

WILLY G. SIA, APPELLEE, VS. PEOPLE OF THE PHILIPPINES, APPELLANT.

G.R. No. 149695. April 28, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

On June 4, 1982, the Consolidated Orient Leasing and Finance Corporation (COLF), as Lessor, and Willy G. Sia, the sole proprietor of WGS Construction Specialists, as Lessee, executed a Lease Agreement,[1] for a period of eighteen (18) months, covering construction equipments described as follows:

ONE (1) UNIT KOMATSU PAYLOADER,
JH65C MODEL, 2-3/4 cu. yd.

Chassis No.: JH65C-0347
Engine No.: 629676

ONE (1) UNIT KOMATSU BULLDOZER MODEL D80A-12

Serial No.: D80A-12-19495
Motor No.: NH220-0969N21515

ONE (1) UNIT YUTANI POCLAIN MODEL YS 650

Serial No.: 1283
Motor No.: 92621[2]

Under the lease agreement, Sia was obliged to deposit with the COLF, upon the execution thereof, the amount of P216,250.00 to guaranty the payment of, inter alia, the agreed rental of P44,980.00 a month payable in the COLF office.[3] On the custody and disposition of the guaranty deposit of P216,250.00, the parties agreed, as follows:

... The Deposit shall be retained by the LESSOR as security for the faithful observance and performance by the LESSEE of the terms and conditions and stipulations in this Agreement and any renewal thereof. The Deposit shall be returned to the LESSEE at the termination of lease without any interest, less such sums which may be due to the LESSOR under the terms of this Agreement without prejudice to whatever cause of action the LESSOR may have against the LESSEE under this Agreement.

2. The provision of paragraph 1 of this Article notwithstanding, if the LESSEE is in default under any of the provisions of this Agreement including the events of Article XV, then the LESSOR may, at its option, apply the Deposit or any part thereof to claims for money or damages it may have against the LESSEE, or to arrearages in the rents and/or the Stipulated Lost Value as the LESSOR may deem necessary and, unless the LESSOR shall exercise its rights and terminate this lease hereby created under sub-paragraph 1.3 of paragraph 1 of Article XV, the LESSEE shall on written demand by the LESSOR pay to the LESSOR the full amount of the Deposit or such amount which shall cover the full amount referred to in Item 6 of the Schedule which shall serve as security and be considered the Deposit in accordance with the provisions of paragraph 1 of this Article.

3. In case the LESSEE gives the LESSOR other collaterals or securities in addition to the Deposit all of such securities or collaterals including the Deposit shall be deemed to secure all claims which are now or may hereafter be owing to the LESSOR by the LESSEE.[4]

The parties further agreed that, in case Sia defaulted in the payment of the agreed rentals or failed to observe the terms and conditions of the Agreement, the following provisions shall apply:

- If the LESSEE fails to pay the rents as provided for in Article III hereof after the same becomes due and payable or any other sums and moneys due and payable under this Agreement or if the LESSEE fails to observe or perform any or all the provisions hereof, or if the LESSOR on reasonable grounds, considers the LESSEE as financially incapable of meeting its obligations herein, then the LESSOR shall, without prejudice to any pre-existing liability of the LESSEE to the LESSOR, have the right to avail of any or all of the following remedies without giving any prior notice or demand to the LESSEE;

1.1

To declare a part or the total amount of the rents and all other moneys, costs and expenses under this Agreement immediately due and payable by the LESSEE;

1.2

To take possession of the property or demand its return.

1.3

To terminate this lease and to demand from the LESSEE the full amount of the Stipulated Loss Value and to claim from the LESSEE compensation for all losses and damages including but not limited to loss of profits.

The remedies provided in sub-paragraph 1.1 and 1.2 of paragraph 1 of this Articles shall not relieve the LESSEE from any other liability under this Agreement, including but not limited to liability for damages.

