

MANUEL LIM AND ROSITA LIM, PETITIONERS, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.*G.R. No. 107898. December 19, 1995*

Ponente: BELLOSILLO, J.

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MANUEL LIM and ROSITA LIM, spouses, were charged before the Regional Trial Court of Malabon with estafa on three (3) counts under Art. 315, par. 2 (d), of The Revised Penal Code, docketed as Crim. Cases Nos. 1696-MN to 1698-MN. The Informations substantially alleged that Manuel and Rosita, conspiring together, purchased goods from Linton Commercial Company, Inc. (LINTON), and with deceit issued seven Consolidated Bank and Trust Company (SOLIDBANK) checks simultaneously with the delivery as payment therefor. When presented to the drawee bank for payment the checks were dishonored as payment on the checks had been stopped and/or for insufficiency of funds to cover the amounts. Despite repeated notice and demand the Lim spouses failed and refused to pay the checks or the value of the goods.

On the basis of the same checks, Manuel and Rosita Lim were also charged with seven (7) counts of violation of B.P. Blg. 22, otherwise known as the Bouncing Checks Law, docketed as Crim. Cases Nos. 1699-MN to 1705-MN. In substance, the Informations alleged that the Lims issued the checks with knowledge that they did not have sufficient funds or credit with the drawee bank for payment in full of such checks upon presentment. When presented for payment within ninety (90) days from date thereof the checks were dishonored by the drawee bank for insufficiency of funds. Despite receipt of notices of such dishonor the Lims failed to pay the amounts of the checks or to make arrangements for full payment within five (5) banking days.

Manuel Lim and Rosita Lim are the president and treasurer, respectively, of Rigi Bilt Industries, Inc. (RIGI). RIGI had been transacting business with LINTON for years, the latter supplying the former with steel plates, steel bars, flat bars and purlin sticks which it uses in the fabrication, installation and building of steel structures. As officers of RIGI the Lim spouses were allowed 30, 60 and sometimes even up to 90 days credit.

On 27 May 1983 the Lims ordered 100 pieces of mild steel plates worth P51,815.00 from LINTON which were delivered on the same day at their place of business at 666 7th Avenue, 8th Street, Kalookan City. To pay LINTON for the delivery the Lims issued SOLIDBANK Check No. 027700 postdated 3 September 1983 in the amount of P51,800.00.[1]

On 30 May 1983 the Lims ordered another 65 pieces of mild steel plates worth P63,455.00 from LINTON which were delivered at their place of business on the same day. They issued as payment SOLIDBANK Check No. 027699 in the amount of P63,455.00 postdated 20 August 1983.[2]

The Lim spouses also ordered 2,600 "Z" purlins worth P241,800.00 which were delivered to them on various dates, to wit: 15 and 22 April 1983; 11, 14, 20, 23, 25, 28 and 30 May 1983; and, 2 and 9 June 1983. To pay for the deliveries, they issued seven SOLIDBANK checks, five of which were -

Check No.

Date of Issue

Amount

027683

16 July 1983

P27,900.00[3]

027684

23 July 1983

P27,900.00[4]

027719

6 Aug. 1983

P32,550.00[5]

027720

13 Aug. 1983

P27,900.00[6]

027721

27 Aug. 1983

P37,200.00[7]

William Yu Bin, Vice President and Sales Manager of LINTON, testified that when those seven (7) checks were deposited with the Rizal Commercial Banking Corporation they were dishonored for "insufficiency of funds" with the additional notation "payment stopped" stamped thereon. Despite demand Manuel and Rosita refused to make good the checks or pay the value of the deliveries.

Salvador Alfonso, signature verifier of SOLIDBANK, Grace Park Branch, Kalookan City, where the Lim spouses maintained an account, testified on the following transactions with respect to the seven (7) checks:

CHECK NO.

