

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. PEDRO G. LAGGUI, PRE-SIDING JUDGE OF BRANCH XXXIV OF THE REGIONAL TRIAL COURT OF PAMPANGA AND ELISEO SORIANO, RESPONDENTS.

G.R. Nos. 76262-63. March 16, 1989

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

The private respondent Eliseo F. Soriano issued a postdated check that bounced. He was charged by the Provincial Fiscal in two separate informations, for violation of B.P. Blg. 22 (Crim. Case No. 2934) and estafa (Crim. Case No. 3007). After a joint trial of the two cases, respondent Judge Pedro Laggui of the Regional Trial Court of Pampanga promulgated a joint decision on September 24, 1986, (1) dismissing the information in Criminal Case No. 2934 (for violation of B.P. Blg. 22) for being "fatally defective" (p. 63, Rollo), and (2) convicting the accused of estafa in Criminal Case No. 3007.

The accused appealed the decision in Criminal Case No. 3007 to the Court of Appeals, which on July 26, 1988, reversed and set aside the judgment of the Regional Trial Court, thereby acquitting the accused Eliseo Soriano, "without prejudice to the person entitled to (sic) the civil action for restitution of the thing and reparation or indemnity for the damage suffered." (CA-G.R. No. 04096, p. 615, Records in Criminal Case No. 2934, Vol. II.)

The State filed the instant petition for certiorari and mandamus assailing the dismissal of the allegedly defective information in Criminal Case No. 2934 and praying that the trial court be ordered to reinstate the case and render judgment as the law and the evidence warrant.

Respondent Judge filed his own Comments on the petition, to defend his order in the case. The accused adopted the Judge's comments as his own.

The only issue raised by the petition is a legal one: whether or not the information in Criminal Case No. 2934 is indeed "fatally defective." The information reads as follows:

"The undersigned Acting Provincial Fiscal and Assistant Provincial Fiscal accuse ELISEO F. SORIANO of felony of Violation of Batas Pambansa Bilang 22, committed as follows:

"That sometime in October 1983, in the municipality of San Fernando, Province of Pampanga, Philippines, and within the Jurisdiction of this Honorable Court, the above-named accused ELISEO F. SORIANO, with intent to defraud, by means of deceit, knowing fully well that he had no funds and/or sufficient funds in the bank, for value received did then and there wilfully, unlawfully and feloniously issue and make out Banco Filipino Check No. 1679962 postdated July 18, 1984, in the amount of TWO HUNDRED FIFTY THOUSAND (P250,000.00) PESOS, Philippine Currency, drawn against his current account with Banco Filipino, Malolos Branch, Bulacan, payable to Lolita O. Hizon in payment of an obligation and when the said check was presented for encashment, said check was dishonored and returned, with the information that the said check is drawn against 'CLOSE ACCOUNT' and in spite of repeated demands made of the accused to redeem said check or settle the said amount, accused failed and refused and still fails and refuses to comply with said

demands, to the damage and prejudice of Lolita O. Hizon, in the total amount of P250,000.00, Philippine Currency.

"All contrary to law." (Annex A, p. 21, Rollo.)

Upon arraignment, Soriano pleaded not guilty to the information.

During the pre-trial, the prosecution and the defense admitted the following:

"1. That at the instance of the private complainant Lolita O. Hizon, Unity Savings and Loan Association Inc. Cashier Check No. 0623 dated October 4, 1983 in the amount of P250,000 (Exh. A) was issued by the said bank drawn against the Metropolitan Bank and Trust Company, San Fernando, Pampanga Branch, and the said check was endorsed by the daughter of Lolita O. Hizon with authority from the latter in favor of the accused Eliseo Soriano;

"2. That the said check (Exh. A) was thereafter endorsed by the accused in favor of Dr. Zoilo Pangilinan as payment of the accused's indebtedness to the former and the check was thereafter encashed by the bank;

"3. That the said check (Exh. A) after its encashment by the bank, was returned to the private complainant Lolita O. Hizon;

"4. That more or less on the date when Cashier Check No. 0623 (Exh. A) was issued, the accused issued Banco Filipino Check No. 1679962 (Exh. B) dated July 18, 1984 in the amount of P250,000 in favor of the private complainant Lolita O. Hizon. According to the accused this Banco Filipino check (Exh. B) was undated, while according to the private complainant Lolita O. Hizon, the said check (Exh. B), was dated July 18, 1984;

"5. That when Banco Filipino Check (Exh. B) was deposited by the private complainant with the Union Bank of the Philippines, San Fernando, Pampanga on July 18, 1984, check was dishonored by the bank because the account of the accused with the drawee bank was already closed as of July 10, 1984 (Exh. B-1);

"6. That because the check (Exh. B) was dishonored by the bank, a demand letter dated August 24, 1984 (Exh. C) was received by the accused from the counsel of the private complainant (Exh. C-1)." (p. 23, Rollo.)

