

STEVE TAN AND MARCIANO TAN, PETITIONERS, VS. FABIAN MENDEZ, JR., RESPONDENT.*G.R. No. 138669. June 06, 2002*

Ponente: QUISUMBING, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-138669/>**QUISUMBING, J.:**

Petitioners filed this petition for review on certiorari seeking to set aside the decision[1] dated January 22, 1999 of the Court of Appeals, Thirteenth Division, in CA-G.R. CR. No. 20030, which affirmed the decision[2] of the Regional Trial Court of Iriga City, Branch 37, convicting petitioners of violation of Batas Pambansa Blg. 22, otherwise known as the Bouncing Checks Law. They were sentenced to suffer the penalty of six months imprisonment and to indemnify private complainant the sum of P58,237.75 with legal interest from date of judicial demand. Also assailed in this petition is the Court of Appeals' resolution[3] dated May 13, 1999 denying petitioners' Motion for Reconsideration.

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

Petitioners Steve Tan and Marciano Tan are the owners of Master Tours and Travel Corporation and operators of Philippine Lawin Bus Co., Inc., while respondent Fabian Mendez, Jr. is the owner of three gasoline stations in Iriga City, Ligao, Albay, and Sipocot, Camarines Sur. Petitioners opened a credit line for their buses' lubricants and fuel consumption with respondent. At the same time, the latter was also designated by petitioners as the booking and ticketing agent of Philippine Lawin Bus Co. in Iriga City.

Under such arrangement, petitioners' drivers purchased on credit fuel and various oil products for its buses through withdrawal slips issued by petitioners, with periodic payments to respondent through the issuance of checks. On the other hand, respondent remitted the proceeds of ticket sales to petitioners also through the issuance of checks. Sent together with respondent's remittance are the remittances of the ticket sales in the Baao Booking office, which is managed separately and independently by another agent, Elias Bacsain.

Accordingly, petitioners issued several checks to respondent as payment for oil and fuel products. One of these is FEBTC check no. 704227 dated June 4, 1991 in the amount of P58,237.75, as payment for gasoline and oil products procured during the period May 2 to 15, 1991. Said check was dishonored by the bank upon presentment for payment for being drawn against insufficient funds.

Respondent sent a demand letter dated June 21, 1991 to petitioners demanding that they make good the check or pay the amount thereof, to no avail. Hence, an information for violation of B.P. 22 was filed against petitioners, upon the complaint of respondent, before the RTC of Iriga City, Branch 37, as follows:

That on or about the 4[th] day of June 1991, in Iriga City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused having purchased from Shellhouse Iriga, Iriga City, owned and managed by Atty. Fabian O. Mendez, Jr., fuel and other oil products in the amount of FIFTY EIGHT THOUSAND TWO HUNDRED THIRTY SEVEN and 75/100 (P58,237.75) PESOS, Philippine currency, and that in payment thereof, the said accused knowing fully well that they had no sufficient funds or credit with the

drawee bank, conspiring and confederating with each other, did, then and there, willfully, unlawfully and feloniously, issue and make out Far East Bank and Trust Company-Binondo Check No. 704227, payable to the order of Shell house Iriga, dated June 4, 1991 in the amount of P58,237.75, and delivered to herein private complainant Atty. Fabian O. Mendez, Jr., in Iriga City and upon its presentment for payment to the drawee bank, the same was dishonored and refused payment for the reason "Drawn Against Insufficient Funds" and despite repeated demands, accused failed and refused and still fails and refuses to make the necessary deposit with said bank sufficient money to cover the said check or to pay the said Atty. Fabian O. Mendez, Jr., the value of the check in the amount of P58,237.75, to the latter's damage and prejudice in the aforesaid amount, plus other form of damages as may be proven in court.

CONTRARY TO LAW.[4]

Petitioners pleaded not guilty during arraignment and trial ensued.

At the trial, the prosecution presented FABIAN MENDEZ, JR., the private complainant, and MULRY MENDEZ. They testified that FEBTC check no. 704227 and other checks in the amount of P235,387.33 were dishonored upon presentment for payment to the bank and that they called petitioners' attention regarding the matter. They sent a demand letter to petitioners asking them to make good the check or pay the value thereof, but petitioners did not heed the request. Instead, petitioners told respondent Fabian to wait a while. After respondent initiated this case, petitioners attempted to settle the same along with other cases pending in other courts in Iriga City. They asked for more time to settle their obligations because they were still waiting for a tax credit certificate in the amount of P517,998 to be issued by the Ministry of Finance, that they would use to settle the cases.[5]

