

## FIRST DIVISION

[ G.R. NO. 160328, February 04, 2005 ]

**TERESITA ALCANTARA VERGARA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### **DECISION**

**YNARES-SANTIAGO, J.:**

This petition for review assails the March 28, 2003 decision<sup>[1]</sup> of the Court of Appeals and its September 30, 2003 resolution<sup>[2]</sup> in CA-G.R. CR No. 25799, which affirmed *in toto* the June 10, 1992 decision<sup>[3]</sup> of the Regional Trial Court of Makati, Branch 132, in Criminal Case No. 91-2267, finding petitioner Teresita Alcantara Vergara guilty beyond reasonable doubt of violation of Batas Pambansa Blg. 22 (BP 22).

The facts show that on June 13, 1988, Livelihood Corporation (LIVECOR) granted Perpetual Garments Corporation (PERPETUAL) a continuing credit line in the amount of P750,000.00.<sup>[4]</sup> The parties agreed that for each availment from the line, PERPETUAL would execute a promissory note and issue postdated checks corresponding to the amount of the loan. Petitioner, in her capacity as Vice President and General Manager of PERPETUAL, signed the credit agreement and all the postdated checks.

One of the checks issued and signed by petitioner was Check No. 019972 for P150,000.00. When deposited on December 15, 1988, the check was dishonored for insufficiency of funds.<sup>[5]</sup> On the same month, LIVECOR verbally informed petitioner of the dishonor of the check.

On April 1, 1991, LIVECOR charged petitioner with violation of BP 22. The information<sup>[6]</sup> reads:

That on or about the 15<sup>th</sup> day of Dec. 1988, in the Municipality of Makati, Metro Manila Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously make out or draw and issue to Livecor and represented by Victor Hernandez[,] to apply on account or for value the dated check described below:

Check No.	:019972
Drawn Against	:Metro Bank
In the amount of	:P150,000.00
Date	:Dec. 15, 1988
Payable to	:LIVECOR

said accused well knowing that at the time of issue thereof, she did not have sufficient funds in or credit with the drawee bank for the payment in full of the face amount of such check upon its presentment for payment within ninety (90) days from the date thereof was subsequently dishonored by the drawee bank for the reason "DRAWN AGAINST INSUFFICIENT FUNDS" and, despite receipt of notice of such dishonor, the accused failed to pay said payee the face amount of said check or to make arrangement for full payment thereof within five (5) banking days after receiving notice.

Contrary to law.

The prosecution claims that petitioner failed to pay the full amount of Check No. 019972 or to make arrangements for its full payment within 5 days from notice of dishonor thereof in December 1988. Although petitioner made cash and check payments after the dishonor, the same were treated by LIVECOR as continuing payments of the outstanding loan. The payments were applied first to the interests and penalties while the rest were applied to the principal, pursuant to the terms of the agreement. As of February 29, 1992, PERPETUAL's total outstanding loan is P610,656.95.<sup>[7]</sup>

Petitioner averred that she cannot be charged with violation of BP 22 because she replaced Check No. 019972 on May 25, 1989, with 6 checks, each for P25,000.00 or for the total amount of P150,000.00.<sup>[8]</sup> She claimed that from the time of dishonor up to March 1992, PERPETUAL paid LIVECOR P542,000.00 thus covering the full amount of the dishonored check.<sup>[9]</sup>

On June 10, 1992, the trial court rendered decision finding petitioner guilty of violating BP 22. It ruled, however, that petitioner is not civilly liable to LIVECOR, thus:

Premises considered, the Court finds the accused guilty beyond reasonable doubt of violation of BP 22. Considering, however, that the borrower is Perpetual Garments Corporation and there is no agreement that she shall be liable for the loan in her personal capacity, she shall not be liable to pay the unpaid balance thereof.

WHEREFORE, the accused is hereby sentenced to pay a fine of P200,000.00 with subsidiary imprisonment in case of insolvency and to pay the costs.

SO ORDERED.<sup>[10]</sup>

Dissatisfied, both LIVECOR and petitioner appealed to the Court of Appeals.

On March 28, 2003, the appellate court dismissed the consolidated appeals and affirmed the trial court's decision in all respects. The dispositive portion thereof, reads:

IN VIEW OF ALL THE FOREGOING, the instant appeals are ordered **DISMISSED**, and the appealed Decision dated June 10, 1992 is hereby

**AFFIRMED in toto.** No pronouncement as to costs.

**SO ORDERED.**<sup>[11]</sup>

Petitioner moved for reconsideration but was denied on September 30, 2003.<sup>[12]</sup> Hence, the instant petition.

In a Resolution dated December 15, 2004, petitioner was required to file a Reply. However, to date, no reply was filed. In the interest of justice and speedy disposition of cases, we resolve to dispense with the filing of said Reply and to decide the case based on the pleadings filed.

