

BEN B. RICO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 137191. November 18, 2002

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For review on certiorari is the decision[1] dated June 15, 1998 of the Court of Appeals in CA-G.R. CR No. 19764, affirming the judgment[2] of the Regional Trial Court of Laoag City which found the petitioner guilty of five counts of violation of Batas Pambansa Blg. 22 (the Bouncing Checks Law), and the resolution[3] dated January 7, 1999 denying petitioner's motion for reconsideration.

Petitioner Ben Rico was a “pakyaw” contractor who used to purchase construction materials on credit from private complainant Ever Lucky Commercial (ELC), represented by Victor Chan, Manager. Petitioner made payments either in cash or by postdated checks. On several occasions, he issued checks to ELC, which were dishonored by the bank upon presentment for payment for “insufficiency of funds” or “closed account”, as follows:

CHECK NO.

DATE

DATE OF DISHONOR

REASON FOR DISHONOR

AMOUNT

04142

Nov. 5, 1990

Nov. 13, 1990

Insufficient funds

P 81,800.00

1759806

Apr. 19, 1990

Apr. 20, 1990

Insufficient funds

25,000.00

1759808

Apr. 20, 1990

Apr. 23, 1990

Account Closed

4,834.00

1759810

Apr. 11, 1990

Apr. 16, 1990

Insufficient funds

39,000.00

1759812

Apr. 11, 1990

Apr. 16, 1990

Insufficient funds

15,250.00

1759811

May 2, 1990

May 3, 1990

Account Closed

12,550.00

TOTAL

=SUM(ABOVE) P178,434.00

Consequently, petitioner was charged under several informations docketed as Criminal Cases Nos. 5796, 5797, 5798, 5799 and 5800 for violation of Batas Pambansa Blg. 22. The information in Criminal Case No. 5796 reads:

That on or about the 27th day of October, 1990, in the City of Laoag, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there wilfully, unlawfully and feloniously draw and issue Check No. 04142 in the amount of Eighty One Thousand Eight Hundred Pesos (P81,800.00), dated November 5, 1990, drawn against the Philippine Commercial and International Bank, Laoag City Branch, in

favor of the Ever Lucky Commercial, as payee, in payment of construction materials which he purchased on credit from the said Ever Lucky Commercial, located at Brgy. No. 12, Gen. Segundo Ave., Laoag City, of which Mr. Victor Chan is the Gen. Manager, knowing fully well that he had no sufficient funds deposited with the drawee bank to cover the payment thereof, as in fact it was dishonored when presented for payment to the drawee bank on November 13, 1990, on the ground that it was drawn against insufficient funds, and the accused, despite due notice to him of the dishonor of said check had not paid the amount thereof nor had he made arrangements for its payment in full by the drawee bank within five (5) banking days from receipt of the notice of dishonor, to the damage and prejudice of the Ever Lucky Commercial in the amount of P81,800.00, Philippine Currency.

CONTRARY TO LAW.[4]

The other informations are similarly worded, except for the check number and their amounts and the dates of issue which are hereunder itemized as follows:

CRIMINAL CASE NO.

CHECK NO.

DATE

AMOUNT

5797

1759806

Apr. 19, 1990

P 25,000.00

5798

1759808

Apr. 20, 1990

P 4,834.00

5799

1759810

Apr. 11, 1990

P 39,000.00

1759812

Apr. 11, 1990

P 15,250.00

5800

1759811

May 2, 1990

P 12,550.00

The five informations were consolidated by the lower court. Upon arraignment, petitioner pleaded not guilty to all the charges, and trial on the merits ensued.

