

LINA LIM LAO, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 119178. June 20, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

May an employee who, as part of her regular duties, signs blank corporate checks -- with the name of the payee and the amount drawn to be filled later by another signatory -- and, therefore, does so without actual knowledge of whether such checks are funded, be held criminally liable for violation of Batas Pambansa Bilang 22 (B.P. 22), when checks so signed are dishonored due to insufficiency of funds? Does a notice of dishonor sent to the main office of the corporation constitute a valid notice to the said employee who holds office in a separate branch and who had no actual knowledge thereof? In other words, is constructive knowledge of the corporation, but not of the signatory-employee, sufficient?

These are the questions raised in the petition filed on March 21, 1995 assailing the Decision[1] of Respondent Court of Appeals[2] promulgated on December 9, 1994 in CA-G.R. CR No. 14240 dismissing the appeal of petitioner and affirming the decision dated September 26, 1990 in Criminal Case Nos. 84-26967 to 84-26969 of the Regional Trial Court of Manila, Branch 33. The dispositive portion of the said RTC decision affirmed by the respondent appellate court reads:[3]

“WHEREFORE, after a careful consideration of the evidence presented by the prosecution and that of the defense, the Court renders judgment as follows:

In Criminal Case No. 84-26969 where no evidence was presented by the prosecution notwithstanding the fact that there was an agreement that the cases be tried jointly and also the fact that the accused Lina Lim Lao was already arraigned, for failure of the prosecution to adduce evidence against the accused, the Court hereby declares her innocent of the crime charged and she is hereby acquitted with cost de oficio.

For Criminal Case No. 84-26967, the Court finds the accused Lina Lim Lao guilty beyond reasonable doubt of the crime charged and is hereby sentenced to suffer the penalty of ONE (1) YEAR imprisonment and to pay a fine of P150,000.00 without subsidiary imprisonment in case of insolvency.

For Criminal Case No. 84-26968, the Court finds the accused Lina Lim Lao guilty beyond reasonable doubt of the crime charged and is hereby sentenced to suffer the penalty of ONE (1) YEAR imprisonment and to pay a fine of P150,000.00 without subsidiary imprisonment in case of (sic) insolvency.

For the two cases the accused is ordered to pay the cost of suit.

The cash bond put up by the accused for her provisional liberty in Criminal Case No. 84-26969 where she is declared acquitted is hereby ordered cancelled (sic).

With reference to the accused Teodulo Aspreco who has remained at large, in order that the cases as against him may not remain pending in the docket for an indefinite period, let the same be archived without prejudice to its subsequent prosecution as soon as said accused is finally apprehended.

Let a warrant issue for the arrest of the accused Teodulo Asprec which warrant need not be returned to this Court until the accused is finally arrested.

SO ORDERED.”

The FactsVersion of the Prosecution

The facts are not disputed. We thus lift them from the assailed Decision, as follows:

“Appellant (and now Petitioner Lina Lim Lao) was a junior officer of Premiere Investment House (Premiere) in its Binondo Branch. As such officer, she was authorized to sign checks for and in behalf of the corporation (TSN, August 16, 1990, p. 6). In the course of the business, she met complainant Father Artelijo Palijo, the provincial treasurer of the Society of the Divine Word through Mrs. Rosemarie Lachenal, a trader for Premiere. Father Palijo was authorized to invest donations to the society and had been investing the society’s money with Premiere (TSN, June 23, 1987, pp. 5, 9-10). Father Palijo had invested a total of P514,484.04, as evidenced by the Confirmation of Sale No. 82-6994 (Exh ‘A’) dated July 8, 1993. Father Palijo was also issued Traders Royal Bank (TRB) checks in payment of interest, as follows:

Check Date Amount

299961 Oct. 7, 1993 (sic) P150,000.00 (Exh. ‘B’)

299962 Oct. 7, 1983 P150,000.00 (Exh. ‘C’)

323835 Oct. 7, 1983 P 26,010.73

All the checks were issued in favor of Artelijo A. Palijo and signed by appellant (herein petitioner) and Teodulo Asprec, who was the head of operations. Further evidence of the transaction was the acknowledgment of postdated checks dated July 8, 1983 (Exh. ‘D’) and the cash disbursement voucher (Exh. ‘F’, TSN, supra, at pp. 11-16).

