

## SECOND DIVISION

[ G.R. No. 152881, August 17, 2004 ]

**ENGR. BAYANI MAGDAYAO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### D E C I S I O N

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

Before us is a petition for review on certiorari filed by petitioner Engr. Bayani Magdayao of the Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CR No. 20549 affirming the Decision<sup>[2]</sup> of the Regional Trial Court, Dipolog City, Branch 8, convicting the petitioner of violation of Batas Pambansa (B.P.) Blg. 22.

#### The Antecedents

An Information was filed charging petitioner with violation of B.P. Blg. 22 on September 16, 1993, the accusatory portion of which reads:

On or about September 30, 1991, at Dipolog City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, knowing fully well that he did not have sufficient funds in or credit with the drawee bank, Philippine National Bank, Dipolog Branch, did then and there willfully, unlawfully and feloniously make, draw, issue and deliver to one RICKY OLVIS, in payment of his obligation to the latter, PNB Check No. 399967 dated September 30, 1991 in the amount of SIX HUNDRED THOUSAND PESOS (P600,000.00), Philippine Currency, which check, however, when presented for payment with PNB-Dipolog Branch, was dishonored and refused payment for the reason that it was drawn against insufficient funds, and despite repeated demands made by the private complainant on the accused, the latter, failed to make good the check's value, to the damage and prejudice of RICKY OLVIS in the aforestated amount.

CONTRARY TO LAW.<sup>[3]</sup>

When arraigned, the petitioner, assisted by counsel, entered a plea of not guilty.

When the case for trial was called on June 7, 1995 for the prosecution to adduce its evidence, the petitioner and his counsel were absent. On motion of the prosecution, the court allowed it to adduce evidence. The prosecution presented the private complainant, Ricky Olvis, who testified on direct examination that on September 30, 1991, the petitioner drew and issued to him Philippine National Bank (PNB) Check No. 399967 dated September 30, 1991 in the amount of P600,000.00. The said check was drawn against the latter's account with the PNB, Dipolog City Branch, and issued in payment of the petitioner's obligation with Olvis. The latter deposited the

check on October 1, 1991 in his account with the BPI-Family Bank, Dipolog City Branch, but the drawee bank dishonored the check for the reason "Drawn Against Insufficient Funds" stamped on the dorsal portion of the check. Olvis testified that when informed that his check was dishonored, the petitioner pleaded for time to pay the amount thereof, but reneged on his promise. Olvis then filed a criminal complaint against the petitioner for violation of B.P. Blg. 22 on September 4, 1992, docketed as I.S. No. 92-368. The petitioner again offered to repay Olvis the amount of the obligation by retrieving the dishonored check and replacing the same with two other checks: one for P400,000.00 and another for P200,000.00 payable to Olvis. Taking pity on the petitioner, he agreed. He then returned the original copy of the check to the petitioner, but the latter again failed to make good on his promise and failed to pay the P600,000.00.

The prosecution wanted Olvis to identify the petitioner as the drawer of the check, but because of the latter's absence and that of his counsel, the direct examination on the witness could not be terminated. The prosecution moved that such direct examination of Olvis be continued on another date, and that the petitioner be ordered to appear before the court so that he could be identified as the drawer of the subject check. The trial court granted the motion and set the continuation of the trial on June 13, 1997. In the meantime, the prosecution marked a photocopy of PNB Check No. 399967 as Exhibit "A," and the dorsal portion thereof as Exhibit "A-1."

After several postponements at the instance of the petitioner, he and his counsel failed to appear before the court for continuation of trial. They again failed to appear when the case was called for continuation of trial on November 21, 1995. The prosecution offered in evidence the photocopy of PNB Check No. 399967, which the court admitted. The trial court, thereafter, issued an Order declaring the case submitted for decision.<sup>[4]</sup> The petitioner filed a motion for a reconsideration of the Order, which the trial court denied on January 26, 1996.

The petitioner then filed an Omnibus Supplemental Motion and to Allow Him to Adduce Evidence alleging, *inter alia*, that:

h) Despite the absence of the original, with only a xerox copy of the PNB Check worth P600,000.00, and further stressing that the same was paid, the prosecutor insisted, against the vigorous objection of accused, in filing the case in Court. Plenty of water passed under the bridge since then;<sup>[5]</sup>

In its Opposition to the said motion, the prosecution averred that it dispensed with the presentation of the original of the dishonored check because the same had been returned to the petitioner. It also pointed out that the petitioner failed to object to the presentation of the photocopy of the dishonored check.

In a Special Manifestation, the petitioner insisted that the photocopy of the subject check was inadmissible in evidence because of the prosecution's failure to produce the original thereof. On July 8, 1996, the trial court issued an Order denying the petitioner's motion. The petitioner's motion for reconsideration thereon was, likewise, denied by the trial court.

On January 29, 1996, the trial court rendered judgment convicting the petitioner of the crime charged. The *fallo* of the decision reads:

WHEREFORE, finding the guilt of the accused established beyond reasonable doubt, the herein accused, Engr. Bayani Magdayao is convicted of the crime charged against him for Violation of *Batas Pambansa Bilang 22*, as principal by direct participation, and pursuant to Section 1 thereof sentenced to suffer the penalty of imprisonment for a period of six (6) months of *arresto mayor* and to pay the costs. The accused is further ordered to pay the private complainant the sum of P600,000.00 corresponding to his obligation due to the private offended party.

