

ROSA LIM, PETITIONER, VS., PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 130038. September 18, 2000

Ponente: PARDO, J.

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PARDO, J.:

The case is an appeal from the decision[1] of the Court of Appeals affirming in toto that of the Regional Trial Court, Cebu City.[2] Both courts found petitioner Rosa Lim guilty of twice violating Batas Pambansa Bilang 22[3] and imposing on her two one-year imprisonment for each of the two violations and ordered her to pay two fines, each amounting to two hundred thousand pesos (P200,000.00). The trial court also ordered petitioner to return to Maria Antonia Seguan, the jewelry received or its value with interest, to pay moral damages, attorney's fees and costs.[4]

We state the relevant facts.[5]

On August 25, 1990, petitioner called Maria Antonia Seguan by phone. Petitioner thereafter went to Seguan's store. She bought various kinds of jewelry -- Singaporean necklaces, bracelets and rings worth P300,000.00. She wrote out a check dated August 25, 1990, payable to "cash" drawn on Metrobank in the amount of P300,000.00[6] and gave the check to Seguan.

On August 26, 1990, petitioner again went to Seguan's store and purchased jewelry valued at P241,668.00. Petitioner issued another check payable to "cash" dated August 16, 1990 drawn on Metrobank in the amount of P241,668.00[7] and sent the check to Seguan through a certain Aurelia Nadera.

Seguan deposited the two checks with her bank. The checks were returned with a notice of dishonor. Petitioner's account in the bank from which the checks were drawn was closed.

Upon demand, petitioner promised to pay Seguan the amounts of the two dishonored checks. She never did.

On June 5, 1991,[8] an Assistant City Prosecutor of Cebu filed with the Regional Trial Court, Cebu City, Branch 23 two informations against petitioner. Both informations were similarly worded. The difference is that in Criminal Case No. 22128, the bouncing checks is Metro Bank Check No. CLN 094244392 dated August 26, 1990 in the amount of P241,668.00. The informations read:[9]

Criminal Case No. 22127-

"The undersigned Prosecutor I of the City of Cebu, accuses ROSA LIM for VIOLATION OF BATAS PAMBANSA BILANG 22 committed as follows:

"That on or about the 20th day of August, 1990, and for sometime subsequent thereto, in the City of Cebu Philippines, and within the jurisdiction of this Honorable Court, the said accused, knowing at the time of issue of the check she does not have sufficient funds in the drawee bank for the payment of such check in full upon its presentment, with deliberate intent, with intent of gain and of causing damage, did then and there issue,

make or draw Metro Bank Check NO. 1 CLN 094244391 dated August 25, 1990 in the amount of P300,000.00 payable to Maria Antonia Seguan which check was issued in payment of an obligation of said accused, but when the said check was presented with the bank the same was dishonored for reason "Account Closed" and despite notice and demands made to redeem or make good said check, said accused failed and refused, and up to the present time still fails and refuses to do so, to the damage and prejudice of said Maria Antonia Seguan in the amount of P300,000.00, Philippine Currency.

"CONTRARY TO LAW."

Criminal Case No. 22128-

"The undersigned Prosecutor I of the City of Cebu, accuses ROSA LIM for VIOLATION OF BATAS PAMBANSA BILANG 22, COMMITTED AS FOLLOWS:

"That on or about the 20th day of August, 1990, and for sometime subsequent thereto, in this City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, knowing at the time of issue of the check she does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, with deliberate intent, with intent of gain and of causing damage, did then and there issue, make or draw Metro Bank Check No. CLN-094244392 dated August 26, 1990 in the amount of P241,668.00 payable to Maria Antonia Seguan which check was issued in payment of an obligation of said accused, but when the said check was presented with the bank, the same was dishonored for reason "Account Closed" and despite notice and demands made to redeem or make good said check, said accused failed and refused, and up to the present time still fails and refuses to do so, to the damage and prejudice of said Maria Antonia Seguan in the amount of P241,668.00, Philippine Currency.

"CONTRARY TO LAW.

"Cebu City, Philippines, 30 May 1991." [10]

Upon arraignment, petitioner pleaded "not guilty" in both cases.

