

ROBERTO CRUZ, PETITIONER, VS. COURT OF APPEALS, PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 108738. June 17, 1994

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

The sole issue to be resolved in the instant petition is whether or not petitioner is liable for violation of Batas Pambansa Bilang 22 for issuing a check knowing he does not have credit with drawee bank and thereafter claiming that the said check was not intended for circulation and negotiation, the same having been issued only to serve as mere evidence or memorandum of indebtedness.

The relevant antecedents are as follows, viz:

Complaining witness Andrea Mayor is a businesswoman engaged, among others, in granting interest-bearing loans and in rediscounting checks.[1] Sometime in 1987, she was introduced to herein petitioner, Roberto Cruz who at that time was engaged in the business of selling ready-to-wear clothes at the Pasay Commercial Center.[2] From then on, petitioner has been borrowing money from Mayor.[3] On March 15, 1989, petitioner borrowed from Andrea Mayor one hundred seventy six thousand pesos (P176,000.00).[4] On April 6, 1989, Mayor delivered the said amount to petitioner himself in the latter's stall at the Pasay Commercial Center. Cruz, in turn, issued Premiere Bank Check No. 057848 postdated April 20, 1989 for same amount.[5] When the check matured, complaining witness presented it to the drawee bank for payment but the same was dishonored and returned for reason "account closed." When notified of the dishonor, petitioner promised to pay his obligation in cash. No payment was made, hence, an information for violation of Batas Pambansa Bilang 22 was filed against the petitioner.[6]

Upon arraignment, petitioner entered a plea of not guilty.[7]

At the pre-trial, petitioner admitted the existence of the check.[8]

During trial, the prosecution presented two (2) witnesses, Andrea Mayor, herein complainant, and Marcelo Ladao, a representative of Premiere Development Bank.

Andrea Mayor testified that she is a businesswoman engaged in the business, among others, of rediscounting checks and lending money at an interest of 3% to 5% monthly; that she came to know the accused Roberto Cruz through the latter's sisters sometime in 1987; that the accused is engaged in the RTW business at the Pasay Commercial Center; that she rediscounted some of the checks of the accused in previous transactions as shown by Exhibits "C," "C-1" to "C-3," in the amounts of P20,000.00, P5,000.00, P9,000.00, and P5,000.00, respectively, which were personal checks issued by the accused for the sums he borrowed and which checks bounced when presented for payment but were paid in cash by the accused when the latter was notified of the dishonor.[9]

Complaining witness Andrea Mayor further testified that on March 15, 1989, accused told her that he needed P176,000.00 and asked to be lent the said amount; that complainant gave the accused the said amount at the

latter's store at the Pasay City Commercial Center; that accused, in turn, issued a check[10] for the same amount; that the check was signed in her presence and she was told that accused might be able to pay before the due date on April 20, 1989; that the check was dishonored upon presentment by the drawee bank; that accused was notified of the dishonor and he promised to raise the amount on May 15, 1989; that accused failed to make good his commitment, hence, she consulted a lawyer and caused the preparation of a complaint.[11]

Marcelo Ladao, a representative of Premiere Development Bank, testified that accused opened Current Account No. 0101-00250-5 on May 15, 1987 and, accordingly, affixed three (3) signatures on the signature card provided by the bank for account applicants; that the said account was closed on October 2, 1989 and that accused was duly advised of the said closure by the Branch Manager of the Pasay City Branch. Ladao, likewise, identified the stamp marked on the face of the check in question, which stamp indicated that the account of the depositor is already closed.[12] On cross-examination, the same witness explained that the subject account was closed at the discretion of the branch manager and that closure is normally a result of a series of checks issued without sufficient funds.[13]

The accused testified in his defense and proffered the defense of denial. He denied (a) having issued the subject check; (b) the signature "R. Cruz" appearing thereon as his; and (c) knowing complainant Andrea Mayor and existence of previous transactions with her.[14] He declared that he saw the check in question for the first time only on January 16, 1991 when it was showed to him by the fiscal and that he never met Andrea Mayor before.[15] He admitted, however, opening Current Account No. 0101-00250-37 with Premiere Development Bank.[16]

The trial court rejected accused's defense and rendered judgment as follows, to wit:

"IN VIEW OF THE FOREGOING, accused is hereby found guilty beyond reasonable doubt of the offense charged in the information, and conformably with the penal provision of Batas Pambansa Blg. 22, accused is hereby sentenced to suffer the straight penalty of one (1) year imprisonment and to indemnify the offended party in the amount of P176,000.00, Philippine Currency. With costs."[17]

Aggrieved by the ruling, petitioner appealed the case to the Court of Appeals.

