

EMILIA LIM, PETITIONER, VS. MINDANAO WINES & LIQUOR GALLERIA, A SINGLE PROPRIETORSHIP BUSINESS OUTFIT OWNED BY EVELYN S. VALDEVIESO, RESPONDENT.

G.R. No. 175851. July 04, 2012

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

Acquittal from a crime does not necessarily mean absolution from civil liability.

Despite her acquittal from the charges of violation of Batas Pambansa Bilang 22 (BP 22) or the Bouncing Checks Law, the lower courts still found petitioner Emilia Lim (Emilia) civilly liable and ordered her to pay the value of the bounced checks, a ruling which was upheld by the Court of Appeals (CA) in its June 30, 2006 Decision[1] and November 9, 2006 Resolution[2] in CA-G.R. SP No. 64897.

In this Petition for Review on Certiorari, Emilia prays for the reversal and setting aside of the said rulings of the CA. She contends that since her acquittal was based on insufficiency of evidence, it should then follow that the civil aspect of the criminal cases filed against her be likewise dismissed. Hence, there is no basis for her adjudged civil liability.

Factual Antecedents

Sales Invoice No. 1711[3] dated November 24, 1995, as well as Statement of Accounts No. 076[4] indicate that respondent Mindanao Wines and Liquor Galleria (Mindanao Wines) delivered several cases of liquors to H & E Commercial owned by Emilia, for which the latter issued four Philippine National Bank (PNB) postdated checks worth P25,000.00 each. When two of these checks, particularly PNB Check Nos. 951453[5] and 951454[6] dated October 10, 1996 and October 20, 1996, respectively, bounced for the reasons ‘ACCOUNT CLOSED’ and ‘DRAWN AGAINST INSUFFICIENT FUNDS’, Mindanao Wines, thru its proprietress Evelyn Valdevieso, demanded from H & E Commercial the payment of their value through two separate letters both dated November 18, 1996.[7] When the demands went unheeded, Mindanao Wines filed before Branch 2 of the Municipal Trial Court in Cities (MTCC) of Davao City Criminal Case Nos. 68,309-B-98 and 68,310-B-98 against Emilia for violations of BP 22.[8]

During trial, the prosecution presented its sole witness, Nieves Veloso (Nieves), accountant and officer-in-charge of Mindanao Wines. She testified that Emilia has been a customer of Mindanao Wines who purchased from it assorted liquors. In fact, Sales Invoice No. 1711 covered the orders made by Emilia from Mindanao Wines and these orders were delivered by the latter’s salesman Marcelino Bersaluna[9] (Marcelino) to H & E Commercial in San Francisco, Agusan del Sur. For the same, Marcelino received the four PNB checks and accordingly endorsed them to Mindanao Wines. Out of these four PNB checks, two were already paid, i.e., one was collected while the other redeemed in court.[10]

With regard to the bounced PNB Check Nos. 951453 and 951454, Nieves claimed that upon her instructions

Marcelino went to H & E Commercial more than 10 times to collect their value. But since his efforts were in vain, two demand letters were thus sent to Emilia which were duly received by her as the same were 'signed by the recipient of the letters'.^[11]

On cross, Nieves admitted that she neither saw Emilia issue the checks nor accompanied Marcelino in delivering the orders to H & E Commercial or in collecting the unpaid checks.^[12] Asked about the corresponding sales order covering Sales Invoice No. 1711, she acknowledged that the sales order was unsigned and explained that sales orders of customers are handled by the Credit and Collection Department of Mindanao Wines.^[13]

After the prosecution rested its case, Emilia filed a Demurrer to Evidence^[14] claiming insufficiency of evidence. She asserted that not one of the elements of BP 22 was proven because the witness merely relied upon the reports of the salesman; that the purchases covered by Sales Invoice No. 1711 were unauthorized because the corresponding job order was unsigned; and that it was never established that the bank dishonored the checks or that she was even sent a notice of dishonor.

