

FIRST DIVISION

[G.R. No. 146211, August 06, 2002]

**MANUEL NAGRAMPA, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

DAVIDE, JR., C.J.:

In this petition for review on certiorari, petitioner assails his conviction for estafa in Criminal Case No. Q-90-15797 and for two counts of violation of Batas Pambansa Blg. 22 (Bouncing Checks Law) in Criminal Cases Nos. Q-90-15798 and Q-90-15799.

The accusatory portion of the information in Criminal Case No. Q-90-15797 for estafa reads as follows:

That on or about the 28th day of July 1989 in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to gain by means of false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud, did then and there, wilfully, unlawfully and feloniously defraud FEDCOR TRADING CORPORATION represented by FEDERICO A. SANTANDER by then and there making, drawing and issuing in favor of the latter the following checks, to wit:

CHECK NOS	AMOUNT	POSTDATED
473477	P75,000.00	August 31, 1989
473478	P75,000.00	September 30, 1989

drawn against the SECURITY BANK AND TRUST COMPANY in payment of an obligation, knowing fully well at the time of issue that he did not have any funds in the bank or his funds deposited therein was not sufficient to cover the amount of the checks that upon presentation of said checks to the said bank for payment, the same were dishonored for the reason that the drawer thereof, accused MANUEL NAGRAMPA did not have any funds therein and despite notice of dishonor thereof, accused failed and refused and still fails and refuses to redeem or make good said checks, to the damage and prejudice of the said FEDCOR TRADING CORPORATION in such amount as may be awarded under the provisions of the Civil Code.

CONTRARY TO LAW.^[1]

The accusatory portion of the information in Criminal Case No. Q-90-15798 for violation of B.P. Blg. 22 reads as follows:

That on or about the 28th day of July, 1989 in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously make, draw and issue in favor of FEDCOR TRADING CORPORATION represented by FEDERICO A. SANTANDER a check numbered 473478 drawn against the SECURITY BANK AND TRUST COMPANY, Escolta Branch, a duly established domestic banking institution, in the amount of P75,000.00, Philippine Currency, postdated September 30, 1989 in payment of an obligation, knowing fully well that at the time of issue that she/he did not have ANY funds in the drawee bank for the payment of such check; that upon presentation of said check to said bank for payment, the same was dishonored for the reason that the drawee bank of accused MANUEL NAGRAMPAMP did not have ANY funds therein and despite notice of dishonor thereof, accused failed and refused and still fails and refuses to redeem or make good said check, to the damage and prejudice of the said FEDCOR TRADING CORPORATION in the amount aforementioned and in such other amount as may be awarded under the provisions of the Civil Code.

Contrary to law.^[2]

The information in Criminal Case No. Q-90-15799 is similarly worded as in Criminal Case No. Q-90-15798 except as to the date and number of the check.

Upon his arraignment, petitioner entered a plea of not guilty in each case.

At the trial on the merits, the prosecution presented Federico Santander, President of Fedcor Trading Corporation (hereafter FEDCOR), and Felix Mirano, signature verifier of the Escolta Branch of the Security Bank and Trust Company.

Federico Santander testified that on 28 July 1989, Corseno Bote, FEDCOR's Sales Manager, brought to FEDCOR petitioner Manuel Nagrampa (hereafter NAGRAMPAMP), General Manager of the Nagrampa Asphalt Plant in Montalban, Rizal. NAGRAMPAMP purchased a Yutani Poclain Backhoe Excavator Equipment for P200,000 from FEDCOR and paid in cash the down payment of P50,000. To cover the balance of P150,000, he issued Check No. 473477^[3] postdated 31 August 1989 and Check No. 473478^[4] postdated 30 September 1989 in the amount of P75,000 each. The checks were drawn against the Security Bank and Trust Company. Upon the assurance of FEDCOR's salesman that the checks were good, FEDCOR delivered to petitioner the equipment.^[5]

Santander further testified that FEDCOR presented the checks for payment on 22 February 1990; however, they were dishonored on the ground that petitioner's account with the drawee bank, Security Bank, had already been closed. In a letter^[6] dated 19 March 1990, sent through registered mail, FEDCOR demanded payment from petitioner; but the latter failed to pay. Hence, the above cases were filed against petitioner with the trial court.^[7] During his cross-examination, Santander denied that the equipment was returned to FEDCOR. Ronnie Bote, son of Corseno

Bote, was not an employee of FEDCOR but was merely its sales agent with no authority to receive returned equipment.^[8]

Felix Mirano, the second prosecution witness, testified that he had been a signature verifier of Security Bank for twelve years. His duty was to verify the signatures of the clients of the bank. He brought with him the signature card for Account No. 0110-4048-19, petitioner's account against which the subject checks were drawn. He identified the signatures appearing on Checks Nos. 473477 and 473478 to be those of the petitioner. When asked about the status of said account, he answered that the account had been closed in May 1985 yet.^[9]

For his part, petitioner testified that on 28 July 1989, he bought from Corseno Bote a backhoe and paid P50,000 cash, as evidenced by an acknowledgment receipt^[10] signed by Corseno Bote. In addition, he issued and handed to Corseno Bote two checks in the amount of P75,000 each, dated 31 August 1989^[11] and 30 September 1989.^[12] The agreement with Corseno Bote was that petitioner would replace the two checks with cash if the backhoe would be in good running condition. The backhoe was delivered at petitioner's jobsite on 29 July 1989. After five to seven days of use, the backhoe broke down. Such fact was reported to Ronnie Bote, and the backhoe was thus repaired. After one day of using it, the backhoe broke down again. Petitioner again reported the matter to Ronnie Bote, who told him that the equipment should be brought to the latter's office for repair. As evidence of the return of the equipment, petitioner presented a letter dated 3 October 1989^[13] addressed to Electrobus Consolidated, Inc., requesting the release of the backhoe to Ronnie Bote for repair, with the alleged signature^[14] of Ronnie Bote appearing at the bottom thereof to attest to his receipt of the equipment. After a week, petitioner demanded from Ronnie Bote the return of the backhoe, the P50,000 cash and the two postdated checks, but to no avail.^[15] On cross-examination, he admitted that during the pendency of the case he paid, upon the advice of his counsel, the amount of P15,000, which he handed to FEDCOR's counsel Atty. Orlando Paray.^[16]

