NILO B. DIONGZON, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 114823. December 23, 1999

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-no-114823/

MENDOZA, J:

Before us is a petition seeking a review of the decision and resolution of the Court of Appeals[1] in CA-G.R. No. 08094 affirming the conviction of herein petitioner of violation of B.P. Blg. 22, the Bouncing Checks Law, by the Regional Trial Court, Branch 43, Bacolod City.

The information in this case charged -

That sometime in August, 1981, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused with intent to gain and by means of false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud knowing that at the time of issue he did not have deposit in or credit with the Allied Banking Corporation, Bacolod Branch, and/or after such issue, failed to keep sufficient funds or to maintain a credit to cover the full amount thereof, did, then and there willfully, unlawfully and feloniously make out, draw, issue and deliver to the herein offended party Filipro, Inc., represented herein by its Area Sales Manager, Anacleto Palisoc, the following checks, to wit:

1. ABC Check No. 540295881-E postdated

September 15, 1981 . . . . . P 36,874.00

2. ABC Check No. 540295880-E postdated

September 16, 1981 . . . . . P130,597.75

3. ABC Check No. 540295899-E postdated

October 3, 1981 . . . . . P130,647.75

or a total sum of Two Hundred Ninety Eight Thousand One Hundred Nineteen Pesos & 75/100 (P298,119.75) in payment of his accountabilities with said offended party; after said offended party, however, deposited said checks with its depository bank, upon presentment for payment therefor within a period of ninety (90) days from the date appearing thereon, the same were dishonored by the drawee bank for reasons that accused's signature differs from specimen on file and/or he had insufficient funds deposited with the Allied Banking Corporation, Bacolod Branch; that despite such notice of such dishonor and repeated demands for the redemption, payment and/or any arrangements for payment in full of such checks within five (5) banking days after receipt of such notice, said accused deliberately refused and continue(sic) to refuse and fail(sic) to redeem the same or pay the value thereof up to the present time, to the damage and prejudice of the said offended party in the amount of Two Hundred Ninety Eight Thousand One Hundred Nineteen Pesos & 75/100 (P298,119.75), Philippine Currency.

Act contrary to law.

Bacolod City, Philippines, 15 December 1981.

Three witnesses - Anacleto B. Palisoc, area sales manager of Filipro, Inc., Linda Nicolas, cashier of Allied Banking Corporation (ABC), and Rogelio Azures, supervising document examiner of the National Bureau of Investigation (NBI) - testified for the prosecution. On the other hand, petitioner Nilo B. Diongzon testified in his own behalf.

The facts are summarized in the following portion of the decision of the Court of Appeals:

[A]ccused was a sales supervisor of Filipro Incorporated (now Nestle Philippines, Inc.). As such, he had authority to allow the withdrawal of Filipro products from its warehouse for delivery to its dealers or customers, to receive payment therefor and remit the same to Filipro through its depository bank at Bacolod City.

Due to the finding by Filipro accounting department that some delivery orders signed by the accused seemed questionable as the quantities ordered "were unusually big and seemed abnormal," Anacleto Palisoc, area sales manager, was authorized to conduct an investigation of the accused's withdrawal of goods and remittance of payments. Palisoc went to Bacolod City and contacted the dealers who were supposed to have ordered the goods. Certain dealers, namely: Queensland, Queendies, and Cokins denied having received the goods listed in the delivery orders signed by the accused. Whereupon, the accused approached Rene Garibay, sales representative, and offered his assistance in the collection of payments for the outstanding delivery orders. The next day the accused presented to him (Garibay) three checks in payment of the items listed in the invoices allegedly issued to Queensland, Queendies, and Cokins. These checks were (1) ABC Check No. 540295881-E, postdated September 15, 1981 for P36,874.00 (Exh. A); (2) ABC Check No. 540295880-E postdated September 16, 1981 for P130,597.75 (Exh. B); (3) ABC Check No. 540295899-E postdated October 3, 1981 for P130,647.75 (Exh. C).

The three checks were deposited with the Security Bank and Trust Company (Bacolod Branch), Filipro's depository bank. However, upon presentment to the drawee bank (Allied Banking Corporation, Bacolod Branch), the three checks were dishonored. The first two checks were dishonored because of the apparent difference between the drawer's signatures thereon and those in the bank's files. The third check was dishonored for insufficiency of funds.

