

SECOND DIVISION

[G.R. No. 150618, July 24, 2003]

**EVANGELINE CABRERA, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES AND LUIS GO, RESPONDENTS.**

D E C I S I O N

CALLEJO, SR., J.:

This is a petition for review of the Decision^[1] dated January 25, 2001, and the October 9, 2001 Resolution of the Court of Appeals in CA-G.R. CR No. 17715 affirming the Decision^[2] dated January 17, 1993 of the Regional Trial Court (RTC) of Davao City, Branch 17, which found the petitioner Evangeline Cabrera guilty beyond reasonable doubt of three counts of violation of *Batas Pambansa Bilang 22* (B.P. Blg. 22), otherwise known as the Bouncing Checks Law.

On August 2, 1993, three Informations were filed charging Evangeline Cabrera with violation of B.P. Blg. 22, the accusatory portion of which respectively reads as follows:

That sometime in April 1992 in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, knowing fully well that she had no sufficient funds in the drawee bank, willfully, unlawfully and feloniously issued and/or made out a Prudential Bank Check No. 665332 in the amount of P50,907.70 postdated July 11, 1992 in favor of Luis Go, in payment of an obligation; but when said check was presented to the drawee bank for encashment, the same was dishonored for the reason "Account Closed" and despite notice of dishonor and demands made upon said accused to make good the check, the same refused and failed to make payment, to the damage and prejudice of the herein complainant in the aforesaid amount of P50,907.70.

Contrary to law.^[3]

That sometime in April 1992 in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, knowing fully well that she had no sufficient funds in the drawee bank, willfully, unlawfully and feloniously issued and/or made out a Prudential Bank Check No. 658049 in the amount of P72,311.75 postdated June 12, 1992 in favor of Luis Go, in payment of an obligation; but when said check was presented to the drawee bank for encashment, the same was dishonored for the reason "Account Closed" and despite notice of dishonor and demands made upon said accused to make good the check,

the same refused and failed to make payment, to the damage and prejudice of the herein complainant in the aforesaid amount of P72,311.75.

Contrary to law.^[4]

That sometime in April 1992 in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, knowing fully well that she had no sufficient funds in the drawee bank, willfully, unlawfully and feloniously issued and/or made out a Prudential Bank Check No. 658034 in the amount of P67,956.00 postdated May 2, 1992 in favor of Luis Go, in payment of an obligation; but when said check was presented to the drawee bank for encashment, the same was dishonored for the reason "Account Closed" and despite notice of dishonor and demands made upon said accused to make good the check, the same refused and failed to make payment, to the damage and prejudice of the herein complainant in the aforesaid amount of P67,956.00.

Contrary to law.^[5]

The accused, now the petitioner in this case, was duly arraigned, assisted by counsel *de officio* and entered a plea of not guilty to all the charges. Joint trial thereafter ensued.

The Case for the Prosecution

Luis Go was the sole proprietor of the Davao Mindanao Pioneer Hardware & Company (DMPH Co.), located at No. 63 Ramon Magsaysay Boulevard, Davao City. One of his customers was Boni Co, a travelling salesman. The two had agreed that Go would sell lumber materials and merchandise to Co on a thirty to forty-day credit basis. Go, however, required Co to issue postdated checks in payment for his purchases. Since Co had no checking account with any bank, he offered to pay for his purchases with postdated checks drawn and issued by the petitioner. Co assured Go that he and the petitioner had a business arrangement. Go made inquiries at the bank and was told that the petitioner handled her checks well. Since Go also believed that Co was a good businessman, he finally agreed to accept the postdated checks issued by the petitioner. Go and Co also agreed that on the due date of the checks, Co would either pay the amount thereof in cash by way of replacement for the same, or Go would negotiate, or deposit the checks in his account and/or the account of DMPH Co.

