

MIRIAM ARMI JAO YU, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 134172. September 20, 2004

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

May an accused found guilty of violations of Batas Pambansa Blg. 22[1] be made to suffer subsidiary imprisonment in case he fails to pay the fines imposed by the trial court for such violations? This is the lone issue raised in this petition for review on certiorari.[2]

On March 25, 1991, petitioner was charged with 19 counts of violation of Batas Pambansa Blg. 22 before the Regional Trial Court, Branch 91, Quezon City, docketed as Criminal Cases Nos. 19468 to 19486.

Upon arraignment, petitioner entered a plea of not guilty. After hearing, the trial court rendered a Decision finding her guilty of the charges and imposing upon her the following penalties:

“WHEREFORE, premises considered, judgment is hereby rendered finding accused Miriam Armi Jao Yu guilty beyond reasonable doubt of violation of Batas Pambansa Blg. 22 and sentencing her as follows:

1. Crim. Case No. 19468

—

to pay a fine of P 200,000.00 and indemnify Susan Andaya in the amount of P 300,000.00;

2. Crim. Case No. 19469

—

to pay a fine of P 150,000.00 and indemnify Susan Andaya in the amount of P 150,000.00;

3. Crim. Case No. 19470

—

to pay a fine of P 200,000.00 and indemnify Susan Andaya in the amount of P 200,000.00;

4. Crim. Case No. 19471

—

to pay a fine of P 200,000.00 and indemnify Susan Andaya in the amount of P 385,000.00;

5. Crim. Case No. 19472

—

to pay a fine of P 15,000.00 and indemnify Susan Andaya in the amount of P 15,000.00;

6. Crim. Case No. 19473

—

to pay a fine of P 15,000.00 and indemnify Susan Andaya in the amount of P 300,000.00;

7. Crim. Case No. 19474

—

to pay a fine of P 200,000.00 and indemnify Susan Andaya in the amount of P 350,000.00;

8. Crim. Case No. 19475

—

to pay a fine of P 200,000.00 and indemnify Susan Andaya in the amount of P 385,000.00;

9. Crim. Case No. 19476

—

to pay a fine of P 200,000.00 and indemnify Susan Andaya in the amount of P 300,000.00;

10. Crim. Case No. 19477

—

to pay a fine of P 200,000.00 and indemnify Susan Andaya in the amount of P 300,000.00;

11. Crim. Case No. 19478

—

to pay a fine of P 15,000.00 and indemnify Susan Andaya in the amount of P 15,000.00;

12. Crim. Case No. 19479

—

to pay a fine of P 15,000.00 and indemnify Susan Andaya in the amount of P 15,000.00;

13. Crim. Case No. 19480

—

to pay a fine of P 200,000.00 and indemnify Susan Andaya in the amount of P 450,000.00;

14. Crim. Case No. 19481

—

to pay a fine of P 25,000.00 and indemnify Susan Andaya in the amount of P 25,000.00;

15. Crim. Case No. 19482

—

to pay a fine of P 200,000.00 and indemnify Susan Andaya in the amount of P 500,000.00;

16. Crim. Case No. 19483

—

to pay a fine of P 17,500.00 and indemnify Susan Andaya in the amount of P 17,500.00;

17. Crim. Case No. 19484

—

to pay a fine of P 13,475.00 and indemnify Susan Andaya in the amount of P 13,475.00;

18. Crim. Case No. 19485

—

to pay a fine of P 15,000.00 and indemnify Susan Andaya in the amount of P 15,000.00;

19. Crim. Case No. 19486

—

to pay a fine of P 15,000.00 and indemnify Susan Andaya in the amount of P 15,000.00;

to suffer subsidiary imprisonment in case of non-payment of the fine in each of the above-entitled cases and to pay the costs of suit.

SO ORDERED.” (Underscoring ours)

Upon appeal, the Court of Appeals affirmed in toto the trial court’s Decision.

Petitioner then filed a motion for reconsideration but was denied by the Appellate Court in its Resolution dated May 29, 1998.

In the instant petition, petitioner contends that Section 1 of Batas Pambansa Blg. 22, which reads:

“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.

