

FRANCISCA PUZON GAERLAN, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 57876. November 06, 1989

Ponente: GANCAYCO, J.

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GANCAYCO, J.

This is a petition for review on certiorari of a decision of the Court of Appeals dated June 10, 1981 affirming the decision of the Court of First Instance of Manila convicting the petitioner Francisca Puzon y Gaerlan of violation of Section 34 of Republic Act No. 265 in relation to Central Bank (CB) Circular No. 265, as amended by Circular No. 289 and sentencing her to imprisonment of one (1) year and one (1) day, to pay a fine of P2,000.00 with subsidiary imprisonment in case of insolvency at the rate of one (1) day for every P8.00 thereof, and to pay the costs.[1]

The facts are undisputed. On April 22, 1971, a five-man joint CIS-Central Bank-Manila Police Team raided the office of the petitioner at Room 305, ABC Building at Escolta, Manila on the strength of a search warrant issued by the City Court of Manila for violation of CB Circular No. 265 as amended by CB Circular No. 289.

The confiscated items consisted of several checks,[2] notebooks, and receipts; two statements of account of petitioner with the Bank of America; statement of account covering the period from November 18 to December 11, 1971 showing a balance of \$3 7.54,[3] and the statement of account for the period from February 18 to March 12, 1971.[4] An inventory of the confiscated items was prepared by the raiding team and the return was made informing the court of origin as to the result of the search conducted on petitioner's place of business.[5] Petitioner was advised to report for investigation but on the date set only her lawyer appeared. An after-operation report dated April 22, 1971 was accomplished and on April 26, 1971, Sgt. Mangente addressed a letter-complaint to the City Fiscal of Manila preparatory to the filing of the case in court.[6] Besides the notebooks and receipts which merely contained a list of merchandise like goods and jewelries consigned to other people which could not be collected by petitioner, and the aforestated statements of account of petitioner with the Bank of America in San Francisco, California, several checks were also confiscated, all drawn by petitioner on her Bank of America account in San Francisco, some of them payable to cash but mostly to specified persons, all indorsed by the payee or by the specified third parties, all negotiations and indorsements by the payees thereof all took place abroad, not in the Philippines, and were all presented for payment to and paid by, the drawee bank in San Francisco, California.

In this petition, the following reasons are adduced in support thereof:

"a.

The conclusion reached by the Court of Appeals that the personal dollar checks issued by the accused petitioner were drawn in the Philippines thus making her liable under Philippine criminal laws is grounded on speculations, surmises and conjectures. The court concluded that inasmuch as the address of accused printed on the check is in Quezon City, they must have been drawn and issued there. It did not consider the evidence that the checks are

payable to foreign companies and made in payment of goods in Hongkong where they were clearly drawn. (Joaquin vs. Navarro, 93 Phil, 257; Cruz vs. Sosing, L-4875, Nov. 27, 1953).

b.

The inference made by the Court of Appeals that having dollar deposits in the United States or in a foreign country is prohibited by CB Circulars 265 and 289 is wrong as the circulars do not say so. In effect, petitioner feels that judicial legislation was made by the court in arriving at this conclusion. The involved CB Circulars cannot be extended or enlarged by implications, intendments or analogies. (Luna vs. Linatok, 74 Phil. 15).

c.

The judgment of the Court of Appeals laid the burden of proof upon the accused petitioner to show that she is not guilty when she should have been presumed innocent until proven otherwise. This particular error was committed when the Court of Appeals stated in its decision and specifically in its resolution denying the motion for reconsideration that the accused should have taken steps in the trial court to exculpate herself. In the words of the resolution, the Court of Appeals said:

"As this court had previously stated, 'Appellant has not bothered even when she took the witness stand on October 20, 1976 to controvert the logical inference that is produced by these checks by declaring and proving that said checks were drawn abroad' to negate the logical inference that the subject checks were drawn at the place of address of the drawer rather than at any other place, in the absence of any evidence to the contrary. As appellant did not even try to establish that she was out of the Philippines, which is her stated address in the checks, then the compelling conclusion is that the issued checks were drawn in this country. This inevitable inference which is based on undisputed evidence has not been overcome by the appellant. She could have easily declared and proved where she was at the time the stated checks were drawn and yet did not do so.

On this consideration, this Court finds it easy to continue to agree with the trial courts finding that:

... the maintaining of a dollar deposit abroad as a vehicle for acquiring and/or depositing of dollars without permission from (the) Central Bank is a violation of public policy, law and regulations issued by the Central Bank." xxx

SO ORDERED."

