

JESSE YOUNG, PETITIONER, VS. COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. NO. 140425. March 10, 2005

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

On appeal before us is the Decision[2] of the Court of Appeals in CA-G.R. CR No. 20850, promulgated on October 6, 1999, affirming in toto the Decision of the Regional Trial Court (RTC) of Manila (Branch 13) in Criminal Case No. 82-5584[3] which found Jesse Young guilty beyond reasonable doubt of violating Batas Pambansa (BP) Blg. 22, otherwise known as the “Bouncing Checks Law.”

On March 24, 1982, an Information was filed accusing Jesse of violating BP Blg. 22, committed as follows:

That on or about August 29, 1981 in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully and feloniously make or draw and issue to Ines Uy to apply on account or for value Phil. Bank of Communications Check No. 575748 dated Aug. 29, 1981 payable to cash in the amount of P20,000.00, said accused knowing fully well that at the time of issue, he/she did not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, which check, when presented within ninety (90) days from the date thereof, was subsequently dishonored by the drawee bank for the reason of insufficient funds and despite receipt of notice of such dishonor, said accused failed to pay said Ines Uy the amount of said check or to make arrangement for payment in full of the same within five (5) banking days after receiving said notice.

Contrary to law.[4]

Upon arraignment, Jesse pleaded not guilty to the charge.[5] Thereafter, trial ensued.

The prosecution and the defense differ in their version of the events that preceded the filing of the above-quoted Information.

The gist of the prosecution evidence is as follows:

On July 11, 1981, Jesse together with his mother Aida Young[6] and his sister Juliet Young[7] went to the house of private complainant Ines Uy asking her to encash three checks with a total value of P50,000.00.[8] Since Ines is a close friend of the Youngs and because they badly needed money, Ines agreed to exchange the three checks with cash.[9] One of the checks is Philippine Bank of Communications (PBC) Check No. 575748 dated August 29, 1981 with a value of P20,000.00 drawn by Jesse.[10] On August 31, 1981, Ines deposited said check in her account with the Consolidated Bank and Trust Corporation (CBTC).[11] On September 1, 1981, CBTC called her up informing her that the subject check was dishonored because there was a stop payment order and because of insufficiency of funds to cover the amount appearing in the check.[12] Thereafter, Ines informed Jesse through telephone that PBC Check No. 575748 was dishonored.[13] Jesse assured her that he would make good the check. However, he did not fulfill his promise.[14] This prompted Ines to seek the help of her lawyer. Her lawyer wrote a demand letter and sent the same to Jesse who refused to receive the same.[15]

On the other hand, Jesse denied having exchanged PBC Check No. 575748 for cash with Ines, contending that he and his sister never went to the house of private complainant.[16] He claims that the check, subject matter of the present case, is one of the seven postdated checks which he gave to Ines as replacement for ten checks earlier drawn by his sister in favor of Ines. The ten checks were supposed to answer for the obligations of their mother to Ines.[17] Jesse claims that when he issued the seven checks to Ines, he told her not to deposit these checks on their due dates for presentment because he did not have sufficient funds;[18] and that he should call her up first because the availability of the funds to cover the amounts of the checks will depend on their collections and receivables.[19] Jesse admitted that six out of the seven checks he issued were dishonored.[20] However, he claims that while Ines informed him when four of the seven checks were dishonored, the latter never notified him when the last two checks, including PBC Check No. 575748, were dishonored.[21] Neither did he receive any demand from Ines, formal or otherwise, for the payment of the check subject matter of the present case, after its dishonor.[22] Jesse admitted that with respect to the subject check, he issued a stop payment order on August 3, 1981.[23] He gave no reason for issuing the stop payment order.

After trial, the RTC rendered judgment finding Jesse guilty beyond reasonable doubt of violating BP Blg. 22, and meted him the penalty of imprisonment for one year. The trial court further ordered Jesse to pay complainant the sum of P20,000.00 as civil liability.[24]

Aggrieved by the trial court's decision, Jesse filed an appeal with the Court of Appeals.