Co purchased merchandise from Go and delivered postdated checks drawn against the petitioner's checking account with the Davao City Branch of Prudential Bank, bearing the following particulars:

<u>Check Number</u>	<u>Amount</u>	<u>Date</u>
658034	P67,956.00	May 02, 1992
658049	P72,311.75	June 12, 1992

When Co failed to pay for his purchases, Go deposited the three postdated checks in his account with the Far East Bank & Trust Company (FEBTC) on August 3, 1992. As of July 31, 1999, the petitioner had P700.00 in her account. When the checks were deposited, the petitioner's account with the bank had a balance of only P100.04. The bank had closed the petitioner's account on August 4, 1992 after applying the said amount to the payment of bank charges. The drawee bank thus dishonored the petitioner's postdated checks, and duly stamped "Account Closed" on the front and dorsal portions of each check. The drawee bank returned the checks to the FEBTC with the corresponding check return slips. Nevertheless, Go continued selling merchandise to Co, who likewise continued to draw and issue postdated checks; this time drawn against his personal account. Go accepted Co's personal checks, hoping that he would eventually be paid. Co's personal checks were all dishonored by the drawee bank.

Go notified the petitioner that her three checks were dishonored by the drawee bank. She saw Go in his office and confirmed that she and Co had a business arrangement. She asked Go to give Co more time to redeem the postdated checks with cash. Go agreed. However, Co again failed to redeem the checks. The petitioner likewise failed to pay the amounts of the checks despite Go's repeated demands.

The Petitioner's Evidence

Boni Co testified that he was engaged in the business of buying and selling merchandise from DMPH Co. Go had agreed that Co would pay for his purchases on a thirty to forty-day credit basis to be guaranteed by postdated checks. Since Co had no checking account, Go agreed to accept blank checks drawn against the petitioner's checking account with the Prudential Bank. Go also agreed to the arrangement that Co would pay for his purchases after the merchandise was sold and the latter had collected from his customers. Co had paid Go the amount of P120,000.00 for his purchases, but Go did not issue any receipt therefor because of mutual trust and confidence. Go, however, failed to return the three postdated checks issued by the petitioner.

The petitioner admitted that she was the drawer of the three postdated checks, but averred that she did not receive any valuable consideration when she issued the same. She merely affixed her signature on the said checks without filling up the names of the payees, the amounts and the corresponding dates therefor. She and Co had agreed that the checks would not be encashed or deposited, but would merely serve as guarantee for the payment of the stocks purchased by Co. Evidently, the petitioner acted in good faith when she issued the checks and delivered them to Co, and as such should not be held guilty of violating B.P. Blg. 22.

The petitioner also admitted that she spoke to Go but denied having received any notice of dishonor, or any demand letter from the latter or from the DMPH Co., informing her of the dishonor of the checks and demanding payment of the amounts thereof. She only learned that the checks were dishonored when she received a *subpoena* pertaining to the same.^[6]

On January 17, 1993, the trial court rendered a decision finding the petitioner guilty

beyond reasonable doubt of three counts of violation of B.P. Blg. 22, the dispositive portion of which reads:

WHEREFORE, finding the evidence of the prosecution more than sufficient, to prove beyond reasonable doubt, the guilt of accused, Evangeline Cabrera, for Violation of Batas Pambansa Blg. 22, pursuant to Section 1 of BP Blg. 22, accused EVANGELINE CABRERA, is sentenced to pay a FINE of P50,907.70, in favor of the government under Crim. Case 30,806-93; under Crim. Case 30,807-93 a FINE of P72,311.75; and under Crim. Case 30,808-93, to pay a FINE of P67,956.00 in favor of the government, with costs.

