

## **VICTOR TING &#8220;SENG DEE&#8221; AND EMILY CHAN-AZAJAR, PETITIONERS, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

*G.R. No. 140665. November 13, 2000*

Ponente: MELO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-140665/>

---

### **MELO, J.:**

Before us is a petition for certiorari under Rule 45 seeking the reversal of the February 12, 1999 decision of the Court of Appeals which affirmed that of the Regional Trial Court of the National Capital Judicial Region (Manila, Branch 45) finding petitioners guilty of seven (7) counts of violation of Batas Pambansa Blg.22.

Petitioners' version of the background events is as follows:

From 1991 to 1992, Juliet Ting "Chan Sioc Hiu" obtained loans, in the aggregate amount of P2,750,000.00, from private complainant Josefina K. Tagle for use in Juliet's furniture business. As payment thereof, Juliet issued eleven (11) post-dated checks which, upon maturity, were dishonored for reasons of "Closed Account" or "Drawn Against Insufficient Funds." Juliet was subsequently prosecuted for violation of Batas Pambansa Blg. 22.

Due to her financial difficulties, Juliet requested her husband Victor Ting "Seng Dee" and her sister Emily Chan-Azajar (petitioners herein) to take over her furniture business, including the obligations appurtenant thereto. Agreeing to Juliet's request, petitioners issued nineteen (19) checks in replacement of the eleven (11) checks earlier issued by Juliet. The planned take-over, however, never materialized since the Naga Hope Christian School, petitioner Emily Chan-Azajar's employer in Naga, refused to let her resign to attend to her sister's business. Since the planned take-over did not take place, petitioners requested Juliet to reassume her obligation to private complainant Tagle by replacing the checks they had previously issued to the latter. Thus, Juliet replaced the nineteen (19) checks issued by petitioners with twenty-three (23) Far East Bank checks in favor of Tagle. Petitioners then requested private complainant Tagle to return the nineteen (19) checks they had issued to her. Instead of returning the checks, Tagle deposited seven of the checks with MetroBank where they were dishonored for being "Drawn Against Insufficient Funds."

On the other hand, private complainant Tagle alleged that sometime in April 1993, petitioners obtained a loan of P950,000.00 from her, issuing several post-dated checks in payment thereof. When the checks were deposited by Tagle with MetroBank, they were dishonored for having been drawn against insufficient funds. Tagle alleged that despite verbal and written demands, petitioners failed to pay her the value of the dishonored checks.

Consequently, seven informations for violation of Batas Pambansa Blg. 22 were filed against petitioners. Said informations are similarly worded except with respect to the check number, the amount involved, and the date the check was issued. The information in Criminal Case No. 94-131945 (the other cases are Criminal Case No. 94-131946, Criminal Case No. 94-131947, Criminal Case No. 94-131948, Criminal Case No. 94-131949, Criminal Case No. 94-131950, and Criminal Case No. 94-131951) charged:

That sometime prior to May 27, 1993, in the City of Manila, Philippines, the said accused, conspiring and confederating together and mutually helping each other, did then and there wilfully, unlawfully and feloniously make or draw and issue to JOSEPHINE K. TAGLE, to apply on account or for value Producers Bank of the Philippines, Check No. 946072 dated May 27, 1993 payable to CASH in the amount of P250,000.00 said accused well knowing that at the time of issue they did not have sufficient funds in or credit with the drawee bank for payment of such check in full upon its presentment, which check when presented for payment within ninety (90) days from the date thereof, was subsequently dishonored by the drawee bank for Drawn Against Insufficient Funds and despite receipt of notice of such dishonor, said accused failed to pay said JOSEFINA K. TAGLE the amount of the check or to make arrangements for full payment of the same within five (5) banking days after receiving said notice.

(p. 2, Original Records.)

Criminal Cases No. 94-131945 to 94-131951 were consolidated and jointly tried. When arraigned, petitioners, assisted by counsel, pleaded not guilty. During trial, the prosecution presented only one witness, the private complainant, the testimony of Producer's Bank representative Ferdinand Lazo being dispensed with after counsel for petitioners admitted the dishonor of the checks subject matter of the action.

