LEODEGARIO BAYANI, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 155619. August 14, 2007

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Leodegario Bayani (petitioner) was charged with Violation of Batas Pambansa Blg. 22 in an Information, to wit:

> That on or about the 20[th]day of August 1992, in the Municipality of Candelaria, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously issue and make out Check No. 054924 dated August 26, 1992, in the amount of TEN THOUSAND PESOS (P10,000.00) Philippine Currency, drawn against the PS Bank, Candelaria Branch, Candelaria, Quezon, payable to "Cash" and give the said check to one Dolores Evangelista in exchange for cash although the said accused knew fully well at the time of issuance of said check that he did not have sufficient funds in or credit with the drawee bank for payment, the same was dishonored and refused payment for the reason that the drawer thereof, the herein accused, had no sufficient funds therein, and that despite due notice said accused failed to deposit the necessary amount to cover said check, or to pay in full the amount of said check, to the damage and prejudice of said Dolores Evangelista in the aforesaid amount.
>
> Contrary to law.[1]

After trial, petitioner was convicted by the Regional Trial Court (RTC) of Lucena City, Branch 55, in a Decision rendered on November 20, 1995, the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing considerations, this Court finds the accused Leodegario S. Bayani, GUILTY beyond reasonable doubt of violating Section 1, Batas Pambansa Blg. 22, and hereby sentences him to suffer one (1) year imprisonment and a fine of Five Thousand (P5,000.00) Pesos, with subsidiary imprisonment in case of insolvency. He shall likewise pay the complaining witness, Dolores Evangelista, the sum of P10,000.00, the value of Check No. 054924 he issued and drew against PS Bank, Candelaria Branch, which was subsequently dishonored by the said drawee bank for insufficiency of funds.
>
> The accused Leodegario Bayani is further ordered to pay Dolores Evangelista the amount of P5,000.00 representing attorney's fees. He shall also pay double the cost of this suit.
>
> SO ORDERED.[2]

In convicting petitioner, the trial court made the following findings of facts:

> - That the Philippine Savings Bank, Candelaria Branch, has issued to the accused check booklet (Exh. "C") on December 12, 1991, with the Check No. 054924 as one of those included in said booklet of checks;
>
> - That the said Check No. 054924 dated August 26, 1992, was drawn and issued payable to Cash in the amount of P10,000.00; said drawn check was made to apply to the account of the accused, Leodegario S. Bayani whose name appears therein in bold print at the upper portion of the said check;

> - That said Check No. 054924, is a post-dated check, was subsequently dishonored by the drawee bank, PS Bank, Candelaria Branch, for insufficiency of funds;
>
> - That the checking account of the accused Leodegario S. Bayani with PS Bank, Candelaria Branch, was closed on September 1, 1992 (Exh. "B-3"), which at the time had only remaining deposit in the amount of P2,414.96 (Exh. "B-4").[3]

The trial court also made the following findings:

> The check in question is postdated, issued and drawn on August 20, 1992, and dated August 26, 1992. It was presented to complaining witness, Dolores Evangelista, for encashment by Alicia Rubia whom the former knows. After the check was deposited with the bank, it was returned to Evangelista for insufficiency of funds (Exh. "A-5"). Thereafter, she pursued the following events to demand payment of the value of the check:
>
> x x x x
>
> After the confrontation at the office of Atty. Emmanuel Velasco, Evangelista has had another confrontation with the accused Bayani and Alicia Rubia at Candelaria municipal building before Brgy. Captain Nestor Baera, but again the accused and Rubia pointed to each other for the settlement of the amount involved in the check in question.
>
> Of these two (2) confrontations Evangelista had with the accused Bayani and Alicia Rubia, including the chances to have met or known the complaining witness Evangelista since 1977 up to the filing of the instant case in the Municipal Trial Court of Candelaria, all what the accused Leodegario Bayani could say were flat denials of having talked with, or otherwise met Evangelista, regarding the latter's claim of payment of the value of Check No. 054924, admittedly from the check booklet of the said accused Bayani issued by PS Bank, Candelaria Branch[.[4]]

