

FRANCISCO M. BAX, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND ILYON INDUSTRIAL CORPORATION, RESPONDENTS.

G.R. No. 149858. September 05, 2007

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Challenged in the instant Petition for Review on Certiorari[1] are the Decision[2] of the Court of Appeals dated December 19, 2000 and its Resolution dated September 5, 2001 in CA-G.R. CR No. 23356 affirming in toto the Decision dated December 14, 1998 of the Regional Trial Court (RTC), Branch 70, Pasig City declaring petitioner guilty of nine (9) counts of violations of Batas Pambansa Bilang 22 (B.P. 22), otherwise known as the Bouncing Checks Law.

On August 16, 1994, Francisco M. Bax, petitioner, was charged with violations of B.P. 22 (10 counts) before the Metropolitan Trial Court (MeTC), Branch 71, Pasig City,[3] docketed as Criminal Cases Nos. 14354 to 14363.

The Information in Criminal Case No. 14354 reads:

That on or about the 13[th] day of March 1994 in the Municipality of Pasig, 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 Ilyon Industrial Corporation to apply on account or for value the check described below:

Check No. : AGRO94438

Drawn against : United Coconut Planters Bank

In the amount : P47,250.00

Dated/Postdated : March 13, 1994

Payable to : Ilyon Industrial Corp. rep. by Benedict Tan

said accused well knowing that at the time of issue he did not have sufficient funds in or credit with the drawee bank for the payment in full of the face amount of such check upon its presentment, which check could have been dishonored for insufficiency of funds had not the accused, without any valid reason, ordered the bank to "Stop Payment", and despite receipt of notice of such dishonor, the accused failed to pay said payee the face amount of the said check or made arrangement for full payment thereof within five (5) banking days after receiving notice.

CONTRARY TO LAW.

Except as to the numbers and dates of the other nine checks issued by petitioner, and the reason for their dishonor (drawn against insufficient funds), the Informations in Criminal Cases Nos. 14355-14363 and the above Information are similarly worded.

The facts are:

Sometime in October 1993, petitioner, for and in behalf of Vachman Industries, Inc. (VACHMAN), purchased 80 metric tons of chemical compounds, known as caustic soda flakes, from Ilyon Industrial Corporation (ILYON), respondent.

On December 6, 1993, ILYON delivered 27 metric tons of caustic soda flakes to petitioner. Again in January 1994, ILYON delivered another 27 metric tons of caustic soda flakes to petitioner. In payment therefor, petitioner issued ten (10) checks amounting to P464,750.00 in favor of ILYON.

Upon presentment of the checks to the United Coconut Planters Bank for payment, they were dishonored for being drawn against insufficient funds. Despite ILYON's demand, petitioner failed to make good the bounced checks for the reason that he has been encountering financial problems. As a result, ILYON caused the filing of ten (10) Informations against petitioner.

After hearing on March 27, 1998, the MeTC rendered a Decision finding petitioner guilty as charged, thus:

WHEREFORE, in view of all the foregoing, the Court hereby renders judgment finding the accused, Francisco Bax, "GUILTY" of the crime of Violations of Batas Pambansa Bilang 22, (10) counts, and accordingly sentences him to suffer imprisonment of six (6) months in each case and to pay the offended party the sum of P464,750.00, the amount of all the ten (10) checks and to pay the cost.

SO ORDERED.

On appeal, the RTC, Branch 70, Pasig City, presided by Judge Pablito Rojas, rendered a Joint Decision dated December 14, 1998 affirming with modification the MeTC Decision, thus:

WHEREFORE, in view of the foregoing, the Decision of the Court a quo is hereby AFFIRMED with the following MODIFICATIONS:

- (a) accused is ACQUITTED in Criminal case No. 14354;
- (b) the sentence imposed on accused in Criminal Case Nos. 14355 to 14363 of six (6) months imprisonment for each is hereby increased to ONE (1) YEAR in each case; and
- (c) the total amount of indemnity to be paid by the accused to the complainant-corporation is PHP 417,500.00.

SO ORDERED.

On appeal,[4] the Court of Appeals in CA-G.R. CR No. 23356 rendered its Decision on December 19, 2000 affirming in toto the RTC Decision. Petitioner filed a motion for reconsideration but it was denied by the appellate court in a Resolution dated September 5, 2001.

Hence the instant petition.

The basic issue is whether the prosecution was able to prove the guilt of petitioner by evidence beyond reasonable doubt.

The Solicitor General contends that the Court of Appeals did not err in affirming the RTC Joint Decision sustaining that of the MeTC because all the elements of violation of B.P. 22 are present in each case. Petitioner, on the other hand, maintains that since he did not receive a written notice of dishonor, not all the elements of the offense have been established by the prosecution. Accordingly, he should be acquitted.

We agree with petitioner.