When Father Palijo presented the checks for encashment, the same were dishonored for the reason ‘Drawn Against Insufficient Funds’ (DAIF). Father Palijo immediately made demands on premiere to pay him the necessary amounts. He first went to the Binondo Branch but was referred to the Cubao Main Branch where he was able to talk with the President, Mr. Cariño. For his efforts, he was paid P5,000.00. Since no other payments followed, Father Palijo wrote Premiere a formal letter of demand. Subsequently, Premiere was placed under receivership” (TSN, supra, at pp. 16-19).[4]

Thereafter, on January 24, 1984, Private Complainant Palijo filed an affidavit-complaint against Petitioner Lina Lim Lao and Teodulo Asprec for violation of B.P. 22. After preliminary investigation,[5] three Informations charging Lao and Asprec with the offense defined in the first paragraph of Section 1, B.P. 22 were filed by Assistant Fiscal Felix S. Caballes before the trial court on May 11, 1984,[6] worded as follows:

1. In Criminal Case No. 84-26967:

“That on or about October 7, 1983 in the City of Manila, Philippines, the said accused did then and there wilfully and unlawfully draw and issue to Artelijo A. Palijo to apply on account or for value a Traders Royal Bank Check No. 299962 for P150,000.00 payable to Fr. Artelijo A. Palijo dated October 7, 1983 well knowing that at the time of issue he/she did not have sufficient funds in or credit with the drawee bank for full payment of the said check upon its presentment as in fact the said check, when presented within ninety (90) days from the date thereof, was dishonored by the drawee bank for the reason: ‘Insufficient Funds’; that despite notice of such dishonor, said accused failed to pay said Artelijo A. Palijo the amount of the said check or to make arrangement for full payment of the same within five (5) banking days from receipt of said notice.

CONTRARY TO LAW.”

2. In Criminal Case No. 84-26968:

“That on or about October 7, 1983 in the City of Manila, Philippines, the said accused did then and there wilfully and unlawfully draw and issue to Artelijo A. Palijo to apply on account or for value a Traders Royal Bank Check No. 299961 for P150,000.00 payable to Fr. Artelijo A. Palijo dated October 7, ‘83 well knowing that at the time of issue he/she did not have sufficient funds in or credit with the drawee bank for full payment of the said check upon its presentment as in fact the said check, when presented within ninety (90) days from the date thereof, was dishonored by the drawee bank for the reason: ‘Insufficient Funds’; that despite notice of such dishonor, said accused failed to pay said Artelijo A. Palijo the amount of the said check or to make arrangement for full payment of the same within five (5) banking days from receipt of said notice.

CONTRARY TO LAW.”

3. And finally in Criminal Case No. 84-26969:

“That on or about July 8, 1983 in the City of Manila, Philippines, the said accused did then and there wilfully and unlawfully draw and issue to Artelijo A. Palijo to apply on account for value a Traders Royal Bank Check No. 323835 for P26,010.03 payable to Fr. Artelijo A. Palijo dated October 7, 1983 well knowing that at the time of issue he/she did not have sufficient funds in or credit with the drawee bank for full payment of the said check upon its presentment as in fact the said check, when presented within ninety (90) days from the date thereof, was dishonored by the drawee bank for the reason: ‘Insufficient Funds’; that despite notice of such dishonor, said accused failed to pay said Artelijo A. Palijo the amount of the said check or to make arrangement for full payment of the same within five (5) banking days from receipt of said notice.

CONTRARY TO LAW.”

Upon being arraigned, petitioner assisted by counsel pleaded “not guilty.” Asprec was not arrested; he has remained at large since the trial, and even now on appeal.

After due trial, the Regional Trial Court convicted Petitioner Lina Lim Lao in Criminal Case Nos. 84-26967 and 84-26968 but acquitted her in Criminal Case No. 84-26969.[7] On appeal, the Court of Appeals affirmed the decision of the trial court.

Version of the Defense

Petitioner aptly summarized her version of the facts of the case thus:

“Petitioner Lina Lim Lao was, in 1983, an employee of Premiere Financing Corporation (hereinafter referred to as the ‘Corporation’), a corporation engaged in investment management, with principal business office at Miami, Cubao, Quezon City. She was a junior officer at the corporation who was, however, assigned not at its main branch but at the corporation’s extension office in (Binondo) Manila. (Ocampo, T.S.N., 16 August 1990, p. 14)

In the regular course of her duties as a junior officer, she was required to co-sign checks drawn against the account of the corporation. The other co-signor was her head of office, Mr. Teodulo Asprec. Since part of her duties required her to be mostly in the field and out of the office, it was normal procedure for her to sign the checks in blank, that is, without the names of the payees, the amounts and the dates of maturity. It was likewise Mr. Asprec, as head of office, who alone decided to whom the checks were to be ultimately issued and delivered. (Lao, T.S.N., 28 September 1989, pp. 9-11, 17, 19.)