On 30 September 1993, the trial court rendered a decision^[17] finding petitioner guilty of two counts of violation of the Bouncing Checks Law and sentencing him to suffer imprisonment for two years and pay FEDCOR P150,000, with legal interest thereon from 9 October 1990 up to the time of full payment.

Petitioner appealed the decision to the Court of Appeals. The appeal was docketed as CA-G.R. CR. No. 18082. Upon noticing that the 30 September 1993 Decision of the trial court did not resolve the issue of petitioner's liability for estafa, the Court of Appeals issued on 19 May 1998 a resolution^[18] ordering the return of the entire records of the case to the trial court for the latter to decide the estafa case against petitioner.

On 8 February 1999, the trial court rendered a decision^[19] finding petitioner guilty beyond reasonable doubt of estafa and sentencing him to suffer imprisonment of seven years and four months of *prision mayor* as minimum to twelve years and six months of *reclusion temporal* as maximum. As might be expected, petitioner also appealed said decision to the Court of Appeals.

On 21 July 2000, the Court of Appeals rendered a decision^[20] affirming in toto the decision of the trial court finding petitioner guilty of estafa and violations of the

Bouncing Checks Law. It also denied petitioner's motion for reconsideration of the decision.^[21] Hence, this petition.

Petitioner claims that he is not guilty of estafa because no damage was caused to FEDCOR, considering that the backhoe became unserviceable a few days after delivery and was eventually returned to FEDCOR through the latter's sales agent Ronnie Bote. He also asserts that he did not violate B.P. Blg. 22 either. The two checks issued by him were presented for payment only on 22 February 1990, or after more than five months from the date of the checks. Under Sections 1 and 2 of B.P. Blg. 22 FEDCOR, as payee, had the duty or obligation to encash or deposit the checks issued in its favor within ninety days from the date of issue. Since FEDCOR deposited the checks after this period, he cannot be faulted for their subsequent dishonor.

Alternatively, petitioner prays that in the event that his conviction for violations of B.P. Blg. 22 is sustained, the rulings in *Vaca v. Court of Appeals*^[22] and *Lim v. People*^[23] should be given retroactive effect in his favor so that only a fine may be imposed on him as penalty.

In arguing that petitioner's conviction for two counts of violation of B.P. Blg. 22 is correct, the Office of the Solicitor General relies heavily on the testimony of Felix Mirano that the account of petitioner had been closed way back in May 1985, or four years prior to the issuance of the subject checks to FEDCOR. The date when the checks were encashed or deposited is immaterial because there was no more existing bank account against which they were drawn, and their dishonor was therefore certain even if the checks were presented for payment within the 90-day period from their issuance. With respect to petitioner's plea to impose on him the penalty of fine in the event that his conviction is affirmed, the OSG maintains that the penalty of imprisonment is appropriate considering petitioner's act of issuing worthless checks which showed his culpable violation of B.P. Blg. 22.

Petitioner's argument that the element of damage to private complainant FEDCOR is lacking is disputed by the OSG by pointing out petitioner's failure to prove the return of the backhoe to FEDCOR. Ronnie Bote, the person to whom the backhoe was allegedly returned, was not presented as a witness to corroborate petitioner's testimony. But even granting *arguendo* that the backhoe was indeed received by Ronnie Bote, there is no showing that he acted for, and on behalf of, FEDCOR in doing so considering that he was not an employee of FEDCOR.

The petition is without merit.

Section 1 of B.P. *Blg.* 22 provides:

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 or 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.

Two distinct acts are punished under the above-quoted provision:

(1) The making or drawing and issuance of any check to apply on account or for value, knowing at the time of issue that the drawer does not have sufficient funds in, or credit with, the drawee bank; and

(2) The failure to keep sufficient funds or to maintain a credit to cover the full amount of the check if presented within a period of ninety days from the date appearing thereon, for which reason it is dishonored by the drawee bank.^[24]

In the first situation, the drawer knows of the insufficiency of funds to cover the check at the time of its issuance; while in the second situation, the drawer has sufficient funds at the time of issuance but fails to keep sufficient funds or maintain credit within ninety days from the date appearing on the check. The check involved in the first offense is worthless at the time of issuance, since the drawer has neither sufficient funds in, nor credit with, the drawee bank at the time; while that involved in the second offense is good when issued, as the drawer has sufficient funds in, or credit with, the drawee bank when issued. In both instances, the offense is consummated by the dishonor of the check for insufficiency of funds or credit.^[25]

It can be gleaned from the allegations in the information that petitioner is charged with the first type of offense under B.P. Blg. 22.

The elements of the first type of offense are as follows:

(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.

^[26]

Petitioner admitted that he issued the two postdated checks worth P75,000 each. He did not deny that the same were dishonored on the ground that the account from which they were to be drawn was already closed at the time the checks were presented for payment. Neither did he rebut the prosecution's evidence that the account against which he drew his two postdated checks had been closed in May 1985 yet, or more than four years prior to the drawing and delivery of the checks.