LYDIA P. CAYANAN & ROSALINDA C. LAGMAN, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

Ponente: ELBINIAS, J.

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ELBINIAS, J.:

Addressed here is a Petition for Review[1] filed under Rule 42 of the Rules of Court. The Petition[2] assails the Decision[3] dated February 2, 2009 issued by the Regional Trial Court ("RTC" for brevity) of Guagua, Pampanga, Branch 49 in Criminal Case No. 08-7797 for violation of Batas Pambansa Bilang 22 ("B.P. 22" for brevity), otherwise known as the "Bouncing Checks Law".

The facts of the case are those as found by the RTC in its Decision[4], as follows:

> "xxx Two (2) separate Criminal Complaints were filed on August 29, 2002 before the court a quo against the appellants (petitioners here) charging them with Violation of Batas Pambansa Blg. 22 which are identical in contents except as to their respective date(s) of issue and check number(s) as well as the amount(s) involved. The identical allegations of the two (2) separate Criminal Complaints read as follow:
> 'That on or about February 4, 2002 in the Municipality of Guagua, Province of Pampanga, Phils., and within the jurisdiction of this Honorable Court, the above-named accused, did then and there draw, issue and deliver a Guagua Rural Bank Check with No. _____ postdated_____ in the amount of _____ in Philippine currency in favor of Pangmasa Lending Investor, in exchange for cash; which check upon presentment for collection was dishonored and returned by the drawee bank for the reason 'ACCOUNT CLOSED' and which check the accused failed to replace with cash within five (5) days from notice of dishonor, resulting to the damage and prejudice of herein private complainant in the amount of _____.

Case

Bank/Check Number

Date

Amount

18443

GRB-0080801

Feb. 9, 2002

P500,000.00

18445

GRB-0080802

Feb.28, 2002

P1,159,200.00

After posting their respective surety bonds undertaken by Plaridel Surety and Insurance Company, accused-appellant Rosalinda Lagman was arraigned on November 20, 2002 whereas accused Lydia Cayanan was arraigned on February 26, 2003 whereby both accused-appellants entered pleas of not guilty to the charges against them.

Pre-trial conference was conducted on November 19, 2003 and was terminated on October 20, 2004. Joint trial proceeded where the prosecution presented evidence to show that complainant is the proprietor and manager of Pangmasa Lending Investor. Sometime in February 2002, both appellants, issued two (2) postdated checks payable to complainant and drawn against Guagua Rural Bank. Said checks were dishonored for the reason 'account closed'.

Following the dishonor, notice of dishonor and demand were sent to the appellants by the complainant. Despite this, no payment or arrangement with the drawee bank was made by the appellants.

On September 9, 2005, after the parties were referred for mediation before the Philippine Mediation Center, a joint motion for provisional dismissal was filed and on the basis thereof, the cases were dismissed on November 16, 2005. However, on October 10, 2006, the prosecution filed a motion to revive which was granted per Order dated November 10, 2006. Prosecution's Exhibits 'A' to 'J' were admitted on March 5, 2007. Thereafter, the defense presented accused-appellant Lydia Cayanan on August 23, 2007 and Benedie Lagman on October 4, 2007. Accused-appellant Rosalinda Lagman submitted a judicial affidavit on November 8, 2007. Only defense's Exhibits '35' and '36' were admitted per Order date June 6, 2008.”[5] (Emphasis supplied)

On July 10, 2008, the Municipal Trial Court (“MTC” for brevity), of Guagua, Pampanga, Branch 2, rendered a Joint Decision[6] finding petitioners Lydia P. Cayanan and Rosalinda C. Lagman (“petitioners” for brevity) guilty beyond reasonable doubt for violation of B.P. 22. The dispositive portion of the Joint Decision[7] read:

> “WHEREFORE, PREMISES CONSIDERED, the court finds the accused Lydia P. Cayanan and Rosalinda C. Lagman, guilty beyond reasonable doubt of Violation of Batas Pambansa Blg. 22.
>
> In CR No. [18443], the accused Lydia P. Cayanan and Rosalinda C. Lagman are sentenced to suffer the penalty of imprisonment of three (3) months. They are directed to pay the private complainant Pangmasa Lending Investor the amount of P490,000, representing the value actually received by the accused by way of damages with 12% interest per annum from the time this joint decision becomes final and executory until full payment.
>
> In CR No. [18445], the accused Lydia P. Cayanan and Rosalinda C. Lagman are sentenced to suffer the penalty of imprisonment of six (6) months. They are directed to pay the private complainant Pangmasa Lending Investor the amount of P1,101,240.00 representing the value actually received by the accused by way of damages with 12% interest per annum from the time this joint decision becomes final and executory until full payment.
>
> Service of sentence shall be successive.
>
> Let warrants of arrest be issued against the accused Lydia P. Cayanan and Rosalinda C. Lagman.
>
> SO ORDERED.”[8]

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Upon their judgment of conviction by the MTC, petitioners appealed to the RTC.

