

DAVID TAN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND CAROLYN ZARAGOZA, RESPONDENTS.

G.R. NO. 145006. August 30, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on Certiorari filed by accused David Tan (petitioner) assailing the Decision[1] of the Court of Appeals (CA) dated February 11, 2000, and the Resolution dated September 4, 2000.

The antecedent facts as accurately narrated by the MTC in its Decision are as follows:

David Tan, the accused herein, stands charged with the crime of Violation of Batas Pambansa Bilang 22 (6 counts) in six (6) separate informations which read as follows:

x x x x x x x x

Records show that the accused, assisted by counsel, entered a plea of Not Guilty, upon being arraigned. Thereafter, these cases were set for trial on the merits, which cases were consolidated and tried jointly.

Carolyn Zaragoza, of legal age, the private complainant, testified among others that: She met the accused through their common friend, Paul Dy while they were having some business negotiations (Witness identified the accused through his pictures which were attached to his bail bond, as said accused failed to appear in court despite notice, said pictures were marked as Exhs. "J", "J-1" and "J-2"); that during her first meeting with the accused, they had a loan transaction which was followed by another loan transaction on June 27, 1994 in the amount of P1 Million, and for which she gave the accused a Metrobank Check No. 001430 in the amount of P950,000.00 (Exhs. "K" & "K-1"), having deducted the 5% interest from said loan. Thereafter, the accused issued several PCIBANK Checks, among which are numbered as follows: x x x When all these checks were deposited at her account with the City Trust Bank, Sucat (Parañaque) Branch, they all bounced for reason "Account Closed." She thereafter tried to contact the accused but he (accused) refused to talk to her. The accused was sent by her lawyer a formal demand through registered mail, for him to pay in cash the aforementioned bounced/dishonored checks but to no avail. In filing this case she engaged the services of a lawyer for P50,000.00 acceptance fee and P1,000.00 per appearance in court; that said accused should pay the corresponding interest of P50,000.00 which had become due since November 1994 other than the principal obligation.

Despite ample opportunity given to the accused to present its evidence, it still failed to do so; hence, the court in its Order dated March 18, 1997, the case was deemed submitted for decision.

On May 27, 1997, the MTC rendered judgment, to wit:

IN VIEW OF THE FOREGOING, this Court finds the accused David Tan guilty beyond reasonable doubt of the crime of Violation of Batas Pambansa Blg. 22 in six (6) counts, and hereby sentences said accused to an imprisonment of six (6) months for each case, and to indemnify the private complainant in the amount of P600,000.00 representing the total amount of the subject checks, plus interest thereon in the amount of

P50,000.00 and attorney's fees in the amount of P20,000.00 and to pay the costs.

SO ORDERED.[2]

Petitioner filed a motion for reconsideration with the MTC wherein he denied receipt of the demand letter[3] dated October 30, 1995 marked as Exhibit "R" and alleged that said evidence was not included in the formal offer of evidence. Said motion for reconsideration was denied. He then appealed the case to the Regional Trial Court of Parañaque, Branch 258 (RTC), with the following assignment of errors:

- The trial court gravely erred in finding appellant guilty beyond reasonable doubt of the crime of Violation of B.P. 22 on six (6) counts (sic);
- The trial court gravely erred in ordering appellant to indemnify the private complainant the value of the six (6) checks in question, plus the sum of P50,000.00 interest and P20,000.00 attorney's fees.[4]

On April 16, 1999, the RTC promulgated its Decision, the dispositive portion of which reads as follows:

WHEREFORE, the Decision of the Court a quo is MODIFIED to read, thus:

IN VIEW OF THE FOREGOING, this Court finds the accused David Tan guilty beyond reasonable doubt of the crime of Violation of Batas Pambansa Bilang 22 in six (6) counts, and hereby sentences said accused to an imprisonment of six (6) months for each case, and to indemnify the private complainant in the amount of P600,000.00 representing the total amount of the subject checks, plus interest thereon at the legal rate from the filing of the Information until fully paid and to pay the costs.

