

PAULINO VILLANUEVA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.*G.R. No. 135098. April 12, 2000*

Ponente: QUISUMBING, J.

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For review, under Rule 45 of the Rules of Court, is the decision[1] of the Court of Appeals dated May 12, 1998 in CA-G.R. No. 17883, which affirmed the joint judgment[2] rendered on October 20, 1994 by the Regional Trial Court of Daet, Camarines Norte, Branch 41, in Criminal Cases Nos. 6929, 6940, 6941, 6942, and 6943, finding petitioner guilty of violating Batas Pambansa (BP) Blg. 22, the Bouncing Checks Law. Also for review is the appellate court's resolution dated August 15, 1998, denying petitioner's motion for reconsideration.

The facts, as culled from the records, are as follows:

Petitioner Paulino Villanueva was a finance officer of the Philippine Constabulary/Integrated National Police (now Philippine National Police). He occasionally dabbled in money-lending. Private complainant below, Carmencita S. Rafer, was his neighbor. She was married to an overseas worker and had some extra cash available for investment. On March 1989, petitioner issued SOLIDBANK (Daet Branch) Check No. PA-0145244, postdated September 30, 1989, in the amount to P50,000.00 payable to Carmencita Rafer. That same month, petitioner issued SOLIDBANK (Daet Branch) Check No. PA-0145247 postdated September 30, 1989, for P52,000.00 payable to the spouses Jesus and Carmencita Rafer. The following month, petitioner again issued SOLIDBANK (Daet Branch) Check No. PA-0145246, postdated October 31, 1989, payable to the Rafer couple in the sum of P100,000.00. Two months later, petitioner made out two more checks payable to Carmencita Rafer, i.e. SOLIDBANK (Daet Branch) Check No. PA-0145258, postdated December 30, 1989, for P20,000.00 and SOLIDBANK (Daet Branch) Check No. PA-0139884, postdated December 31, 1989, in the amount of P75,000.00.

On February 22 and 23, 1990, Carmencita Rafer tried to encash the five checks issued by petitioner at the Daet branch of Solidbank. The said checks were dishonored and stamped "Account Closed." Rafer then repeatedly demanded that petitioner make good the value of the dishonored checks, but petitioner refused. She then complained, and the Prosecutor charged petitioner in five informations for violations of B.P. Blg. 22, the Bouncing Checks Law.

The information in Criminal Case No. 6929 reads:

"That on or about the month of March 1989, in the municipality of Daet, province of Camarines Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, well knowing that he did not have funds in the bank, did then and there willfully, unlawfully and feloniously issue and make out a postdated SOLIDBANK Daet Branch Check No. PA0145244 dated September 30, 1989 in the amount of P50,000.00 and delivered the same to CARMENCITA S. RAFER in payment of a loan by the accused obtained from the latter, and when the said check was presented to the drawee bank for payment, the same was

dishonored and rejected for the reason that said check was drawn against [a] closed account, and despite repeated demands made upon the accused to make good the value of the check or pay its equivalent amount, failed and refused to do so, to the damage and prejudice of said Carmencita S. Rafer in the aforestated amount.

"CONTRARY TO LAW."[3]

The informations in Criminal Cases Nos. 6940 to 6943, inclusive, were similarly worded as in Criminal Case No. 6929, except as to the dates, check numbers, and amounts involved. The cases were then consolidated and jointly tried.

Upon arraignment, petitioner pleaded "Not Guilty" to all five charges.

Private complainant argued that the dishonored checks were meant to be the payments of various loans extended by her to petitioner. Petitioner, in turn, did not deny having drawn the checks subject of the offense, but raised the defense that:

"[W]hat they agreed to was a money-lending partnership where Rafer provided the sums and Villanueva the operations. Their target clientele were the PC/INP personnel and civilian staff who were charged interests at 20% per month, of which Rafer was to get 15% and Villanueva 5%. When Rafer gave the amounts to be loaned, Villanueva issued the checks and the amounts thereon represent the sums given plus the interests to be earned in six (6) months but less his stipends. These were given as guarantees because Rafer had a change of mind and wanted that instead of the collections being deposited in the bank she wanted it paid to her outright. Villanueva had accordingly paid Rafer, but out of misplaced trust he failed to get back the checks."[4]

On October 20, 1994, the trial court rendered a joint judgment, which found the petitioner guilty on all five counts. The fallo of said judgment reads:

"WHEREFORE, in the light of all the foregoing, finding the accused Paulino Villanueva, guilty beyond reasonable doubt (of violations) of the Bouncing Check Law (Batas Pambansa 22), is hereby sentenced in these consolidated cases, to suffer imprisonment as follows:

1. In Criminal Case No. 6929, he is hereby sentenced (to) imprisonment of One (1) year and to indemnify the complainant P50,000.00.
2. In Criminal Case No. 6940, he is sentenced to One (1) year imprisonment and to indemnify the complainant P20,000.00.
3. In Criminal Case No. 6941, he is hereby sentenced (to) One (1) year and to indemnify the complainant P75,000.00.
4. In Criminal Case No. 6942, he is hereby sentenced to One (1) year imprisonment and to indemnify the complainant P52,000.00.
5. In Criminal Case No. 6943, he is hereby sentenced (to) One (1) year imprisonment and to indemnify the complainant P100,000.00.

