

JAIME ALFEREZ, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND PINGPING CO, RESPONDENTS.

G.R. No. 182301. January 31, 2011

Ponente: NACHURA, J.

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NACHURA, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court, assailing the Court of Appeals (CA) Decision[1] dated December 13, 2007 and Resolution[2] dated March 4, 2008 in CA-G.R. CEB-CR No. 00300.

The facts of the case, as culled from the records, are as follows:

Petitioner Jaime Alferez purchased construction materials from Cebu ABC Sales Commercial. As payment for the goods, he issued three (3) checks for the total amount of P830,998.40. However, the checks were dishonored for having been drawn against a closed account. Petitioner was thus charged with three (3) counts of violation of Batas Pambansa Bilang (B.P. Blg.) 22 before the Municipal Trial Court in Cities (MTCC), Cebu City. The cases were raffled to Branch 3 and docketed as Criminal Case Nos. 40985-R to 40987-R.[3] During the trial, the prosecution presented its lone witness, private complainant Pingping Co.[4] Thereafter, the prosecution formally offered the following documentary evidence:

1. BPI Check No. 492089 dated 29 April 1994 in the sum of P78, 889.95;
2. BPI Check No. 492010 dated 22 June 1994 in the sum of P30,745.90;
3. BPI Check No. 492011 dated 22 June 1994 in the sum of P721,362.55;
4. The demand letter dated 7 July 1994 addressed to petitioner;
5. The registry receipt of the Post Office;
6. The face of the Registry Return Receipt;
7. The dorsal side of the Registry Return Receipt;
8. The Returned Check Ticket dated 23 June 1994; and
9. The reason for the dishonor.[5]

Instead of presenting evidence, petitioner filed a Demurrer to Evidence[6] on August 8, 2003, or approximately ten (10) months after the prosecution rested its case. Petitioner averred that the prosecution failed to show that he received the notice of dishonor or demand letter.

On March 4, 2005, the MTCC issued a resolution[7] denying petitioner's Demurrer to Evidence, and rendering judgment finding petitioner guilty as charged, the dispositive portion of which reads:

WHEREFORE, the Court finds the accused guilty beyond reasonable doubt of the crime of issuing bouncing checks as defined and penalized under Section 1 of Batas Pambansa Blg. 22 and hereby sentences the accused the following:

- To pay a fine of Php830,998.40 and in case of insolvency to suffer subsidiary imprisonment;
- To pay private complainant the total face value of the checks in the amount of Php830,998.40 plus 1%

interest per month beginning from the filing of the complaint.

SO ORDERED.[8]

Aggrieved, petitioner appealed to the Regional Trial Court (RTC), Branch 21, Cebu City. The RTC rendered Judgment[9] affirming in toto the MTCC decision. Petitioner moved for reconsideration, but it was denied in an Order[10] dated December 16, 2005. In the same Order, the RTC modified the MTCC resolution by sentencing petitioner to suffer the penalty of imprisonment for six (6) months for each count of violation of B.P. Blg. 22, instead of fine as originally imposed.

Undaunted, petitioner elevated the matter to the CA via a petition for review under Rule 42 of the Rules of Court. In the assailed Decision, the CA dismissed the petition for lack of merit. It sustained petitioner's conviction as the elements of the crime had been sufficiently established. As to the service on petitioner of the notice of dishonor, the appellate court pointed out that petitioner did not testify, and that he did not object to the prosecution's evidence aimed at proving the fact of receipt of the notice of dishonor. Consequently, the registry receipt and the return card adequately show the fact of receipt. As to petitioner's contention that he was denied his right to present evidence after the denial of his demurrer to evidence, the CA held that there was no such denial since it was merely the consequence of the filing of demurrer without leave of court. Finally, as to the imposition of the penalty of imprisonment instead of fine, the CA found no grave abuse of discretion on the part of the RTC since it was shown that petitioner acted in bad faith.[11]

On March 4, 2008, the CA denied petitioner's motion for reconsideration. Hence, this petition anchored on the following issues:

Whether the Registry Receipt and Registry Return Receipt alone without presenting the person who mailed and/or served the demand letter is sufficient notice of dishonor as required by BP 22.

Whether the filing of the Demurrer of (sic) Evidence without leave and denied by the trial court is a waiver of the right of the petitioner (the accused before the trial court) to present his evidence in support and to rebut the evidence of the respondent particularly with respect to the civil aspect of the case.

