

THIRD DIVISION

[G.R. No. 140665, November 13, 2000]

**VICTOR TING "SENG DEE" AND EMILY CHAN-AZAJAR,
PETITIONERS, VS. COURT OF APPEALS AND PEOPLE OF THE
PHILIPPINES, RESPONDENTS.**

D E C I S I O N

MELO, J.:

Before us is a petition for certiorari under Rule 45 seeking the reversal of the February 12, 1999 decision of the Court of Appeals which affirmed that of the Regional Trial Court of the National Capital Judicial Region (Manila, Branch 45) finding petitioners guilty of seven (7) counts of violation of Batas Pambansa Blg.22.

Petitioners' version of the background events is as follows:

From 1991 to 1992, Juliet Ting "Chan Sioc Hiu" obtained loans, in the aggregate amount of P2,750,000.00, from private complainant Josefina K. Tagle for use in Juliet's furniture business. As payment thereof, Juliet issued eleven (11) post-dated checks which, upon maturity, were dishonored for reasons of "Closed Account" or "Drawn Against Insufficient Funds." Juliet was subsequently prosecuted for violation of Batas Pambansa Blg. 22.

Due to her financial difficulties, Juliet requested her husband Victor Ting "Seng Dee" and her sister Emily Chan-Azajar (petitioners herein) to take over her furniture business, including the obligations appurtenant thereto. Agreeing to Juliet's request, petitioners issued nineteen (19) checks in replacement of the eleven (11) checks earlier issued by Juliet. The planned take-over, however, never materialized since the Naga Hope Christian School, petitioner Emily Chan-Azajar's employer in Naga, refused to let her resign to attend to her sister's business. Since the planned take-over did not take place, petitioners requested Juliet to reassume her obligation to private complainant Tagle by replacing the checks they had previously issued to the latter. Thus, Juliet replaced the nineteen (19) checks issued by petitioners with twenty-three (23) Far East Bank checks in favor of Tagle. Petitioners then requested private complainant Tagle to return the nineteen (19) checks they had issued to her. Instead of returning the checks, Tagle deposited seven of the checks with MetroBank where they were dishonored for being "Drawn Against Insufficient Funds."

On the other hand, private complainant Tagle alleged that sometime in April 1993, petitioners obtained a loan of P950,000.00 from her, issuing several post-dated checks in payment thereof. When the checks were deposited by Tagle with MetroBank, they were dishonored for having been drawn against insufficient funds. Tagle alleged that despite verbal and written demands, petitioners failed to pay her the value of the dishonored checks.

Consequently, seven informations for violation of Batas Pambansa Blg. 22 were filed against petitioners. Said informations are similarly worded except with respect to the check number, the amount involved, and the date the check was issued. The information in Criminal Case No. 94-131945 (the other cases are Criminal Case No. 94-131946, Criminal Case No. 94-131947, Criminal Case No. 94-131948, Criminal Case No. 94-131949, Criminal Case No. 94-131950, and Criminal Case No. 94-131951) charged:

That sometime prior to May 27, 1993, in the City of Manila, Philippines, the said accused, conspiring and confederating together and mutually helping each other, did then and there wilfully, unlawfully and feloniously make or draw and issue to JOSEPHINE K. TAGLE, to apply on account or for value Producers Bank of the Philippines, Check No. 946072 dated May 27, 1993 payable to CASH in the amount of P250,000.00 said accused well knowing that at the time of issue they did not have sufficient funds in or credit with the drawee bank for payment of such check in full upon its presentment, which check when presented for payment within ninety (90) days from the date thereof, was subsequently dishonored by the drawee bank for Drawn Against Insufficient Funds and despite receipt of notice of such dishonor, said accused failed to pay said JOSEFINA K. TAGLE the amount of the check or to make arrangements for full payment of the same within five (5) banking days after receiving said notice.

(p. 2, Original Records.)

Criminal Cases No. 94-131945 to 94-131951 were consolidated and jointly tried. When arraigned, petitioners, assisted by counsel, pleaded not guilty. During trial, the prosecution presented only one witness, the private complainant, the testimony of Producer's Bank representative Ferdinand Lazo being dispensed with after counsel for petitioners admitted the dishonor of the checks subject matter of the action.

