

FIRST DIVISION

[G.R. No. 144887, November 17, 2004]

**ALFREDO RIGOR, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

DECISION

AZCUNA, J.:

This is a petition for review on *certiorari* of the decision of the Court of Appeals, in CA-G.R. CR No. 18855, which affirmed the decision of the Regional Trial Court of Pasig, Branch 163, in Criminal Case No. 86025, convicting petitioner Alfredo Rigor of violation of *Batas Pambansa Blg. 22* (the Bouncing Checks Law), and imposing upon him the penalty of imprisonment for six (6) months and ordering him to reconstitute to the Rural Bank of San Juan the sum of P500,000 and to pay the costs.

The Information^[1] against petitioner reads:

That on or about the 16th day of November 1989 in the Municipality of San Juan, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously make or draw and issue to Rural Bank of San Juan, Inc. thru its loan officer Carlos N. Garcia, a postdated check to apply on account or for value the check described below:

Check No. : 165476
Drawn : Associated Bank, Tarlac Branch
against
In the : P500,000.00
Amount
of
Dated : February 16, 1990
Payable to : Rural Bank of San Juan

said accused well knowing that at the time of issue on 16 November 1989, he has already insufficient funds or credit with the drawee bank for the payment in full of the face amount of such check and that as of 2 February 1990 his bank accounts were already closed and that check when presented for payment from and after the date thereof, was subsequently dishonored for the reason "Account Closed" and despite receipt of notice of such dishonor, the accused failed to pay said payee the face amount of said check or to make arrangement for full payment thereof during the period of not less than five (5) banking days after receiving notice.

When arraigned, petitioner pleaded not guilty. Thereafter, trial on the merits ensued.

The facts, as narrated by the Court of Appeals, are as follows:

The prosecution evidence was furnished by witnesses Edmarcos Basangan of Rural Bank of San Juan (RBSJ) and Esteban Pasion, employee of the Associated Bank. It was shown that on November 16, 1989, appellant (petitioner herein) applied for a commercial loan from the Rural Bank of San Juan, Inc., at N. Domingo St., San Juan, Metro Manila in the sum of P500,000.00 (Exh. "A"). He signed a promissory note stating that an interest of 24% per annum from its date will be charged on the loan (Exh. "B"). The loan was approved by RBSJ's Bank Manager Melquecedes de Guzman and Controller Agustin Uy. A cashier's check with RBSJ No. 2023424 in the amount of P487,000.00, net proceeds of the loan, was issued to appellant (Exh. "C"). Appellant endorsed, then encashed the check with RBSJ Teller Eleneth Cruz, who stamped thereon the word "paid" (Exh. "C-4"). After appellant received the proceeds, he issued an undated check, Associated Bank Check No. 165476, Tarlac Branch, in the amount of P500,000, payable to RBSJ (Exh. "D").

It was not the bank policy for a borrower to apply for a loan, obtain its approval and its proceeds on the same day. Appellant's case was a special one considering that he is the "kumpare" of the President of RBSJ and he is well-known to all the bank's directors since he, like them, comes from Tarlac.

Appellant failed to pay his loan upon its maturity on December 16, 1989. He personally asked de Guzman for a two-month extension and advised RBSJ to date to February 16, 1990 his Associated Bank check no. 165476. Failing anew to pay, he asked for another two-month extension or up to April 16, 1990. Both requests de Guzman granted. On April 16, 1990, appellant still failed to pay his loan. Basangan and his co-employee, Carlos Garcia, went to Tarlac to collect from appellant the amount of the loan. Appellant's written request for another 30-day extension was denied by de Guzman who instead, sent him a formal demand letter dated April 25, 1990.

On May 25, 1990, Associated Bank check no. 165476 was deposited with PS Bank, San Juan Branch. The check was later returned with the words "closed account" stamped on its face. Associated Bank employee PASION declared that appellant's Current Account No. 1022-001197-9 with Associated Bank had been closed since February 2, 1990. Appellant's balance under the bank's statement of account as of November 16, 1989 was only P859. The most appellant had on his account was P40,000 recorded on November 19, 1989 (Exh. "K").

Basangan and Garcia, in Tarlac, advised appellant of the dishonor of his check. Appellant wrote Atty. Joselito Lim, RBSJ Chairman of the Board, about the loan and arrangements as to the schedule of his payment. His letter was referred to de Guzman, who, in turn, sent to him another demand letter dated September 17, 1990. The letter informed him of the dishonor of his check. De Guzman required him to take the

necessary step for the early settlement of his obligation. He still refused to pay.

Appellant denied the charge. He claimed that on November 16, 1989, Agapito Uy and his sister Agnes Angeles proposed to him that he secure a loan from the RBSJ for P500,000. P200,000 of it will be for him and the P300,000 will go to Uy and to his sister to pay unpaid loans of borrowers in their "side banking" activities. For the approval of his loan, Uy told him that appellant can put up his four-door Mercedes Benz as collateral for the P200,000 loan. The P300,000 will have no collateral. Uy also told him the he (Uy) has complete control of the bank and his Mercedes Benz will be enough collateral for the P500,000.

