

## SECOND DIVISION

[ G.R. NO. 145498, January 17, 2005 ]

**BENJAMIN LEE, PETITIONER, VS. COURT OF APPEALS AND  
PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

### D E C I S I O N

**AUSTRIA-MARTINEZ, J.:**

Petitioner is now before us on a petition for review under Rule 45 of the Rules of Court seeking the reversal of the Decision<sup>[1]</sup> of the Court of Appeals dated July 30, 1999, which affirmed the judgment of the Regional Trial Court, Branch 79, Quezon City (RTC) convicting him of violating *Batas Pambansa Blg. 22* in Criminal Case No. Q-93-50094; and the Resolution<sup>[2]</sup> dated October 11, 2000, denying his motion for reconsideration.

The facts are as follows:

On October 4, 1993, an Information was filed against petitioner Dr. Benjamin F. Lee and a certain Cesar Al. Bautista, for violation of B.P. Blg. 22, which reads:

That on or about the 24<sup>th</sup> day of July 1993, in Quezon City, Philippines, the said accused, conspiring together, confederating with, and mutually helping each other, did then and there willfully, unlawfully and feloniously make or draw and issue to Rogelio G. Bergado to apply on account or for value United Coconut Planters Bank Check No. 168341 dated July 24, 1993 payable to the order of Rogelio G. Bergado in the amount of P980,000.00, Philippine Currency, said accused well knowing that at the time of issue they did not have sufficient funds in or credit with the drawee bank for payment of such check in full upon its presentment, which check when presented for payment was subsequently dishonored by the drawee bank for Account Closed and despite receipt of notice of such dishonor, said accused failed to pay said Rogelio G. Bergado 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.<sup>[3]</sup>

Petitioner pleaded not guilty in his arraignment on February 1, 1995.<sup>[4]</sup> Presiding Judge Godofredo L. Legaspi noted in the assailed judgment that trial proceeded insofar only as petitioner is concerned, "since accused Cesar Bautista is presently detained at Municipal Jail at Calapan, Mindoro where he has a pending case before the Metropolitan Trial Court (MTC), Calapan, Mindoro and despite several notices to the jail warden of Calapan, Mindoro, the latter failed to bring the person of said accused to this Court for arraignment."<sup>[5]</sup>

For the prosecution, private complainant Rogelio Bergado testified that: on July 19, 1992, he loaned Unlad Commercial Enterprises (Unlad for brevity), through its agent Norma Ilagan, the amount of P500,000.00 with an interest of 4% a month; on September 10, 1992, he loaned another P400,000.00 through Ilagan for the same interest rate; in exchange, he received a total of twenty-six checks, four of which were dishonored for the reason "drawn against insufficient funds"; he went to Calapan, Mindoro and talked to Bautista and the latter replaced the dishonored checks with United Coconut Planters Bank (UCPB) Check No. ARA 168341, signed by Bautista and herein petitioner dated July 24, 1993, in the amount of P980,000.00 representing the total amount loaned plus interests; when Bergado deposited the check at UCPB, the same was dishonored due to "account closed"; through his lawyer, he sent demand letters to Bautista and petitioner, who, despite having received the same still failed and refused to make any payment. Upon cross-examination, Bergado admitted that he did not see or meet petitioner prior to July 24, 1993 nor did he go to Calapan, Mindoro to check the existence of Unlad prior to lending it the amount of P900,000.00.<sup>[6]</sup>

The prosecution also presented Zenaida<sup>[7]</sup> Katigbak, Branch Operations Officer of UCPB Araneta Avenue, Quezon City, who testified that Bautista and petitioner are the authorized signatories of Current Account No. 130-000406-2, against which the check subject of the present criminal case was issued; and that the account was opened on August 22, 1988 and closed on January 31, 1992 due to mishandling of the account, *i.e.*, a check was previously issued against it without sufficient funds.<sup>[8]</sup>

The prosecution presented UCPB Check No. ARA 168341,<sup>[9]</sup> UCPB Check Return Slip dated August 5, 1993 stating that Check No. ARA 168341 was returned unpaid due to "account closed";<sup>[10]</sup> a demand letter addressed to petitioner dated August 9, 1993;<sup>[11]</sup> registry return slip;<sup>[12]</sup> a copy of the complaint affidavit of private complainant;<sup>[13]</sup> signature card of the current account of petitioner and Bautista at UCPB;<sup>[14]</sup> and the bank statement of the current account of petitioner and Bautista dated January 31, 1992 reflecting that said account has been closed on said date.<sup>[15]</sup>

