OFELIA MARIGOMEN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 153451. May 26, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review of the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR No. 20510 affirming the Decision[2] of the Regional Trial Court (RTC) of Bacolod City, Branch 44, in Criminal Case Nos. 13012 to 13014 convicting Ofelia Marigomen and John V. Dalao for violation of Batas Pambansa (B.P.) Blg. 22.

The Antecedents

Caltex Philippines, Inc. (Caltex) is engaged in the sale of gasoline and oil products to its customers, one of which was the Industrial Sugar Resources, Inc. (INSURECO), with offices at the Bacolod Murcia Milling Corporation Compound in Bacolod City. Caltex had granted a credit line to INSURECO, and the latter purchased gasoline and lubricants from Caltex through its sales representative in Negros Occidental and Bacolod City.[3] The finance officer of INSURECO was Ofelia Marigomen, while John V. Dalao was the assistant to the general manager.[4] They were authorized to draw and sign checks against the account of INSURECO at the Far East Bank and Trust Company, Bacolod City Branch. Caltex had agreed for INSURECO to pay its purchases via postdated checks, which were delivered to Caltex upon the release of the purchased oil products.[5]

As evidenced by separate delivery receipts, INSURECO bought and took delivery of oil products from Caltex. In payment thereof, the following postdated checks, drawn and signed by Marigomen and Dalao against its account with the Far East Bank and Trust Company, Bacolod City Branch, were issued in favor of Caltex:

INVOICE NO.

DATE OF SALE

CHECK NO.

AMOUNT

BA 87060[6]

March 13, 1992

3357283[7]

P 44,988.56

BA 87464[8]

March 17, 1992

3357348[9]

P148,656.10

BA 87987[10]

March 30, 1992

3357543[11]

P130,782.70

BA 87988[12]

-do-

-do-

P28,000.00

BA 88290[13]

April 3, 1992

3357619[14]

P205,489.50

BA 88291[15]

-do-

-do-

P 82,193.30

BA 88292[16]

-do-

-do-

-do-

On due dates, Caltex presented the said checks for payment. However, Check Nos. 3357283, 3357348 and 3357619 were dishonored by the drawee bank, for the reason that they were "drawn against insufficient funds." Check No. 3357543 was, likewise, dishonored with the notation "account closed."[17] Hence, Caltex, through Dalao, made verbal demands to INSURECO for the replacement of the dishonored checks with either manager's checks or cash, to no avail.[18] On May 6, 1992, Caltex sent a confirmation telegram informing INSURECO of the dishonor of the said checks, and again demanded their replacement, but received no reply.[19]

On July 6, 1992, Caltex filed criminal complaints for violation of B.P. Blg. 22 against Marigomen and Dalao with the Office of the City Prosecutor of Bacolod City.[20] They were, thereafter, charged with three counts of violation of B.P. Blg. 22 in three separate Informations filed with the RTC of Bacolod City, and docketed as Criminal Case Nos. 13012 to 13014. The accusatory portion of the Information in Criminal Case No. 13012 reads:

> That on or about the 30th day of March 1992, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused being then the Finance Officer and Assistant General Manager, respectively, of Industrial Sugar Resources Company, Inc. (INSURECO) did, then and there, willfully, unlawfully and feloniously make out, issue and deliver Far East Bank and Trust Company, Bacolod Branch,

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> Bacolod, City Check No. 3357348 postdated to April 24, 1992, in the amount of ONE HUNDRED FORTY-EIGHT THOUSAND SIX HUNDRED FIFTY-SIX PESOS and TEN CENTAVOS (P148,656.10), Philippine Currency, in favor of Caltex Philippines, Inc. a corporation duly organized and existing under the Philippine Laws, represented in this case by its Sales Representative, Norman Lee Riego, Jr., in payment of a pre-existing obligation knowing at the time of issue of said check that they did not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment and which check after presentment, was subsequently dishonored by the drawee bank for reason of insufficient funds; that, despite notice of dishonor and repeated demands, accused failed and refused and still fails and refuses to make good the full value of their check or redeem the same to the damage and prejudice of said Caltex Philippines, Inc., in the aforementioned amount.
>
> Contrary to law.[21]

Except for the dates of the commission of the crimes charged and the contents of the postdated checks subject matter thereof, the accusatory portions of the two other Informations are similarly worded.