On the alternative (if the petitioner is guilty), whether the accused should only be mete[d] the penalty of fine as imposed by the trial court (MTCC).[12]

The petition is partly meritorious.

After a careful evaluation of the records of the case, we believe and so hold that the totality of the evidence presented does not support petitioner's conviction for violation of B.P. Blg. 22.

Section 1 of B.P. Blg. 22 defines the offense, as follows:[13]

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.

Accordingly, this Court has held that the elements of the crime are, as follows: (1) the making, drawing, and issuance of any check to apply on account or for value; (2) the knowledge of the maker, drawer, or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of the 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.[14]

In this case, the first and third elements of the crime have been adequately established. The prosecution, however, failed to prove the second element. Because this element involves a state of mind which is difficult to establish, Section 2 of B.P. Blg. 22 creates a presumption of knowledge of insufficiency of funds under the following circumstances:[15]

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 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.

In *Suarez v. People*,[16] which is on all fours with the instant case, two Informations for violation of B.P. Blg. 22 were filed against petitioner therein. After the prosecution presented its evidence, petitioner filed a Demurrer to Evidence without leave of court on the ground that no notice of dishonor had been sent to and received by him. When the case reached this Court, we acquitted petitioner on reasonable doubt as there was insufficient proof that he received notice of dishonor. We explained that:

The presumption arises when it is proved that the issuer had received this notice, and that within five banking days from its receipt, he failed to pay the amount of the check or to make arrangements for its payment. The full payment of the amount appearing in the check within five banking days from notice of dishonor is a complete defense. Accordingly, procedural due process requires that a notice of dishonor be sent to and received by the petitioner to afford the opportunity to avert prosecution under B.P. Blg. 22.

x x x. [I]t is not enough for the prosecution to prove that a notice of dishonor was sent to the petitioner. It is also incumbent upon the prosecution to show "that the drawer of the check received the said notice because the fact of service provided for in the law is reckoned from receipt of such notice of dishonor by the drawee of the check.

A review of the records shows that the prosecution did not prove that the petitioner received the notice of dishonor. Registry return cards must be authenticated to serve as proof of receipt of letters sent through registered mail.[17]

In this case, the prosecution merely presented a copy of the demand letter, together with the registry receipt and the return card, allegedly sent to petitioner. However, there was no attempt to authenticate or identify the signature on the registry return card.[18] Receipts for registered letters and return receipts do not by themselves prove receipt; they must be properly authenticated to serve as proof of receipt of the letter, claimed to be a notice of dishonor.[19] To be sure, the presentation of the registry card with an unauthenticated signature, does not meet the required proof beyond reasonable doubt that petitioner received such notice. It is not enough for the

prosecution to prove that a notice of dishonor was sent to the drawee of the check. The prosecution must also prove actual receipt of said notice, because the fact of service provided for in the law is reckoned from receipt of such notice of dishonor by the drawee of the check.[20] The burden of proving notice rests upon the party asserting its existence. Ordinarily, preponderance of evidence is sufficient to prove notice. In criminal cases, however, the quantum of proof required is proof beyond reasonable doubt. Hence, for B.P. Blg. 22 cases, there should be clear proof of notice.[21] Moreover, for notice by mail, it must appear that the same was served on the addressee or a duly authorized agent of the addressee. From the registry receipt alone, it is possible that petitioner or his authorized agent did receive the demand letter.[22] Possibilities, however, cannot replace proof beyond reasonable doubt.[23] The consistent rule is that penal statutes have to be construed strictly against the State and liberally in favor of the accused.[24] The absence of a notice of dishonor necessarily deprives the accused an opportunity to preclude a criminal prosecution.[25] As there is insufficient proof that petitioner received the notice of dishonor, the presumption that he had knowledge of insufficiency of funds cannot arise.[26]

This is so even if petitioner did not present his evidence to rebut the documentary evidence of the prosecution as he had waived his right to present evidence for having filed a demurrer to evidence without leave of court. We must emphasize that the prosecution has the burden of proving beyond reasonable doubt each element of the crime as its case will rise or fall on the strength of its own evidence, never on the weakness or even absence of that of the defense.[27] The failure of the prosecution to prove the receipt by petitioner of the requisite notice of dishonor and that he was given at least five (5) banking days within which to settle his account constitutes sufficient ground for his acquittal.[28]

