

**LOURDES AZARCON, PETITIONER, VS. PEOPLE OF THE PHILIPPINES
AND MARCOSA GONZALES, RESPONDENTS.***G.R. No. 185906. June 29, 2010*

Ponente: CARPIO MORALES, J.

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On petition for review are the Court of Appeals September 30, 2008 Decision[2] and January 6, 2009 Resolution[3] affirming with modification the September 15, 2006 Decision of Branch 224 of the Regional Trial Court (RTC) of Quezon City in Criminal Case Nos. Q-38-021202 to 021288 which upheld the November 15, 2005 Decision of Branch 38 of the Metropolitan Trial Court (MeTC) of Quezon City convicting Lourdes Azarcon (petitioner) of eighty-four (84) counts of violation of Batas Pambansa (B.P.) Bilang 22,[4] otherwise known as the Bouncing Checks Law.

Since 1990, petitioner, a businesswoman, had been borrowing money from Marcosa Gonzales (Marcosa) who was engaged in informal money-lending. Between the months of August to December 1992, as was usual in the normal course of their transactions, petitioner issued several Premiere Bank checks payable to Marcosa, dated at ten-day intervals, in exchange for cash received. Due to business reverses suffered by petitioner, however, the checks were, on maturity, dishonored for the reason "Account Closed."

Marcosa, through counsel, thus demanded, by letter[5] of December 1, 1993 to petitioner, the settlement of her P749,000.00 obligation for which she issued "several Premium Bank checks, with [the] assurance that all will be honored" but that they were all dishonored due to "Account Closed."

Replying, petitioner, by letter[6] of December 17, 1993, sought a "reconciliation of her accountability since [she] has also some receipt payments covering the checks she has issued." She, in the same letter, expressed willingness to settle her outstanding account. Petitioner's husband, Manuel Azarcon (Manuel), later paid on February 15, 1994 the amount of P200,000.00 representing "initial payment on the account of [petitioner]" with the undertaking to settle the balance within one year via monthly installments.[7]

More than two and a half years later, as petitioner had not settled her outstanding obligation, Marcosa filed on September 4, 1996 a complaint[8] for violation of B.P. 22 before the Quezon City Prosecutor's Office against her involving 120 dishonored checks amounting to P746,250.00, 87 of which were made the basis of 87 Informations filed against her.

Except for the numbers, dates and amounts (ranging from P1,500.00 to P6,250.00) of the checks[9] issued by petitioner subject of the 87 Informations filed against her, each Information uniformly charged as follows:

That on or about the _____ in Quezon City, Philippines, the said accused, did then and there willfully, unlawfully and feloniously make or draw and issue to MARCOSA GONZALES to apply on account or for value PREMIERE BANK check no. 000367 dated _____ payable to the order of MARCOSA GONZALES in the amount of _____ Philippine Currency, said accused well knowing that at the time of issue she did not have sufficient funds in or credit with the drawee bank for the payment of such

check in full upon its presentment which check when presented for payment was subsequently dishonored by the drawee bank for insufficiency of funds/Account Closed and despite receipt of notice of such dishonor, said accused failed to pay said MARCOSA GONZALES the amount of said check or to make arrangement for full payment of the same within five (5) banking days after receiving said notice.

CONTRARY TO LAW.

Petitioner maintained that her obligations under the various checks had been released, superseded and novated by her husband's assumption of her liabilities.[10] Brushing this position aside, the trial court convicted petitioner. It, however, deducted from the total amount of the face value of the 87 checks the sum of P11,000.00 representing the face value of three checks[11] which the prosecution failed to offer in evidence, and another sum of P20,000.00 claimed to have been paid to Marcosa which she failed to dispute.

Thus, the trial court, by Decision[12] of November 15, 2005, disposed:

WHEREFORE, premises considered, this Court finds accused LOURDES AZARCON guilty, beyond reasonable doubt, of eighty-four (84) counts of violation of the Batas Pambansa Blg. 22 in Criminal Case Nos. 21202 to 21247, 21249 to 21261, 21263 to 21277 and 21279 to 21288, and hereby sentences her to suffer a penalty of SIX (6) MONTHS IMPRISONMENT for each count of violation; to restitute to the private complainant the amount of TWO HUNDRED NINETY FIVE THOUSAND TWO HUNDRED FIFTY PESOS (P295,250.00) representing the value of the checks less the payment of P20,000.00 plus 12% per annum interest from the date of final demand until said amount is fully paid. The accused is also ordered to pay the complainant the reasonable sum of P20,000.00 as attorney's fees.

Further, pursuant to Sec. 34, Rule 132 of the Revised Rules on Criminal Procedure which provides that the court shall consider no evidence which has not been formally offered, Criminal Cases Nos. 21248, 21262 and 21278 are hereby DISMISSED, for insufficiency of evidence.

SO ORDERED.

