

## FIRST DIVISION

[ G. R. NO. 145420, September 19, 2006 ]

**A. RAFAEL C. DINGLASAN JR., PETITIONER, VS. HON. COURT OF APPEALS, ET AL., RESPONDENTS.**

### DECISION

**CHICO-NAZARIO, J.:**

Before this Court is a Petition for New Trial and, in the alternative, for the Reopening of the Case<sup>[1]</sup> on the ground of newly discovered evidence filed by A. Rafael C. Dinglasan, Jr. (Dinglasan) who was found guilty<sup>[2]</sup> of violating Batas Pambansa Blg. 22, otherwise known as The Bouncing Checks Law, by the Regional Trial Court (RTC) of Makati, Branch 62, in Criminal Case No. 21238.

On 17 August 1985, Elmyra Trading Corporation (Elmyra), represented by its President, Dinglasan, and Antrom, Inc. (Antrom), also represented by its President, Antonio Garcia Jr., entered into a Memorandum of Agreement whereby the parties agreed that Antrom will extend credit accommodation in favor of Elmyra to finance its prawn business. The latter, in turn, will issue checks to guarantee the payment of its obligations.

A few months after a number of financing transactions were made, Elmyra's indebtedness to Antrom reached the amount of P1,476,000.58. As initial payment, Dinglasan issued a Commercial Bank (drawee bank) Check No. HO270451 with Antrom as payee, but postdated on 3 October 1985 in the amount of P515,000.00. Upon presentment for payment with the drawee bank, however, the said check was dishonored for insufficiency of funds.

Consequently, on 16 December 1985, an Information<sup>[3]</sup> charging Dinglasan with Violation of Batas Pambansa Blg. 22 was filed before the RTC of Makati, Branch 62, docketed as Criminal Case No. 21238, *People of the Philippines v. A. Rafael C. Dinglasan, Jr.* The Information reads:

That on or about the 3<sup>rd</sup> day of October, 1985, in the Municipality of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, well knowing that he has no sufficient funds in or credit with the bank, did there and then willfully, unlawfully and feloniously make out and issue Commercial Bank of Manila Check No. H0207451 dated October 3, 1985 in the amount of P515,000.00 in payment of his obligation to Antrom Inc., represented by Rosanna E. Velasco, but when said check was presented to the bank for payment, the same was dishonored and/or refused payment for reason "Drawn Against Insufficient Funds" and accused, despite repeated demands and lapse of five (5) banking days from notice thereof, failed and refused to make good the said check and/or to deposit with the

drawee bank the necessary amount to cover the aforesaid check, to the damage and prejudice of the herein complainant in the aforementioned amount of P515,000.00

On 16 December 1991, the trial court convicted Dinglasan for having committed the crime charged. In a Decision<sup>[4]</sup> promulgated on the same date, the court *a quo* found him guilty beyond reasonable doubt of violating Batas Pambansa Blg. 22. The dispositive portion reads this wise:

WHEREFORE, finding accused A. Rafael C. Dinglasan, Jr. guilty beyond reasonable doubt of violating *B.P. Blg. 22*, he is hereby sentenced to suffer an imprisonment of one year and to pay a fine of Two Hundred Thousand Pesos (P200,000.00); and, to indemnify ANTROM, INC., the sum of Five Hundred Fifteen (sic) (P515,000.00) Pesos, at [the] legal rate of interest from October 3, 1985, until the full amount of P515,000.00 is fully paid.

Dinglasan, thereafter, filed a Motion for Reconsideration<sup>[5]</sup> which was denied by the same court for lack of merit in an Order<sup>[6]</sup> issued on 4 September 1992.

On 25 September 1992, Dinglasan appealed to the Court of Appeals the adverse RTC Decision dated 16 December 1991, finding him guilty of violating Batas Pambansa Blg. 22 and the RTC Order dated 4 September 1992, denying his Motion for Reconsideration.<sup>[7]</sup>

On 26 October 1998, the appellate court in CA-G.R. CR No. 14138, *People of the Philippines v. A. Rafael C. Dinglasan*, handed down a Decision,<sup>[8]</sup> dismissing the appeal, thereby, affirming *in toto* the Decision of the RTC finding Dinglasan guilty beyond reasonable doubt of violating Batas Pambansa Blg. 22. The dispositive portion reads:

WHEREFORE, finding no reversible error therefrom, the Decision now on appeal is hereby AFFIRMED in toto. Costs against accused-appellant.

Aggrieved, the accused filed before this Court a Petition for Review on *Certiorari*<sup>[9]</sup> questioning the 26 October 1998 Decision of the Court of Appeals. The petition was docketed as G.R. No. 137800, *A. Rafael C. Dinglasan v. Court of Appeals*, and was raffled to the Third Division of this Court. In a Resolution<sup>[10]</sup> dated 28 June 1999, this Court resolved to deny the petition for failure to show that a reversible error had been committed by the appellate court.

