

SECOND DIVISION

[G.R. No. 167461, February 19, 2008]

**VICKY MOSTER, Petitioner, vs. PEOPLE OF THE PHILIPPINES,
Respondent.**

DECISION

QUISUMBING, J.:

This petition assails the Decision^[1] dated October 29, 2004 of the Court of Appeals in CA-G.R. CR No. 27595, affirming with modification the Decision^[2] dated August 28, 2002 of the Regional Trial Court (RTC) of Caloocan City, Branch 124. The Court of Appeals found petitioner Vicky L. Moster guilty on two counts for violation of *Batas Pambansa Blg. 22 (B.P. Blg. 22)*,^[3] otherwise known as the Bouncing Checks Law. She was sentenced to pay, in addition to the fines imposed with subsidiary imprisonment in case of insolvency, P273,345, representing the two unpaid checks subject of this case. Also assailed is the Resolution^[4] dated March 16, 2005 of the appellate court denying petitioner's motion for reconsideration.

The antecedent facts, as culled from the findings of the trial and appellate courts, are as follows:

According to complainant Adriana Presas, who is engaged in the rediscounting business, on or about August 1995, petitioner obtained from her a loan of P450,000, for which the petitioner issued as payment three postdated PhilBank checks, as follows:

Check No. 026137 dated October 31, 1995 amounting to P94,257.00;
Check No. 026138 dated October 31, 1995 amounting to P188,514.00;
Check No. 026124 dated December 31, 1995 amounting to P84,831.00.

^[5]

The three checks were all payable to cash. Presas testified she did not deposit the checks on their due dates upon petitioner's request and assurance that they would be replaced with cash. When she could not wait any longer, Presas deposited Check Nos. 026138 and 026124 in her Westmont Bank account, sometime in January 1996 and March 1996, respectively, only to be notified later that the checks were dishonored because the account had been closed. Presas said she did not deposit Check No. 026137 after she agreed to petitioner's request to withhold its deposit as it had not yet been funded. After receiving notice that Check Nos. 026138 and 026124 had been dishonored, Presas immediately informed petitioner thereof and demanded payment for the value of the checks. This demand, however, went unheeded.

In a letter dated January 14, 1997, Presas through counsel, demanded from petitioner the settlement of P367,602, representing the total value of the three

checks, within five days from receipt. Petitioner, however, did not comply. Thus, three Informations for violation of *B.P. Blg. 22*, docketed as Criminal Case Nos. 178240, 178241 and 178242, were filed against petitioner in Branch 49, Metropolitan Trial Court (MeTC), Caloocan City. The Informations were similarly worded except with respect to the check numbers, the dates and amounts of the checks,^[6] as follows:

That sometime in the month of August 1995 in Caloocan City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously make and issue Check No. 026138 drawn against PHILBANK in the amount of P188,514.00 dated October 31, 1995 to apply for value in favor of ADRIANA PRESAS well knowing at the time of issue that she has no sufficient fund in or credit with the drawee bank for the payment of such check in full upon its presentment, which check was subsequently dishonored for the reason ACCOUNT CLOSED and with intent to defraud, failed and still fails to pay the said complainant the amount of P188,514.00 despite receipt of notice from the drawee bank that said check has been dishonored and had not been paid.

CONTRARY TO LAW.^[7]

When arraigned, petitioner pleaded not guilty.

At the trial, Alfredo S. Daza, Branch Manager of PhilBank, identified the three subject checks as PhilBank checks drawn against the account of petitioner. He also testified that only Check Nos. 026138 and 026124 were presented to the bank for clearing, and that these were dishonored for the reason "Account Closed." Daza showed a certified true copy of a computer printout, showing that petitioner's account under Account Number 1053-0463-2 had a temporary overdraft or negative balance of P3,301.04 as of November 22, 1995, for which reason the account was closed. Daza explained that issuing a check without sufficient funds was against bank policy, and when an account holder issues an unfunded check, the bank has the prerogative to close the account.

Petitioner, for her part, testified that sometime in August 1994, she got from Presas, by way of checks rediscounting, her first loan for P60,000, secured by her Isuzu vehicle. After obtaining additional loan, her total loan amounted to P150,000, but because of the interest, it ballooned to P375,345. According to petitioner, the three PhilBank checks she issued were the payment for the aforementioned loan. After Check Nos. 026138 and 026124 bounced, she replaced them with Asiatrust Bank Check No. 0446323 dated February 8, 1996 for P273,345, the value of the two bounced checks. Presas did not encash the first check, Check No. 026137. When she tried to retrieve the initial three subject checks, Presas refused, claiming petitioner still owed interest.

On December 27, 2000, the MeTC rendered its decision, convicting petitioner as follows:

One of the essential elements of the offense of violation of the Anti-Bouncing Check Law is that upon its presentment, the check is subsequently dishonored by the drawee bank for insufficiency of funds or

credit. As admittedly, PhilBank Check No. 026137 in the amount of P94,257.00 dated Oct. 31, 1995 was not presented to the drawee bank and therefore could not have been dishonored for insufficiency of fund or credit, the crime of issuing a bum check of which the accused is charged in **Crim. Case No. 178241 does not exist** and accused Vicky Moster y Libarnes is hereby [a]cquitted of the charge.

x x x x

WHEREFORE, upon a careful consideration of the foregoing evidence, the Court finds the same to be sufficient to support a conviction of the accused beyond reasonable doubt of the offense of violation of B.P. [Blg.] 22 on **two counts** and hereby sentences accused Vicky Moster Y Libarnes to pay a fine of two hundred thousand pesos (P200,000.00) in **Crim. Case No. 178240** and a fine of eighty-five thousand pesos (P85,000.00) in **Crim. Case No. 178242**, with subsidiary imprisonment in both cases in case of insolvency.

Accused is further ordered to pay complainant Adriana Presas the amount of three hundred sixty-seven thousand six hundred two pesos (**P367,602.00**) representing **the value of the three PhilBank [c]hecks that are yet unpaid** with interest thereon at 12% per annum from February, 1996 until the amount is fully paid and to pay the cost of these suits.

SO ORDERED.^[8] (Emphasis supplied.)

The RTC affirmed *in toto* the MeTC's decision and subsequently denied the motion for reconsideration. On appeal, the Court of Appeals affirmed with modification the RTC's decision, thus:

WHEREFORE, we **AFFIRM** the assailed decision of the RTC with the modification that the accused-petitioner **is ordered to pay, in addition to the fines imposed, the amount of Two Hundred Seventy-Three Thousand, Three Hundred Forty-Five Pesos (P273,345.00)**, representing the **value of the two PhilBank Checks that are yet unpaid**, with interest thereon at 12% per annum from February 1996 until the amount is fully paid, and to pay the cost of these suits.

SO ORDERED.^[9] (Emphasis supplied.)

Petitioner sought reconsideration, but her motion was denied. Hence, this petition, anchored on the following grounds:

I.

WHETHER OR NOT PETITIONER'S GUILT HAS BEEN ESTABLISHED BEYOND REASONABLE DOUBT AND THAT THE COURT OF APPEALS COMMITTED GRAVE ERROR WHEN IT RULED IN A MANNER THAT DISREGARDED THE PRECEDENTS LAID DOWN IN MAGNO VS. COURT OF APPEALS, 210 SCRA 471 [1992]; CABRERA VS. PEOPLE[,] 407 SCRA 247 [2003]; RICO VS. PEOPLE[,] 392 SCRA 61 [2002]; KING VS. PEOPLE[,] 319 SCRA 654 [1999]; LLAMAD[O] VS. COURT OF APPEALS, 270 SCRA

II.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE ERROR, AND MISINTERPRETED THE FACTS AND EVIDENCE IN AFFIRMING THE DECISION OF THE RTC WITH THE MODIFICATION THAT THE ACCUSED-PETITIONER IS ORDERED TO PAY IN ADDITION TO THE FINES IMPOSED THE AMOUNT OF TWO HUNDRED SEVENTY THREE THOUSAND THREE HUNDRED FORTY FIVE PESOS (Ps.273,345.00) REPRESENTING THE VALUE OF THE TWO PHILBANK CHECKS THAT ARE YET UNPAID. WITH INTEREST THEREON AT 12% PER ANNUM FROM FEBRUARY 1996 UNTIL THE AMOUNT IS FULLY PAID AND TO PAY THE COST OF THESE SUITS.

[10]

Simply, the two issues for our resolution are (1) Was petitioner's guilt proven beyond reasonable doubt? and (2) Did the Court of Appeals err in holding petitioner liable for the value of the two PhilBank checks, with 12% interest?

Petitioner admits she issued the three subject checks but insists that she is not liable under *B.P. Blg. 22* because the prosecution failed to prove the element of knowledge of the insufficiency of funds as it had not established that she actually received a notice of dishonor. She adds that she had already settled her obligation with Presas when she replaced the two bounced checks with Asiatrust Bank Check No. 0446323.

Respondent, through the Office of the Solicitor General, counters that petitioner was duly notified of the dishonor of the checks when petitioner received Presas's January 14, 1997 letter^[11] on January 29, 1997. Respondent claims it presented not only the registry receipt^[12] but also the registry return card^[13] to prove mailing and receipt of the notice of dishonor. In fact, as respondent argues, petitioner herself admitted she had replaced the dishonored checks with an Asiatrust Bank Check No. 0446323 dated February 8, 1996.

We find merit in the petition.

B.P. Blg. 22 punishes as *malum prohibitum* the mere issuance of a worthless check, provided the other elements of the offense are proved. Section 1^[14] enumerates the elements of *B.P. Blg. 22*, as follows: (1) the making, drawing, and issuance of any check to apply on account or for value; (2) the knowledge of the maker, drawer, or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of the check in full upon its presentment; and (3) the subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.^[15]

Upon careful examination of the records, however, we found that only the first and third elements have been established by the prosecution. By her own admission, petitioner issued the three subject checks, two of which were presented to PhilBank but were dishonored and stamped for the reason "Account Closed." Under Section 3^[16] of *B.P. Blg. 22*, the introduction in evidence of the dishonored check, having

the drawee's refusal to pay stamped or written thereon, or attached thereto, with the reason therefor as aforesaid shall be *prima facie* evidence of the making or issuing of the said checks and the due presentment to the drawee for payment and the dishonor thereof, and that the same was properly dishonored for the reason written, stamped or attached thereto by the drawee on such dishonored checks.^[17]

As to the second element, Section 2^[18] of *B.P. Blg. 22* creates the presumption that the issuer of the check was aware of the insufficiency of funds when he issued a check and the bank dishonored it.^[19] This presumption, however, arises only after it is proved that the issuer had received a written notice of dishonor and that, within five days from receipt thereof, he failed to pay the amount of the check or to make arrangements for its payment.^[20]

Ordinarily, preponderance of evidence is sufficient to prove notice. But in criminal cases, the quantum of proof required is proof beyond reasonable doubt.^[21] In the instant case, the prosecution merely presented a copy of the demand letter allegedly sent to petitioner through registered mail and the registry return card. There was no attempt to authenticate or identify the signature on the registry return card. All that we have on record is an illegible signature on the registry receipt as evidence that someone received the letter. As to whether this signature is that of petitioner or her authorized agent remains a mystery. We stress that as we have held in *Rico v. People*,^[22] receipts for registered letters and return receipts do not by themselves prove receipt; they must be properly authenticated to serve as proof of receipt of the letters, claimed to be a notice of dishonor.

Unfortunately, the prosecution presented only the testimony of Presas to prove mailing and receipt of the demand letter, to wit:

Q: When you were informed by the bank that the checks bounced and you informed the accused about it, what was her answer?

A: Accused told me to wait and she will settle the matter.

Q: What happen to her promises that she will settle the checks?

A: When the accused failed to comply with her promise I filed the case in court.

x x x x

Q: Aside from your oral demand, what other demand did you make on the accused?

A: I went to my lawyer to file the case in court.

Q: Aside from filing the complaint what did Atty. Galope do?

x x x x

A: ...my lawyer Atty. Galope sent a demand letter to the accused.