BETTY KING, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 131540. December 02, 1999

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

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.

The Case

Before this Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the January 30, 1997 Decision[1] of the Court of Appeals[2] (CA) in CA-GR CR No. 18226 and its November 5, 1997 Resolution[3] denying reconsideration. The CA affirmed the June 14, 1994 Decision[4] of the Regional Trial Court (RTC) of Makati, Metro Manila[5] in Criminal Case Nos. 93-3335 to 93-3345 which convicted petitioner of 11 counts of violation of BP 22, otherwise known as the Bouncing Checks Law.

On April 28, 1993, Second Assistant Provincial Prosecutor Jaime A. Adoc filed against petitioner eleven separate Informations,[6] which are identically worded, except for the check number, the amount and the date, as follows:

> "That in or about the month of January, 1992 in the Municipality of Las Piñas, 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 EILEEN FERNANDEZ herein represented by _____ to apply on account or for value the check described below:
>
> EQUITABLE BANK
> Check No. 021711
> In the amount of P50,000.00
> Postdated July 24, 1992
> said accused well knowing that at the time of issue she/he 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 their presentment, which check when presented for payment within ninety (90) days from the date thereof were subsequently dishonored by the drawee bank for the reason 'Account Closed' and despite receipt of notice of such dishonor the accused failed to pay the face amount thereof or make arrangement for the full payment thereof within five (5) working days after receiving notice."[7]

When arraigned, petitioner, assisted by counsel, pleaded not guilty. After the prosecution presented its evidence and rested its case, petitioner filed a Demurrer to Evidence without leave of court, on the ground that the prosecution failed to prove her guilt beyond reasonable doubt. The trial court denied the Demurrer in its assailed Decision, the dispositive portion of which reads:

> "WHEREFORE, premises considered, the demurrer to evidence without prior leave of court is DENIED for lack of merit.
>
> Since accused has waived her right to present evidence, judgment is hereby rendered finding accused guilty beyond reasonable doubt of Violation of Batas Pambansa Bilang 22 in the eleven (11) above-entitled cases and is ordered to:
>
> 1. Suffer imprisonment for thirty (30) days, to pay a fine in the amount of P50,000.00, and to pay complainant Eileen Fernandez the amount of P50,000.00 as actual damages in Criminal Case No. 93-3335;
>
> 2. Suffer imprisonment for thirty (30) days, to pay a fine in the amount of P50,000.00, and to pay complainant Eileen Fernandez the amount of P50,000.00 as actual damages in Criminal Case No. 93-3336;
>
> 3. Suffer imprisonment for thirty (30) days, to pay a fine in the amount of P50,000.00, and to pay complainant Eileen Fernandez the amount of P50,000.00 as actual damages in Criminal Case No. 93-3337;
>
> 4. Suffer imprisonment for thirty (30) days, to pay a fine in the amount of P64,200.00, and to pay complainant Eileen Fernandez the amount of P64,200.00 as actual damages in Criminal Case No. 93-3338;
>
> 5. Suffer imprisonment for thirty (30) days, to pay a fine in the amount of P66,000.00, and to pay complainant Eileen Fernandez the amount of P66,000.00 as actual damages in Criminal Case No. 93-3339;
>
> 6. Suffer imprisonment for thirty (30) days, to pay a fine in the amount of P100,000.00, and to pay complainant Eileen Fernandez the amount of P100,000.00 as actual damages in Criminal Case No. 93-3340;
>
> 7. Suffer imprisonment for thirty (30) days, to pay a fine in the amount of P150,000.00, and to pay complainant Eileen Fernandez the amount of P150,000.00 as actual damages in Criminal Case No. 93-3341;
>
> 8. Suffer imprisonment for thirty (30) days, to pay a fine in the amount of P150,000.00, and to pay complainant Eileen Fernandez the amount of P150,000.00 as actual damages in Criminal Case No. 93-3342;
>
> 9. Suffer imprisonment for thirty (30) days, to pay a fine in the amount of P130,000.00, and to pay complainant Eileen Fernandez the amount of P130,000.00 as actual damages in Criminal Case No. 93-3343;
>
> 10. Suffer imprisonment for thirty (30) days, to pay a fine in the amount of P130,000.00, and to pay complainant Eileen Fernandez the amount of P130,000.00 as actual damages in Criminal Case No. 93-3344; and,
>
> 11. Suffer imprisonment for thirty (30) days, to pay a fine in the amount of P130,000.00, and to pay complainant Eileen Fernandez the amount of P130,000.00 as actual damages in Criminal Case No. 93-3345."[8]

