

EDUARDO R. VACA AND FERNANDO NIETO, PETITIONERS, VS. COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 131714. November 16, 1998

Ponente: MENDOZA, J.

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MENDOZA, J.:

Petitioners seek a review of the decision, dated October 25, 1996,[1] and the resolution, dated December 2, 1997,[2] of the Court of Appeals, affirming their conviction by the Regional Trial Court of Quezon City (Branch 100) for violation of B.P. Blg. 22, otherwise known as the "Bouncing Checks Law."

The facts are as follows:

Petitioner Eduardo R. Vaca is the president and owner of Ervine International, Inc. (Ervine), which is engaged in the manufacture and sale of refrigeration equipment, while his son-in-law, petitioner Fernando Nieto, is the firm's purchasing manager. On March 10, 1988, petitioners issued a check for P10,000.00 to the General Agency for Reconnaissance, Detection, and Security, Inc. (GARDS) in partial payment of the security services rendered by GARDS to Ervine. The check was drawn on the China Banking Corporation (CBC). When deposited in the Philippine Commercial International Bank (PCIBank) branch at Shaw Boulevard, Mandaluyong, the check was dishonored for insufficiency of funds.

On March 29, 1988, GARDS wrote Ervine a letter in which it demanded payment in cash of the amount of the check within seven days from notice. The letter was received by Ervine on the same day, but petitioners did not pay within the time given.

On April 13, 1988, petitioners issued a check for P19,860.16 to GARDS. The check was drawn on the Associated Bank. The voucher accompanying it stated that the check was to replace the dishonored check, the P9,860.16 balance being partial payment for Ervine's outstanding account. The check and the voucher were received by a GARDS messenger, Nolan C. Pena, on April 15, 1988, but GARDS did not return the dishonored check.

On April 14, 1988, GARDS Operations Manager Jovito C. Cabusara filed a criminal complaint against petitioners for violation of B.P. Blg. 22. After preliminary investigation, an information was filed in the Regional Trial Court of Quezon City (Branch 97). However, the case was dismissed by the court on May 11, 1989, upon motion of the prosecution, on the ground that Ervine had already paid the amount of the check.

On September 18, 1989, GARDS, through its Acting Operations Manager Eduardo B. Alindaya, filed another complaint for violation of B.P. Blg. 22 against petitioners. This resulted in the filing of an information against petitioners in the Regional Trial Court of Quezon City (Branch 100). After trial, petitioners were found guilty of the charge and each was sentenced to suffer one (1) year imprisonment and to pay a fine of P10,000.00 and the costs.

On appeal, the Court of Appeals affirmed the decision. It subsequently denied petitioners' motion for

reconsideration. Hence, this petition. Petitioners contend:

- A. Respondent Court gravely erred in not holding that the prosecution failed to prove petitioners' guilt beyond reasonable doubt.
- B. Respondent Court gravely erred in basing conviction on the alleged weakness of the evidence of the defense rather than on the strength of the evidence of the prosecution.
- C. Respondent Court erred in not acquitting petitioners on grounds of "mistake of fact" and "lack of knowledge."

Petitioners pray that the case against them be dismissed or, in the alternative, that the decision of the trial court be modified by sentencing each to an increased fine but without imprisonment.

By supplemental petition, dated January 29, 1998, petitioners submitted an affidavit of desistance executed by GARDS president Dominador R. Santiago which states that the case arose from a mere "accounting difference" between petitioners and GARDS, that the latter had not really suffered any damage as a result of the issuance of the check in question and, that GARDS was no longer interested in prosecuting the case.

On May 28, 1998, petitioners filed another supplemental petition, this time invoking the recent decision in *Lao v. Court of Appeals*,^[3] in which this Court reversed a conviction for violation of B.P. Blg. 22 upon a showing that the accused had no knowledge of the insufficiency of funds.

The Solicitor General opposes the appeal. He contends that the facts of *Lao v. Court of Appeals* are different from those of the case at bar and that the affidavit of desistance of Dominador Santiago is of no moment, such affidavit having been made only after petitioners' conviction.

After due review of the decision in this case, we find that petitioners' conviction for violation of B.P. Blg. 22 is well founded.

First. The elements of the offense penalized under B.P. Blg. 22 are: (1) making, drawing, and issuance of any check to apply to account or for value; (2) 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 the 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 of the check for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.^[4] The maker's knowledge is presumed from the dishonor of the check for insufficiency of funds.^[5] Thus, §2 of B.P. Blg. 22 expressly provides:

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.

In this case, after being notified on March 29, 1988 of the dishonor of their previous check, petitioners gave GARDS a check for P19,860.16. They claim that this check had been intended by them to replace the bad check they had previously issued to the GARDS. Based on the testimony of a GARDS accountant, however, the Court of Appeals found that the check was actually payment for two bills, one for the period of January 16 to January 31, 1988 in the amount of P9,930.08 and another one for the period of March 16 to March 31, 1988 in the same amount. But even if such check was intended to replace the bad one, its issuance on April 13, 1988 ¾ 15 days after petitioners had been notified on March 29, 1988 of the dishonor of their previous check ¾ cannot negate the

presumption that petitioners knew of the insufficiency of funds to cover the amount of their previous check. Sec. 2 of B.P. Blg. 22 requires that such check be given within five (5) days from the notice of dishonor to them.