- Upon the occurrence of any of the following events, the LESSOR may, without any prior notice or demand to the LESSEE, avail of any or all of the remedies under paragraph 1 of this Article, and the effects thereof will be the same as those provided for herein:

2.1

suspension of business, bankruptcy or dissolution of the LESSEE; or

2.2

levy or attachment of all or substantially all of the assets of the LESSEE, regardless of whether or not the same affects the Property, or

2.3

assignment of or compromise affecting all or substantially all of the LESSEE's assets to or with its creditor; or

2.4

If any judgment against the LESSEE shall remain unsatisfied for more than ten (10) days; or

2.5

If the LESSEE shall abandon the Property.[5]

Sia and his wife, Judy, executed a surety agreement in which they bound and obliged themselves, jointly and

severally, to insure the proper and due performance of Sia's obligations to the COLF under the lease agreement.[6]

Sia remitted to the COLF the agreed guaranty deposit of P216,250.00. He also issued and delivered to the COLF, upon the execution of the lease agreement in 1982, eighteen (18) postdated checks in the amount of P44,980.00 each, payable to the COLT, drawn against his account with the Rizal Commercial Banking Corporation (RCBC). Each check was to be encashed or deposited by the COLF in its account on their respective due dates in payment of the monthly rental of the equipment.[7] At the time, the bank had extended credit facilities to the petitioner.[8]

The COLF deposited the checks for the rentals of July to December 1992, and these checks were duly honored by the drawee bank.[9] The COLF thereafter deposited, in its account, Check No. 233533 postdated January 4, 1983 for the amount of P44,980.00 in payment for the January 1983 rental of the equipment.[10] This check was, however, dishonored by the drawee bank for "insufficient funds." The COLF wrote Sia on January 5, 1983, informing the latter of the dishonor of the check and requesting for the replacement thereof.[11]

On March 4, 1983, COLF deposited in its account Check No. 233534 postdated March 4, 1983 in the amount of P44,980.00 in payment for the March 1983 rental.[12] However, the check was, again, dishonored by the drawee bank, this time for the reason "account closed." [13] On March 7, 1983, the COLF wrote Sia informing him of the dishonor of the check.[14] The COLF finally decided to terminate the lease and, on March 10, 1983, wrote Sia informing him that it was terminating the lease agreement.[15] Sia received the letter but did not respond.[16]

Despite the termination of the lease, the COLF still deposited Check No. 233535 in the amount of P44,980.00 on April 4, 1983. The check, which was drawn by Sia against his account with the RCBC in payment for the April 1983 rental, was dishonored by the drawee bank, again for the reason "account closed." On April 6, 1983, COLF once more wrote to Sia, informing him of the dishonor of the check and requesting for a replacement as soon as possible.[17] The COLF did not receive any reply.

On May 17, 1983, the COLF filed a complaint for replevin and damages against Sia with the Regional Trial Court of Makati, docketed as Civil Case No. 3958. It prayed that, after due proceedings, judgment be rendered against Sia in its favor:

- Directing the Sheriff to take over the possession and custody of the following:

- One (1) Unit Komatsu Payloader JH65 C Model 2-3/4 cu. yd.

- Chassis No. JH65C-0347

- Engine No. 629676

- One (1) Unit Bulldozer Model D80A-12 (Komatsu)

- Serial No. D80A-12-19495

- Motor No. NH220-0969N21515

- One (1) Unit Yutani Poclain Model YS 650

- Serial No. 1283

- Motor No. 92621

- Ordering defendant WGS Construction Specialists to pay the plaintiff:

- (a)

- Accrued rental in the amount of ONE HUNDRED SEVENTY-NINE THOUSAND NINE HUNDRED TWENTY PESOS (P179,920.00);

(b)

3% of the above amount as penalty per month from January, 1983, up to the present;

(c)

30% of the above amount as attorney's fees;

(d)

The value of the property, which is FOUR HUNDRED NINETY-FOUR THOUSAND SEVEN HUNDRED EIGHTY PESOS (P494,780.00), and the incidental charges above-mentioned in case the equipment are no longer available or the same have been impaired so substantially that recovery would be futile;

(e)

The costs of this suit; and

- Ordering defendants-sureties Willy G. Sia and Judy A. Sia, jointly and severally, to pay the above-stated amounts to plaintiff in case defendant WGS Construction Specialists should fail to do so.[18]