On appeal, the Court of Appeals (CA)[5] affirmed in toto the trial court's decision. The CA's Decision dated January 30, 2002 provides for the following dispositive portion:

> WHEREFORE, and it appearing from the circumstances of both the offense and the offender which does not indicate good faith or a clear mistake of fact in accordance with the Administrative Circular No. 13-2001, the judgment appealed from is AFFIRMED in toto, with costs.
>
> SO ORDERED.[6]

Thus, herein petition for review on certiorari under Rule 45, Rules of Court, with the following assignment of errors:

> THE COURT OF APPEALS, WITH DUE RESPECT, ERRED IN REFUSING TO ACQUIT THE ACCUSED DESPITE THE CONVICTION OF THE TRIAL COURT IS UTTERLY BASED ON HEARSAY EVIDENCE;
>
> THE COURT OF APPEALS ERRED IN CONVICTING THE ACCUSED DESPITE THE CONSIDERATION FOR THE ISSUANCE OF THE CHECK WAS NOT DULY ESTABLISHED;
>
> THE TRIAL COURT AND THE COURT OF APPEALS ERRED WHEN THEY CONVICTED THE ACCUSED BASED ON THE WEAKNESS OF THE LATTER'S EVIDENCE AND NOT ON THE STRENGTH OF PROSECUTION'S EVIDENCE;
>
> THE TRIAL COURT AND THE COURT OF APPEALED (sic) ERRED IN CONVICTING THE ACCUSED SOLELY ON THE BASES OF PRESUMPTIONS.[7]

On the other hand, the Office of the Solicitor General (OSG), representing respondent, argues that: (1) petitioner's

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denial of his liability for Check No. 05492 cannot overcome the primordial fact that his signature appears on the face of such check; (2) want of consideration is a personal defense and is not available against a holder in due course; and (3) the constitutional presumption of innocence was overcome by the requisite quantum of proof.[8]

Well-settled is the rule that the factual findings and conclusions of the trial court and the CA are entitled to great weight and respect, and will not be disturbed on appeal in the absence of any clear showing that the trial court overlooked certain facts or circumstances which would substantially affect the disposition of the case. Jurisdiction of this Court over cases elevated from the CA is limited to reviewing or revising errors of law ascribed to the CA, whose factual findings are conclusive and carry even more weight when said court affirms the findings of the trial court, absent any showing that the findings are totally devoid of support in the record or that they are so glaringly erroneous as to constitute serious abuse of discretion.[9]

The Court sustains the CA in affirming petitioner's conviction by the RTC.

Petitioner denies having issued the check subject of this case. He argues that the evidence pinpointing him as the signatory on the check is merely hearsay.

Section 36 of Rule 130 of the Rules of Court provides for the rule on hearsay evidence, to wit:

> Sec. 36. Testimony generally confined to personal knowledge; hearsay excluded. - A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules.

Under the above rule, any evidence " whether oral or documentary " is hearsay if its probative value is not based on the personal knowledge of the witness, but on that of some other person who is not on the witness stand. Hence, information that is relayed to the former by the latter before it reaches the court is considered hearsay.[10]

In the present case, complainant Evangelista testified that she was approached by Alicia Rubia who told her that she was requested by petitioner to have the check exchanged for cash, as he needed money badly.[11] Obviously, Evangelista's testimony is hearsay since she had no personal knowledge of the fact that petitioner indeed requested Rubia to have the check exchanged for cash, as she was not personally present when petitioner supposedly made this request. What she testified to, therefore, was a matter that was not derived from her own perception but from Rubia's.

