

SECOND DIVISION

[G.R. No. 99032, March 26, 1997]

**RICARDO A. LLAMADO, PETITIONER, VS. COURT OF APPEALS
AND PEOPLE OF THE PHILIPPINES, RESPONDENT.**

D E C I S I O N

TORRES, JR., J.:

Before us is a petition to review the decision^[1] of the Court of Appeals which affirmed the decision of the Regional Trial Court of Manila in Criminal Case No. 85-38653 convicting petitioner of Violation of Batas Pambansa Blg. 22, otherwise known as the Bouncing Checks Law, and sentencing him to suffer imprisonment of one (1) year of prision correccional and to pay a fine of P200,000.00 with subsidiary imprisonment in case of insolvency, and to reimburse Leon Gaw the amount of P186,500.00 plus the costs of suit.

The facts of the case, as found by the Court of Appeals, are as follows:

"Accused-appellant, Ricardo Llamado, together with Jacinto Pascual, was charged with violation of Batas Pambansa Blg. 22 and pleaded "not guilty" of the crime charged.

"Accused Jacinto Pascual remained at large. Thus trial on the merits was conducted against accused-appellant, Ricardo Llamado, only.

"Accused Ricardo Llamado and his co-accused Jacinto Pascual were the Treasurer and President, respectively, of the Pan Asia Finance Corporation.

"As found by the trial court, private complainant, Leon Gaw, delivered to accused the amount of P180,000.00, with the assurance of Aida Tan, the secretary of the accused in the corporation, that it will be repaid on 4 November 1983, plus interests thereon at 12% plus a share in the profits of the corporation, if any.

"Upon delivery of the money, accused Ricardo Llamado took it and placed it inside a deposit box. Accused Jacinto Pascual and Ricardo Llamado signed Philippine Trust Company Check No. 047809, postdated 4 November 1983, in the amount of P186,500.00 in the presence of private complainant.

"The aforesaid check was issued in payment of the cash money delivered to the accused by private complainant, plus interests thereon for sixty (60) days in the amount of P6,500.00.

"On 4 November 1983, private complainant deposited the check in his current account with the Equitable Banking Corporation which later informed the complainant that said check was dishonored by the drawee bank because payment was stopped, and that the check was drawn against insufficient funds. Private complainant was also notified by the Equitable Banking Corporation that his current account was debited for the amount of P186,500.00 because of the dishonor of the said check.

"Private complainant returned to Aida Tan to inform her of the dishonor of the check. Aida Tan received the check from private complainant with the assurance that she will have said check changed with cash. However, upon his return to Aida Tan, the latter informed him that she had nothing to do with the check.

"Thereupon, private complainant went to accused Ricardo Llamado on 11 November 1983 to inform him of the dishonor of the check. Accused offered in writing to pay private complainant a portion of the amount equivalent to 10% thereof on 14 or 15 November 1983, and the balance to be rolled over for a period of ninety (90) days. This offer was accepted by private complainant.

"Accused, however, failed to remit to private complainant the aforesaid 10% on or before 15 November 1983 and to roll over the balance of the money.

"Private complainant then demanded from the accused the payment of P186,500.00 but accused failed to pay and instead, accused offered to return to private complainant only 30% of his money which was refused by the latter. Thus, the filing of the complaint for violation of Batas Pambansa No. 22 against the accused."^[2]

On the other hand, petitioner's version of the relevant facts, is as follows:

"It was the practice in the corporation for petitioner to sign blank checks and leave them with Pascual so that Pascual could make disbursements and enter into transactions even in the absence of petitioner.

"One of the checks which petitioner signed in blank and gave to Pascual is the check in question, Exhibit "A."

"The check was later issued to private complainant, filled up with the amount P186,500.00 and date November 4, 1983.

"The check was dishonored on November 7, 1983 when private complainant presented it for payment because its payment had been stopped (Exhibits A-6 and A-7). However, there were also no sufficient funds in the account to cover the amount of the check.

"Private complainant went to see Aida Tan, the 'Secretary' of Pan-Asia Finance Corporation, about the dishonor of the check because 'she was the one who handled [sic] the check and gave it to me.' He returned the

check to Aida Tan who gave him a receipt for it (Exhibit C), and promised 'to return the cash money.' However, she did not do so. Instead, she returned the check to private complainant (pp. 9-11, tsn, January 6, 1986; p. 9, tsn, January 6, 1986).

"On November 11, 1983, private complainant entered into an agreement (Exhibit H) with petitioner whereby Pan-Asia Finance Corporation would pay private complainant 10% of the P186,500.00 by November 14, or 15, and the balance will be rolled over for 90 days (pp. 1-4, tsn, June 30, 1986). Private respondent was not however paid as agreed upon.

"In late 1985, petitioner was charged with violation of BP 22 under the following Information: xxx"^[3]

After trial on the merits, the trial court rendered judgment convicting the accused of violation of Batas Pambansa No. 22, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered finding the Accused Ricardo A. Llamado guilty of Violation of Batas Pambansa No. 22 and hereby sentences him to suffer imprisonment for a period of one (1) year of prision correccional and to pay a fine of P200,000.00, with subsidiary imprisonment in case of insolvency. The Accused is likewise condemned to reimburse Leon Gaw the aforesaid amount of P186,500.00 plus the costs of suit.

SO ORDERED."

On appeal, the Court of Appeals affirmed the trial court's decision.

In this petition, petitioner alleges that:

1. respondent Court of Appeals erred because it convicted petitioner of the charge of violation of Batas Pambansa Blg. 22 although the check was only a contingent payment for investment which had not been proven to be successful, thus the check was not issued "to apply on account or for value" within the contemplation of the batas;

2. respondent Court of Appeals erred because it convicted petitioner of the charge for merely signing the check in question without being actually involved in the transaction for which the check was issued, in disregard of the pronouncement of this Court in *Dingle vs. IAC*, 148 SCRA 595;

3. respondent Court of Appeals erred because it refused to apply the "novation theory" recognized by this Court in *Ong v. Court of Appeals*, 124 SCRA 578, and *Guingona, Jr. v. City Fiscal of Manila*, 128 SCRA 577, despite admission by private complainant that before the charge was filed in court or even the prosecutor he had entered into a new agreement with petitioner supplanting the check in question;

4. respondent Court of Appeals erred because it held petitioner personally liable for the amount of the check in question, although it was