

KENNETH NGO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 155815. July 14, 2004

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

To convict the accused, it is necessary to prove beyond reasonable doubt all the elements of the crime charged. Matters that do not form part of those elements need not be proved. In denying this Petition, the Court finds petitioner's arguments immaterial and irrelevant to the charge of violation of Batas Pambansa Blg. 22.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, seeking to set aside the March 18, 2002 Decision[2] and the October 1, 2002 Resolution[3] of the Court of Appeals (CA) in CA-GR CR No. 11341. The assailed Decision disposed as follows:

“WHEREFORE, judgment is hereby rendered as follows:

“1. In Criminal Cases Nos. 18200-89 and 18201-89, the decision of the court a quo is AFFIRMED with the following MODIFICATIONS:“a) In Criminal Case No. 18200-89 - the penalty of imprisonment is DELETED, and in lieu thereof, the [petitioner] is directed to pay a fine in the sum of x x x P150,000.00 with subsidiary imprisonment in case of insolvency to pay fine and to pay the costs;

“b) In Criminal Case No. 18201-89 - the penalty of imprisonment is DELETED, and in lieu thereof, the [petitioner] is directed to pay a fine in the sum of P150,000.00 with subsidiary imprisonment in case of insolvency to pay fine and to pay the costs;

“2) In Criminal Case No. 18202-89 - [petitioner] is hereby ACQUITTED on reasonable doubt. As regards the civil liability, the [petitioner] is ordered to pay complainant Paul Gotianse the amount of P75,000.00 with legal interest from the date of the filing of this case until fully paid.”[4]

The assailed Resolution denied reconsideration.

The Facts

The antecedents are narrated by the CA as follows:

“(1) Three separate Informations were filed before the Regional Trial Court, Branch 15, Davao City against the [petitioner] charging him with Violation of Batas Pambansa Blg. 22 [BP 22], which are identical in contents except as to their respective date[s] of issue and check number[s]. The identical allegations of the three (3) separate Informations read as follows:“That on or about October, 1988 in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the [petitioner], knowing fully well that he had no sufficient funds in the drawee bank, wil[l]fully, unlawfully and feloniously issued and/or made out EBC Check No. _____ postdated _____ in the amount of P75,000.00 in favor of Paul Gotianse in payment of an obligation; but when said check was presented to the drawee bank for encashment, the same was dishonored

for the reason 'Drawn Against Insufficient Funds' and despite notice of dishonor and demands upon said accused to make good the check, the same refused and failed to make payment, to the damage and prejudice of the herein complainant in the aforesaid amount of P75,000.00.

Case No. Check No. DATE AMOUNT

18200-89 EBC-22976156 2/12/89 75,000.00

18201-89 EBC-22976157 3/12/89 75,000.00

18202-89 EBC-22976158 4/12/89 75,000.00

"(2) Upon arraignment on September 29, 1989, [petitioner] entered a plea of not guilty to all the charges.

"(3) Joint trial proceeded where the prosecution presented evidence to show that complainant Paul Gotianse is a businessman and an officer of Northern Hill Development Corporation. Sometime in October 1988, in Davao City, [Petitioner] Kenneth Ngo, in settlement of the indebtedness he had incurred with Northern Hill Development Corporation, issued eight postdated checks payable to complainant and all drawn against the Equitable Banking Corporation. The first five checks were honored by the drawee bank but the three postdated checks were dishonored for the reason 'drawn against insufficient funds.' These checks were the following:

CHECK NUMBER AMOUNT DATE

EBC Check No. 22976156 P75,000.00 [2/12/1989]

EBC Check No. 22976157 P75,000.00 [3/12/1989]

EBC Check No. 22976158 P75,000.00 [4/12/1989]

"Following the dishonor, notices of dishonor and demand were sent to [petitioner] by complainant [Paul Gotianse]. Despite this, however, no payment or arrangement with the drawee bank was made by the [petitioner].

"(4) On September 3, 1990, the [petitioner] filed a Motion to dismiss which is actually a demurrer to evidence without prior leave of Court. When it was denied, the [petitioner] was not allowed to present evidence and the cases were deemed submitted for decision.

"(5) On January 24, 1991, the lower court rendered a decision convicting the [petitioner] on the three (3) criminal cases." [5]

The dispositive portion of the trial court's Decision reads:

"WHEREFORE, the guilt of the [petitioner] having been proven beyond reasonable doubt, Kenneth Ngo is hereby sentenced as follows:

"1. Crim. Case No. 18,200 -to be imprisoned for eight (8) months, to indemnify Paul Gotianse in behalf of Northern Hill Development Seventy-Five Thousand (P75,000.00) Pesos with legal interest to be computed from March 14, 1989 until fully paid, to pay a fine of Two Thousand (P2,000.00) Pesos and to pay Eighteen Thousand (P18,000.00) Pesos as attorney's fees.