However, petitioner is barred from questioning the admission of Evangelista's testimony even if the same is hearsay. Section 34, Rule 132 of the Rules of Court requires that the trial court shall not consider any evidence which has not been finally offered. Section 35 of the same Rule provides that as regards the testimony of a witness, the offer must be made at the time the witness is asked to testify. And under Section 36 of the same Rule, objection to a question propounded in the course of the oral examination of a witness shall be made as soon as the ground therefor becomes reasonably apparent.

Thus, it has been held that "in failing to object to the testimony on the ground that it was hearsay, the evidence offered may be admitted."[12] Since no objection to the admissibility of Evangelista's testimony was timely made - from the time her testimony was offered[13] and up to the time her direct examination was conducted[14] - then petitioner has effectively waived[15] any objection to the admissibility thereof and his belated attempts to have her testimony excluded for being hearsay has no ground to stand on.

While Evangelista's statement may be admitted in evidence, it does not necessarily follow that the same should be given evidentiary weight. Admissibility of evidence should not be equated with weight of evidence.[16] In this regard, it has been held that although hearsay evidence may be admitted because of lack of objection by the adverse party's counsel, it is nonetheless without probative value,[17] unless the proponent can show that the

evidence falls within the exception to the hearsay evidence rule.[18]

In this case, Evangelista's testimony may be considered as an independently relevant statement, an exception to the hearsay rule, the purpose of which is merely to establish the fact that the statement was made or the tenor of such statement. Independent of the truth or the falsity of the statement, the fact that it has been made is relevant.[19] When Evangelista said that Rubia told her that it was petitioner who requested that the check be exchanged for cash, Evangelista was only testifying that Rubia told her of such request. It does not establish the truth or veracity of Rubia's statement since it is merely hearsay, as Rubia was not presented in court to attest to such utterance. On this score, evidence regarding the making of such independently relevant statement is not secondary but primary, because the statement itself may (a) constitute a fact in issue or (2) be circumstantially relevant as to the existence of that fact.[20] Indeed, independent of its truth or falsehood, Evangelista's statement is relevant to the issues of petitioner's falsehood, his authorship of the check in question and consequently, his culpability of the offense charged.

In any event, petitioner's conviction did not rest solely on Evangelista's testimony. There are other pieces of evidence on record that established his guilt, to wit: the subject check was included in the booklet of checks issued by the PSBank to petitioner; the subject check was made to apply to the account of petitioner whose name appears on the upper portion of the said check; and most telling is that petitioner never categorically denied that the signature appearing on the check was his. What petitioner claimed was that the signature on the check was similar to his signature, although there were "differences," viz.:

> Q: I am showing to you a certain document purpurting (sic) to be PSB Check No. 054924, will you please look at this particular document and tell this Honorable Court if this particular check is one of those issued to you by the Philippine Saving's Bank?
>
> A: Yes, sir.
>
> Q: Now, there appears a signature above a line located at the bottom of the said check which appears to be Leodegario Bayani, please tell this Honorable Court if you know this particular signature?
>
> A: Although it is similar to my signature I could not tell if this is my signature, sir.
>
> Q: Please explain to this Honorable Court why is it so?
>
> A: Because there are some differences, sir.
>
> Q: Please tell this Honorable Court the particular differences you are referring to?
>
> A: At the middle of the signature I usually put my middle initial and also the beginning of my family name is almost connected with each other, sir.[21]

Neither did petitioner claim that the signature was a forgery. Had he done so, then a forensic examination of the signature in appearing on the check and his signature would have been made in order to determine the genuineness or authenticity of the signature appearing on the check.

All these pieces of evidence, taken together, inevitably support the finding of petitioner's guilt beyond reasonable doubt of the offense charged.

Petitioner also argues that he cannot be convicted due to the prosecution's failure to prove that the subject check was issued to apply on account or for value.