On February 2, 2009, the RTC rendered its assailed Decision[9], affirming in toto the Joint Decision[10] of the MTC.[11]

After petitioners' Motion for Reconsideration[12] was denied by the the RTC, petitioners filed the Petition[13] at bench praying for the following:

> "WHEREFORE, it is respectfully prayed to this Honorable Court of Appeals to render a decision, to wit:
>
> 1. Reversing the decision dated February 2, 2009 of RTC BR 49 Guagua, Pampanga.
>
> 2. Rendering another decision in favor of the accused acquitting them for insufficiency [of] evidence."[14]

Petitioners raised the following assignment of errors:

> "ASSIGNMENT OF ERRORS
>
> I. The Honorable Court committed grave error in considering the Notice of Dishonor dated July 14, 2002 sent by registered mail after six (6) months from the maturity dates of the checks February 9, 2002 and February 28, 2002 were not served and not personally received by both accused.
>
> II. The Courts (sic) committed grave error in disregarding the fact that the checks of Erlinda Plamenco that were rediscounted by Joseph Guiam were properly identified by Lydia Cayanan.
>
> III. The [C]ourt committed grave error in not considering the fact that Joseph Guiam gave the initial deposit of THREE THOUSAND PESOS (P3000.00) for opening checking account of both accused at Guagua Rural Bank on Feb. 4, 2002.
>
> IV. The [C]ourt failed to appreciate the fact that during the pre-trial conference that accused admitted having issued the checks with qualification that no MONEY was received from Joseph Guiam.
>
> V. The Court a quo committed an error in considering that the Notice of Dishonor was received by the accused.
>
> VI. The [C]ourt committed error for disregarding the fact that the private prosecutor did not have authority in [w]riting issued by the Chief of the Prosecution Office or of the Pampanga Regional State Prosecution to prosecute the case subject to the approval of the Court in violation of Sec. 5[,] Rule 110 of the Rules of Court.
>
> VII. The Court erred in not considering the stipulations at the pre-trial conference that accused admitted having issued the checks with qualification that (they) checks were not issued in exchanged for cash but for rediscounting and that they (accused) had never received the amount of P1,159,200.00 and P500,000.00 from Guiam. (Hearing on February 2, 2005 Joseph Guiam page 27)."[15]

To begin with, contrary to petitioners' arguments in their assignment of error VI, the court did not err in allowing the private prosecutor to prosecute the case without authority in writing from the Chief of the Prosecution Office or of the Regional State Prosecution.[16]

Petitioners had argued the following:

> "A careful scrutiny of the records reveal that no delegation of authority to prosecute the case was given to the private prosecutor commencing February 2, 2005 up to the termination of the case.
>
> At the initial hearing, the Public Prosecutor merely manifested in open [c]ourt, the statement and to quote:
>
> Fiscal Estamo: 'We are [delegating] the prosecution of these cases to the private prosecutor. (TSN Hearing on Feb. 2, 2005 page 3)

> [Thereafter] Atty Binoza (sic) took over with the following statement[:]
>
> Atty. Benoza: He offered the testimony [of] the witness Joseph Guiam as owner of Pangmasa Lending Investor, that both accused issued the checks in favor of Pangmasa Lending Investor which upon maturity, deposited in the drawee bank were dishonored and despite Notice of Dishonor they failed to make good the checks. He continued acting as prosecutor until the termination of the cases without the required written delegated authority from the [prosecution's] office.
>
> xxx
>
> The Complaint Affidavit dated August 23, 2002 was the basis for the filing of the information for B.P. No. 22 against Cayanan and Lagman after the effectivity of the A.M. SC N0. 22 on May 1, 2002. It is mandatory that the presentation of evidence by the private prosecutor must [be] through the written authority delegated by the Pampanga Chief of the Prosecution [Office] or by the Regional State Prosecutor. There being no delegation of authority that was secured by the private prosecutor constitutes a fatal defect."[17] (Emphasis supplied)