On January 26, 1993, the Court of Appeals rendered judgment affirming the trial court's decision.[18]

Now petitioner comes to this Court by way of a petition for review on certiorari seeking the reversal of the respondent court's decision. Petitioner cites the following for allowance of his petition, viz:

"A. Respondent Court Committed Reversible Error and Grave Abuse Of Discretion Amounting To Lack Or Excess Of Jurisdiction in Affirming The Finding of The Trial Court On The Basis Of Surmises, Conjectures and Unfounded Conclusions.

x x x

"B. Respondent Court Gravely Erred In Holding The Petitioner Liable Under BP No. 22, Despite Knowledge of the Complaining Witness That The Account Had Long been Closed.

x x x

"C. Respondent Court Gravely Erred In Holding That The 'Complete Turnabout' of the Petitioner, As Claimed By The Solicitor General, Rendered Petitioner's Appeal Devoid of Merit.

x x x"[19]

Petitioner, in this case, cannot seem to make up his mind. First, he denies having issued the questioned check,

then, he claims that when he issued the same, it was more in the nature of a memorandum of indebtedness and, as such, does not fall within the purview of Batas Pambansa Blg. 22.

However, the issuance of the check subject of the present case is no longer at issue since the petitioner himself, on appeal to the respondent court, admitted having issued the check after he received the amount of P176,000.00 from the complaining witness. Therefore, the only issue in the case at bench is whether or not petitioner can be convicted for violation of B.P. 22.

We answer in the affirmative.

A check issued as an evidence of debt, though not intended to be presented for payment has the same effect of an ordinary check,[20] hence, falls within the ambit of B.P. 22 which merely provides that "any person who makes or draws and issues any check to apply for an account or for value, knowing at the time of issue that he does, not have sufficient funds in or credit with the drawee bank x x x which check is subsequently dishonored by the drawee bank for insufficiency of funds on credit x x x shall be punished by imprisonment x x x"[21]

When a check is presented for payment, the drawee bank will generally accept the same regardless of whether it was issued in payment of an obligation or merely to guarantee the said obligation. What the law punishes is the issuance of a bouncing check[22] not the purpose for which it was issued nor the term and conditions relating to its issuance. The mere act of issuing a worthless check is *malum prohibitum*. [23] This point has been made clear by this Court, thus:

"It is now settled that Batas Pambansa Bilang 22 applies even in cases where dishonored checks are issued merely in the form of a deposit or a guarantee. The enactment in question does not make any distinction as to whether the checks within its contemplation are issued in payment of an obligation or merely to guarantee the said obligation. In accordance with the pertinent rule of statutory construction, inasmuch as the law has not made any distinction in this regard, no such distinction can be made by means of interpretation or application. Furthermore, the history of the enactment of subject statute evinces the definite legislative intent to make the prohibition all-embracing, without making any exception from the operation thereof in favor of a guarantee. This intent may be gathered from the statement of the sponsor of the bill (Cabinet Bill No. 9) which was enacted later into Batas Pambansa Bilang 22, when it was introduced before the Batasan Pambansa, that the bill was introduced to discourage the issuance of bouncing checks, to prevent checks from becoming 'useless scraps of paper' and to restore respectability to checks, all without distinction as to the purpose of the issuance of the checks. The legislative intent as above said is made all the more clear when it is considered that while the original text of Cabinet Bill No. 9, *supra*, had contained a proviso excluding from the coverage of the law a check issued as a mere guarantee, the final version of the bill as approved and enacted by the Committee on the Revision of Laws in the Batasan deleted the abovementioned qualifying proviso deliberately for the purpose of making the enforcement of the act more effective (Batasan Record, First Regular Session, December 4, 1978, Volume II, pp. 1035-1036).