After due trial, on December 29, 1992, the trial court rendered a decision in the two cases convicting petitioner, to wit: [11]

"WHEREFORE, prosecution having established the guilt of the accused beyond reasonable doubt, judgment is hereby rendered convicting the accused, Rosa Lim and sentencing her in Criminal Case No. CBU-22127, to suffer the penalty of imprisonment for a period of ONE (1) YEAR and a fine of TWO HUNDRED THOUSAND (P200,000.00) PESOS and in Criminal Case No. CBO-22128, the same penalty of imprisonment for ONE YEAR and fine of TWO HUNDRED THOUSAND (P200,000.00) is likewise imposed.

"The accused is hereby ordered to pay private complainant Maria Antonia Seguan, the sum of P541,668.00 which is the value of the jewelries bought by the accused from the latter with interest based on the legal rate to be counted from June 5, 1991, the date of the filing of the informations, or return the subject jewelries; and further to pay private complainant:

"(a) The sum of P50,000.00 as moral damages in compensation for the latter's worries with the freezing of her business capital involved in these litigated transactions;

"(b) The sum of P10,000.00 for attorney's fees, plus costs.

"SO ORDERED." [12]

In due time, petitioner appealed to the Court of Appeals. [13]

On October 15, 1996, the Court of Appeals rendered a decision, dismissing the appeal in this wise:

"WHEREFORE, premises considered, the appeal is DISMISSED. The decision appealed from is AFFIRMED in toto.

"SO ORDERED." [14]

Hence, this appeal. [15]

In this appeal, petitioner argues that she never knew Seguan and much more, had any "transaction" with her. According to petitioner, she issued the two checks and gave them to Aurelia Nadera, not to Seguan. She gave the two checks to Aurelia Nadera from whom she got two sets of jewelry, as a "security arrangement" or "guarantee" that she would return the jewelry received if she would not be able to sell them. [16]

The appeal has no merit.

The elements of B.P. Blg. 22 are: [17]

"(1) The making, drawing and issuance of any check to apply for 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) The 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."

Petitioner never denied issuing the two checks. She argued that the checks were not issued to Seguan and that they had no pre-existing transaction. The checks were issued to Aurelia Nadera as mere guarantee and as a security arrangement to cover the value of jewelry she was to sell on consignment basis. [18] These defenses cannot save the day for her. The first and last elements of the offense are admittedly present. To escape liability, she must prove that the second element was absent, that is, at the time of issue of the checks, she did not know that her funds in the bank account were insufficient. She did not prove this.

B.P. No. 22, Section 2 creates a presumption juris tantum that the second element prima facie exists when the first and third elements of the offense are present. [19] If not rebutted, it suffices to sustain a conviction. [20]

The gravamen of B.P. No. 22 is the act of making and issuing a worthless check or one that is dishonored upon its presentment for payment. And the accused failed to satisfy the amount of the check or make arrangement for its payment within five (5) banking days from notice of dishonor. [21] The act is malum prohibitum, pernicious and inimical to public welfare. [22] Laws are created to achieve a goal intended and to guide and prevent against an evil or mischief. [23] Why and to whom the check was issued is irrelevant in determining culpability. The terms and conditions surrounding the issuance of the checks are also irrelevant. [24]

Unlike in estafa, [25] under B. P. No. 22, one need not prove that the check was issued in payment of an obligation, or that there was damage. The damage done is to the banking system. [26]

In *United States v. Go Chico*, we ruled that in acts mala prohibita, the only inquiry is, "has the law been violated?" When dealing with acts mala prohibita [27] --

"... it is not necessary that the appellant should have acted with criminal intent. In many crimes, made such by statutory enactment, the intention of the person who commits the crime is entirely immaterial. This is necessarily so. If it were not, the statute as a deterrent influence would be substantially worthless. It would be impossible of execution. In many cases, the act complained of is itself that which produces the pernicious effect the statute seeks to avoid. In those cases the pernicious effect is produced with precisely the same force and result whether the intention of the person performing the act is good or bad."

This case is a perfect example of an act mala prohibita. Petitioner issued two checks. They were dishonored upon presentment for payment due to the fact that the account was closed. Petitioner failed to rebut the presumption that she knew her funds were insufficient at the time of issue of the checks. And she failed to pay the amount of the checks or make arrangement for its payment within five (5) banking days from receipt of notice of dishonor. B.P. No. 22 was clearly violated. Hoc quidem per quam durum est sed ita lex scripta est. The law may be exceedingly hard but so the law is written.