On October 6, 1999, the Court of Appeals rendered a Decision affirming in toto the decision of the RTC.

Hence, Jesse filed the present petition raising a single issue, to wit:

WHETHER OR NOT THE CONVICTION OF PETITIONER OF THE CRIME CHARGED IS PROPER IN THE ABSENCE OF PRIOR DEMAND FOR PAYMENT OF THE FACE VALUE OF SUBJECT CHECK.[25]

Petitioner is accused of violation of BP Blg. 22, Section 1 of which provides as follows:

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 (30) 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 the Act.

A reading of the above-quoted provision of law shows that it penalizes two (2) distinct acts. First, the act of making or drawing and issuing any check to apply on account or for value, knowing at the time of issue that the drawer does not have sufficient funds in or credit with the drawee bank; and, second, having sufficient funds in or credit with the drawee bank the drawer 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.[26]

In the present case, petitioner was charged, tried and convicted under the first act, the essential elements of which are as follows:

- (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) 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.[27]

There is no dispute that the subject check was drawn for value received.

Petitioner never disputed that he issued PBC Check No. 575748 and that said check was dishonored on two grounds: first, he ordered the bank to stop payment for no valid reason and; second, for insufficiency of funds.

However, petitioner claims that he was not given notice of dishonor. He contends that under Section 2 of BP Blg. 22, notice of dishonor or demand for payment coupled with his failure to pay within five banking days is a prerequisite before he can be charged for violation of BP Blg. 22.

We do not agree.

Section 2 of BP Blg. 22 provides:

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 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.

It must be emphasized that the second element of the offense punished under the first paragraph of Section 1 of BP Blg. 22 is “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.” In *King vs. People*,[28] we held that:

[t]o hold a person liable under BP 22, it is not enough to establish that a check issued was subsequently dishonored. 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, . . .

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In other words, 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.” Verily, BP 22 gives the accused an opportunity to satisfy the amount indicated in the check and thus avert prosecution. As the Court held in *Lozano v. Martinez*, the aforecited provision serves to “mitigate the harshness of the law in its application.” This opportunity, however, can be used only upon receipt by the accused of a notice of dishonor. . . .

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Thus, in order to create the prima facie presumption that the issuer knew of the insufficiency of funds, it must be shown that he or she received a notice of dishonor and, within five banking days thereafter, failed to satisfy the amount of the check or make arrangement for its payment.[29]

As a rule, the absence of proof that the person who issued the check received any notice informing him of the fact that his check was dishonored and giving him five banking days within which to make arrangements for payment of the said check prevents the application of the disputable presumption that he had knowledge of the insufficiency of his funds at the time he issued the check.[30] Absent such presumption, the burden is on the prosecution to prove that the person who issued the check had knowledge of the insufficiency of his funds when he issued the said check; otherwise, he cannot be held liable under the law.[31]

On petitioner's claim that there was no demand made on him by private complainant, the RTC ruled as follows:

The argument is without merit.

Section 2 of Batas Pambansa as quoted above only creates a prima facie knowledge of insufficiency of funds or credit unless the maker or drawer pays the holder or make arrangements thereon within five (5) days from notice. Demand therefore is not necessary. Said notice need not be a formal demand as in the case of Estafa. It is sufficient that notice be given to the defendant. The evidence adduced clearly shows that notice was given by the complainant that the checks were dishonored. When he was called up; he assured the complainant that "he will make good with the check" (tsn, Dec. 1, 1982, p. 8). Even granting therefore that he did not receive the formal demand, the accused has prior knowledge that he has no sufficient funds with the bank. This has been admitted by the accused himself. As stated above, Section 2 of Batas Pambansa Blg. 22 only creates a prima facie evidence of knowledge. Demand is not necessary as in estafa. In the instant case, the accused had knowledge that he has no sufficient funds to cover the check.[32]

The Court of Appeals affirmed the trial court in toto.