On June 2, 1983, the court issued an Order in Civil Case No. 3958 granting the plaintiff's plea for a writ of replevin. The court thereafter issued a Writ of Seizure against the plaintiff's property with the requisite bond therefor. Sia received the complaint and summons on October 21, 1983, but failed to file an answer. On motion of the plaintiff, Sia was declared in default.[19] The plaintiff adduced its evidence, ex parte, on February 8, 1984. The sheriff, however, failed to locate the equipment declared in the complaint and failed to seize and take possession thereof.[20]

In the meantime, the COLF charged Sia with violating Batas Pambansa (B.P.) Blg. 22 by reason of the dishonor of the checks postdated January 4, 1983, March 4, 1983 and April 4, 1983, respectively. On August 3, 1984, three Informations were filed with the RTC of Makati charging Sia with violating B.P. Blg. 22, docketed as Criminal Cases Nos. 11865, 11866, and 11867. The accusatory portions of the said Informations are as follows:

That on or about June 1982, in the Municipality of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, said accused did, then and there, willfully, unlawfully and feloniously make, draw and issue in favor of Consolidated Orient Leasing & Finance Corporation represented by Eduardo R. Alvarez, a check numbered 233532, drawn against the Rizal Commercial Banking Corporation (RCBC), a duly established domestic banking institution, in the amount of P44,980.00 Philippine Currency, dated January 4, 1983 in payment of an obligation, knowing fully well at the time of issue that he did not have any sufficient funds in the drawee bank for the payment of such check; that upon presentation of said check to the said bank for payment the same was dishonored for the reason that the drawer thereof accused Willy G. Sia 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 Consolidated Orient Leasing & Finance Corporation is (sic) the aforesaid sum.

Contrary to law.

Crim. Case No. 11865

That on or about June 1982, in the Municipality of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable court, said accused did, then and there, willfully, unlawfully and feloniously make, draw and issue in favor of Consolidated Orient Leasing & Finance Corporation represented by Eduardo R. Alvarez, a check numbered 233534 drawn against the Rizal Commercial Banking Corporation (RCBC), a duly established banking institution, in the amount of P44,980.00 Philippine Currency, dated March 4, 1983 in payment of an obligation, knowing fully well at the time of issue that he did not have any funds in the drawee

bank for the payment of said check, that upon presentation of said check to the drawee bank the same was dishonored for the reason that the drawer thereof, accused Willy G. Sia did not have 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 Consolidated Orient Leasing & Finance Corporation in the aforesaid sum.

Contrary to law.

Crim. Case No. 11866

That on or about June 1982, in the Municipality of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, said accused did, then and there, willfully, unlawfully and feloniously make, draw and issue in favor of Consolidated Orient Leasing & Finance Corporation represented by Eduardo R. Alvarez, a check numbered 233535, drawn against the Rizal Commercial Banking Corporation (RCBC), a duly established domestic banking institution, in the amount of P44,980.00 Philippine Currency, dated April 4, 1983 in payment of an obligation, knowing fully well at the time of issue that he did not have any funds in the drawee bank for the payment of such check; that upon presentation of said check to said bank for payment the same was dishonor (sic) for the reason that the drawee thereof, accused Willy G. Sia did not have 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 Consolidated Orient Leasing & Finance Corporation in the aforesaid sum.

Contrary to law.

Crim. Case No. 11867[21]

When arraigned, Sia, assisted by counsel, entered a plea of not guilty.

The Case for Petitioner Sia

Sia testified that, upon the execution of the lease agreement in 1982, he drew and delivered to COLF eighteen (18) postdated checks drawn against his account with the RCBC, each check in the amount of P44,980.00 corresponding to the rental for the leased property.[22] Every month, as each check fell due, he informed the COLF whether to deposit or encash the checks, or to apply the current deposit for the payment of the rental due.[23] He made good the first six postdated checks but failed to fund the ensuing checks for January, March, and April 1983. He reasoned that his financial condition was adversely affected by the implementation of his project in Nueva Vizcaya and the RCBC had since then refused to give him credit.[24] To facilitate payment of the checks, Sia then asked COLF, through its assistant manager, Go Hong Ko, to apply his guaranty deposit for the postdated checks to cover the rentals from January 1983. Go Hong Ko told Sia that there would be no problem as his guaranty deposit of P216,250.00 was still intact and more than enough to answer for the said checks.[25] Thus, Sia no longer funded his account with the drawee bank, thinking that his guaranty deposit would answer for the checks.

Sia alleged that he never received the January 5, 1983, March 7, 1983 and April 6, 1983 letters of the COLF, and that the latter never notified him that the checks postdated January 4, 1983, March 3, 1983 and April 4, 1983, respectively, were deposited with the drawee bank, and that the same were subsequently dishonored by the drawee bank. He was surprised when he learned about the charges against him for violation of B.P. Blg. 22 when he received a subpoena from the Office of the City Prosecutor of Makati, requiring him to submit his counter-affidavit to the criminal complaint of the COLF.[26] Furthermore, he was not informed why his guaranty deposit was not applied to the payment of the three dishonored checks.[27]

In the meantime, on March 12, 1984, the RTC rendered judgment in Civil Case No. 3958, in favor of COLF, the dispositive portion of which reads, as follows:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff as follows:

(1)

Ordering defendant WGS Construction Specialists to pay plaintiff:

a)

P179,920.00, representing accrued rentals;

b)

3% of the above amount as penalty per month from January, 1983, up to May 17, 1983;

c)

P5,000.00 as and for attorney's fees;

d)

P494,780.00, representing the actual value of the leased property not recovered, plus interest thereon at the legal rate computed from date hereof;

e)

The costs of suit.

(2)

The guaranty deposit of P216,250.00 made by said defendant shall be applied to the satisfaction of the aforementioned amounts.

(3)

Ordering defendants Willy G. Sia and Judy A. Sia, jointly and severally, to pay plaintiff the remaining unpaid balance of the judgment debt which defendant WGS Construction Specialists should fail to satisfy.

SO ORDERED.[28]

The decision became final and executory, Sia having failed to appeal the decision.

After due trial, the trial court rendered judgment, on November 17, 1995, finding Sia guilty beyond reasonable doubt of the crime charged in Criminal Cases Nos. 11865 and 11866 and acquitting him of the crime charged in Criminal Case No. 11867. The decretal portion of the decision reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding accused WILLY G. SIA GUILTY beyond reasonable doubt for violation of Batas Pambansa Bilang 22 in Criminal Cases Nos. 11865 and 11866 and is sentenced to suffer imprisonment of one (1) year and; to pay a fine of P50,000.00 for each case; and to indemnify complainant the sum of P89,900.00 with legal interest from the filing of these cases on August 31, 1984 until payment is made.

Anent Criminal Case No. 11867, for the reason aforementioned, judgment is hereby rendered ACQUITTING accused WILLY G. SIA of the crime charged.

No costs.[29]

Sia filed a motion for the reconsideration of the decision contending that:

I

THE DECISION OF THIS HONORABLE COURT IN CIVIL CASE NO. 3958 (REGIONAL TRIAL COURT BRANCH CXXXII) DATED MARCH 12, 1984 WHICH WAS RENDERED BEFORE THE INFORMATIONS IN THE ABOVE-ENTITLED CASES WERE FILED IN COURT CLEARLY SHOW THAT THE OBLIGATION OF THE ACCUSED WAS ALREADY SETTLED AND PAID THRU THE SECURITY DEPOSIT ALREADY MADE AND IN THE POSSESSION OF THE ALLEGED PRIVATE COMPLAINANT.

II

THE OBLIGATION, IF ANY, OF THE ACCUSED IN THE CASES AT BAR WAS ALREADY PAID OR EXTINGUISHED BY VIRTUE OF THE LAW ON COMPENSATION.

III

THE DECISION OF THIS HONORABLE COURT REQUIRING THE ACCUSED TO PAY AGAIN THE VALUE OF THE CHECKS DESPITE THE FINAL AND EXECUTED DECISION OF THIS HONORABLE COURT IN CIVIL CASE NO. 3958 IS TANTAMOUNT TO UNJUST ENRICHMENT ON THE PART OF THE PRIVATE COMPLAINANT.

