

## SECOND DIVISION

**[ G.R. NO. 153451, May 26, 2005 ]**

**OFELIA MARIGOMEN, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### D E C I S I O N

**CALLEJO, SR., J.:**

This is a petition for review of the Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR No. 20510 affirming the Decision<sup>[2]</sup> of the Regional Trial Court (RTC) of Bacolod City, Branch 44, in Criminal Case Nos. 13012 to 13014 convicting Ofelia Marigomen and John V. Dalao for violation of Batas Pambansa (B.P.) Blg. 22.

#### The Antecedents

Caltex Philippines, Inc. (Caltex) is engaged in the sale of gasoline and oil products to its customers, one of which was the Industrial Sugar Resources, Inc. (INSURECO), with offices at the Bacolod Murcia Milling Corporation Compound in Bacolod City. Caltex had granted a credit line to INSURECO, and the latter purchased gasoline and lubricants from Caltex through its sales representative in Negros Occidental and Bacolod City.<sup>[3]</sup> The finance officer of INSURECO was Ofelia Marigomen, while John V. Dalao was the assistant to the general manager.<sup>[4]</sup> They were authorized to draw and sign checks against the account of INSURECO at the Far East Bank and Trust Company, Bacolod City Branch. Caltex had agreed for INSURECO to pay its purchases via postdated checks, which were delivered to Caltex upon the release of the purchased oil products.<sup>[5]</sup>

As evidenced by separate delivery receipts, INSURECO bought and took delivery of oil products from Caltex. In payment thereof, the following postdated checks, drawn and signed by Marigomen and Dalao against its account with the Far East Bank and Trust Company, Bacolod City Branch, were issued in favor of Caltex:

INVOICE NO.	DATE OF SALE	CHECK NO.	AMOUNT
BA 87060 <sup>[6]</sup>	March 13, 1992	3357283 <sup>[7]</sup>	P 44,988.56
BA 87464 <sup>[8]</sup>	March 17, 1992	3357348 <sup>[9]</sup>	P148,656.10
BA 87987 <sup>[10]</sup>	March 30, 1992	3357543 <sup>[11]</sup>	P130,782.70
BA 87988 <sup>[12]</sup>	-do-	-do-	P28,000.00
BA 88290 <sup>[13]</sup>	April 3, 1992	3357619 <sup>[14]</sup>	P205,489.50
BA 88291 <sup>[15]</sup>	-do-	-do-	P 82,193.30
BA 88292 <sup>[16]</sup>	-do-	-do-	-do-

On due dates, Caltex presented the said checks for payment. However, Check Nos. 3357283, 3357348 and 3357619 were dishonored by the drawee bank, for the reason that they were "drawn against insufficient funds." Check No. 3357543 was, likewise, dishonored with the notation "account closed."<sup>[17]</sup> Hence, Caltex, through Dalao, made verbal demands to INSURECO for the replacement of the dishonored checks with either manager's checks or cash, to no avail.<sup>[18]</sup> On May 6, 1992, Caltex sent a confirmation telegram informing INSURECO of the dishonor of the said checks, and again demanded their replacement, but received no reply.<sup>[19]</sup>

On July 6, 1992, Caltex filed criminal complaints for violation of B.P. Blg. 22 against Marigomen and Dalao with the Office of the City Prosecutor of Bacolod City.<sup>[20]</sup> They were, thereafter, charged with three counts of violation of B.P. Blg. 22 in three separate Informations filed with the RTC of Bacolod City, and docketed as Criminal Case Nos. 13012 to 13014. The accusatory portion of the Information in Criminal Case No. 13012 reads:

That on or about the 30th day of March 1992, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused being then the Finance Officer and Assistant General Manager, respectively, of Industrial Sugar Resources Company, Inc. (INSURECO) did, then and there, willfully, unlawfully and feloniously make out, issue and deliver Far East Bank and Trust Company, Bacolod Branch, Bacolod, City Check No. 3357348 postdated to April 24, 1992, in the amount of ONE HUNDRED FORTY-EIGHT THOUSAND SIX HUNDRED FIFTY-SIX PESOS and TEN CENTAVOS (P148,656.10), Philippine Currency, in favor of Caltex Philippines, Inc. a corporation duly organized and existing under the Philippine Laws, represented in this case by its Sales Representative, Norman Lee Riego, Jr., in payment of a pre-existing obligation knowing at the time of issue of said check that they did not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment and which check after presentment, was subsequently dishonored by the drawee bank for reason of insufficient funds; that, despite notice of dishonor and repeated demands, accused failed and refused and still fails and refuses to make good the full value of their check or redeem the same to the damage and prejudice of said Caltex Philippines, Inc., in the aforementioned amount.

Contrary to law.<sup>[21]</sup>

Except for the dates of the commission of the crimes charged and the contents of the postdated checks subject matter thereof, the accusatory portions of the two other Informations are similarly worded.