After the checks were dishonored, Palisoc and Garibay conferred with the dealers of Queensland and Queendies. The latter claimed that they did not issue the checks nor receive the goods under the delivery orders signed by the accused. When confronted about this matter, the accused acknowledged responsibility and promised to settle the same. He also admitted having issued the three checks under his account No. 006873 with the Allied Banking Corporation (Bacolod Branch). He explained that he resorted to credit riding, a practice whereby other dealers were allowed to use the existing credit line of the authorized dealers in order to avail of Filipro's goods without cash payments. According to the accused, he practiced this technique which was unofficially allowed by the company in order to achieve Filipro sales targets. He claimed that certain goods covered by delivery order No. 793192 with invoice No. 756445 in the amount of P125,971.40 intended for delivery to Reboton store were actually delivered to another dealer, UN Merchandising; that he issued his checks for the payment of accounts of the dealers, to whom the goods were delivered, with the understanding that he would hold on to those checks while waiting for their payments; and that he did this to accommodate the dealers.

During trial, petitioner initially denied that the signatures appearing in the first two checks were his. Then he argued that the three checks were not issued "on account" or "for value" as required in B.P. Blg. 22. Later, however, he admitted that he issued the third check to replace the second check which, he insisted, he did not issue.[2]

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

The trial court saw through petitioner's conflicting claims and held him guilty of violating B.P. Blg. 22.

On appeal, petitioner raised the same defenses he presented during trial. In addition, however, he claimed that the information charged more than one offense and that the issuance of the third check as replacement for the second check constituted novation which thereby extinguished his obligation. The Court of Appeals rejected petitioner's contentions and affirmed his conviction. However, it held that because B.P. Blg. 22 is a special law and does not contain a provision for subsidiary imprisonment, petitioner was not subject to subsidiary imprisonment in case of insolvency. The dispositive portion of the appellate court's decision reads:

> WHEREFORE, the appealed decision is hereby affirmed with modification in its dispositive portion in the sense that the appellant should not be ordered to suffer subsidiary imprisonment in case he fails to pay the fine of P80,647.75 by reason of insolvency. With costs de oficio.
>
> SO ORDERED.

Petitioner filed a motion for reconsideration wherein he abandoned the defenses he raised in the trial court except that of novation. He argued that novation took place as a result of the partial payment he made and the written undertaking he had executed to pay for the balance of the check. His motion was, however, denied by the Court of Appeals. Hence, this petition for review on certiorari.

Petitioner argues that because of the incompatibility between the last check (Exh. C) and the partial payment and written undertaking he executed, there was a novation of his original obligation so that any incipient criminal liability which he might have had under the former obligation was thereby avoided.

Petitioner raises this issue for the first time on appeal. As already stated, his contentions in the trial court were: (1) that the two checks which had been dishonored had not been issued by him as shown by different signatures they contained, and (2) that since the checks had not been issued "on account" or "for value," an essential element of the crime defined in B.P. Blg. 22 had not been established. It was only after the trial court had rejected these defenses and found petitioner guilty that petitioner advanced the theory of novation in his Supplemental Brief in the Court of Appeals.

This defense was rightfully ignored by the Court of Appeals in its decision affirming petitioner's conviction. As the Court of Appeals held, novation is not a mode of extinguishing criminal liability and criminal liability, once incurred, cannot be compromised.[3] Indeed, there was no novation, and even if there was, petitioner's liability under B.P. Blg. 22 was not thereby extinguished.

It is well-settled that the following requisites must be present for novation to take place: (1) a previous valid obligation; (2) agreement of all the parties to the new contract; (3) extinguishment of the old contract; and (4) validity of the new one.[4]

These requisites, particularly the third, were not proven in this case. As the Court of Appeals held, the transaction became a personal undertaking of the petitioner when he received the goods for delivery but made no delivery thereof either to the credited dealer or to the credit rider.[5] Petitioner had an existing obligation to pay the value of the goods for which the check was issued. This obligation was not extinguished when the check was dishonored and a new agreement was reached by the two parties to pay in cash its value. The change in the mode of paying the obligation was not a change in any of the objects or principal conditions of the contract. As Tolentino states, neither acceptance of partial payment nor change of place or manner of payment involves novation.[6] For novation cannot be presumed but must be expressly intended by the parties.