The elements of the offense penalized by Batas Pambansa Blg. 22 are:

> (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.[22]

As regards the first element, it is presumed, upon issuance of the checks and in the absence of evidence to the contrary, that the same was issued for valuable consideration.[23] Under the Negotiable Instruments Law, it is presumed that every party to an instrument acquired the same for a consideration or for value.[24] In alleging that there was no consideration for the subject check, it devolved upon petitioner to present convincing evidence to overthrow the presumption and prove that the check was issued without consideration.

Valuable consideration may consist either of some right, interest, profit or benefit accruing to the party who makes the contract; or some forbearance, detriment, loss of some responsibility to act; or labor or service given, suffered or undertaken by the other side. It is an obligation to do or not to do, in favor of the party who makes the contract, such as the maker or indorser.[25] It was shown in this case that the check was issued and exchanged for cash. This was the valuable consideration for which the check was issued.

At any rate, what the law punishes is the mere act of issuing a bouncing check, not the purpose for which it was issued or the terms and conditions relating to its issuance. The law does not make any distinction on whether the checks within its contemplation are issued in payment of an obligation or to merely guarantee the obligation. The thrust of the law is to prohibit the making of worthless checks and putting them in circulation.[26]

Thus, the Court cannot sustain petitioner's stance that the prosecution failed to prove his guilt. As ruled in Lee v. Court of Appeals:

> Proof beyond reasonable doubt does not mean absolute certainty. Suffice it to say the law requires only moral certainty or that degree of proof which produces conviction in a prejudiced mind.[27]

After going over the evidence presented by the prosecution and the defense in this case, the Court finds no reason to overturn the judgment of conviction rendered by the RTC, as affirmed by the CA, as the prosecution sufficiently proved petitioner's guilt beyond reasonable doubt.

WHEREFORE, the petition is DENIED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Nachura, and Reyes, JJ., concur.

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[1] Records, pp. 2-3.

[2] Id. at 251.

[3] Id. at 247-248.

[4] Id. at 248-249.

[5] Penned by Associate Justice Teodoro P. Regino, with Associate Justices Eugenio S. Labitoria and Rebecca De Guia-Salvador, concurring.

[6] CA rollo, p. 91.

[7] Rollo, p. 15.

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[8] Id. at 106-107.

[9] Ty v. People of the Philippines, G.R. No. 149275, September 27, 2004, 439 SCRA 220, 228-229.

[10] Bon v. People of the Philippines, G.R. No. 152160, January 13, 2004, 419 SCRA 101, 109.

[11] TSN, June 29, 1993, p. 14.

[12] Cabugao v. People of the Philippines, G.R. No. 158033, July 30, 2004, 435 SCRA 624, 633.

[13] TSN, June 29, 1993, pp. 4-6.

[14] Id.

[15] Maunlad Savings and Loan Association, Inc. v. Court of Appeals, 399 Phil. 590, 599 (2000).

[16] People of the Philippines v. Parungao, 332 Phil. 917, 924 (1996).

[17] De la Torre v. Court of Appeals, 355 Phil. 826, 638 (1998).

[18] PNOC Shipping and Transport Corporation v. Court of Appeals, 358 Phil. 38, 54 (1998).

[19] Lea Mer Industries, Inc. v. Malayan Insurance, Co., Inc., G.R. No. 161745, September 30, 2005, 471 SCRA 698, 714.

[20] Republic of the Philippines v. Alejaga, Sr., 441 Phil. 656, 672 (2002).

[21] TSN, November 23, 1994, pp. 10-11.

[22] Marigomen v. People of the Philippines, G.R. No. 153451, May 26, 2005, 459 SCRA 169, 179.

[23] Ty v. People of the Philippines, supra note 9, at 233.

[24] Negotiable Instruments Law, Sec. 24.

[25] Lee v. Court of Appeals, G.R. No. 145498, January 17, 2005, 448 SCRA 455, 474-475.

[26] Ty v. People of the Philippines, supra note 9, at 235

[27] Lee v. Court of Appeals, supra note 25, at 476.

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