Ruling of the Municipal Trial Court in Cities

In its December 10, 1999 Order,^[15] the MTCC granted the Demurrer to Evidence. It ruled that while Emilia did issue the checks for value, the prosecution nevertheless miserably failed to prove one essential element that consummates the crime of BP 22, i.e., the fact of dishonor of the two subject checks. It noted that other than the checks, no bank representative testified about presentment and dishonor. Hence, the MTCC acquitted Emilia of the criminal charges. However, the MTCC still found her civilly liable because when she redeemed one of the checks during the pendency of the criminal cases, the MTCC considered the same as an acknowledgement on her part of her obligation with Mindanao Wines. Pertinent portions of the MTCC Order read:

The elements of B.P. Blg. 22 must concur before one can be convicted of this offense. Since one element is wanting, it is believed that the guilt of the accused has not been established beyond reasonable doubt. The Court, however, opines that the accused is civilly liable. There is evidence on record that an account was contracted. She should, therefore, pay.

WHEREFORE, the demurrer to evidence is granted and these cases are ordered DISMISSED.

Accused, however, is adjudged to pay complainant the total amounts of the 2 checks which is P50,000.00, with interest at the rate of 12% per annum to be computed from the date of notice which is November 18, 1996 until the amount is paid in full; to reimburse complainant of the expenses incurred in filing these cases in the amount of P1,245.00, and to pay attorney's fees of P10,000.00.

SO ORDERED.^[16]

Ruling of the Regional Trial Court

Dissatisfied that her acquittal did not carry with it her exoneration from civil liability, Emilia appealed to the Regional Trial Court (RTC) of Davao City, Branch 13. Emilia contended that since the MTCC dismissed the criminal cases 'on the ground of insufficient evidence,' the civil aspect of the criminal cases should likewise be automatically dismissed. She argued that the court may only award damages for the civil aspect of BP 22 if the criminal cases have been dismissed on 'reasonable doubt' upon proof of preponderance of evidence.

The RTC was not persuaded by Emilia's contentions. The RTC clarified that the MTCC dismissed the criminal cases based on 'reasonable doubt' and not on 'insufficiency of evidence.' And while the prosecution failed to prove criminal liability beyond reasonable doubt, Emilia's indebtedness was nonetheless proven by preponderance of evidence, the quantum of evidence required to prove the same. Thus, the RTC declared in its January 5, 2001 Order^[17] that:

The prosecution however had established that the accused had issued the checks subject of these cases. The accused had impliedly admitted that she was the maker of the checks subject of [these] case[s] when she redeemed a third check from the complainant. In fact, the accused had never categorically denied having issued the checks subject of these cases. When the accused filed the Demurrer to Evidence, she had hypothetically admitted the evidence presented by the prosecution to be true, and this includes the allegation of the prosecution that the accused issued the checks subject of these cases for value.[18]

Thus, it dismissed the appeal, viz:

WHEREFORE, in view of the foregoing, the appeal of the accused in these cases is hereby DISMISSED, and the decision appealed from is hereby AFFIRMED IN TOTO.

SO ORDERED.[19]

Ruling of the Court of Appeals

Undeterred, Emilia filed before the CA a Petition for Review[20] still insisting that the MTCC's dismissal was based on 'insufficiency of evidence' and that same pertains to both the criminal and civil aspects of BP 22. She reiterated that there was no basis for the civil award made by the MTCC since the prosecution failed to show evidence of her civil liability and that a court can only award civil liability in cases of acquittals based on reasonable doubt and not on insufficiency of evidence.

In its June 30, 2006 Decision, the CA emphasized that even if acquitted, an accused may still be held civilly liable if a) the acquittal was based on reasonable doubt or b) the court declared that the liability of the accused is only civil. Just like the RTC, the CA ruled that the dismissal of the criminal cases against Emilia was expressly based on reasonable doubt, hence, she is not free from civil liability because the same is not automatically extinguished by acquittal based on said ground. The CA further declared that even granting that her acquittal was for 'insufficiency of evidence,' the same is still akin to a dismissal based on reasonable doubt.

