

EVANGELINE DANAÓ, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS

G.R. No. 122353. June 06, 2001

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Before this Court is a Petition for Review on Certiorari assailing the Decision of the Court of Appeals in CA-G.R. CR No. 15031, "The People of the Philippines vs. Evangeline Claire Danao," for violation of Batas Pambansa Blg. 22, and its Resolution denying her motion for reconsideration.

On December 18, 1992, Evangeline Danao was charged in Criminal Case Nos. 92-8385 and 92-8386 for violation of Batas Pambansa Blg. 22 (the Bouncing Checks Law) before the Regional Trial Court, Branch 60, Makati City. Except as to the numbers, amounts and dates of the two (2) checks issued by Evangeline, the two (2) Informations in said criminal cases are similarly worded, thus:

"That on or about the 23rd day of December 1991, in the Municipality of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously make or draw and issue to Luviminda Macasieb, to apply on account or for value, the checks described below:

Crim. Case

Crim. Case

No. 92-8385

No. 92-8386

Check No.

128796

130851

Drawn Against

PCI Bank

PCI Bank

In the Amount of

P14,500.00

P15,000.00

Dated/Postdated

Jan. 23, 1992

Jan. 24, 1992

Payable to

Cash

Cash

said accused well knowing that at the time of issue thereof, accused did not have sufficient funds in or credit with the drawee bank for the payment in full of the face amount of such check upon its presentment, which check when presented for payment within ninety (90) days from the date thereof, was subsequently dishonored by the drawee bank for the reason 'ACCOUNT CLOSED' and, despite receipt of notice of such dishonor, the said accused failed to pay said payee the face amount of said check or to make arrangement for full payment thereof within five (5) banking days after receiving notice.

"Contrary to law."[1]

Upon arraignment on January 27, 1993, Evangeline pleaded "not guilty" to both charges. Trial ensued thereafter.

The respective versions of the prosecution and the defense are summarized by the Court of Appeals in its assailed Decision as follows:

"Private complainant Luviminda Macasieb is in the business of rediscounting checks. Arturo Estrada, the branch manager of the Monte de Piedad bank at Pasay City was one of her agents, authorized to transact rediscounting business with any person for and in behalf of the private complainant.

"Sometime in December 1991, appellant (Evangeline Danao) went to see Arturo Estrada at his office to seek an additional loan, being a depositor and borrower of the bank. Estrada had to refuse appellant's request, considering that her existing loan had not yet been fully liquidated.

"Appellant then asked Estrada if he knew a private lender. Estrada informed appellant that he knew one who lends money with postdated checks as security. Appellant agreed to the arrangement, Estrada phoned private complainant Luviminda Macasieb and told her of appellant's desire to get a loan with postdated checks as security. Macasieb talked with appellant over the phone and explained that the checks would be subject to a 10% interest every month. After the telephone conversation with appellant, Macasieb instructed Estrada to release the amount of P29,750.00 (Exh. "A") from the petty cash fund entrusted by her to Estrada. After appellant received the said amount from Estrada, she issued two postdated checks in the total amount of P29,750.00. The checks were Monte de Piedad Check No. 128796 dated 25 January 1992 in the amount of P14,750.00 (Exh. B); and the other check No. 130851 dated 24 January 1992 in the amount of P15,000.00 (Exh. C).

"On the maturity dates of the two checks, private complainant deposited the same at the PCIB Branch at Heroes Hill, Quezon City. However, the checks were dishonored for the reason that the account of appellant had already been closed. Macasieb later received check slips (Exhs. D and E) together with the returned checks. The returned checks bear the stamped words "ACCOUNT CLOSED". Estrada informed appellant of the dishonor of the checks and asked her to redeem the same but to no avail. A letter was sent by Atty. Jose S. Padolina, counsel for private complainant, demanding that appellant settle her obligation (Exh. F, p. 62, rec.). Appellant, however, failed to heed the demand letter.

"The appellant does not deny that she issued the two postdated checks. She claims, however, that she has fully paid private complainant."[2]

The trial court did not give credence to Evangeline's defense.