The petition is impressed with merit.

Section 3 of Central Bank Circular No. 265 as amended by Circular No. 289 provides as follows:

"Sec. 3 — No person shall take out or export from the Philippines foreign currency or any other foreign exchange except as otherwise authorized by the Central Bank.

x x x

x x x

x x x

Sec. 3 — All receipts of foreign exchange by resident persons, firms companies or corporations shall represent not less than the full value of the transactions involved. All such receipts shall be sold to authorized agents of

the Central Bank of the Philippines by the recipients within three business days following the receipt of such foreign exchange and must be received in currencies prescribed to form part of the international reserve. Resident persons, firms, companies or corporations shall not delay taking ownership of their foreign exchange earnings except when such delay is customary.

The penal provision is found in Section 34 of Republic Act No. 265 which provides the following:

"Sec. 34 — Proceedings upon violation of laws and regulations. — Whenever any person or entity wilfully violates this Act or any order, instruction, rule or regulation issued by the Monetary Board, the person or persons responsible for such violation shall be punished by a fine of not more than twenty thousand pesos and by imprisonment of not more than five years."

The first question that arises is whether or not there is any prohibition for any citizen or resident of the Philippines from opening a foreign exchange or dollar account abroad or outside of the Philippines, particularly in the United States.

An examination of the aforecited provisions of the CB circulars show that there is no such prohibition at all for any citizen or resident of the Philippines from opening a dollar account or foreign currency account outside this country. In this case the respondent court adopted the view of the trial court that maintaining a dollar deposit abroad without permission from the CB is a violation of the public policy, laws and regulations issued by the CB. Certainly this pronouncement is not supported by any provision of law.

Indeed, at the time of prosecution of this case and with the authority of the CB, citizens or residents of this country may bring out with them certain amounts of foreign exchange which they can freely dispose of in any manner. In the process, they may open an account in a foreign bank by depositing part or all of the foreign exchange they are authorized to carry and spend by the CB. Certainly, there can be no violation thereby. By the same token if such citizen should acquire foreign exchange from other sources and not within the Philippines and deposit the same in his account in a foreign bank, such an act cannot constitute a violation of our CB regulations.

The respondent court found that petitioner committed a violation of CB regulations when she issued checks drawn against her account with the Bank of America in San Francisco. Inasmuch as on the face of the checks the printed address of petitioner appears to be at 106 Quiraya Street, Quezon City, respondent court concluded that the said checks that were confiscated from petitioner must have been drawn in the Philippines which act constitutes exportation of foreign exchange in violation of CB regulations.

The Court disagrees. The said checks were confiscated from petitioner were made payable to cash or certain third parties abroad. They were all negotiated and indorsed by said payees abroad and were presented for payment to and paid by the drawee bank in San Francisco, California. From the environmental drawee bank in San Francisco, California. From the environmental circumstances of this case it cannot be presumed or deduced that the checks were drawn and issued by the petitioner in the Philippines. It is more logical to assume that the same were drawn at the place of payment where the payees thereof were located.

A conviction cannot be predicated on a presumption or speculation. The respondent court surmised that it was the duty of petitioner to show that she in fact issued said checks outside of the Philippines and that by failing to do so the presumption arises that they were drawn at the place indicated to be her address in the Philippines. A conviction for a criminal offense must be based on clear and positive evidence and not on mere assumptions.

Moreover, assuming that the said checks were issued in the Philippines in payment of an account overseas, the issuance thereof in the Philippines does not constitute an expiration of foreign exchange. The said checks were drawn against the account of petitioner in San Francisco, California, outside the Philippines. There was no exportation of foreign exchange. The foreign exchange was in San Francisco all the time.

WHEREFORE, the petition is GRANTED and the questioned decision of the Court of Appeals dated June 10, 1981 and the resolution dated August 26, 1981 are REVERSED AND SET ASIDE and another judgment is hereby rendered ACQUITTING petitioner of the offense charged, with costs de oficio.

SO ORDERED.

Narvasa (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Mr. justice Nestor B. Alampay was the ponente, concurred in by Justices Lino M. Patajo and Vicente V. Mendoza.

[2] Exhibits B to HH; pages 267 to 300 rec.

[3] Exhibit LL; page 306, rec.

[4] Exhibit MM; page 307, rec.

[5] Exhibits KK to KKI.

[6] Exhibits JJ to JJI.

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