

SECOND DIVISION

[G.R. No. 131714, November 16, 1998]

**EDUARDO R. VACA AND FERNANDO NIETO, PETITIONERS, VS.
COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES,
RESPONDENTS.**

D E C I S I O N

MENDOZA, J.:

Petitioners seek a review of the decision, dated October 25, 1996,^[1] and the resolution, dated December 2, 1997,^[2] of the Court of Appeals, affirming their conviction by the Regional Trial Court of Quezon City (Branch 100) for violation of B.P. Blg. 22, otherwise known as the "Bouncing Checks Law."

The facts are as follows:

Petitioner Eduardo R. Vaca is the president and owner of Ervine International, Inc. (Ervine), which is engaged in the manufacture and sale of refrigeration equipment, while his son-in-law, petitioner Fernando Nieto, is the firm's purchasing manager. On March 10, 1988, petitioners issued a check for P10,000.00 to the General Agency for Reconnaissance, Detection, and Security, Inc. (GARDS) in partial payment of the security services rendered by GARDS to Ervine. The check was drawn on the China Banking Corporation (CBC). When deposited in the Philippine Commercial International Bank (PCIBank) branch at Shaw Boulevard, Mandaluyong, the check was dishonored for insufficiency of funds.

On March 29, 1988, GARDS wrote Ervine a letter in which it demanded payment in cash of the amount of the check within seven days from notice. The letter was received by Ervine on the same day, but petitioners did not pay within the time given.

On April 13, 1988, petitioners issued a check for P19,860.16 to GARDS. The check was drawn on the Associated Bank. The voucher accompanying it stated that the check was to replace the dishonored check, the P9,860.16 balance being partial payment for Ervine's outstanding account. The check and the voucher were received by a GARDS messenger, Nolan C. Pena, on April 15, 1988, but GARDS did not return the dishonored check.

On April 14, 1988, GARDS Operations Manager Jovito C. Cabusara filed a criminal complaint against petitioners for violation of B.P. Blg. 22. After preliminary investigation, an information was filed in the Regional Trial Court of Quezon City (Branch 97). However, the case was dismissed by the court on May 11, 1989, upon motion of the prosecution, on the ground that Ervine had already paid the amount of the check.

On September 18, 1989, GARDS, through its Acting Operations Manager Eduardo B. Alindaya, filed another complaint for violation of B.P. Blg. 22 against petitioners. This resulted in the filing of an information against petitioners in the Regional Trial Court of Quezon City (Branch 100). After trial, petitioners were found guilty of the charge and each was sentenced to suffer one (1) year imprisonment and to pay a fine of P10,000.00 and the costs.

On appeal, the Court of Appeals affirmed the decision. It subsequently denied petitioners' motion for reconsideration. Hence, this petition. Petitioners contend:

A. Respondent Court gravely erred in not holding that the prosecution failed to prove petitioners' guilt beyond reasonable doubt.

B. Respondent Court gravely erred in basing conviction on the alleged weakness of the evidence of the defense rather than on the strength of the evidence of the prosecution.

C. Respondent Court erred in not acquitting petitioners on grounds of "mistake of fact" and "lack of knowledge."

Petitioners pray that the case against them be dismissed or, in the alternative, that the decision of the trial court be modified by sentencing each to an increased fine but without imprisonment.

By supplemental petition, dated January 29, 1998, petitioners submitted an affidavit of desistance executed by GARDS president Dominador R. Santiago which states that the case arose from a mere "accounting difference" between petitioners and GARDS, that the latter had not really suffered any damage as a result of the issuance of the check in question and, that GARDS was no longer interested in prosecuting the case.

On May 28, 1998, petitioners filed another supplemental petition, this time invoking the recent decision in *Lao v. Court of Appeals*,^[3] in which this Court reversed a conviction for violation of B.P. Blg. 22 upon a showing that the accused had no knowledge of the insufficiency of funds.

The Solicitor General opposes the appeal. He contends that the facts of *Lao v. Court of Appeals* are different from those of the case at bar and that the affidavit of desistance of Dominador Santiago is of no moment, such affidavit having been made only after petitioners' conviction.

After due review of the decision in this case, we find that petitioners' conviction for violation of B.P. Blg. 22 is well founded.

First. The elements of the offense penalized under B.P. Blg. 22 are: (1) making, drawing, and issuance of any check to apply to 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.^[4] The