However, we resolve to modify the penalty imposed on petitioner. B.P. No. 22 provides a penalty of "imprisonment of not less than thirty days but not more than one year or 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." [28]

In *Vaca v. Court of Appeals*, [29] we held that in determining the penalty to be imposed for violation of B.P. No. 22, the philosophy underlying the Indeterminate Sentence Law applies. The philosophy is to redeem valuable human material, and to prevent unnecessary deprivation of personal liberty and economic usefulness with due regard to the protection of the social order. There, we deleted the prison sentence imposed on petitioners. We imposed on them only a fine double the amount of the check issued. We considered the fact that petitioners brought the appeal, believing in good faith, that no violation of B.P. No. 22 was committed, "otherwise, they would have simply accepted the judgment of the trial court and applied for probation to evade prison term." [30] We do the same here. We believe such would best serve the ends of criminal justice.

Consequently, we delete the prison sentences imposed on petitioner. The two fines imposed for each violation, each amounting to P200,000.00 are appropriate and sufficient.

The award of moral damages and order to pay attorney's fees are deleted for lack of sufficient basis.

WHEREFORE, we AFFIRM with modification the decision of the Court of Appeals. [31] We find petitioner Rosa Lim guilty beyond reasonable doubt of two counts of violation of Batas Pambansa Bilang 22. We SET ASIDE the sentence of imprisonment and hereby sentence her only to pay a fine of P200,000.00 in each case, with subsidiary imprisonment in case of insolvency or non-payment not to exceed six (6) months. [32] We DELETE the award of moral damages and attorney's fees. The rest of the judgment of the trial court as affirmed by the Court of Appeals shall stand. Costs against petitioner.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Pangniban, Purisima, Buena, Gonzaga-Reyes, and De Leon, Jr., JJ., concur.

Quisumbing, J., In the result.

Ynares-Santiago, J., On leave.

[1] In CA-G.R. CR No. 14641, promulgated on October 15, 1996, De La Rama, J., ponente, Cui and Montenegro, JJ., concurring.

[2] In Criminal Case Nos. CBU 22127 and 22128.

[3] Bouncing Checks Law, hereinafter referred to as "B.P. 22".

[4] Rollo, p. 94.

[5] Rollo, p. 12.

[6] Rollo, p. 89.

[7] Ibid.

[8] Rollo, p. 94.

[9] Rollo, pp. 80-81.

[10] Petition, Annex "A", Rollo, pp. 80-81.

[11] Rollo, pp. 93-94.

[12] Petition, Annex "A", Rollo, pp. 80-94.

[13] Docketed as CA-G.R. CR No. 14641.

[14] Rollo, pp. 10-20.

[15] Petition for Review, Rollo, pp. 25-39.

[16] Rollo, p. 13.

[17] Francisco T. Sycip, Jr. v. Court of Appeals, G.R. No. 125059, March 17, 2000.

[18] Rollo, p. 13.

[19] B.P. 22, Section 2 provides, "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.

[20] Francisco T. Sycip, Jr. v. Court of Appeals, *supra*, Note 17.

[21] King v. People, G.R. No. 131540, December 2, 1999.

[22] Francisco T. Sycip, Jr. v. Court of Appeals, *supra*, Note 17.

[23] Codoy v. Calugay, 312 SCRA 333, 351 (1999).

[24] Llamado v. Court of Appeals, 270 SCRA 423 (1997).

[25] People v. Hernando, G.R. No. 125214, October 28, 1999.

[26] Vaca v. Court of Appeals, 298 SCRA 658 (1998).

[27] United States v. Go Chico, 14 Phil. 128, 131 (1909).

[28] Batas Pambansa Blg. 22, Section 1.

[29] Vaca v. Court of Appeals, *supra*, Note 26.

[30] Vaca v. Court of Appeals, *supra*, at p. 664.

[31] In CA-G.R. CR No. 14641.

[32] See Article 39, par. 2, Revised Penal Code; Diongzon v. Court of Appeals, G.R. No. 114822, December 23, 1999; Llamado v. Court of Appeals, 337 Phil. 153 (1997).

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