Nonetheless, petitioner's acquittal for failure of the prosecution to prove all elements of the offense beyond reasonable doubt does not include the extinguishment of his civil liability for the dishonored checks.[29] In case of acquittal, the accused may still be adjudged civilly liable. The extinction of the penal action does not carry with it the extinction of the civil action where (a) the acquittal is based on reasonable doubt as only preponderance of evidence is required; (b) the court declares that the liability of the accused is only civil; and (c) the civil liability of the accused does not arise from or is not based upon the crime of which the accused was acquitted.[30] In a number of similar cases, we have held that an acquittal based on reasonable doubt does not preclude the award of civil damages.[31]

In view of the foregoing, we sustain the findings of the trial court, as affirmed by the CA, as to petitioner's civil liability.

Finally, in answer to petitioner's insistence that he should have been allowed by the trial court to present his evidence on the civil aspect of the case, suffice it to state that when petitioner filed a demurrer to evidence without leave of court, the whole case was submitted for judgment on the basis of the evidence presented by the prosecution as the accused is deemed to have waived the right to present evidence. At that juncture, the court is called upon to decide the case including its civil aspect.[32]

WHEREFORE, premises considered, the Court of Appeals Decision dated December 13, 2007 and Resolution dated March 4, 2008 in CA-G.R. CEB-CR No. 00300 are MODIFIED. Petitioner Jaime Alferez is ACQUITTED on reasonable doubt of violation of B.P. Blg. 22. However, the civil liability imposed on petitioner is AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Peralta, Abad, and Mendoza, JJ., concur.

- [1] Penned by Associate Justice Francisco P. Acosta, with Associate Justices Pampio A. Abarintos and Amy C. Lazaro-Javier, concurring; rollo, pp. 16-25.
- [2] Id. at 26-27.
- [3] CA rollo, p. 18.
- [4] Rollo, p. 17.
- [5] CA rollo, pp. 22-23.
- [6] Id. at 28-31.
- [7] Penned by Presiding Judge Gil R. Acosta; id. at 18-21.
- [8] Id. at 21.
- [9] Penned by Presiding Judge Eric F. Menchavez; id. at 14-15.
- [10] Id. at 16-17.
- [11] Rollo, pp. 19-24.
- [12] Id. at 6.
- [13] King v. People, 377 Phil. 692, 706 (1999).
- [14] Suarez v. People, G.R. No. 172573, June 19, 2008, 555 SCRA 238, 245; Moster v. People, G.R. No. 167461, February 19, 2008, 546 SCRA 287, 296.
- [15] Suarez v. People, supra, at 245; King v. People, supra note 13, at 708-709.
- [16] Supra.
- [17] Id. at 246.
- [18] Moster v. People, supra note 14, at 297-298.
- [19] Id. at 298, citing Rico v. People, G.R. No. 137191, November 18, 2002, 392 SCRA 61, 73.
- [20] Moster v. People, supra, at 299, citing Cabrera v. People, 454 Phil. 759, 774 (2003).
- [21] Cabrera v. People, supra, at 774.
- [22] Ting v. Court of Appeals, 398 Phil. 481, 494 (2000).
- [23] Moster v. People, supra note 14, at 299.
- [24] Ambito v. People, G.R. No. 127327, February 13, 2009, 579 SCRA 69, 94.
- [25] Id. at 92.
- [26] Suarez v. People, supra note 14, at 247.
- [27] Moster v. People, supra note 14, at 299; King v. People, supra note 13, at 711.
- [28] Moster v. People, supra, at 299.
- [29] Ambito v. People, supra note 24, at 94.

[30] Hun Hyung Park v. Eung Won Choi, G.R. No. 165496, February 12, 2007, 515 SCRA 502, 513.

[31] Ambito v. People, supra note 24, at 94, citing Bax v. People, G.R. No. 149858, September 5, 2007, 532 SCRA 284, 292-293; Rico v. People, supra note 19, at 74; Domangsang v. Court of Appeals, G.R. No. 139292, December 5, 2000, 347 SCRA 75, 84-85.

[32] Hun Hyung Park v. Eung Won Choi, supra note 30, at 512-513.

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