DATE PRESENTED

REASON FOR DISHONOR

027683

22 July 1983

Payment Stopped (PS)[8]

027684

23 July 1983

PS and Drawn Against Insufficient Fund (DAIF)[9]

027699

24 Aug. 1983

PS and DAIF[10]

027700

5 Sept. 1993

PS and DAIF[11]

027719

9 Aug. 1993

DAIF[12]

027720

16 Aug. 1983

PS and DAIF[13]

027721

30 Aug. 1983

PS and DAIF[14]

Manuel Lim admitted having issued the seven (7) checks in question to pay for deliveries made by LINTON but denied that his company's account had insufficient funds to cover the amounts of the checks. He presented the bank ledger showing a balance of P65,752.75. Also, he claimed that he ordered SOLIDBANK to stop payment because the supplies delivered by LINTON were not in accordance with the specifications in the purchase orders.

Rosita Lim was not presented to testify because her statements would only be corroborative.

On the basis of the evidence thus presented the trial court held both accused guilty of estafa and violation of B.P. Blg. 22 in its decision dated 25 January 1989. In Crim. Case No. 1696-MN they were sentenced to an indeterminate penalty of six (6) years and one (1) day of prision mayor as minimum to twelve (12) years and one (1) day of reclusion temporal as maximum plus one (1) year for each additional P10,000.00 with all the accessory penalties provided for by law, and to pay the costs. They were also ordered to indemnify LINTON in the amount of P241,800.00. Similarly sentences were imposed in Crim. Cases Nos. 1697-MN and 1698-MN except as to the indemnities awarded, which were P63,455.00 and P51,800.00, respectively.

In Crim. Case No. 1699-MN the trial court sentenced both accused to a straight penalty of one (1) year imprisonment with all the accessory penalties provided for by law and to pay the costs. In addition, they were ordered to indemnify LINTON in the amount of P27,900.00. Again, similar sentences were imposed in Crim. Cases Nos. 1700-MN to 1705-MN except for the indemnities awarded; which were P32,550.00, P27,900.00, P27,900.00, P63,455.00, P51,800.00 and P37,200.00 respectively.[15]

On appeal, the accused assailed the decision as they imputed error to the trial court as follows: (a) the Regional Trial Court of Malabon had no jurisdiction over the cases because the offenses charged were committed outside its territory; (b) they could not be held liable for estafa because the seven (7) checks were issued by them several weeks after the deliveries of the goods; and, (c) neither could they be held liable for violating B.P. Blg. 22 as they ordered payment of the checks to be stopped because the goods delivered were not those specified by them, besides they had sufficient funds to pay the checks.

In the decision of 18 September 1992[16] respondent Court of Appeals acquitted accused-appellants of estafa on the ground that indeed the checks were not made in payment of an obligation contracted at the time of their issuance. However it affirmed the finding of the trial court that they were guilty of having violated B.P. Blg. 22.[17] On 6 November 1992 their motion for reconsideration was denied.[18]

In the case at bench petitioners maintain that the prosecution failed to prove that any of the essential elements of the crime punishable under B.P. Blg. 22 was committed within the jurisdiction of the Regional Trial Court of Malabon. They claim that what was proved was that all the elements of the offense were committed in Kalookan City. The checks were issued at their place of business, received by a collector of LINTON, and dishonored by the drawee bank, all in Kalookan City. Furthermore, no evidence whatsoever supports the proposition that they knew that their checks were insufficiently funded. In fact, some of the checks were funded at the time of presentment but dishonored nonetheless upon their instruction to the bank to stop payment. In fine, considering that the checks were all issued, delivered, and dishonored in Kalookan City, the trial court of Malabon exceeded its jurisdiction when it tried the case and rendered judgment thereon.

The petition has no merit. Section 1, par. 1, of B.P. Blg. 22 punishes "[a]ny 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 x x x" The gravamen of the offense is knowingly issuing a worthless check.[19] Thus, a fundamental element is knowledge on the part of the drawer of the insufficiency of his funds in[20] or credit with the drawee bank for the payment of such check in full upon presentment. Another essential element is subsequent dishonor of the check 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.[21]

It is settled that venue in criminal cases is a vital ingredient of jurisdiction.[22] Section 14, par. (a), Rule 110, of the Revised Rules of Court, which has been carried over in Sec. 15, par. (a), Rule 110 of the 1985 Rules on Criminal Procedure, specifically provides:

Sec. 14. Place where action is to be instituted. - (a) In all criminal prosecutions the action shall be instituted and tried in the court of the municipality or province wherein the offense was committed or any one of the essential ingredients thereof took place.