In signing the checks as part of her duties as junior officer of the corporation, petitioner had no knowledge of the actual funds available in the corporate account. (Lao, T.S.N., 28 September 1989, p. 21) The power, duty and responsibility of monitoring and assessing the balances against the checks issued, and funding the checks thus issued, devolved on the corporation’s Treasury Department in its main office in Cubao, Quezon City,

headed then by the Treasurer, Ms. Veronilyn Ocampo. (Ocampo, T.S.N., 19 July 1990, p. 4; Lao, T.S.N., 28 September 1989, pp. 21-23) All bank statements regarding the corporate checking account were likewise sent to the main branch in Cubao, Quezon City, and not in Binondo, Manila, where petitioner was holding office. (Ocampo, T.S.N., 19 July 1990, p. 24; Marqueses, T.S.N., 22 November 1988, p. 8)

The foregoing circumstances attended the issuance of the checks subject of the instant prosecution.

The checks were issued to guarantee payment of investments placed by private complainant Palijo with Premiere Financing Corporation. In his transactions with the corporation, private complainant dealt exclusively with one Rosemarie Lachenal, a trader connected with the corporation, and he never knew nor in any way dealt with petitioner Lina Lim Lao at any time before or during the issuance of the delivery of the checks. (Palijo, T.S.N., 23 June 1987, pp. 28-29, 32-34; Lao, T.S.N., 15 May 1990, p. 6; Ocampo, T.S.N., p. 5) Petitioner Lina Lim Lao was not in any way involved in the transaction which led to the issuance of the checks.

When the checks were co-signed by petitioner, they were signed in advance and in blank, delivered to the Head of Operations, Mr. Teodulo Asprec, who subsequently filled in the names of the payee, the amounts and the corresponding dates of maturity. After Mr. Asprec signed the checks, they were delivered to private complainant Palijo. (Lao, T.S.N., 28 September 1989, pp. 8-11, 17, 19; note also that the trial court in its decision fully accepted the testimony of petitioner [Decision of the Regional Trial Court, p. 12], and that the Court of Appeals affirmed said decision in toto)

Petitioner Lina Lim Lao was not in any way involved in the completion, and the subsequent delivery of the check to private complainant Palijo.

At the time petitioner signed the checks, she had no knowledge of the sufficiency or insufficiency of the funds of the corporate account. (Lao, T.S.N., 28 September 1989, p. 21) It was not within her powers, duties or responsibilities to monitor and assess the balances against the issuance; much less was it within her (duties and responsibilities) to make sure that the checks were funded. Premiere Financing Corporation had a Treasury Department headed by a Treasurer, Ms. Veronilyn Ocampo, which alone had access to information as to account balances and which alone was responsible for funding the issued checks. (Ocampo, T.S.N., 19 July 1990, p. 4; Lao, T.S.N., 28 September 1990, p. 23) All statements of account were sent to the Treasury Department located at the main office in Cubao, Quezon City. Petitioner was holding office at the extension in Binondo Manila. (Lao, T.S.N., 28 September 1989, p. 24-25) Petitioner Lina Lim Lao did not have knowledge of the insufficiency of the funds in the corporate account against which the checks were drawn.

When the checks were subsequently dishonored, private complainant sent a notice of said dishonor to Premier Financing Corporation at its head office in Cubao, Quezon City. (Please refer to Exh. 'E'; Palijo, T.S.N., 23 June 1987, p. 51) Private complainant did not send notice of dishonor to petitioner. (Palijo, T.S.N., 24 July 1987, p. 10) He did not follow up his investment with petitioner. (Id.) Private complainant never contacted, never informed, and never talked with, petitioner after the checks had bounced. (Id., at p. 29) Petitioner never had notice of the dishonor of the checks subject of the instant prosecution.

The Treasurer of Premiere Financing Corporation, Ms. Veronilyn Ocampo testified that it was the head office in Cubao, Quezon City, which received notice of dishonor of the bounced checks. (Ocampo, T.S.N., 19 July 1990, pp. 7-8) The dishonor of the check came in the wake of the assassination of the late Sen. Benigno Aquino, as a consequence of which event a majority of the corporation's clients pre-terminated their investments. A period of extreme illiquidity and financial distress followed, which ultimately led to the corporation's being placed under receivership by the Securities and Exchange Commission. (Ocampo, T.S.N., 16 August 1990, p. 8, 19; Lao, T.S.N., 28 September 1989, pp. 25-26; Please refer also to Exhibit '1', the order of receivership issued by the Securities and Exchange Commission) Despite the Treasury Department's and (Ms. Ocampo's) knowledge of the dishonor of the checks, however, the main office in Cubao, Quezon City never informed petitioner Lina Lim Lao or anybody in the Binondo office for that matter. (Ocampo, T.S.N., 16 August 1990, pp. 9-10) In her testimony, she justified her omission by saying that the checks were

actually the responsibility of the main office (Ocampo, T.S.N., 19 July 1990, p. 6) and that, at that time of panic withdrawals and massive pre-termination of clients' investments, it was futile to inform the Binondo office since the main office was strapped for cash and in deep financial distress. (Id., at pp. 7-9) Moreover, the confusion which came in the wake of the Aquino assassination and the consequent panic withdrawals caused them to lose direct communication with the Binondo office. (Ocampo, T.S.N., 16 August 1990, p. 9-10)