On the other hand, the defense presented petitioner MARCIANO TAN and ISIDRO TAN as witnesses. In his testimony, Marciano averred that he cannot be held liable for violation of B.P. 22 because the amount subject of the check had already been extinguished by offset or compensation against the collection from ticket sales from the booking offices. He presented a memorandum[6] dated June 10, 1991 showing the return to respondent of various unencashed checks in the total amount of P66,839.25 representing remittance of ticket sales in the Iriga and Baao offices that were earlier sent by respondent. After the alleged offset, there remains a balance of P226,785.83.[7] The memorandum[8] states:

June 10, 1991

To Atty. Fabian Mendez:

We just would like to inform your good office that we are sending you back the following checks to be offset to our gasoline account:

Returned check June 07

P 58,237.75

Of PLBC for gasoline

235,387.33

293,625.08

Your check:

Sales Iriga May 29-31

P 17,373.00

June 1-5

28,057.55

Baao June 3-4

5,375.00

May 28-June2

16,033.70

66,839.25

Balance to be paid for schedule

P 226,785.83

ESTEBAN TAN

On cross-examination, Marciano admitted to have drawn the subject check to pay private respondent's gasoline station and that it was not covered by sufficient funds at the time of its issuance due to uncollected receivables.[9] Upon query by the court, he claimed that he did not talk to private complainant and could not tell if the latter agreed to offset the checks with the remittances.[10]

ISIDRO TAN, petitioners' brother, corroborated Marciano's claim of offset. He also admitted speaking with Mulry Mendez regarding the proposed settlement of the case which, however, was not accepted by respondent.[11]

On rebuttal, respondent disputed petitioners' claim of payment through offset or compensation. He claimed that the amount of the four unencashed checks totaling P66,839.25 could not have offset the amount of the dishonored checks since petitioners' total obligations at that time had already reached P906,000.[12] Moreover, even if compensation took place, it should have been applied to an alleged earlier obligation of P235,387.33. Respondent also claimed that compensation did not take place as there was no application of payment made by the petitioners in their memorandum dated June 10,1991.[13]

After trial, the trial court convicted petitioners for violation of B.P. 22. The dispositive portion of its decision reads:

WHEREFORE, the Court finds both accused, as drawers of the check in question, guilty of the violation of Batas Pambansa Blg. 22, as principals thereof, without attendant mitigating or aggravating circumstance, and hereby sentences both accused to suffer the penalty of imprisonment of Six (6) Months, to indemnify the private complainant jointly and severally, the sum of P58,237.75 with legal interest from date of judicial demand, and to pay the costs.

SO ORDERED.[14]

On appeal, the Court of Appeals affirmed the conviction of petitioners, thus:

WHEREFORE, the assailed decision being in conformity with law and the evidence, the same is hereby

AFFIRMED. Costs against appellants.

SO ORDERED.[15]

Hence, this petition. Petitioners raise the following errors:

I

THE HONORABLE COURT OF APPEALS ERRED WHEN IT FAILED TO CONSIDER THE FACT OF PAYMENT BY OFFSETTING PRIOR TO THE DEMAND LETTER SENT BY RESPONDENT DESPITE THE ABUNDANCE OF EVIDENCE PROVING THE SAME.

II

SINCE THE HONORABLE COURT OF APPEALS FOUND OFFSETTING CONTENTIOUS IT SHOULD HAVE ACQUITTED PETITIONERS ON THE GROUND OF REASONABLE DOUBT.

III

THE HONORABLE COURT OF APPEALS ERRED IN CONCLUDING THAT ASSUMING THAT THERE WAS OFFSETTING THE PETITIONERS ARE NONETHELESS GUILTY BECAUSE PAYMENT DOES NOT ABATE THE CRIME OF VIOLATION OF B.P. 22.

Briefly, the following are the issues for our resolution:

- Whether or not petitioners can be held liable for violation of B.P. 22 or the Bouncing Checks Law; and
- Whether or not payment through compensation or offset can preclude prosecution for violation of B.P. 22.

The law enumerates the elements of B.P. Blg. 22 to be (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.[16]

We find all the foregoing elements present in this case. Petitioner Marciano admitted that he drew the subject check as payment for the fuel and oil products of respondents. He knew at that time that there were no sufficient funds to cover the check because he had uncollected receivables.[17] The check was thus dishonored upon presentment to the bank for payment.

The law has made the mere act of issuing a bum check a *malum prohibitum*,[18] an act proscribed by legislature for being deemed pernicious and inimical to public welfare.[19] The gravamen of the offense under this law is the act of issuing a worthless check or a check that is dishonored upon its presentment for payment. Thus, even if there had been payment, through compensation or some other means, there could still be prosecution for violation of B.P. 22. We find that no reversible error was committed by the courts *a quo* in finding petitioners guilty of violation of B.P. 22.

