

FELICITO ABARQUEZ, PETITIONER, VS. COURT OF APPEALS (SPECIAL FORMER SEVENTH DIVISION) AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 148557. August 07, 2003

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is an appeal from the decision of the Court of Appeals[1] which affirmed with modification the decision of the Regional Trial Court of Dagupan City, Branch 41,[2] finding petitioner Felicito Abarquez guilty beyond reasonable doubt of five (5) counts of violations of Batas Pambansa Blg. 22 or the Bouncing Checks Law.

There is no dispute that petitioner issued in favor of Fertiphil Corporation five (5) checks drawn against Republic Planters Bank, Dagupan Branch. The checks issued are as follows:

Check No.

Date

Amount

2956654

June 5, 1986

P372,000.00

2956655

June 5, 1986

P340,000.00

2954047

June 13, 1986

P 27,600.00

2956660

June 27, 1986

P 58,500.00

2956662

July 1, 1986

P 52,200.00

Likewise, it is undisputed that the checks were dishonored for having been drawn against insufficient funds. Fertiphil demanded that petitioner make good the checks but to no avail, prompting the former to file criminal complaints against him. Consequently, five informations for violation of BP Blg. 22 were filed with the RTC of Dagupan City, Branch 41. The information in Criminal Case No. D-8135[3] reads:

That on or about the 14[th] day of June, 1986, in the City of Dagupan, Philippines, and within the territorial jurisdiction of this Honorable Court, the above-named accused FELICITO ABARQUEZ, did then and there willfully, unlawfully and criminally, draw, issue and deliver to FERTIPHIL CORPORATION, Makati, Metro Manila, a Republic Planters Bank check No. 2956660, Dagupan City Branch, postdated June 27, 1986, in the amount of FIFTY-EIGHT THOUSAND FIVE HUNDRED PESOS (P58,500.00) Philippine currency, in payment of several bags of fertilizer purchased from said corporation, although the said accused knew fully well that his funds deposited in the said bank, if any, were not sufficient to cover its face value, such that when the said check was presented to the drawee bank for payment, the same was dishonored for reason 'DRAWN AGAINST INSUFFICIENT FUNDS' and returned to the complainant and despite notice of dishonor and to make good said check, accused failed and/or refused to pay and/or make good the amount of said check despite the lapse of more than five (5) banking days, to the damage and prejudice of the herein complainant, Fertiphil CORPORATION, represented by NOEL DE LA ROSA, Chief Accountant, in the aforesaid amount of P58,500.00 and other consequential damages.

Contrary to Batas Pambansa Bilang 22.

Except for the dates of commission, the check numbers, the dates and the amounts of said checks, the following informations were similarly worded. In Criminal Case No. D-8136,[4] petitioner issued Check No. 2954047 on May 10, 1986 postdated June 13, 1986 in the amount of P27,600.00. In Criminal Case No. D-8137,[5] petitioner issued Check No. 2956662 on June 16, 1986 postdated July 1, 1986 in the amount of P52,200.00. In Criminal Case No. D-8176,[6] petitioner issued Check No. 2956665 on June 5, 1986 in the amount of P340,000.00 and, in Criminal Case No. D-8177,[7] petitioner issued Check No. 2956654 on June 5, 1986 in the amount of P372,000.00.

After trial on the merits, the court a quo rendered its decision disposing as follows:

WHEREFORE, the accused Felicito Abarquez is found guilty beyond reasonable doubt of violation of Batas Pambansa Bilang 22 as charged in Criminal Case Nos. D-8135, D-8136, D-8137, D-8176 and D-8177 and hereby imposes upon him for each case, the penalty of One (1) year imprisonment and to indemnify Fertiphil Corporation the total amount of P844,500.00 and to pay the costs.

SO ORDERED.[8]

Petitioner appealed to the Court of Appeals, which affirmed with modification the decision of the trial court, thus:

IN VIEW OF THE FOREGOING, the judgment appealed from is AFFIRMED with MODIFICATION. In line with Administrative Circular No. 12-2000 issued by the Supreme Court En Banc on November 12, 2000, judgment is hereby rendered ordering appellant to pay a fine of ONE MILLION SEVEN HUNDRED THOUSAND SIX HUNDRED PESOS (P1,700,600.00) which is double the total amount of the five checks issued by appellant. The penalty of imprisonment is deleted.