If all the acts material and essential to the crime and requisite of its consummation occurred in one municipality or territory, the court therein has the sole jurisdiction to try the case.[23] There are certain crimes in which some acts material and essential to the crimes and requisite to their consummation occur in one municipality or territory and some in another, in which event, the court of either has jurisdiction to try the cases, it being understood that the first court taking cognizance of the case excludes the other.[24] These are the so-called transitory or continuing crimes under which violation of B.P. Blg. 22 is categorized. In other words, a person charged with a transitory crime may be validly tried in any municipality or territory where the offense was in part committed.[25]

In determining proper venue in these cases, the following acts material and essential to each crime and requisite to its consummation must be considered: (a) the seven (7) checks were issued to LINTON at its place of business in Balut, Navotas; (b) they were delivered to LINTON at the same place; (c) they were dishonored in Kalookan City; and, (d) petitioners had knowledge of the insufficiency of their funds in SOLIDBANK at the time the checks were issued. Since there is no dispute that the checks were dishonored in Kaloocan City, it is no longer necessary to discuss where the checks were dishonored.

Under Sec. 191 of the Negotiable Instruments Law the term "issue" means the first delivery of the instrument complete in form to a person who takes it as a holder. On the other hand, the term "holder" refers to the payee or indorsee of a bill or note who is in possession of it or the bearer thereof. In *People v. Yabut*[26] this Court explained —

x x x x The place where the bills were written, signed, or dated does not necessarily fix or determine the place where they were executed. What is of decisive importance is the delivery thereof. The delivery of the instrument is the final act essential to its consummation as an obligation. An undelivered bill or note is inoperative. Until delivery, the contract is revocable. And the issuance as well as the delivery of the check must be to a person who takes it as a holder, which means '(t)he payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.' Delivery of the check signifies transfer of possession, whether actual or constructive, from one person to another with intent to transfer title thereto x x x x

Although LINTON sent a collector who received the checks from petitioners at their place of business in Kalookan City, they were actually issued and delivered to LINTON at its place of business in Balut, Navotas. The receipt of the checks by the collector of LINTON is not the issuance and delivery to the payee in contemplation of law. The collector was not the person who could take the checks as a holder, i.e., as a payee or indorsee thereof, with the intent to transfer title thereto. Neither could the collector be deemed an agent of LINTON with respect to the checks because he was a mere employee. As this Court further explained in *People v. Yabut*[27] —

Modesto Yambao's receipt of the bad checks from Cecilia Que Yabut or Geminiano Yabut, Jr., in Caloocan City cannot, contrary to the holding of the respondent Judges, be licitly taken as delivery of the checks to the complainant Alicia P. Andan at Caloocan City to fix the venue there. He did not take delivery of the checks as holder, i.e., as 'payee' or 'indorsee.' And there appears to be no contract of agency between Yambao and Andan so as to bind the latter for the acts of the former. Alicia P. Andan declared in that sworn testimony before the investigating fiscal that Yambao is but her 'messenger' or 'part-time employee.' There was no special fiduciary relationship that permeated their dealings. For a contract of agency to exist, the consent of both parties is essential. The principal consents that the other party, the agent, shall act on his behalf, and the agent consents so as to act. It must exist as a fact. The law makes no presumption thereof. The person alleging it has the burden of proof to show, not only the fact of its existence, but also its nature and extent x x x x

Section 2 of B.P. Blg. 22 establishes a prima facie evidence of knowledge of insufficient funds as follows —

The making, drawing and issuance of a check payment of which is refused by the bank 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 arrangement 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 prima facie evidence has not been overcome by petitioners in the cases before us because they did not pay LINTON the amounts due on the checks; neither did they make arrangements for payment in full by the drawee bank within five (5) banking days after receiving notices that the checks had not been paid by the drawee bank. In

People v. Grospe[28] citing People v. Manzanilla[29] we held that "x x x knowledge on the part of the maker or drawer of the check of the insufficiency of his funds is by itself a continuing eventuality, whether the accused be within one territory or another."

Consequently, venue or jurisdiction lies either in the Regional Trial Court of Kalookan City or Malabon. Moreover, we ruled in the same Grospe and Manzanilla cases as reiterated in Lim v. Rodrigo[30] that venue or jurisdiction is determined by the allegations in the Information. The Informations in the cases under consideration allege that the offenses were committed in the Municipality of Navotas which is controlling and sufficient to vest jurisdiction upon the Regional Trial Court of Malabon.[31]

We therefore sustain likewise the conviction of petitioners by the Regional Trial Court of Malabon for violation of B.P. Blg. 22 thus —

Accused-appellants claim that they ordered payment of the checks to be stopped because the goods delivered were not those specified by them. They maintain that they had sufficient funds to cover the amount of the checks. The records of the bank, however, reveal otherwise. The two letters (Exhs. 21 and 22) dated July 23, and August 10, 1983 which they claim they sent to Linton Commercial, complaining against the quality of the goods delivered by the latter, did not refer to the delivery of mild steel plates (6mm x 4 x 8) and "Z" purlins (16 x 7 x 2-1/2 mts) for which the checks in question were issued. Rather, the letters referred to B.1. Lally columns (Sch. #20), which were the subject of other purchase orders.

It is true, as accused-appellants point out, that in a case brought by them against the complainant in the Regional Trial Court of Kalookan City (Civil Case No. C-10921) the complainant was held liable for actual damages because of the delivery of goods of inferior quality (Exh. 23). But the supplies involved in that case were those of B.I. pipes, while the purchases made by accused-appellants, for which they issued the checks in question, were purchases of mild steel plates and "Z" purlins.

Indeed, the only question here is whether accused-appellants maintained funds sufficient to cover the amounts of their checks at the time of issuance and presentment of such checks. Section 3 of B.P. Blg. 22 provides that 'notwithstanding receipt of an order to stop payment, the drawee bank shall state in the notice of dishonor that there were no sufficient funds in or credit with such bank for the payment in full of the check, if such be the fact.'

The purpose of this provision is precisely to preclude the maker or drawer of a worthless check from ordering the payment of the check to be stopped as a pretext for the lack of sufficient funds to cover the check.

In the case at bar, the notice of dishonor issued by the drawee bank, indicates not only that payment of the check was stopped but also that the reason for such order was that the maker or drawer did not have sufficient funds with which to cover the checks. x x x x Moreover, the bank ledger of accused-appellants' account in Consolidated Bank shows that at the time the checks were presented for encashment, the balance of accused-appellants' account was inadequate to cover the amounts of the checks.[32] x x x x

WHEREFORE, the decision of the Court of Appeals dated 18 September 1992 affirming the conviction of petitioners Manuel Lim and Rosita Lim -

In CA-G.R. CR No. 07277 (RTC Crim. Case No. 1699-MN); CA-G.R. CR No. 07278 (RTC Crim. Case No. 1700-MN); CA-G.R. CR No. 07279 (RTC Crim. Case No. 1701-MN); CA-G.R. CR No. 07280 (RTC Crim. Case No. 1702-MN); CA-G.R. CR No. 07281 (RTC Crim. Case No. 1703-MN); CA-G.R. CA No. 07282 (RTC Crim. Case No. 1704-MN); and CA-G.R. CR No. 07283 (RTC Crim Case No. 1705-MN), the Court finds the accused-appellants

MANUEL LIM and ROSITA LIM guilty beyond reasonable doubt of violation of Batas Pambansa Bilang 22 and are hereby sentenced to suffer a STRAIGHT PENALTY OF ONE (1) YEAR IMPRISONMENT in each case, together with all the accessory penalties provided by law, and to pay the costs.