Moreover, pursuant to Art. 100 in relation to Art. 104 of the Revised Penal Code, governing civil indemnity, accused is furthermore ordered, to pay the amount of:

In Criminal Case 30,806-93, the amount of P50,907.70;

In Criminal Case 30,807-93, the amount of P72,311.75; and

In Criminal Case 30,808-93, the amount of P67,956.00, in favor of Luis Go, with subsidiary imprisonment in case of insolvency, in accordance with the provisions of Art. 39, of the Revised Penal Code, as amended by Republic Act No. 5455, approved on April 21, 1969.^[7]

The trial court ruled that the evidence on record showed that the petitioner voluntarily issued the checks in question. Notwithstanding her claim that the said checks were issued merely to accommodate Co and to guarantee the latter's obligations, she is guilty of violation of B.P. Blg. 22 which prohibits and penalizes the mere issuance of a bouncing check. The trial court did not rule on the petitioner's claim that she did not receive any notice of dishonor from the drawee bank or from the private complainant, or any letter of demand notifying her of such dishonor and demanding payment of the amounts of the checks.

Aggrieved, the petitioner interposed an appeal before the Court of Appeals (CA). Therein, she asserted that:

THE TRIAL COURT ERRED IN HOLDING THAT THERE WAS A VALID ISSUANCE OF THE CHECKS IN QUESTION;

THE TRIAL COURT ERRED IN NOT CONSIDERING THE EVIDENCE THAT THE CHECKS IN QUESTION WERE NOT ISSUED FOR A VALID CONSIDERATION IN SO FAR AS THE ACCUSED IS CONCERNED;

THE TRIAL COURT ERRED IN NOT CONSIDERING THAT THE PROSECUTION HAD NOT ESTABLISHED THE ELEMENT OF FRAUD OR DECEIT;

THE TRIAL COURT ERRED IN HOLDING THE ACCUSED LIABLE TO PAY A FINE EQUIVALENT TO THE AMOUNT OF THE CHECKS IN QUESTION; AND

THE TRIAL COURT ERRED IN HOLDING THE ACCUSED LIABLE TO PAY

THE COMPLAINANT THE TOTAL SUM OF P191,175.45
NOTWITHSTANDING THE EVIDENCE THAT SHE DID NOT RECEIVE ANY
MERCHANDISE.^[8]

The petitioner argued in her brief that the prosecution failed to prove that she received any notice of dishonor of the subject checks:

In fact under the law, a drawer of a check is entitled to a notice of dishonor and only if said drawer fails to make good the same within five (5) banking days from receipt of said notice that bad faith or fraud is prima facie presumed to exist.

In the case at bar, no such notice of dishonor was afforded the accused. Hence, for lack of bad faith or fraudulent intent, the accused may not be convicted of the offense charged.

Moreover, the accused may not be said to have knowledge[d] that she has no funds in the bank at the time of issuance because when subject checks were borrowed from her, the obligation of Boni Co and its maturity was not yet fixed.^[9]

On January 25, 2001, the CA rendered a decision affirming the decision of the trial court.

WHEREFORE, in the light of the foregoing consideration, the assailed decision is hereby AFFIRMED in toto. Without pronouncement as to costs.
^[10]

The CA ruled that the petitioner voluntarily and validly issued the blank checks. Thus, the presumption is that the checks were issued for valuable consideration, notwithstanding the claim that they were issued merely as a form of deposit or guaranty.

The CA stressed that the failure of the prosecution to prove that the petitioner was motivated by fraud or deceit in issuing the said checks was of no moment since fraud is not an element of violation of B.P. Blg. 22. The CA emphasized that the act of issuing a worthless check is *malum prohibitum*; hence, fraud is not an essential element of the crime. However, the CA failed to resolve the petitioner's plea of acquittal for failure of the prosecution to prove that she received any notices of dishonor of the subject checks from the private respondent or from the drawee bank.

Dissatisfied, the petitioner filed a motion for reconsideration of the decision, but the CA resolved on October 9, 2001 to deny the same.^[11]

In the petition at bar, the petitioner ascribes several errors to the CA. However, this Court believes that the threshold issue to be resolved is whether or not the petitioner is liable for violation of B.P. Blg. 22, on her plea that:

In fact under the law, a drawer of a check is entitled to a notice of dishonor and only if said drawer fails to make good the same within five (5) banking days from receipt of said notice that bad faith or fraud is prima facie presumed to exist.