An appeal in a criminal case throws the whole case wide open for review.[33] A review of the prosecution evidence reveals that the prosecution had sufficiently established the prima facie presumption that petitioner had knowledge that he had no sufficient funds at the time he issued the subject check. Private complainant testified that her lawyer sent petitioner a demand letter.[34] Susan Cruz categorically testified that she personally delivered said letter to petitioner who refused to receive the same, thus constraining Susan just to leave a copy thereof with him.[35] However, it is unrefuted that petitioner failed to make good the checks within five banking days. Thus, the presumption of "knowledge" on the part of petitioner at the time he issued the subject checks has been established. Petitioner failed to rebut the presumption. In fact, it is significant to note that petitioner himself admitted that he did not have sufficient funds at the time he issued the subject check.[36] Moreover, petitioner likewise admitted that he ordered the bank to stop payment of said check for no apparent reason on August 3, 1981, or twenty-six days before its due date.

Corollarily, petitioner is not exculpated from the offense he committed even if at the time of issuance of the check he informed the private complainant that he does not have sufficient funds to cover the amount of the check he issued. We have held that knowledge of the payee of the insufficiency or lack of funds of the drawer with the drawee bank is immaterial as deceit is not an essential element of an offense penalized by BP Blg. 22.[37]

We note that we have held in previous cases that the drawer's act of notifying the payee at the time of the issuance of the check that he does not have sufficient funds to cover the amount of such check may operate to absolve the drawer from liability under BP Blg. 22.[38] However, it must be emphasized that in said cases, the checks were drawn and issued in good faith and without intention on the part of their respective drawers to apply said checks for account or for value. In *Magno vs. Court of Appeals*,[39] the rubber checks were simply issued to

cover a warranty deposit in a lease contract returnable to the drawer upon the satisfactory completion of the entire period of lease. The drawer did not benefit from the deposit since the checks were used only as a deposit to serve as security for the faithful performance of the drawer's obligation as a lessee of an equipment.[40] On the other hand, in *Idos vs. Court of Appeals*,[41] the subject check was issued for the mere purpose of evidencing the private complainant's share or interest in a partnership he entered into with the drawer of the check. The check was simply meant to show the drawer's commitment that when the receivables of the partnership are collected and goods are sold and only when such collection and sale were realized, would the drawer give to the private complainant the net amount due him representing his interest in the partnership; it did not involve a debt of or any amount due and payable by the drawer.[42] Thus, the operative facts in the present case are different. Herein petitioner issued the subject check in exchange for cash given to him and his mother and sister by private complainant. Hence, as distinguished from *Magno and Idos*, it is clear that in the instant case the check was intended to apply for account or for value.

Since the three elements of the offense punished under the first paragraph of Section 1 of BP Blg. 22 are present in the instant case, we find no error in the Court of Appeals' affirmation of the trial court's decision convicting petitioner of violation of BP Blg. 22.

Finally, while we sustain petitioner's conviction, we deem it proper to modify the penalty imposed, pursuant to Supreme Court Administrative Circular No. 12-2000, as clarified by Administrative Circular No. 13-2001.

Considering the absence of proof or allegation by the prosecution to show that petitioner is not a first-time offender,[43] we find that the interests of justice would be best served if petitioner would simply be fined, double the amount of the subject check, instead of imprisoned, to enable him to find ways to settle his civil obligations to private complainant, not to mention the fine imposed on him.

In addition, the complainant is entitled to legal interest of six per cent (6%) per annum from filing of the Information until the finality of herein decision the amount of which, inclusive of interest, shall thereon be subject to twelve percent (12%) interest until fully paid.

WHEREFORE, the assailed Decision of the Court of Appeals is AFFIRMED with MODIFICATIONS.