The accused shall serve these sentences simultaneously in accordance with Art. 70, Revised Penal Code and with costs.

"SO ORDERED."[5]

Petitioner appealed to the Court of Appeals. In affirming the trial court's judgment in toto, the appellate court held:

"It is undeniably true that Villanueva made and issued the checks in consideration for sums of money he

received from Rafer and these same checks were subsequently dishonored by the bank upon their presentment, and he failed to make good on them after notice and demand. As such, the full weight of the law must certainly be applied to him. B.P. Blg. 22 was enacted to prohibit under pain of penal sanctions, the making of worthless checks and putting them in circulation. It is not the non-payment of an obligation which the law punishes, but the act of making and issuing a check upon presentment for payment. (*Italics in the original, citation omitted*).

"WHEREFORE, the appeal is DISMISSED for lack of merit and the Decision dated October 20, 1994 is AFFIRMED in toto.

"SO ORDERED."[6]

Petitioner then belatedly moved for reconsideration, but the appellate court denied the same on August 15, 1998. The Court of Appeals resolution denying petitioner's motion for reconsideration noted:

"It appears that the flurry of entries of appearances and motions and the withdrawals thereof, are but futile attempts to confound and confuse. Likewise, the accused-appellant wrongly alleges that the Motion for Reconsideration and/or New Trial attached to his Manifestation and Motion dated June 1, 1999 was personally filed and received on June 1, 1998. It was in fact personally filed on June 11, 1998 (p. 130, rollo).

"Regardless of their worth, the eminent point is that the subject Motion for Reconsideration was filed out of time, and the same is DENIED while the Resolution of June 29, 1998 is MAINTAINED.

"SO ORDERED."[7]

Hence, the instant petition relying on the following grounds:

1. The petitioner's Motion for Reconsideration filed before the Honorable Court of Appeals should, in the interest of justice, be given due course and not ordered expunged from the Rollo.
2. The requisites for the grant of a new trial on the ground of newly discovered evidence having been substantially shown, the Court of Appeals should have remanded the case to the court of origin for new trial.
3. The Honorable Court of Appeals erred in not holding that the subject checks were not drawn to apply on account or for value.
4. The Honorable Court of Appeals seriously erred in not acquitting the accused-petitioner of the offense charged, the same not having been proved beyond reasonable doubt.

The principal issues before us are:

- (1) Did the Court of Appeals commit grave error when it expunged from the CA rollo petitioner's motion for reconsideration for being filed out of time?
- (2) Did the Court of Appeals err when it did not remand the case for new trial considering that petitioner had newly discovered evidence in the form of private complainant's Affidavit of Desistance?
- (3) Has the guilt of the accused been proven beyond reasonable doubt?

We will now resolve these issues seriatim. Petitioner contends firstly that he received the decision of the Court of Appeals affirming the joint judgment of the trial court on May 18, 1998. At that time, his counsel had already withdrawn from the case. After some difficulty in getting a new lawyer, petitioner then hired Atty. Silverio L. Ibay, Jr., as his new counsel de parte. The latter filed a Motion for Extension of Time to File Motion for Reconsideration on June 2, 1998, which was the deadline for filing petitioner's Motion for Reconsideration. The Motion for Reconsideration was belatedly filed on June 11, 1998. It was denied by the Court of Appeals for having been filed out of time. Petitioner contends that this procedural blunder by his lawyer, in effect, violated his

constitutional right to counsel.[8] Petitioner now asks us to apply our ruling in *De Guzman v. Sandiganbayan*, 256 SCRA 171 (1996), where we held that an accused may not be penalized for the costly importunings of his lawyer.