On appeal, the Quezon City RTC, Br. 224[13] affirmed the trial court's judgment by Decision[14] of September 15, 2006.

At the Court of Appeals before which petitioner appealed, she questioned 1) the lack of prior demand for the settlement of the checks after their dishonor, the December 1, 1993 demand letter[15] for the payment of her outstanding balance having failed to mention or enumerate any particular check involved therein, and (2) the lower courts' failure to appreciate that novation had taken place with respect to her civil liability.[16]

By the challenged decision, the appellate court affirmed the appellant's conviction but found the imposition of the penalty of imprisonment (six months for each of the 84 checks) too harsh, citing SC Administrative Circular 12-2000[17] and *Lim v. People*. [18] It thus modified the RTC decision, disposing as follows:

WHEREFORE, premises considered, the assailed Judgment of the Regional Trial Court of Quezon City is hereby modified, to wit: This Court finds Petitioner Lourdes Azarcon guilty of having violated the provisions of Batas Pambansa Bilang 22 and hereby sentences her to pay a fine double the amount stated on each of the 84 checks, to suffer subsidiary imprisonment in case of non-payment or insolvency and to restitute to the Private Respondent the amount of TWO HUNDRED NINETY FIVE THOUSAND TWO HUNDRED FIFTY PESOS (P295,250.00) representing the value of the checks less the payment of P20,000.00, plus 12% per annum interest from the date of final demand until said amount is fully paid. The accused is also ordered to pay the complainant the reasonable sum of P20,000.00 as attorney's fees.

SO ORDERED. (emphasis supplied; underscoring in the original)

Reconsideration having been denied by Resolution of January 6, 2009, petitioner echoes before this Court substantially the same issues proffered before the appellate court.

Petitioner's conviction stands.

Liability for violation of B.P. 22 attaches when the prosecution establishes proof beyond reasonable doubt of the existence of the following elements:

1. The accused makes, draws or issues any check to apply to account or for value;
2. The accused knows at the time of the issuance that he or she 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 check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or it would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment.[19]

The evidence clearly demonstrates the presence of all three elements. It is not the function of this Court to undertake a review of the factual findings of the trial court, which were sustained by the RTC and the Court of Appeals.

Petitioner argues, however, that acquittal is in order as the second element of the crime is wanting, citing lack of knowledge of the insufficiency of her credit due to Marcosa's failure to specify or enumerate the dishonored checks in her December 1, 1993 demand letter. Petitioner's argument fails.

What constitutes proof of knowledge of insufficiency of funds, *Dico v. Court of Appeals*[20] enlightens:

x x x x

This knowledge of insufficiency of funds or credit at the time of the issuance of the check . . . involves a state of mind of the person making, drawing or issuing the check which is difficult to prove. [Thus] Section 2 of B.P. Blg. 22 creates a prima facie presumption of such knowledge. Said section reads:

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.

x x x In other words, the presumption is brought into existence only after it is proved that the issuer had received a notice of dishonor and that within five days from receipt thereof, he failed to pay the amount of the check or to make arrangements for its payment. The presumption or prima facie evidence as provided in this section cannot arise, if such notice of nonpayment by the drawee bank is not sent to the maker or drawer, or if there is no proof as to when such notice was received by the drawer, since there would simply be no way of reckoning the crucial 5-day period.

A notice of dishonor received by the maker or drawer of the check is thus indispensable before a conviction can ensue. The notice of dishonor may be sent by the offended party or the drawee bank. The notice must be in writing. A mere oral notice to pay a dishonored check will not suffice. The lack of a written notice is fatal for the prosecution.

The requirement of notice, its sending to, and its actual receipt by, the drawer or maker of the check gives the latter the option to prevent criminal prosecution if he pays the holder of the check 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 the check has not been paid. (emphasis and underscoring supplied)

All that the Bouncing Checks Law thus requires is that the accused must be notified in writing of the fact of dishonor.[21]

Petitioner admittedly received the December 1, 1993 demand letter of Marcosa. In fact, in her reply letter of December 17, 1993, petitioner sought a reconciliation of accounts and expressed willingness to settle - an indication of her awareness of what checks Marcosa was referring to in the December 1, 1993 letter.

As for petitioner's assertion that novation of her civil liability occurred, it is likewise unavailing.

Iloilo Traders Finance, Inc. v. Heirs of Oscar Soriano, Jr.[22] on novation teaches:

Novation may either be extinctive or modificatory, much being dependent on the nature of the change and the intention of the parties. Extinctive novation is never presumed; there must be an express intention to novate; in cases where it is implied, the acts of the parties must clearly demonstrate their intent to dissolve the old obligation as the moving consideration for the emergence of the new one. Implied novation necessitates that the incompatibility between the old and new obligation be total on every point such that the old obligation is completely superseded by the new one. The test of incompatibility is whether they can stand together, each one having an independent existence; if they cannot and are irreconcilable, the subsequent obligation would also extinguish the first.