As already stated, the Court of Appeals affirmed the RTC in this wise:[9]

> "WHEREFORE, the appealed decision is hereby affirmed [I]N TOTO. Costs against appellant."

Hence, this Petition.[10]

The Facts

Evidence for the Prosecution

The Office of the Solicitor General[11] summarized the facts, as viewed by the prosecution, in this wise:

> "On several occasions in January, 1992, at Las Piñas, Metro Manila, petitioner discounted with complainant Ellen Fernandez several Equitable Bank checks postdated from July 23 to 29, 1992 in the total amount of P1,070,000.00 in exchange for cash in the amount of P1,000,000.00. When the checks were deposited for payment, they were dishonored by the drawee bank because they were drawn against an account without

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> sufficient funds. Petitioner failed to make good the checks despite demand. (Memorandum dated April 7, 1993 of Assistant Provincial Prosecutor to the Rizal Provincial Prosecutor)
>
> "During the hearing on the merits of this case on September 17, 1998, the prosecution offered in evidence its documentary evidence. Petitioner admitted the genuineness and due execution of the documents presented."[12]

Evidence for the Defense

As noted earlier, petitioner filed a Demurrer to Evidence without leave of court. In doing so, she waived her right to present evidence and submitted the case for judgment on the basis of the documentary exhibits adduced by the prosecution.[13]

Ruling of the Court of Appeals

In affirming the trial court, the Court of Appeals explained that the prosecution proved all the elements of the crime. The CA also pointed out that the failure of petitioner to sign the pretrial order was not fatal to the prosecution, because her conviction was based on the evidence presented during the trial.

The Issues

Petitioner submits the following issues for the Court's consideration:

> "I
>
> Whether or not the trial court and the Court of Appeals gravely erred in admitting in evidence all the documentary evidence of the prosecution though their due execution and genuineness were not duly established in evidence pursuant to the provisions of the Rules of Court and prevailing jurisprudence;
>
> "II
>
> Whether or not the trial court and the Court of Appeals gravely erred in declaring that Rule 118, Section 4 of the Rules of Court, as applied in the case of Fule vs. Court of Appeals, 162 SCRA 446, which states that no agreement or admission made or entered during the pre-trial conference shall be used in evidence against the accused unless reduced to writing and signed by him and his counsel, is inapplicable in the case at bar;
>
> "III
>
> Whether or not the trial court and the Court of Appeals gravely erred in ruling that the burden of evidence has already been shifted from the prosecution to the defense despite the definite factual issues in the pre-trial order; and
>
> "IV
>
> Whether or not the trial court and the Court of Appeals erred in ruling that the prosecution has proven the guilt of the accused beyond reasonable doubt albeit the prosecution did not produce any evidence."[14]

In the main, the resolution of the Petition hinges on (1) the admissibility and (2) the sufficiency of the prosecution evidence.

This Court's Ruling

The Petition has merit insofar as it contends that the elements of the crime charged have not all been proven beyond reasonable doubt.

First Issue:

Admissibility of Documentary Evidence

Because the first, the second and the third issues raised by petitioner all refer to the same matter, they will be discussed together. She contends that the pieces of documentary evidence presented by the prosecution during

pretrial are inadmissible, because she did not sign the pretrial agreement as required under Section 4 of Rule 118 of the Rules of Court.[15] Hence, she argues that there is no basis for her conviction.