Petitioners contend that, in accordance with the ruling in *Lao v. Court of Appeals*,^[6] they should be acquitted because the preparation of checks is the responsibility of the company accountant and all they do is sign the checks. They claim that they rely on the word of the accountant that there are sufficient funds in the bank to pay for the checks.

In the *Lao* case, the accused, as the Court found, had merely been made by her employer, Premiere Investment House, to countersign checks in blank. The accused was a mere employee who did not have anything to do with the issuance of checks for the company. She did not know to whom the checks would be paid as the names of payees were written only later by the head of operations. Moreover, no notice of dishonor was given to her as required by B.P. Blg. 22, §2. It could thus rightly be concluded that the accused issued checks to apply to account not knowing that at the time of issuance funds were insufficient to pay for the checks.

Petitioners in this case cannot pretend ignorance of the insufficiency of funds. While it may be true that it was the company's accountant who actually prepared the rubber check, the fact remains that petitioners are the owners and officers of the company. Sec. 1 of B.P. Blg. 22 provides that "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."

In fact, petitioner Nieto testified that after the check in question was dishonored, he instructed their company accountant to prepare a replacement check.^[7] This belies petitioners' claim that they had no hand in the preparation of checks^[8] and shows that petitioners were in control of the finances of the company.

Second. The affidavit of desistance of the GARDS president deserves no more than passing mention. The claim that this case was simply the result of a misunderstanding between GARDS and petitioners and that the former did not really suffer any damage from the dishonor of the check is flimsy. After prosecuting the case below with tenacity, complainants going so far as to file another complaint after their first one had been dismissed, it is trifling with this Court for complainants to now assert that the filing of their case was simply a mistake. It is for reasons such as this that affidavits of desistance, like retractions, are generally disfavored.^[9] The affidavit in this case, which was made after petitioners' conviction, is nothing but a last-minute attempt to save them from punishment. Even if the payee suffered no damage as a result of the issuance of the bouncing check, the damage to the integrity of the banking system cannot be denied. Damage to the payee is not an element of the crime punished in B.P. Blg. 22.

Third. Petitioners pray that, in the alternative, the penalty be modified by deleting the sentence of imprisonment and, in lieu thereof, a fine in an increased amount be imposed on them. In support of their plea, they allege that they do not have any record of prior conviction; that Eduardo Vaca is of advanced age (late 60s); and, that they come from good families. Petitioners claim that "with their family background and social standing there is no reason why they will refuse to pay a due and demandable debt of only P10,000.00. It is precisely because of their founded belief that the subject obligation has been paid that they refused to be intimidated by a criminal charge."

The Court of Appeals dismissed these allegations as irrelevant to the question of petitioners' guilt. We think so ourselves. However, we believe that they can be considered in determining the appropriate penalty to impose on petitioners.

B.P. Blg. 22, §1, par. 1 provides a penalty of "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." Petitioners are first-time offenders. They are Filipino entrepreneurs who presumably contribute to the national economy. Apparently, they brought this appeal, believing in all good faith, although mistakenly, that they had not committed a violation of B.P. Blg. 22. Otherwise, they could simply have accepted the judgment of the trial court and applied for probation to evade a prison term. It would best serve the ends of criminal justice if in fixing the penalty within the range of discretion allowed by §1, par. 1, the same philosophy underlying the Indeterminate Sentence Law is observed, namely, that of redeeming valuable human material and preventing unnecessary deprivation of personal liberty and economic usefulness with due regard to the protection of the social order.[10] In this case we believe that a fine in an amount equal to double the amount of the check involved is an appropriate penalty to impose on each of the petitioners.

WHEREFORE, the decision of the Court of Appeals is **AFFIRMED** with the modification that the sentence of imprisonment is deleted and petitioners are each ordered to pay a fine of P20,000.00 equivalent to double the amount of the check.

SO ORDERED.

Melo (Acting Chairman) and Puno, JJ., concur.
Martinez, J., on official leave.

[1] Per Justice Celia Lipana-Reyes and concurred in by Justices Corona Ibay-Somera and Salvador J. Valdez, Jr.

[2] Per Justice Salvador J. Valdez, Jr. and concurred in by Justices Corona Ibay-Somera and Conchita Carpio Morales.

[3] 274 SCRA 572 (1997).

[4] Navarro v. Court of Appeals, 234 SCRA 639, 643-644 (1994).

[5] People v. Laggui, 171 SCRA 305, 311 (1989).

[6] 274 SCRA 572 (1997).

[7] Supplemental Petition, dated May 27, 1998, pp. 2-4; Rollo, pp. 59-61.

[8] Petition, p. 13; id., p. 33.

[9] E.g., People v. Ballabare, 264 SCRA 350 (1996); Molina v. People, 259 SCRA 138 (1996); People v. Romero, 224 SCRA 749 (1993).

[10] See People v. Ducosin, 59 Phil. 109, 117 (1933).

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