On August 3, 1993, the trial court convicted her as charged, thus:

"V

"ADJUDICATION

"26. The PROSECUTION has proven beyond reasonable doubt, the guilt of DANA O of the crime charged in each of the INFORMATIONS. Her constitutionally-presumed innocence has been overcome.

"27. WHEREFORE, the Court hereby renders judgment as follows:

"27.1. The accused EVANGELINE CLAIRE DANA O is found guilty to violation of Section 2, B.P. 22 in each of the above-entitled cases:

"27.2. Accordingly, the accused is sentenced in:

CRIM. CASE NO. 92-8385

"27.2.1. To suffer the penalty of imprisonment of FOUR (4) MONTHS and ONE (1) day and a fine of FOURTEEN THOUSAND SEVEN HUNDRED FIFTY PESOS (P14,750.00) with subsidiary imprisonment in case of insolvency.

"27.2.2. To indemnify the private offended party, LUVIMINDA MACASIEB, the sum of FOURTEEN THOUSAND SEVEN HUNDRED FIFTY PESOS (P14,750.00).

"27.2.3. To pay the said offended party damages at the rate of six (6) percent per annum on the P14,750.00 from December 18, 1991 until the said amount is fully paid.

CRIM. CASE NO. 92-8385

"27.2.4. To suffer the penalty of imprisonment of FOUR (4) MONTHS and ONE (1) day and a fine of FIFTEEN THOUSAND PESOS (P15,000.00) with subsidiary imprisonment in case of insolvency.

"27.2.5. To indemnify the private offended party, LUVIMINDA MACASIEB, the sum of FIFTEEN THOUSAND PESOS (P15,000.00).

"27.2.6. To pay the said offended party damages at the rate of six (6) percent per annum on the (P15,000.00) from December 18, 1991 until the said amount is fully paid.

x x x x x x x x"[3]

On appeal, the Court of Appeals, in CA-G.R. CR No. 15031, rendered its Decision[4] on April 19, 1995 affirming in toto the trial court's Decision. Evangeline filed a motion for reconsideration but was denied by the Court of Appeals in a Resolution dated August 28, 1995.

Hence the instant petition wherein Evangeline contends that the respondent Court of Appeals erred -

"A.

x x x IN NOT HOLDING THAT AN ESSENTIAL ELEMENT OF BOUNCING CHECK LAW VIOLATION IS ABSENT, BECAUSE THE PRESUMPTION OR PRIMA FACIE EVIDENCE OF KNOWLEDGE OF INSUFFICIENCY OF FUNDS DID NOT ARISE, SINCE THE PROSECUTION FAILED TO PROVE EVANGELINE'S RECEIPT OF, AS WELL AS THE DATE WHEN SHE RECEIVED, THE

COMPLAINANT'S LETTER OF DEMAND.

"B.

x x x IN NOT HOLDING THAT THE ACCUSED EVANGELINE HAD ALREADY PAID THE SUBJECT ACCOUNT EVEN BEFORE THE COMPLAINANT'S LETTER OF DEMAND, AS SHOWN BY COMPLAINANT'S STATEMENT OF ACCOUNT, EXH. "1".

"C.

x x x IN REJECTING AS EVIDENCE THE STATEMENT OF ACCOUNT, EXH. "1", ON THE GROUND THAT IT IS INCOMPETENT, THAT IT DID NOT COMPLY WITH THE REQUIREMENTS FOR PROOF OF PRIVATE DOCUMENT AND OF SECONDARY EVIDENCE, DESPITE AND IN SPITE OF THE COMPLAINANT'S ADMISSION, IN OPEN COURT UNDER OATH, THAT SHE WROTE IT IN HER OWN HANDWRITING AND THAT ITS CONTENTS ARE TRUE.

"D.

x x x IN HOLDING THAT, EVEN IF THE STATEMENT OF ACCOUNT, EXH. "1", WERE COMPETENT AND ADMISSIBLE, IT APPLIED TO OTHER ACCOUNTS, DESPITE AND IN SPITE OF THE COMPLAINANT'S ADMISSION, IN OPEN COURT UNDER OATH, THAT THE SUBJECT CHECKS WERE THE ONLY LOAN TRANSACTION BETWEEN THE COMPLAINANT AND THE ACCUSED EVANGELINE, AND NOTWITHSTANDING THAT UNDER THE LAW THE APPLICATION OF PAYMENT SHOULD BE TO THE SUBJECT ACCOUNT.