An extinctive novation would thus have the twin effects of, first, extinguishing an existing obligation and, second, creating a new one in its stead. This kind of novation presupposes a confluence of four essential requisites: (1) a previous valid obligation; (2) an agreement of all parties concerned to a new contract; (3) the extinguishment of the old obligation; and (4) the birth of a valid new obligation. Novation is merely modificatory where the change brought about by any subsequent agreement is merely incidental to the main obligation (e.g., a change in interest rates or an extension of time to pay); in this instance, the new agreement will not have the effect of extinguishing the first but would merely supplement it or supplant some but not all of its provisions. (emphasis and underscoring supplied)

The novation which petitioner suggests as having taken place, whereby Manuel was supposed to assume her obligations as debtor, is neither express nor implied. There is no showing of Marcosa explicitly agreeing to such a substitution, nor of any act of her from which an inference may be drawn that she had agreed to absolve petitioner from her financial obligations and to instead hold Manuel fully accountable.

It bears pointing out that the February 15, 1994 receipt[23] acknowledging payment of P200,000, apparently that given by Manuel, reads:

February 15, 1994

Received the sum of TWO HUNDRED THOUSAND PESOS only (P200,000.00) covered by two separate checks - BPI Check No. 390971 dated February 15, 1994 and BPI Check No. 390970 dated March 15, 1994 representing initial payment on the account of Mrs. Lourdes N. Azarcon with Mrs. Marcosa Gonzales. The balance of Mrs. Azarcon's account shall be payable in one year through monthly payments until her indebtedness is fully settled. This is without prejudice to whatever legal action Mrs. Marcosa Gonzales may undertake in case of failure of the spouses Manuel and Lourdes Azarcon to settle in full their obligation, as provided above.

x x x x (underscoring supplied)

Finally, practically all the other receipts[24] thereafter issued by Marcosa acknowledging installment payments invariably disclose that they were either made by petitioner herself, or received for "the account of Mrs. Lourdes

Azarcon."

WHEREFORE, the petition is DENIED.

SO ORDERED.

Brion, Bersamin, Abad,[*] and Villarama, Jr., JJ., concur.

[1] Petitioner passed away on April 23, 2009 during the pendency of this petition; vide Manifestation of September 15, 2009, rollo, pp. 114-117.

[*] Additional member per Special Order No. 843 dated May 17, 2010.

[2] Penned by Associate Justice Marlene Gonzales-Sison, with the concurrence of Associate Justices Juan Q. Enriquez, Jr. and Isaias P. Dicdican; CA rollo, pp. 391-402.

[3] Id. at 464-465.

[4] Entitled An Act Penalizing the Making or Drawing and Issuance of a Check Without Sufficient Funds or Credit and for Other Purposes.

[5] Exhibit "A," records, p. 538.

[6] Exhibit "A-2," id. at 539.

[7] Vide Exhibit "33," id. at 755.

[8] Exhibit "1," id. at 711-713.

[9] Vide Exhibits "D" to "D-83," id. at 544-564, exclusive of three (3) Premiere Bank checks, to wit:

Check Number Date Amount Criminal Case No.

152348

October 9, 1992

2,500.00

21248

152316

September 20, 1992

P 3,000.00

21262

000377

December 4, 1992

P 5,500.00

21278

[10] TSN, August 12, 2003, pp. 20-29.

[11] Covered by Criminal Cases Nos. 21248, 21267 and 21278.

[12] Rendered by Acting Presiding Judge Catherine P. Manodon; records, pp. 946-961.

[13] The case was originally raffled off to Branch 219 but subsequently re-raffled to Branch 224 after the former's presiding judge voluntarily inhibited himself upon petitioner's motion; vide Order of May 5, 2006, id. at 1513.

[14] Id. at 1542-1545.

[15] Vide note 5.

[16] CA rollo, pp. 15-27.

[17] Re: Penalty for Violation of BP Blg. 22, November 21, 2000.

[18] G.R. No. 130038, September 18, 2000, 340 SCRA 497.

[19] Ruiz v. People, G.R. No. 160893, November 18, 2005, 475 SCRA 476, 489 citing Yu Oh v. Court of Appeals, G.R. No. 125297, June 6, 2002, 403 SCRA 300.

[20] G.R. No. 141669, February 28, 2005, 452 SCRA 441, 456-457 citing Lao v. Court of Appeals, G.R. No. 119178, June 20, 1997, 274 SCRA 572, 584.

[21] Domagsang v. Court of Appeals, G.R. No. 139292, December 5, 2000, 347 SCRA 75, 83.

[22] G.R. No. 149683, June 16, 2003, 404 SCRA 67, 71-72.

[23] Vide note 7.

[24] Exhibits "33-A" to "33-K," id. at 756-765.

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