In view of the foregoing the court a quo is directed to issue a Warrant of Arrest against the accused which need not be returned until he has been arrested.

SO ORDERED.[5]

Petitioner moved for reconsideration of the foregoing Decision but per Order dated July 5, 1999, the RTC denied the same.

A Petition for Review was then filed by petitioner with the CA, alleging as follows:

With due respect to the Honorable Regional Trial Court, Branch 258, Parañaque City, it committed reversible error, thus:

- In affirming the trial court's verdict of conviction despite the prosecution's failure to prove the guilt of herein petitioner/accused beyond reasonable doubt.
- In affirming the trial court's verdict awarding damages to private respondent.
- In ordering the trial court to issue warrant of arrest against petitioner despite the fact that its verdict affirming the trial court's decision is not yet final and executory.[6]

The CA dismissed the appeal and affirmed the RTC Decision, ruling that petitioner's guilt had indeed been proven beyond reasonable doubt since the existence of the element that he had knowledge of the insufficiency of funds in or credit with the drawee bank at the time he issued the checks is established by the demand letter dated October 30, 1995 notifying him of the dishonor of the checks he issued. The CA further pointed out that the RTC had already deleted the MTC's award for interest in the amount of P50,000.00 and attorney's fees, hence, on said issue, there is no error that needs to be corrected. As to the order for the issuance of a warrant of arrest, the CA held that "[i]t is a constitutional mandate that once accused is convicted in the Regional Trial Court, bail becomes a matter of discretion upon the court and no longer a matter of right." [7]

Petitioner filed a motion for reconsideration where he argued that no evidentiary weight should be given to the

demand letter dated October 30, 1995 because, although included in the formal offer of evidence by the prosecution, it was not presented during trial for proper identification, hence, it should not have been admitted into evidence even if the defense failed to object to the formal offer thereof. Petitioner insisted that the prosecution did not have proof of notice of dishonor, thus, petitioner's guilt had not been proven beyond reasonable doubt.

The CA denied said motion for reconsideration in its Resolution[8] dated September 4, 2000 holding that since said issue was never raised before the trial court nor before the RTC, the same can no longer be considered by the reviewing court.

Hence, this petition where it is alleged that:

- THE APPELLATE COURT ERRED IN AFFIRMING IN TOTO THE LOWER COURT'S VERDICT OF CONVICTION DESPITE THE PROSECUTION'S FAILURE TO PROVE THE GUILT OF PETITIONER/ACCUSED BEYOND REASONABLE DOUBT MUCH MORE SO CONSIDERING THAT THE PROOF OF NOTICE OF DISHONOR HAS NOT BEEN SATISFACTORILY PROVEN OR IS BASED ON EVIDENCE NOT PROPERLY IDENTIFIED AND OFFERED.

x x x x x x x x

- THE APPELLATE COURT ERRED IN AFFIRMING THE TRIAL COURT'S VERDICT AWARDED DAMAGES TO PRIVATE RESPONDENT.

x x x x x x x x

- THE APPELLATE COURT ERRED IN SUSTAINING THE REGIONAL TRIAL COURT WHICH ORDERED AN INFERIOR COURT TO ISSUE A WARRANT OF ARREST AGAINST PETITIONER DESPITE THE FACT THAT ITS VERDICT AFFIRMING THE INFERIOR COURT'S DECISION IS NOT YET FINAL AND EXECUTORY.[9]

The petition is imbued with merit.

With regard to the first assignment of error, petitioner reiterates his argument that no evidentiary weight should be given to the demand letter dated October 30, 1995 because, although included in the formal offer of evidence by the prosecution, it was not presented during trial for proper identification and should not have been admitted into evidence even if the defense failed to object to the formal offer thereof.

It is quite true that this Court has ruled that objection to the admissibility of evidence, if not made at the time such evidence is offered, shall be deemed waived.[10] However, in all cases where said rule had been applied, the assailed testimonial or object evidence had been duly presented during the course of the trial.

In the present case, a judicious examination of the entire record shows that, indeed, the demand letter dated October 30, 1995 was never presented during the course of the trial.