"E.

x x x IN FURTHER ANCHORING THE CONVICTION OF THE ACCUSED EVANGELINE TO PATENT CONJECTURES, UNWARRANTED INFERENCES AND PALPABLE NON-SEQUITURS THAT CANNOT CURE THE PROSECUTION'S FAILURE TO PROVE KNOWLEDGE OF INSUFFICIENCY OF FUNDS AS AN ESSENTIAL ELEMENT OF THE OFFENSE, NOR NEGATE THE LEGAL EFFECT OF PAYMENT OF THE SUBJECT ACCOUNT BY THE ACCUSED BEFORE DEMAND.

xxx xxx xxx"[5]

It is settled that factual findings of the trial court are accorded great weight, even finality on appeal, except when it has failed to appreciate certain facts and circumstances which, if taken into account, would materially affect the result of the case. This exception is present here.

We find that the totality of the evidence presented does not support petitioner's conviction for violation of B.P. Blg. 22, since the prosecution failed to prove beyond reasonable doubt all the elements of the offense.

The Information in each of the two criminal cases charges that petitioner Evangeline issued the subject check, "knowing that at the time of issue thereof," she "did not have sufficient funds in or credit with the drawee bank for the payment in full of the face amount of the check upon its presentment," and that "despite receipt of notice of dishonor, the said accused failed to pay the payee the face amount of the check or to make arrangement for full payment thereof within five (5) banking days after receiving notice."

Petitioner was specifically charged with violation of the first paragraph of Section 1 of BP Blg. 22, which provides:

"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." (Underscoring supplied)

The elements[6] of the offense under the abovequoted provision are:

1. The accused makes, draws or issues any check to apply to account or for value;
2. The accused knows at the time of the issuance that he or she does not have sufficient funds in, or credit with, the drawee bank for the payment of the check in full upon its presentment; and
3. The check is subsequently dishonored by the drawee bank for insufficiency of funds or credit, or it would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment.

In *King vs. People*,[7] this Court, through Justice Artemio V. Panganiban, held: "To hold a person liable under B.P. Blg. 22, it is not enough to establish that a check issued was subsequently dishonored. It must be shown further that the person who issued the check knew '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.' Because this element involves a state of mind which is difficult to establish, Section 2 of the law creates a prima facie presumption of such knowledge, as follows:

'SEC. 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.'"

Thus, this Court further ruled in *King*, "in order to create the prima facie presumption that the issuer knew of the insufficiency of funds, it must be shown that he or she received a notice of dishonor and, within five banking days thereafter, failed to satisfy the amount of the check or make arrangement for its payment." [8]

Indeed, the prima facie presumption in Section 2 of B.P. Blg. 22 "gives the accused an opportunity to satisfy the amount indicated in the check and thus avert prosecution." [9] This opportunity, as this Court stated in *Lozano vs. Martinez*, [10] serves to "mitigate the harshness of the law in its application."

In other words, if such notice of non-payment by the drawee bank is not sent to the maker or drawer of the check, or if there is no proof as to when such notice was received by the drawer, then the presumption or prima facie evidence as provided in Section 2 of B.P. Blg. 22 cannot arise, since there would simply be no way of reckoning the crucial 5-day period.

In the present case, no proof of receipt by petitioner of any notice of non-payment of the checks was ever presented during the trial. As found by the trial court itself, "(t)he evidence however is not clear when Macasieb (private complainant) made the demands. There is no proof of the date when DANA O received the demand letter (Exh. F)." [11]

Obviously, in the instant case, there is no way of determining when the 5-day period prescribed in Section 2 of B.P. Blg. 22 would start and end. Thus, the presumption or prima facie evidence of knowledge by the petitioner of the insufficiency of funds or credit at the times she issued the checks did not arise.

It is clear that the essential element of knowledge of insufficiency of funds or credit on the part of petitioner is absent in the case at bar, not having been proved by the prosecution. On this ground alone, petitioner should be acquitted.