The prosecution established that petitioner, who used to purchase construction materials on credit from ELC, issued the above-cited checks as payment for the materials and that they were dishonored upon presentment for payment to the bank either for “insufficient funds” or “account closed”. After the checks were dishonored, ELC demanded payments from petitioner, who failed to make good his undertaking to replace the checks. No formal written demand letter or notice of dishonor, however, was sent to the petitioner. It was also established by the prosecution that ELC, through its manager, issued several receipts covering several payments in various amounts made by petitioner as replacement of some dishonored but returned checks as well as for payment of materials purchased. No official receipts covering the materials purchased, however, were presented in court as evidence.[5]

In his defense, petitioner did not deny that he issued the subject checks and that they were dishonored upon presentment for payment with the drawee bank. He claimed, however, that he already paid the amounts covered by the checks, totalling P284,340.50, including interest. In support thereof, he submitted as evidence the following official receipts issued by ELC[6]

OFFICIAL RECEIPT NO.

DATE

AMOUNT

3290

Apr. 24, 1990

P 65,000.00

3298

Apr. 27, 1990

90,733.50

3411

May 3, 1990

10,000.00

3683

Sept. 4, 1990

68,607.00

3866

Jan. 5, 1991

50,000.00

TOTAL

=SUM(ABOVE) P284,340.50

According to petitioner, the difference between the total amount as reflected in the receipts and the total amount covered by the subject checks represented interest.[7] He also admitted that he did not retrieve the dishonored checks as they were not yet fully paid.[8]

On March 13, 1996, the trial court rendered its judgment as follows:

(1) In Criminal Case No. 5796, the accused is hereby found guilty beyond reasonable doubt of the violation of BP Bilang 22. He is sentenced to suffer the straight penalty of ONE (1) YEAR imprisonment and to indemnify the offended party in the amount of P81,800.00;

(2) In Criminal Case No. 5797, the accused is hereby found guilty beyond reasonable doubt of the violation of BP Bilang 22. He is sentenced to suffer the straight penalty of SIX (6) MONTHS imprisonment and to indemnify the offended party in the amount of P25,000.00;

(3) In Criminal Case No. 5798, the accused is hereby found guilty beyond reasonable doubt of the violation of BP Bilang 22. He is sentenced to suffer the straight penalty of THREE (3) MONTHS imprisonment and to indemnify the offended party in the amount of P4,834.00;

(4) In Criminal Case No. 5799, the accused is hereby found guilty beyond reasonable doubt of the violation of BP Bilang 22. He is sentenced to suffer the straight penalty of ONE (1) YEAR Imprisonment and to indemnify the offended party in the amount of P54,250.00; and

(5) In Criminal Case No. 5800, the accused is hereby found guilty beyond reasonable doubt of the violation of BP Bilang 22. He is sentenced to suffer the straight penalty of SIX (6) MONTHS imprisonment and to indemnify the offended party in the amount of P12,550.00.

Costs against the accused.

SO ORDERED.[9]

In convicting petitioner, the trial court noted that petitioner had admitted the issuance and dishonor of the subject checks, and he could not escape criminal liability as it found his defense of payment off-tangent.[10] It ruled that the alleged payments do not apply to the subject checks but for the other materials purchased, and granting they were applicable, they could only affect his civil liability.[11] Further, the trial court concluded that a mathematical computation of the payments made by the petitioner vis-a-vis the subject checks did not give credence to the stance of petitioner. The trial court found it illogical for petitioner to have paid more than the amounts covered by the subject checks without a single alleged payment matching any of the amounts written in the subject checks, and with petitioner paying more than his outstanding liabilities at some point.[12]

Aggrieved, petitioner filed an appeal before the Court of Appeals, which affirmed the trial court's decision. The

Court of Appeals found petitioner's defense of payment untenable and not proven by clear and convincing evidence. It further stated that even if there were payment, petitioner failed to prove that it was made within five days from receipt of notice of dishonor.[13] In relation thereto, it ruled that the testimonial evidence of private complainant declaring that immediate demands to pay were made on petitioner is in themselves notices of dishonor.[14] Petitioner's motion for reconsideration was denied in a resolution dated January 7, 1999.

Hence, this petition raising issues based on the alleged errors of the appellate court.