SO ORDERED.<sup>[6]</sup>

On appeal to the Court of Appeals, the petitioner assigned the following errors:

I

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED OF THE CRIME CHARGED SOLELY ON THE BASIS OF THE FOLLOWING EVIDENCE:

- A. MACHINE OR PHOTOSTATIC COPY OF PNB CHECK NO. 399967 DATED SEPTEMBER 30, 1991;
- B. WORD "DAIF" AT THE BACK OF THE PHOTOSTATIC COPY OF SAID CHECK;
- C. UNCORROBORATED ORAL TESTIMONY OF PRIVATE COMPLAINANT.

II

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED WITHOUT HIM BEING POSITIVELY IDENTIFIED BY THE COMPLAINANT OR OTHER WITNESS.

III

THE LOWER COURT ERRED WHEN IT RENDERED THE DECISION WITH ALLEGED FINDINGS OF FACTS NOT SUFFICIENTLY SUPPORTED BY EVIDENCE.

IV

THE LOWER COURT ERRED IN AWARDING CIVIL INDEMNITY TO PRIVATE COMPLAINANT IN THE AMOUNT OF SIX HUNDRED THOUSAND PESOS.<sup>[7]</sup>

On December 21, 2001, the CA rendered judgment affirming the decision of the trial court. The appellate court also denied the petitioner's motion for reconsideration.

In his petition at bar, the petitioner merely reiterates the errors he ascribed to the RTC in his appeal before the CA, and prays that the decisions of the trial and appellate courts be set aside.

## The Ruling of the Court

The petition has no merit.

On the first three assignments of error, the petitioner avers that the prosecution failed to prove his guilt beyond reasonable doubt of the crime charged because of the following: (a) the photocopy of PNB Check No. 399967, adduced in evidence by the prosecution, is inadmissible in evidence under Rule 129, Section 1 of the Revised Rules of Evidence; hence, has no probative weight; b) the prosecution failed to present the BPI-Family Bank teller to testify on the presentment of PNB Check No. 399967 and the dishonor thereof; and (c) the prosecution failed to prove that it was he who drew and delivered the dishonored check to the private complainant, and that he was properly notified of the dishonor of the said check. The petitioner also asserts that there was no legal basis for the award of the amount of P6,000.00 as civil indemnity.

We rule against the petitioner.

Section 1 of B.P. Blg. 22 for which the petitioner was charged, reads:

**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 in full upon 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 (30) 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.*

To warrant the petitioner's conviction of the crime charged, the prosecution was burdened to prove the following essential elements thereof:

- (1) The making, drawing and issuance of any check to apply for account or for value;
- (2) The 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 such check in full upon its presentment; and
- (3) The subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.

[8]

The gravamen of the offense is the act of making or issuing a worthless check or a check that is dishonored upon presentment for payment.<sup>[9]</sup> As to the second element, knowledge on the part of the maker or drawer of the check of the insufficiency of the funds in or credit with the bank to cover the check upon its

presentment refers to the state of mind of the drawer; hence, it is difficult for the prosecution to prove. The law creates a *prima facie* knowledge on the insufficiency of funds or credit, coincidental with the attendance of the two other elements. As such, Section 2 provides:

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 makes 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.

We agree with the petitioner that it was incumbent upon the prosecution to adduce in evidence the original copy of PNB Check No. 399967 to prove the contents thereof, more specifically the names of the drawer and endorsee, the date and amount and the dishonor thereof, as well as the reason for such dishonor. Section 3, Rule 129 of the Revised Rules on Evidence specifically provides that when the subject of inquiry is the contents of the document, no evidence shall be admissible other than the original thereof. The purpose of the rule requiring the production by the offeror of the best evidence is the prevention of fraud, because if a party is in possession of such evidence and withholds it and presents inferior or secondary evidence in its place, the presumption is that the latter evidence is withheld from the court and the adverse party for a fraudulent or devious purpose which its production would expose and defeat.<sup>[10]</sup> As long as the original evidence can be had, the court should not receive in evidence that which is substitutionary in nature, such as photocopies, in the absence of any clear showing that the original writing has been lost or destroyed or cannot be produced in court. Such photocopies must be disregarded, being inadmissible evidence and barren of probative weight.<sup>[11]</sup>

Furthermore, under Section 3(b), Rule 130 of the said Rules, secondary evidence of a writing may be admitted when the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice. To warrant the admissibility of secondary evidence when the original of a writing is in the custody or control of the adverse party, Section 6 of Rule 130 provides that the adverse party must be given reasonable notice, that he fails or refuses to produce the same in court and that the offeror offers satisfactory proof of its existence:

*When original document is in adverse party's custody or control.*— If the document is in the custody or under the control of the adverse party, he must have reasonable notice to produce it. If after such notice and after satisfactory proof of its existence, he fails to produce the document, secondary evidence may be presented as in the case of its loss.

The mere fact that the original of the writing is in the custody or control of the party against whom it is offered does not warrant the admission of secondary evidence. The offeror must prove that he has done all in his power to secure the best evidence by giving notice to the said party to produce the document.<sup>[12]</sup> The notice may be in the form of a motion for the production of the original or made in open court in the