

## THIRD DIVISION

[ G.R. No. 134172, September 20, 2004 ]

**MIRIAM ARMI JAO YU, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### DECISION

**SANDOVAL-GUTIERREZ, J.:**

May an accused found guilty of violations of *Batas Pambansa Blg. 22*<sup>[1]</sup> be made to suffer subsidiary imprisonment in case he fails to pay the fines imposed by the trial court for such violations? This is the lone issue raised in this petition for review on certiorari.<sup>[2]</sup>

On March 25, 1991, petitioner was charged with 19 counts of violation of *Batas Pambansa Blg. 22* before the Regional Trial Court, Branch 91, Quezon City, docketed as Criminal Cases Nos. 19468 to 19486.

Upon arraignment, petitioner entered a plea of not guilty. After hearing, the trial court rendered a Decision finding her guilty of the charges and imposing upon her the following penalties:

"WHEREFORE, premises considered, judgment is hereby rendered finding accused Miriam Armi Jao Yu guilty beyond reasonable doubt of violation of *Batas Pambansa Blg. 22* and sentencing her as follows:

1. Crim. Case – **to pay a fine of P 200,000.00** and  
No. 19468 indemnify Susan Andaya in the  
amount of P 300,000.00;
2. Crim. Case – **to pay a fine of P 150,000.00** and  
No. 19469 indemnify Susan Andaya in the  
amount of P 150,000.00;
3. Crim. Case – **to pay a fine of P 200,000.00** and  
No. 19470 indemnify Susan Andaya in the  
amount of P 200,000.00;
4. Crim. Case – **to pay a fine of P 200,000.00** and  
No. 19471 indemnify Susan Andaya in the  
amount of P 385,000.00;
5. Crim. Case – **to pay a fine of P 15,000.00** and  
No. 19472 indemnify Susan Andaya in the  
amount of P 15,000.00;
6. Crim. Case – **to pay a fine of P 15,000.00** and  
No. 19473 indemnify Susan Andaya in the  
amount of P 300,000.00;
7. Crim. Case – **to pay a fine of P 200,000.00** and  
No. 19474 indemnify Susan Andaya in the  
amount of P 350,000.00;
8. Crim. Case – **to pay a fine of P 200,000.00** and

- No. 19475 indemnify Susan Andaya in the amount of P 385,000.00;
9. Crim. Case No. 19476 – **to pay a fine of P 200,000.00** and indemnify Susan Andaya in the amount of P 300,000.00;
10. Crim. Case No. 19477 – **to pay a fine of P 200,000.00** and indemnify Susan Andaya in the amount of P 300,000.00;
11. Crim. Case No. 19478 – **to pay a fine of P 15,000.00** and indemnify Susan Andaya in the amount of P 15,000.00;
12. Crim. Case No. 19479 – **to pay a fine of P 15,000.00** and indemnify Susan Andaya in the amount of P 15,000.00;
13. Crim. Case No. 19480 – **to pay a fine of P 200,000.00** and indemnify Susan Andaya in the amount of P 450,000.00;
14. Crim. Case No. 19481 – **to pay a fine of P 25,000.00** and indemnify Susan Andaya in the amount of P 25,000.00;
15. Crim. Case No. 19482 – **to pay a fine of P 200,000.00** and indemnify Susan Andaya in the amount of P 500,000.00;
16. Crim. Case No. 19483 – **to pay a fine of P 17,500.00** and indemnify Susan Andaya in the amount of P 17,500.00;
17. Crim. Case No. 19484 – **to pay a fine of P 13,475.00** and indemnify Susan Andaya in the amount of P 13,475.00;
18. Crim. Case No. 19485 – **to pay a fine of P 15,000.00** and indemnify Susan Andaya in the amount of P 15,000.00;
19. Crim. Case No. 19486 – **to pay a fine of P 15,000.00** and indemnify Susan Andaya in the amount of P 15,000.00;

**to suffer subsidiary imprisonment in case of non-payment of the fine in each of the above-entitled cases** and to pay the costs of suit.

SO ORDERED.” (Underscoring ours)

Upon appeal, the Court of Appeals affirmed *in toto* the trial court’s Decision.

Petitioner then filed a motion for reconsideration but was denied by the Appellate Court in its Resolution dated May 29, 1998.

In the instant petition, petitioner contends that Section 1 of *Batas Pambansa Blg. 22*, which 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 check in full upon its 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 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.**

**The same penalty shall be imposed** upon any person who, having sufficient funds in or credit with the drawee bank when he makes or draws and issues a check, shall fail to keep sufficient funds or to maintain a credit to cover the full amount of the check if presented within a period of ninety (90) days from the date appearing thereon, for which reason it is dishonored by the drawee bank. Where the check is drawn by a corporation, company or entity, the person or persons who actually signed the check in behalf of such drawer shall be liable under this Act.

Where the check is drawn by a corporation, company or entity, the person or persons who actually signed the check in behalf of such drawer shall be liable under this Act.” (Underscoring ours)

provides **only** the imposition of **imprisonment or fine, or both**, in cases of violation of *Batas Pambansa Blg. 22*. Thus, she should not suffer subsidiary imprisonment in case of non-payment of the fines imposed by the trial court.

The Solicitor General disagrees with petitioner and prays that the Decision of the Court of Appeals be affirmed.

The petition must fail.

The imposition of subsidiary imprisonment is expressly provided under Articles 38 and 39 of the Revised Penal Code, thus:

**“ART. 38. Pecuniary liabilities – Order of payment.** – In case the property of the offender should not be sufficient for the payment of all his pecuniary liabilities, the same shall be met in the following order:

1. The preparation of the damage caused.
2. Indemnification of consequential damages.
- 3. The fine.**
4. The costs of the proceedings. (Underscoring ours)

**“ART. 39. Subsidiary penalty.** – **If the convict has no property with which to meet the fine mentioned in paragraph 3 of the next preceding article, he shall be subject to a subsidiary personal liability at the rate of one day for each eight pesos, subject to the following rules:**

1. If the principal penalty imposed be *prision correccional* or *arresto* and fine, he shall remain under confinement until his fine referred in the preceding paragraph is satisfied, but his subsidiary imprisonment shall not exceed one-third of the term of the