MAIN ISSUE:

THE APPELLATE COURT COMMITTED A GRAVE MISTAKE IN AFFIRMING THE TRIAL COURT'S FINDING THAT THE PETITIONER IN THE FIVE (5) CRIMINAL CASES IS GUILTY BEYOND REASONABLE DOUBT OF THE VIOLATION OF BP BILANG 22 AND SENTENCING HIM TO SUFFER THE PENALTY IMPOSED THEREIN.

SUB-ISSUES

I

THE APPELLATE COURT ERRED IN SHIFTING UNTO THE PETITIONER THE BURDEN OF PROVING HIS OWN INNOCENCE INSTEAD OF LAYING THE BURDEN UPON THE PROSECUTION TO PROVE THE GUILT OF PETITIONER BEYOND REASONABLE DOUBT.

II

THE APPELLATE COURT ERRED IN FINDING THAT DEFENSE OF PAYMENT BY PETITIONER DID NOT OVERTHROW THE PRIMA FACIE EVIDENCE OF KNOWLEDGE OF THE INSUFFICIENCY OF FUNDS AT THE TIME OF ISSUANCE OF THE CHECKS AND THAT THE DEMANDS FOR PAYMENT MADE TO PETITIONER ARE IN THEMSELVES NOTICES OF DISHONOR.

III

THE APPELLATE COURT ERRED IN AFFIRMING THE TRIAL COURT'S FINDING THAT THE PAYMENTS MADE BY THE PETITIONER TO THE EVER LUCKY COMMERCIAL (ELC) AS EVIDENCED BY OFFICIAL RECEIPT ISSUED BY ELC REFER TO OTHER TRANSACTIONS BETWEEN THE PETITIONER AND ELC AND NOT TO THE DISHONORED CHECKS.

IV

THE APPELLATE COURT ERRED IN AFFIRMING THE TRIAL COURT'S ANALYSIS DEBUNKING PETITIONER'S DEFENSE OF PAYMENTS.[15]

In our view, the principal issue for our resolution is whether or not petitioner's guilt has been established beyond reasonable doubt.

Petitioner contends that he should be acquitted of all charges because he already paid his obligations to Ever Lucky Commercial. He likewise avers that the prosecution failed to establish all the elements of the crime, particularly that he had knowledge of the insufficiency of his funds in the bank at the time he issued the checks. This failure, according to petitioner, can be traced to the prosecution's inability to prove that notices of dishonor were sent to him.

The Office of the Solicitor General (OSG), for appellee, argues that the payments made by petitioner refer to different transactions and not to those covered by the checks subject matter of this case. The OSG also avers that the verbal demands made by private complainant are more than enough to prove that petitioner had knowledge of

the insufficiency of his funds in the bank at the time he issued the checks.

At the outset, we must stress that as a general rule, the factual findings of the trial court, when affirmed by the Court of Appeals, are accorded respect and finality, unless tainted with arbitrariness or palpable error,[16] or when the trial court failed to appreciate certain facts and circumstances which, if taken into account, would materially affect the result of the case.[17] We find that the exceptions rather than the general rule apply in this case. We also find the petition meritorious.

The law enumerates the elements of violation of B.P. 22, namely (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 the 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.[18]

The first and third elements of the offense are present and proved in these consolidated cases. But we find that the second element was not sufficiently established.

Knowledge of insufficiency of funds or credit in the drawee bank for the payment of a check upon its presentment is an essential element of the offense.[19] In several cases,[20] we have ruled that to hold a person liable under B.P. 22, it is not enough to establish that a check was dishonored upon presentment. It must be shown further that the person who issued the check knew 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. 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.

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 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.” (Italics and underscoring supplied)

In *King vs. People*,[21] we held:

... 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.