For the defense, petitioner testified that: it is Bautista who is the sole owner of Unlad; he knew Bautista and became his "compadre" because of Bautista's wife who was his employee; he does not know anything about the check issued by Bautista in favor of Bergado nor did he receive any amount from Bergado or any other person; he agreed to open an account with Bautista in 1988 because Bautista promised to give him 5% interest from the proceeds of loans that will be made in favor of other people from said account; before July of 1989, Bautista also asked him to sign several checks in exchange for 2.5% interest a month from the proceeds of loan to be made in favor of other people; after July 1989, he terminated his accommodation arrangement with Bautista after learning that Bautista was also giving 5% interest to other investors without any accommodation agreement; he asked for the checks he previously signed but Bautista refused to return them saying that he did not have them anymore; and in spite of these, he continued investing in Bautista's business in the amount of more than P500,000.00.<sup>[16]</sup>

On cross-examination, petitioner admitted that he signed several checks in blank on

different occasions; that he was the one who asked and insisted that Bautista execute Exhs. "1" and "2", affidavits of Bautista stating that Unlad shall be Bautista's sole responsibility; and that despite having severed his relationship with Bautista in July of 1989, he did not inform UCPB Araneta, Quezon City branch of such fact and he continued investing in Unlad, from July 1989 to April 1994.<sup>[17]</sup>

To bolster his claim, petitioner presented: an affidavit executed by Bautista dated May 31, 1993 stating that Bautista is the sole proprietor of Unlad and that any business transaction entered into by Unlad shall be Bautista's personal responsibility;<sup>[18]</sup> an affidavit executed by Bautista on June 4, 1990, stating that petitioner is no longer connected with Unlad and that petitioner should not be held liable regarding any transaction entered into by Unlad after July 1989 since petitioner is no longer a signatory;<sup>[19]</sup> a business permit issued by the Municipality of Calapan certifying that Bautista has been granted a permit to operate a "general merchandise";<sup>[20]</sup> a certification from the Department of Trade and Industry, Oriental Mindoro Provincial Office stating that Unlad is registered in the name of Cesar Bautista and/or Placer Bautista;<sup>[21]</sup> orders of attachment issued by the Regional Trial Court of Oriental Mindoro on the properties of Bautista and petitioner;<sup>[22]</sup> and checks issued by Bautista in favor of petitioner and his wife Amelia Lee.<sup>[23]</sup>

On July 22, 1997, the RTC promulgated its decision, the dispositive portion of which reads as follows:

WHEREFORE, judgment is hereby rendered in this case finding accused Benjamin Lee guilty beyond reasonable doubt of Violation of Batas Pambansa Blg. 22 and accordingly sentences him to suffer an imprisonment of one (1) year of prision correccional, and to pay the offended party P980,000.00 and to pay a fine of P200,000.00 with subsidiary imprisonment in case of insolvency and non-payment of the fine by the accused.

SO ORDERED.<sup>[24]</sup>

Petitioner went to the Court of Appeals which modified the trial court's judgment, thus:

WHEREFORE, the Decision is hereby MODIFIED by imposing a penalty of one (1) year and for the accused to pay the private party the sum of Nine Hundred Eighty Thousand Pesos (P980,000.00) as civil indemnity.

With cost against the accused.

SO ORDERED.<sup>[25]</sup>

Petitioner's motion for reconsideration was denied on October 11, 2000.

Hence, the present petition with the following assignment of errors:

1. THE COURT A QUO COMMITTED A REVERSIBLE ERROR OF LAW IN DISREGARDING PETITIONER'S DEFENSE THAT HE HAD ALREADY

SEVERED, SINCE JULY 1989, HIS ACCOMODATION ARRANGEMENT WITH HIS CO-ACCUSED BAUTISTA WHO WAS SOLELY RESPONSIBLE FOR ALL THE TRANSACTIONS ENTERED INTO BY UNLAD COMMERCIAL ENTERPRISES AND THEREFORE PETITIONER HAD NO KNOWLEDGE OF THE SUFFICIENCY OR INSUFFICIENCY OF FUNDS OF UNLAD'S BANK ACCOUNT.

2. THE COURT A QUO HAS DECIDED IN (A) WAY NOT IN ACCORD WITH LAW IN FAILING TO RULE THAT THE SUBJECT CHECK, UCPB CHECK NO. ARA 168341, WAS NOT ISSUED BY PETITIONER TO PRIVATE COMPLAINANT ON ACCOUNT OR FOR VALUE.

3. THE COURT A QUO COMMITTED AN ERROR OF LAW WHEN IT FAILED TO CONSIDER THAT AT THE TIME THE SUBJECT CHECK WAS ISSUED BY BAUTISTA IN FAVOR OF PRIVATE COMPLAINANT, THE LATTER WAS ALREADY AWARE THAT THE RESPECTIVE ESTATES OF THE ACCUSED WERE ALREADY ATTACHED BY THE REGIONAL TRIAL COURT OF CALAPAN, ORIENTAL MINDORO.

4. THE COURT A QUO COMMITTED A REVERSIBLE ERROR OF FACT AND LAW IN NOT ACQUITTING PETITIONER ON GROUND OF REASONABLE DOUBT.

5. THE COURT A QUO AND THE TRIAL COURT COMMITTED REVERSIBLE ERROR OF LAW WHEN THEY FAILED TO DISMISS THE INFORMATION FOR VIOLATION OF B.P. 22 AGAINST THE ACCUSED FOR LACK OF JURISDICTION.<sup>[26]</sup>

In support of his first assigned error, petitioner claims that: he had no actual knowledge of the sufficiency or insufficiency of the funds handled by his co-accused Bautista; while it is true that he opened a joint account with Bautista at UCPB Araneta Avenue, Quezon City and that he signed several UCPB checks in blank to accommodate Bautista, he already severed his accommodation arrangement with Bautista as early as July of 1989; this is evidenced by the affidavits executed by Bautista dated June 4, 1990 and May 31, 1993 which the court a quo ignored; the Court of Appeals erroneously held that the affidavits of Bautista are "self-serving" since there was no showing that Bautista was lying when he made the statements therein; also, the declarant in this case is Bautista and not petitioner, thus the principle of self-serving statements cannot apply; the affidavits of Bautista are declarations against the interest of the person making it, which are admissible notwithstanding their hearsay character, since such declarations are relevant to the case and the declarant is not available as a witness despite efforts of petitioner to present Bautista in court; the true test of the reliability of the declaration is not whether it was made *ante litem motam* as in this case but whether the declaration was uttered under circumstances justifying the conclusion that there was no probable motive to falsify; also, the affidavits of Bautista, having been acknowledged before a notary public, should be given evidentiary weight.<sup>[27]</sup>

Petitioner also points out that in *Lao vs. Court of Appeals*<sup>[28]</sup> the Court held that if knowledge of the insufficiency of funds is proven to be actually absent or non-existent, the accused should not be held liable for the offense defined under Sec. 1

of *B.P. Blg. 22*; in said case, petitioner was acquitted, even though she was still connected with the corporation at the time of the issuance of the check, since she was not expected or obliged to possess under the organizational structure of the corporation, knowledge of the insufficiency of funds; and that in the case at bar, the court *a quo* affirmed the conviction of petitioner even though it was established that he had ceased to be connected with co-accused Bautista's business for more than three years prior to the issuance of the subject check and even though it was clear from the testimony of private complainant himself that he had dealt with Bautista and Ilagan only.<sup>[29]</sup>

Anent the second and third assigned errors, petitioner argues that: in the case at bar, there was neither a pre-existing obligation nor an obligation incurred on the part of petitioner when the subject check was given by Bautista to private complainant on July 24, 1993 since petitioner was no longer connected with Unlad or Bautista starting July of 1989; when Bautista issued the subject check to Bergado on July 24, 1993, Bautista had no more authority to use petitioner's pre-signed checks thus there was no consideration to speak of; petitioner was deceived by Bautista into believing that all the pre-signed checks were already used or issued as of 1989; the court *a quo* should not have presumed that when petitioner signed the checks and handed the same to Bautista, petitioner had knowledge that their account had no funds; in all criminal cases, suspicion, no matter how strong cannot sway judgment; even assuming that petitioner had issued the subject check when he signed the same sometime before July 1989 and that he had an undertaking to whoever would be the payee, still petitioner should be exempted from criminal liability since petitioner could not comply with the said undertaking due to an insuperable cause, *i.e.*, as early as June 18, 1993, all the properties of petitioner had already been attached/garnished by the Regional Trial Court of Oriental Mindoro.<sup>[30]</sup>

Petitioner further argues that: private complainant is not a holder in due course because he knew that the account of Bautista and petitioner with UCPB Araneta branch had been closed at the time that he deposited UCPB Check No. ARA 168341 on August 5, 1993; Check No. ARA 374058 in the amount of P500,000.00, which bounced earlier, was drawn from the same UCPB account of Bautista and petitioner which had already been closed by the UCPB on January 31, 1992;<sup>[31]</sup> private complainant also had knowledge that the respective estates of both accused were already attached by the RTC at the time the subject check was given to him by Bautista since the first order of attachment was issued on June 18, 1993 and was recorded with the Registry of Deeds of Oriental Mindoro on the same date; applying the principle that registration of instrument is notice to the world, Bergado is presumed to know the various orders of attachment/garnishment issued by the court.<sup>[32]</sup>

As to his fourth assigned error, petitioner argues that: the prosecution failed to prove his guilt beyond reasonable doubt; the prosecution failed to rebut the allegation of petitioner that he was not anymore connected with the business of Bautista and therefore he had no knowledge of the insufficiency of the funds handled by Bautista; and the prosecution and the trial court relied solely on the authenticity of petitioner's signature on the subject check which fact is not enough to convict petitioner of the offense charged.<sup>[33]</sup>