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.” (Underscoring ours)

provides only the imposition of imprisonment or fine, or both, in cases of violation of Batas Pambansa Blg. 22. Thus, she should not suffer subsidiary imprisonment in case of non-payment of the fines imposed by the trial court.

The Solicitor General disagrees with petitioner and prays that the Decision of the Court of Appeals be affirmed.

The petition must fail.

The imposition of subsidiary imprisonment is expressly provided under Articles 38 and 39 of the Revised Penal Code, thus:

- “ART. 38. Pecuniary liabilities – Order of payment. – In case the property of the offender should not be sufficient for the payment of all his pecuniary liabilities, the same shall be met in the following order: 1. The preparation of the damage caused.
2. Indemnification of consequential damages.
3. The fine.
4. The costs of the proceedings. (Underscoring ours)

“ART. 39. Subsidiary penalty. – If the convict has no property with which to meet the fine mentioned in paragraph 3 of the next preceding article, he shall be subject to a subsidiary personal liability at the rate of one day for each eight pesos, subject to the following rules:

- If the principal penalty imposed be prison correccional or arresto and fine, he shall remain under confinement until his fine referred in the preceding paragraph is satisfied, but his subsidiary imprisonment shall not exceed one-third of the term of the sentence, and in no case shall it continue for more than one year, and no fraction or part of a day shall be counted against the prisoner.
- When the principal penalty imposed be only a fine, the subsidiary imprisonment shall not exceed six months, if the culprit shall have been prosecuted for a grave or less grave felony, and shall not exceed fifteen days, if for a light felony.
- When the principal penalty imposed is higher than prison correccional no subsidiary imprisonment shall be imposed upon the culprit.
- If the principal penalty imposed is not to be executed by confinement in a penal institution, but such penalty is of fixed duration, the convict, during the period of time established in the preceding rules, shall continue to suffer the same deprivation as those of which the principal penalty consists.
- The subsidiary personal liability which the convict may have suffered by reason of his insolvency shall not relieve him from the fine in case his financial circumstances should improve.” (Underscoring ours)

We hold that the above provisions on subsidiary imprisonment can be applied suppletorily to Batas Pambansa Blg. 22 pursuant to Article 10 of the same Code, which provides:

- “ART. 10. Offenses not subject to the provisions of this Code. – Offenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code. This Code shall be supplementary to such laws, unless the latter should specially provide the contrary.” (Underscoring ours)

As early as 1959, this Court, in *People vs. Cubelo*,^[3] held:

“Appellant’s contention that the trial court committed error in ordering him to serve subsidiary imprisonment in case of insolvency in the payment of fine with the reason that Act No. 4003, which prohibits fishing with the use of explosive, fails to provide for such subsidiary imprisonment, and that being a special law, it is not subject to the provisions of the Revised Penal Code, is untenable. The second paragraph of Article 10 of the said Code provides that ‘this Code shall be supplementary to such laws, unless the latter should specially provide the contrary.’ Articles 100 (civil liability) and 39 (subsidiary penalty) are applicable to offenses under special laws (*People vs. Moreno*, 60 Phil. 178; *Copiaco vs. Luzon Brokerage*, 66 Phil. 184).”

Indeed, the absence of an express provision on subsidiary imprisonment in Batas Pambansa Blg. 22 does not and cannot preclude its imposition in cases involving its violations.

It bears stressing that on February 14, 2001, we issued Administrative Circular No. 13-2001 clarifying the imposition of imprisonment for violations of Batas Pambansa Blg. 22 and subsidiary imprisonment upon the accused found guilty but is unable to pay the fine he is sentenced to pay. In clarifying the imposition of subsidiary imprisonment, the Circular states that if the accused is unable to pay the fine imposed by the trial court, “there is no legal obstacle to the application of the Revised Penal Code provisions on subsidiary imprisonment.” The full text of the Circular reads:

“ADMINISTRATIVE CIRCULAR NO. 13-2001

TO : ALL JUDGES

SUBJECT : CLARIFICATION OF ADMINISTRATIVE CIRCULAR NO. 12-2000 ON THE PENALTY FOR VIOLATION OF BATAS PAMBANSA BLG. 22, OTHERWISE KNOWN AS THE BOUNCING CHECKS LAW