"2. Crim. Case No. 18,201 -to be imprisoned for eight (8) months, to indemnify Paul Gotianse in behalf of Northern Hill Development Seventy-Five Thousand (P75,000.00) Pesos with legal interest to be computed from March 14, 1989 until fully paid, to pay a fine of Two Thousand (P2,000.00) Pesos and to pay Eighteen Thousand (P18,000.00) Pesos as attorney's fees.

“3. Crim. Case No. 18,202 -to be imprisoned for eight months, to indemnify Paul Gotianse in behalf of Northern Hill Development Seventy-Five Thousand (P75,000.00) Pesos with legal interest to be computed from April 14, 1989 until fully paid, to pay a fine of Two Thousand (P2,000.00) Pesos and to pay Eighteen Thousand (P18,000.00) Pesos as attorney’s fees.”[6]

Ruling of the Court of Appeals

The CA noted the undisputed fact that three (3) checks issued by petitioner had been dishonored for payment.[7] According to the appellate court, instead of presenting evidence, he opted instead to file a Motion to Dismiss, which the trial court treated as a Demurrer to Evidence without prior leave of court.[8] Thus, the CA decided the appeal based on the prosecution’s evidence, which stood un rebutted.[9]

The CA ruled that all the elements of a violation of BP 22 with regard to Criminal Case Nos. 18200-89 and 18201-89 had been proven beyond reasonable doubt. Pursuant to SC Administrative Circular No. 12-2000,[10] the penalty of imprisonment imposed by the lower court was deleted. For each criminal case, the appellate court imposed a fine of P150,000, with subsidiary imprisonment in case of insolvency. Finding that no written notice of dishonor or demand letter had been sent to petitioner regarding EBC Check No. 22976158, the CA acquitted him in Criminal Case No. 18202-89.[11]

Hence, this Petition.[12]

The Issue

In his Statement of the Issues, petitioner contends:

“I. The accused can only be convicted of an offense based on evidence which conform to the allegation contained in the information.

“II. The trial court erred in imposing penalties and civil liabilities in favor of a wrong party.”[13]

The Court’s Ruling

The Petition is devoid of merit.

Main Issue:

Conformity of the Evidence with the Information

According to petitioner, the Information in Criminal Case Nos. 18200-89 and 18201-89 indicated that the checks had been issued in favor of Paul Gotianse, yet the prosecutor’s evidence established that the actual obligation for which they had been issued was in favor of Northern Hill Development.[14] On this basis, petitioner alleges that the prosecution failed to prove the elements of the offense, since the checks had not been issued for a valid consideration insofar as Complainant Gotianse was concerned.[15]

Elements of the Offense

It is fundamental that every element of the offense must be alleged in the complaint or information and proved beyond reasonable doubt by the prosecution. Whatever facts and circumstances must be stated are determined by reference to the definitions and the essentials of the specific crimes.[16]

Petitioner was charged with violation of BP 22 under the following provision:

“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. x x x”[17]

Under this provision, there are two ways of violating BP 22: 1) by making or drawing and issuing a check to apply “on account or for value,” knowing at the time of issue that the check was not sufficiently funded; and 2) by having sufficient funds in or credit with the drawee bank at the time of issue, but failing to keep sufficient funds or credit with the said bank to cover the full amount of the check when presented to the drawee bank within a period of ninety (90) days.[18]

Pertinent to the present case, the elements of the offense under the first situation of BP 22 are the following:

- the making, drawing and issuance of any check to apply on account or for value;
- the maker, drawer or issuer knows 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; and
- the 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 cause, ordered the bank to stop payment.[19]

In the instant case, we find no reason to depart from the CA’s findings, which petitioner does not rebut. Present are all these elements constituting a violation of BP 22:

“1) [Petitioner] issued EBC Check Nos. [2]2976156 and 22976157 in partial settlement of his obligation to Northern Hill Development;

“2) The checks were deposited by the complainant but were subsequently dishonored by the drawee bank for insufficiency of funds;

“3) [Petitioner] knew that at the time he issued the postdated checks, he had no sufficient funds in or credit with the drawee bank; x x x [and he failed] to redeem the checks within five (5) days from written demand by the complainant for payment.”[20]

Cause for Issuance
of Check Is Immaterial

We agree with the submission of the Office of the Solicitor General (OSG) that petitioner’s argument is immaterial and irrelevant.[21] This Court has consistently declared that the cause or reason for the issuance of a check is inconsequential in determining criminal culpability under BP 22.[22] We explained the reason in *Llamado v. Court of Appeals* as follows:[23]

“[T]o determine the reason[s] for which checks are issued, or the terms and conditions for their issuance, will greatly erode the faith the public reposes in the stability and commercial value of checks as currency substitutes, and bring about havoc in trade and in banking communities.”[24]

The gravamen of the offense punished by BP 22 is the act of making and issuing a worthless check; that is, a check that is dishonored upon its presentation for payment.[25] The mere act of issuing a worthless check is *malum prohibitum*. [26] *Lozano v. Martinez*, [27] has declared that it is not the nonpayment of the obligation that is being punished, but the making of worthless checks. In *People v. Nitafan*, [28] this Court has ruled that a check issued as an evidence of debt -- though not intended to be presented for payment -- has the same effect as an

ordinary check and would fall within the ambit of BP 22. *Que v. People*[29] has affirmed the application of BP 22 to cases in which dishonored checks have been issued in the form of deposit or guarantee. Indeed, the law does not make any distinction between checks issued in payment of an obligation and those made merely to guarantee that obligation.[30]

The claim that the prosecution failed to prove that the check had been issued to apply on account or for value in favor of Paul Gotianse[31] is irrelevant. The law does not require that the payee of a check be the same as the obligee of the obligation in consideration for which the check has been issued. Pertinent is a criminal law authority's explanation of the term to apply on account or for value:

“It should be noted that BP Blg. 22 punishes the making or drawing and issuing of any check that is subsequently dishonored, even in payment of pre-existing obligation, as indicated in Section 1 thereof by the phrase ‘to apply on account.’ Section 1 also punishes the making or drawing and issuing of a check that is subsequently dishonored, in payment of an obligation contracted at the time of the issuance of the check, as indicated by the words ‘for value.’ x x x.”[32]

When the checks were issued by petitioner to Paul Gotianse as payee, they were issued to apply “on account;” that is, to settle the former's obligation to the latter's principal -- Northern Hill Development. In this regard, the Court also notes that the trial court found that petitioner had agreed to settle his debt to the company by issuing the checks payable to its agent, Gotianse.[33] Clearly, the prosecution proved the first element of a violation of BP 22.

Propriety of the Award for Civil Liability and Attorney's Fees

Petitioner further argues that there was no legal basis to hold him civilly liable to Northern Hill Development, because it was not a party to the case.[34] This allegation is erroneous.

The challenged Decision required petitioner to indemnify the agent, not the company. Moreover, the liability to pay Gotianse “in behalf of Northern Hill Development” was merely in conformity with the evidence adduced at the trial. It should be noted that Gotianse, the payee of the bounced check,[35] is the injured party. One who is neither a payee nor a holder of a bad check has neither the personality to sue nor a cause of action against the drawer.[36]

The indemnity in favor of Gotianse was made pursuant to Section 1, Rule 111 of the Rules of Court:

“When a criminal action is instituted, the civil action for the recovery of civil liability is impliedly instituted with the criminal action unless the offended party waives the civil action, reserves his right to institute it separately, or institutes the civil action prior to the criminal action.”[37]

Under the present revised Rules, the criminal action for violation of BP 22 shall be deemed to include the corresponding civil action.[38] The reservation to file a separate civil action is no longer needed.[39]

Petitioner also fails to support his opposition to the award of attorney's fees. The recovery of such fees in the concept of actual or compensatory damages is allowed under the circumstances. Under Article 2208 of the Civil Code, attorney's fees and the expenses of litigation are awarded when the court deems them just and equitable.[40] Considering that the trial took almost two years to complete,[41] and that the agreed attorney's fees of the private prosecutor engaged to represent complainant[42] is twenty-five percent (25%) of the sum due in each case, the award of P18,000 as attorney's fees for each of the cases is just and reasonable.

WHEREFORE, this Petition is DENIED and the assailed Decision and Resolution of the Court of Appeals AFFIRMED. Costs against petitioner.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Ynares-Santiago, Carpio, and Azcuna, JJ., concur.

[1] Rollo, pp. 10-24.

[2] Id., pp. 89-96. Seventh Division. Penned by Justice Juan Q. Enriquez Jr., with the concurrence of Justices Delilah Vidallon-Magtolis (chair) and Candido V. Rivera (member).

[3] Id., pp. 103-104.