SO ORDERED.[9]

Not satisfied with the decision, petitioner is now before us and submits the following issues:

- Whether the trial court and the Court of Appeals erred in convicting petitioner in Criminal Case No. D-8137 though the check subject thereof was dishonored for being drawn against uncollected deposit (DAUD) and not

for being drawn against insufficient funds (DAIF) or closed account (CA) which are the only punishable acts under BP 22;

- Whether the trial court and the Court of Appeals erred in convicting petitioner in Criminal Case Nos. D-8135 and D-8136 despite the unrebutted evidence showing payment thereof after the dishonor by the drawee bank;

- Whether the trial court and the Court of Appeals erred in convicting the accused in Criminal Case Nos. D-8176 and D-8177; and

- Whether the Court of Appeals erred in imposing the penalty of fine in the amount of One Million Seven Hundred Thousand Six Hundred pesos (P1,700,600.00) which is double the total amount of the five checks despite the express provision of BP 22 that the fine imposed shall in no case exceed Two Hundred Thousand pesos (Sec. 1, BP 22).[10]

Petitioner admits having issued the subject checks but insists that he is not liable under BP Blg. 22. Thus, in Criminal Case No. D-8135, Abarquez alleges that although Check No. 2956660 dated June 27, 1986 in the amount of P58,500.00 was dishonored by the bank on July 3, 1986 for insufficiency of funds, the same however was paid on July 28, 1986 via telegraphic transfer through Republic Planters Bank, Dagupan Branch as evidenced by O.R. No. 902575 before any notice of dishonor or demand to pay the same was made.

In Criminal Case No. D-8136, petitioner submits that Check No. 2954047 dated June 13, 1986 in the amount of P27,600.00 was likewise dishonored for insufficiency of funds. He avers however that even before any notice of dishonor or demand to pay the same was made, he already made the corresponding payments by means of a demand draft and telegraphic transfer through Republic Planters Bank, Dagupan Branch on July 17, 1986 and August 19, 1986, as evidenced by O.R. Nos. 902868 and 902672.

As regards Check No. 2956662 in the amount of P52,500.00 which is the subject of Criminal Case No. D-8137, petitioner admits that the same was dishonored, but alleges that he could not be made liable under BP Blg. 22, as the same was dishonored for having been drawn against uncollected deposits and not against insufficiency of funds.

As to Check No. 2956655 issued in the amount of P340,000.00 and Check No. 2956654 for P372,000.00, the subject of Criminal Case Nos. D-8176 and D-8177 respectively, which were dishonored for insufficiency of funds, petitioner argues that he could not be made liable under the Bouncing Checks Law, considering that both checks were not issued for account or for value as they were merely intended to secure the payment of his debt to Fertiphil after reconciliation of their books of account.

In *Meriz v. People*,^[11] it was held that the essential elements of the offense penalized under BP Blg. 22 are:

- The making, drawing and issuance of any check to apply to account or for value;
- The knowledge of the maker, drawer or issuer that at the time of issue he does not have sufficient funds or credit with the drawee bank for the payment of such check in full upon its presentment; and
- 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.

Both the spirit and letter of the Bouncing Checks Law require, for the act to be punished under said law, not only that the accused issued a check that was dishonored, but that likewise the accused was actually notified in writing of the fact of dishonor. The consistent rule is that penal statutes have to be construed strictly against the State and liberally in favor of the accused.^[12]

The *prima facie* presumption that the drawer has knowledge of the insufficiency of funds or credit at the time of

the issuance, or on the presentment for payment, of the check may be rebutted by payment of the value of the check either by the drawer or by the drawee bank within five banking days from notice of the dishonor given to the drawer. The payment thus becomes a complete defense regardless of the strength of the evidence offered by the prosecution. It must be presupposed, then, that the issuer 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.[13]

In *Caras v. Court of Appeals*,^[14] we note that the law provides for a prima facie rule of evidence. Knowledge of insufficiency of funds in or credit with the bank is presumed from the act of making, drawing, and issuing a check payment of which is refused by the drawee bank for insufficiency of funds when presented within 90 days from the date of issue. However, this presumption is rebutted when it is shown that the maker or drawer pays or makes arrangements for the payment of the check within five banking days after receiving notice that such check had been dishonored. Thus, it is essential for the maker or drawer to be notified of the dishonor of her check, so he could pay the value thereof or make arrangements for its payment within the period prescribed by law.