As a result of the financial crisis and distress, the Securities and Exchange Commission placed Premier Financing Corporation under receivership, appointing a rehabilitation receiver for the purpose of settling claims against the corporation. (Exh. '1') As he himself admits, private complainant filed a claim for the payment of the bounced check before and even after the corporation had been placed under receivership. (Palijo, T.S.N., 24 July 1987, p. 10-17) A check was prepared by the receiver in favor of the private complainant but the same was not claimed by him. (Lao, T.S.N., 15 May 1990, p. 18)

Private complainant then filed the instant criminal action. On 26 September 1990, the Regional Trial Court of Manila, Branch 33, rendered a decision convicting petitioner, and sentencing the latter to suffer the aggregate penalty of two (2) years and to pay a fine in the total amount of P300,000.00. On appeal, the Court of Appeals affirmed said decision. Hence, this petition for review.”[8]

The Issue

In the main, petitioner contends that the public respondent committed a reversible error in concluding that lack of actual knowledge of insufficiency of funds was not a defense in a prosecution for violation of B.P. 22. Additionally, the petitioner argues that the notice of dishonor sent to the main office of the corporation, and not to petitioner herself who holds office in that corporation's branch office, does not constitute the notice mandated in Section 2 of BP 22; thus, there can be no prima facie presumption that she had knowledge of the insufficiency of funds.

The Court's Ruling

The petition is meritorious.

Strict Interpretation of Penal Statutes

It is well-settled in this jurisdiction that penal statutes are strictly construed against the state and liberally for the accused, so much so that the scope of a penal statute cannot be extended by good intention, implication, or even equity consideration. Thus, for Petitioner Lina Lim Lao's acts to be penalized under the Bouncing Checks Law or B.P. 22, “they must come clearly within both the spirit and the letter of the statute.”[9]

The salient portions of B.P. 22 read:

“SECTION 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 a 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 or 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.

SECTION 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."

This Court listed the elements of the offense penalized under B.P. 22, as follows: "(1) the making, drawing and issuance of any check to apply to 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 such check in full upon its presentment; and (3) subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment." [10]

Justice Luis B. Reyes, an eminent authority in criminal law, also enumerated the elements of the offense defined in the first paragraph of Section 1 of B.P. 22, thus:

- "1. That a person makes or draws and issues any check.
2. That the check is made or drawn and issued to apply on account or for value.
3. That 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 payment of such check in full upon its presentment.
4. That 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." [11]

Crux of the Petition

Petitioner raised as defense before the Court of Appeals her lack of actual knowledge of the insufficiency of funds at the time of the issuance of the checks, and lack of personal notice of dishonor to her. The respondent appellate court, however, affirmed the RTC decision, reasoning that "the maker's knowledge of the insufficiency of funds is legally presumed from the dishonor of his checks for insufficiency of funds. (People vs. Laggui, 171 SCRA 305; Nieras vs. Hon. Auxencio C. Dacuycuy, 181 SCRA 1)" [12] The Court of Appeals also stated that "her alleged lack of knowledge or intent to issue a bum check would not exculpate her from any responsibility under B.P. Blg. 22, since the act of making and issuing a worthless check is a *malum prohibitum*." [13] In the words of the Solicitor General, "(s)uch alleged lack of knowledge is not material for petitioner's liability under B.P. Blg. 22." [14]

Lack of Actual Knowledge of Insufficiency of Funds

Knowledge of insufficiency of funds or credit in the drawee bank for the payment of a check upon its presentment is an essential element of the offense. [15] There is a prima facie presumption of the existence of this element from the fact of drawing, issuing or making a check, the payment of which was subsequently refused for insufficiency of funds. It is important to stress, however, that this is not a conclusive presumption that forecloses or precludes the presentation of evidence to the contrary.

In the present case, the fact alone that petitioner was a signatory to the checks that were subsequently dishonored

merely engenders the prima facie presumption that she knew of the insufficiency of funds, but it does not render her automatically guilty under B.P. 22. The prosecution has a duty to prove all the elements of the crime, including the acts that give rise to the prima facie presumption; petitioner, on the other hand, has a right to rebut the prima facie presumption.[16] Therefore, if such knowledge of insufficiency of funds is proven to be actually absent or non-existent, the accused should not be held liable for the offense defined under the first paragraph of Section 1 of B.P. 22. Although the offense charged is a malum prohibitum, the prosecution is not thereby excused from its responsibility of proving beyond reasonable doubt all the elements of the offense, one of which is knowledge of the insufficiency of funds.

After a thorough review of the case at bar, the Court finds that Petitioner Lina Lim Lao did not have actual knowledge of the insufficiency of funds in the corporate accounts at the time she affixed her signature to the checks involved in this case, at the time the same were issued, and even at the time the checks were subsequently dishonored by the drawee bank.

