

[G.R. NO. 141669, February 28, 2005]

**JAIME DICO, PETITIONER, VS. HON. COURT OF APPEALS AND
PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

D E C I S I O N

CHICO-NAZARIO, J.:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, seeking the reversal of the Decision^[1] of the Court of Appeals dated 30 September 1999 and its Resolution^[2] dated 11 January 2000 denying petitioner's motion for reconsideration.

Accused Jaime Dico, now petitioner, was charged on 28 March 1994 with three (3) counts of violation of Batas Pambansa Bilang 22 (B.P. Blg. 22), docketed as Criminal Cases No. 38254-R to No. 38256-R, before the Municipal Trial Court in Cities (MTCC), Branch 7, Cebu City.

The accusatory portion of the Information in Criminal Case No. 38254-R reads:

That on or about the 12th day of May, 1993 and for sometime subsequent thereto, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, knowing at the time of issue of the check she/he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, with deliberate intent, with intent of gain and of causing damage, did then and there issue, make or draw Far East Bank and Trust Co. Check No. 364903 dated May 12, 1993 in the amount of P100,000.00 payable to Equitable Banking Corp. which check was issued in payment of an obligation of said accused, but when said check was presented with said bank, the same was dishonored for reason Account Closed and despite notice and demands made to redeem or make good said check, said accused failed and refused, and up to the present time still fails and refuses to do so, to the damage and prejudice of said Equitable Card Network Inc. in the amount of P100,000.00 Philippine Currency.^[3]

The two other Informations are similarly worded except for the number, date, and amount of the checks. The pertinent data in the other informations are as follows:

Case No.	Check No.	Date	Amount
38255-R	369404	June 12, 1993	P200,000.00 ^[4]
38256-R	369380	Jan. 15, 1993	P296,736.27 ^[5]

When arraigned on 11 January 1995, accused pleaded "not guilty" to each of the charges. Upon agreement of the parties, pre-trial of the cases was waived.^[6] The cases were consolidated and were jointly heard.

The prosecution presented Lily Canlas,^[7] Collection Manager of Equitable Card Network, Inc., as its sole witness. On the other hand, the defense presented two witnesses – Debbie Dy, Manager of Equitable Card Network, Inc., Cebu Branch, as a hostile witness, and the petitioner himself.

The facts, as summarized by the MTCC, are quoted by the Court of Appeals:

The evidence of the prosecution adduced thru the testimony of Lily Canlas, collection manager of the complainant Equitable Card Network, Inc. show that the accused is a credit card holder of the said network; that the complainant filed these cases because the three (3) checks which the accused issued in its favor, and in payment of his obligation to the complainant card network all bounced, for reason "Account Closed" (Exhs. "A," "B," "C," "A-1," "B-1," and "C-1").

That the complainant sent a letter to the accused to redeem or pay the amounts of the checks but the accused refused to comply, hence, the filing of these cases in Court. (Exhs. "2," "3" and "4").

On cross-examination, Ms. Canlas testified that in 1993, the credit line of the accused with the complainant Equitable Card Network was P499,000.00; that the accused had a good record with the complainant until he issued the bouncing checks above-mentioned; that the outstanding obligation of the accused to the complainant Equitable Card Network including interests and charges thereon is P1,035,590.28 (Exh. "D" and "D-1"); and that the obligation of the accused to the complainant rose to a million because the accused abused his credit card; that in January, 1993, the accused applied with the complainant for an increase of his credit line to P699,000.00 but this was rejected by the complainant (Exh. "1"), because the amount of P499,000.00 is the highest credit line that the complainant can give the accused, and besides, the current obligation of the accused has not yet been settled.

For his defense, the accused presented Ms. Debbie Dy, Branch Manager of the local branch of the complainant Equitable Card Network as his hostile witness who testified that she is familiar with the accounts of the accused with the complainant; that including interests and other charges, the total obligation of the accused to the complainant is P1,035,590.31; that the credit line of the accused with the complainant is P499,000.00; and the accused's application for an increase of his credit line P699,000.00 was rejected by the complainant; and that the total amount of the three (3) checks issued by the accused in favor of the complainant in three (3) cases is P596,736.27.