It is settled that factual findings of the trial court are accorded great weight, even finality on appeal, except when it has failed to appreciate certain facts and circumstances which, if taken into account, would materially affect the result of the case. This exception is present here.[5]

Section 1 of B.P. 22 provides:

SECTION 1. Checks without sufficient funds. - Any person who makes or draws and issues any check to apply on account or for value, knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, which check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment, shall be punished by imprisonment of not less than thirty days but not more than one (1) year or by a fine of not less than but not more than double the amount of the check which fine shall in no case exceed Two hundred thousand pesos, or both such fine and imprisonment at the discretion of the court.

The same penalty shall be imposed upon any person who having sufficient funds in or credit with the drawee bank when he makes or draws and issues a check, shall fail to keep sufficient funds or to maintain a credit to cover the full amount of the check if presented within a period of ninety (90) days from the date appearing thereon, for which reason it is dishonored by the drawee bank.

Where the check is drawn by a corporation, company or entity, the person or persons who actually signed the check in behalf of such drawer shall be liable under this Act.

Thus, the prosecution must prove the following essential elements of the offense:

- (1) the making, drawing, and issuance of any check to apply for account or for value;
- (2) the knowledge of the maker, drawer, or issuer that at the time of issue there are no sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment; and
- (3) the 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.[6]

We find that the prosecution failed to prove the second element.

To hold petitioner liable for violation of B.P. 22, it is not enough that the issued check was subsequently dishonored for insufficiency of funds. It must be shown beyond reasonable doubt that he knew of the insufficiency of funds at the time the check was issued.[7] Hence, the law provides that he must be notified of the dishonor, 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 bank 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.[8]

While it is true that ILYON, through its president, Benedict Tan, asked petitioner to pay the dishonored checks, however, such kind of notice is not the one required by B.P. 22.

Under B.P. 22, the prosecution must prove not only that the accused issued a check that was subsequently dishonored. It must also establish that the accused was actually notified that the check was dishonored, and that he or she failed, within five banking days from receipt of the notice, to pay the holder of the check the amount due thereon or to make arrangement for its payment. Absent proof that the accused received such notice, a prosecution

for violation of the Bouncing Checks Law cannot prosper.[9]

In *Domagsang v. Court of Appeals*,[10] we held 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, thus:

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. (Emphasis supplied)

Since petitioner did not receive a written notice of dishonor of the checks, obviously, there is no way of determining when the 5-day period prescribed in Section 2 of B.P. 22 would start and end. Thus, the prima facie evidence of petitioner's knowledge of the insufficiency of funds or credit at the time he issued the checks did not arise.[11]

We thus find that the prosecution failed to prove by evidence beyond reasonable doubt that petitioner is guilty of violations of B.P. 22.

However, petitioner should pay the face value of the nine (9) dishonored checks plus legal interest. It is well settled that the civil liability is not extinguished by acquittal where such acquittal is based on lack of proof beyond reasonable doubt, since only preponderance of evidence is required in civil cases.[12]

We however modify the award of petitioner's civil liability to ILYON from P417,500.00 to P425,250.00. In Criminal Case No. 14354, petitioner was acquitted by the RTC since the reason for the dishonor was his "stop payment order" to the drawee bank to enable VACHMAN to reconcile its accounts with ILYON. Hence, only the face value of the remaining nine (9) checks should be included in the computation of petitioner's civil liability. Each check has a face value of P47,250.00 which, if we multiply by nine, yields P425,250.00.

WHEREFORE, we REVERSE the Decision of the Court of Appeals. Petitioner Francisco M. Bax is acquitted in Criminal Cases Nos. 14355 to 14363 for violations of B.P. 22 for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered, however, to pay the offended party, ILYON, the face value of the nine (9) checks in the total amount of P425,250.00 with 12% interest per annum from the filing of the Informations until fully paid.

SO ORDERED.

Puno, C.J., (Chairperson), Corona, Azcuna, and Garcia, JJ., concur.

[1] Filed under Rule 45, 1997 Rules of Civil Procedure, as amended.

[2] Penned by Associate Justice Mercedes Gozo-Dadole (retired) and concurred in by Associate Justice Ma. Alicia Austria-Martinez (now a member of this Court) and Associate Justice Hilarion L. Aquino (retired).

[3] Presided by Judge Luis D. Martinez.

[4] From the Decision of the RTC in Criminal Cases Nos. 14355 to 14363.

[5] *Vergara v. People*, G.R. No. 160328, February 4, 2005, 450 SCRA 495.

[6] Marigomen v. People, G.R. No. 153451, May 26, 2005, 459 SCRA 169.

[7] Vergara v. People, supra at 501.

[8] King v. People, G.R. No. 131540, December 2, 1999, 319 SCRA 654.

[9] Id., p. 656.

[10] G.R. No. 139292, December 5, 2000, 347 SCRA 75.

[11] Danao v. Court of Appeals, G.R. No. 122353, June 6, 2001, 358 SCRA 450, 459.

[12] Rico v. People, G.R. No. 137191, November 18, 2002, 392 SCRA 61.

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