In Criminal Case No. D-8135, petitioner paid the face value of the subject check in the amount of P58,500.00 even before Fertiphil made any formal written demand to pay the face value of the dishonored check.^[15] In fact, petitioner paid the face value of the check on July 28, 1986, a little over three weeks from the time the check was presented for payment on July 3, 1986. Petitioner was only informed through a demand letter dated September 27, 1986, or two months after petitioner paid the face value of the dishonored check.^[16] Petitioner, therefore, cannot be held liable under B.P. 22 in Criminal Case No. D-8135.

In Criminal Case No. D-8136, petitioner paid the face value of Check No. 2954047 in the amount of P27,000.00 by means of Demand Draft and Telegraphic Transfer on July 17, 1986.^[17] In fact, petitioner paid the face value of the dishonored check on the same day the subject check was presented for payment, on July 17, 1986, and before the formal written demand letter was sent to petitioner on September 27, 1986. Petitioner, therefore, cannot also be held liable under B.P. 22 in Criminal Case No. D-8136.

In *Griffith v. Court of Appeals*,^[18] we held that:

While we agree with the private respondent that the gravamen of violation of B.P. 22 is the issuance of worthless checks that are dishonored upon their presentment for payment, we should not apply penal laws mechanically. We must find if the application of the law is consistent with the purpose of and reason for the law. *Ratione cessat lex, et cessat lex.* (When the reason for the law ceases, the law ceases.) It is not the letter alone but the spirit of the law also that gives it life. This is especially so in this case where a debtor's criminalization would not serve the ends of justice but in fact subvert it. The creditor having collected already more than a sufficient amount to cover the value of the checks for payment of rentals, via auction sale, we find that holding the debtor's president to answer for a criminal offense under B.P. 22 two years after said collection, is no longer tenable nor justified by law or equitable considerations.

In Criminal Case No. D-8137, Check No. 2956662 dated July 1, 1986 with a face value of P52,200.00 was dishonored for being drawn against uncollected deposit (DAUD) and not for being drawn against insufficient funds (DAIF). According to petitioner, B.P. 22 punishes the drawer of a check if it is drawn against insufficient funds but not when it is drawn against uncollected deposit. He ratiocinated that at the time the check was presented for payment on July 8, 1986, the balance as shown in the ledger of petitioner's account was more than the face value of the subject check. Even then, he claims that he is not liable since he paid the value of the check within five (5) banking days from knowledge of dishonor.

Petitioner was not being entirely forthright when he claims that Check No. 2956662 was dishonored for being drawn against uncollected deposit (DAUD). On the contrary, the records show that the stated reason for the dishonor of said check was insufficient funds (DAIF).^[19] Indeed, the ledger of the Republic Planters Bank,

Dagupan Branch showed that the subject check had insufficient funds at the time it was drawn on July 1, 1986 as petitioner's account had only a balance of P48,166.196 as of June 30, 1986.[20] Subsequently, when the check was presented for payment on July 8, 1986, the check still had insufficient funds because the check deposit made by petitioner which was supposedly more than enough to cover the face value of the subject check had not been credited by the bank.

In *Tan v. People*,[21] we held that even with uncollected deposits, the bank may honor the check at its discretion in favor of clients, in which case there would be no violation of B.P. Blg. 22. Corollarily, if the bank so desires, it could likewise dishonor the check if drawn against uncollected deposits, in which case the drawer could be held liable for violation of BP Blg. 22.

In Criminal Case Nos. D-8176 and D-8177, petitioner claims that Fertiphil had no right to encash Check No. 2956655 in the amount of P340,000.00 and Check No. 2956654 for P372,000.00 as they were not issued for account or for value. Petitioner avers that he only issued those checks as advance payment to Fertiphil but only after reconciliation of their books of account.