The accused Jaime Dico testifying on direct examination admits having issued in favor of the complainant Equitable Card Network FEBTC Check No. 369380 dated January 15, 1993 in the amount of P296,736.27 (Exh. "A"); FEBTC Check No. 369403 dated May 12, 1993 in the amount of P100,000.00 (Exh. "B") and FEBTC Check No. 369404 dated June 12, 1993 in the amount of P200,000.00 (Exh. "C").

That due to the conflicts and inconsistencies in the billings made upon

him by the complainant with regard(s) to amounts reflected in his accounts, he advised the Branch Manager then, Bernard Chua not to present to the bank the checks that he has issued until all the said conflicts and inconsistencies in his accounts shall have been reconciled.

That since 1985, he is a credit card holder of the complainant Equitable Card Network, Inc., and when he issued the checks in question, he was holding the position of sales manager of the Yap Auto Supply, Cebu City; and because of the nature of his work which is to travel in the Visayas and Mindanao, he needed a credit card in his trips.

That as of January, 1993, his credit limit with the complainant was exactly P499,000.00; and the reconciliation of his billings which he has asked the complainant over the years [was] not heeded; that because P596,736.27 is quite a big amount, he did not redeem the checks he issued because he wanted to be sure that he would be paying the right amount.

That with respect to the check (Exh. "B") dated May 12, 1993, in the amount of P100,000.00, he issued said check on April 7, 1993; and because of the inconsistencies in his billings, and because he was billed every month, he proposed to the Branch Manager then, Bernard Chua that pending reconciliation of his accounts, he will issue four (4) checks; the three (3) of which are the checks marked as the prosecution's Exhs. "A," "B," and "C" and subject of these cases, and another check; that he issued above-mentioned four (4) checks in addition to his cash payment of P100,000.00 which he has paid to Bernard Chua; that in his proposal dated April 7, 1993 (Exh. "12"), he included the above-mentioned four (4) post dated checks as a sign of good faith; and as a way of commitment to pay his outstanding balance to the complainant which is to [be] amortized as follows: May 12, 1993 - P100,000.00; June 12, 1993 - P200,000.00; July 12, 1993 - P300,000.00; and on August 12, 1993 - P300,000.00; but his proposal was rejected by the complainant's top management in Manila; that based on Exh. "8" which is the Summary furnished by Debbie Dy, incumbent Branch Manager of the complainant network in Cebu City, his outstanding balance to the complainant is P752,389.19, but with the payment of P100,000.00 he made on April 7, 1993, his balance to the complainant is P652,389.19.

That he does not understand why his total obligation to the complainant has already reached P1,035,589.28 when his credit line is only P499,000.00; hence, he approached the complainant's manager to reconcile his accounts and find out where the complainant was mistaken; that even if his accounts were reconciled, he cannot admit that his obligation to the complainant has already reached millions; and that the problem with the complainant is that it did not return to him the checks which he sent to the complainant together with his proposal to reconcile his accounts.

On cross-examination, the accused testified that on April 6, 1993, he made a cash payment of P100,000.00 to the complainant; then on January 15, 1993, he issued the check Exh. "A"; then on April 7, 1993,

he issued the checks Exhs. "B" and "C"; and then on April 30, 1993, he issued two (2) other checks to the complainant; and the total out of these five (5) checks which he has issued in favor of the complainant is P1,881,000.12.

That on May 31, 1993, he filed a Petition For Insolvency with the Regional Trial Court, Cebu City (Exh. "B"); that attached to the said Petition is Schedule "A" which contains a Statement of his Assets and Liabilities; that as reflected in the Schedule of Creditors (Exh. "E-3"), one of his creditors is the Equitable Card Network (Exh. "E-3-A") which is the complainant in these cases; and the nature of his obligation to the said creditor is a loan in the amount of P1,888,181.29 (Exh. "B-3-A").

It is also confirmed by the accused that in the Schedule List of Check issued (Exh. "E-4"), the seven (7) checks mentioned therein (Exh. "E-4-A") include the checks which issued to the complainant in these cases and marked as Exhs. "A," "B," and "C."