A Motion for Reconsideration<sup>[11]</sup> was then filed by Dinglasan on 26 August 1999, but the same was again denied by this Court in a Resolution dated 13 September 1999 for failure to raise substantial arguments that would warrant reconsideration of the Resolution dated 28 June 1999 with an *ad cautelam* that such denial is final.<sup>[12]</sup>

Undaunted, Dinglasan filed a Second Motion for Reconsideration but the same was merely noted without action by this Court in view of the *En Banc* Resolution dated 7 April 1987 that no motion for leave to file a second motion for reconsideration of a judgment or a final resolution by the same party shall be entertained. In a Resolution dated 16 December 1999, this Court directed that no further pleadings

shall be entertained in this case.

The Resolution of this Court dated 28 June 1999 denying Dinglasan's Petition for Review became final and executory on 14 October 1999 as evidenced by the Entry of Judgment. <sup>[13]</sup>

By virtue of the final and executory judgment rendered by this Court in G.R. No. 137800, the prosecution, on 19 September 2000, filed a motion<sup>[14]</sup> with the RTC for the issuance of the warrant of arrest and writ of execution in order to satisfy the judgment. The prosecution likewise prayed that a hold-departure order be issued in order to prevent Dinglasan from leaving the country until he has fully served his sentence.

In an Order<sup>[15]</sup> issued on 21 September 2000, the trial court, acting on the said motion, issued a warrant for the arrest of Dinglasan and a writ of execution for the enforcement of his civil liability and, at the same time, enjoining him from leaving the country.

Alarmed, Dinglasan on 30 October 2000, filed the instant Petition for New Trial and, in the alternative, for the Reopening of the Case<sup>[16]</sup> based on newly discovered evidence, which was docketed as G.R. No. 145420, entitled, "*A. Rafael C. Dinglasan Jr. v. Court of Appeals.*" He urges this Court to uphold substantial justice, emphasizing that the newly discovered evidence he seeks to introduce in this case is so material and of such weight that, if, admitted would probably change the judgment, hence, suspension of procedural rules is warranted.

The alleged newly discovered evidence claimed by Dinglasan are the affidavits of Ma. Elena Dinglasan, in her capacity as Executive Vice-President and Treasurer of Elmyra, and Ma. Encarnacion Vda. De Dinglasan, the wife of Mariano Dinglasan, who, during his lifetime, was the Cashier and Liaison Officer of the same company. These affidavits, together with the transmittal letter dated 8 October 1985 attached to Solidbank Manager's Check No. 002969 dated 3 October 1985 sent by Ma. Elena Dinglasan to Antrom, tends to prove that Dinglasan made good of the check within five banking days from notice of dishonor. He could not, therefore, be validly convicted of violating Batas Pambansa Blg. 22 for one of the essential elements of the offense, that is, the drawer failed and refused to make good the said check within five banking days from the notice of dishonor, is absent.

In her affidavit,<sup>[17]</sup> Ma. Elena Dinglasan attested that she was the Executive Vice-President and Treasurer of Elmyra for the period of 1985-1986. As such, she was in-charge of disbursing and sourcing of corporation funds including the preparation of checks and approval of vouchers supporting the disbursements. In the course of its business, the affiant caused the issuance of Commercial Bank Check No. 270451 on 27 September 1985 in the amount of P515,000.00, but postdated on 3 October 1985, which was dishonored by the bank for insufficiency of funds and which eventually caused Dinglasan's conviction for violation of Batas Pambansa Blg. 22. Upon receiving the notice of dishonor, she caused the preparation of Solidbank Manager's Check No. 002969 dated 3 October 1985 in the amount of P150,000.00 intended to cover a part of the amount of the bounced check. The Solidbank check, together with its transmittal letter dated 8 October 1985, stating the purpose of the said check, was sent to Antrom and was received by its representative as evidenced

by the signature appearing on the receiving copy thereof.

Explaining why the said transmittal letter dated 8 October 1985 was belatedly offered as evidence on this case, Ma. Elena Dinglasan reasoned that that she was not aware that the said letter has any significance on Dinglasan's liability. She explained further that in 1993 she was diagnosed of breast cancer and had to undergo surgical operation and chemotherapy.

To corroborate the statements of Ma. Elena Dinglasan, Encarnacion Vda. De Dinglasan on her part, narrated under oath that her late husband used to bring some of Elmyra's documents home to work on at night and after her husband's death in 1994, such documents were kept inside a box and left somewhere in one corner of their house. It was only when a minor renovation was made therein several years after her husband passed away that she was able to chance upon the said documents again. The said documents were turned over to Dinglasan on 21 October 2000. It was later discovered that the said documents include the transmittal letter dated 8 October 1985 sent by Ma. Elena Dinglasan to Antrom.<sup>[18]</sup>

In contrast, private respondent Antrom contends that the Petition for New Trial and/or Reopening of the Case based on newly discovered evidence should be dismissed on the ground that the same is procedurally and substantially defective.<sup>[19]</sup>

Elaborating, Antrom claims that under the Revised Rules of Court, the Motion for New Trial should be filed at any time after the appeal from the lower court has been perfected and before the judgment of the appellate court convicting the accused becomes final. The judgment of this Court in G.R. No. 137800 dated 28 June 1999 became final and executory on 14 October 1999 as evidenced by the Entry of Judgment. The present petition, on the other hand, was filed only on 30 October 2000 or a year after the finality of the decision in G.R. No. 137800. The filing of the instant action, therefore, has already prescribed.<sup>[20]</sup>

Moreover, Antrom continues, considering for the sake of argument that the instant action was filed within the reglementary period, still, the petition must fail for the requisites for newly discovered evidence as ground for new trial were not satisfactorily complied with. Let it be noted that the transmittal letter dated 8 October 1995 was previously attached as evidence in a Petition for Review filed by Dinglasan before the Ministry of Justice (now the Department of Justice) on 15 December 1986, assailing the Resolution of the Fiscal dated 11 December 1986 recommending the filing of Information against him. The same letter was also introduced as evidence before the Court of Appeals in CA-G.R. CR No. 14138 when Dinglasan assailed the RTC decision dated 16 December 1991. Hence, the claim that the alleged evidence was not available during the trial in the courts below, and is thus, newly discovered is erroneous, if not misleading.<sup>[21]</sup>

Finally, Antrom stresses that, granting for the sake of argument, that the petition at bar was filed on time and the alleged evidence is newly discovered within the purview of the law, such evidence introduced and admitted, nevertheless, would not exculpate Dinglasan from liability. The gravamen of the offense is the act of the drawer in making or issuing a check with the full knowledge that he does not have sufficient funds to cover the amount. Such awareness was admitted by Dinglasan

when he expressly requested Antrom not to deposit the check without his explicit conformity in anticipation that such check will be dishonored if presented for payment. The mere act of issuing a worthless check and not the nonpayment of the obligation is punished by law because of its deleterious effect on public interest.

The Solicitor General, representing the People of the Philippines, on their part, submitted that the instant petition should be dismissed because it was filed out of time and Dinglasan's evidence sought to be admitted is neither material nor newly discovered so as to warrant new trial or reopening of the case. The alleged evidence if introduced and admitted, would not in any way alter the judgment. Upon perusal of the transmittal letter dated 8 October 1985, it was nowhere stated therein that Solidbank Manager's Check No. 002969 dated 3 October 1985 was intended as partial payment of Commercial Bank Check No. 270451 dated 3 October 1985 that bounced. The said letter was a mere proposal wherein a payment in kind or *dacion en pago* was offered by Elmyra. The Solicitor General likewise noted that the letter dated 8 October 1986 was already introduced as evidence in the Petition for Review with the Ministry of Justice filed by Dinglasan.<sup>[22]</sup>

For the resolution of this Court are the following issues:

I.

WHETHER OR NOT THE INSTANT PETITION WAS FILED ON TIME.

II.

WHETHER OR NOT A NEW TRIAL OR REOPENING OF THE CASE BASED ON NEWLY DISCOVERED EVIDENCE SHOULD BE ALLOWED.

The pertinent provision of the Revised Rules of Court reads:

Rule 124 - Procedure in the Court of Appeals.

Section 14. *Motion for New Trial*. - At any time after the appeal from the lower court has been perfected and **before the judgment of the Court of Appeals convicting the accused becomes final**, the latter may move for a new trial on the ground of newly discovered evidence material to his defense. The motion shall conform to the provisions of section 4 Rule 121. (Emphasis supplied.)

Explicit from the above stated rule that a Motion for New Trial should be filed before the judgment of the appellate court convicting the accused becomes final.

While Dinglasan agrees with the above stated rules that the instant petition should be filed before the finality of the judgment convicting the appellant, he, however argues that judgment attains finality only upon the receipt of the order or resolution denying his second motion for reconsideration.

Dinglasan's argument is without merit.

Let it be recalled that Dinglasan's Motion for Leave to File Second Motion for Reconsideration was denied by this Court as the subject matter thereof is a prohibited pleading and that the Motion for Reconsideration was merely noted