

SECOND DIVISION

[G.R. No. 224979, December 13, 2017]

**IVY LIM, PETITIONER, V. PEOPLE OF THE PHILIPPINES AND
BLUE PACIFIC HOLDINGS, INC., RESPONDENTS.**

D E C I S I O N

PERALTA, J.:

This is a petition for review on *certiorari*, assailing the Decision^[1] dated October 27, 2014 of the Court of Appeals (CA), which denied petitioner Ivy Lim's petition for review, and affirmed the Decision^[2] dated September 30, 2013 and the Order dated December 3, 2013 rendered by the Regional Trial Court (RTC) of Makati City in Criminal Case No. 13-1586-86. The RTC affirmed the Joint Decision^[3] dated May 22, 2013 of the Metropolitan Trial Court (MeTC) of Makati City, which found Lim guilty beyond reasonable doubt of ten (10) counts of violation of *Batas Pambansa Bilang* (B.P. Blg.) 22 in Criminal Cases No. 346643-52.

The antecedent facts are as follows:

Private respondent Blue Pacific Holdings, Inc. (BPHI) granted Rochelle Benito a loan amounting to P1,149,500.00 as evidenced by a Promissory Note acknowledged before a notary public on July 29, 2003. Petitioner Lim signed as a co-maker of her sister Benito. To secure payment of the loan, Benito and Lim issued eleven (11) Equitable PCI Bank checks with a face value of P67,617.65 each, or a total amount of P743,794.15, to wit:

Check No.	Date	Amount
0105461	May 29, 2004	P67,617.65
0105462	June 29, 2004	P67,617.65
0105463	July 29, 2004	P67,617.65
0105464	August 29, 2004	P67,617.65
0105465	September 29, 2004	P67,617.65
0105466	October 29, 2004	P67,617.65
0105467	November 29, 2004	P67,617.65
0105468	December 29, 2004	P67,617.65
0105452	January 29, 2005	P67,617.65

0105477 February 28, 2005 P67,617.65
0105478 March 29, 2005 P67,617.65

Later on, 10 of these 11 checks were dishonored when presented for payment for having been drawn against a closed account. BPHI sent Lim various demand letters, but to no avail. On June 28, 2005, BPHI sent a final demand letter, which Lim supposedly received as shown by the registry return card bearing her signature.

For failing to pay the amounts corresponding the dishonored checks, Lim was charged with 11 counts of violation of B.P. Blg. 22. For her part, Lim raised the defenses that (1) she could not have signed and issued the checks on July 29, 2003 in the presence of BPHI Finance Officer Juanito Enriquez because she was then abroad as shown by the Certification of the Bureau of Immigration and Deportation (BID); (2) BPHI has no permit to conduct financing business; (3) the checks were issued to facilitate illegal trafficking of teachers to the United States for which there has been a criminal action filed and resolved for human trafficking; and (4) there was no valuable consideration given.

Upon arraignment on December 13, 2006, Lim, assisted by counsel, pleaded not guilty to all charges. During the preliminary conference, the parties admitted the following matters: (1) the jurisdiction of the trial court; (2) the identity of Lim as the accused, (3) the existence of the complaint affidavit, (4) the existence of the promissory note and Lim's signature thereon, and (5) the existence and due execution of the 11 checks with BPHI as payee.

During trial, the prosecution presented its witness, BPHI Finance Officer Enriquez, and documentary evidence consisting of the complaint-affidavit, the promissory note and the 11 checks, and the demand letters, among others. For the defense, Lim claimed that the subject checks were unauthenticated because she was out of the country on July 29, 2003, as shown by the certification of her travel record issued by the BID. She refuted the testimony of Enriquez that he personally saw her signed the checks before him.

On May 22, 2013, the MeTC rendered a Joint Decision finding Lim guilty beyond reasonable doubt of 10 counts of violation of B.P. Blg. 22, the dispositive portion of which states:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered finding accused IVY LIM a.k.a. IVY BENITO LIM **guilty beyond reasonable doubt for violation of Batas Pambansa Blg. 22 in Criminal [Case Nos.] 346643 or ten (10) counts** and hereby orders her to pay a FINE of SIX HUNDRED SEVENTY-SIX THOUSAND ONE HUNDRED SEVENTY-SIX PESOS AND 50/100 (P676,176.50) which is the face value of the ten (10) checks with subsidiary imprisonment in case of insolvency in accordance with Article 39 of the Revised Penal Code.