Respecting the factual conclusions of the lower courts anent Emilia's civil liability, the CA noted that Emilia had never denied issuing the subject checks for value which, in themselves constituted evidence of indebtedness. Moreover, she failed to refute the prosecution's evidence when she filed a Demurrer to Evidence. The CA therefore affirmed the assailed Order of the RTC except that it deleted the award of attorney's fees, thus:

WHEREFORE, premises considered, the assailed Order of the Regional Trial Court (RTC), Br. 13, Davao City, affirming in toto the Order of the Municipal Trial Court in Cities (MTCC), Br. 2, Davao City as to the civil liability of Emilia Lim, is hereby AFFIRMED with the sole modification that the award of attorney's fees in favor of the Respondent is DELETED.

SO ORDERED. [21]

On Motion for Reconsideration,[22] Emilia asserted that by granting her Demurrer to Evidence based on insufficiency of evidence, the MTCC acknowledged that there is absolutely no case against her. She alleged that the 'preponderance of evidence' required in determining civil liability does not apply to her as she never presented any evidence at all, implying that in such a determination, both parties should have presented their respective evidence for the purpose of ascertaining as to which of the evidence presented is superior.

The CA, however, rejected the motion in its Resolution[23] dated November 9, 2006. It held that 'insufficiency' does not mean the 'total absence of evidence,' but that 'evidence is lacking of what is necessary or required to make out her case.' The CA explained that the MTCC acquitted Emilia because the quantum of evidence required for a finding of guilt beyond reasonable doubt was insufficient to convict her of BP 22. However, the extinction of the civil aspect does not necessarily follow such acquittal. The CA also disregarded Emilia's argument that a

‘preponderance of evidence’ should be a comparison of evidence of the opposing parties as such interpretation would lead to absurdity because by simply refusing to present evidence, a defendant can then be easily absolved from a civil suit.

Hence, this petition raising the following assignment of errors:

1)

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT HOLDING THAT THE AWARD OF CIVIL LIABILITY IN FAVOR OF THE RESPONDENT AND AGAINST THE PETITIONER IS A NULLITY FOR LACK OF DUE PROCESS, APART FROM THE FACT THAT THE COMPLAINANT IS NOT A JURIDICAL PERSON OR IS NOT THE REAL PARTY IN INTEREST.

2)

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT HOLDING THAT BECAUSE THE GROUND FOR THE DISMISSAL WAS FOR “INSUFFICIENCY OF EVIDENCE” AND NOT ON “REASONABLE DOUBT,” THE DISMISSAL OF THE CRIMINAL CASES CARRIES WITH IT THE DISMISSAL OF THE CIVIL CASES DEEMED INSTITUTED THEREIN.

3)

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN ITS APPLICATION OF THE CONCEPT OF “PREPONDERANCE OF EVIDENCE.”

4)

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT HOLDING THAT THERE IS NO PIECE OF “ADMISSIBLE EVIDENCE” PRESENTED THAT MAY BE TAKEN INTO ACCOUNT TO PROVE CIVIL LIABILITY.[24]

In sum, the core issue in this petition is whether the dismissal of Emilia’s BP 22 cases likewise includes the dismissal of their civil aspect.

Our Ruling

The petition lacks merit.

Emilia’s allegations that she was denied due process and that Mindanao Wines is not the real party in interest do not merit our attention as these were never raised for resolution before the courts below.

Emilia claims that she was deprived of due process when the courts below declared her civilly liable. In support of this, she cites *Salazar v. People*[25] wherein it was held that a court cannot rule upon the civil aspect of the case should it grant a demurrer to evidence with leave of court since the accused is entitled to adduce controverting evidence on the civil liability. Emilia likewise contends that Mindanao Wines is not a juridical person, it being a single proprietorship only and thus, not the real party in interest in this case.