IV

THIS HONORABLE COURT HAS NO JURISDICTION TO RULE ON THE CIVIL ASPECT OF THE TWO (2) CRIMINAL CASES.[30]

On June 4, 1996 the Court partially granted the motion and modified its decision, as follows:

WHEREFORE, the Motion for Reconsideration is GRANTED, in so far as that portion ordering accused Willy G. Sia to indemnify the private complainant the sum of P89,900 with legal interest from the filing of these cases on August 31, 1984 until payment is made, is concerned. The Decision of this Court dated November 17, 1995 finding accused Willy G. Sia GUILTY beyond reasonable doubt for violation of Batas Pambansa Bilang 22 in Criminal Cases Nos. 11865 and 11866 and is sentenced to suffer imprisonment of one (1) year and to pay a fine of P50,000.00 for each case STANDS.

SO ORDERED.[31]

On appeal to the Court of Appeals, Sia (the appellant therein), ascribed the following errors to the trial court:

I

THE TRIAL COURT ERRED IN NOT FINDING THAT THE ACCUSED'S DEPOSIT OF P216,250.00 IN THE POSSESSION OF THE PRIVATE COMPLAINANT WAS TO BE APPLIED OR COULD BE APPLIED TO THE RENTALS.

II

THE TRIAL COURT ERRED IN NOT FINDING THAT THE ACCUSED HAD TOLD THE PRIVATE COMPLAINANT TO APPLY THE P216,250.00 TO THE PAYMENT OF THE RENTALS STARTING WITH THE MONTH OF JANUARY 1983.

III

THE TRIAL COURT ERRED IN NOT FINDING THAT THE ACCUSED HAD ACTUALLY APPLIED THE P216,250.00 TO THE PAYMENT OF THE RENTALS FOR JANUARY AND MARCH 1983.

IV

THE TRIAL COURT ERRED IN NOT FINDING THAT THERE HAD BEEN NO NOTICE OF DISHONOR

GIVEN TO THE ACCUSED.

V

THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY OF VIOLATING BATAS PAMBANSA BLG. 22.[32]

On May 31, 2001, the appellate court rendered judgment affirming the decision of the RTC, as amended, thus:

WHEREFORE, the instant appeal is hereby DISMISSED, and the decision appealed from, as modified in the order dated June 4, 1996, is hereby AFFIRMED in toto.

No pronouncement as to costs.

SO ORDERED.[33]

The appellate court held that it was of no moment whether the COLF notified Sia of the dishonor of the checks by letter, or if Sia failed to receive such notices. Sia admitted when he testified that he knew that his funds with the drawee bank were insufficient when the subject checks fell due, and that he failed to fund the same. The court also held that the application of Sia's guaranty deposit to the amounts due under the subject checks was optional on the part of the COLF.

Sia, now the petitioner, comes to this Court contending as follows:

I

NOTICE OF DISHONOR IS NECESSARY IN A CRIMINAL CASE FOR VIOLATION OF BATAS PAMBANSA BLG. 22.

II

SUCH NOTICE OF DISHONOR IS ALL THE MORE NECESSARY IN THE INSTANT CASE BECAUSE THE SUBJECT CHECKS SHOULD NOT HAVE BEEN DEPOSITED BY THE PRIVATE COMPLAINANT.

III

THE PROSECUTION WAS NOT ABLE TO PROVE BEYOND REASONABLE DOUBT THAT NOTICE OF DISHONOR HAD BEEN GIVEN TO THE PETITIONER.

IV

THE PETITIONER SHOULD HAVE BEEN ACQUITTED FOR FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[34]

The petitioner asserts that a notice or letter informing him of the dishonor of the subject checks so as to give him a period of five (5) banking days from receipt thereof to pay the amounts of the checks, or to make arrangements with the drawee bank for the payment of the said checks are mandatory requirements. He argues that the notice or letter informing him of the dishonor of the subject checks, as well as the lapse of the five-day period, are conditions precedent, without which he cannot be convicted, much less charged under Section 1, first paragraph of B.P. Blg. 22.

The petitioner contends that the failure of the COLF or the drawee bank to notify him of the dishonor of the subject checks deprived him of a chance to pay the amounts thereof. He asserts that his admission[35] did not relieve the prosecution of its burden to prove the following: (a) that the said checks were deposited by COLF in its account; (b) that the said checks were dishonored by the drawee bank either for insufficiency of funds or that his

account with the said bank was already closed; (c) that the petitioner was notified in writing of the dishonor of the said checks; and, (d) that five banking days from such notice of dishonor had already elapsed, without him paying the amounts due or making arrangements with the drawee bank for the payment of the said checks. The petitioner avers that this did not amount to an admission that when he issued and delivered the subject checks to the COLF, he did not have sufficient funds in his account with the drawee bank to answer for the amounts of the checks and that he had knowledge thereof.