"Consequently, what are important are the facts that the accused had deliberately issued the checks in question to cover accounts and that the checks were dishonored upon presentment regardless of whether or not the accused merely issued the checks as a guarantee.' (pp. 4-5, Dec. IAC) [pp. 37-38, Rollo]."[24]

The importance of arresting the proliferation of worthless checks need not be underscored. The mischief created by unfunded checks in circulation is injurious not only to the payee or holder, but to the public as well. This harmful practice "can very well pollute the channels of trade and commerce, injure the banking system and eventually hurt the welfare of society and the public interest." [25]

Petitioner likewise opines that the payee, herein complaining witness, was aware of the fact that his account with Premiere Development Bank was closed. He claims that the payee's knowledge verily supports his contention that

he did not intend to put the said check in circulation much less ensure its payment upon presentment.

Knowledge of the payee of the insufficiency or lack of funds of the drawer with the drawee bank is immaterial as deceit is not an essential element of an offense penalized by B.P. 22. As already aforestated, the gravamen of the offense is the issuance of a bad check,[26] hence, malice and intent in the issuance thereof are inconsequential. Moreover, the fact that the check issued is restricted is likewise of no moment. Cross checks or restricted checks are negotiable instruments within the coverage of B.P. 22.

Petitioner, on appeal, changed his theory from complete denial that he issued the questioned check to an admission of its issuance without intent to circulate or negotiate it. Such a change of theory however, cannot be allowed. When a party adopts a certain theory, and the case is tried and decided upon that theory in the court below, he will not be permitted to change his theory on appeal for to permit him to do so would not only be unfair to the other party but it would also be offensive to the basic rules of fair play, justice and due process.[27]

Finally, the issue raised primarily involves a question of fact. Our jurisdiction in cases brought to us from the Court of Appeals is limited to reviewing the errors of law imputed to the latter, its findings of fact being conclusive. Therefore, barring any showing that the findings complained of are totally devoid of support in the record, such findings must stand.[28] After a careful consideration of the records, we sustain the conclusion of the respondent court.

WHEREFORE, premises considered, the instant petition is DISMISSED and the questioned decision of the respondent court is hereby AFFIRMED en toto. Costs against the petitioner.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., Bellosillo, and Quiason, JJ., concur.

[1] TSN, November 23, 1990, pp. 3-4.

[2] Id., pp. 4-5.

[3] Id., pp. 6-14.

[4] Id., p. 15.

[5] Id., pp. 15-18.

[6] Original Records, p. 1.

[7] Original Records, p. 14.

[8] Pre-Trial Order, p. 1; Original Records, p. 25; TSN, October 5, 1990, pp. 4,5.

[9] TSN, November 23, 1990, pp. 3-14.

[10] Exhibit "B"

[11] Id., pp. 15-19.

[12] TSN, November 9, 1990, pp. 7-14.

[13] Id, pp. 21-23.

[14] TSN, May 6, 1991, p. 2.

[15] *Id.*, p. 3.

[16] *Id.*, p. 7.

[17] Decision, p. 7; Original Records, p. 120.

[18] Penned by Justice Minerva P. Gonzaga-Reyes and concurred in by Justices Luis A. Javellana and Consuelo Ynares-Santiago.

[19] Petition, pp. 5-7; Rollo, pp. 12-14.

[20] *People vs. Nitafan*, 215 SCRA 79, 82, citing *Cushing vs. Gore*, 15 Mass. 69 and *Dykers vs. Leather Manufacturers' Bank*, 11 Paige 612.

[21] Section 1, B.P. 22, Emphasis ours.

[22] *Lozano vs. Martinez*, 146 SCRA 523; *People vs. Veridiano II*, 132 SCRA 523.

[23] *Que vs. People*, 154 SCRA 160.

[24] *Id.*, pp. 164-165.

[25] *Lozano vs. Martinez*, *supra*, p. 340.

[26] *Ibid.*

[27] *BA Finance Corporation vs. Court of Appeals*, 201 SCRA 157; *Galicía vs. Palo*, 179 SCRA 375; *Ramos vs. Intermediate Appellate Court*, 175 SCRA 70; *Ganzon vs. Court of Appeals*, 161 SCRA 641; *Dulos Realty and Development Corporation vs. Court of Appeals*, 157 SCRA 425; *Dihiansan, et al. vs. Court of Appeals, et al.*, 153 SCRA 712; *Dela Santa vs. Court of Appeals, et al.*, 140 SCRA 44; *Soriano vs. Philippine National Railways*, 84 SCRA 722; *Mejorada vs. Municipal Council of Dipolog*, 52 SCRA 451.

[28] *Bunag, Jr. vs. Court of Appeals*, 211 SCRA 440; *Morales vs. Court of Appeals, et al.*, 197 SCRA 391.

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