

THIRD DIVISION

[G.R. NO. 139292, December 05, 2000]

**JOSEPHINE DOMAGSANG, PETITIONER, VS. THE HONORABLE
COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES,
RESPONDENTS.**

D E C I S I O N

VITUG, J.:

Petitioner was convicted by the Regional Trial Court of Makati, Branch 63, of having violated *Batas Pambansa* ("B.P.") *Blg.* 22 (Anti-Bouncing Check Law), on eighteen (18) counts, and sentenced to "suffer the penalty of One (1) Year imprisonment for each count (eighteen [18] counts)." Petitioner was likewise "ordered to pay the private complainant the amount of P573,800.00."^[1] The judgment, when appealed to the Court of Appeals (CA-G.R. CR No. 18497), was affirmed *in toto* by the appellate court.

It would appear that petitioner approached complainant Ignacio Garcia, an Assistant Vice President of METROBANK, to ask for financial assistance. Garcia accommodated petitioner and gave the latter a loan in the sum of P573,800.00. In exchange, petitioner issued and delivered to the complainant 18 postdated checks for the repayment of the loan. When the checks were, in time, deposited, the instruments were all dishonored by the drawee bank for this reason: "Account closed." The complainant demanded payment allegedly by calling up petitioner at her office. Failing to receive any payment for the value of the dishonored checks, the complainant referred the matter to his lawyer who supposedly wrote petitioner a letter of demand but that the latter ignored the demand.

On 08 May 1992, Criminal Case No. 92-4465 was lodged against petitioner before the Regional Trial Court ("RTC") of Makati. The Information read:

"That on or about the 24th day of June, 1991, in the Municipality of Makati, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously make out, draw and issue to complainant Ignacio H. Garcia, Jr., to apply on account or for value the dated check/described below:

"Check No.	:	149900
Drawn Against	:	Traders Royal Bank
In the Amount of	:	P50,000.00
Dated/Postdated	:	June 24, 1991
Payable to	:	Ignacio H. Garcia, Jr.

"said accused well knowing that at the time of issue thereof, she did not have sufficient funds in or credit with the drawee bank for the payment in full of the face amount of such check 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 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 within five (5) banking days after receiving notice.

"CONTRARY TO LAW."^[2]

Subsequent Informations, docketed Criminal Cases No. 92-4466 to No. 92-4482, inclusive, similarly worded as in Criminal Case No. 92-4465 except as to the dates, the number, and the amounts of the checks hereunder itemized -

<u>"Check Number</u>	<u>Dated/Postdated</u>	<u>Amount</u>
TRB - No. 161181	July 18, 1991	P6,000.00
TRB - No. 149906	July 24, 1991	3,000.00
No. 182074	July 30, 1991	29,700.00
No. 182084	August 30, 1991	9,300.00
No. 182078	September 15, 1991	6,000.00
No. 161183	September 18, 1991	6,000.00
No. 161177	September 18, 1991	100,000.00
No. 182085	September 30, 1991	9,000.00
No. 182079	October 15, 1991	6,000.00
No. 182086	October 30, 1991	10,500.00
No. 182080	November 15, 1991	6,000.00
No. 182087	November 30, 1991	11,400.00
No. 182081	December 15, 1991	6,000.00
No. 182082	December 15, 1991	100,000.00
No. 182088	December 30, 1991	12,000.00
No. 182089	December 30, 1991	100,000.00
No. 182090	December 30, 1991	100,000.00" ^[3]

were also filed against petitioner. The cases were later consolidated and jointly tried following the "not guilty" plea of petitioner when arraigned on 02 November 1992.

On 07 September 1993, petitioner filed a demurrer to the evidence, with leave of court, premised on the absence of a demand letter and that the checks were not issued as payment but as evidence of indebtedness of petitioner or as collaterals of the loans obtained by petitioner. Opposed by the prosecution, the demurrer was denied by the trial court. In the hearing of 17 February 1994, petitioner, through counsel, waived her right to present evidence in her defense. Relying solely then on the evidence submitted by the prosecution, the lower court rendered judgment convicting petitioner. The decision, as heretofore stated, was affirmed by the Court of Appeals in its decision of 15 February 1999. Reconsideration was also denied in the resolution, dated 09 July 1999, of the appellate court.

Hence, the instant petition where petitioner raised the following issues for resolution by the Court -

"1. Whether or not an alleged verbal demand to pay sufficient to convict herein petitioner for the crime of violation of B.P. Blg. 22;

"2. Whether or not the Honorable Court of Appeals committed reversible error when it affirmed the judgment of conviction rendered by the trial court, on the ground that a written notice of dishonor is not necessary in a prosecution for violation of B.P. Blg. 22, contrary to the pronouncement of the Supreme Court in the case of Lao vs. Court of Appeals, 274 SCRA 572; (and)

"3. Whether or not the Honorable Court of Appeals erred in considering the alleged written demand letter, despite failure of the prosecution to formally offer the same."^[4]

The pertinent provisions of B.P. Blg. 22 "Bouncing Checks Law," provide:

"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 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.

"SEC. 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 in or credit with such bank, when presented within ninety (90) 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.

"SEC. 3. *Duty of drawee; rules of evidence.* - It shall be the duty of the drawee of any check, when refusing to pay the same to the holder thereof upon presentment, to cause to be written, printed or stamped in plain language thereon, or attached thereto, the reason for drawee's dishonor or refusal to pay the same: *Provided*, That where there are no sufficient funds in or credit with such drawee bank, such fact shall always be explicitly stated in the notice of dishonor or refusal. In all prosecutions under this Act, 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.

"Notwithstanding receipt of an order to stop payment, the drawee shall state in the notice that there were no sufficient funds in or credit with such bank for the payment in full of such check, if such be the fact."^[5]
(Underscoring supplied.)

The law enumerates the elements of the crime to be (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 the 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.^[6]

There is deemed to be a *prima facie* evidence of knowledge on the part of the maker, drawer or issuer of insufficiency of funds in or credit with the drawee bank of the check issued if the dishonored check is presented within 90 days from the date of the check and the maker or drawer fails to pay thereon or to make arrangement with the drawee bank for that purpose. The statute has created the *prima facie* presumption evidently because "knowledge" which involves a state of mind would be difficult to establish.^[7] The presumption does not hold, however, when the maker, drawer or issuer of the check pays the holder thereof the amount due thereon or makes arrangement for payment in full by the drawee bank of such check **within 5 banking days after receiving notice that such check has not been paid by the drawee bank.**

In *Lao vs. Court of Appeals*,^[8] this Court explained:

"x x x. Section 2 of B.P. Blg. 22 clearly provides that this presumption arises not from the mere fact of drawing, making and issuing a bum check; there must also be a showing that, within five banking days *from*