

ANNA MARIA CATOLICO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

Ponente: BERSAMIN, L.P., J.

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BERSAMIN, L.P., J.:

The accused appeals the judgment dated August 31, 2005 of the Regional Trial Court (RTC), Branch 40, in Manila, rendered in the exercise of its appellate jurisdiction, disposing thus:

The prosecution having discharged the burden of proving beyond reasonable doubt the elements of the offense especially the fact as found by the lower court that the notice of dishonor or demand letter, dated September 7, 2002, “has been personally acknowledged and received by the accused herself (Exhibit B). This accused does not likewise deny,” (Judgment, page 8), or “Accused herself received the demand letter dated September 7, 2002” (page 9, *supra*), the Court has the constitutional duty to convict her. The silence of the accused obviously prejudiced her. Her apparent perception that the prosecution failed utterly to make out a case against her is utterly wrong and she should suffer the consequences.

WHEREFORE, The Judgment, dated June 3, 2005, is **AFFIRMED** in toto.

SO ORDERED.[1]

We adopt the following antecedents narrated in the comment of the Office of the Solicitor General (OSG), viz:

1. Sometime in December 2001, petitioner Anna Maria Catolico obtained a series of loans from private complainant Richiel Beltran in the aggregate amount of eight hundred eighty-nine thousand and one hundred eighteen pesos (P889,118.00) with an agreed monthly interest of ten percent (10%). In payment thereof, petitioner issued several BPI post-dated checks as follows:

CHECK NO. DATE AMOUNT

75935 Feb. 9, 2002 65,000.00

97464 Feb. 14, 2002 57,602.00

75983 Feb. 7, 2002 78,102.00

97488 Feb. 23, 2002 73,000.00

97489 Feb. 24, 2002 75,000.00

97461 Feb. 22, 2002 68,502.00

97465 Feb. 18, 2002 72,000.00

97459 Feb. 20, 2002 62,500.00

2. Upon presentment of the aforesaid checks to the bank for payment, the same were dishonored for the reason: “Account Closed.”

3. Petitioner failed to satisfy the amounts stated in her checks despite repeated verbal and written demands by private complainant, the latest of which was a demand letter dated September 7, 2002 prepared by private complainant's lawyer, Atty. Valeriano Reloj.

4. Consequently, private complainant filed an affidavit-complaint against petitioner for estafa and violation B.P. Blg. 22 (eight counts).

5. The case for violation of B.P. Blg. 22 was raffled to Branch 6 of the Metropolitan Trial Court (MTC) in Manila and docketed as Criminal Cases Nos. 397199-7206.[2]

The evidence of the parties, summarized in the MeTC decision, is reiterated herein, to wit:

On December 1, 2004, the private complainant took the witness stand. Pursuant to the summary nature of the proceedings of these cases, she presented and identified her Affidavit-Complaint in lieu of her direct-examination (TSN dated December 1, 2004, pp. 3-5).

In her Complaint-Affidavit, the private complainant alleged that sometime December 2001, the accused obtained a series of loan transactions from her which reached the total amount of P889,118.00 with an agreed monthly interest of 10%. In payment of the same, postdated checks were issued, among which were subject checks (Exhibits "C" to "J").

Upon presentment for payment on maturity date, however, subject checks were dishonored for the reason "Account Closed" (Paragraph 2 of the Complaint-Affidavit; Exhibits "C-2" to "J-2"). A demand letter dated September 7, 2002 was thereafter sent to the accused (Exhibit "B"). But despite receipt of the same, still, no payment transpired.

On cross-examination, the private complainant admitted that the loan transactions were not reduced into writing (TSN dated December 1, 2004, p. 6). The private complainant further revealed that she has known the accused as a client of Unitrust Bank where she worked as its Branch Cashier (ibid., p. 7).

On December 14, 2004, the prosecution filed its Formal Offer of Evidence. No comment having been filed by the accused, Exhibits "A" to "J" and sub-markings were all admitted as part of the testimonial evidence offered by the prosecution and as proof of their contents thereof.[3]

After trial on the merits, the MeTC rendered its judgment in the consolidated cases, disposing as follows:

WHEREFORE, in Criminal Case No. 397199, this Court finds accused Anna Maria Catolico GUILTY beyond reasonable doubt of a violation of Batas Pambansa Blg. 22 {Bouncing Checks Law} and imposes upon her to pay a FINE of SIXTY FIVE THOUSAND PESOS (P65,000.00), with subsidiary imprisonment in case of insolvency.

Likewise, in Criminal Case No. 397200, this Court finds accused Anna Maria Catolico GUILTY beyond reasonable doubt of a violation of Batas Pambansa Blg. 22 (Bouncing Checks Law) and imposes upon her to pay a FINE of FIFTYS EVEN THOUSAND SIX HUNDRED TWO PESOS {57,602.00}, with subsidiary imprisonment in case of insolvency.

Likewise, in Criminal Case No. 397201, this Court finds accused Anna Maria Catolico GUILTY beyond reasonable doubt of a violation of Batas Pambansa Blg. 22 {Bouncing Checks Law} and imposes upon her to pay a FINE of SEVENTY EIGHT THOUSAND ONE HUNDRED TWO PESOS (P78,102.00), with subsidiary imprisonment in case of insolvency.

Likewise, in Criminal Case No. 397202, this Court finds accused Anna Maria Catolico GUILTY beyond reasonable doubt of a violation of Batas Pambansa Blg. 22 {Bouncing Checks Law} and imposes upon her to pay a FINE of SEVENTY THREE THOUSAND PESOS (P73,000.00), with subsidiary imprisonment in case of insolvency.

Likewise, in Criminal Case No. 397203, this Court finds accused Anna Maria Catolico GUILTY beyond reasonable doubt of a violation of Batas Pambansa Blg. 22 {Bouncing Checks Law} and imposes upon her to pay a FINE of SEVENTY FIVE THOUSAND PESOS (P75,000.00), with subsidiary imprisonment in case of insolvency.

Likewise, in Criminal Case No. 397204, this Court finds accused Anna Maria Catolico GUILTY beyond reasonable doubt of a violation of Batas Pambansa Blg. 22 {Bouncing Checks Law} and imposes upon her to pay a FINE of SIXTY EIGHT THOUSAND FIVE HUNDRED TWO PESOS (P68,502.00), with subsidiary imprisonment in case of insolvency.

Likewise, in Criminal Case No. 397205, this Court finds accused Anna Maria Catolico GUILTY beyond reasonable doubt of a violation of Batas Pambansa Blg. 22 {Bouncing Checks Law} and imposes upon her to pay a FINE of SEVENTY TWO THOUSAND PESOS (P72,000.00), with subsidiary imprisonment in case of insolvency.

Lastly, in Criminal Case No. 397206, this Court finds accused Anna Maria Catolico GUILTY beyond reasonable doubt of a violation of Batas Pambansa Blg. 22 {Bouncing Checks Law} and imposes upon her to pay a FINE of SIXTY TWO THOUSAND FIVE HUNDRED PESOS (P62,500.00), with subsidiary imprisonment in case of insolvency.

Meantime, as Administrative Circular No. 57-97 recognizes that the criminal action for violation of B.P. Blg. 22 is deemed to necessarily include the corresponding civil action, private allusion to an interest rate of 10% per month cannot be appreciated in her favor. Article 1956 of the New Civil Code provides that, “No interest shall be due unless it has been expressly stipulated in writing” (Antonio Tan v. Court of Appeals, G.R. No. 116285, October 19, 2001). Private complainant herself conceded that the interest rate has no been reduced into writing (TSN dated December 1, 2004, p. 6).

In *Crismina Garments, Inc. v. Court of Appeals*, 304 SCRA 356 {1999}, however, it has been held that “when the obligation is breached, and it consists in the payment of a sum of money, the interest due should be that which may have been stipulated in writing. x x x In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.” In these cases, therefore, only the legal interest rate of 12% per annum shall find application.

In reference to her civil liability, therefore, accused is made liable to pay private complainant Richiel O. Beltran civil indemnity in the respective amounts of SIXTY FIVE THOUSAND PESOS (P65,000.00) IN criminal Case No. 397199, FIFTY SEVEN THOUSAND SIX HUNDRED TWO PESOS (P57,602.00) in Criminal Case No. 397200; SEVENTY EIGHT THOUSAND ONE HUNDRED TWO PESOS (P78,102.00) in Criminal Case No. 397201; SEVENTY THREE THOUSAND PESOS (P73,000.00) in Criminal Case No. 397202; SEVENTY FIVE THOUSAND PESOS (P75,000.00) in Criminal Case No. 397203; SIXTY EIGHT THOUSAND FIVE HUNDRED TWO PESOS (P68,502.00) in Criminal Case No. 397204; SEVENTY TWO THOUSAND PESOS (P72,000.00) in Criminal Case No. 397205; and SIXTY TWO THOUSAND FIVE HUNDRED PESOS (P62,500.00) in Criminal Case No. 397206, representing her principal obligations as reflected in the face value of each subject check, with legal interest at 12% per annum from date of judicial demand on October 15, 2003, until fully paid.

SO ORDERED.[4]

The petitioner appealed but the RTC affirmed the MeTC through its judgment dated August 31, 2005, *supra*.[5]

She then filed her motion for reconsideration on September 27, 2005,[6] but on November 8, 2005, the RTC denied her motion for reconsideration.[7]

Hence, this appeal by petition for review, wherein she submits the following lone error committed by the RTC, to wit:

The Honorable Court a quo, with due respect and deference, committed a reversible error in the interpretation/application of the law in the instant case and in the appreciation of the facts and evidence presented.[8]

In support of her appeal, she posits that no notice of the dishonor of the checks was actually made to the accused; that the testimony of the complaining party on the alleged sending of the notice of dishonor to and its receipt by the accused was hearsay; and that the proof of the signature appearing in the notice of dishonor as hers was insufficient because the signature was not even identified and mentioned by the complaining party to be that of the petitioner.

The petitioner contends that the making and sending of the demand letter dated September 7, 2002, which was the controversial notice of dishonor, was not competently proved because the complaining party's complaint-affidavit dated September 30, 2002 did not even mention that the petitioner had personally acknowledged and received the demand letter. She claims that the complaining party was not competent to attest to the notice of dishonor simply because the person who had sent the demand letter via registered mail was the private prosecutor, Atty. Valeriano D. Reloj, who did not testify; that proof of actual receipt of the notice of dishonor by the drawer (petitioner) before the presumption of knowledge of the drawer of the insufficiency of funds was not fulfilled; that the signature appearing in the registry return receipt in acknowledgment of the demand letter was not her signature; that the complaining party did not even claim that the signature was that of the petitioner; and that, accordingly, the evidence on the notice of dishonor/demand letter being sent and being received by the petitioner was hearsay and worthless.

On the other hand, the OSG insists that the Prosecution was able to prove that the notice of dishonor was made on the petitioner; that her denial of receipt of the notice of dishonor was easily demolished by her signature appearing on the registry return receipt indicating her personal acknowledgment and receipt on September 9, 2002 at 9:45 am of the demand letter dated September 7, 2002 prepared by Atty. Reloj; that her signature on the registry return receipt was identical with her signatures appearing on some of the documents she had signed and submitted in the cases such as the motion to set aside order of arrest, minutes of the hearing of December 1, 2004 and the manifestations found in pages 215-216 and 251 of the records, as noted by Assistant City Prosecutor Pedro Salanga; and that such established circumstances persuaded the RTC into aptly holding as it did.

The appeal is devoid of merit.

The applicable legal provisions are Sec. 1 and Sec. 2, Batas Pambansa Blg. 22, which state as follows:

Sec. 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 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.

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.

The elements of the offense penalized by BP 22 are, therefore, that: (1) the making, drawing, and issuance of any check to apply for account or for value; (2) the 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) the subsequent dishonor of the check by the drawee bank for insufficient funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.[9]

In its decision, the MeTC cogently found as follows:

All such elements were sufficiently proven in these cases.

The first element is exhibited from the fact that subject checks were intended to cover a series of loan transactions extended by the private complainant, whether to the accused or her friend, Rosalinda Parojenog. Each loan was secured through the issuance of post-dated checks. There is no question, therefore, that subject checks were issued for a valuable consideration.

The third element is shown from the fact that subject checks were dishonored for the reason “Account Closed” stamp marked on subject checks themselves, without the accused, for a valid cause, having ordered the drawee bank to make a stop payment.

As to the second element, B. P. Blg. 22 creates a presumption juris tantum that the second element exists when the first and third elements of the offense are present. Thus, the maker’s knowledge is presumed from the dishonor of subject checks for the reason, “Account Closed” (*Vaca v. Court of Appeals*, 298 SCRA 656 [1998]; *Ting v. Court of Appeals*, 344 SCRA 551 [2001]; *Wong v. Court of Appeals*, 351 SCRA 100 [2001]).

The recent cases of *King v. People*, 319 SCRA 654 [1999], *Ting v. Court of Appeals*, 344 SCRA 551 [2000], *Dumagsang v. Court of Appeals*, G. R. No. 139292, December 5, 2000 and *Caras v. Court of Appeals*, G.R. No. 129900, October 2, 2001, however, emphasized that while knowledge of insufficiency of funds in or credit with the bank is presumed from the act of making, drawing and issuing a check payment of which is refused by the drawee bank for insufficiency of funds when presented within 90 days from date of issue, this presumption may be rebutted by the accused, in particular, when no actual notice of dishonor was sent to the accused to give the latter an opportunity to make arrangements for payment of the check within five (5) banking days after receiving such notice.

In this case, however, no such rebuttal was made, primarily borne from the fact that the prosecution has convincingly presented evidence that the demand letter dated September 7, 2002 sent by the private complainant has been personally acknowledged and received by the accused herself (Exhibit “B”). This, accused does not likewise deny.[10]

Affirming the MeTC, the RTC held that the Prosecution had discharged its burden of proof, stating:

The trial court referred to the presumption of knowledge of insufficiency of funds in or credit with the bank from the act of making, drawing and issuing a check payment of which is refused by the drawee bank for insufficiency of funds when presented within 90 days from date of issue, which was not rebutted by the accused. The trial court then proceeded to state its finding that the accused likewise did not deny that the

demand letter dated September 7, 2002 has been personally acknowledged and received by the accused herself, citing Exhibit B (pages 110-111 of record). Now, the accused is repeatedly trying to show that it was NOT “sent by the private complainant” as erroneously held by the trial court or that there was no clear and convincing proof that it was actually sent by Atty. Reloj (who did not testify) or that it was sent or served by Atty. Reloj, citing the testimony of the private complainant on cross examination, or that the signature appearing on the post office registry return card was not the signature of the accused. All these are off-tangent as to the finding by the lower court that the accused likewise did not deny that the said letter or notice of dishonor (Exhibit B) has been personally acknowledged and received by the accused herself, which does not refer at all to the service by registered mail. It was rather a written admission by the party served, i.e., the accused, that she received it on September 9, 2002 at 9:45 A.M. (Exhibit B). It is only now that the accused is apparently and belatedly denying actual receipt of said letter of demand (Exhibit B). As earlier intimated, the alleged service of or the actual sending of a demand letter or notice of dishonor by Atty. Reloj maybe hearsay because he did not testify, but the foregoing finding of the lower court based on record has nothing to do with it and, therefore, the hearsay rule does not apply.[11]

We concur with the 2 lower courts. The record contains competent credible and reliable evidence establishing her guilt beyond reasonable doubt for 8 counts of violation of BP 22.

The petitioner did not testify in the trial because she was content in presenting Rosalinda Parojenog as her sole witness. Parojenog, supposedly a friend of long standing of the petitioner’s, attested to taking several blank checks of the petitioner in December 2001 that she had then rediscounted with complaining party Richiel O. Beltran to the tune of P889,118.00 because she (Parojenog) was then in dire financial straits but asserting to have already partially paid the account in the amount of P145,000.00 through the husband of Beltran. Yet, the petitioner did not thereby deny drawing and issuing the checks but on the contrary Parojenog even admitted that the signatures on the checks were those of the petitioner. Thus, Parojenog’s exculpation of her friend was worthless to the petitioner.

The petitioner’s contention, that the complaining party did not prove the sending and receipt of the required written notice of dishonor prior to the filing of the case existed in the record, is absolutely lacking in substance. The MeTC and RTC decisions reveal that the finding of guilty against the petitioner rested on her failure to rebut the evidence that she had herself received and signed for the demand letter dated September 7, 2002. Such finding is upheld. Verily, the undeniable signature of the petitioner competently established her receipt of the demand letter, that it did not matter at all that Atty. Reloj did not testify on such facts or that only Beltran had testified herein despite her having no direct participation in the making and sending of the demand letter.

Nonetheless, we clarify that Beltran’s lack of participation in the sending of the demand letter did not render her particular testimony on the demand letter unreliable. The contrary is true. For one, Atty. Reloj was properly presumed to have informed Beltran, his client, about the demand letter; hence, her knowledge of it should be accepted. Moreover, Beltran could be rightly said to have adopted the purpose, letter and tenor of the demand letter sent in her behalf by her own lawyer due to the well-recognized relationship between her and Atty. Reloj as one between principal and agent.[12] And, thirdly, Beltran ratified its contents and intent by adverting to the demand letter in her complaint affidavit. Her ratification amounted to an adoptive admission, which is a party’s reaction to a statement or action by another person when it is reasonable to treat the party’s reaction as an admission of something stated or implied by the other person.[13]

With the reliable identification of the signature on the registry return receipt to be that of the petitioner, it became incumbent upon her as the addressee, according to *Sebastian v. Workmen’s Compensation Commission*,[14] “to show by indubitable evidence that indeed (she) did not receive the notice” sent to her. Her failure to testify herein meant that she did not discharge such obligation, rendering her arguments about the failure to prove the second

element of the violation of BP 22 futile and worthless.

In light of this analysis, the second element of the offense was established.

The checks were also competently shown to be dishonored due to the insufficiency of funds through the words Account Closed stamped on the checks. Based on the established facts, therefore, the petitioner's conviction for 8 counts of violation of BP 22 is upheld.

WHEREFORE, the judgment dated August 31, 2005 of the Regional Trial Court is AFFIRMED.

Villarama, Jr., and Arevalo-Zenarosa, JJ., concur.

[1] Annex C, decision, in RTC Criminal Cases No. 05-237915-922; rollo, pp. 32-37

[2] Rollo, pp. 159-160.

[3] Rollo, pp. 24-25.

[4] Rollo, pp. 29-31.

[5] Rollo, pp. 32-37.

[6] Rollo, pp. 57-61.

[7] Rollo, pp. 67-68.

[8] Rollo, p. 13.

[9] Tan v. Mendez, Jr., 432 Phil. 760 (2002); Lim v. People, 420 Phil. 506 (2001); Sycip, Jr. v. Court of Appeals, 328 SCRA 447 (2000).

[10] Rollo, pp. 26-27.

[11] Rollo, pp. 35-36.

[12] Sec. 29, Rule 130, Rules of Court.

[13] Estrada v. Desierto, 356 SCRA 108 (April 3, 2001).

[14] 81 SCRA 675, 679 (1978).

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