

THIRD DIVISION

[G.R. NO. 155619, August 14, 2007]

**LEODEGARIO BAYANI, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Leodegario Bayani (petitioner) was charged with Violation of *Batas Pambansa Blg. 22* in an Information, to wit:

That on or about the 20th day of August 1992, in the Municipality of Candelaria, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously issue and make out Check No. 054924 dated August 26, 1992, in the amount of TEN THOUSAND PESOS (P10,000.00) Philippine Currency, drawn against the PS Bank, Candelaria Branch, Candelaria, Quezon, payable to "Cash" and give the said check to one Dolores Evangelista in exchange for cash although the said accused knew fully well at the time of issuance of said check that he did not have sufficient funds in or credit with the drawee bank for payment, the same was dishonored and refused payment for the reason that the drawer thereof, the herein accused, had no sufficient funds therein, and that despite due notice said accused failed to deposit the necessary amount to cover said check, or to pay in full the amount of said check, to the damage and prejudice of said Dolores Evangelista in the aforesaid amount.

Contrary to law.^[1]

After trial, petitioner was convicted by the Regional Trial Court (RTC) of Lucena City, Branch 55, in a Decision rendered on November 20, 1995, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing considerations, this Court finds the accused Leodegario S. Bayani, GUILTY beyond reasonable doubt of violating Section 1, *Batas Pambansa Blg. 22*, and hereby sentences him to suffer one (1) year imprisonment and a fine of Five Thousand (P5,000.00) Pesos, with subsidiary imprisonment in case of insolvency. He shall likewise pay the complaining witness, Dolores Evangelista, the sum of P10,000.00, the value of Check No. 054924 he issued and drew against PS Bank, Candelaria Branch, which was subsequently dishonored by the said drawee bank for insufficiency of funds.

The accused Leodegario Bayani is further ordered to pay Dolores Evangelista the amount of P5,000.00 representing attorney's fees. He

shall also pay double the cost of this suit.

SO ORDERED.^[2]

In convicting petitioner, the trial court made the following findings of facts:

1. That the Philippine Savings Bank, Candelaria Branch, has issued to the accused check booklet (Exh. "C") on December 12, 1991, with the Check No. 054924 as one of those included in said booklet of checks;
2. That the said Check No. 054924 dated August 26, 1992, was drawn and issued payable to Cash in the amount of P10,000.00; said drawn check was made to apply to the account of the accused, Leodegario S. Bayani whose name appears therein in bold print at the upper portion of the said check;
3. That said Check No. 054924, is a post-dated check, was subsequently dishonored by the drawee bank, PS Bank, Candelaria Branch, for insufficiency of funds;
4. That the checking account of the accused Leodegario S. Bayani with PS Bank, Candelaria Branch, was closed on September 1, 1992 (Exh. "B-3"), which at the time had only remaining deposit in the amount of P2,414.96 (Exh. "B-4").^[3]

The trial court also made the following findings:

The check in question is postdated, issued and drawn on August 20, 1992, and dated August 26, 1992. It was presented to complaining witness, Dolores Evangelista, for encashment by Alicia Rubia whom the former knows. After the check was deposited with the bank, it was returned to Evangelista for insufficiency of funds (Exh. "A-5"). Thereafter, she pursued the following events to demand payment of the value of the check:

x x x x

After the confrontation at the office of Atty. Emmanuel Velasco, Evangelista has had another confrontation with the accused Bayani and Alicia Rubia at Candelaria municipal building before Brgy. Captain Nestor Baera, but again the accused and Rubia pointed to each other for the settlement of the amount involved in the check in question.

Of these two (2) confrontations Evangelista had with the accused Bayani and Alicia Rubia, including the chances to have met or known the complaining witness Evangelista since 1977 up to the filing of the instant case in the Municipal Trial Court of Candelaria, all what the accused Leodegario Bayani could say were flat denials of having talked with, or otherwise met Evangelista, regarding the latter's claim of payment of the value of Check No. 054924, admittedly from the check booklet of the said accused Bayani issued by PS Bank, Candelaria Branch.^[4]

On appeal, the Court of Appeals (CA)^[5] affirmed *in toto* the trial court's decision. The CA's Decision dated January 30, 2002 provides for the following dispositive portion:

WHEREFORE, and it appearing from the circumstances of both the offense and the offender which does not indicate good faith or a clear mistake of fact in accordance with the Administrative Circular No. 13-2001, the judgment appealed from is AFFIRMED in toto, with costs.