When she testified, Marigomen admitted to having drawn and signed the postdated checks subject matter of the cases, along with Dalao, and that these were issued in payment for the gasoline and oil products purchased by INSURECO. She declared that she was employed by INSURECO as finance officer on September 15, 1991, and that she resigned on March 31, 1992.<sup>[22]</sup> As of June 5, 1992 she was residing at No. 40 Malaspina St., Villamonte, Bacolod City.<sup>[23]</sup> She claimed that she had no participation whatsoever in the purchase of Caltex oil products by INSURECO,<sup>[24]</sup>

which had been granted a credit line with a 30 to 40-day payment term.<sup>[25]</sup> She had no knowledge that Caltex had sent confirmation telegrams demanding payment from INSURECO, because by then she was no longer employed therein. Moreover, she never received any written notice or telegram from Caltex demanding payment of the amounts of the dishonored checks.<sup>[26]</sup> It was only when she received a *subpoena* from the Office of the City Prosecutor of Bacolod City that she discovered that the checks had been dishonored, and that she had been charged in connection therewith. She insisted that she was not aware that the funds of INSURECO in its account with the Far East Bank and Trust Company were insufficient at the time she issued the subject checks.<sup>[27]</sup>

On October 21, 1996, the trial court rendered judgment convicting Marigomen and Dalao of the crimes charged. The *fallo* of the decision reads:

WHEREFORE, premises considered, the Court hereby ACQUITS the accused, John Dalao for the crime of Estafa in Crim. Case No.12311 for insufficiency of evidence. The Court, however, finds the accused Ofelia Marigomen and John Dalao GUILTY beyond reasonable doubt for violation of Batas Pambansa Blg. 22 and hereby sentences them as follows:

1. In Crim. Case No. 13012:

One (1) year imprisonment and to jointly and solidarily pay the complainant, by way of civil indemnity the amount of P148,656.10, representing the value of the check.

2. In Crim. Case No. 13013:

One (1) year imprisonment and to jointly and solidarily pay the complainant the sum of P124,855.75 by way of civil indemnity.

3. In Crim. Case No. 13014:

One (1) year imprisonment and to jointly and solidarily pay the complainant the amount of P44,988.55, by way of civil indemnity.

...

SO ORDERED.<sup>[28]</sup>

Marigomen appealed the decision to the CA, asserting in her brief, as appellant therein, that the following errors were committed by the trial court:

1

THE TRIAL COURT ERRED IN HOLDING THAT THERE IS A DEMAND MADE TO THE ACCUSED OFELIA MARIGOMEN.

2

THE TRIAL COURT ERRED IN ALLOWING A PRIVATE PROSECUTOR TO

CONDUCT THE DIRECT EXAMINATION.

3

THE TRIAL COURT ERRED IN HOLDING THAT THE ACCUSED OFELIA MARIGOMEN IS CIVILLY LIABLE.

4

THE TRIAL COURT ERRED IN HOLDING THAT THERE IS A VALID OFFER OF EXHIBITS MADE BY THE PROSECUTION.

5

THE TRIAL COURT ERRED IN ADMITTING THE TESTIMONY OF THE WITNESS MR. NORMAN RIEGO WITHOUT REQUIRING HIS AUTHORITY OR BOARD RESOLUTION FROM CALTEX, PHILIPPINES.

6

THE TRIAL COURT ERRED IN TOTALLY DISREGARDING THE FACT THAT THERE IS A CREDIT LINE GRANTED BY CALTEX, PHILIPPINES TO INDUSTRIAL SUGAR RESOURCES, INC. (INSURECO).<sup>[29]</sup>

On April 19, 2001, the CA rendered judgment affirming the decision of the RTC, with the modification that Marigomen and Dalao pay fines, with subsidiary imprisonment in case of insolvency, in lieu of imprisonment. The appellate court ruled that they were civilly liable for the amounts of the checks, conformably with Article 100 of the Revised Penal Code, and the ruling of this Court in *Banal v. Tadeo, Jr.*<sup>[30]</sup> It also held that the notices of demand sent by Caltex for INSURECO to pay the amount of the checks were sufficient notice to Marigomen and Dalao. The CA also declared that whether or not Caltex granted a credit line or accommodation to INSURECO was irrelevant to the issue of whether they were criminally liable for violation of B.P. Blg. 22.

Upon the denial of her motion for reconsideration of the said decision, Marigomen filed the instant petition for review on *certiorari*, raising the following issues:

1. WHETHER OR NOT THE HONORABLE COURT OF APPEALS IS RIGHT IN UPHOLDING THE DECISION OF THE REGIONAL TRIAL COURT IN FINDING THE ACCUSED MRS. MARIGOMEN GUILTY FOR VIOLATION OF B.P. 22 INSPITE OF THE FACT THAT NO NOTICE OF DEMAND HAS EVER BEEN SENT TO THE PETITIONER.
2. WHETHER OR NOT THE PARTICIPATION OF THE PRIVATE PROSECUTOR IS PROPER OR NOT.
3. WHETHER OR NOT PETITIONER MAY BE HELD CIVILLY LIABLE IN THE INSTANT CASE.
4. WHETHER OR NOT THERE WAS A VALID OFFER OF EXHIBITS AS AGAINST THE CRIMINAL INFORMATION FILED AGAINST ACCUSED