In lieu of imprisonment, petitioner Jesse Young is ordered to pay a FINE of P40,000.00, with subsidiary imprisonment not to exceed six (6) months in case of insolvency, pursuant to paragraph 2, Article 39 of the Revised Penal Code.

Petitioner is also ordered to indemnify private complainant, Ines Uy, P20,000.00, representing the amount of the dishonored check, with six (6%) percent interest from date of filing of the Information until the finality of herein decision, the amount of which, inclusive the interest, is subject to twelve percent (12%) interest until fully paid.

SO ORDERED.

Puno, (Chairman), Callejo, Sr., Tinga, and Chico-Nazario, JJ., concur.

[1] Spelled as "Jessie" in other portions of the Rollo and Records.

[2] Penned by Justice Jose L. Sabio, Jr., and concurred in by Justices Hector L. Hofilena (now retired) and Omar U. Amin (now retired).

[3] Entitled "People of the Philippines vs. Jesse Young."

[4] Original Records, p. 1.

- [5] OR, pp. 33-34.
- [6] Referred to as Aida Young Chua in other parts of the TSN.
- [7] Referred to as Julieta Young, Julieta Chua or Juliet Chua in other parts of the TSN.
- [8] TSN, Testimony of Ines Uy, September 14, 1982, p. 5; TSN, Testimony of Ines Uy, December 1, 1982, pp. 14-15.
- [9] TSN, September 14, 1982, p. 5.
- [10] Id, pp. 6-7; Exhibit "A"/ "12," p. 46, OR.
- [11] TSN, September 14, 1982, p. 9.
- [12] Id, pp. 9-12.
- [13] TSN, December 1, 1982, p. 8.
- [14] Ibid.
- [15] Exhibits "D" and "D-1," p. 53, Original Records.
- [16] TSN, Testimony of Jesse Young, September 7, 1981, p. 4.
- [17] Id., pp. 5-9.
- [18] Id., pp. 13 and 15.
- [19] Id., p. 13.
- [20] Id., p. 14.
- [21] Id., pp. 19-20.
- [22] TSN, Testimony of Jesse Young, December 7, 1983, p. 16.
- [23] Id., pp. 31-34.
- [24] OR, pp. 391-397.
- [25] Rollo, p. 17.
- [26] Nagrampa vs. People, G.R. No. 146211, August 6, 2002, 386 SCRA 412, 422; Bautista vs. Court of Appeals, G.R. No. 143375, July 6, 2001, 360 SCRA 618, 624-625.
- [27] Magdayao vs. People, G.R. No. 152881, August 17, 2004, citing Wong vs. Court of Appeals, G.R. No. 117857, February 2, 2001, 351 SCRA 100.
- [28] G.R. No. 131540, December 2, 1999, 319 SCRA 654.
- [29] Id., pp. 667-669.
- [30] Caras vs. Court of Appeals, G.R. No. 129900, October 2, 2001, 366 SCRA 371, 382-383.
- [31] Id, p. 383.
- [32] Original Records, p. 396.
- [33] People vs. Luceriano, G.R. No. 145223, February 11, 2004, 422 SCRA 486, 495.

[34] Exhibit “D,” p. 53, Original Records; TSN, December 1, 1982, p. 9.

[35] TSN, February 28, 1983, pp. 6-12.

[36] TSN, September 7, 1983, p. 13.

[37] Rigor vs. People, G.R. No. 144887, November 17, 2004, citing Cruz vs. Court of Appeals, G.R. No. 108738, June 17, 1994, 233 SCRA 301, 309.

[38] Magno vs. Court of Appeals, G.R. No. 96132, June 26, 1992, 210 SCRA 471, 475; Idos vs. Court of Appeals, G.R. No. 110782, September 25, 1998, 296 SCRA 194.

[39] Supra.

[40] Id., pp. 479-480.

[41] Supra.

[42] Id., pp. 204-205.

[43] Recuerdo vs. People, G.R. No. 133036, January 22, 2003, 395 SCRA 638, 646.

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