We note, however, that Emilia had never invoked before the courts below the ruling in *Salazar*. Neither did she specify in her pleadings filed therein whether her demurrer was filed with or without leave of court. It is only now that Emilia is claiming that the same was filed with leave of court in an apparent attempt to conform the facts of this case with that in *Salazar*. The same goes true with regard to the questioned locus standi of Mindanao Wines. Emilia likewise did not raise in her pleadings filed with the RTC or the CA that the civil aspect is dismissible for

lack of cause of action because Mindanao Wines is not a juridical person and thus not a real party in interest. In fact, the courts below all along considered Mindanao Wines as the plaintiff and the trial proceeded as such.

Obviously, these new issues are mere afterthoughts. They were raised only for the first time in this petition for review on certiorari. Never were they presented before the RTC and the CA for resolution. To allow Emilia to wage a legal blitzkrieg and blindside Mindanao Wines is a violation of the latter's due process rights:

It is well-settled that no question will be entertained on appeal unless it has been raised in the proceedings below. Points of law, theories, issues and arguments not brought to the attention of the lower court, administrative agency or quasi-judicial body, need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of fairness and due process impel this rule. Any issue raised for the first time on appeal is barred by estoppel.[26]

For this reason, the said issues do not merit the Court's consideration.

Notwithstanding her acquittal, Emilia is civilly liable.

"The extinction of the penal action does not carry with it the extinction of the civil liability where x x x the acquittal is based on reasonable doubt as only preponderance of evidence is required"[27] in civil cases. On this basis, Emilia insists that the MTCC dismissed the BP 22 cases against her not on the ground of reasonable doubt but on insufficiency of evidence. Hence, the civil liability should likewise be extinguished. Emilia's Demurrer to Evidence, however, betrays this claim. Asserting insufficiency of evidence as a ground for granting said demurrer, Emilia herself argued therein that the prosecution has not proven [her] guilt beyond reasonable doubt.[28] And in consonance with such assertion, the MTCC in its judgment expressly stated that her guilt was indeed not established beyond reasonable doubt, hence the acquittal.[29]

In any case, even if the Court treats the subject dismissal as one based on insufficiency of evidence as Emilia wants to put it, the same is still tantamount to a dismissal based on reasonable doubt. As may be recalled, the MTCC dismissed the criminal cases because one essential element of BP 22 was missing, i.e., the fact of the bank's dishonor. The evidence was insufficient to prove said element of the crime as no proof of dishonor of the checks was presented by the prosecution. This, however, only means that the trial court cannot convict Emilia of the crime since the prosecution failed to prove her guilt beyond reasonable doubt, the quantum of evidence required in criminal cases. Conversely, the lack of such proof of dishonor does not mean that Emilia has no existing debt with Mindanao Wines, a civil aspect which is proven by another quantum of evidence, a mere preponderance of evidence.

Emilia also avers that a court's determination of preponderance of evidence necessarily entails the presentation of evidence of both parties. She thus believes that she should have been first required to present evidence to dispute her civil liability before the lower courts could determine preponderance of evidence.

We disagree.

"Preponderance of evidence is [defined as] the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term 'greater weight of the evidence' or 'greater weight of the credible evidence'. It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto."[30] Contrary to Emilia's interpretation, a determination of this quantum of evidence does not need the presentation of evidence by both parties. As correctly reasoned out by the CA, Emilia's interpretation is absurd as this will only encourage defendants to waive their presentation of evidence in order for them to be absolved from civil liability for lack of preponderance of evidence. Besides, Emilia should note that even when a respondent does not present evidence, a complainant in a civil case is nevertheless

burdened to substantiate his or her claims by preponderance of evidence before a court may rule on the reliefs prayed for by the latter. Settled is the principle that “parties must rely on the strength of their own evidence, not upon the weakness of the defense offered by their opponent.”[31]

Lastly, we see no reason to disturb the ruling of the CA anent Emilia’s civil liability. As may be recalled, the CA affirmed the lower courts’ factual findings on the matter. Factual findings of the trial court, when affirmed by the CA, will not be disturbed.[32] Also, “[i]t is a settled rule that in a petition for review on certiorari under Rule 45 of the Rules of [Court], only questions of law may be raised by the parties and passed upon by this Court.”[33] Moreover, “it is well to remember that a check may be evidence of indebtedness. A check, the entries of which are in writing, could prove a loan transaction.”[34] While Emilia is acquitted of violations of BP 22, she should nevertheless pay the debt she owes.