The petitioner further avers that there was no factual basis for his indictment for violation of Section 1, first paragraph of B.P. 22 because he and the COLF, thru Go Hong Ko, had agreed that the latter would apply his guaranty deposit of P216,250.00 to the payment of the subject checks, amounting to only P99,960.00. The petitioner cited the ruling of this Court in *Ting v. Court of Appeals*[36] to support his plea for a reversal of the decisions of the appellate court and the trial court.

In its Comment on the petition, the Office of the Solicitor General asserts that contrary to the petitioner's contention, the latter's admission relieved the prosecution of its burden to prove that the petitioner had knowledge of the insufficiency of his funds in the drawee bank when he drew and issued the subject checks in 1982 to COLF. The OSG also avers that under the lease agreement, it was optional on the part of COLF to apply the petitioner's guaranty deposit to the payment of his back rentals and the subject checks. It behooved the petitioner to fund the subject checks on due dates thereof to avoid his indictment for violation of B.P. Blg. 22.

The petition is meritorious.

Section 1, B.P. Blg. 22 under which the petitioner was charged in the RTC reads:

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 act sought to be prevented by the law is the act of making and issuing a check with the knowledge that, at the time of issue, the drawer issuing the check does not have sufficient funds in or credit with the bank for payment and the check was subsequently dishonored upon presentment. What the law punishes is the issuance of a worthless check and not the purpose for which such check was issued nor the terms or conditions relating to its issuance.[37] The thrust of the law is to prohibit, under pain of penal sanctions, the making of worthless checks and putting them in circulation.[38] The crime is one against public order and is *malum prohibitum*. The law is intended to safeguard the interests of the banking system and the legitimate checking account user.[39] It is not intended nor designed to coerce a debtor to pay his debt,[40] nor to favor or encourage those who seek to enrich themselves through manipulation and circumvention of the purpose of the law.[41]

This Court has held that in criminal cases involving violations of Section 1, B.P. Blg. 22, the prosecution is burdened to prove beyond reasonable doubt the following elements:

- The accused makes, draws or issues any check to apply to account or for value.
- The check is subsequently dishonored by the drawee bank for insufficiency of funds or credit; or it would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment.

- The accused knows at the time of the issuance that he or she does not have sufficient funds in, or credit with, drawee bank for the payment of the check in full upon its presentment.[42]

To hold a person liable, the prosecution must prove that the accused knew, at the time of issue, that he does not have sufficient funds in or credit for the full payment of such check upon its presentment. The prosecution must rely on the strength of its own evidence and not on the weakness of the evidence of the accused.[43]

Knowledge on the part of the drawer or maker of the insufficiency of funds or credit in the drawee bank for the payment of a check upon its presentment is an essential element of the offense. This element involves a state of the mind of the drawer or maker of the check which is difficult for the prosecution to prove. To ease the burden of the prosecution, Section 2 of B.P. Blg. 22 created a prima facie presumption of knowledge on the part of the drawer or maker of the check of the insufficiency of his fund in the drawee bank, thus:

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.

However, for the presumption to arise, the prosecution must adduce evidence to prove the factual basis for its onset, namely, (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 drawer; and, (c) the drawer or maker of the check fails to pay the holder of the check the amount due thereon, or makes arrangements for payment in full within five (5) banking days after receiving notice that such check has not been paid by the drawer. With the onset of the presumption, the burden of evidence is shifted on the drawer/maker of the check to prove that, when he issued the subject check, he had no knowledge that he had insufficient funds in the drawee bank to answer for the amount due. The notice of dishonor 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. The drawer or maker of a check has a right, under the law, to demand that a written notice of dishonor be sent to and received by him to enable him to avoid indictment for violation of B.P. Blg. 22.[44]

Construing Section 2 of the said law, we held in *Domagsang v. Court of Appeals, et al.*[45] that the notice of dishonor of a check to the maker must be in writing. A mere oral notice to the drawer or maker of the dishonor of his check is not enough:

Petitioner counters that the lack of a written notice of dishonor is fatal. The Court agrees.