We are, however, unable to agree with petitioner's contention. The records show petitioner was represented by counsel of his choice in the trial court, and also by counsel de parte before the Court of Appeals. When his new lawyer filed his motion for reconsideration out of time, there was no violation of petitioner's right to counsel. The constitutional right to counsel is not violated where a member of the Bar represents petitioner.[9]

Further, a client is bound by the acts of his counsel.[10] The rule extends even to the mistakes and negligence committed by the latter, except only when such mistakes or neglect would result in serious injustice to the client. In our view, petitioner here has failed to present any cogent reason why this Court should find an exception in his case. There is no showing that Atty. Ibay was so grossly incompetent or so grossly negligent when he filed a tardy motion for reconsideration on petitioner's behalf. In fact, it could be said petitioner was the one who should be faulted, having hired Atty. Ibay when the period to move for reconsideration had run out. A party cannot blame his counsel for negligence when he himself was guilty of neglect.[11]

With respect to the second issue, petitioner insists that private complainant's affidavit of desistance dated May 14, 1998 is newly discovered evidence which can tip the scales in his favor if a new trial were to be granted.

We cannot sustain petitioner's contention. The requisites for newly discovered evidence as a ground for a new trial are: (a) the evidence was discovered after the trial; (b) such evidence could not have been discovered and produced at the trial with reasonable diligence; and (c) that it is material, not merely cumulative, corroborative, or impeaching, and is of such weight that, if admitted, will probably change the judgment.[12]

In the instant case, private complainant executed her Affidavit of Desistance only on May 14, 1998 or 6 years after her testimony and after the Court of Appeals had affirmed the trial court's decision and had denied petitioner's motion for reconsideration. It is settled that affidavits of recantation made by a witness after the conviction of the accused deserve only scant consideration.[13] Moreover, there is nothing in said affidavit, which would support a different conclusion. The third requisite is, therefore, lacking. The Court of Appeals, thus, committed no reversible error in refusing to treat said desistance as newly discovered evidence to warrant a new trial. To hold otherwise would put no end to litigation as every accused could simply wrangle an affidavit of desistance from a principal witness to seek a new trial or to prolong one.

With respect to the third issue, petitioner charges the Court of Appeals with manifest error in affirming his conviction since his guilt had not been proven beyond reasonable doubt. He insists that since the checks drawn by petitioner were made not to apply for account or for value but merely to provide his wife with reasons to transact with private complainant below, B.P. Blg. 22 should not have applied to him.

The elements of the offense penalized under B.P. Blg. 22, are: (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) 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.[14]

In the instant case, it is undisputed that petitioner issued the five bouncing checks to private complainant. With respect to the first element of the offense, the Court of Appeals found:

"[T]he argument of Villanueva that his checks were issued without consideration whatsoever is contrary to his statements in his Counter-Affidavit dated December 31, 1990 and his testimony. He said that the checks were issued when he received sums of money from Rafer." [15]

With respect to the second element of the offense, the Court of Appeals said:

"Appellant's claim of lack of knowledge of insufficiency of funds cannot withstand his categorical admission to the contrary in his testimony (tsn dated August 17, 1992, p. 16-17) and in his appeal brief (p.56, rollo)..."[16]

Factual findings of the Court of Appeals are not, as a general rule, reviewable by the Supreme Court in petitions for certiorari under Rule 45, the exception being only when the findings of the appellate court are at variance with those of the trial court.[17] In the instant case, it is to be noted that the appellate court confirmed the factual findings of the trial court. The facts thus established are now conclusive upon this Court.

Respecting the third element of the offense, it is undisputed that the checks in question were dishonored upon presentment for payment.

Given the foregoing circumstances, the inescapable conclusion is that the prosecution has overcome the presumption of innocence in favor of the accused and, consequently, has proved petitioner's guilt beyond reasonable doubt.

WHEREFORE, the instant petition is DENIED, and the assailed decision and resolution of the Court of Appeals in CA-G.R. No. CR 17883 are AFFIRMED. Costs against petitioner.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] Rollo, pp. 29-35.

[2] Id. at 38-44.

[3] Id. at 38.

[4] Id. at 32.

[5] Id. at 43-44.

[6] Id. at 34.

[7] Id. at 36.

[8] Const. art. III, sec. 14 (2).

[9] People v. Sesbreño, G.R. No. 121764, September 9, 1999 reiterating Gamboa v. Cruz, 162 SCRA 642 (1988).

[10] People v. Hernandez, 260 SCRA 25, 38 (1996) citing People v. Ravelo, 202 SCRA 655 (1991).

[11] Macapagal v. Court of Appeals, 271 SCRA 491, 502 (1997).

[12] Amper v. Sandiganbayan, 279 SCRA 434, 441-442 (1997).

[13] Molina v. People, 259 SCRA 138, 157 (1996).

[14] Idos v. Court of Appeals, 296 SCRA 194, 204 (1998).

[15] Rollo, p. 32.

[16] Id. at p. 33.

[17] Rivera v. Court of Appeals, 284 SCRA 673, 682 (1998); Quebral v. Court of Appeals, 252 SCRA 353, 364 (1996).

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