When she testified, Marigomen admitted to having drawn and signed the postdated checks subject matter of the cases, along with Dalao, and that these were issued in payment for the gasoline and oil products purchased by INSURECO. She declared that she was employed by INSURECO as finance officer on September 15, 1991, and that she resigned on March 31, 1992.[22] As of June 5, 1992 she was residing at No. 40 Malaspina St., Villamonte, Bacolod City.[23] She claimed that she had no participation whatsoever in the purchase of Caltex oil products by INSURECO,[24] which had been granted a credit line with a 30 to 40-day payment term.[25] She had no knowledge that Caltex had sent confirmation telegrams demanding payment from INSURECO, because by then she was no longer employed therein. Moreover, she never received any written notice or telegram from Caltex demanding payment of the amounts of the dishonored checks.[26] It was only when she received a subpoena from the Office of the City Prosecutor of Bacolod City that she discovered that the checks had been dishonored, and that she had been charged in connection therewith. She insisted that she was not aware that the funds of INSURECO in its account with the Far East Bank and Trust Company were insufficient at the time she issued the subject checks.[27]

On October 21, 1996, the trial court rendered judgment convicting Marigomen and Dalao of the crimes charged. The fallo of the decision reads:

> WHEREFORE, premises considered, the Court hereby ACQUITS the accused, John Dalao for the crime of Estafa in Crim. Case No.12311 for insufficiency of evidence. The Court, however, finds the accused Ofelia Marigomen and John Dalao GUILTY beyond reasonable doubt for violation of Batas Pambansa Blg. 22 and hereby sentences them as follows:
>
> 1. In Crim. Case No. 13012:
> One (1) year imprisonment and to jointly and solidarily pay the complainant, by way of civil indemnity the amount of P148,656.10, representing the value of the check.

2. In Crim. Case No. 13013:

> One (1) year imprisonment and to jointly and solidarily pay the complainant the sum of P124,855.75 by way of civil indemnity.

3. In Crim. Case No. 13014:

> One (1) year imprisonment and to jointly and solidarily pay the complainant the amount of P44,988.55, by way of civil indemnity.

...

SO ORDERED.[28]

Marigomen appealed the decision to the CA, asserting in her brief, as appellant therein, that the following errors were committed by the trial court:

> 1
>
> THE TRIAL COURT ERRED IN HOLDING THAT THERE IS A DEMAND MADE TO THE ACCUSED OFELIA MARIGOMEN.
>
> 2
>
> THE TRIAL COURT ERRED IN ALLOWING A PRIVATE PROSECUTOR TO CONDUCT THE DIRECT EXAMINATION.
>
> 3
>
> THE TRIAL COURT ERRED IN HOLDING THAT THE ACCUSED OFELIA MARIGOMEN IS CIVILLY LIABLE.
>
> 4
>
> THE TRIAL COURT ERRED IN HOLDING THAT THERE IS A VALID OFFER OF EXHIBITS MADE BY THE PROSECUTION.
>
> 5
>
> THE TRIAL COURT ERRED IN ADMITTING THE TESTIMONY OF THE WITNESS MR. NORMAN RIEGO WITHOUT REQUIRING HIS AUTHORITY OR BOARD RESOLUTION FROM CALTEX, PHILIPPINES.
>
> 6
>
> THE TRIAL COURT ERRED IN TOTALLY DISREGARDING THE FACT THAT THERE IS A CREDIT LINE GRANTED BY CALTEX, PHILIPPINES TO INDUSTRIAL SUGAR RESOURCES, INC. (INSURECO).[29]

On April 19, 2001, the CA rendered judgment affirming the decision of the RTC, with the modification that Marigomen and Dalao pay fines, with subsidiary imprisonment in case of insolvency, in lieu of imprisonment. The appellate court ruled that they were civilly liable for the amounts of the checks, conformably with Article 100 of the Revised Penal Code, and the ruling of this Court in Banal v. Tadeo, Jr.[30] It also held that the notices of demand sent by Caltex for INSURECO to pay the amount of the checks were sufficient notice to Marigomen and Dalao. The CA also declared that whether or not Caltex granted a credit line or accommodation to INSURECO was irrelevant to the issue of whether they were criminally liable for violation of B.P. Blg. 22.