The other facts which were established at the trial are:

The accused (now private respondent) Eliseo F. Soriano is a minister of the "Church of God in Jesus Christ, the Pillar and Ground of the Truth in the Philippines." (p. 28, Rollo.) He first met the offended party Lolita O. Hizon in July or August, 1983, when her godson, Arcadio Mallari, who is a member of Soriano's congregation, introduced the latter to her, Hizon became interested in Soriano's religious group and became a member thereof on November 27, 1983.

In the second week of August 1983, Soriano confided to Hizon his worries about his indebtedness of P250,000 to Dr. and Mrs. Zoilo Pangilinan. The obligation was secured by a mortgage on the congregation's property which would mature on October 4, 1983. Hizon offered to help. She agreed to lend P250,000 in cash to Soriano who would issue a post-dated check to her for the same amount.

To raise the P250,000, Hizon borrowed against her time deposit at the Unity Savings and Loan Association, Inc, (USLA). Since she and her husband were leaving for the United States on a short trip in August 1983, she signed the necessary papers for the loan before their departure. She also executed a special power of attorney authorizing her daughter, Rose Anne Hizon, to receive from USLA the P250,000-check representing the proceeds of her loan and to endorse and deliver it to Soriano upon Soriano's issuing to her a post-dated check for the same amount of P250,000. Accordingly, on October 4, 1983, Rose Anne got the P250,000 check from the USLA, endorsed it to Soriano who issued, in exchange therefor, his Banco Filipino check for the same amount. His check was undated.

When Lolita Hizon arrived from her trip on October 16, 1983, she asked Soriano why his check bore no date. Soriano told her to date it "July 18, 1984" (pp. 26-27, Rollo) so he would have sufficient time to fund it. When Hizon deposited the check on that date, the drawee bank dishonored it because Soriano's account with it had been closed as of July 10, 1984, or one week before the due date of the check.

During the trial on the merits, Soriano admitted that when he issued the check he did not have enough funds in the bank, and that he failed to deposit the needed amount to cover it. He alleged that he issued the check as "a temporary receipt for what he had received" (pp. 20-21, t.s.n., December 2, 1985; pp. 10 and 35, RTC Decision, p. 30, Rollo).

Despite repeated demands to make good his check, or to replace it with cash, Soriano did neither.

In its decision dated September 1, 1986, the trial court ruled that the accused could not be convicted of a violation of the Bouncing Checks Law, B. P. Blg. 22, because the information failed to allege that he knew, when he issued the check, that he would not have sufficient funds for its payment in full upon its presentment to the drawee bank. In the opinion of the trial judge, the information did not charge an offense, hence, he dismissed it.

In this petition for certiorari and mandamus, the State alleges that the information is sufficient, hence, respondent Judge committed an error of law, and/or gravely abused his discretion, in dismissing Criminal Case No. 2934. We agree.

The accused was charged with having violated Batas Pambansa Blg. 22, which 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 he payment of such in full upon 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 (30) 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." (Underscoring supplied.)

The elements of the offense are:

1. the making, drawing and issuance of any check to apply to account or for value,
2. 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
3. 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 reason, ordered the bank to stop payment.

The "defect" which respondent Judge perceived in the information was the failure to allege that the accused, as maker or drawer of the check at the time of issue, knew of the insufficiency of his funds in the bank for payment of the check in full "upon its presentment" (p. 56, Rollo). In the court's opinion, it was not enough for the information to have alleged that the accused knew when he issued the check that he then did not have sufficient funds in the bank; the information should have alleged that the accused knew that he would not have sufficient funds in the bank to pay the check in full "upon its presentment." It believed that the absence of an allegation that the accused foresaw or had foreknowledge of the insufficiency of his bank account upon presentment of the check for payment, was fatal to the information.

The interpretation is erroneous. Section 2 of the law provides:

"Section 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." (Emphasis supplied.)

In other words the presence of the first and third elements of the offense constitutes prima facie evidence that the second element exists. The maker's knowledge of the insufficiency of his funds is legally presumed from the dishonor of his check for insufficiency of funds. This Court has ruled that:

"Violation of the bad checks act is committed when one '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' or 'having sufficient funds in or credit with the drawee bank x x x shall fail to keep sufficient funds or to maintain a credit to cover the full amount of the check if presented within period of ninety (90) days from the date appearing thereon, for which reason it is dishonored by the drawee bank.'" (People vs. Manzanilla, 156 SCRA 279, 282.)