While, indeed, Section 2 of B.P. Blg. 22 does not state that the notice of dishonor be in writing, taken in conjunction, however, with Section 3 of the law. i.e., “that where there are no sufficient funds in or credit with such drawee bank, such fact shall always be explicitly stated in the notice of dishonor or refusal,” a mere oral notice or demand to pay would appear to be insufficient for conviction under the law. The Court is convinced that both the spirit and letter of the Bouncing Checks Law would require for the act to be punished thereunder not only that the accused issued a check that is dishonored, but that likewise the accused has actually been 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.[46]

Unless and until the drawer or maker of the check receives a written notice of dishonor of the check, or where there is no proof as to when such notice of dishonor was received by the drawer or maker, the five-day period within which the drawer or maker has to pay the amount due or made arrangements with the drawee bank for the payment of the check, cannot be determined. In such case, the prima facie presumption cannot arise.[47]

Emphasizing the intent of the State in providing a five-day banking period from notice of dishonor of a check within which the maker or drawer may pay the amount due or make arrangements with the drawee bank for its payment, the Court declared in *Lao v. Court of Appeals*:^[48]

It has been observed that the State, under this statute, actually offers the violator “a compromise by allowing him to perform some act which operates to preempt the criminal action, and if he opts to perform it the action is abated.” This was also compared “to certain laws allowing illegal possessors of firearms a certain period of time to surrender the illegally possessed firearms to the Government, without incurring any criminal liability.”^[49]

If the maker or drawer pays, or makes arrangements with the drawee bank for the payment of the amount due within the five-day period from notice of the dishonor given to the drawer, it is a complete defense; the accused may no longer be indicted for violation of Section 1, B.P. Blg. 22. If he is so indicted, he may set up the payment of the amount due as a complete defense.^[50]

In this case, the prosecution failed to prove that the COLF or the drawee bank ever sent any written notice of dishonor of the subject checks to the petitioner and that the latter received the same. The only witness presented by the prosecution to prove its case against the petitioner was Eduardo R. Alvarez, who was in charge of the COLF collection department. He testified that he signed the letters dated January 5, 1983^[51] and July 7, 1983,^[52] addressed to the petitioner notifying the latter of the dishonor of the subject checks. However, Alvarez admitted that, after signing the said letters, he had the same transmitted to the collection department and had no personal knowledge whether the said letters were sent to and actually received by the petitioner. The collection department merely told him that the letters were sent to the petitioner.

Q

You also talk of demand letters dated January 5, March 7 and April 6, all in the year 1983, which are marked Exhibits E, F, and G, respectively. Were you the one who prepare (sic) these demand letters?

A

No, sir, these were prepared and signed by our collection department.

Q

And you have no actual knowledge when these demand letters were prepared by one of your department?

A

No, sir, I gave instructions to prepare the demand letters.

Q

Who sent these demand letters to Mr. Sia?

A

The collection department was the one who sent the demand letter to Mr. Sia.

Q

Why do you know that it was sent by the collection department?

A

Because I gave instruction to that department.

Q

Did you ask the collection department that these demand letters be sent to Mr. Sia.

A

Yes, sir.

Q

What did your collection department said?

A

It was sent.

Q

Why do you know that it was sent by your collection department?

A

The collection department said the letters were sent and received by Mr. Sia.

Q

This collection department simply told you that this was sent to Mr. Sia?

A

Yes, sir.

Q

All these demand letters?

A

Yes.[53]

There is no evidence on record how the letters were, in fact, sent to the petitioner, whether by personal delivery or by registered mail. The COLF did not adduce in evidence the complaint for replevin and damages in Civil Case No. 3958 against the petitioner. Furthermore, the trial court did not declare in its decision that the COLF sent notices of dishonor of the subject checks to the petitioner, and that the latter received such notices of dishonor.