Upon the denial of her motion for reconsideration of the said decision, Marigomen filed the instant petition for review on certiorari, raising the following issues:

> - WHETHER OR NOT THE HONORABLE COURT OF APPEALS IS RIGHT IN UPHOLDING THE DECISION OF THE REGIONAL TRIAL COURT IN FINDING THE ACCUSED MRS. MARIGOMEN GUILTY FOR VIOLATION OF B.P. 22 INSPITE OF THE FACT THAT NO NOTICE OF DEMAND HAS EVER BEEN SENT TO THE PETITIONER.
>
> - WHETHER OR NOT THE PARTICIPATION OF THE PRIVATE PROSECUTOR IS PROPER OR NOT.
>
> - WHETHER OR NOT PETITIONER MAY BE HELD CIVILLY LIABLE IN THE INSTANT CASE.

> - WHETHER OR NOT THERE WAS A VALID OFFER OF EXHIBITS AS AGAINST THE CRIMINAL INFORMATIONS FILED AGAINST ACCUSED MARIGOMEN.[31]

The petitioner avers that the prosecution failed to prove a condition sine qua non to her prosecution and conviction for violation of B.P. Blg. 22, that is, written notice informing her that the subject checks had been dishonored. She alleges that the respondent failed to prove that a copy of the telegram dated May 6, 1992 addressed to INSURECO was sent to and received by her. Thus, even if the telegram had been received by INSURECO, such receipt was not binding on her because she was no longer employed with INSURECO by then.

The petitioner insists that she had no participation whatsoever in the purchase of the oil products by her former employer. She maintains that it is shocking to the conscience that she, a mere employee of INSURECO, should be held civilly liable for the said purchases. She asserts that if she had issued the checks in her personal capacity, indubitably, she would be liable for the dishonor of the checks; in this case, however, she drew and signed the checks as a mere employee of INSURECO and did not even receive a single centavo of its proceeds. She cites the ruling of this Court in Banque Generale Belge v. Walter Bull & Co., Inc.[32]

The Office of the Solicitor General (OSG), for its part, maintains that the petitioner was notified verbally and in writing of the dishonor of the subject checks, as shown by the aforementioned telegram sent by Caltex via PT&T to INSURECO. The OSG argues that the petitioner cannot feign ignorance of the said telegram since she was the assigned finance officer of INSURECO. The petitioner even failed to prove that March 31, 1992 was the last day of her employment with INSURECO; and even if it were the case, it was unusual that the petitioner still signed checks due and demandable at a time when she would no longer be connected with INSURECO, and that the latter allowed such a situation. The OSG posits that the petitioner cannot even rely on the ruling of this Court in Lao v. Court of Appeals,[33] because the factual backdrop in this case is substantially different.

The threshold issue is whether or not the respondent adduced proof beyond reasonable doubt of the guilt of the petitioner for violation of B.P. Blg. 22.

The petition is granted.

Section 1 of B.P. Blg. 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.

For violation of B.P. Blg. 22 to be committed, the prosecution must prove the following essential elements:

> (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.[34]

It is difficult for the prosecution to prove the second element of the crime because the knowledge on the part of the maker, drawer or issuer that at the time of issue he does not have sufficient funds or credit with the drawee

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bank for the payment of such checks in full upon its presentation is a state of the mind. However, Section 2 of B.P. Blg. 22 provides that if the prosecution proves that the making, drawing and issuing of a check, payment of which is refused by the drawee bank because of insufficiency of funds or credit with the said bank within 90 days from the date of the check, such shall be prima facie evidence of the second element of the crime. The drawee or maker of the check may overcome the prima facie evidence, either by paying the amount of the check, or by making arrangements for its payment in full within five banking days after receipt of notice that such check was not paid by the drawee bank.[35]

Contrary, to the respondent's contention, the ruling of the Court in Lao v. Court of Appeals[36] is applicable in this case. In acquitting the petitioner therein, the Court explained:

> 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. In this light, the full payment of the amount appearing in the check within five banking days from notice of dishonor is a "complete defense." The absence of a notice of dishonor necessarily deprives an accused an opportunity to preclude a criminal prosecution. Accordingly, procedural due process clearly enjoins that a notice of dishonor be actually served on petitioner. Petitioner has a right to demand – and the basic postulates of fairness require - that the notice of dishonor be actually sent to and received by her to afford her the opportunity to avert prosecution under B.P. Blg. 22.