True, a pretrial agreement not signed by a party is inadmissible. However, the conviction of petitioner was based not on that agreement but on the documents submitted during the trial, all of which were admitted without any objection from her counsel. During the hearing on September 17, 1993, the prosecution offered as evidence the dishonored checks, the return check tickets addressed to private complainant, the notice from complainant addressed to petitioner that the checks had been dishonored, and the postmaster's letter that the notice had been returned to sender. Petitioner's counsel did not object to their admissibility. This is shown by the transcript of stenographic notes taken during the hearing on September 17, 1993:vee

"COURT:

You have no objection to the admissibility, not that the Court will believe it.

ATTY. MANGERA

No, Your Honor.

COURT:

Exhibits 'A' to 'A' to 'K' are admitted.

ATTY. MAKALINTAL:

We offer Exhibit 'L', the return-check ticket dated July 27, 1992, relative to checks No. 021745 and 021746 indicating that these checks were returned DAIF, drawn against insufficient funds; Exh. M, returned check ticket dated July 28, 1992, relative to Check No. 021727, 021711 and 021720 likewise indicating the said checks to have been drawn against insufficient funds, Your Honor. Exhibit N, returned check ticket dated July 29, 1992, relative to Check Nos. 021749 and 021748, having the same indications;

Exhibits O, returned check ticket dated July 29, 1992 relative to Check Nos. 021750 and 021753, with the same indications;

Exhibits P, returned check ticket dated August 4, 1992 relative to Check No. 021752, having the same indication as being drawn against insufficient funds;

Exhibit Q, the demand letter sent to the accused by Atty. Horacio Makalintal dated August 3, 1992;

Exhibit R, the letter-request for certification addressed to the Postmaster General sent by the same law office dated 17 September 1992, showing that the said letter was dispatched properly by the Central Post Office of

Makati;

Exhibit S, 1st Indorsement of the Makati Central Post Office dated 21 September 1992;

Exhibit T, the Philippine Postal Corporation Central Post Office letter dated 24 September 1992, addressed to this representation showing that there were 3 notices sent to the herein accused who received the said letter.

COURT:

Let's go to the third check slip; any objection to the third slip?

ATTY. MANGERA:

We have no objection as to the due execution and authenticity.

COURT:

Admitted.

ATTY. MAKALINTAL:

We are offering Exhibits Q, R, S and T, for the purpose of showing that there was demand duly made on the accused and that the same had been appropriately served by the Central Post Office Services of Manila.

ATTY. MANGERA:

We admit as to the due execution and authenticity only as to that portion, Your Honor.

COURT:

We are talking of admissibility now, so admitted. In other words, at this point, he makes an offer and the Court will either grant admission, [admit] it in evidence or deny it. It can deny admission if it is not properly identified etcetera.

ATTY. MANGERA:

I think it is already provided.

COURT:

So, admitted.

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> ATTY. MAKALINTAL:
>
> With the admission of our offer, Your Honor, the prosecution rests."[[16]]

From the foregoing, it is clear that the prosecution evidence consisted of documents offered and admitted during the trial. In view of this, the CA correctly ruled that Fule v. Court of Appeals[17] would not apply to the present controversy. In that case, a hearing was conducted during which the prosecution presented three exhibits. However, Fule's conviction was "based solely on the stipulation of facts made during the pre-trial on August 8, 1985, which was not signed by the petitioner, nor by his counsel." Because the stipulation was inadmissible in evidence under Section 4 of Rule 118, the Court held that there was no proof of his guilt.

In the present case, petitioner's conviction was based on the evidence presented during trial, and not on the stipulations made during the pretrial. Hence, petitioner's admissions during the trial are governed not by the Fule ruling or by Section 4 of Rule 118, but by Section 4 of Rule 129 which reads:

> "SEC. 4. Judicial Admissions. --- An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made."

Hence, the trial court and the Court of Appeals did not err in taking cognizance of the said documentary evidence.