The scope of petitioner's duties and responsibilities did not encompass the funding of the corporation's checks; her duties were limited to the marketing department of the Binondo branch.[17] Under the organizational structure of Premiere Financing Corporation, funding of checks was the sole responsibility of the Treasury Department. Veronilyn Ocampo, former Treasurer of Premiere, testified thus:

"Q Will you please tell us whose (sic) responsible for the funding of checks in Premiere?

A The one in charge is the Treasury Division up to the Treasury Disbursement and then they give it directly to Jose Cabacan, President of Premiere." [18]

Furthermore, the Regional Trial Court itself found that, since Petitioner Lina Lim Lao was often out in the field taking charge of the marketing department of the Binondo branch, she signed the checks in blank as to name of the payee and the amount to be drawn, and without knowledge of the transaction for which they were issued.[19] As a matter of company practice, her signature was required in addition to that of Teodulo Asprec, who alone placed the name of the payee and the amount to be drawn thereon. This is clear from her testimony:

"q x x x Will you please or will you be able to tell us the condition of this check when you signed this or when you first saw this check?

Witness

a I signed the check in blank. There were no payee. No amount, no date, sir.

q Why did you sign this check in blank when there was no payee, no amount and no date?

a It is in order to facilitate the transaction, sir.

x x x x x x x x

COURT

(to witness)

q Is that your practice?

Witness

a Procedure, Your Honor.

COURT

That is quiet (sic) unusual. That is why I am asking that last question if that is a practice of your office.

a As a co-signer, I sign first, sir.

q So the check cannot be encashed without your signature, co-signature?

a Yes, sir.

Atty. Gonzales

(to witness)

q Now, you said that you sign first, after you sign, who signs the check?

a Mr. Teodoro Asprec, sir.

q Is this Teodoro Asprec the same Teodoro Asprec, one of the accused in all these cases?

a Yes, sir.

q Now, in the distribution or issuance of checks which according to you, as a co-signee, you sign. Who determines to whom to issue or to whom to pay the check after Teodoro Asprec signs the check?

Witness

a He is the one.

Atty. Gonzales

q Mr. Asprec is the one in-charge in . . . are you telling the Honorable Court that it was Teodoro Asprec who determines to whom to issue the check? Does he do that all the time?

Court

q Does he all the time?

(to witness)

a Yes, Your Honor.

q So the check can be negotiated? So, the check can be good only upon his signing? Without his signing or signature the check cannot be good?

a Yes, Your Honor.

Atty. Gonzales

(to witness)

q You made reference to a transaction which according to you, you signed this check in order to facilitate the transaction . . . I withdraw that question. I will reform.

COURT

(for clarification to witness)

Witness may answer.

q Only to facilitate your business transaction, so you signed the other checks?

Witness

a Yes, Your Honor.

q So that when ever there is a transaction all is needed . . . all that is needed is for the other co-signee to sign?

a Yes, Your Honor.

COURT

(To counsel)

Proceed.

Atty. Gonzales

(to witness)

q Why is it necessary for you to sign?

a Because most of the time I am out in the field in the afternoon, so, in order to facilitate the transaction I sign so if I am not around they can issue the check.”[20]

Petitioner did not have any knowledge either of the identity of the payee or the transaction which gave rise to the issuance of the checks. It was her co-signatory, Teodulo Asprec, who alone filled in the blanks, completed and issued the checks. That Petitioner Lina Lim Lao did not have any knowledge or connection with the checks’ payee, Artelijo Palijo, is clearly evident even from the latter’s testimony, viz.:

“ATTY. GONZALES:

Q When did you come to know the accused Lina Lim Lao?

A I cannot remember the exact date because in their office Binondo, --

COURT: (before witness could finish)

Q More or less?

A It must have been late 1983.

ATTY. GONZALES:

Q And that must or that was after the transactions involving alleged checks marked in evidence as Exhibits B and C?

A After the transactions.

Q And that was also before the transaction involving that confirmation of sale marked in evidence as Exhibit A?

A It was also.

Q And so you came to know the accused Lina Lim Lao when all those transactions were already consummated?

A Yes, sir.

Q And there has never been any occasion where you transacted with accused Lina Lim Lao, is that correct?

A None, sir, there was no occasion.

Q And your coming to know Lina Lim Lao the accused in these cases was by chance when you happened to drop by in the office at Binondo of the Premier Finance Corporation, is that what you mean?

A Yes, sir.

Q You indicated to the Court that you were introduced to the accused Lina Lim Lao, is that correct?

A I was introduced.

x x x x x x x x

Q After that plain introduction there was nothing which transpired between you and the accused Lina Lim Lao?

