

ALFREDO RIGOR, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 144887. November 17, 2004

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition for review on certiorari of the decision of the Court of Appeals, in CA-G.R. CR No. 18855, which affirmed the decision of the Regional Trial Court of Pasig, Branch 163, in Criminal Case No. 86025, convicting petitioner Alfredo Rigor of violation of Batas Pambansa Blg. 22 (the Bouncing Checks Law), and imposing upon him the penalty of imprisonment for six (6) months and ordering him to restitute to the Rural Bank of San Juan the sum of P500,000 and to pay the costs.

The Information[1] against petitioner reads:

That on or about the 16[th] day of November 1989 in the Municipality of San Juan, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously make or draw and issue to Rural Bank of San Juan, Inc. thru its loan officer Carlos N. Garcia, a postdated check to apply on account or for value the check described below:

Check No.

:

165476

Drawn against

:

Associated Bank, Tarlac Branch

In the Amount of

:

P500,000.00

Dated

:

February 16, 1990

Payable to

:

Rural Bank of San Juan

said accused well knowing that at the time of issue on 16 November 1989, he has already insufficient funds or credit with the drawee bank for the payment in full of the face amount of such check and that as of 2 February 1990 his bank accounts were already closed and that check when presented for payment from and after the date thereof, was subsequently dishonored for the reason "Account Closed" and despite receipt of notice of such dishonor, the accused failed to pay said payee the face amount of said check or to make arrangement for full payment thereof during the period of not less than five (5) banking days after receiving notice.

When arraigned, petitioner pleaded not guilty. Thereafter, trial on the merits ensued.

The facts, as narrated by the Court of Appeals, are as follows:

The prosecution evidence was furnished by witnesses Edmarcos Basangan of Rural Bank of San Juan (RBSJ) and Esteban Pasion, employee of the Associated Bank. It was shown that on November 16, 1989, appellant (petitioner herein) applied for a commercial loan from the Rural Bank of San Juan, Inc., at N. Domingo St., San Juan, Metro Manila in the sum of P500,000.00 (Exh. "A"). He signed a promissory note stating that an interest of 24% per annum from its date will be charged on the loan (Exh. "B"). The loan was approved by RBSJ's Bank Manager Melquecedes de Guzman and Controller Agustin Uy. A cashier's check with RBSJ No. 2023424 in the amount of P487,000.00, net proceeds of the loan, was issued to appellant (Exh. "C"). Appellant endorsed, then encashed the check with RBSJ Teller Eleneth Cruz, who stamped thereon the word "paid" (Exh. "C-4"). After appellant received the proceeds, he issued an undated check, Associated Bank Check No. 165476, Tarlac Branch, in the amount of P500,000, payable to RBSJ (Exh. "D").

It was not the bank policy for a borrower to apply for a loan, obtain its approval and its proceeds on the same day. Appellant's case was a special one considering that he is the "kumpare" of the President of RBSJ and he is well-known to all the bank's directors since he, like them, comes from Tarlac.

Appellant failed to pay his loan upon its maturity on December 16, 1989. He personally asked de Guzman for a two-month extension and advised RBSJ to date to February 16, 1990 his Associated Bank check no. 165476. Failing anew to pay, he asked for another two-month extension or up to April 16, 1990. Both requests de Guzman granted. On April 16, 1990, appellant still failed to pay his loan. Basangan and his co-employee, Carlos Garcia, went to Tarlac to collect from appellant the amount of the loan. Appellant's written request for another 30-day extension was denied by de Guzman who instead, sent him a formal demand letter dated April 25, 1990.

On May 25, 1990, Associated Bank check no. 165476 was deposited with PS Bank, San Juan Branch. The check was later returned with the words "closed account" stamped on its face. Associated Bank employee PASION declared that appellant's Current Account No. 1022-001197-9 with Associated Bank had been closed since February 2, 1990. Appellant's balance under the bank's statement of account as of November 16, 1989 was only P859. The most appellant had on his account was P40,000 recorded on November 19, 1989 (Exh. "K").

