

THIRD DIVISION

[G.R. No. 146424, November 18, 2005]

ALBINO JOSEF, PETITIONER, VS. PEOPLE OF THE PHILIPPINES
AND AGUSTIN ALARILLA, RESPONDENTS.**

D E C I S I O N

CORONA, J.:

This is a petition for review on certiorari^[1] of a decision of the Court of Appeals in CA-G.R. CR no. 23234,^[2] which affirmed the decision of the Regional Trial Court of Malolos Bulacan convicting Albino Josef of 26 counts of violation of BP 22, also known as the Anti-Bouncing Checks Law.^[3]

By way of a preliminary clarification, this is a petition for review of the CA's decision affirming Albino Josef's conviction for 26 counts of violation of BP 22. It is therefore a criminal case and the People of the Philippines should be impleaded as a respondent in line with Section 2, Rule 125 of the 2000 Rules of Criminal Procedure.

^[4] Nonetheless, petitioner, in filing this petition, incorrectly entitled it *Albino Josef v. Agustin Alarilla*. In accord with Section 6, Rule 1 of the Rules of Court,^[5] we have allowed petitioner Josef to subsequently implead the People of the Philippines as respondent in this case.

Now, the facts.

From June to August, 1991, petitioner, a Marikina-based manufacturer and seller of shoes, purchased materials from respondent Agustin Alarilla, a seller of leather products from Meycauayan, Bulacan, for which the former issued a total of 26 postdated checks against his account with the Associated Bank and Far East Bank & Trust Company (Marikina Branches). When private respondent presented these checks for encashment, they were dishonored because the accounts against which they were drawn were closed. Private respondent informed petitioner of the dishonor and demanded payment of their value. After some negotiations, petitioner drew and delivered a new set of postdated checks in replacement of the dishonored ones. Private respondent, in turn, returned to petitioner the originals of the dishonored postdated checks but retained photocopies thereof. When private respondent deposited the replacement checks in his account with the Westmont Bank, these were also dishonored by the drawee bank. As a result, the private respondent filed criminal complaints against petitioner for violation of BP 22 with the Office of the Provincial Prosecutor of Bulacan. After preliminary investigation, the Provincial Prosecutor filed 26 Informations against petitioner with the RTC of Bulacan for violation of BP 22, entitled *People v. Josef*, Criminal Case Nos. 2113-M-93 to 2138-M-93, for the original 26 postdated checks.^[6]

The trial court convicted petitioner on all counts and imposed the penalty of six

months for each conviction. The Court of Appeals, in the assailed decision, affirmed the trial court.

Petitioner admits having issued the 26 dishonored checks. However, he claims the following defenses: 1) he has already paid private respondent the amount of the checks in cash; 2) the trial court was incorrect to accept as evidence photocopies of the original checks and 3) he acted in good faith. He likewise adopts the dissenting opinion of CA Justice Martin Villarama, Jr.,^[7] which states that the penalty of imprisonment was incorrectly imposed on petitioner in the light of Administrative Circular No. 12-2000.^[8]

The petition is without merit.

The elements of violation of BP 22 are:

- 1) making, drawing and issuing any check to apply on account or for value;
- 2) 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) subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit, or dishonor of the check for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.^[9]

All three elements are present here.

Petitioner categorically admits the fact of issuance of the checks and their dishonor,^[10] the first and third elements. He has likewise failed to rebut the statutory presumption^[11] of knowledge of insufficient funds, the second element, which attaches if the check is presented and dishonored within 90 days from its issuance.^[12] While petitioner alleges to have paid private respondent the amount of the checks, he failed to specify if he had done so within five banking days from receiving notice of the checks' dishonor and to present any evidence of such payment. In addition, his unsubstantiated claim of cash payment contradicts his earlier defense that he had replaced the checks.

Moving onto the procedural aspects of the case, petitioner claims that, under the Best Evidence Rule, the trial court should not have admitted in evidence the photocopies of the checks until after he had been given reasonable notice to produce the originals. The Court of Appeals, in disposing of this contention, said:^[13]

However, in the light of the factual milieu in the present recourse, (we) find and so declare that the Court *a quo* did not commit any reversible error in admitting in evidence the photostatic copies of the subject checks in lieu of the originals thereof in the possession of the [Petitioner]. It bears stressing that the *raison d'etre* of the proscription against the admission of secondary evidence in lieu or in substitution of the original thereof is to prevent the commission of fraud on the part of

the offeror who is in possession of the best evidence but, in lieu thereof, adduced secondary evidence:

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When he testified in the Court *a quo*, the [Petitioner] brought out the originals of the checks and even marked the same in evidence as **Exhibits "1" to "21"**, except five (5) of the subject checks, which he claimed as missing and the Prosecution even adopted the original checks as its evidence:

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The [Petitioner] admitted, before the Court *a quo*, that the originals of the subject checks were in his possession. **The [Petitioner] never alleged that the photostatic copies of the checks marked and offered in evidence by the Prosecution were not faithful copies of the originals of the checks.** In point of fact, when he testified in the Court *a quo*, he was shown, by his counsel, the photostatic copies of the subject checks... and admitted that the originals of said checks were in his possession on his claim that he had paid the Private Complainant the amount of P600,000.00 in cash and the balance in the form of checks which he drew and issued to the Private Complainant by way of replacement of the aforesaid other checks:

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By his testimony, **the [Petitioner] thereby admitted that the photostatic copies of the checks marked and offered in evidence by the Prosecution were the faithful reproductions of the originals of the checks in his possession. Hence, the Prosecution may mark and offer in evidence the photostatic copies of the checks.**

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Having admitted, albeit impliedly, that the photostatic copies of the checks admitted in evidence by the Court *a quo* were the faithful reproduction of the original copies in his possession, the Petitioner was thus estopped from invoking Section 3, Rule 130 of the Revised Rules of Evidence.

We agree with the Court of Appeals. By admitting that the originals were in his possession and even producing them in open court, petitioner cured whatever flaw might have existed in the prosecution's evidence. The fact that these originals were all stamped "account closed" merely confirmed the allegations of the respondent that the checks were dishonored by reason of the account being closed. Because they were entirely consistent with its main theory, the prosecution correctly adopted these originals as its own evidence. In addition, by petitioner's own admission, five of the original checks were lost, thus rendering the photocopies thereof admissible as exceptions to the Best Evidence Rule.^[14]