On March 16, 1995, the trial court found petitioners guilty of violating Batas Pambansa Blg. 22 in each of the seven cases, disposing as follows:

WHEREFORE, in view of the foregoing, accused VICTOR TING and EMILY CHAN AZAJAR are hereby found "GUILTY" beyond reasonable doubt of all the charges contained in Criminal Case Nos. 94-131945; 94-131946; 94-131947; 94-131948; 94-131949; 94-131950 and 94-131951 and for each count, they are hereby sentenced to suffer the penalty of one (1) year imprisonment; to pay Josefina K. Tagle the total amount of P950,000.00; and to pay the cost.

(p. 294, Rollo.)

Aggrieved, petitioners filed an appeal with the Court of Appeals which was docketed therein as C.A.-G.R. No. 18054. However, the appellate court, on February 12, 1999, affirmed. Petitioners' motion for reconsideration was, likewise, denied for lack of merit. Hence, the instant petition.

Petitioners claim that the Court of Appeals erred in affirming the decision of the trial court, given the absence of proof beyond reasonable doubt or in the presence of facts creating reasonable doubt.

The petition has merit.

Section 1 of Batas Pambansa Blg. 22, otherwise known as the Bouncing Checks Law, provides:

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 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.

For a violation of Batas Pambansa Blg. 22 to be committed, the following elements must be present:

(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 there are no 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 (*Sycip, Jr. vs. CA*, G.R. No. 125059, March 17, 2000).

An analysis of the evidence presented, however, shows that not all the aforementioned elements have been established by the prosecution beyond reasonable doubt.

That the seven checks in question were issued by petitioners is beyond dispute. Not only were the dishonored checks presented in court, but petitioners even admitted signing the checks and issuing them to private complainant. From the evidence on record, it is clear that petitioners signed and issued the seven checks in question.

That the checks were dishonored is also clearly established. Section 3 of Batas Pambansa Blg. 22 provides that "the introduction in evidence of any unpaid and dishonored check, having the drawee's refusal to pay stamped or written thereon, or attached thereto, with the reason therefor as aforesaid, shall be prima facie evidence of the making or issuance of said check, and the due presentment to the drawee for payment and the dishonor thereof, and that the same was properly dishonored for the reason written, stamped, or attached by the drawee on such dishonored check." In the instant case, the fact of the checks' dishonor is sufficiently shown by the return slips issued by MetroBank, the depository bank, stating that the checks had been returned for the reason "DAIF -- Drawn Against Insufficient Funds." Not only are these check return slips prima facie evidence that the drawee bank dishonored the checks, but the defense did not present any evidence to rebut these documents. In fact, counsel for petitioners even admitted the fact of the checks' dishonor, agreeing to dispense with the presentation of the bank representative who was supposed to prove the fact of dishonor of said checks (p. 162, Rollo.).

However, for liability to attach under Batas Pambansa Blg. 22, it is not enough that the prosecution establishes that a check was issued and that the same was subsequently dishonored. The prosecution must also prove the second element, that is, it must further show that the issuer, at the time of the check's issuance, had knowledge that he did not have enough funds or credit in the bank for payment thereof upon its presentment. Since the second element involves a state of mind which is difficult to verify, Section 2 of Batas Pambansa Blg. 22 creates a presumption *juris tantum* that the second element prima facie exists when the first and third elements of the offense are present (*Magno v. People*, 210 SCRA 471 [1992]). Section 2 provides:

Section 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 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."

In truth, this Court declared in *King v. People* (G.R. No. 131540, December 2, 1999) that "the prima facie presumption arises when the 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... This opportunity, however, can be used only upon receipt by the accused of a notice of dishonor." 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.

*King v. People*, decided by this Division, involves a set of facts similar to the case at bar. In said case, the accused therein was proven to have issued eleven checks, all of which were duly filled up and signed by her. It was also clearly established that these eleven checks were dishonored, as shown by the checks themselves which were stamped "ACCOUNT CLOSED" and further supported by the return tickets issued by PCI Bank stating that the checks had been dishonored. Yet, even if the prosecution had already established the issuance of the checks and their subsequent dishonor, this Court still required the prosecution to show that the issuer knew of the insufficiency of funds by proving 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.

Moreover, in *Lina Lim Lao v. CA* (274 SCRA 572 [1997]), we emphasized that "the full payment of the amount appearing in the check within five banking days from notice of dishonor is a `complete defense.' 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 postulate 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 22."

To prove that petitioners received a notice of dishonor, the prosecution presented a copy of the demand letter allegedly sent to petitioners through registered mail and its corresponding registry receipt. Private complainant Josefina Tagle, the sole witness for the prosecution, testified thus:

Q:

Now, when these seven (7) checks bounced for insufficiency of funds, what step did you take?

