

SECOND DIVISION

[G.R. No. 154947, August 11, 2004]

**LEODEGARIO BAYANI, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

CALLEJO, SR., J.:

This is a petition for review on certiorari of the Decision^[1] of the Court of Appeals in CA-G.R. CR No. 22861 affirming on appeal the Decision^[2] of the Regional Trial Court of Lucena City, Branch 59, in Criminal Case No. 93-135 convicting the accused therein, now the petitioner, for violation of *Batas Pambansa (B.P.) Blg. 22*.

On February 9, 1993, Leodegario Bayani was charged with violation of B.P. Blg. 22 in an Information which reads:

That on or about the 20th day of August 1992, in the Municipality of Candelaria, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously issue and make out Check No. 054936 dated August 29, 1992, in the amount of FIFTY-FIVE THOUSAND PESOS (P55,000.00) Philippine Currency, drawn against the PSBank, Candelaria Branch, Candelaria, Quezon, payable to "Cash" and give the said check to one Dolores Evangelista in exchange for cash although the said accused knew fully well at the time of issuance of said check that he did not have sufficient funds in or credit with the drawee bank for payment of said check in full upon presentment; that upon presentation of said check to the bank for payment, the same was dishonored and refused payment for the reason that the drawer thereof, the herein accused, had no sufficient fund therein, and that despite due notice, said accused failed to deposit the necessary amount to cover said check or to pay in full the amount of said check, to the damage and prejudice of said Dolores Evangelista in the aforesaid amount.

Contrary to law.^[3]

The Case for the Prosecution

At about noon on August 20, 1992, Alicia Rubia arrived at the grocery store of Dolores Evangelista in Candelaria, Quezon, and asked the latter to rediscount Philippine Savings Bank (PSBank) Check No. 054936 in the amount of P55,000.00. The check was drawn by Leodegario Bayani against his account with the PSBank and postdated August 29, 1992.^[4] Rubia told Evangelista that Bayani asked her to rediscount the check for him because he needed the money.^[5] Considering that Rubia and Bayani were long-time customers at the store and she knew Bayani to be

a good man, Evangelista agreed to rediscount the check.^[6] After Rubia endorsed the check, Evangelista gave her the amount of P55,000.00.^[7] However, when Evangelista deposited the check in her account with the Far East Bank & Trust Company on September 11, 1992, it was dishonored by the drawee bank for the reason that on September 1, 1992, Bayani closed his account with the PSBank.^[8] The reason for the dishonor of the check was stamped at its dorsal portion. As of August 27, 1992, the balance of Bayani's account with the bank was P2,414.96.^[9] Evangelista then informed Rubia of the dishonor of the check and demanded the return of her P55,000.00. Rubia replied that she was only requested by Bayani to have the check rediscounted and advised Evangelista to see him. When Evangelista talked to Bayani, she was told that Rubia borrowed the check from him.^[10]

Thereafter, Evangelista, Rubia, Bayani and his wife, Aniceta, had a conference in the office of Atty. Emmanuel Velasco, Evangelista's lawyer. Later, in the Office of the Barangay Captain Nestor Baera, Evangelista showed Bayani a photocopy of the dishonored check and demanded payment thereof. Bayani and Aniceta, on one hand, and Rubia, on the other, pointed to each other and denied liability thereon. Aniceta told Rubia that she should be the one to pay since the P55,000.00 was with her, but the latter insisted that the said amount was in payment of the pieces of jewelry Aniceta purchased from her.^[11] Upon Atty. Velasco's prodding, Evangelista suggested Bayani and Rubia to pay P25,000.00 each. Still, Bayani and Rubia pointed to the other as the one solely liable for the amount of the check.^[12] Rubia reminded Aniceta that she was given the check as payment of the pieces of jewelry Aniceta bought from her.

The Case for the Petitioner

Bayani testified that he was the proprietor of a funeral parlor in Candelaria, Quezon. He maintained an account with the PSBank in Candelaria, Quezon, and was issued a checkbook which was kept by his wife, Aniceta Bayani. Sometime in 1992, he changed his residence. In the process, his wife lost four (4) blank checks, one of which was Check No. 054936^[13] which formed part of the checks in the checkbook issued to him by the PSBank.^[14] He did not report the loss to the police authorities. He reported such loss to the bank after Evangelista demanded the refund of the P55,000.00 from his wife.^[15] He then closed his account with the bank on September 11, 1992, but was informed that he had closed his account much earlier. He denied ever receiving the amount of P55,000.00 from Rubia.^[16]

Bayani further testified that his wife discovered the loss of the checks when he brought his wife to the office of Atty. Emmanuel Velasco.^[17] He did not see Evangelista in the office of the lawyer, and was only later informed by his wife that she had a conference with Evangelista. His wife narrated that according to Evangelista, Rubia had rediscounted a check he issued, which turned out to be the check she (Aniceta) had lost. He was also told that Evangelista had demanded the refund of the amount of the check.^[18] He later tried to contact Rubia but failed. He finally testified that he could not recall having affixed his signature on the check.^[19]

Aniceta Bayani corroborated the testimony of her husband. She testified that she was invited to go to the office of Atty. Velasco where she, Rubia and Evangelista had

a conference. It was only then that she met Evangelista. Rubia admitted that she rediscounted the complainant's check with Evangelista. When Evangelista asked her to pay the amount of the check, she asked that the check be shown to her, but Evangelista refused to do so. She further testified that her husband was not with her and was in their office at the time.