Clarification has been sought by concerned Judges and other parties regarding the operation of Administrative Circular 12-2000 issued on 21 November 2000. In particular, queries have been made regarding the authority of Judges to

- Impose the penalty of imprisonment for violations of Batas Pambansa Blg. 22; and
- Impose subsidiary imprisonment in the event that the accused, who is found guilty of violating the provisions of B.P. Blg. 22, is unable to pay the fine which he is sentenced to pay

considering that Administrative Circular No. 12-2000 adopted the rulings in *Eduardo Vaca v. Court of Appeals* (G.R. No. 131714, 16 November 1998, 298 SCRA 656) and *Rosa Lim v. People of the Philippines* (G.R. No. 130038, 18 September 2000) as a policy of the Supreme Court on the matter of the imposition of penalties for violations of B.P. Blg. 22, without mentioning whether subsidiary imprisonment could be resorted to in case of the accused’s inability to pay the fine.

The clear tenor and intention of Administrative Circular No. 12-2000 is not to remove imprisonment as an alternative penalty, but to lay down a rule of preference in the application of the penalties provided for in B.P. Blg. 22.

The pursuit of this purpose clearly does not foreclose the possibility of imprisonment for violators of B.P. Blg. 22. Neither does it defeat the legislative intent behind the law.

Thus, Administrative Circular No. 12-2000 establishes a rule of preference in the application of the penal provisions of B.P. Blg. 22 such that where the circumstances of both the offense and the offender clearly indicate good faith or a clear mistake of fact without taint of negligence, the imposition of a fine alone should be considered as the more appropriate penalty. Needless to say, the determination of whether the circumstances warrant the imposition of a fine alone rests solely upon the Judge. Should the Judge decide that imprisonment is the more appropriate penalty, Administrative Circular No. 12-2000 ought not be deemed a hindrance.

It is, therefore, understood that

- Administrative Circular 12-2000 does not remove imprisonment as an alternative penalty for violations of B.P. Blg. 22;

- The Judges concerned may, in the exercise of sound discretion, and taking into consideration the peculiar circumstances of each case, determine whether the imposition of a fine alone would best serve the interests of justice or whether forbearing to impose imprisonment would depreciate the seriousness of the offense, work violence on the social order, or otherwise be contrary to the imperatives of justice;

- Should only a fine be imposed and the accused be unable to pay the fine, there is no legal obstacle to the application of the Revised Penal Code provisions on subsidiary imprisonment.

The issuance of this Administrative Circular was authorized by the Court En Banc in A.M. No. 00-11-01-SC at its session of 13 February 2001.

The Clerk of Court of the Supreme Court and the Court Administrator shall immediately cause the implementation of this Administrative Circular.

This Administrative Circular shall be published in a newspaper of general circulation not later than 20 February 2001.

Issued this 14[th] day of February, 2001.

(Sgd.)

HILARIO G. DAVIDE, JR.

Chief Justice” (Underscoring ours)

In *Felicitto Abarquez vs. Court of Appeals and People of the Philippines* promulgated on August 7, 2003[4] – a case which involves the application of penalties for violations of Batas Pambansa Blg. 22 – we did not only modify the amount of the fines imposed by the Court of Appeals in Criminal Cases Nos. D-8137, D-8176 and D-8177, but also imposed “subsidiary imprisonment in case of insolvency in accordance with Article 39 of the Revised Penal Code” in each case.

Administrative Circular No. 13-2001 and our Decision in *Felicitto Abarquez vs. Court of Appeals and People of the Philippines* should now lay to rest the controversy at bar.

WHEREFORE, the petition is DENIED.

SO ORDERED.

Panganiban, (Chairman), and Corona, JJ., concur.

Carpio-Morales, J., on leave.

[1] “AN ACT PENALIZING THE MAKING OR DRAWING AND ISSUANCE OF A CHECK WITHOUT SUFFICIENT FUNDS OR CREDIT AND FOR OTHER PURPOSES.”

[2] Filed pursuant to Rule 45 of the 1997 Rules of Civil Procedure, as amended.

[3] No. L-13678, November 20, 1959, 106 Phil. 496.

[4] G.R. No. 148557.

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