Second Issue:
Sufficiency of Prosecution Evidence
Petitioner argues that the prosecution failed to prove beyond reasonable doubt the elements of the offense. After a careful consideration of the records of this case, we believe and so rule that the totality of the evidence presented does not support petitioner's conviction for violation of BP 22.

Section 1 of BP 22 defines the offense as follows:

> "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 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."

Accordingly, this Court has held that the elements of the crime are as follows:[18]

> 1. The accused makes, draws or issues any check to apply to account or for value.
>
> 2. 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.

> 3. The accused knows at the time of the issuance that he or she does not have sufficient funds in, or credit with, drawee bank for the payment of the check in full upon its presentment.

We shall analyze the evidence, purportedly establishing each of the aforementioned elements which the trial and the appellate courts relied upon.

Issuance of the Questioned Checks

Contending that the prosecution failed to prove the first element, petitioner maintains that she merely signed the questioned checks without indicating therein the date and the amount involved. She adds that they were improperly filled up by Eileen Fernandez. Thus, she concludes, she did not "issue" the dishonored checks in the context of the Negotiable Instruments Law, which defines "issue" as the "first delivery of the instrument complete in form to a person who takes it as a holder."[19]

Petitioner's contentions are not meritorious. The questioned checks, marked as Exhibits "A" to "K," contained the date of issue and the amount involved. In fact, petitioner even admitted that she signed those checks. On the other hand, no proof was adduced to show that petitioner merely signed them in blank, or that complainant filled them up in violation of the former's instructions or their previous agreement. The evidence on record is clear that petitioner issued eleven checks, all of which were duly filled up and signed by her.

Checks Dishonored

Neither are we persuaded by petitioner's argument that "there appears no evidence on record that the subject checks were unpaid and dishonored."[20] Under Section 3 of BP 22, "the introduction in evidence of any unpaid and dishonored check, having the drawee's refusal to pay stamped or written thereon, or attached thereto, with the reason therefor as aforesaid, shall be prima facie evidence of the making or issuance of said check, and the due presentment to the drawee for payment and the dishonor thereof, and that the same was properly dishonored for the reason written, stamped, or attached by the drawee on such dishonored check."

In the present case, the fact that the checks were dishonored was sufficiently shown by the checks themselves, which were stamped with the words "ACCOUNT CLOSED." This was further supported by the returned check tickets issued by PCI Bank, the depository bank, stating that the checks had been dishonored.

Clearly, these documents constitute prima facie evidence that the drawee bank dishonored the checks. Again, no evidence was presented to rebut the prosecution's claim.

Knowledge of Insufficiency of Funds

To hold a person liable under BP 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 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:[21]

> "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."

In other words, the prima facie presumption arises when a check is issued. But the law also provides that the

presumption does not arise when the issuer pays the amount of the check or makes arrangement for its payment "within five banking days after receiving notice that such check has not been paid by the drawee." Verily, BP 22 gives the accused an opportunity to satisfy the amount indicated in the check and thus avert prosecution. As the Court held in Lozano v. Martinez, the aforecited provision serves to "mitigate the harshness of the law in its application."[22] This opportunity, however, can be used only upon receipt by the accused of a notice of dishonor. This point was underscored by the Court in Lina Lim Lao v. Court of Appeals:[23]

> "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 allowing illegal possessors of firearms a certain period of time to surrender the illegally possessed firearms to the Government, without incurring any criminal liability.' 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.' 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 BP 22."

Thus, 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.

To prove that petitioner knew of the insufficiency of her funds, the prosecution presented Exhibits "Q" to "T." Based on these documents, the Court of Appeals concluded that "[p]rivate complainant sent a demand letter to appellant to make good said checks x x x. Appellant failed to pay the face value of the eleven checks or make arrangement for the full payment thereof within 90 days after receiving the notice."[24]

Upon closer examination of these documents, we find no evidentiary basis for the holding of the trial court and the Court of Appeals that petitioner received a notice that the checks had been dishonored.

