonor is fatal to its cause." (Emphasis supplied)

The giving of a notice of dishonor affords the offender due process, thus ---

"The giving of the written notice of dishonor does not only supply the proof for the second element arising from the presumption of knowledge the law puts up but also affords the offender due process. The law thereby allows the offender to avoid prosecution if she pays the holder of the check the amount due thereon, or makes arrangements for the payment in full of the check by the drawee within five banking days from receipt of the written notice that the check had not been paid. The Court cannot permit a deprivation of the offender of this statutory right by not giving the proper notice of dishonor. The nature of this opportunity for the accused to avoid criminal prosecution has been expounded in *Lao v. Court of Appeals*:

It has been observed that the State, under this statute, actually offers the violator 'a compromise by allowing him to perform some act which operates to preempt the criminal action, and if he opts to perform it the action is abated' xxx In this light, the full payment of the amount appearing in the check within five banking days from notice of dishonor is a 'complete defense.' The absence of a notice of dishonor necessarily deprives an accused an opportunity to preclude a criminal prosecution. Accordingly, procedural due process clearly enjoins that a notice of dishonor be actually served on petitioner. Petitioner has a right to demand – and the basic postulate of fairness require – that the notice of dishonor be actually sent to and received by her to afford her the opportunity to avert prosecution under B.P. 22." [13]

It must be remembered that violation of BP 22 is a criminal offense that requires proof beyond reasonable doubt. Hence, each of the elements of the crime must be duly established by the said quantum of evidence.

All told, the prosecution failed to establish that a notice of dishonor was duly sent and received by Que as to convict her for violation of BP 22 and such failure of the prosecution is a clear ground for Que's acquittal.

WHEREFORE, the assailed Decision of the Regional Trial Court (RTC) of the City of Vigan, Ilocos Sur, Branch 20 dated is hereby REVERSED and SET ASIDE. Erlinda Que is ACQUITTED of the offense of Violation of B.P. Blg. 22 on seventeen counts for insufficiency of evidence.

SO ORDERED.

Abdulwahid, H. S., Chairperson and Inting, S. B., JJ., concur.

[1] Rollo p. 36

[2] Id. p. 12

[3] Id. p. 58

[4] Id. p. 12

[5] Id. p. 36

[6] See Bax vs. People of the Philippines, G.R. No. 149858, September 5, 2007

[7] G.R. No. 187401, September 17, 2014

[8] See Dico vs. Court of Appeals, G.R. No. 141669, February 28, 2005

[9] See Resterio vs People of the Philippines, G.R. No. 177438, September 24, 2012

[10] G.R. No. 127327, February 13, 2009

[11] G.R. No. 177438, September 24, 2012

[12] G.R. No. 125297, June 6, 2003

[13] Supra., Resterio, G.R. No. 177438, September 24, 2012

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.