WHEREFORE, the petition for review on certiorari is DENIED. The challenged June 30, 2006 Decision and November 9, 2006 Resolution of the Court of Appeals in CA-G.R. SP No. 64897 are hereby AFFIRMED in toto.

SO ORDERED.

Leonardo-De Castro,[*] Acting Chairperson, Brion,**] Villarama, Jr., and Perlas-Bernabe,**] JJ., concur.

[*] Per Special Order No. 1226 dated May 30, 2012.

[**] Per Special Order No. 1247 dated June 29, 2012.

[**] Per Special Order No. 1227 dated May 30, 2012.

[1] CA rollo, pp. 115-132; penned by Associate Justice Teresita Dy-Liacco Flores and concurred in by Associate Justices Rodrigo F. Lim, Jr. and Sixto C. Marella, Jr.

[2] Id. at 156-160.

[3] Id. at 23.

[4] Id. at 28.

[5] Id. at 26.

[6] Id. at 24.

[7] Id. at 25 and 27.

[8] Section 1 of the said law 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.

[9] CA rollo, p. 88.

[10] Id. at 89.

[11] Id. at 94 and 98.

[12] Id. at 101-103.

[13] Id. at 111-112.

[14] Id. at 32-35.

[15] Id. at 36-39; penned by Presiding Judge Antonina B. Escovilla.

[16] Id. at 38-39.

[17] Id. at 44-45; penned by Judge Isaac G. Robillo, Jr.

[18] Id. at 45.

[19] Id.

[20] Id. at 4-15.

[21] Id. at 132.

[22] Id. at 139-147.

[23] Supra note 2.

[24] Rollo, p. 17.

[25] 458 Phil. 504 (2003).

[26] *Besana v. Mayor*, G.R. No. 153837, July 21, 2010, 625 SCRA 203, 214.

[27] *Alferez v. People of the Philippines*, G.R. No. 182301, January 31, 2011, 641 SCRA 116, 125, citing *Hun Hyung Park v. Eung Won Choi*, G.R. No. 165496, February 12, 2007, 515 SCRA 502, 513. Other bases mentioned therein for the finding of civil liability despite the acquittal of the accused from the criminal case are “a) the court declares that the liability of the accused is only civil; and b) the civil liability of the accused does not arise from or is not based upon the crime of which the accused was acquitted.”

[28] CA rollo, p. 32.

[29] Id. at 38.

[30] *Peñalber v. Ramos*, G.R. No. 178645, January 30, 2009, 577 SCRA 509, 526-527, citing *Ong v. Yap*, 492 Phil. 188, 196-197 (2005). Emphasis supplied.

[31] *Gajudo v. Traders Royal Bank*, 519 Phil. 791, 803 (2006), citing *Saguid v. Court of Appeals*, 451 Phil. 825, 837.

[32] Maxwell Heavy Equipment Corporation v. Yu, G.R. No. 179395, December 15, 2010, 638 SCRA 653, 658, citing Pacific Airways Corporation v. Tonda, 441 Phil. 156, 162 (2002); Austria v. Court of Appeals, 384 Phil. 408, 415 (2000).

[33] Jarantilla Jr. v. Jarantilla, G.R. No. 154486, December 1, 2010, 636 SCRA 299, 308.

[34] Gaw v. Chua, G.R. No. 160855, April 16, 2008, 551 SCRA 505, 519, citing Pacheco v. Court of Appeals, 377 Phil. 627, 637 (1999) and Spouses Tan v. Villapaz, 512 Phil. 366, 376 (2005).

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