A There was none.”[21]

Since Petitioner Lina Lim Lao signed the checks without knowledge of the insufficiency of funds, knowledge she was not expected or obliged to possess under the organizational structure of the corporation, she may not be held liable under B.P. 22. For in the final analysis, penal statutes such as B.P. 22 “must be construed with such strictness as to carefully safeguard the rights of the defendant x x x.”[22] The element of knowledge of insufficiency of funds having been proven to be absent, petitioner is therefore entitled to an acquittal.

This position finds support in *Dingle vs. Intermediate Appellate Court*[23] where we stressed that knowledge of

insufficiency of funds at the time of the issuance of the check was an essential requisite for the offense penalized under B.P. 22. In that case, the spouses Paz and Nestor Dingle owned a family business known as “PMD Enterprises.” Nestor transacted the sale of 400 tons of silica sand to the buyer Ernesto Ang who paid for the same. Nestor failed to deliver. Thus, he issued to Ernesto two checks, signed by him and his wife as authorized signatories for PMD Enterprises, to represent the value of the undelivered silica sand. These checks were dishonored for having been “drawn against insufficient funds.” Nestor thereafter issued to Ernesto another check, signed by him and his wife Paz, which was likewise subsequently dishonored. No payment was ever made; hence, the spouses were charged with a violation of B.P. 22 before the trial court which found them both guilty. Paz appealed the judgment to the then Intermediate Appellate Court which modified the same by reducing the penalty of imprisonment to thirty days. Not satisfied, Paz filed an appeal to this Court “insisting on her innocence” and “contending that she did not incur any criminal liability under B.P. 22 because she had no knowledge of the dishonor of the checks issued by her husband and, for that matter, even the transaction of her husband with Ang.” The Court ruled in Dingle as follows:

“The Solicitor General in his Memorandum recommended that petitioner be acquitted of the instant charge because from the testimony of the sole prosecution witness Ernesto Ang, it was established that he dealt exclusively with Nestor Dingle. Nowhere in his testimony is the name of Paz Dingle ever mentioned in connection with the transaction and with the issuance of the check. In fact, Ang categorically stated that it was Nestor Dingle who received his two (2) letters of demand. This lends credence to the testimony of Paz Dingle that she signed the questioned checks in blank together with her husband without any knowledge of its issuance, much less of the transaction and the fact of dishonor.

In the case of Florentino Lozano vs. Hon. Martinez, promulgated December 18, 1986, it was held that an essential element of the offense is knowledge on the part of the maker or drawer of the check of the insufficiency of his funds.

WHEREFORE, on reasonable doubt, the assailed decision of the Intermediate Appellate Court (now the Court of Appeals) is hereby SET ASIDE and a new one is hereby rendered ACQUITTING petitioner on reasonable doubt.”[24]

In rejecting the defense of herein petitioner and ruling that knowledge of the insufficiency of funds is legally presumed from the dishonor of the checks for insufficiency of funds, Respondent Court of Appeals cited *People vs. Laggui*[25] and *Nierras vs. Dacuycuy*. [26] These, however, are inapplicable here. The accused in both cases issued personal -- not corporate -- checks and did not aver lack of knowledge of insufficiency of funds or absence of personal notice of the check’s dishonor. Furthermore, in *People vs. Laggui*[27] the Court ruled mainly on the adequacy of an information which alleged lack of knowledge of insufficiency of funds at the time the check was issued and not at the time of its presentment. On the other hand, the Court in *Nierras vs. Dacuycuy*[28] held mainly that an accused may be charged under B.P. 22 and Article 315 of the Revised Penal Code for the same act of issuing a bouncing check.

The statement in the two cases -- that mere issuance of a dishonored check gives rise to the presumption of knowledge on the part of the drawer that he issued the same without funds -- does not support the CA Decision. As observed earlier, there is here only a prima facie presumption which does not preclude the presentation of contrary evidence. On the contrary, *People vs. Laggui* clearly spells out as an element of the offense the fact that the drawer must have knowledge of the insufficiency of funds in, or of credit with, the drawee bank for the payment of the same in full on presentment; hence, it even supports the petitioner’s position.

Lack of Adequate Notice of Dishonor

There is another equally cogent reason for the acquittal of the accused. There can be no prima facie evidence of

knowledge of insufficiency of funds in the instant case because no notice of dishonor was actually sent to or received by the petitioner.

The notice of dishonor may be sent by the offended party or the drawee bank. The trial court itself found absent a personal notice of dishonor to Petitioner Lina Lim Lao by the drawee bank based on the un rebutted testimony of Ocampo “(t)hat the checks bounced when presented with the drawee bank but she did not inform anymore the Binondo branch and Lina Lim Lao as there was no need to inform them as the corporation was in distress.”[29] The Court of Appeals affirmed this factual finding. Pursuant to prevailing jurisprudence, this finding is binding on this Court.[30]

Indeed, this factual matter is borne by the records. The records show that the notice of dishonor was addressed to Premiere Financing Corporation and sent to its main office in Cubao, Quezon City. Furthermore, the same had not been transmitted to Premiere’s Binondo Office where petitioner had been holding office.