The Court of Appeals denied petitioner's motion for reconsideration on the ground, inter alia, that the written undertaking was not presented as evidence. The records of the trial court show, however, that the existence of the

written undertaking was actually admitted by the prosecution during trial,[7] although, for some reason, it was not formally offered in evidence by the prosecution. However that may be, whether the written undertaking was presented or not, the fact remains that there was no novation in this case.

Nor is novation a mode of extinguishing criminal liability. As held by this Court, novation "may prevent the rise of criminal liability as long as it occurs prior to the filing of the criminal information in court."[8] In other words, novation does not extinguish criminal liability but may only prevent its rise.

Petitioner claims that the new agreement took effect prior to the filing of the information in court on December 15, 1981. He argues that, therefore, there could not have been any criminal liability under B.P. Blg. 22.

The argument is untenable. The fact is that the supposed new agreement never took effect as petitioner never complied with his undertaking. In Llamado v. Court of Appeals,[9] a similar issue arose. An agreement to partially pay the dishonored check was made, but the accused failed to comply with his promise. This Court ruled:

> [T]he "novation theory" recognized by this Court in certain cases does not apply in the case at bar. While private complainant agreed to petitioner's offer to pay him 10% of the amount of the check on November 14 or 15, 1983 and the balance to be rolled over for 90 days, this turned out to be only an empty promise which effectively delayed private complainant's filing of a case for violation of B.P. Blg. 22 against petitioner and his co-accused.

The Court thus held that the novation theory does not apply where the offer to pay by the debtor, and accepted by the creditor, turns out to be merely an empty promise. In this case, the balance of the check was never paid, as witness Anacleto B. Palisoc testified.[10]

Indeed, the gravamen of the offense of violating B.P. Blg. 22 is the issuance of worthless checks. In this case, petitioner admitted issuing the check which when presented was dishonored. Though he promised to pay its value when it was dishonored, the fact remains that at the time it was presented to the drawee bank, it was not sufficiently funded. Petitioner, as the drawer of the check, is presumed to have knowledge of the insufficient funds, and his failure to pay the value of the check within five banking days from notice of dishonor did not dispute this presumption. On this, the Court of Appeals correctly affirmed the trial court.

But we think it was error for the appellate court not to impose subsidiary imprisonment in case of insolvency on the ground that there is no provision in B.P. Blg. 22 allowing for such penalty. This Court has, on several occasions, imposed subsidiary imprisonment in case of insolvency to pay the fine for violation of special laws, notwithstanding the absence of such provision in said laws.[11] In Llamado v. Court of Appeals,[12] we imposed subsidiary imprisonment on petitioner who was convicted of violating B.P. Blg. 22.

WHEREFORE, premises considered, the decision of the Court of Appeals is AFFIRMED with the modification that subsidiary imprisonment be imposed in case of insolvency to pay the fine of P80,647.75.
SO ORDERED.
Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

---

[1] Per Associate Justice Angelina S. Gutierrez and concurred in by Justices Jaime M. Lantin and Bernardo P. Pardo (now Associate Justice of the Supreme Court).1

[2] RTC Decision, p. 8; Rollo, p. 36; RTC Records, p. 478.2

[3] Rollo, pp. 99-100.3

[4] Reyes v. CA, 332 Phil. 40 (1996).4

[5] Rollo, p. 95.5

[6] 4 A. Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines 387 (1995).6

[7] TSN, p. 47, Sept. 8, 1982.7

[8] Guingona, Jr. v. City Fiscal of Manila, 128 SCRA 577.8

[9] 337 Phil. 153 (1997).9

[10] TSN, p. 47, Sept. 8, 1982.10

[11] See People v. Moreno, 60 Phil. 712 (1934) and Copiaco v. Luzon Brokerage, 66 Phil. 184 (1938) (Revised Motor Vehicles Act); People v. Abedes, 268 SCRA 619 (1997) and Zanoria v. Court of Appeals, 347 Phil. 538 (1997) (Dangerous Drugs Act).11

[12] Supra.12

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

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.