The accused IVY LIM a.k.a. IVY BENITO LIM is acquitted in Criminal Case No. 346642 for failure of the prosecution to establish all the elements of the crime charged.

With regards to the civil aspect of these cases, she is hereby ordered to pay the private complainant Blue Pacific Holdings, Inc. the total amount

of SEVEN HUNDRED FORTY-THREE THOUSAND SEVEN HUNDRED NINETY-FOUR PESOS AND 15/100 (P743,794.15) which corresponds to the face value of the eleven (11) checks subject matter of the present cases, plus 12% interest *per annum* from date of the filing of the Informations on May 22, 2006 until the amount shall have been fully paid. She is likewise ordered to pay the amount of Twenty Thousand Pesos (P20,000.00) as and for attorney's fees and to pay the costs of suit.

SO ORDERED.^[4]

On appeal, the RTC found no reversible error and affirmed the MeTC Decision.

Dissatisfied, Lim filed a petition for review before the CA, which denied the same and affirmed the RTC Decision. The CA also denied her motion for reconsideration. Hence, the petition.

Lim raises the following grounds in support of her petition for review on *certiorari*:

- A. AN UNAUTHENTICATED REGISTRY RETURN CARD CANNOT PROVE RECEIPT OF NOTICE OF DISHONOR AND CANNOT BE A BASIS FOR CONVICTION FOR A CHARGE OF VIOLATION OF BATAS PAMBANSA BLG. 22 UNDER PREVAILING JURISPRUDENCE SUCH THAT THE COURT OF APPEALS GRAVELY ERRED IN UPHOLDING THE RULINGS OF THE TRIAL COURT AND THE REGIONAL TRIAL COURT THAT THERE WAS PROOF OF PERSONAL SERVICE OF NOTICE OF DISHONOR ON THE PETITIONER BASED ON A COMPARISON OF SIGNATURES ON THE SUBJECT CHECKS AND OF THE SIGNATURES ON THE REGISTRY RETURN CARD - AND THAT HEREIN PETITIONER WAS PROPERLY CONVICTED FOR VIOLATION OF BATAS PAMBANSA BLG. 22
- B. UNAUTHENTICATED CHECKS CANNOT PROVE THAT HEREIN PETITIONER WAS THE SAME PERSON WHO ISSUED SAID CHECKS, IN ACCORDANCE WITH THE DOCTRINE ENUNCIATED IN *UNCHUAN V. LOZADA. ET AL (SUPRA.)*, SUCH THAT THE COURT OF APPEALS GRAVELY ERRED IN UPHOLDING THE RULINGS OF THE TRIAL COURT AND THE REGIONAL TRIAL COURT THAT HEREIN PETITIONER WAS PROPERLY CONVICTED FOR VIOLATION OF BATAS PAMBANSA BLG. 22
- C. A DOCUMENT THAT WAS NEVER PRESENTED, IDENTIFIED, AUTHENTICATED NOR TESTIFIED ON DURING TRIAL CANNOT BE ADMITTED IN EVIDENCE NOR USED TO PROVE THE GUILT OF HEREIN PETITION[ER] FOR THE OFFENSE CHARGED AGAINST HER, IN ACCORDANCE WITH THE DOCTRINE IN *UNCHUAN V. LOZADA, ET AL, (SUPRA.)*, SUCH THAT THE COURT OF APPEALS GRAVELY ERRED IN UPHOLDING THE RULINGS OF THE TRIAL COURT AND THE REGIONAL TRIAL COURT THAT HEREIN PETITIONER WAS PROPERLY CONVICTED FOR VIOLATION OF BATAS PAMBANSA BLG. 22 CRIMINALLY AND CIVILLY LIABLE.^[5]

The petition lacks merit, but a modification of the imposed penalty and the interest on actual damages awarded are in order.