Likewise no notice of dishonor from the offended party was actually sent to or received by Petitioner Lao. Her testimony on this point is as follows:

“Atty. Gonzales

q Will you please tell us if Father Artelejo Palejo (sic) ever notified you of the bouncing of the check or the two (2) checks marked as Exhibit ‘B’ or ‘C’ for the prosecution?

Witness

a No, sir.

q What do you mean no, sir?

a I was never given a notice. I was never given notice from Father Palejo (sic).

COURT

(to witness)

q Notice of what?

a Of the bouncing check, Your Honor.”[31]

Because no notice of dishonor was actually sent to and received by the petitioner, the prima facie presumption that she knew about the insufficiency of funds cannot apply. Section 2 of B.P. 22 clearly provides that this presumption arises not from the mere fact of drawing, making and issuing a bum check; there must also be a showing that, within five banking days from receipt of the notice of dishonor, such maker or drawer failed to pay the holder of the check the amount due thereon or to make arrangement for its payment in full by the drawee of such check.

It has been observed that the State, under this statute, actually offers the violator “a compromise by allowing him to perform some act which operates to preempt the criminal action, and if he opts to perform it the action is abated.” This was also compared “to certain laws[32] allowing illegal possessors of firearms a certain period of time to surrender the illegally possessed firearms to the Government, without incurring any criminal liability.”[33] In this light, the full payment of the amount appearing in the check within five banking days from notice of dishonor is a “complete defense.”[34] The absence of a notice of dishonor necessarily deprives an accused an opportunity to preclude a criminal prosecution. Accordingly, procedural due process clearly enjoins that a notice of dishonor be actually served on petitioner. Petitioner has a right to demand -- and the basic postulates of fairness require -- that the notice of dishonor be actually sent to and received by her to afford her the opportunity to avert prosecution under B.P. 22.

In this light, the postulate of Respondent Court of Appeals that “(d)emand on the Corporation constitutes demand on appellant (herein petitioner),”[35] is erroneous. Premiere has no obligation to forward the notice addressed to it to the employee concerned, especially because the corporation itself incurs no criminal liability under B.P. 22 for the issuance of a bouncing check. Responsibility under B.P. 22 is personal to the accused; hence, personal knowledge of the notice of dishonor is necessary. Consequently, constructive notice to the corporation is not enough to satisfy due process. Moreover, it is petitioner, as an officer of the corporation, who is the latter’s agent for purposes of receiving notices and other documents, and not the other way around. It is but axiomatic that notice to the corporation, which has a personality distinct and separate from the petitioner, does not constitute notice to the latter.

Epilogue

In granting this appeal, the Court is not unaware of B.P. 22’s intent to inculcate public respect for and trust in checks which, although not legal tender, are deemed convenient substitutes for currency. B.P. 22 was intended by the legislature to enhance commercial and financial transactions in the Philippines by penalizing makers and issuers of worthless checks. The public interest behind B.P. 22 is thus clearly palpable from its intended purpose.[36]

At the same time, this Court deeply cherishes and is in fact bound by duty to protect our people’s constitutional rights to due process and to be presumed innocent until the contrary is proven.[37] These rights must be read into any interpretation and application of B.P. 22. Verily, the public policy to uphold civil liberties embodied in the Bill of Rights necessarily outweighs the public policy to build confidence in the issuance of checks. The first is a basic human right while the second is only proprietary in nature.[38] Important to remember also is B.P. 22’s requirements that the check issuer must know “at the time of issue that he does not have sufficient funds in or credit with the drawee bank” and that he must receive “notice that such check has not been paid by the drawee.” Hence, B.P. 22 must not be applied in a manner which contravenes an accused’s constitutional and statutory rights.

There is also a social justice dimension in this case. Lina Lim Lao is only a minor employee who had nothing to do with the issuance, funding and delivery of checks. Why she was required by her employer to countersign checks escapes us. Her signature is completely unnecessary for it serves no fathomable purpose at all in protecting the employer from unauthorized disbursements. Because of the pendency of this case, Lina Lim Lao stood in jeopardy -- for over a decade -- of losing her liberty and suffering the wrenching pain and loneliness of imprisonment, not to mention the stigma of prosecution on her career and family life as a young mother, as well as the expenses, effort and aches in defending her innocence. Upon the other hand, the senior official -- Teodulo Asprec -- who appears responsible for the issuance, funding and delivery of the worthless checks has escaped criminal prosecution simply because he could not be located by the authorities. The case against him has been archived while the awesome prosecutory might of the government and the knuckled ire of the private complainant were all focused on poor petitioner. Thus, this Court exhorts the prosecutors and the police authorities concerned to exert their best to arrest and prosecute Asprec so that justice in its pristine essence can be achieved in all fairness to the complainant, Fr. Artelijo Palijo, and the People of the Philippines. By this Decision, the Court enjoins the Secretary of Justice and the Secretary of Interior and Local Government to see that essential justice is done and the real culprit(s) duly-prosecuted and punished.