In their defense, petitioners principally rely on the principle of compensation or offset under the civil law to avoid criminal prosecution. Essentially, they argue that they could not be held liable for violation of B.P. 22 because the amount covered by the subject check had already been paid by compensation or offset through other checks issued by respondent as remittances of ticket sales for petitioners' bus company.

It bears stressing that the issue of whether or not the obligations covered by the subject check had been paid by

compensation or offset is a factual issue that requires evaluation and assessment of certain facts. This is not proper in a petition for review on certiorari to the Supreme Court. We have repeatedly held that this Court is not a trier of facts.[20] The jurisdiction of this Court over cases elevated from the Court of Appeals is confined to the review of errors of law ascribed to the Court of Appeals, whose findings of fact are conclusive absent any showing that such findings are entirely devoid of any substantiation on record.[21]

On this aspect, the Court of Appeals affirmed the findings of the trial court that the alleged compensation is not supported by clear and positive evidence. The trial court noted that the total amount of the two checks issued by petitioners is P293,625.08 while the total amount of the returned checks amounted to only P66,939.75. No application of payment was made as to which check was to be paid. These factual findings should be accorded respect and finality as the trial court is in the best position to assess and evaluate questions of fact. These findings will not be disturbed on appeal in the absence of any clear showing that the trial court overlooked certain facts or circumstances that would substantially affect the disposition of the case.[22]

As found by the trial court, petitioners' defense of compensation is unavailing because petitioners did not clearly specify in the memorandum dated June 10, 1991 which dishonored check is being offset. Applying Article 1289[23] in relation to Article 1254[24] of the Civil Code, the unencashed checks amounting to P66,839.25 should have been applied to the earlier dishonored check amounting to P235,387.33 which is more onerous than the subject check amounting to only P58,237.75.

We also note that no compensation can take place between petitioners and respondent as respondent is not a debtor of petitioners insofar as the two checks representing collections from the Baao ticket sales are concerned.[25] Article 1278 of the Civil Code[26] requires, as a prerequisite for compensation, that the parties be mutually and principally bound as creditors and debtors.[27] If they were not mutually creditors and debtors of each other, the law on compensation would not apply.[28] In this case, the memorandum shows that some unencashed checks returned to respondent to allegedly offset the dishonored check were from the Baao ticket sales which are separate from the ticket sales of respondent. Respondent only acted as an intermediary in remitting the Baao ticket sales and, thus, is not a debtor of petitioners.

Interestingly, petitioners never alleged compensation when they received the demand letter, during the preliminary investigation, or before trial by filing a motion to dismiss. Moreover, if indeed there was payment by compensation, petitioners should have redeemed or taken the checks back in the ordinary course of business.[29] There is no evidence on record that they did so.

Finally, while we sustain the conviction of petitioners, we deem it appropriate to modify the penalties imposed. We delete the penalty of imprisonment and in lieu thereof, we impose upon petitioners a fine amounting to double the value of the subject check, with subsidiary imprisonment in case of insolvency or non-payment.

Supreme Court Administrative Circular No. 12-2000, as clarified by Administrative Circular No. 13-2001, established a rule of preference in imposing penalties in B.P. 22 cases. Section 1 of B.P. 22 imposes the following alternative penalties for its violation, to wit: (a) imprisonment of not less than 30 days but not more than one year; or (b) a fine of not less than but not more than double the amount of the check which fine shall in no case exceed P200,000; or (c) both such fine and imprisonment at the discretion of the court.

The rationale of Adm. Circular No. 12-2000 is found in our rulings in *Eduardo Vaca vs. Court of Appeals*[30] and *Rosa Lim vs. People of the Philippines*. [31] We held in those cases that it would best serve the ends of criminal justice if, in fixing the penalty to be imposed for violation of B.P. 22, the same philosophy underlying the Indeterminate Sentence Law is observed, i.e. 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.

To be sure, it is not our intention to decriminalize violation of B.P. 22. Neither is it our intention to delete the alternative penalty of imprisonment. The propriety and wisdom of decriminalizing violation of B.P. 22 is best left to the legislature and not this Court. As clarified by Administrative Circular 13-2001, 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. 22. Where the circumstances of the case, for instance, clearly indicate good faith or a clear mistake of fact without taint of negligence, the imposition of a fine alone may be considered as the more appropriate penalty. This rule of preference does not foreclose the possibility of imprisonment for violators of B.P. 22. Neither does it defeat the legislative intent behind the law. 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 to be deemed a hindrance.[32]

We are not unaware of the importance of checks in commercial transactions. In commercial parlance, they have been widely and fittingly known as the substitute of money and have effectively facilitated the smooth flow of commercial transactions. Thus, the pernicious effects and repercussions of circulating worthless checks are simply unimaginable. It is for this reason that B.P. 22 was enacted by the legislature, to penalize individuals who would place worthless checks in circulation and degrade the value and importance of checks in commercial transactions.