The gravamen of the offense under B. P. Blg. 22 is the act of making and issuing a worthless check or a check that is dishonored upon its presentment for payment. The law has made the mere act of issuing a bum check a *malum prohibitum*, an act proscribed by legislature for being deemed pernicious and inimical to public welfare. (Lozano vs. Martinez, Lobaton vs. Cruz, Datuin vs. Pano, Violago vs. Pano, Abad vs. Gerochi, Aguiluz vs. Isnani, Hojas vs. Peñaranda, People vs. Nitafan, G.R. Nos. L-63419, 66839-42, 71654, 74524-25, 75122-49, 75812-13, 75765-67 & 75789, December 18, 1986, 146 SCRA 323).

Since the information in Criminal Case No. 2934 did allege that the accused, for value received, unlawfully and feloniously issued the postdated check "knowing fully well that he had no funds and/or insufficient funds in the bank x x x and when the said check was presented for encashment, said check was dishonored and returned with the information that the said check is drawn against 'CLOSE ACCOUNT' x x x" (pp. 21-22, Rollo) the information satisfies the legal definition of the offense under Section 1, B P. Blg. 22. It is sufficient. The trial court erred in dismissing it.

However, although its decision is erroneous, that decision may not be annulled or set aside because it amounted to a judgment of acquittal. It became final and executory upon its promulgation. The State may not appeal that decision for it would place the accused twice in jeopardy of punishment for the offense in violation of his constitutional right against double jeopardy (Art. III, Sec. 21, 1987 Constitution).

This case is somewhat similar to the case of *US vs. Yam Tung Way*, 21 Phil. 67, where this Court ruled that the defendant, after having been discharged by a competent court, cannot again be put on trial for the same offense "whether his discharge be the result of formal acquittal or of a ruling of the court upon some question of law arising at the trial; no appeal lies in such case on behalf of the government." The accused therein was charged with infringement of literary rights. After trial, he moved for the dismissal of the information on the ground that the evidence of the Government did not establish the commission of the offense charged. The Court reserved its judgment on the motion and required the defendant to submit his evidence. Afterwards, it discharged him on the ground that no copyright law existed then in the Philippines. The Government appealed. The Supreme Court held that the Government had no right to appeal:

"Defendant was regularly arraigned, pleaded not guilty, put upon his trial by the calling of the government's witnesses against him, and thereafter discharged by the trial court. It is true that the court made no express finding as to whether the defendant did or did not commit the specific acts set out in the information, and that

the dismissal of the information was based on the court's conclusion of law that there being no copyright law in force in these Islands, the acts which it is alleged were committed by the defendant do not constitute the crime with which he was charged, nor any other offense defined and penalized by law. But the reasoning and authority of the opinion of the Supreme Court of the United States in the case of *Kepner vs. United States*, supra, is conclusively against the right of appeal by the government from a judgment discharging the defendant in a criminal case after he has been brought to trial, whether defendant was acquitted on the merits or whether defendant's discharge was based upon the trial court's conclusion of law that the trial had failed for some reason to establish the guilt of the defendant as charged.

"As indicated in the opinion in that case, the protection afforded by the prohibition against the putting of any person twice in jeopardy for the same offense, is a protection not merely against the peril of second punishment, but against being tried a second time for the same offense. In that case the court expressly held that:

'It follows that Military Order No. 58, as amended by Act of the Philippine Commission, No. 194, insofar as it undertakes to permit an appeal by the Government after acquittal, was repealed by the Act of Congress of July, 1902, providing immunity from second jeopardy for the same criminal offense.'

"But the reasoning of the opinion goes further and denies the right to the Government to procure the reversal of erroneous proceedings and commence anew, save only in those cases in which the first proceeding did not create legal jeopardy. So that, without his own consent, a defendant who has once been brought to trial in a court of competent jurisdiction cannot be again put on trial for the same offense after the first trial has terminated by a judgment directing his discharge, whether his discharge be the result of a formal acquittal, or of a ruling of the court upon some question of law arising at the trial." (*US vs. Yam Tung Way*, 21 Phil. 67, 70-71.)

Since in the present case the accused Eliseo Soriano had been arraigned, pleaded "not guilty," and was tried upon a valid and sufficient information (although the lower court erroneously thought otherwise) and the case against him was dismissed by decision of the trial court (hence, without his consent and not upon his motion), he has been placed in jeopardy or danger of punishment for the offense charged. For this Court to re-assess the evidence against him pursuant to the Government's appeal, would place him twice in jeopardy of punishment for the same offense.

Although the dismissal of the information against him may constitute a miscarriage of justice, the erroneous dismissal by the trial court may not be disturbed for it would violate his basic constitutional right to be exempt from double jeopardy.

WHEREFORE, the petition for review of the trial court's decision dismissing the information in Criminal Case No. 2934, is denied.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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