Defeating petitioners' arguments however, is that the private prosecutor could prosecute the case under the direct control and supervision of the public prosecutor without need of authority in writing. This is because the delegation made by the public prosecutor to private prosecutor to prosecute the case below was made in open court. An authority in writing from the Prosecution's Office is only needed when there is no regular prosecutor assigned by the court, or the prosecutor assigned cannot attend to the prosecution of pending criminal cases, due to heavy work schedule, pursuant to the following pronouncement by the Supreme Court in Atty. Franklin G. Gacal vs. Judge Jaime I. Infante, Regional Trial Court, Branch 38, in Alabel, Sarangani, A.M. No. RTJ- 04-1845, October 5, 2011 [Formerly A.M. No. IPI No. 03-1831-RTJ]:

> "The need for an authority in writing from the Chief of the Prosecution's Office or Regional State Prosecutor to the Private Prosecutor to prosecute the case, subject to the approval of the court, contemplates of a situation wherein there is no regular prosecutor assigned the court, or the prosecutor assigned, due to heavy work schedule, cannot attend to the prosecution of pending criminal cases to expedite disposition of the case. This provision of the Rules of Criminal Procedure does not prevent the offended party who did not reserve, waive nor institute separate civil action, from intervening in the case through a private prosecutor." (Emphasis supplied)

In the prosecution for violation of B.P. 22 otherwise known as the Bouncing Checks Law, the following elements must be present: 1.) a person makes or draws and issues a check to apply on account or for value; 2.) the person who makes or draws and issues the check knows at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the full payment of the check upon its presentment, and; 3.) the check is subsequently dishonored by the drawee bank for insufficiency of funds or credit, or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment[18].

Contrary to petitioners' assignment of errors I and V, a Notice of Dishonor was personally and actually received by them.

Petitioners had argued as follows:

> "In the complaint-affidavit dated August 23, 2002 of Joseph Guiam, it was alleged that accused issued the two (2) Guagua Rural Bank Checks [N]o. 0080811 (sic) in the amount of PHP 500,000.00 dated February 9, 2002 and check [N]o. 0080802 in the amount of PHP 1,529.200 (sic) dated February 28, 2002.
>
> No [N]otice of Dishonor was personally and actually received by the accused. The alleged Notice of Dishonor dated July 14, 2002 sent on August 8, 2002 to the accused presented in Court is inadmissible aside from the self-serving testimony of the complainant. No other evidence was presented in court by the prosecution to

> prove that the accused had personally received such notice of Dishonor[.]
>
> xxx
>
> In the Complaint Affidavit of Joseph Guiam, the Notice of Dishonor dated July 14, 2002 was allegedly sent to the accused by registered mail.
>
> The alleged demand letter was sent by registered mail to the accused only after more than six (6) months from the maturity dates of the checks Feb. 9, 2002 and Feb. 28, 2002 that were issued to complainant.
>
> There was no authenticated document that was presented by the prosecution that proved there was actually a Notice of Dishonor personally sent and received by both accused.
>
> xxx
>
> Indeed, this requirement cannot be taken lightly because Sec. 2 provides for an opportunity to preclude Criminal Prosecution. In other words, procedural due process demands that Notice of Dishonor be actually served on the petitioner.
>
> It is very clear, that the registry receipt and registry return receipt mentioned in the complaint affidavit as Annexes H, H-1, H-3, H-4 and marked as prosecution's Exhibits D & E for the demand letter allegedly sent by Guiam cannot be considered as evidence of Notice to the accused. For failure of the prosecution to present an authenticated document in the court, the registry receipts are inadmissible in evidence."[19] (Emphasis supplied)

Negating petitioners' arguments however, is that petitioners admitted during the Pre-Trial Conference, the fact that a Notice of Dishonor and a Demand Letter were sent to them by private complainant Pangmasa Lending Investor ("private complainant" for brevity).[20] Petitioners also admitted that despite their receipt of the Notice of Dishonor and Demand Letter, they had not "replaced or paid the face value"[21] of the dishonored checks.[22] The following were petitioners' admissions during the Pre-Trial Conference[23] on November 19, 2003, which admissions in turn, were revealed in the MTC's Joint Decision[24] of July 10, 2008:

> "a.) [T]he identity (sic) of the accused;
>
> b.) [T]hat the accused used to maintain a checking account with the Guagua Rural Bank, Betis Branch, Betis, Guagua, Pampanga;
>
> c.) [T]hat the accused [issued] in favor of the private complainant Guagua Rural Bank Check [Nos.] 0080801 and 0080802, respectively dated February 9, 2002 and February 28, 2002 in the respective amount of P500,000.00 and P1,159,200.00;
>
> d.) [T]hat the said checks when presented for payment were dishonored for the reason 'Account Closed';
>
> e.) [T]hat a notice of dishonor and demand letter was sent to the accused by the private complainant; [and]
>
> f.) [T]hat despite receipt of the notice and demand letter the accused have not replaced or paid the face value of the said checks."[25] (Emphasis supplied)

Petitioners could not also properly argue that the registry receipt and the registry return receipt of the Demand Letter were inadmissible as evidence of Notice of Dishonor. This is because petitioners failed to object to their admissibility at the time such pieces of evidence were offered by the prosecution. Hence, they could no longer raise such objection for the first time on Appeal. This was as had been similarly pronounced by the Supreme Court in Land Bank of the Philippines vs. Veronica Atega Nable, G.R. No. 176692, June 27, 2012, to wit:

> "Any objection to evidence must be timely raised in the course of the proceedings in which the evidence is

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> first offered. This enables the adverse party to meet the objection to his evidence, as well as grants to the trial court the opportunity to pass upon and rule on the objection. The objection to evidence cannot be made for the first time on appeal, both because the party who has failed to timely object becomes estopped from raising the objection afterwards; and because to assail the judgment of the lower court upon a cause as to which the lower court had no opportunity to pass upon and rule is contrary to basic fairness and procedural orderliness." (Emphasis Supplied)

Neither could petitioners Cayanan and Lagman properly argue in their assignment of errors II and III that they were merely forced to open a checking account and to issue the checks in order to pay for the rediscounted checks of a certain Erlinda Plamenco ("Plamenco" for brevity). The reason is that nothing was presented by the petitioners to support their allegation that they were merely forced to do so.

Moreover, contrary to petitioners' assignment of errors IV and VII, petitioners' issuance of the dishonored checks, which they admitted during the Pre-trial Conference[26], and in their pleadings, is presumed to have been done for a valuable consideration.[27]

The issuance of a check is presumed to have been done for a valuable consideration in the absence of evidence to prove the contrary. The one who alleges the contrary, such as petitioners here, has the obligation to present convincing proof to overthrow the presumption. This is in accordance with the pronouncement of the Supreme Court in Leodegario Bayani vs. People of the Philippines, G.R. No. 155619, August 14, 2007, to wit:

> "As regards the first element, it is presumed, upon issuance of the checks and in the absence of evidence to the contrary, that the same was issued for valuable consideration. Under the Negotiable Instruments Law, it is presumed that every party to an instrument acquired the same for a consideration or for value. In alleging that there was no consideration for the subject check, it devolved upon petitioner to present convincing evidence to overthrow the presumption and prove that the check was issued without consideration.
>
> Valuable consideration may consist either of some right, interest, profit or benefit accruing to the party who makes the contract; or some forbearance, detriment, loss of some responsibility to act; or labor or service given, suffered or undertaken by the other side. It is an obligation to do or not to do, in favor of the party who makes the contract, such as the maker or indorser. It was shown in this case that the check was issued and exchanged for cash. This was the valuable consideration for which the check was issued.
>
> At any rate, what the law punishes is the mere act of issuing a bouncing check, not the purpose for which it was issued or the terms and conditions relating to its issuance. The law does not make any distinction on whether the checks within its contemplation are issued in payment of an obligation or to merely guarantee the obligation. The thrust of the law is to prohibit the making of worthless checks and putting them in circulation." (Emphasis supplied)

Such a presumption here was not overcome, due to petitioners' failure to present evidence to support their allegations. On the other hand, the prosecution had proven that petitioners' issuance of the dishonored checks was done for a valuable consideration. This, the prosecution did by its presentation of "cash vouchers"[28] which bore the signatures of petitioners[29], and which vouchers therefore showed that petitioners received money from private complainant. Thus, petitioners' denial that they did not receive any amount from private complainant is negative and self-serving evidence undeserving of weight in law.[30]

Besides, even if the checks that petitioners issued in favor of private complainant were not issued for a valuable consideration, still, the mere issuance of a worthless check constitutes a Violation of B.P. 22, as had been similarly pronounced by the Supreme Court in Alberto Lim vs. People of the Philippines[31], to wit:

> "Hence, without evidentiary support, ALBERTO's claim that the twelve checks lacks valuable consideration must fail. Upon issuance of the said checks, it is presumed, in the absence of evidence to the contrary, that the

> same was issued for valuable consideration. B.P. Blg. 22 punishes the issuance of a bouncing check. It is also worthy to note that it is not the non-payment of an obligation which the law punishes, but the act of making and issuing a check that is dishonored upon presentment for payment. The purpose for which it was issued and the terms and conditions relating to its issuance are immaterial. What is primordial is that such issued checks were worthless and the fact of its worthlessness is known to appellant at the time of their issuance, a required element under B.P. Blg. 22. This is because the mere act of issuing a worthless check is malum prohibitum." (Emphasis supplied)

Given all these, no cogent or compelling reason was therefore shown to justify any deviation from the following findings of the RTC, which were based on the facts and the law:

> "Indeed, this court agrees with the position of the court a quo that appellants' argument and/or defense that the checks were issued to guarantee the obligation of their client, Erlinda Flamenco is immaterial and irrelevant. The Supreme Court has consistently declared that the cause or reason for the issuance of a check is inconsequential in determining criminal culpability under BP Blg. 22; the reason therefore was explained in Llamado v. Court of Appeals, G.R. No. 99032, March 26, 1997, as follows:
> '[T]o determine the reason[s] for which checks are issued, or the terms and conditions for their issuance, will greatly erode the faith the public reposes in the stability and commercial value of checks as currency substitutes, and bring about havoc in trade and in banking communities xxx

The gravamen of the offense punished by BP. 22 is the act of making and issuing a worthless check; that is, a check that is dishonored upon its presentation for payment. (Recuerdo v. People, 395 SCRA 638, 643, January 22, 2003).

The mere act of issuing a worthless check is malum prohibitum. Lozano v. Martinez, 230 Phil. 406, 421, December 18, 1986, has declared that it is not the non-payment of the obligation that is being punished, but the making of worthless checks.

In People v. Nitafan, 215 SCRA 79, 82, (See also Cruz v. Court of Appeals, 233 SCRA 301, 307, June 17, 1994. October 22, 1992; Cruz v. Court of Appeals, 233 SCRA 301, 307, June 17, 1994), the High Court has ruled that a check issued as an evidence of debt - though not intended to be presented for payment – has the same effect as an ordinary check and would fall within the ambit of BP 22.

Que v. People (154 SCRA 160, 164 September 21, 1987) has affirmed the application of BP 22 to cases in which dishonored checks have been issued in the form of deposit or guarantee. Indeed, the law does not make any distinction between checks issued in payment of an obligation and those made merely to guarantee that obligation. (San Pedro v. People, 387 SCRA 352, 357, August 15, 2002).

From all the foregoing, the court finds no reversible error in the assailed joint decision of the court a quo."[32] (Emphasis supplied)

The rule is entrenched in that factual findings of the MTC, especially when affirmed in toto by the RTC, as is the case here, are accorded great weight and respect.[33]

Thus, after careful consideration of all the facts, arguments, and issues appearing on the records, as well as of the pertinent laws and jurisprudence, and, in accordance with what is best determined to be proper under the circumstances, the following disposition is made on these matters.

GIVEN ALL THESE, the Petition is therefore DENIED.

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SO ORDERED.

Dicdican, and Paredes, JJ., concur.

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[1] Rollo, pp. 8-22.

[2] Rollo, pp. 8-22.

[3] Rollo, pp. 135-142.

[4] Rollo, pp. 135-142.

[5] Rollo, pp. 136-137.

[6] Rollo, pp. 29–36, 128-134.

[7] Rollo, pp. 29–36, 128-134.

[8] Rollo, p. 134.

[9] Rollo, pp. 135-142.

[10] Rollo, pp. 29-36, 128-134.

[11] Rollo, p. 142.

[12] Rollo, pp. 46-51.

[13] Rollo, pp. 8-22.

[14] Rollo, p. 22.

[15] Rollo, pp. 12-13.

[16] Rollo, p. 19.

[17] Rollo, pp. 19-20.

[18] Eumelia R. Mitra vs. People of the Philippines and Felicisimo S. Tarcelo, G.R. No. 191404, July 5, 2010.

[19] Rollo, pp. 13-19.

[20] Rollo, pp. 129.

[21] Rollo, p. 129.

[22] Rollo, pp. 129, 132, 133.

[23] Rollo, p. 129.

[24] Rollo, pp. 29-36, 128-134.

[25] Rollo, p. 129.

[26] Rollo, p. 129.

[27] Leodegario Bayani vs. People of the Philippines, G.R. No. 155619, August 14, 2007.

[28] Rollo, pp. 129, 133.

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[29] Rollo, pp. 129, 133.

[30] People of the Philippines vs. Antonio Baldomar y Liscano, G.R. No. 197043, February 29, 2012.

[31] G.R. No. 143231, October 26, 2001.

[32] Rollo, pp. 141-142.

[33] Erlinda de la Cruz vs. Court of Appeals and People of the Philippines, G.R. No. 105213 December 4, 1996.

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