Nevertheless, while we recognize the noble objective of B.P.22, we deem it proper to apply the philosophy underlying the Indeterminate Sentence Law in imposing penalties for its violation. The gist of Administrative Circular No. 12-2000 is to consider the underlying circumstances of the case such that if the situation calls for the imposition of the alternative penalty of fine rather than imprisonment, the courts should not hesitate to do so.

In this case, we note that petitioners had exerted efforts to settle their obligations. The fact of returning the unencashed checks to respondent indicates good faith on the part of petitioners. Absent any showing that petitioners acted in bad faith, the deletion of the penalty of imprisonment in this case is proper.[33]

WHEREFORE, the petition is DENIED and the Decision of Court of Appeals in CA-G.R. CR No. 20030, is AFFIRMED with MODIFICATION. Petitioners are ordered to indemnify respondent in the amount of P58,237.75 with legal interest from date of judicial demand. The sentence of imprisonment of six months is SET ASIDE and in lieu thereof, a FINE in the amount of P116,475.50[34] is imposed upon petitioners, with subsidiary imprisonment not to exceed six months in case of insolvency or non-payment.[35]

Costs against petitioners.

SO ORDERED.

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

[1] Rollo, pp. 90-95.

[2] Id. at 69-75.

[3] Id. at 117.

[4] Records, pp. 1-2.

[5] Id. at 311-312.

[6] Id. at 230.

[7] Id. at 312.

[8] Supra, note 6.

[9] Id. at 313.

[10] Ibid.

[11] Ibid.

[12] Ibid.

[13] Ibid.

[14] Id. at 315.

[15] Rollo, p. 95.

[16] Alberto Lim vs. People of the Philippines, G.R. No. 143231, October 26, 2001, p. 4, citing Rosa Lim vs. People of the Philippines, G.R. No. 130038, 340 SCRA 497, 502. (2000).

[17] Rollo, p. 72, citing TSN, June 21, 1993, p.10.

[18] The term mala prohibita refers generally to acts made criminal by special laws. There is a distinction between crimes which are mala in se, or wrongful from their nature and those that are mala prohibita, or wrong merely because prohibited by statute. (L.B. Reyes-Revised Penal Code, Book 1 2001 15[th] Revised Ed.)

[19] People vs. Chua, G.R. No. 130632, 315 SCRA 326, 338 (1999).

[20] Luis Wong vs. Court of Appeals and People of the Philippines, G.R. No. 117857, February 2, 2001, p. 6; Aleria Jr. vs. Velez, G.R. No. 127400, 298 SCRA 611, 618 (1998).

[21] Alberto Lim vs. People of the Philippines, G.R. No. 143231, October 26, 2001, p. 5.

[22] Supra, note 21.

[23] Article 1289. If a person should have against him several debts which are susceptible of compensation, the rules on the application of payments shall apply to the order of the compensation.

[24] Article 1254. When the payment cannot be applied in accordance with the preceding rules, or if application cannot be inferred from other circumstances, the debt which is most onerous to the debtor, among those due shall be deemed to have been satisfied. xxx

[25] Under the New Civil Code compensation takes place when two persons, in their own right, are creditors and debtors of each other.

[26] Article 1278. Compensation shall take place when two persons, in their own right, are creditors and debtors of each other.

[27] CKH Industrial and Development Corp. vs. Court of Appeals, et. al., G.R. No. 111890, 272 SCRA 333, 342 (1997).

[28] Republic of the Philippines vs. Mambulao Lumber Co., G.R. No. L-17725, 4 SCRA 622, 626 (1962).

[29] Alberto Lim vs. People of the Philippines, G.R. No. 143231, October 26, 2001, p. 7, citing Dico vs. CA, G.R.

No. 116566, 305 SCRA 637, 644 (1999), and Sec. 3 [q], Rule 131, Revised Rules of Court.

[30] G.R. No. 131714, 298 SCRA 656, 664 (1998).

[31] G.R. No. 130038, 340 SCRA 497, 504 (2000).

[32] Administrative Circular No. 13-2001, cited in *Alberto Lim vs. People of the Philippines*, G.R. No. 143231, October 26, 2001, pp. 7-8.

[33] *Yolanda Aguirre vs. People of the Philippines*, G.R. No. 144142, August 23, 2001, p. 8.

[34] P58,237.75 x 2

[35] *Rosa Lim vs. People of the Philippines*, G.R. No. 130038, 340 SCRA 497, 505 (2000), citing Article 39, par. 2, Revised Penal Code; *Diongzon vs. Court of Appeals*, G.R. No. 114823, 321 SCRA 477 (1999); *Llamado vs. Court of Appeals*, 270 SCRA 423 (1997).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.