The transcript of stenographic notes[11] for the hearing held on September 26, 1996 shows that the presentation of the testimony of the bank representative testifying for the prosecution was dispensed with since the opposing parties stipulated that the testimony of a bank representative would prove the following:

x x x the witness will be testifying on the points that at the time the six checks were presented for payment, the first two checks were dishonored for being "Drawn Against Insufficient Funds" while the third up to the sixth checks were dishonored for reason of "account closed" and per records of the bank, the account of the accused was not sufficient to cover the amount of the checks issued by the accused as well as the domestic current account of the accused and we have here the documents, the ledger of the accused which would prove that the

accounts of the accused, both savings and current were not sufficient to cover the checks issued by the accused to the complainant?[12]

The only other prosecution witness is private complainant Carolyn Zaragosa (Zaragosa), whose testimony is to the effect that after the checks bounced, she tried to call up petitioner but the latter refused to talk to her, thus, she was constrained to obtain the services of a lawyer. Nowhere in the transcript of stenographic notes[13] for the hearing held on December 17, 1996, did Zaragosa ever mention the existence of a demand letter dated October 30, 1995. After the direct testimony of Zaragosa where the exhibits marked were only up to Exhibits "Q" and "Q-1," all the subsequent hearings did not push through. Zaragosa was never cross-examined. The defense, despite numerous resetting of hearing dates set for presentation of its evidence, failed to appear during those hearings, prompting the MTC to deem the case submitted for decision without evidence for the defense.

Since there were no other hearings held, it was impossible for the prosecution to have presented and marked as exhibit, the demand letter dated October 30, 1995.

The very first time said demand letter was ever mentioned or appeared in the record was in the formal offer of evidence, supposedly marked as Exhibit "R." How said demand letter came to be marked as Exhibit "R" and inserted into the record truly mystifies this Court. Such circumstance, to say the least, is tainted with irregularity because, as previously mentioned, such document was never presented or identified in any of the hearings. As held in *Pigao v. Rabanillo*, [14] for documentary evidence to be considered by the court, it must have been presented during trial and formally offered.

Although petitioner admits that they failed to submit any opposition to the formal offer of evidence, he nevertheless raised the issue of the non-presentation of the demand letter in his motion for reconsideration filed with the MTC. Evidently, the CA made a mistake in stating that petitioner only raised for the first time on appeal, the issue on the admission of the demand letter into evidence.

Thus, in view of the foregoing significant circumstances, it would be unreasonable to apply to the present case the general rule that objection to the admissibility of evidence, if not made at the time such evidence is offered, shall be deemed waived. As the demand letter was never presented during the course of the trial, petitioner was never alerted to its possible inclusion in the prosecution's formal offer of evidence. Verily, therefore, petitioner's failure to timely object to this piece of evidence (the demand letter) is excusable. The prosecution should not benefit from the anomalous inclusion of the demand letter in the records. Said evidence should be deemed inadmissible and should not have been considered by the MTC in arriving at its judgment.

With the exclusion of the demand letter from the body of evidence presented by the prosecution, the next question is, would the remaining evidence still be sufficient to prove petitioner's guilt beyond reasonable doubt? The answer must be in the negative.

The elements of violation of Batas Pambansa Blg. 22 (B.P. Blg. 22) 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 for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.[15]

In *Ongson v. People*, [16] the Court expounded on the kind of evidence necessary to prove the second element, to wit:

As to the second element, we have held that knowledge involves a state of mind which is difficult to establish, thus the statute itself creates a prima facie presumption that the drawer had knowledge of the insufficiency of

his funds in or credit with the bank at the time of the issuance and on the check's presentment for payment if he fails to pay the amount of the check within five (5) banking days from notice of dishonor.

Sec. 2 of B.P. 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.