The accused further testified on cross-examination that although he could not agree on his outstanding obligation to the complainant, he nevertheless placed his total liability to the complainant in his Petition, because he was made to understand in the insolvency proceedings that he has to list down the checks that he has issued but were never returned to him; and since the complainant did not return to him the checks subject of these cases, he has to include said checks in his assets and liabilities in his petition for insolvency.^[8]

In a decision dated 19 June 1996, Amado B. Bajarias, Sr., Presiding Judge of the MTCC, Branch 7, Cebu City, convicted petitioner of the crimes charged. The dispositive portion of which reads:

WHEREFORE, the Court finds the accused Jaime Dico guilty beyond reasonable doubt of the crime of violation of BP Blg. 22 as defined and penalized under Sec. 1 of the said law and as charged in the above-entitled three (3) Informations, and hereby imposes upon the accused; the following penalties:

- 1) For Crim. Case No. 38254-R, to suffer imprisonment of six (6) months, and to indemnify the complainant, the sum of P100,000.00;
- 2) For Crim. Case No. 38255-R, to suffer imprisonment of six (6) months, and to indemnify the complainant, the sum of P200,000.00; and
- 3) For Crim. Case No. 3856-R,^[9] to suffer imprisonment of six (6) months, and to indemnify the complainant the sum of P296,736.27.^[10]

On 25 July 1996, petitioner filed a Motion for Reconsideration^[11] which the prosecution opposed.^[12] In an order dated 26 August 1996, the motion was denied.^[13]

On 30 August 1996, petitioner appealed to the Regional Trial Court (RTC) by filing a

notice of appeal.^[14]

In a Judgment dated 20 February 1997, Ferdinand J. Marcos, Presiding Judge of the RTC of Cebu City, Branch 20, affirmed *en toto* the decision of the MTCC.^[15] Petitioner moved for its reconsideration^[16] which was opposed by the prosecution.^[17] On 23 June 1997, the motion for reconsideration was denied.^[18]

By way of Petition for Review, accused Dico went up to the Court of Appeals seeking the reversal of the Judgment of the RTC which affirmed the decision of the MTCC.^[19]

In its Comment to the Petition for Review, the Office of the Solicitor General asked for the dismissal of the petition on the ground that the same had no merit.^[20]

In its Decision dated 30 September 1999, the Court of Appeals, in acquitting petitioner in one of the cases, said:

However, with respect to subject FEBTC Check No. 369380 dated January 15, 1993, which was dishonored when presented for payment on May 17, 1993 or beyond ninety (90) days from date thereof, no such *prima facie* evidence of knowledge of insufficiency of funds or credit exists. Hence, it is incumbent upon the prosecution to adduce evidence to prove that petitioner has "knowledge of the insufficiency of his funds or credit at the time he issued FEBTC Check No. 369380 dated January 15, 1993." Unfortunately, the prosecution failed to present evidence to establish such "knowledge of insufficiency of funds or credit on the part of the petitioner" regarding the said check, as the record is bereft of any evidence to prove the existence thereof. Perforce, petitioner cannot be convicted of violation of B.P. Blg. 22 with respect to subject FEBTC Check No. 369380 dated January 15, 1993. This, notwithstanding, the petitioner is nevertheless liable to pay private complainant Equitable the amount of P296,736.27 appearing on the face of said check as it was preponderantly proven in the civil aspect of the case that said check was one of the unpaid checks issued by petitioner to settle his standing obligation which up to the present remains unpaid.^[21]

The Decision disposes:

WHEREFORE, premises considered, the challenged decision via petition for review is MODIFIED to read as follows:

(1) Petitioner Jaime Dico is ACQUITTED in Criminal Case No. 38256-R but is, nevertheless, ordered to indemnify private complainant the sum of P296,736.27 representing his unpaid obligation covered by FEBTC Check No. 369380 dated January 15, 1993.

(2) The judgment convicting Petitioner Jaime Dico in Criminal Cases Nos. 38254-R and 38255-R and penalizing him to suffer imprisonment of six (6) months in each of the said cases and ordering him to indemnify private complainant in the amount of P100,000.00 and P200,000.00 representing his unpaid obligation covered by FEBTC Check Nos. 369403