On March 16, 1995, the trial court found petitioners guilty of violating Batas Pambansa Blg. 22 in each of the seven cases, disposing as follows:

WHEREFORE, in view of the foregoing, accused VICTOR TING and EMILY CHAN AZAJAR are hereby found "GUILTY" beyond reasonable doubt of all the charges contained in Criminal Case Nos. 94-131945; 94-131946; 94-131947; 94-131948; 94-131949; 94-131950 and 94-131951 and for each count, they are hereby sentenced to suffer the penalty of one (1) year imprisonment; to pay Josefina K. Tagle the total amount of P950,000.00; and to pay the cost.

(p. 294, Rollo.)

Aggrieved, petitioners filed an appeal with the Court of Appeals which was docketed therein as C.A.-G.R. No. 18054. However, the appellate court, on February 12, 1999, affirmed. Petitioners' motion for reconsideration was, likewise, denied for lack of merit. Hence, the instant petition.

Petitioners claim that the Court of Appeals erred in affirming the decision of the trial court, given the absence of proof beyond reasonable doubt or in the presence of facts creating reasonable doubt.

The petition has merit.

Section 1 of Batas Pambansa Blg. 22, otherwise known as the Bouncing Checks Law, 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 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.

For a violation of Batas Pambansa Blg. 22 to be committed, the following elements must be present:

- (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 there are no 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 (Sycip, Jr. vs. CA, G.R. No. 125059, March 17, 2000).

An analysis of the evidence presented, however, shows that not all the aforementioned elements have been established by the prosecution beyond reasonable doubt.

That the seven checks in question were issued by petitioners is beyond dispute. Not only were the dishonored checks presented in court, but petitioners even admitted signing the checks and issuing them to private complainant. From the evidence on record, it is clear that petitioners signed and issued the seven checks in question.

That the checks were dishonored is also clearly established. Section 3 of Batas Pambansa Blg. 22 provides that "the introduction in evidence of any unpaid and dishonored check, having the drawee's refusal to pay stamped or written thereon, or attached thereto, with the reason therefor as aforesaid, shall be *prima facie* evidence of the making or issuance of said check, and the due presentment to the drawee for payment and the dishonor thereof, and that the same was properly dishonored for the reason written, stamped, or attached by the drawee on such dishonored check." In the instant case, the fact of the checks' dishonor is sufficiently shown by the return slips issued by MetroBank, the depository bank, stating that the checks had been returned for the reason "DAIF -- Drawn Against Insufficient Funds." Not only are these check return slips *prima facie* evidence that the drawee bank dishonored the checks, but the defense did not present any evidence to rebut these documents. In fact, counsel for petitioners even admitted the fact of the checks' dishonor, agreeing to dispense with the presentation of the bank representative who was supposed to prove the fact of dishonor of said checks (p. 162, Rollo.).

However, for liability to attach under Batas Pambansa Blg. 22, it is not enough that the prosecution establishes that a check was issued and that the same was subsequently dishonored. The prosecution must also prove the second element, that is, it must further show that the issuer, at the time of the check's issuance, had knowledge that he did not have enough funds or credit in the bank for payment thereof upon its presentment. Since the second element involves a state of mind which is difficult to verify, Section 2 of Batas Pambansa Blg. 22 creates a presumption *juris tantum* that the second element *prima facie* exists when the first and third elements of the offense are present (*Magno v. People*, 210 SCRA 471 [1992]). Section 2 provides:

Section 2. *Evidence of knowledge of insufficient funds.*-- The making, drawing, and issuance of a check payment of which is refused by the drawee because of insufficient funds or credit with such bank, when presented within ninety days from the date of the check, shall be *prima facie* evidence of knowledge of such insufficiency of funds or credit unless such maker or drawer pays the holder thereof the amount due thereon, or makes arrangements for payment in full by the drawee of such check within five (5) banking days after receiving notice that such check has not been paid by the drawee."

In truth, this Court declared in *King v. People* (G.R. No. 131540, December 2, 1999) that "the *prima facie* presumption arises when the check is issued. But the law also provides that the presumption does not arise when the issuer pays the amount of the check or makes arrangement for its payment 'within five banking days after receiving notice that such check has not been paid by the drawee.' Verily, BP 22 gives the accused an opportunity to satisfy the amount indicated in the check and thus avert prosecution... This opportunity, however, can be used only upon receipt by the accused of a notice of dishonor." Thus, the presumption that the issuer had