A:

I demanded the return of my money from them.

Q:

Now, what was the reply of the two accused?

A:

They kept on promising that they will pay but up to now they have not paid any single centavo.

Q:

What other step did you take?

A:

I requested my lawyer to write a demand letter.

Q:

And that demand letter was sent to the accused?

A:

Yes, Sir.

Q:

In what manner?

A:

By registered mail.

Q:

Now, was that demand letter received by the two accused?

A:

Yes, Sir.

Q:

What is your evidence?

A:

The return card.

Q:

If you are shown anew the copy of the demand letter which is already marked as Exhibit B, would you be able to recognize the same?

A:

Yes, Sir.

Q:

Is that the one that you are referring to?

A:

Yes, Sir.

Q:

How about the return card, is that correct?

A:

Yes, Sir, this is the one.

Q:

Now, upon receipt of this letter by the two accused, did the two accused pay the amount of the said check?

A:

No, Sir.

Q:

So what did you do next?

A:

I told my lawyer to file charges against them.

Q:

You mean the present charge?

A:

Yes, Sir.

Atty. Acuesta:

That is all, Your Honor.

(TSN, Aug. 24, 1994, p. 8-9.)

Aside from the above testimony, no other reference was made to the demand letter by the prosecution. As can be noticed from the above exchange, the prosecution alleged that the demand letter had been sent by mail. To prove mailing, it presented a copy of the demand letter as well as the registry return receipt. However, no attempt was made to show that the demand letter was indeed sent through registered mail nor was the signature on the registry return receipt authenticated or identified. It cannot even be gleaned from the testimony of private complainant as to who sent the demand letter and when the same was sent. In fact, the prosecution seems to have presumed that the registry return receipt was proof enough that the demand letter was sent through registered mail and that the same was actually received by petitioners or their agents.

As adverted to earlier, it is necessary in cases for violation of Batas Pambansa Blg. 22, that the prosecution prove that the issuer had received a notice of dishonor. It is a general rule that when service of notice is an issue, the person alleging that the notice was served must prove the fact of service (58 Am Jur 2d, Notice, § 45). The burden of proving notice rests upon the party asserting its existence. Now, ordinarily, preponderance of evidence is sufficient to prove notice. In criminal cases, however, the quantum of proof required is proof beyond reasonable doubt. Hence, for Batas Pambansa Blg. 22 cases, there should be clear proof of notice. Moreover, it is a general rule that, when service of a notice is sought to be made by mail, it should appear that the conditions on which the validity of such service depends had existence, otherwise the evidence is insufficient to establish the fact of service (C.J.S., Notice, § 18). In the instant case, the prosecution did not present proof that the demand letter was sent through registered mail, relying as it did only on the registry return receipt. In civil cases, service made through registered mail is proved by the registry receipt issued by the mailing office and an affidavit of the person mailing of facts showing compliance with Section 7 of Rule 13 (See Section 13, Rule 13, 1997 Rules of Civil Procedure). If, in addition to the registry receipt, it is required in civil cases that an affidavit of mailing as proof of service be presented, then with more reason should we hold in criminal cases that a registry receipt alone is insufficient as proof of mailing. In the instant case, the prosecution failed to present the testimony, or at least the affidavit, of the person mailing that, indeed, the demand letter was sent.

Moreover, petitioners, during the pre-trial, denied having received the demand letter (p. 135, Rollo.). Given petitioners' denial of receipt of the demand letter, it behooved the prosecution to present proof that the demand letter was indeed sent through registered mail and that the same was received by petitioners. This, the prosecution miserably failed to do. Instead, it merely presented the demand letter and registry return receipt as if mere presentation of the same was equivalent to proof that some sort of mail matter was received by petitioners. Receipts for registered letters and return receipts do not prove themselves; they must be properly authenticated in order to serve as proof of receipt of the letters (*Central Trust Co. v. City of Des Moines*, 218 NW 580).

Likewise, for notice by mail, it must appear that the same was served on the addressee or a duly authorized agent of the addressee. In fact, the registry return receipt itself provides that "[a] registered article must not be delivered to anyone but the addressee, or upon the addressee's written order, in which case the authorized agent must write the addressee's name on the proper space and then affix legibly his own signature below it." In the case at bar, no effort was made to show that the demand letter was received by petitioners or their agent. All that we have on record is an illegible signature on the registry receipt as evidence that someone received the letter. As to whether this signature is that of one of the petitioners or of their authorized agent remains a mystery. From the registry receipt alone, it is possible that petitioners or their authorized agent did receive the demand letter. Possibilities, however, cannot replace proof beyond reasonable doubt. There being insufficient proof that petitioners received notice that their checks had been dishonored, the presumption that they knew of the insufficiency of the funds therefor cannot arise.

As we stated in *Savage v. Taypin* (G.R. No. 134217, May 11, 2000), "penal statutes must be strictly construed against the State and liberally in favor of the accused." Likewise, the prosecution may not rely on the weakness of the evidence for the defense to make up for its own blunders in prosecuting an offense. Having failed to prove all the elements of the offense, petitioners may not thus be convicted for violation of Batas Pambansa Blg. 22.

That petitioners are civilly liable to private complainant is also doubtful. Private complainant claims that petitioners borrowed Nine Hundred Fifty Thousand (P950,000.00) Pesos from her on or about the end of April 1993, in payment of which petitioners issued several post-dated checks in her favor. The seven checks issued by petitioners as payment for the amount borrowed add up to P950,000.00. If private complainant is the businesswoman that she claims to be, she should be collecting interest on the loan she granted to petitioners. In other words, the amount to be repaid by petitioners should be more than P950,000.00, to account for interest on the loan. The checks issued by petitioners, however, do not provide for interest. It is thus more credible that the seven checks involved in this case form part of nineteen checks issued to replace the checks issued by Juliet Ting to private complainant. This conclusion is bolstered by private complainant's admission in her reply-affidavit that more than seven checks were issued by petitioners (p. 11, Original Records). In said reply-affidavit, private complainant states that "respondents issued and delivered to me in Manila several checks, which partially include their seven (7) bouncing checks herein. I say 'partially' because I will have to file additional bouncing check cases against them, as these other checks likewise bounced." Furthermore, in the same reply-affidavit, private complainant claims that the checks in question were not replaced, allegedly because the replacement checks must first be cleared, which did not happen in this case. By implication, had the 23 Far East Bank checks issued by Juliet Ting to replace the nineteen checks issued by petitioners been cleared, then private complainant would have considered the checks in question as having been replaced. This only supports our conclusion that it was Juliet Ting who owed money to private complainant, not petitioners.

Moreover, the original debtor Juliet Ting was convicted by the Regional Trial Court of Manila in Criminal Cases 93-126581-91 for eleven counts of violation of Batas Pambansa Blg. 22. These eleven bouncing check cases involved the same obligation being sued upon by private complainant Tagle herein. The trial court expressly

acknowledged in said cases that nineteen (19) checks were issued by petitioners as payment for Juliet Ting's obligation. In its August 7, 1997 decision convicting Juliet Ting for violation of Batas Pambansa Blg. 22, the trial court declared that "to cover the additional loans, accused (Juliet Ting) delivered 19 post-dated checks issued by Victor Ting and Emily Azajar (p. 55, Rollo.)." The trial court's decision further provides:

Since she could not fund the other checks (Exhs. B to K), she replaced the same with 19 post-dated checks of her husband Victor Ting and her sister Emily Azajar totaling P2,450,000.00. They issued the checks as they would take over her furniture business. The intended partnership of Victor and Emily was aborted as the latter was not allowed to resign from her teaching post in Naga City. She then replaced the checks issued by Victor and Emily with her own checks - 23 FEB post-dated checks per list (Exh. 9) prepared by Suzanne Azajar.

Despite receipt of the replacement checks, complainant refused to return the checks of Victor and Emily and even filed cases against them.

(p. 56, Rollo.)

Not having borrowed the amount of Nine Hundred Fifty Thousand (P950,000.00) from private complainant, petitioners may not thus be held liable therefor.

WHEREFORE, premises considered, the instant petition is GRANTED and the assailed decision of the Court of Appeals dated February 12, 1999 REVERSED and SET ASIDE. Petitioners Victor Ting "Seng Dee" and Emily Chan-Azajar are hereby ACQUITTED of the charges against them for violation of Batas Pambansa Blg. 22, for lack of sufficient evidence to prove the offenses charged beyond reasonable doubt. No special pronouncement is made as to costs.

**SO ORDERED.**

Vitug, Panganiban, and Gonzaga-Reyes, JJ., concur.

**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.