First, Lim argues that the signature in the registry return card of the demand letter was never authenticated because the prosecution's sole witness, Enriquez, admitted that he did not personally or actually see her receive the notice of dishonor nor sign

the registry receipt. She faults Enriquez for failing to explain why he claimed that the signature on said registry return card was hers. She also contends that the CA committed manifest error in ruling that her actual receipt of the notice of dishonor was proven by comparing her signatures in the subject checks with that of the registry return card, because nowhere in the Rules of Evidence or jurisprudence is it provided that proof/authentication can be made by comparing two unauthenticated documents.

Second, Lim points out that while Enriquez testified that he saw her personally signed the 10 postdated checks on July 29, 2003 in Makati City, his testimony was belied by a BID Certification showing that she was out of the country that day and could not have signed the same checks. Since she did not sign the checks in the presence of Enriquez on said date, then the subject checks could not have been properly authenticated in accordance with the Rules on Evidence.

Lastly, Lim asserts that in holding her liable to BPHI, the trial court primarily relied on the Promissory Note which was never produced, presented, identified, authenticated or testified on by Enriquez. Thus, the trial court erred in admitting the said evidence and using it as basis for holding her guilty beyond reasonable doubt of violation of B.P. Blg. 22. Due to the improper admission of such evidence, Lim also contends that she could not be held civilly liable to BPHI for the issuance of the postdated checks, inasmuch as lack of consideration is a defense under the Negotiable Instruments Law.

Lim's arguments are untenable.

First, contrary to Lim's claim that only the unauthenticated registry return card was the only proof presented by the prosecution to establish service of a notice of dishonor, the evidence on record shows that the prosecution also presented the registry receipt and the testimony of Enriquez who sent the demand letter by registered mail.

In *Resterio v. People*,^[6] the Court ruled that the notice of dishonor required under B.P. Blg. 22 to be given to the drawer, maker or issuer of the check should be written. "If the service of the written notice is by registered mail, the proof of service consists not only in the presentation as evidence of the registry return receipt but also of the registry receipt together with the authenticating affidavit of the person mailing the notice of dishonor. Without the authenticating affidavit, the proof of giving the notice of dishonor is insufficient, unless the mailer personally testifies in court on the sending by registered mail."

Here, the transcript of stenographic notes confirm that the prosecution complied with the requisite proof of service of the notice of dishonor by presenting Enriquez, who testified on the sending of such notice by registered mail, and identified the demand letter, the registry receipt and the registry return card, *viz.*:

ATTY. DELA ROSA:

Q Mr. Witness, during the last hearing of this case, you went to identify the checks in question in this case which have been previously marked in evidence as Exhibits to "O", and you testified that these checks after they were issued to your company by the accused, Ivy Lim, the same were deposited and dishonored by the bank for the reason of account closed, is that correct?

A Yes, sir.

Q Now, after the checks in question were dishonored by the bank for the reason as stated account closed, what did you do?

A We called the accused by telephone to follow up payments of the returned checks, sir.

Q Were you able to talk to the accused through telephone?

A Yes, sir.

Q What was the reply of the accused, if any?

A The reply of Ms. Ivy Lim is that, can I answer that in Tagalog, your Honor?

COURT:

Yes. (Witness testifying in Tagalog)

A "Ayaw pabayaran ni Ate."

Q What did you do after that?

A Since our demand fell on death case, the office sent a demand letter dated 18 May 2005, sir.

Q To whom, was the demand letter sent?

A To Ms. Rocel Benito and Ms. Ivy Lim, sir.

Q Do you have a copy of the letter which you sent to the accused, Ivy Lim?

A Yes, sir.

Q Will you please produce the letter which you said was sent to the accused, Ivy Lim?

A Yes, sir.

ATTY. DELA ROSA:

Witness is producing the Letter dated May 18, 2005 which has been marked in evidence as Exhibit "Q" and "Q-1", respectively.

Q Mr. Witness, there appears to be a signature on top of the name Juanita M. Enriquez, whose signature is this?

A The same is my signature, sir.

ATTY. DELA ROSA:

May we request your Honor that the signature properly identified by the witness be marked as Exhibit "Q-4".

COURT:

Mark it.

ATTY. DELA ROSA:

Q How was this demand letter sent to the accused, Ivy Lim?

A The demand letter was sent through registered mail at Malolos, Bulacan, sir.

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Q Do you have any proof that the said letter, marked as Exhibit "Q" was sent by registered mail, as you claimed in Malolos, Bulacan?