WHEREFORE, the questioned Decision of the Court of Appeals affirming that of the Regional Trial Court, is hereby REVERSED and SET ASIDE. Petitioner Lina Lim Lao is ACQUITTED. The Clerk of Court is hereby ORDERED to furnish the Secretary of Justice and the Secretary of Interior and Local Government with copies of this Decision. No costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., and Melo, JJ., concur.

Francisco, J., on leave.

[1] Rollo, pp. 43-48.

[2] Eighth Division, composed of J. Consuelo Ynares-Santiago, ponente, and JJ. Emeterio C. Cui, Chairman, and Conchita Carpio Morales.

[3] Record, pp. 29-30. The RTC decision was penned by Judged Rodolfo G. Palattao.

[4] Rollo, pp. 44-45.

[5] Assistant Fiscal Domingo A. Mendoza resolved on reinvestigation to dismiss the case insofar as Lina Lim Lao is concerned after finding no sufficient evidence to sustain the charges against her. However, an Order dated 28 January 1986 from the then Ministry of Justice reversed the resolution of Fiscal Mendoza and directed him to withdraw the motion to dismiss he filed and to proceed with the prosecution of the case on the basis of the informations filed in Criminal Case Nos. 84-26967 to 84-26969. See Private Respondent's Memorandum, pp. 1-6; Rollo, pp. 138-143.

[6] Record of the Regional Trial Court, page 1 of folders 1, 2, and 3.

[7] Ibid., p.45.

[8] Petition for Review, pp. 4-7; Rollo, pp. 13-16. TSN citations in the original.

[9] Agpalo, Ruben E., Statutory Construction, p. 208, (1990). Citations omitted.

[10] Navarro vs. Court of Appeals, 234 SCRA 639, 643-644, August 2, 1994; citing People vs. Laggui, 171 SCRA 305, March 16, 1989.

[11] Reyes, Luis B., The Revised Penal Code, Criminal Law, Book Two, p. 700, (1993).

[12] Rollo, p. 46.

[13] Ibid.

[14] Comment of Public Respondent, p. 4; Rollo, p. 62.

[15] Reyes, supra. See also Nitafan, David G., Notes and Comments on the Bouncing Checks Law (B.P. Blg. 22), p. 62, (1995); Antonio Nieva vs. Court of Appeals, G.R. Nos. 95796-97, May 2, 1997.

[16] See, Ricardo Llamado vs. Court of Appeals, G.R. No. 99032, March 26, 1997, in which the Court acknowledged that the prima facie presumption under B.P. 22 may be rebutted.

[17] Ibid., pp. 5-6, September 28, 1989.

[18] Ibid., pp.3-4, July 19, 1990.

[19] Decision of the Regional Trial Court, p. 12; Record of the Court of Appeals, p. 66.

[20] TSN, pp. 7-11, September 28, 1989.

[21] Ibid., pp. 29-33, June 23, 1987.

- [22] Alfredo L. Azarcon vs. Sandiganbayan, People of the Philippines and Jose C. Batausa, G.R. No. 116033, p. 19, February 26, 1997.
- [23] 148 SCRA 595, March 16, 1987.
- [24] Ibid., pp. 596-597.
- [25] Supra, footnote no. 10.
- [26] 181 SCRA 1, January 11, 1990.
- [27] Supra.
- [28] Supra.
- [29] Decision of the Regional Trial Court, p. 10; records, p. 160.
- [30] Maximino Fuentes vs. Hon. Court of Appeals, G.R. No. 109849, p. 9, February 26, 1997; citing Juan Castillo, et al. vs. Court of Appeals, et al., G.R. No. 106472, p. 9, August 7, 1996.
- [31] TSN, pp. 25-26, September 28, 1989.
- [32] See, e.g., E.O. 107, 83 O.G. No. 7, p. 576 (February 16, 1987), and E.O. 122, 89 O.G. No. 44, p. 6349 (November 1, 1993).
- [33] Nitafan, supra, pp. 121-122.
- [34] Navarro vs. Court of Appeals, supra.
- [35] Rollo, p. 46.
- [36] See Lozano vs. Martinez, 146 SCRA 323, 339-341, December 18, 1996.
- [37] Sections 1 and 14, Article III, Constitution.
- [38] See also Philippine Blooming Mills Employees Organization vs. Philippine Blooming Mills Co., Inc., 51 SCRA 189, June 5, 1973.

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