We do not agree. In *Ong v. People*,[22] we held that what the law punishes is the issuance of a bouncing check, not the purpose for which it was issued nor the terms and conditions relating to its issuance. The mere act of issuing a worthless check is *malum prohibitum*, provided the other elements of the offense are properly proved.[23]

The fact that petitioner issued the subject checks knowing the inadequacy of his funds in the bank to cover said checks makes him liable under B.P. 22. As elaborated in *Meriz v. People*: [24]

The Court has consistently declared that the cause or reason for the issuance of the check is inconsequential in determining criminal culpability under BP 22. The Court has since said that 'a check issued as an evidence of debt, although not intended for encashment, has the same effect like any other check' and must thus be held to be 'within the contemplation of BP 22.' Once a check is presented for payment, the drawee bank gives it the usual course whether issued in payment of an obligation or just as a guaranty of an obligation. BP 22 does not concern itself with what might actually be envisioned by the parties, its primordial intention being to instead ensure the stability and commercial value of checks as being virtual substitutes for currency. It is a policy that can easily be eroded if one has yet to determine the reason for which checks are issued, or the terms and conditions for their issuance, before an appropriate application of legislative enactment can be made. The gravamen of the offense under BP 22 is the act of making or issuing a worthless check or a check that is dishonored upon presentment for payment. The act effectively declares the offense to be one of *malum prohibitum*. The only valid query then is whether the law has been breached, i.e., by the mere act of issuing a bad check, without so much regard as to the criminal intent of the issuer.

Therefore, in Criminal Cases Nos. D-8137, D-8176 and D-8177, both the trial court and the Court of Appeals correctly found petitioner guilty beyond reasonable doubt of violation of B.P. 22. The trial court sentenced petitioner to suffer imprisonment of one (1) year for each count, but the Court of Appeals deleted the penalty of imprisonment. The appellate court based its decision on Administrative Circular No. 12-2000, where this Court, adopting the rulings in *Vaca v. Court of Appeals*[25] and *Lim v. People*,[26] authorized the non-imposition of the penalty of imprisonment in B.P. 22 cases subject to certain conditions. However, the Court of Appeals failed to explain the basis for the deletion of the prison sentence imposed by the trial court.

It should be clarified that the non-imposition of the penalty of imprisonment in B.P. 22 cases should be based on the peculiar circumstances set forth in the *Vaca* case, which were cited in *Lim*, more particularly:

Petitioners are first-time offenders. They are Filipino entrepreneurs who presumably contribute to the national economy. Apparently, they brought this appeal, believing in all good faith, although mistakenly, that they had

not committed a violation of B.P. Blg. 22. Otherwise, they could simply have accepted the judgment of the trial court and applied for probation to evade prison term. It would beset serve the ends of criminal justice if in fixing the penalty within the range of discretion allowed by §1, par. 1, the same philosophy underlying the Indeterminate Sentence Law is observed, namely, that of redeeming valuable human material and preventing unnecessary deprivation of personal liberty and economic usefulness with due regard to the protection of social order.[27]

In other words, Administrative Circular No. 12-2000 does not authorize the non-imposition of imprisonment in each and every case of B.P. 22. Having this in mind, the Court issued on February 14, 2001 Administrative Circular 13-2001 which modified Administrative Circular No. 12-2000 by stressing that "the clear tenor of Administrative Circular No. 12-2000 is not to remove imprisonment as an alternative penalty, but to lay down a rule of preference in the application of the penalties provided for in B.P. 22." It is further stated therein:

Thus, Administrative Circular 12-2000 establishes a rule of preference in the application of the penal provisions of B.P. 22 such that where the circumstances of both the offense and the offender clearly indicate good faith or a clear mistake of fact without taint of negligence, the imposition of a fine alone should be considered as the more appropriate penalty. Needless to say, the determination of whether the circumstances warrant the imposition of a fine alone rests solely upon the Judge. Should the Judge decide that imprisonment is the more appropriate penalty, Administrative Circular 12-2000 ought not be deemed a hindrance.