True, complainant sent petitioner a registered mail, as shown in Exhibit "Q," informing the latter that the checks had been dishonored. But the records show that petitioner did not receive it. In fact, Postmaster Wilfredo Ulibarri's letter addressed to complainant's counsel certified that the "subject registered mail was returned to sender on September 22, 1992 x x x."[25]

Notwithstanding the clear import of the postmaster's certification, the prosecution failed to adduce any other proof that petitioner received the post office notice but unjustifiably refused to claim the registered mail. It is possible that the drawee bank sent petitioner a notice of dishonor, but the prosecution did not present evidence that the bank did send it, or that petitioner actually received it. It was also possible that she was trying to flee from complainant by staying in different addresses. Speculations and possibilities, however, cannot take the place of proof. Conviction must rest on proof beyond reasonable doubt. Clearly, the evidence on hand demonstrates the indelible fact that petitioner did not receive notice that the checks had been dishonored. Necessarily, the presumption that she knew of the insufficiency of funds cannot arise.

Be that as it may, the Court must point out that it cannot rule on petitioner's civil liability, for the issue was not raised in the pleadings submitted before us.

We must stress that BP 22, like all penal statutes, is construed strictly against the State and liberally in favor of the accused.[26] Likewise, the prosecution has the burden to prove beyond reasonable doubt each element of the crime. Hence, the prosecution's case must rise or fall on the strength of its own evidence, never on the weakness

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or even absence of that of the defense.

WHEREFORE, the assailed Decision of the Court of Appeals is hereby REVERSED and SET ASIDE. Petitioner Betty King is ACQUITTED for failure of the prosecution to prove all the elements of the crimes charged. No pronouncement as to costs.

SO ORDERED.

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

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[1] Rollo, pp. 52-63.

[2] Sixth Division.

[3] Rollo, p. 66.

[4] Rollo, pp. 94-99; penned by Judge Santiago Ranada Jr.

[5] Branch 137.

[6] Records, pp. 21-62.

[7] Rollo, pp. 10--12.

[8] RTC Decision, pp. 5-6; rolo, pp. 98-99.

[9] CA Decision, p. 12; rollo, p. 63.

[10] This case was deemed submitted for resolution on March 19, 1999, upon receipt by the Court of the respondent's Memorandum.

[11] Through Solicitor General Ricardo P. Galvez, Assistant Solicitor General Rodolfo G. Urbiztondo and Solicitor Procolo M. Olaivar.

[12] Respondent’s Comment, pp. 1-2; rollo, pp. 149-150.

[13] Section 15, Rule 119 of the Rules of Court.

[14] Petitioner's Memorandum, pp. 9-10; rollo, pp. 197-198; signed by Attys. Janette Bassig Chua and Alquin B. Manguera.

[15] “Sec. 4. Pre-trial agreements must be signed. --- No agreement or admission made or entered during the pre-trial conference shall be used in evidence against the accused unless reduced to writing and signed by him and his counsel.”

[16] TSN, September 17, 1993; pp. 3-5; rollo, pp. 82-84.

[17] 162 SCRA 446, June 22, 1988.

[18] People v. Laggui, 171 SCRA 305, March 16, 1989.

[19] Petitioner’s Memorandum, p. 32; rollo, p. 220.

[20] Petitioner’s Memorandum, p. 35; rollo, p. 223.

[21] See also Crisologo-Jose v. Court of Appeals, 177 SCRA 594, September 15, 1989; Travel-On, Inc. v. Court

of Appeals, 210 SCRA 351, June 26, 1992 and People v. Singson, 215 SCRA 534, November 12, 1992.

[22] 146 SCRA 324, December 18, 1986, per Yap, CJ.

[23] 274 SCRA 572, 594, June 20, 1997, per Panganiban, J. Citations omitted.

[24] CA Decision, p. 11; rollo, p. 62.

[25] Exhibit “T,” Records, p. 20.

[26] Agpalo, Statutory Construction (1990), p. 208; Nitafan, Notes and Comments on the Bouncing Checks Law, p. 21.

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