[4] CA Decision, p. 7; Rollo, p. 95.

[5] Id., pp. 2-4 & 90-92.

[6] RTC Decision, pp. 12-13; Rollo, pp. 87-88.

[7] CA Decision, p. 4; Rollo, p. 92.

[8] Under Section 23, Rule 119 of the Rules of Court, when a demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.

[9] Supra at note 7.

[10] Issued on November 21, 2000.

[11] CA Decision, p. 6; Rollo, p. 94.

[12] This case was deemed submitted for resolution on September 1, 2003, upon this Court's receipt of petitioner's Memorandum, signed by Atty. Jose V. Yap. Public respondent's Memorandum, signed by Assistant Solicitor General Carlos N. Ortega and Associate Solicitor Bernardino P. Salvador Jr., was received by this Court on July 25, 2003.

[13] Petitioner's Memorandum, p. 7; Rollo, p. 191.

[14] Ibid.

[15] Petitioner's Memorandum, p. 5, Rollo, p. 189.

[16] *Bautista v. Court of Appeals*, 413 Phil. 159, 172, July 6, 2001; *Balitaan v. CFI of Batangas*, 201 Phil. 311, 322, July 30, 1982.

[17] *Batas Pambansa Blg. 22 or the Bouncing Checks Law*, approved April 3, 1979.

[18] *Wong v. Court of Appeals*, 351 SCRA 100, 108, February 2, 2001.

[19] *Meriz v. People*, 420 Phil. 608, 617, November 13, 2001; *Caras v. Court of Appeals*, 418 Phil. 655, 664, October 2, 2001; *Bautista v. Court of Appeals*, Supra; *People v. Laggui*, 171 SCRA 305, 310, March 16, 1989.

[20] Assailed Decision, p. 5; Rollo, p. 93. Under Section 2 of BP 22, the maker's knowledge of the insufficiency of funds is legally presumed from the dishonor of the check for insufficiency of funds. Such presumption would not lie if the maker pays or arranges for payment within five (5) banking days after receiving a notice of dishonor (See also *Caras v. Court of Appeals*, Supra; *People v. Laggui*, Supra, p. 311).

- [21] Respondent's Memorandum, p. 6; Rollo, p. 152.
- [22] *Meriz v. People*, Supra; *Llamado v. Court of Appeals*, 337 Phil. 153, March 26, 1997.
- [23] Supra.
- [24] Id., p. 159, per Torres, J.
- [25] *Recuerdo v. People*, 395 SCRA 638, 643, January 22, 2003; *Lozano v. Martinez*, 230 Phil. 406, 421, December 18, 1986.
- [26] *Wong v. Court of Appeals*, Supra; *Caras v. Court of Appeals*, Supra; *Llamado v. Court of Appeals*, Supra.
- [27] Supra. See also *Recuerdo v. People*, Supra.
- [28] 215 SCRA 79, 82, October 22, 1992. See also *Cruz v. Court of Appeals*, 233 SCRA 301, 307, June 17, 1994.
- [29] 154 SCRA 160, 164, September 21, 1987. See also *Dico, Jr. v. Court of Appeals*, 305 SCRA 637, 642, in which this Court noted that the drawee bank should honor a check that is presented for payment, whether the same has been issued in payment of an obligation or just as a guaranty of an obligation.
- [30] *San Pedro v. People*, 387 SCRA 352, 357, August 15, 2002.
- [31] Petitioner's Memorandum, p. 9; Rollo, p. 193.
- [32] Reyes, *The Revised Penal Code*, Book Two (2001), 15[th] ed., p. 785.
- [33] RTC Decision, pp. 8-10; Rollo, pp. 38-40.
- [34] Petitioner's Memorandum, p. 10; Rollo, p. 194.
- [35] *Tam Wing Tak v. Makasiar*, 350 SCRA 475, 485, January 29, 2001.
- [36] Ibid.
- [37] This is found in §1, Rule 111 of the 1985 Rules of Criminal Procedure, and in the amendments per AM No. 00-05-03-SC dated October 3, 2000.
- [38] §1, Rule 111 of the Rules of Court (AM No. 00-05-03 dated October 3, 2000).
- [39] Ibid.
- [40] *People v. Bergante*, 350 Phil. 275, 292, February 27, 1998.
- [41] The cases were filed on July 20, 1989, and the trial court's Decision was promulgated on January 24, 1991 (RTC Decision, pp. 1 and 13; Rollo, pp. 31 and 43).
- [42] Petitioner's Memorandum, p. 10; Rollo, p. 194.

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