The trial court convicted the petitioner of the crime of violating Section 1, B.P. Blg. 22, relying principally on the petitioner's admission that, when Check No. 233533 became due, his funds in the drawee bank were insufficient to pay for the amount of the check; that his account with the drawee bank had already been closed when COLF deposited Check No. 233534; and, that he no longer funded his account to pay for the amounts of the ensuing checks. The trial court concluded that on the basis of the said admission, there was no longer a need for the prosecution to prove that the petitioner received notices or letters notifying him of the dishonor of the subject checks after the dishonor thereof. The appellate court agreed with the trial court.

We do not agree.

Indeed, the petitioner admitted when he testified in his defense, that, on the due date of Check No. 233533, he was aware that he did not have funds in the drawee bank for the payment of the said check, and that when Check No. 233534 fell due on March 4, 1983, the bank had already closed the said account. This, however, did not amount to

an admission that, when he issued the said checks in June 1982, he had known that he had no funds in the drawee bank sufficient to pay for the amounts of the checks. In fact, the petitioner testified that in 1983, he was granted credit facilities by the drawee bank and that the postdated checks he issued to the COLF for the rentals due from June to December, 1982 had been duly honored. The drawee bank subsequently closed the petitioner's account only because the latter had suffered financial reverses.

Assuming that the petitioner had knowledge that he had insufficient funds in the drawee bank when he issued the questioned checks, he could still have paid the checks or made arrangements with the drawee bank for the payment of the said checks if he had been duly notified of their dishonor. In not sending a notice or letter of dishonor to the petitioner as required by law, the COLF deprived the petitioner of his right to avoid prosecution for violation of B.P. Blg. 22.

IN LIGHT OF THE FOREGOING, the petition is GRANTED. The Decision of the Court of Appeals affirming with modifications the Decision of the Regional Trial Court in Criminal Cases Nos. 11865 and 11866 are REVERSED and SET ASIDE. The petitioner is ACQUITTED of the crimes charged in said cases for insufficiency of evidence.

SO ORDERED.

Puno, (Chairman), Quisumbing, Austria-Martinez, and Tinga, JJ., concur.

[1] Exhibit A.

[2] Exhibit 1-A.

[3] Ibid.

[4] Exhibit A-2 (Emphasis ours).

[5] Exhibit A.

[6] Records, p. 264.

[7] TSN, 18 May 1995, p. 8.

[8] Id. at 10-11.

[9] Id. at 9.

[10] Exhibit 1-A.

[11] Exhibit E.

[12] Exhibit D.

[13] Ibid.

[14] Exhibit F.

[15] Ibid.

[16] Id.

[17] Exhibit "G."

[18] Records, pp. 219-220.

[19] Id. at 263.

[20] Id..

[21] Id. at 246-247.

[22] TSN, 18 May 1995, p. 8.

[23] Id. at 8-9.

[24] Id. at 10-11.

[25] Id. at 12-13.

[26] Id. at 15-16.

[27] Id. at 19-20.

[28] Records, p. 226.

[29] Id. at 251.

[30] Id. at 253-254.

[31] Id. at 277.

[32] CA Rollo, pp. 42-43.

[33] Id. at 119.

[34] Rollo, p. 16.

[35] The petitioner testified that on the due date of the first check, Check No. 233533 dated January 4, 1983, he did not have sufficient fund in the drawee bank to pay for the amount thereof; and that on the due date of the second check, Check No. 233534, his account was already closed.

[36] 344 SCRA 551 (2000).

[37] Lagman v. People, 371 SCRA 686 (2001).

[38] Lozano v. Martinez, 146 SCRA 323 (1986).

[39] Griffith v. Court of Appeals, 379 SCRA 94 (2002).

[40] Lozano v. Martinez, *supra*.

[41] Griffith v. Court of Appeals, *supra*.

[42] King v. People, 319 SCRA 654, 666 (1994).

[43] Id.

[44] Lao v. Court of Appeals, 274 SCRA 375 (1997).

[45] 347 SCRA 75 (2000).

[46] Id. at 83-84.

[47] Danao v. Court of Appeals, 358 SCRA 450 (2001).

[48] Supra.

[49] Id. at 594.

[50] Id., Citing Navarro v. Court of Appeals, 234 SCRA 639 (1994).

[51] Exhibit "E."

[52] Exhibit "F."

[53] TSN, 22 May 1985, pp. 32-34.

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