SO ORDERED.^[6]

Thus, herein petition for review on *certiorari* under Rule 45, Rules of Court, with the following assignment of errors:

THE COURT OF APPEALS, WITH DUE RESPECT, ERRED IN REFUSING TO ACQUIT THE ACCUSED DESPITE THE CONVICTION OF THE TRIAL COURT IS UTTERLY BASED ON HEARSAY EVIDENCE;

THE COURT OF APPEALS ERRED IN CONVICTING THE ACCUSED DESPITE THE CONSIDERATION FOR THE ISSUANCE OF THE CHECK WAS NOT DULY ESTABLISHED;

THE TRIAL COURT AND THE COURT OF APPEALS ERRED WHEN THEY CONVICTED THE ACCUSED BASED ON THE WEAKNESS OF THE LATTER'S EVIDENCE AND NOT ON THE STRENGTH OF PROSECUTION'S EVIDENCE;

THE TRIAL COURT AND THE COURT OF APPEALS (sic) ERRED IN CONVICTING THE ACCUSED SOLELY ON THE BASES OF PRESUMPTIONS.

^[7]

On the other hand, the Office of the Solicitor General (OSG), representing respondent, argues that: (1) petitioner's denial of his liability for Check No. 05492 cannot overcome the primordial fact that his signature appears on the face of such check; (2) want of consideration is a personal defense and is not available against a holder in due course; and (3) the constitutional presumption of innocence was overcome by the requisite quantum of proof.^[8]

Well-settled is the rule that the factual findings and conclusions of the trial court and the CA are entitled to great weight and respect, and will not be disturbed on appeal in the absence of any clear showing that the trial court overlooked certain facts or circumstances which would substantially affect the disposition of the case. Jurisdiction of this Court over cases elevated from the CA is limited to reviewing or revising errors of law ascribed to the CA, whose factual findings are conclusive and carry even more weight when said court affirms the findings of the trial court, absent any showing that the findings are totally devoid of support in the record or that they are so glaringly erroneous as to constitute serious abuse of discretion.^[9]

The Court sustains the CA in affirming petitioner's conviction by the RTC.

Petitioner denies having issued the check subject of this case. He argues that the evidence pinpointing him as the signatory on the check is merely hearsay.

Section 36 of Rule 130 of the Rules of Court provides for the rule on hearsay evidence, to wit:

Sec. 36. Testimony generally confined to personal knowledge; hearsay excluded. - A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules.

Under the above rule, any evidence " whether oral or documentary " is hearsay if its probative value is not based on the personal knowledge of the witness, but on that of some other person who is not on the witness stand. Hence, information that is relayed to the former by the latter before it reaches the court is considered hearsay.
[10]

In the present case, complainant Evangelista testified that she was approached by Alicia Rubia who told her that she was requested by petitioner to have the check exchanged for cash, as he needed money badly.^[11] Obviously, Evangelista's testimony is hearsay since she had no personal knowledge of the fact that petitioner indeed requested Rubia to have the check exchanged for cash, as she was not personally present when petitioner supposedly made this request. What she testified to, therefore, was a matter that was not derived from her own perception but from Rubia's.

However, petitioner is barred from questioning the admission of Evangelista's testimony even if the same is hearsay. Section 34, Rule 132 of the Rules of Court requires that the trial court shall not consider any evidence which has not been finally offered. Section 35 of the same Rule provides that as regards the testimony of a witness, the offer must be made at the time the witness is asked to testify. And under Section 36 of the same Rule, objection to a question propounded in the course of the oral examination of a witness shall be made as soon as the ground therefor becomes reasonably apparent.

Thus, it has been held that "in failing to object to the testimony on the ground that it was hearsay, the evidence offered may be admitted."^[12] Since no objection to the admissibility of Evangelista's testimony was timely made - from the time her testimony was offered^[13] and up to the time her direct examination was conducted^[14] - then petitioner has effectively waived^[15] any objection to the admissibility thereof and his belated attempts to have her testimony excluded for being hearsay has no ground to stand on.

While Evangelista's statement may be admitted in evidence, it does not necessarily follow that the same should be given evidentiary weight. Admissibility of evidence should not be equated with weight of evidence.^[16] In this regard, it has been held that although hearsay evidence may be admitted because of lack of objection by the adverse party's counsel, it is nonetheless without probative value,^[17] unless the proponent can show that the evidence falls within the exception to the hearsay evidence rule.^[18]

In this case, Evangelista's testimony may be considered as an independently relevant statement, an exception to the hearsay rule, the purpose of which is merely to establish the fact that the statement was made or the tenor of such statement.