In CA-G.R. CR No. 07277 (RTC Crim. Case No. 1699-MN), both accused-appellants are hereby ordered to indemnify the offended party in the sum of P27,900.00.

In CA-G.R. CR No. 07278 (RTC Crim. Case No. 1700-MN) both accused-appellants are hereby ordered to indemnify the offended party in the sum of P32,550.00.

In CA-G.R. CR No. 07279 (RTC Crim. Case No. 1701-MN) both accused-appellants are hereby ordered to indemnify the offended party in the sum of P27,900.00.

In CA-G.R. CR No. 07280 (RTC Crim. Case No. 1702-MN) both accused-appellants are hereby ordered to indemnify the offended party in the sum of P27,900.00.

In CA-G.R. CR No. 07281 (RTC Crim. Case No. 1703-MN) both accused are hereby ordered to indemnify the offended party in the sum of P63,455.00.

In CA-G.R. CR No. 07282 (RTC Crim. Case No. 1704-MN) both accused-appellants are hereby ordered to indemnify the offended party in the sum of P51,800.00, and

In CA-G.R. CR No. 07283 (RTC Crim. Case No. 1705-MN) both accused-appellants are hereby ordered to indemnify the offended party in the sum of P37,200.00[33] —

as well as its resolution of 6 November 1992 denying reconsideration thereof, is AFFIRMED. Costs against petitioners.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Kapunan, and Hermosisima, Jr., JJ., concur.

[1] Exh. "C."

[2] Exh. "G."

[3] Exh. "L."

[4] Exh. "N."

[5] Exh. "P."

[6] Exh. "S."

[7] Exh. "V."

[8] Exh. "M."

[9] Exhs. "0," "0-1" and "0-2."

[10] Exhs. "H" and "H-1."

[11] Exhs. "D," "D-1" and "D-2."

[12] Exhs. "Q" and "Q-1."

[13] Exhs. "T," "U" and "U-1."

[14] Exhs. "W," "W-1" and "W-2."

[15] Rollo, pp. 79-80.

[16] Penned by Justice Vicente V. Mendoza (now a Member of this Court) as Chairman, with Justices Jaime M. Lantin and Consuelo Y. Santiago concurring.

[17] *Id.*, pp. 56-58.

[18] *Id.*, p. 61.

[19] *Cruz v. IAC*, G.R. No. 66327, 28 May 1984, 129 SCRA 490.

[20] *Lozano v. Martinez*, G.R. No. 63419, 18 December 1986, 146 SCRA 323; *Dingle v. IAC*, G.R. No. 75243, 16 March 1987, 148 SCRA 595.

[21] *People v. Manzanilla*, G.R. Nos. 66003-04, 11 December 1987, 156 SCRA 279.

[22] *Lopez v. City Judge*, No. L-25795, 29 October 1966, 18 SCR6; *U.S. v. Pagdayuman*, 5 Phil. 265 (1905); *U.S. v. Reyes*, 1 Phil. 249 (1902); *Ragpala v. J.P. of Tubod, Lanao*, 109 Phil. 265 (1905); *Agbayani v. Sayo*, No. L-47880, 30 April 1979, 89 SCRA 699.

[23] *People v. Yabut*, No. L-42902, 29 April 1977, 76 SCRA 624.

[24] *Tuzon v. Cruz*, No. L-27410, 28 August 1975, 66 SCRA 235.

[25] *People v. Grospe*, G.R. Nos. 74053-54, 20 January 1988, 157 SCRA 154.

[26] See Note 23, p. 629.

[27] *Id.*, p. 630.

[28] See Note 25.

[29] See Note 21.

[30] G.R. No. 76974, 18 November 1988, 167 SCRA 487.

[31] Adm. Order No. 3 defines the territorial jurisdiction of Regional Trial Courts in the National Capital Judicial Region by, inter alia, establishing two branches over the municipalities of Malabon and Navotas with seats in Malabon.

[32] Court of Appeals Decision, pp. 16-17; Rollo, pp. 54-55.

[33] *Id.*, pp. 56-58.

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