Thus, the presumption that the issuer had knowledge of the insufficiency of funds is brought into existence only after it is proved that the issuer had received a notice of dishonor and that, within five days from receipt thereof, he failed to pay the amount of the check or to make arrangement for its payment.[22]

Here, both the Court of Appeals and the trial court relied solely on the testimony of prosecution witness Danilo Cac to the effect that private complainant immediately demanded payment of the value of the checks after they were dishonored. Aside from this self-serving testimony, no other evidence was presented to prove the giving and receiving of such notice. The nature and content of said demands were not clarified. Even the date when and the manner by which these alleged demands were made upon and received by petitioner were not specified. Worse, the records do not show that formal and written demand letters or notices of dishonor were ever sent to petitioner.

Where the presumption of knowledge of insufficiency of funds does not arise due to the absence of notice of dishonor of the check, the accused should not be held liable for the offense defined under the first paragraph of

Section 1 of B.P. 22.[23]

As held in the case of *Lao vs. Court of Appeals*[24] a notice of dishonor personally sent to and received by the accused is necessary before one can be held liable under B.P. 22. In that case, we stated thus:

Because no notice of dishonor was actually sent to and received by the petitioner, the prima facie presumption that she knew about the insufficiency of funds cannot apply. Section 2 of BP Blg. 22 clearly provides that this presumption arises not from the mere fact of drawing, making, and issuing a bum check; there must also be a showing that, within five banking days from receipt of the notice of dishonor, such maker or drawer failed to pay the holder of the check the amount due thereon or to make arrangement for its payment in full by the drawee of such check.

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.” xxx 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 Blg. 22. (*Italics supplied.*)

In other words, if such notice of non-payment by the drawee bank is not sent to the maker or drawer of the bum check, or if there is no proof as to when such notice was received by the drawer, then the presumption of knowledge as provided in Section 2 of B.P. 22 cannot arise, since there would simply be no way of reckoning the crucial five-day period.[25]

As stated earlier, the prosecution not only failed to prove the receipt by petitioner of any notice of dishonor, the records are also bereft of any indication that written formal demand letters or notice of dishonor were actually sent to petitioner. In recent cases, we had the occasion to emphasize that not only must there be a written notice of dishonor or demand letters actually received by the drawer of a dishonored check, but there must also be proof of receipt thereof that is properly authenticated, and not mere registered receipt and/or return receipt.

Thus, as held in *Domagsang vs. Court of Appeals*,[26] while Section 2 of B.P. 22 indeed does not state that the notice of dishonor be in writing, this must be taken in conjunction with Section 3 of the law, i.e., “that where there are no sufficient funds in or credit with such drawee bank, such fact shall always be explicitly stated in the notice of dishonor or refusal”. A mere oral notice or demand to pay would appear to be insufficient for conviction under the law. In our view, both the spirit and the letter of the Bouncing Checks Law require for the act to be punished thereunder not only that the accused issued a check that is dishonored, but also that the accused has actually been notified in writing of the fact of dishonor. The consistent rule is that penal statutes must be construed strictly against the State and liberally in favor of the accused. In *Victor Ting vs. Court of Appeals*,[27] we stated that when service of a notice is sought to be made by mail, it should appear that conditions exist on which the validity of such service depends. Otherwise, the evidence is insufficient to establish the fact of service. Receipts for registered letters and return receipts do not by themselves prove receipt; they must be properly authenticated to serve as proof of receipt of the letters.

In fine, the failure of the prosecution to prove the existence and receipt by petitioner of the requisite written notice of dishonor and that he was given at least five banking days within which to settle his account constitutes sufficient ground for his acquittal.

However, while petitioner is acquitted for violation of B.P. 22, he should be ordered to pay the face value of the five dishonored checks plus legal interest in accordance with our ruling in *Domagsang vs. Court of Appeals*. [28]

There, the prosecution failed to sufficiently establish a case to warrant conviction, but clearly proved petitioner's failure to pay a just debt owing to the private complainant. Thus, petitioner was ordered to pay the face value of the check with 12 percent legal interest per annum, reckoned from the filing of the information until the finality of the decision. It is well settled that an acquittal based on reasonable doubt does not preclude the award of civil damages. The judgment of acquittal extinguishes the liability of the accused for damages only when it includes a declaration that the facts from which the civil liability might arise did not exist. Thus, the civil liability is not extinguished by acquittal where the acquittal is based on lack of proof beyond reasonable doubt, since only preponderance of evidence is required in civil cases. There appears to be no sound reason to require that a separate civil action be still filed considering that the facts to be proved in the civil case have already been established in the criminal proceedings where the accused was acquitted. To require a separate civil action would mean needless clogging of court dockets and unnecessary duplication of litigation with all its attendant loss of time, effort, and money on the part of all concerned.[29]

Finally, we agree that petitioner's alleged prior payment is untenable. As found by the trial court and by the Court of Appeals, it is unnatural and illogical for petitioner to have paid more than his outstanding obligations. It is also unlikely that he would pay substantial amounts of interest when nothing had been agreed upon on this matter. It is quite striking how he could have generously paid more than what was due from him when he could hardly pay private complainant in cash, and had to issue post-dated checks. Moreover, he could have asked for the return of the checks as a matter of sound business practice and procedure if indeed he already paid all the dishonored checks. The fact that these checks remained in the possession of private complainant contradicts petitioner's allegation of payment.[30]

WHEREFORE, the decision of the Court of Appeals in CA-G.R. CR No. 19764 is MODIFIED. Petitioner BEN RICO is ACQUITTED of the charge for violation of B.P. 22 on the ground of reasonable doubt. However, he is ordered to pay private complainant the face value of the checks in the total amount of P178,434.00, with 12 percent interest per annum, from the filing of the informations until the amount due is fully paid.

No pronouncement as to costs.

SO ORDERED.

Bellosillo, Mendoza, and Callejo, Sr., JJ., concur.

Austria-Martinez, J., on leave.

[1] CA Rollo, pp. 89-97.

[2] Records, pp. 209-221.

[3] Supra note 1 at 123.

[4] Records, p. 1.

[5] TSN, April 22, 1994, July 18, 1994 and August 22, 1994, pp. 2-50.

[6] Records, pp. 190-191.

[7] TSN, August 22, 1994, pp. 59-60.

[8] Id. at 61.

[9] Records, p. 221.

- [10] Id. at 217.
- [11] Id. at 217-218.
- [12] Id. at 218-220.
- [13] CA Rollo, p. 94.
- [14] Ibid.
- [15] Rollo, pp. 32-33.
- [16] David vs. Manila Bulletin Publishing Company, Inc., 347 SCRA 68, 69 (2000).
- [17] Danao vs. Court of Appeals, 358 SCRA 450, 456 (2001).
- [18] Lim vs. People, G.R. No. 143231, October 26, 2001, p. 4; Wong vs. Court of Appeals, 351 SCRA 100, 108-109 (2001); Domagsang vs. Court of Appeals, 347 SCRA 75, 80-81 (2000).
- [19] Lao vs. Court of Appeals, 274 SCRA 572, 585 (1997).
- [20] Danao vs. Court of Appeals, 358 SCRA 450, 458 (2001); Ting vs. Court of Appeals, 344 SCRA 551, 557-558 (2000); King vs. People, 319 SCRA 654, 667-668 (1999).
- [21] Supra note 20 at 668.
- [22] Ting vs. Court of Appeals, supra note 20 at 558.
- [23] Supra note 19 at 585-586.
- [24] Id. at 593-594.
- [25] Danao vs. Court of Appeals, supra note 20 at 458-459.
- [26] Supra note 18 at 83-84.
- [27] Supra note 20 at 561-562.
- [28] Supra note 18 at 84-85.
- [29] Padilla, et al. vs. Court of Appeals, 129 SCRA 558, 565-567 (1984).
- [30] See Alberto Lim vs. People of the Philippines, G.R. No. 143231, October 26, 2001, pp. 6-7.

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