Again, the ruling of this Court in King[12] bears repeating:

"Under Batas Pambansa Blg. 22 (BP 22), the prosecution must prove not only that the accused issued a check that was subsequently dishonored. It must also establish that the accused was actually notified that the check was dishonored, and that he or she failed, within five banking days from receipt of the notice, to pay the holder of the check the amount due thereon or to make arrangement for its payment. Absent proof that the accused received such notice, a prosecution for violation of the Bouncing Checks Law cannot prosper."

In the same vein, we clarified in Lao vs. Court of Appeals[13] that "(a)lthough 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."

The remaining assigned errors raised by petitioner are closely interrelated since they pertain to her payment of the amounts of the subject checks even prior to complainant's letter of demand. We shall discuss them jointly.

Petitioner contends that while the demand letter is dated June 17, 1992 (Exh. "F"), the Statement of Account (Exhs. "1" & "1-A") shows that as of June 5, 1992, she had paid to complainant Macasieb P30,514.00, thus covering the amount of P29,500.00 of the two checks.

We find that the payment made by Evangeline in the total amount of P30,514.00 has been sufficiently and convincingly established by the very testimony of complainant herself. The respondents, through the Solicitor General, argued that petitioner's payments were for "other accounts". But that is not so, as can be clearly gleaned from the following testimony of complainant Macasieb:

"Q:

Regarding those other transactions, was Evangeline Danao ever able to make good those other transactions as you mentioned several transactions?

"A:

I do not think so because what she is using is the check of her mother. I forgot the name - Samonte I think."[14]

"Q:

How much was the partial payment?

"A: More or less I think P30,000.00 something but that is for the other accounts with me using the other checks of her clients."[15]

"Q:

You mean to say, after filing these cases or before filing these cases and after the first transaction was not made good you still continue doing business with her in the rediscounting business?

"A:

Not anymore because what she was furnishing before are I think the checks of the customers and through the checks of the customers I accepted."[16]

"Q:

Going back to this particular transaction - is this the only transaction of Evangeline Danao which is under her name made between you and her?

"A:

Yes, sir."[17]

"Q:

But you still remember that statement of account in your own handwriting which was given to her?

"A:

Yes, Attorney. This is my handwriting because sometime in June 1992 she asked for an audience with me. This is the statement of account and these are the payments that she was able to make from February to June.

"Q:

Under your oath you will affirm that you have issued this statement of account?

"A:

Yes.

"Q:

And to the total amount of P30,514.00?

"A:

Yes.

"ATTY. DY:

I am presenting this as evidence for the accused. I request that the same be marked as Exh. 1 for the accused and then the amount of P30,514.00 be enclosed in parenthesis and to be marked as our Exh. 1-A."[18]
(Emphasis supplied)

It is plain that complainant established by her own admission that the subject checks are the only particular transactions between her and petitioner and that the so-called "other transactions" or checks are in the names of the latter's mother, clients or customers. There can be no other conclusion then than that petitioner's payment of P30,514.00 pertains only to the subject checks.

In sum, we find that the prosecution failed to prove by evidence beyond reasonable doubt the guilt of herein petitioner for violations of B.P. 22.

WHEREFORE, the assailed Decision and Resolution of the Court of Appeals are hereby REVERSED and SET ASIDE. Petitioner Evangeline Danao is ACQUITTED of the offense of violation of B.P. Blg. 22 on two counts for insufficiency of evidence. No pronouncement as to costs.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Gonzaga-Reyes, JJ., concur.

[1] Rollo, pp. 68-69, 82-83.

[2] Ibid., pp. 102-103.

[3] Ibid., pp. 78-79.

[4] Ibid., pp. 101-109.

[5] Ibid., pp. 24-25.

[6] See also *People vs. Laggui*, 171 SCRA 305 (1989).

[7] 319 SCRA 667-668 (1999).

[8] Ibid., p. 669.

[9] Ibid., p. 668.

[10] 146 SCRA 324 (1986).

[11] Annex "A" of Petition; Rollo, p. 78.

[12] *Supra*, p. 656.

[13] 274 SCRA 586 (1997).

[14] Rollo, p. 207.

[15] Ibid., p. 208.

[16] Ibid.

[17] Ibid.

[18] TSN, March 10, 1993, pp. 22-23; Rollo, pp. 36-37.

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