# PACIFICO B. ARCEO, JR.,PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

*G.R. NO. 142641. July 17, 2006*

Ponente: CORONA, J.

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**CORONA, J.:**

This petition for review on certiorari assails the April 28, 1999 decision[1] and March 27, 2000 resolution[2] of the Court of Appeals in CA-G.R. CR No. 19601 affirming the trial court's judgment finding petitioner Pacifico B. Arceo, Jr. liable for violation of Batas Pambansa Blg. (BP) 22, otherwise known as the "Bouncing Checks Law."

The facts of the case as found by the trial court and adopted by the Court of Appeals follow.

> On March 14, 1991, [petitioner], obtained a loan from private complainant Josefino Cenizal [] in the amount of P100,000.00. Several weeks thereafter, [petitioner] obtained an additional loan of P50,000.00 from [Cenizal]. [Petitioner] then issued in favor of Cenizal, Bank of the Philippine Islands [(BPI)] Check No. 163255, postdated August 4, 1991, for P150,000.00, at Cenizal's house located at 70 Panay Avenue, Quezon City. When August 4, 1991 came, [Cenizal] did not deposit the check immediately because [petitioner] promised [] that he would replace the check with cash. Such promise was made verbally seven (7) times. When his patience ran out, [Cenizal] brought the check to the bank for encashment. The head office of the Bank of the Philippine Islands through a letter dated December 5, 1991, informed [Cenizal] that the check bounced because of insufficient funds.
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> Thereafter, [Cenizal] went to the house of [petitioner] to inform him of the dishonor of the check but [Cenizal] found out that [petitioner] had left the place. So, [Cenizal] referred the matter to a lawyer who wrote a letter giving [petitioner] three days from receipt thereof to pay the amount of the check. [Petitioner] still failed to make good the amount of the check. As a consequence, [Cenizal] executed on January 20, 1992 before the office of the City Prosecutor of Quezon City his affidavit and submitted documents in support of his complaint for [e]stafa and [v]iolation of [BP 22] against [petitioner]. After due investigation, this case for [v]iolation of [BP 22] was filed against [petitioner] on March 27, 1992. The check in question and the return slip were however lost by [Cenizal] as a result of a fire that occurred near his residence on September 16, 1992. [Cenizal] executed an Affidavit of Loss regarding the loss of the check in question and the return slip.[3]

After trial, petitioner was found guilty as charged. Aggrieved, he appealed to the Court of Appeals. However, on April 28, 1999, the appellate court affirmed the trial court's decision in toto. Petitioner sought reconsideration but it was denied. Hence, this petition.

Petitioner claims that the trial and appellate courts erred in convicting him despite the failure of the prosecution to present the dishonored check during the trial. He also contends that he should not be held liable for the dishonor of the check because it was presented beyond the 90-day period provided under the law. Petitioner further questions his conviction since the notice requirement was not complied with and he was given only three days to pay, not five banking days as required by law. Finally, petitioner asserts that he had already paid his obligation to Cenizal.

Petitioner's contentions have no merit.

## SIGNIFICANCE OF THE 90-DAY PERIOD FOR PRESENTMENT OF THE CHECK

Petitioner asserts that there was no violation of BP 22 because the check was presented to the drawee bank only on December 5, 1991 or 120 days from the date thereof (August 4, 1991). He argues that this was beyond the 90-day period provided under the law in connection with the presentment of the check. We disagree.

Section 1 of BP 22 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 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 this Act.

In Wong v. Court of Appeals,[4] the Court ruled that the 90-day period provided in the law is not an element of the offense. Neither does it discharge petitioner from his duty to maintain sufficient funds in the account within a reasonable time from the date indicated in the check. According to current banking practice, the reasonable period within which to present a check to the drawee bank is six months. Thereafter, the check becomes stale and the drawer is discharged from liability thereon to the extent of the loss caused by the delay.

Thus, Cenizal's presentment of the check to the drawee bank 120 days (four months) after its issue was still within the allowable period. Petitioner was freed neither from the obligation to keep sufficient funds in his account nor from liability resulting from the dishonor of the check.

## APPLICABILITY OF THEBEST EVIDENCE RULE

Petitioner's insistence on the presentation of the check in evidence as a condition sine qua non for conviction under BP 22 is wrong. Petitioner anchors his argument on Rule 130, Section 3, of the Rules of Court, otherwise known as the best evidence rule. However, the rule applies only where the content of the document is the subject of the inquiry. Where the issue is the execution or existence of the document or the circumstances surrounding its execution, the best evidence rule does not apply and testimonial evidence is admissible.[5]

The gravamen of the offense is the act of drawing and issuing a worthless check.[6] Hence, the subject of the inquiry is the fact of issuance or execution of the check, not its content.

Here, the due execution and existence of the check were sufficiently established. Cenizal testified that he presented the originals of the check, the return slip and other pertinent documents before the Office of the City Prosecutor of Quezon City when he executed his complaint-affidavit during the preliminary investigation. The City Prosecutor found a prima facie case against petitioner for violation of BP 22 and filed the corresponding


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information based on the documents. Although the check and the return slip were among the documents lost by Cenizal in a fire that occurred near his residence on September 16, 1992, he was nevertheless able to adequately establish the due execution, existence and loss of the check and the return slip in an affidavit of loss as well as in his testimony during the trial of the case.

Moreover, petitioner himself admited that he issued the check. He never denied that the check was presented for payment to the drawee bank and was dishonored for having been drawn against insufficient funds.

## PRESENCE OF THEELEMENTS OF THE OFFENSE

Based on the allegations in the information,[7] petitioner was charged for violating the first paragraph of BP 22. The elements of the offense are:

1. the making, drawing and issuance of any check to apply to account or for value;

2. 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. subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit, or dishonor of the check for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.[8]

All these elements are present in this case.

Both the trial and appellate courts found that petitioner issued BPI check no. 163255 postdated August 4, 1991 in the amount of P150,000 in consideration of a loan which he obtained from Cenizal. When the check was deposited, it was dishonored by the drawee bank for having been drawn against insufficient funds. There was sufficient evidence on record that petitioner knew of the insufficiency of his funds in the drawee bank at the time of the issuance of the check. In fact, this was why, on maturity date, he requested the payee not to encash it with the promise that he would replace it with cash. He made this request and assurance seven times but repeatedly failed to make good on his promises despite the repeated accommodation granted him by the payee, Cenizal.

## NOTICE OF DISHONOR TO PETITIONERAND PAYMENT OF THE OBLIGATION

The trial court found that, contrary to petitioner's claim, Cenizal's counsel had informed petitioner in writing of the check's dishonor and demanded payment of the value of the check. Despite receipt of the notice of dishonor and demand for payment, petitioner still failed to pay the amount of the check.

Petitioner cannot claim that he was deprived of the period of five banking days from receipt of notice of dishonor within which to pay the amount of the check.[9] While petitioner may have been given only three days to pay the value of the check, the trial court found that the amount due thereon remained unpaid even after five banking days from his receipt of the notice of dishonor. This negated his claim that he had already paid Cenizal and should therefore be relieved of any liability.

Moreover, petitioner's claim of payment was nothing more than a mere allegation. He presented no proof to support it. If indeed there was payment, petitioner should have redeemed or taken the check back in the ordinary course of business.[10] Instead, the check remained in the possession of the payee who demanded the satisfaction of petitioner's obligation when the check became due as well as when the check was dishonored by the drawee bank.

These findings (due notice to petitioner and nonpayment of the obligation) were confirmed by the appellate court. This Court has no reason to rule otherwise. Well-settled is the rule that the factual findings of the trial court, when

affirmed by the appellate court, are not to be disturbed.[11]

WHEREFORE, the petition is hereby DENIED. The April 28, 1999 decision and March 27, 2000 resolution of the Court of Appeals in CA-G.R. CR No. 19601 are AFFIRMED.

Costs against petitioner.

**SO ORDERED.**

Puno, (Chairperson), Sandoval-Gutierrez, Azcuna, and Garcia, JJ., concur.

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[1] Penned by Associate Justice Jainal D. Rasul (retired) and concurred in by Associate Justices Conchita Carpio Morales (now a member of the Supreme Court) and Bernardo P. Abesamis (retired) of the Third Division of the Court of Appeals; rollo, pp. 17-24.

[2] Penned by Associate Justice Bernardo P. Abesamis (retired) and concurred in by Associate Justices Conchita Carpio Morales (now a member of the Supreme Court) and Marina L. Buzon of the Former Third Division of the Court of Appeals; rollo, p. 26.

[3] CA decision, rollo, pp. 17-24.

[4] G.R. No. 117857, 02 February 2001, 351 SCRA 100.

[5] Florenz D. Regalado, Remedial Law Compendium, Volume II, Seventh Revised Edition, 1995, p. 555.

[6] Tan v. Mendez, Jr., 432 Phil. 760 (2002).

[7] The information read:

The undersigned Assistant City Prosecutor accuses PACIFICO B. ARCEO, JR. of violation of Batas Pambansa Blg. 22, committed as follows:

That on or about the 15th day of April 1991, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there, willfully, unlawfully and feloniously make, draw and issue in favor of JOSEFINO CENIZAL a check no. 163255 drawn against the Bank of the Philippine Island[,] a duly established domestic banking institution[,] in the amount in the amount of P150,000.00 Philippine Currency, postdated August 4, 1991, in payment of an obligation, knowing fully well at the time of issue that [he] did not have the payment of such check; that upon presentation of said check to said bank for payment, the same was dishonored for the reason that the drawer thereof, accused Pacifico B. Arceo, Jr., did not have sufficient funds therein, and despite notice of dishonor thereof, accused failed and refused and still fails and refuses to redeem or make good said check, to the damage and prejudice of the said Josefino Cenizal in the amount aforementioned and in such other amount as may be awarded under the provisions of the Civil Code.

CONTRARY TO LAW. (Rollo, pp. 17-18.)

[8] Vaca v. Court of Appeals, 359 Phil. 187 (1998).

[9] Section 2 of BP 22 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 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


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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.

[10] Tan v. Mendez, Jr., supra; Lim v. People, 420 Phil. 506 (2001).

[11] Miranda v. Besa, G.R. No. 146513, 30 July 2004, 435 SCRA 532.


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