The issue for resolution in this petition for review is whether petitioner should be convicted of violation of BP 22.

The Solicitor General contends that petitioner's conviction is proper because all the elements of violation of BP 22 are present. Petitioner, on the other hand, insists that the full payment of the value of the dishonored check 2 years prior to the filing of the information justifies her acquittal. Petitioner argues that her conviction is without basis since the total payments she made from knowledge of the dishonor of the check in December 1988, up to the filing of the information on April 1, 1991, far exceeds the value of the bounced check.

It is settled that factual findings of the trial court are accorded great weight, even finality on appeal, except when it has failed to appreciate certain facts and circumstances which, if taken into account, would materially affect the result of the case. This exception is present here.<sup>[13]</sup>

In *King v. People*,<sup>[14]</sup> we ruled thus:

Section 1 of BP 22 defines the offense as follows:

Section 1. *Checks without sufficient funds.* - Any person who makes or draws and issues any check to apply on account or for value, knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, which check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment, shall be punished by imprisonment of not less than thirty days but not more than one (1) year or by a fine of not less than but not more than double the amount of the check which fine shall in no case exceed Two hundred thousand pesos, or both such fine and imprisonment at the discretion of the court.

The same penalty shall be imposed upon any person who having sufficient funds with the drawee bank when he makes or draws and issues a check, shall fail to keep sufficient funds or to maintain a credit to cover the full amount of the check if presented within a period of ninety (90) days from the date appearing thereon, for which reason it is dishonored by the drawee bank.

Where the check is drawn by a corporation, company or entity, the person or persons who actually signed the check in behalf of such drawer shall be liable under this Act.

Accordingly, this Court has held that the elements of the crime are as follows:

1. The accused makes, draws or issues any check to apply to account or for value.
2. The check is subsequently dishonored by the drawee bank for insufficiency of funds or credit; or it would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment.
3. The accused knows at the time of the issuance that he or she does not have sufficient funds in, or credit with, drawee bank for the payment of the check in full upon its presentment.<sup>[15]</sup>

To hold petitioner liable for violation of BP 22, it is not enough that she issued the check that was subsequently dishonored for insufficiency of funds. It must also be shown beyond reasonable doubt that she knew of the insufficiency of funds at the time the check was issued. Thus:

To hold a person liable under BP 22, it is not enough to establish that a check issued was subsequently dishonored. It must be shown further that the person who issued the check knew "at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment." Because this element involves a state of mind which is difficult to establish, Section 2 of the law creates a *prima facie* presumption of such knowledge, as follows:

*Sec. 2. Evidence of knowledge of insufficient funds.*— The making, drawing and issuance of a check payment of which is refused by the drawee because of insufficient funds in or credit with such bank, when presented within ninety (90) days from the date of the check, shall be *prima facie* evidence of knowledge of such insufficiency of funds or credit unless such maker or drawer pays the holder thereof the amount due thereon, or make arrangements for payment in full by the drawee of such check within five (5) banking days after receiving notice that such check has not been paid by the drawee.

**In other words, the *prima facie* presumption arises when a check is issued. But the law also provides that the presumption does not arise when the issuer pays the amount of the check or makes arrangement for its payment "within five banking days after receiving notice that such check has not been paid by the drawee." Verily, BP 22 gives the accused an opportunity to satisfy the amount indicated in the check and thus avert prosecution.<sup>[16]</sup>**  
(Emphasis ours)

Going through the records of this case, we find that it was not clearly established when the notice of dishonor was served on petitioner, thus:

Atty. De Jesus:

After you were informed by the bank that the check was dishonored due to insufficient funds, what did you do next, if any?

Ms. Dalisay:

We informed our client about it and made several demands upon her to redeem the bounced check.

Q. Did the accused make good the amount of the bounced check?

A. No. [17]

...

Q. After you were informed by the bank that the check bounced, what did you do next, if any?

Atty. Arias:

That was already answered. She informed the accused ...

Court:

She said the client was informed and demand was made. How were the demands made upon the accused?

A. Verbally, Your Honor.

Court:

All verbal?

A: All verbal in the case of the subject check but written in the case of the entire loan. [18]

Even the petitioner was not sure as to when she was notified of the dishonor, thus:

Court:

You did not see the return notice of dishonor. So he was aware that the check was dishonored. Alright. Prior to, about a week before October 10, 1990, did you ever learn whether the check in the amount of P150,000.00 marked Exhibit D, was dishonored?

Accused:

Yes, Your Honor.

Court:

When for the first time did you learn that the check was dishonored?

A. When they informed me at my residence in Biñan, Your Honor.

Court: