

## FOURTH DIVISION

[ CA-G.R. CR. NO. 35910, March 09, 2015 ]

**ERLINDA QUE, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,  
RESPONDENT.**

### D E C I S I O N

**BALTAZAR-PADILLA, J.:**

This is a petition for review under Rule 42 of the Rules of Court assailing the Decision<sup>[1]</sup> dated June 23, 2013 of the Regional Trial Court (RTC) of the City of Vigan, Ilocos Sur, Branch 20, dismissing petitioner's appeal and affirming the Decision<sup>[2]</sup> rendered by the Municipal Trial Court in Cities (MTCC) of Vigan, Ilocos Sur dated September 28, 2012 finding petitioner guilty beyond reasonable doubt of Violation of B.P. Blg. 22.

### FACTS

**Erlinda Navarro (Navarro)** is the owner of **Linda's Department Store (Linda's)**, a business establishment selling groceries, kitchen wares, RTW, footwear and others.

**Erlinda Que (Que)** is a regular client of Linda's. Sometime in 2002 until 2003, Que purchased several items from Linda's and paid for the same through several checks, to wit:

"Drawee Bank	Check Number	Date	Amount
1. Bank of Commerce	0000001609	3-9-2003	P 53,270.00
2. Bank of Commerce	0000001612	3-18-2003	P 82,460.00
3. Bank of Commerce	0000001619	3-22-2003	P 75,240.00
4. Bank of Commerce	0000001651	3-8-2003	P 27,635.00
5. Bank of Commerce	0000001652	3-11-2003	P 37,500.00
6. Bank of Commerce	0000001659	3-12-2003	P280,000.00
7. Bank of Commerce	0000001690	3-19-2003	P150,000.00
8. Bank of Commerce	0000001700	3-8-2003	P 70,000.00
9. Maybank	4431575	3-15-2003	P 50,000.00
10. Maybank	4431576	3-30-2003	P 50,000.00
11. Maybank	4431581	3-14-2003	P 50,000.00
12. Maybank	4431582	3-31-2003	P 50,000.00
13. Maybank	4431648	3-9-2003	P160,000.00
14. 1 <sup>st</sup> E Bank	0004188	3-30-2003	P100,000.00
15. 1 <sup>st</sup> E Bank	0004189	4-1-2003	P100,000.00
16. Equitable PCI Bank	0126049	3-20-2003	P 83,150.00

17. Equitable PCI Bank	0126050 3-9-2003	P 93,250.00
18. Equitable PCI Bank	0106448	P
		80,000.00"

However, upon presentment, all of the issued checks were dishonored for being drawn against a closed account.

Navarro orally notified Que about the bounced checks and the latter answered that she would pay Navarro once her properties are sold and her customers pay her. When Que failed to make good of the checks after her conversation with Navarro, the latter, through her counsel, sent a demand letter to Que dated December 20, 2005.<sup>[3]</sup>

Despite the demands, Que still failed to pay her debt, thus, Navarro filed eighteen criminal complaints for Violation of Batas Pambansa Blg. 22 (**BP 22**) against Que docketed as Criminal Cases Nos. 13751, 13752, 13753, 13754, 13755 13756, 13757, 13758, 13759, 13760, 13761, 13762, 13763, 13764, 13765, 13766, 13767 and 13768 with the Municipal Trial Court (MTC) of Vigan, Ilocos Sur and eighteen criminal complaints for Estafa with the Regional Trial Court (RTC) of Vigan, Ilocos Sur, Br. 21.

The accusatory portion of the information in Criminal Case No. 13751 reads as follows:

"That on or about the 9th day of March, 2003, in the City of Vigan, Province of Ilocos Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously make, issue and deliver to Erlinda Navarro for value, May Bank Vigan Branch Check No. 4431648 in the amount of ONE HUNDRED SIXTY THOUSAND PESOS ([P]160,000.00) DATED March 9, 2003 as payment of her obligation from Erlinda Navarro, the said accused, knowing fully well that at the time she issued and delivered the above-mentioned check she did not nor had deposited sufficient funds in or credit with the drawee bank for payment of such check in full upon presentment, as she did fail in her promise to deposit in advance sufficient funds therefor, such that when said check was presented for payment, said check was dishonored and returned with the notation "ACCOUNT CLOSED", to the damage and prejudice of said Erlinda Navarro in the said amount of P160,000.00.

Contrary to Law."

The informations in Criminal Cases No. 13752, 13753, 13754, 13755 13756, 13757, 13758, 13759, 13760, 13761, 13762, 13763, 13764, 13765, 13766, 13767 and 13768 are similarly worded as in Criminal Case No. 13751 except as to the dates of Violation of B.P. Blg. 22, check numbers and the amounts thereof.

The eighteen informations were consolidated by the MTCC.

Thereafter, joint trial ensued.

On December 9, 2011, the RTC of Vigan, Ilocos Sur, Br. 21 decided the Estafa cases

in favor of Que, acquitting her of all the charges but finding her civilly liable for the total amount of the bounced checks.

On September 28, 2012, the MTCC rendered its Consolidated Decision<sup>[4]</sup> finding Que guilty of Violation of BP 22 in Criminal Cases No. 13751- 13767 but acquitting her in Criminal Case No. 13768 for failure of the prosecution to present Equitable PCI Bank Check No. 0106448, the subject bounced check, the fallo of which states:

“WHEREFORE, premises considered, judgment is rendered finding accused ERLINDA GARCIA-QUE, as follows:

(1) **Guilty** beyond reasonable doubt for seventeen (17) counts of violation of Section 1 of B.P. Blg. 22, otherwise known as the Bouncing Check Law, under above-captioned Criminal Case Nos. 13751 to 13767, with the aggravating circumstance of abuse of trust and confidence appreciated against her for every violation without offsetting mitigating circumstance imposes upon her to pay a fine equivalent to the amount of each check in the aggregate amount of ONE MILLION FOUR HUNDRED NINETY TWO THOUSAND and FIVE HUNDRED FIVE PESOS (P1,492,505.00) subject to subsidiary imprisonment in case of non-payment and to pay unto the private complainant ERLINDA RECLUSDO-NAVARRO, moral damages of P20,000.00 and exemplary damages of P20,000.00 for every violation or case in the total of SIX HUNDRED EIGHTY THOUSAND PEOS (P680,000.00) and the P21,015.00 representing filing fees and other fees; and

(2) **Not Guilty** under Criminal Case No. 13768 and the case is dismissed for lack of proof beyond reasonable doubt.

The costs of suit to be paid by the Accused.

SO ORDERED.”

Aggrieved, Que appealed from the said Decision. On July 23, 2013, the RTC affirmed the MTCC Decision but deleted the award of damages, the dispositive part of which states:

“WHEREFORE, the Consolidates Decision of the MTCC in these cases finding the accused Erlinda Que GUILTY beyond reasonable doubt for seventeen (17) counts of violation of Section 1 of B.P. 22 is AFFIRMED. The awards, however, of moral and exemplary damages are hereby DELETED.

SO ORDERED.”<sup>[5]</sup>

Hence, this further appeal by way of petition for review.

### **ISSUES**

Que interposes the following grounds for Our consideration, to wit:

**1. The Honorable Regional Trial Court as an appellate court erred in not dismissing the case by failing to appreciate that the 3<sup>rd</sup>**

**element of the crime charged of violation of Batas Pambasa Bilang 22 was not present.**

**2. The Honorable Regional Trial Court as an appellate court erred in not dismissing the case by failing to appreciate the absence of a notice of dishonor which is a jurisdictional requirement in the crime of violation of Batasan Pambansa Bilang 22.**

### **RULING**

The petition is impressed with merit.

Section 1 of Batas Pambansa Bilang 22 states:

“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 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 person to be found guilty of Violation of BP 22, the prosecution must prove the following:

“1) Making, drawing, and issuance of any check to apply on 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.”

In this case, there is no argument as to the presence of the first and third elements. The defense raised by Que is that the second element of the charge is lacking.

In ***Campos vs. People of the Philippines***,<sup>[7]</sup> the Supreme Court reiterated on how the second element for violation of BP 22 can be proven by the prosecution, thus ---

“Considering that the second element involves a state of mind which is difficult to establish, Section 2 of B.P. 22 creates a presumption of knowledge of insufficiency of funds, as it reads:

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 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.”

For this presumption to arise, the prosecution must prove the following: (a) the check is presented within ninety (90) days from the date of the check; (b) the drawer or maker of the check receives notice that such check has not been paid by the drawee; and (c) the drawer or maker of the check fails to pay the holder of the check the amount due thereon, or make arrangements for payment in full within five (5) banking days after receiving notice that such check has not been paid by the drawee. In other words, the presumption is brought into existence only after it is proved that the issuer had received a notice of dishonor and that within five days from receipt thereof, he failed to pay the amount of the check or to make arrangements for its payment. The presumption or prima facie evidence as provided in this section cannot arise, if such notice of nonpayment by the drawee bank is not sent to the maker or drawer, or if there is no proof as to when such notice was received by the drawer, since there would simply be no way of reckoning the crucial 5-day period. A notice of dishonor received by the maker or drawer of the check is thus indispensable before a conviction can ensue.<sup>[8]</sup>

In deciding that the presence of the second element was proven by the prosecution, the RTC, in upholding the MTCC, ratiocinated in this wise:

“xxx The prosecution presented a Demand Letter addressed to the accused in her given residence (Exh. F), a Registry Return Receipt (Exh. F-1) and a Registry Return Card (Exh. F-2) with a signature appearing at the space for the addressee. To the mind of the court, this is sufficient proof of service of Notice of Dishonor, in the absence of proof to the contrary. In other words, this documentary evidence had confirmed the positive declaration of the complainant that her lawyer had sent demand letter to the accused. Also, the complainant had earlier personally talked to the accused for the payment of the bounced checks. This clear and standing testimony of the complainant remained unrefuted even when the accused took the witness stand. Meaning, the accused never denied