Moreover, the notice of dishonor must be in writing; a verbal notice is not enough. The rationale for this was explained by the Court in Domagsang v. Court of Appeals,[37] to wit:

> 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.

Thus, if the drawer or maker is an officer of a corporation, the notice of dishonor to the said corporation is not notice to the employee or officer who drew or issued the check for and in its behalf. The Court explained in Lao v. Court of Appeals,[38] to wit:

In this light, the postulate of Respondent Court of Appeals that "(d)emand on the Corporation constitutes demand on appellant (herein petitioner)," is erroneous. Premiere has no obligation to forward the notice addressed to it to the employee concerned, especially because the corporation itself incurs no criminal liability under B.P. Blg. 22 for the issuance of a bouncing check. Responsibility under B.P. Blg. 22 is personal to the accused; hence, personal knowledge of the notice of dishonor is necessary. Consequently, constructive notice to the corporation is not enough to satisfy due process. Moreover, it is petitioner, as an officer of the corporation, who is the latter's agent for purposes of receiving notices and other documents, and not the other way around. It is but axiomatic that notice to the corporation, which has a personality distinct and separate from the petitioner, does not constitute notice to the latter.

In this case, the prosecution failed to present any employee of the PT&T to prove that the telegrams from the

offended party were in fact transmitted to INSURECO and that the latter received the same. Furthermore, there is no evidence on record that the petitioner ever received the said telegrams from INSURECO, or that separate copies thereof were transmitted to and received by the petitioner.

In fine, the respondent failed to prove the second element of the crime. Hence, the petitioner should be acquitted of the crimes charged.

IN LIGHT OF ALL THE FOREGOING, the petition is GRANTED. The Decision of the Court of Appeals in CA-G.R. CR No. 20510 dated April 19, 2001 and its Resolution dated April 11, 2002 are REVERSED and SET ASIDE. Petitioner Ofelia Marigomen is ACQUITTED of all the charges. The bonds posted for her provisional liberty are hereby CANCELLED.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, and Chico-Nazario, JJ., concur. Tinga, J., out of the country.

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[1] Penned by Associate Justice Mercedes Gozo-Dadole with Associate Justices Fermin A. Martin, Jr. and Portia Aliño-Hormachuelos, concurring.

[2] Penned by Judge Anastacio I. Lobaton.

[3] Exhibits "L," "N" and "O."

[4] IbId.

[5] Exhibit "4;" TSN, 20 February 1996, p. 22.

[6] Records, p. 259.

[7] Exhibit "I," Id. at 208.

[8] Records, p. 51.

[9] Exhibit "J," Id. at 209.

[10] Id. at 512.

[11] Exhibit "K," Id. at 210.

[12] Records, p. 512.

[13] Exhibit "B," Id. at 260.

[14] Exhibit "D," Id. at 202.

[15] Exhibit "A," Id. at 199.

[16] Exhibit "C," Id. at 201.

[17] Exhibits "E," "F" and "K-5."

[18] TSN, 27 September 1994; Exhibits "H," "L," and "O."

[19] Exhibit "G."

[20] Exhibits "H," "L," "N" and "O."

[21] Rollo, p. 18.

[22] TSN, 20 February 1996, pp. 5 & 18.

[23] Id. at 3.

[24] Id. at 27.

[25] Exhibit "4."

[26] TSN, 20 February 1996, pp. 27-28.

[27] Id. at 26.

[28] CA Rollo, pp. 91-92.

[29] Id. at 63.

[30] G.R. No. L-78911-25, 11 December 1987, 156 SCRA 325.

[31] Rollo, pp. 5-6.

[32] 84 Phil. 164 (1949).

[33] G.R. No. 119178, 20 June 1997, 274 SCRA 572.

[34] Ting v. Court of Appeals, G.R. No. 140665, 13 November 2000, 344 SCRA 551.

[35] Section 2 of B.P. Blg. 22 reads in full:

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.

[36] Supra.

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

[38] Supra.

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