For this presumption to arise, the prosecution must prove the following: (a) the check is presented within ninety (90) days from the date of the check; (b) the drawer or maker of the check receives notice that such check has not been paid by the drawee; and (c) the drawer or maker of the check fails to pay the holder of the check the amount due thereon, or make arrangements for payment in full within five (5) banking days after receiving notice that such check has not been paid by the drawee. In other words, the presumption 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 arrangements for its payment. The presumption or prima facie evidence as provided in this section cannot arise, if such notice of nonpayment by the drawee bank is not sent to the maker or drawer, or if there is no proof as to when such notice was received by the drawer, since there would simply be no way of reckoning the crucial 5-day period. Furthermore, the notice of dishonor must be in writing; a verbal notice is not enough.[17] (Emphasis supplied)

Since the prosecution failed to present evidence during trial that a written demand had been sent to and received by petitioner, the second element, that the accused had knowledge of the insufficiency of funds, had not been established. As stated in *Dico v. Court of Appeals*,^[18] "[a] notice of dishonor received by the maker or drawer of the check is thus indispensable before a conviction can ensue. x x x. The lack of a written notice is fatal for the prosecution." Hence, petitioner's conviction for the crime of violation of B.P. Blg. 22 must be set aside.

However, the CA correctly affirmed the RTC's award of the legal rate of interest on the principal amount of P600,000.00. It should be borne in mind that Section 1, Rule 111 of the Rules of Court provides that "[w]hen a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action x x x." Section 1, Rule 133 of the same Rules provides that "[i]n civil cases, the party having the burden of proof must establish his case by a preponderance of evidence." Here, private complainant successfully proved, by preponderance of evidence, that despite all her efforts to collect from petitioner, he failed to pay his indebtedness. Thus, the trial court correctly ordered petitioner to pay private complainant civil indemnity.

Petitioner's argument that private complainant should not have been awarded civil indemnity because she failed to exhaust non-judicial means before resorting to the filing of the criminal case should not be given any consideration as the evidence shows that private complainant indeed tried to demand payment from petitioner out of court but all to no avail.

The RTC was correct in awarding interest on the principal amount at the legal rate which should be 12% per annum from the filing of the Information until fully paid, as this is in keeping with the Court's ruling in *Trade & Investment Development Corporation of the Philippines v. Roblett Industrial Construction Corporation*,^[19] where the Court reiterated that:

- When an obligation, regardless of its source, i.e., law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on 'Damages' of

the Civil Code govern in determining the measure of recoverable damages.

- With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

- When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

x x x x x x x x (Underscoring Ours)

Petitioner also keeps harping on the issue of the MTC's error of awarding attorney's fees, but as correctly pointed out by the CA, the RTC had already deleted such award for attorney's fees. There is, therefore, no longer any need to discuss such aspect.

WHEREFORE, the petition is PARTLY GRANTED. Petitioner is ACQUITTED of the crime of Violation of B.P. Blg. 22. However, petitioner is ORDERED to PAY private complainant Carolyn Zaragosa the amount of P600,000.00 representing the total amount of the subject checks, plus 12% interest thereon from the filing of the Information until fully paid and to pay the costs.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Callejo, Sr. and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justices Eubulo G. Verzola (now deceased) and Martin S. Villarama, Jr.

[2] CA rollo, p. 40.

[3] Records, pp. 91-92.

[4] CA rollo, p. 47.

[5] Id. at 14-15.

[6] CA rollo, p. 6.

[7] Rollo, p. 39.

[8] Rollo, pp. 42-44.

[9] Id. at 15-16, 23-24.

[10] *People v. Enfermo*, G.R. Nos. 148682-85, November 30, 2005, 476 SCRA 515; *Abrenica v. Gonda and De Gracia*, 34 Phil. 739 (1916).

[11] Records, pp. 41-44.

[12] Id. at 43.

[13] Id. at 51-65.

[14] G.R. No. 150712, May 2, 2006.

[15] Ongson v. People, G.R. No. 156169, August 12, 2005, 466 SCRA 656.

[16] Id.

[17] Ongson v. People, supra at 673-675.

[18] G.R. No. 141669, February 28, 2005, 452 SCRA 441, 458.

[19] G.R. No. 139290 November 11, 2005, 474 SCRA 510, 535.

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