

SECOND DIVISION

[G.R. No. 132552, July 14, 2004]

**CLARO E. NARTE AND WINSTON TOMAS L. CADHIT,
PETITIONERS, VS. COURT OF APPEALS, FIRST DIVISION AND
PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

D E C I S I O N

TINGA, J.:

This is a petition for review assailing the *Decision*^[1] of the Court of Appeals dated January 28, 1998 which dismissed the petition filed by Claro E. Narte and Winston Tomas L. Cadhit (hereinafter, the petitioners) and affirmed the decision of the Regional Trial Court (RTC)^[2] convicting the petitioners of nine (9) counts of violation of Batas Pambansa Blg. 22 (B.P. 22) with subsidiary imprisonment in case of insolvency in each case.^[3]

The facts are not disputed. As summarized by the MeTC and adopted by the RTC and the Court of Appeals, they are as follows:^[4]

The evidence for the prosecution shows that Claro Narte is the General Manager of Norphil Transport Corporation while accused Winston Tomas Cadhit is the maintenance and purchasing manager of Norphil Transport Corporation; that spouses Delia and Emilio Cabrera sold three (3) air conditioned buses to Norphil Transport Corporation at 712 Earnshaw St., Sampaloc, Manila, on May 12, 1994 for P2,220,000.00 cash upon delivery by virtue of which a deed of absolute sale was executed; that the buses were delivered; that payment for the buses was made in postdated checks issued by accused Claro Narte and Winston Tomas L. Cadhit, to wit: Check No. 738006 (Exhibit E), Check No. 738007 (Exhibit F), Check No. 738022 (Exhibit G), Check No. 738024 (Exhibit H), Check No. 738025 (Exhibit I), Check No. 738026 (Exhibit J), Check No. 738018 (Exhibit K), Check No. 738019 (Exh. L), Check No. 738020 (Exhibit M), Check No. 738021 (Exhibit N), at their office at 712 Earnshaw St., Sampaloc, Manila, all of which are payable to Emilio Cabrera, that the checks are marked Exhibits E, F, H, J, K, L, were deposited on August 18, 1994 with Solid Bank, Paco Branch; that the checks marked Exhibit G and Exhibit I were presented for payment with PNB on July 5, 1994 and September 2, 1994, respectively; that the checks marked Exhibit M and N were deposited with Solid Bank on August 31, 1994 and September 18, 1994, respectively; that the check marked Exhibit G was dishonored for being drawn against insufficient funds while the rest of the checks marked Exhibits E to F and H to N were dishonored by reason of account closed as per corresponding letter advice from the banks concerned; that the spouses accepted check payments upon the request of accused; that they informed accused that the checks had bounced; that the accused

promised to pay the bank upon return of their boss who was then in Canada; that the boss arrived without any payment being made; that she consulted a lawyer, Atty. Gaudencio Laguna, who sent demand letters; that despite their promise and receipt of the demand letters, accused failed to settle the obligation.

Evidence for the defense shows that in the transaction for the sale of the buses in favor of Norphil Transport Corporation, one Emilio Cabrera, Jr. represented to be the owner of the buses; that upon delivery of the three buses, which was made one after the other, postdated checks were issued and made payable to Emilio Cabrera, referred to as Emilio Cabrera, Jr. and not Emilio Cabrera, Sr., for the agreed total consideration of ₱2,220,000.00, but no deed of absolute sale was given; that when accused repeatedly requested for the deed of absolute sale so that the corporation could effect transfer of the line and operate the buses, it was discovered that buses were in the name of Delia Cabrera, and not Emilio Cabrera, Jr. to whom the accused issued the checks; that accused requested the return of the checks mistakenly issued to Emilio Cabrera, Jr. for a replacement in the name of Delia Cabrera, but the checks were given to Emilio Cabrera, Sr. who is not the intended payee; and that the name and signature of Emilio Cabrera, Sr. were merely inserted in the deed of absolute sale to make it appear that he was a party to the sale.

The MeTC found that the prosecution was able to establish the elements of the offense, namely: that a person makes or draws and issues any check; that the check is made or drawn and issued to apply on account or for value; that the person who makes or draws and issues the check knows at the time of issuance 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; and that the 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.^[5]

According to the MeTC, "the accused issued and signed the subject checks as payment for the three (3) buses sold to Norphil Transport Corporation and knew that at the time of issuance they did not have sufficient funds in or credit with the drawee bank for the payment in full upon presentment."^[6] Consequently, the MeTC convicted the petitioners of ten (10) counts of violation of B.P. 22 and imposed the penalty of fine for each count with subsidiary imprisonment in case of insolvency. However, only nine (9) of the ten (10) convictions were appealed to the RTC. Correspondingly, only nine (9) convictions were affirmed.^[7]

The petitioners then appealed to the Court of Appeals by way of a petition for review^[8] raising the following issues: (a) that the trial court erred in convicting them despite the fact that the complainant is not the intended payee of the checks; (b) that the trial court erred in finding that all the elements of the offense have been established; and (c) that the trial court erred in ordering subsidiary imprisonment in case of non-payment of fine.

The appellate court dismissed the petition, ruling that all the elements of the offense have been established by the prosecution. Citing the RTC's decision favorably, the