At the conclusion of the trial, the court rendered judgment finding Bayani guilty beyond reasonable doubt of violation of Section 1 of B.P. Blg. 22. The decretal portion of the decision reads:

WHEREFORE, premises considered, the Court finds the accused Leodegario Bayani guilty beyond reasonable doubt of violation of Section 1, Batas Pambansa Bilang 22 and hereby sentences him to suffer an imprisonment of ONE (1) YEAR, or to pay a fine of ONE HUNDRED TEN THOUSAND PESOS (P110,000.00), to pay to complaining witness Dolores Evangelista the sum of FIFTY-FIVE THOUSAND PESOS (P55,000.00), the value of the check and to pay the costs.

SO ORDERED.^[20]

On appeal, the petitioner averred that the prosecution failed to adduce evidence that he affixed his signature on the check, or received from Rubia the amount of P55,000.00, thus negating his guilt of the crime charged.

The petitioner asserts that even Teresita Macabulag, the bank manager of PSB who authenticated his specimen signatures on the signature card he submitted upon opening his account with the bank, failed to testify that the signature on the check was his genuine signature.

On January 30, 2002, the Court of Appeals rendered judgment^[21] affirming the decision of the RTC with modification as to the penalty imposed on the petitioner.

The petitioner asserts in the petition at bar that –

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING WITH MODIFICATION THE CONVICTION OF PETITIONER BY THE TRIAL COURT FOR ALLEGED VIOLATION OF BATAS PAMBANSA BLG. 22 NOTWITHSTANDING THAT THE PROSECUTION MISERABLY FAILED TO PROVE THAT THE CHECK WAS ISSUED FOR A VALUABLE CONSIDERATION.^[22]

The petitioner contends that the prosecution failed to prove all the essential elements of the crime of violation of Section 1, B.P. Blg. 22. He asserts that the prosecution failed to prove that he issued the check. He avers that even assuming that he issued the check, the prosecution failed to prove that it was issued for valuable consideration, and that he received the amount of P55,000.00 from Rubia. Hence, in light of the ruling of this Court in *Magno vs. Court of Appeals*,^[23] he is entitled to an acquittal on such grounds.

The petitioner further contends that Evangelista's testimony, that Rubia told her that it was the petitioner who asked her to have the check rediscounted, is hearsay and, as such, even if he did not object thereto is inadmissible in evidence against him. He

avers that the prosecution failed to present Rubia as a witness, depriving him of his right to cross-examine her. He contends that any declaration made by Rubia to Evangelista is inadmissible in evidence against him.

The petition is denied.

We agree with the submission of the petitioner that Evangelista's testimony, that Rubia told her that the petitioner requested that the subject check be rediscounted, is hearsay. Evangelista had no personal knowledge of such request of the petitioner to Rubia. Neither is the information relayed by Rubia to Evangelista as to the petitioner's request admissible in evidence against the latter, because the prosecution failed to present Rubia as a witness, thus, depriving the petitioner of his right of cross-examination.

However, the evidence belies the petitioner's assertion that the prosecution failed to adduce evidence that he issued the subject check. Evangelista testified that when she talked to the petitioner upon Rubia's suggestion, the petitioner admitted that he gave the check to Rubia, but claimed that the latter "borrowed" the check from him.

Q When this check in question was returned to you because of the closed account, what did you do, if you did anything?

A I talked to Alicia Rubia, Sir.

Q And what did Alicia Rubia tell you in connection with the check in question?

A Alicia Rubia told me that she was just requested by Leodegario Bayani, Sir.

Q And what else did she tell you?

A She advised me to go to Leodegario Bayani, Sir.

Q Did you go to Leodegario Bayani as per instruction of Alicia Rubia?

A Yes, Sir.

Q And what did Leodegario Bayani tell you in connection with this check?

A He told me that Alicia Rubia borrowed the check from him, Sir. [24]

Evangelista testified that she showed to the petitioner and his wife, Aniceta, a photocopy of the subject check in the office of Atty. Velasco, where they admitted to her that they owned the check:

ATTY. ALZAGA (TO WITNESS)

Q When you shown (sic) the check to Leodegario Bayani and his wife in the law office of Atty. Velasco, what did they tell you?

ATTY. VELASCO: