

FIRST DIVISION

[G.R. No. 160127, November 11, 2008]

**RAFAEL P. LUNARIA, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

PUNO, C.J.:

This is a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court, to reverse and set aside the Decision of the Court of Appeals (CA),^[1] and the Resolution which denied petitioner's motion for reconsideration. The CA affirmed the decision of the Regional Trial Court (RTC) of Valenzuela City, Branch 75,^[2] finding petitioner Rafael Lunaria guilty of one (1) count violation of *Batas Pambansa* (B.P.) *Blg.* 22.

The Case

Records^[3] show that sometime in October 1988, petitioner entered into a partnership agreement with private complainant Nemesio Artaiz, in the conduct of a money-lending business, with the former as industrial partner and the latter the financier. Petitioner, who was then a cashier of Far East Bank and Trust Company in Meycauayan, Bulacan, would offer loans to prospective borrowers which his branch was unable to accommodate. At the start of the business, petitioner would first inform Artaiz of the amount of the proposed loan, then the latter would issue a check charged against his account in the bank (proceeds of which will go to a borrower), while petitioner would in turn issue a check to Artaiz corresponding to the amount lent plus the agreed share of interest.

The lending business progressed satisfactorily between the parties and sufficient trust was established between the parties that they both agreed to issue pre-signed checks to each other, for their mutual convenience. The checks were signed but had no payee's name, date or amount, and each was given the authority to fill these blanks based on each other's advice.

The arrangement ended on November 1989, when Artaiz was no longer willing to continue the partnership.^[4] One of the checks issued by petitioner to Artaiz was dishonored for insufficient funds.^[5] When Artaiz went to petitioner to ask why the latter's check had bounced, petitioner told Artaiz that he had been implicated in a murder case and therefore could not raise the money to fund the check.^[6] Petitioner requested Artaiz not to deposit the other checks that would become due as he still had a case.^[7]

Petitioner was charged with murder in December 1989 and detained until May 1990, when he was released on bail. He was eventually acquitted in December 1990.

According to Artaiz, he went to petitioner in May 1990, after petitioner had been released on bail, and demanded payment for the money owed Artaiz. Petitioner again requested more time to prepare the money and collect on the loans. Artaiz agreed. [8] In June 1990, petitioner allegedly went to Artaiz's residence where both had an accounting. It was supposedly agreed that petitioner owed Artaiz P844,000.00 and petitioner issued a check in that amount, post-dated to December 1990. [9]

When the check became due and demandable, Artaiz deposited it. The check was dishonored as the account had been closed. A demand letter was subsequently sent to petitioner, informing him of the dishonor of his check, with a demand that he pay the obligation. [10] Artaiz also went to petitioner's house to get a settlement. According to Artaiz, petitioner proposed that his house and lot be given as security. But after Artaiz's lawyer had prepared the document, petitioner refused to sign. At this point, Artaiz filed the instant case. [11]

The RTC found petitioner guilty as charged and sentenced him to suffer the penalty of imprisonment of one (1) year, and to pay Artaiz the amount of P844,000.00, and the cost of suit. [12]

On appeal, the CA found no error and affirmed the decision in *toto*. [13]

The Issues

In the petition before us, petitioner alleges that the CA gravely erred in:

- I. Not reversing the RTC decision convicting petitioner for violation of *B.P. Bilang 22*;
- II. Not holding that the prosecution failed to establish the elements of the crime of the violation of *B.P. Bilang 22*:
 1. the prosecution failed to establish that the subject check was duly "made" or "drawn" and "issued" by petitioner;
 2. the subject check was received by the private complainant without giving any consideration therefore;
 3. the oral testimony of private complainant is full of serious inconsistencies and contradictions and should have been disregarded by the trial court;
 4. private complainant's testimony should have been stricken off the records for being hearsay in nature;
 5. the prosecution dismally failed to overcome the presumption of innocence of the accused in criminal cases;
 6. to hold petitioner liable for violation of B.P. Blg. 22 in this case would result in a terrible injustice;
- III. In the alternative,... in not applying in petitioner's favor the rule of preference in the imposition of penalties in B.P. Blg. 22 cases, i.e., the [CA] erred gravely in not deleting the penalty of imprisonment and imposing in lieu thereof a fine upon petitioner.

The Ruling

We affirm the conviction but with modification on the penalty.

At the outset, the first and second grounds raised by petitioner are essentially factual in nature, impugning the finding of guilt by both the CA and the RTC. Petitioner would have this court re-evaluate and re-assess the facts, when it is beyond cavil that in an appeal by *certiorari*, the jurisdiction of this Court is confined to reviews of errors of law ascribed to the CA. This Court is not a trier of facts, and the findings of fact by the CA are conclusive, more so when it concurs with the factual findings of the RTC. Absent any showing that such findings are devoid of any substantiation on record, the finding of guilt is conclusive on us.^[14]

Moreover, we have gone over the records and find no error in the decision of the appellate court holding that the elements of the crime have been established by the prosecution, *i.e.*, (1) the making, drawing, and issuance of any check to apply for 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]

Petitioner makes much of the argument that the check was not "made" or "drawn" within the contemplation of the law, nor was it for a consideration. The evidence on record belies these assertions. As correctly held by the CA:

Under the first element, [petitioner] wants Us to believe that he did not draw and issue the check. Citing the Negotiable Instruments Law, he said the he could not have "drawn" and "issued" the subject check because "it was not complete in form at the time it was given to [Artaiz]."

At the outset, it should be borne in mind that the exchange of the pre-signed checks without date and amount between the parties had been their practice for almost a year by virtue of their money-lending business. They had authority to fill up blanks upon information that a check can then be issued.

Thus, under the Negotiable Instruments Law, Section 14 of which reads:

"Blanks, when may be filled. — Where the instrument is wanting in any material particular, the person in possession thereof has prima facie authority to complete it by filling up the blanks therein. xxx"

[T]his practice is allowed.

Because of the presumption of authority, the burden of proof that there was no authority or that authority granted was exceeded is carried by the person who questions such authority.