Appellant agreed to the proposal. He signed a blank loan application form and a promissory note plus a chattel mortgage for his Mercedes Benz. Thereafter, he was told to come back in two days. Uy gave him two Premiere Bank checks worth P100,000 each. He gave one check to his brother Efren Rigor and the other to his sister-in-law for encashment in Tarlac. He issued to Uy a personal check for P500,000 undated. This check was deposited in the bank for encashment in the later part of May, 1990 but it bounced. When demand was made for him to pay his loan, he told Uy to get his Mercedes Benz as payment for P200,000 but Uy refused. Uy wanted him to pay the whole amount of P500,000.^[2]

On July 8, 1994, the trial court rendered judgment against petitioner, the dispositive portion of which reads:

WHEREFORE, foregoing premises considered, this Court finds accused Alfredo Rigor guilty beyond reasonable doubt of the crime of Violation of Section 1 of Batas Pambansa Blg. 22 and there being no mitigating or aggravating circumstance on record, imposes upon him the penalty of imprisonment for six (6) months and to restitute to the Rural Bank of San Juan the sum of P500,000.00 and to pay the costs. ^[3]

The trial court stated the reasons for petitioner's conviction, thus:

In the case at bar, accused admitted having issued Associated Bank Check No. 165476 in the amount of P500,000.00. the check was undated when issued. Records, however, show that it was issued on 16 November 1989 but as it appear[s] now it is dated 16 February 1990. The probable reason must be because upon the maturity of his loan on 16 December 1989, accused asked for extension of two (2) months to pay the same. And the expiration of that two (2) months period is 16 February 1990. Nevertheless, Exhibit "K" for the prosecution including its submarkings show that the highest outstanding amount in the current account of accused with the Associated Bank, Tarlac Branch for the month of November 1989, the month Rigor issued aforesaid check, is only about P40,000.00. Hence, Rigor has no sufficient deposit in the bank to cover the amount of P500,000.00 when he issued Check No. 165476. Therefore, Rigor knowingly issued the same he having no sufficient funds in or credit with the drawee bank in violation of section 1 of [B.P.] Blg. 22.

The defense of the accused that the amount of loan he secured from the Rural Bank of San Juan is only P200,000.00 is of no moment. The fact is he admitted having issued Associated Bank Check No. 165476 in the amount of P500,000.00 and upon its deposit for encashment, the same was dishonored for reason account closed.^[4]

Petitioner appealed his conviction to the Court of Appeals, which affirmed the trial court's decision. The dispositive portion of the appellate court's decision reads:

WHEREFORE, the appealed decision is **AFFIRMED** with the modification that the reference to lack of mitigating or aggravating circumstances should be deleted and disregarded.^[5]

Hence, this petition for review on *certiorari*.

Petitioner raises the following:

- 1) Absent the element of knowingly issuing a worthless check entitles the petitioner to acquittal;
- 2) Without proof that accused actually received a notice of dishonor, a prosecution for violation of the Bouncing Checks Law cannot prosper;
- 3) The Pasig Court below had no jurisdiction to try and decide the case for violation of *Batas Pambansa Bilang 22*.^[6]

Petitioner contends that he did not violate *Batas Pambansa Bilang 22* because he told the officers of the complainant bank from the very beginning that he did not have sufficient funds in the bank; he was merely enticed by Agustin Uy, the bank's managing director and comptroller, to obtain the instant loan where he received only P200,000, while Uy took P300,000; and his check was partly used to collateralize an accommodation in favor of Uy in the amount of P300,000.

The contention is without merit.

Petitioner is charged with violation of Section 1 of *Batas Pambansa Bilang 22*, thus:

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 elements of the offense are: (1) Making, drawing, and issuance of 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.^[7]

As found by the Regional Trial Court and the Court of Appeals, all the aforementioned elements are present in this case.

The evidence shows that on November 16, 1989, petitioner applied^[8] for a loan in the amount of P500,000 with the Rural Bank of San Juan and on the same day, he issued an undated Associated Bank Check No. 165476^[9] worth P500,000 payable to Rural Bank of San Juan in connection with the loan, which check was later dated February 16, 1990.^[10] The check was thus issued to apply for value.^[11] This shows the presence of the first element of the offense.

The presence of the second element of the offense is shown by petitioner's admission^[12] that he knew of the insufficiency of his funds in the drawee bank when he issued the check and he allegedly did not hide the fact from the officials of the Rural Bank of San Juan.

The Court of Appeals correctly ruled, thus:

x x x

Knowledge involves a state of mind difficult to establish. We hold that appellant's admission of the insufficiency of his fund at the time he issued the check constitutes the very element of "knowledge" contemplated in Sec. 1 of BP 22. The prima facie presumption of knowledge required in Sec. 2, Ibid., does not apply because (a) the check was presented for payment only on May 25, 1990 or beyond the 90-day period, which expired on May 16, 1990, counted from the maturity date of the check on February 16, 1990 and (b) an actually admitted knowledge of a fact needs no presumption.

While it is true that if a check is presented beyond ninety (90) days from its due date, there is no more presumption of knowledge by the drawer that at the time of issue his check has no sufficient funds, the presumption in this case is supplanted by appellant's own admission that he did not hide the fact that he had no sufficient funds for the check. In fact, it appears that when he authorized RBSJ to date his check on February 16, 1990, his current account was already closed two weeks earlier, on February 2, 1990.^[13]

Petitioner, however, argues that since the officers of the bank knew that he did not have sufficient funds, he has not violated *Batas Pambansa Bilang 22*.

Assuming *arguendo* that the payee had knowledge that he had insufficient funds at the time he issued the check, such knowledge by the payee is immaterial as deceit is not an essential element of the offense under *Batas Pambansa Bilang 22*.^[14] The gravamen of the offense is the issuance of a bad check; hence, malice and intent in the issuance thereof are inconsequential.^[15]