Basangan and Garcia, in Tarlac, advised appellant of the dishonor of his check. Appellant wrote Atty. Joselito Lim, RBSJ Chairman of the Board, about the loan and arrangements as to the schedule of his payment. His letter was referred to de Guzman, who, in turn, sent to him another demand letter dated September 17, 1990. The letter informed him of the dishonor of his check. De Guzman required him to take the necessary step for the early settlement of his obligation. He still refused to pay.

Appellant denied the charge. He claimed that on November 16, 1989, Agapito Uy and his sister Agnes Angeles proposed to him that he secure a loan from the RBSJ for P500,000. P200,000 of it will be for him and the P300,000 will go to Uy and to his sister to pay unpaid loans of borrowers in their "side banking" activities. For the approval of his loan, Uy told him that appellant can put up his four-door Mercedes Benz as collateral for

the P200,000 loan. The P300,000 will have no collateral. Uy also told him the he (Uy) has complete control of the bank and his Mercedes Benz will be enough collateral for the P500,000.

Appellant agreed to the proposal. He signed a blank loan application form and a promissory note plus a chattel mortgage for his Mercedes Benz. Thereafter, he was told to come back in two days. Uy gave him two Premiere Bank checks worth P100,000 each. He gave one check to his brother Efren Rigor and the other to his sister-in-law for encashment in Tarlac. He issued to Uy a personal check for P500,000 undated. This check was deposited in the bank for encashment in the later part of May, 1990 but it bounced. When demand was made for him to pay his loan, he told Uy to get his Mercedes Benz as payment for P200,000 but Uy refused. Uy wanted him to pay the whole amount of P500,000.[2]

On July 8, 1994, the trial court rendered judgment against petitioner, the dispositive portion of which reads:

WHEREFORE, foregoing premises considered, this Court finds accused Alfredo Rigor guilty beyond reasonable doubt of the crime of Violation of Section 1 of Batas Pambansa Blg. 22 and there being no mitigating or aggravating circumstance on record, imposes upon him the penalty of imprisonment for six (6) months and to restitute to the Rural Bank of San Juan the sum of P500,000.00 and to pay the costs. [3]

The trial court stated the reasons for petitioner's conviction, thus:

In the case at bar, accused admitted having issued Associated Bank Check No. 165476 in the amount of P500,000.00. the check was undated when issued. Records, however, show that it was issued on 16 November 1989 but as it appear[s] now it is dated 16 February 1990. The probable reason must be because upon the maturity of his loan on 16 December 1989, accused asked for extension of two (2) months to pay the same. And the expiration of that two (2) months period is 16 February 1990. Nevertheless, Exhibit "K" for the prosecution including its submarkings show that the highest outstanding amount in the current account of accused with the Associated Bank, Tarlac Branch for the month of November 1989, the month Rigor issued aforesaid check, is only about P40,000.00. Hence, Rigor has no sufficient deposit in the bank to cover the amount of P500,000.00 when he issued Check No. 165476. Therefore, Rigor knowingly issued the same he having no sufficient funds in or credit with the drawee bank in violation of section 1 of [B.P.] Blg. 22.

The defense of the accused that the amount of loan he secured from the Rural Bank of San Juan is only P200,000.00 is of no moment. The fact is he admitted having issued Associated Bank Check No. 165476 in the amount of P500,000.00 and upon its deposit for encashment, the same was dishonored for reason account closed.[4]

Petitioner appealed his conviction to the Court of Appeals, which affirmed the trial court's decision. The dispositive portion of the appellate court's decision reads:

WHEREFORE, the appealed decision is AFFIRMED with the modification that the reference to lack of mitigating or aggravating circumstances should be deleted and disregarded.[5]

Hence, this petition for review on certiorari.

Petitioner raises the following:

1)

Absent the element of knowingly issuing a worthless check entitles the petitioner to acquittal;

2)

Without proof that accused actually received a notice of dishonor, a prosecution for violation of the Bouncing Checks Law cannot prosper;

3)

The Pasig Court below had no jurisdiction to try and decide the case for violation of Batas Pambansa Bilang 22.[6]

Petitioner contends that he did not violate Batas Pambansa Bilang 22 because he told the officers of the complainant bank from the very beginning that he did not have sufficient funds in the bank; he was merely enticed by Agustin Uy, the bank's managing director and comptroller, to obtain the instant loan where he received only P200,000, while Uy took P300,000; and his check was partly used to collateralize an accommodation in favor of Uy in the amount of P300,000.

The contention is without merit.

Petitioner is charged with violation of Section 1 of Batas Pambansa Bilang 22, thus:

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 elements of the offense are: (1) Making, drawing, and issuance of any check to apply on 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.[7]

As found by the Regional Trial Court and the Court of Appeals, all the aforementioned elements are present in this case.

The evidence shows that on November 16, 1989, petitioner applied[8] for a loan in the amount of P500,000 with the Rural Bank of San Juan and on the same day, he issued an undated Associated Bank Check No. 165476[9] worth P500,000 payable to Rural Bank of San Juan in connection with the loan, which check was later dated February 16, 1990.[10] The check was thus issued to apply for value.[11] This shows the presence of the first element of the offense.

The presence of the second element of the offense is shown by petitioner's admission[12] that he knew of the insufficiency of his funds in the drawee bank when he issued the check and he allegedly did not hide the fact from the officials of the Rural Bank of San Juan.

The Court of Appeals correctly ruled, thus:

x x x

Knowledge involves a state of mind difficult to establish. We hold that appellant's admission of the insufficiency of his fund at the time he issued the check constitutes the very element of "knowledge" contemplated in Sec. 1 of BP 22. The prima facie presumption of knowledge required in Sec. 2, Ibid., does not apply because (a) the check was presented for payment only on May 25, 1990 or beyond the 90-day period, which expired on May 16, 1990, counted from the maturity date of the check on February 16, 1990 and (b) an actually admitted knowledge of a fact needs no presumption.

While it is true that if a check is presented beyond ninety (90) days from its due date, there is no more presumption of knowledge by the drawer that at the time of issue his check has no sufficient funds, the presumption in this case is supplanted by appellant's own admission that he did not hide the fact that he had no sufficient funds for the check. In fact, it appears that when he authorized RBSJ to date his check on February 16, 1990, his current account was already closed two weeks earlier, on February 2, 1990.[13]

Petitioner, however, argues that since the officers of the bank knew that he did not have sufficient funds, he has not violated Batas Pambansa Bilang 22.

Assuming arguendo that the payee had knowledge that he had insufficient funds at the time he issued the check, such knowledge by the payee is immaterial as deceit is not an essential element of the offense under Batas Pambansa Bilang 22.[14] The gravamen of the offense is the issuance of a bad check; hence, malice and intent in the issuance thereof are inconsequential.[15]

Moreover, the cited case of *Magno v. Court of Appeals*,[16] which resulted in the acquittal of the accused therein, is inapplicable to petitioner as the facts of said case are different. In *Magno*, the bounced checks were issued to cover a warranty deposit in a lease contract, where the lessor-supplier was also the financier of the deposit.[17] It was a *modus operandi* whereby the supplier of the goods is also able to sell or lease the same goods at the same time privately financing those in desperate need so they may be accommodated.[18] The Court therein held:

To charge the petitioner for the refund of a "warranty deposit" which he did not withdraw as it was not his own account, it having remained with LS Finance, is to even make him pay an unjust "debt," to say the least, since petitioner did not receive the amount in question. All the while, said amount was in the safekeeping of the financing company, which is managed, supervised and operated by the corporation officials and employees of LS Finance. Petitioner did not even know that the checks he issued were turned over by Joey Gomez to Mrs. Teng, whose operation was kept from his knowledge on her instruction. This fact alone evoke suspicion that the transaction is irregular and immoral per se, hence, she specifically requested Gomez not to divulge the source of the "warranty deposit."

It is intriguing to realize that Mrs. Teng did not want the petitioner to know that it was she who "accommodated" petitioner's request for Joey Gomez, to source out the needed funds for the "warranty deposit." Thus it unfolds the kind of transaction that is shrouded with mystery, gimmickry and doubtful legality. It is in simple language, a scheme whereby Mrs. Teng as the supplier of the equipment in the name of her corporation, Mancor, would be able to "sell or lease" its goods as in this case, and at the same time, privately financing those who desperately need petty accommodations as this one. This *modus operandi* has in so many instances victimized unsuspecting businessmen, who likewise need protection from the law, by availing of the deceptively called "warranty deposit" not realizing that they also fall prey to leasing equipment under the guise of a lease purchase agreement when it is a scheme designed to skim off business clients.[19]

This case, however, involves an ordinary loan transaction between petitioner and the Rural Bank of San Juan wherein petitioner issued the check certainly to be applied to the payment of his loan since the check and the loan have the same value of P500,000. Whether petitioner agreed to give a portion of the proceeds of his loan to Agustin Uy, an officer of complainant bank, to finance Uy's and his (petitioner) sister's alleged "side-banking" activity, such agreement is immaterial to petitioner's liability for issuing the dishonored check under Batas Pambansa Bilang 22.

Lozano v. Martinez[20] states:

The gravamen of the offense punished by BP 22 is the act of making and issuing a worthless check or a check that is dishonored upon its presentation for payment. It is not the non-payment of an obligation which the law punishes. The law is not intended or designed to coerce a debtor to pay his debt. The thrust of the law is to prohibit, under pain of penal sanctions, the making of worthless checks and putting them in circulation.

Because of its deleterious effects on the public interest, the practice is proscribed by the law. The law punishes the act not as an offense against property, but an offense against public order.

People v. Nitafan[21] held that to require that the agreement surrounding the issuance of checks be first looked into and thereafter exempt such issuance from the provisions of Batas Pambansa Bilang 22 on the basis of such agreement or understanding would frustrate the very purpose for which the law was enacted.

Further, the presence of the third element of the offense is shown by the fact that after the check was deposited for encashment, it was dishonored by Associated Bank for reason of “closed account” as evidenced by its Check Return Slip.[22] Despite receipt of a notice of dishonor from complainant bank, petitioner failed to pay his obligation.

Petitioner next contends that he did not receive a notice of dishonor, the absence of which precludes criminal prosecution.

The contention is likewise of no merit.

The notice of dishonor of a check may be sent to the drawer or maker by the drawee bank, the holder of the check, or the offended party either by personal delivery or by registered mail.[23] The notice of dishonor to the maker of a check must be in writing.[24]

In this case, prosecution witness Edmarcos Basangan testified that after petitioner’s check was dishonored, he and co-employee Carlos Garcia went to petitioner’s residence in Tarlac to inform him about it. Thereafter, petitioner wrote a letter dated June 28, 1990 to Atty. Joselito Lim, RBSJ chairman of the Board of Directors, proposing a manner of paying the loan. The letter was referred to the bank manager who sent petitioner another demand letter[25] dated September 17, 1990 through registered mail.[26] Said letter informed petitioner of the dishonor of his check for the reason of account closed, and required him to settle his obligation, thus:

x x x

September 17, 1990

Mr. Alfredo Rigor
Victoria, Tarlac

Dear Mr. Rigor,

Please be informed that the check dated February 16, 1990, that you issued purportedly for the payment of your loan, which has already become due and demandable in the sum of PESOS: Five Hundred Thousand Pesos Only (P500,000.00) was dishonored on February 16, 1990 (should be May 25, 1990) for the reason Account Closed (AC).

We trust that you will take the necessary step for the early settlement of your obligation to us.

Very truly yours,

MELQUECEDES DE GUZMAN

The transcript of records[27] shows that petitioner admitted knowledge of the dishonor of his check through a demand letter sent to him. Hence, petitioner cannot pretend that he did not receive a notice of dishonor of his check.

Lastly, petitioner contends that the Regional Trial Court of Pasig had no jurisdiction over this case since no proof has been offered that his check was issued, delivered, dishonored or that knowledge of insufficiency of funds

occurred in the Municipality of San Juan, Metro Manila.

The contention is untenable.

As regards venue of a criminal action, Section 15, paragraph (a), of Rule 110 of the 2000 Revised Rules of Criminal Procedure, which reflects the old rule,[28] provides:

Sec. 15. Place where action is to be instituted. –

(a) Subject to existing laws, the criminal action shall be instituted and tried in the court of the municipality or territory where the offense was committed or where any of its essential ingredients occurred. (Emphasis supplied.)

Violations of Batas Pambansa Bilang 22 are categorized as transitory or continuing crimes.[29] In such crimes, some acts material and essential to the crimes and requisite to their consummation occur in one municipality or territory and some in another, in which event, the court of either has jurisdiction to try the cases, it being understood that the first court taking cognizance of the case excludes the other.[30] Hence, a person charged with a transitory crime may be validly tried in any municipality or territory where the offense was in part committed.[31]

The evidence clearly shows that the undated check was issued and delivered at the Rural Bank of San Juan, Metro Manila[32] on November 16, 1989, and subsequently the check was dated February 16, 1990 thereat. On May 25, 1990, the check was deposited with PS Bank, San Juan Branch, Metro Manila.[33] Thus, the Court of Appeals correctly ruled:

Violations of B.P. 22 are categorized as transitory or continuing crimes. A suit on the check can be filed in any of the places where any of the elements of the offense occurred, that is, where the check is drawn, issued, delivered or dishonored. x x x

The information at bar effectively charges San Juan as the place of drawing and issuing. The jurisdiction of courts in criminal cases is determined by the allegations of the complaint or information. Although, the check was dishonored by the drawee, Associated Bank, in its Tarlac Branch, appellant has drawn, issued and delivered it at RBSJ, San Juan. The place of issue and delivery was San Juan and knowledge, as an essential part of the offense, was also overtly manifested in San Juan. There is no question that crimes committed in November, 1989 in San Juan are triable by the RTC stationed in Pasig. In short both allegation and proof in this case sufficiently vest jurisdiction upon the RTC in Pasig City. [34]

WHEREFORE, the petition is DENIED and the assailed Decision of the Court of Appeals, in CA-G.R. CR No. 18855, is hereby AFFIRMED. Costs against petitioner.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Quisumbing, Ynares-Santiago, and Carpio, JJ., concur.

[1] Records, p. 3.

[2] Rollo, pp. 28-32.

[3] Supra, note 1, at 186.

[4] Id. at 185-186.

[5] Supra, note 2, at 45.

[6] Id. at 15, 19, 20.

[7] Vaca v. Court of Appeals, 298 SCRA 656, 661 (1998), citing Navarro v. Court of Appeals, 234 SCRA 639, 643-644 (1994).

[8] Exh. "A," Records, p. 130.

[9] Exh. "D," Records, p. 133.

[10] TSN, November 17, 1993, pp. 3-14.

[11] See Ngo v. People of the Philippines, G.R. No. 155815, July 14, 2004.

[12] Petition, Rollo, p. 16.

[13] Supra, note 2, at 35-36.

[14] Cruz v. Court of Appeals, 233 SCRA 301, 309 (1994).

[15] Ibid.

[16] 210 SCRA 471 (1992).

[17] Ibasco v. Court of Appeals, 261 SCRA 449, 461 (1996).

[18] Ibid.

[19] Supra, note 16, at 477-478.

[20] 146 SCRA 323, 338 (1986).

[21] 215 SCRA 79, 84 (1992).

[22] Exh. "G," Records, p. 137.

[23] Sia v. People of the Philippines, G.R. No. 149695, April 28, 2004.

[24] Ibid.

[25] Exh. "I," Records, p. 139.

[26] Exh. "I-2," Records, p. 140.

[27] TSN, February 4, 1994, pp. 5-6.

[28] The 1985 Rules on Criminal Procedure, Rule 110, Sec. 15. Place where action is to be instituted. –

(a) Subject to existing laws, in all criminal prosecutions the action shall be instituted and tried in the court of the municipality or territory wherein the offense was committed or any one of the essential ingredients thereof took place.

[29] Lim v. Court of Appeals, 251 SCRA 408, 416 (1995).

[30] Id. at 415-416.

[31] Id. at 416.

[32] TSN, September 15, 1992, pp. 19-21.

[33] TSN, November 10, 1992, p. 8.

[34] Supra, note 2, at 41-43.

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