It is, therefore, understood that:

- Administrative Circular 12-2000 does not remove imprisonment as an alternative penalty for violations of B.P. 22;
- The Judges concerned may, in the exercise of sound discretion, and taking into consideration the peculiar circumstances of each case, determine whether the imposition of a fine alone would best serve the interests of justice, or whether forbearing to impose imprisonment would depreciate the seriousness of the offense, work violence on the social order, or otherwise be contrary to the imperatives of justice;
- Should only a fine be imposed and the accused be unable to pay the fine, there is no legal obstacle to the application of the Revised Penal Code provisions on subsidiary imprisonment.[28]

The foregoing notwithstanding, we note that the Court of Appeals rendered the assailed judgment on January 12, 2001, prior to the issuance of Administrative Circular No. 13-2001. Consequently, it was justified in relying merely on Administrative Circular No. 12-2000 in imposing on petitioner the penalty of fine in lieu of imprisonment.

However, the Court of Appeals erred in fixing the amounts of the fine insofar as Criminal Cases Nos. D-8176 and D-8177 are concerned. Section 1 of B.P. 22 explicitly provides that while the violation thereof shall be punished by a fine of not less than but not more than double the amount of the check, such fine shall in no case exceed P200,000.00. Therefore, the appealed decision of the Court of Appeals should be modified. Petitioner should be sentenced to pay a fine in the amount of P104,400.00 in Criminal Case No. D-8137; P200,000.00 in Criminal Case No. D-8176; and P200,000.00 in Criminal Case No. D-8177; with subsidiary imprisonment in case of insolvency in accordance with Article 39 of the Revised Penal Code.

WHEREFORE, in view of the foregoing, the assailed decision of the Court of Appeals in CA-G.R. CR No. 18632 is **AFFIRMED** with **MODIFICATIONS**.

In Criminal Cases Nos. D-8135 and D-8136, petitioner Felicito Abarquez is **ACQUITTED**.

In Criminal Case No. D-8137, petitioner is found **GUILTY** beyond reasonable doubt of violation of Batas

Pambansa Blg. 22, and is sentenced to pay a fine of P104,400.00 and to indemnify Fertiphil Corporation in the amount of P52,200.00.

In Criminal Case No. D-8176, petitioner is found GUILTY beyond reasonable doubt of violation of Batas Pambansa Blg. 22, and is sentenced to pay a fine of P200,000.00, and to indemnify Fertiphil Corporation in the amount of P340,000.00.

In Criminal Case No. D-8177, petitioner is found GUILTY beyond reasonable doubt of violation of Batas Pambansa Blg. 22, and is sentenced to pay a fine of P200,000.00 and to indemnify Fertiphil Corporation in the amount of P372,000.00.

Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., Vitug, Carpio, and Azcuna, JJ., concur.

[1] Penned by Justice Eubulo G. Verzola and concurred in by Justices Marina L. Buzon and Bienvenido L. Reyes.

[2] Penned by Presiding Judge Deodoro J. Sison.

[3] Records, p. 1.

[4] Records, pp. 1-2.

[5] Records, pp. 35-36.

[6] Records, pp. 44-45.

[7] Records, pp. 77-78.

[8] Records, p. 425.

[9] Rollo, pp. 189-190.

[10] Rollo, pp. 18-19.

[11] G.R. No. 134498, 13 November 2001, 368 SCRA 524, 531.

[12] Domagsang v. CA, G.R. No. 139292, 5 December 2000, 347 SCRA 75, 83.

[13] Meriz v. People, see note 8, p. 533.

[14] G.R. No. 129900, 2 October 2001, 366 SCRA 371, 380.

[15] Exhibit "411", Vol. 2, Records, p. 208.

[16] Exhibit "J", Vol. 1, Records, p. 106.

[17] Exhibit "413", Records, p. 209.

[18] G.R. No. 129764, 12 March 2002.

[19] Records, Vol. 2, pp. 38-39.

[20] Exhibit "H", Records, Vol. 1, p. 89.

- [21] G.R. No. 141466, 19 January 2001, 349 SCRA 777, 781.
- [22] G.R. No. 139006, 27 November 2000, 346 SCRA 117, 122-123.
- [23] Caras v. CA, G.R. No. 129900, 2 October 2001, 366 SCRA 371, 380.
- [24] See note 8, pp. 531-532.
- [25] G.R. No. 131714, 16 November 1998, 298 SCRA 656.
- [26] G.R. No. 130038, 18 September 2000, 340 SCRA 497.
- [27] Vaca v. Court of Appeals, *supra*, at 664.
- [28] Administrative Circular No. 13-2001 dated February 14, 2001.

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