

EIGHTEENTH DIVISION

[CA-G.R. CR. NO. 02262, August 29, 2014]

**PACIFICO T. BRANZUELA, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

INGLES, G. T., J.:

THE CASE

Before this court is a joint petition for review under Rule 42 seeking the reversal of the Joint Judgment^[1] dated 29 May 2009 of the Regional Trial Court, 7th Judicial Region, Branch 1, City of Tagbilaran in Crim. Case Nos. 14058-14075, dismissing the appeal of the petitioner, Pacifico T. Branzuela, and accordingly, affirming the MTCC's judgment^[2] dated 18 July 2008 finding him guilty of eighteen (18) counts of violation of Batas Pambansa Blg. 22, otherwise known as the Bouncing Check Law.

THE FACTUAL ANTECEDENTS

On 12 July 2006, City Prosecutor Bibiana Z. Bautista filed against the petitioner eighteen (18) separate informations,^[3] which are identically worded, except for the check number, the amount and the date, as follows:

"That on or about the 24th day of May, 2005 in the City of Tagbilaran, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, knowing fully well that he did not have sufficient funds deposited with the bank, did, then and there, willfully, unlawfully, and feloniously make out and issue Check No. 0108311 dated May 24, 2005 in the amount of FIFTEEN THOUSAND EIGHT HUNDRED TWELVE PESOS (P15,812.00), Philippine Currency, drawn against Pilipino Rural Bank (PRBank), Tagbilaran City Branch and pay to the order of Bohol People's Lumber Corp. and thereafter, did then and there, willfully, unlawfully and feloniously pass on, give and deliver the said check to Engr. Albert M. Uy in payment of a certain obligation; however, upon presentment of the check for encashment or payment at its drawee bank within a period ninety (90) days from the date appearing thereon, the same was dishonored and refused payment for the reason "DRAWN AGAINST INSUFFICIENT FUNDS" and the accused neither paid nor made arrangement with the drawee bank within five (5) banking days from receipt of a written notice of non-payment, and despite demand to redeem the said check, accused has failed and refused and still fails and refuses to do so, to the damage and prejudice of the said Albert M. Uy, in

the amount to be proved during the trial of the case.

Acts committed contrary to the provisions of Batas Pambansa Bilang 22.”

Hereunder are the details in the seventeen (17) Informations filed against the petitioner, to wit:

Check No.	Date	Value
0109743	May 27, 2005	P19,247.00
0109742	May 31, 2005	P19,545.00
0110506	June 3, 2005	P 7,560.00
0109719	June 4, 2005	P23,320.00
0109714	June 11, 2005	P21,350.00
0110523	June 17, 2005	P12,794.00
0111469	June 15, 2005	P 9,744.00
0110167	June 18, 2005	P 8,735.00
0110504	July 4, 2005	P14,326.00
0110515	June 30, 2005	P16,892.00
0110538	June 25, 2005	P17,775.00
0110505	June 24, 2005	P11,505.00
0110152	June 21, 2005	P16,015.00
0111493	July 8, 2005	P11,916.00
0111466	July 10, 2005	P 8,496.00
0111485	July 11, 2005	P11,270.00
0111465	July 15, 2005	P 9,374.00

When arraigned, the petitioner pleaded not guilty. Records will show that the prosecution presented the testimony of the private complainant and Exhibits “A” to “U”, with submarkings; while the defense offered the testimony of the petitioner and Exhibits “1” and “2”, with submarkings.

As culled from the judgment of the Municipal Trial Court in Cities (MTCC), the facts of the case are as follow:

“Prosecution's evidence

Engr. Albert Uy, Manager of Bohol People's Lumber Corporation located along M. Parras St., City of Tagbilaran, declared that he knew accused Pacifico Branzuela having been one of their clients/customers. On several occasions, accused purchased on credit various construction materials from Bohol People's Lumber Corporation payable on a fixed and certain period of time and he issued the eighteen (18) checks subject matter of these cases (Exhs. “D” thru “U”) in payment of his obligation, vouching that the said checks were good and sufficiently funded.

Complainant presented the checks to the drawee bank for payment on

their due dates but the same were dishonored on the ground of DAIF (drawn against insufficient funds) or Account Closed as shown in the Check Return Advice (Exhs. "D-1" thru "U-1"). He personally informed the accused that his checks were dishonored. A demand letter advising accused of the dishonor of the checks was sent by his counsel to the accused (Exh. "C") by registered mail as shown by Registry Receipt No. 4447 (Exh. "C-1") and the same was received by someone whose signature was not legible per Registry Return Receipt (Exh. "C-2").

Weeks after the demand letter was sent to accused he came to complainant's office to settle his obligation. But despite repeated demands made, accused failed to and still fails to redeem the checks to the damage and prejudice of the complainant."

"Defense's Evidence

Accused maintained that he issued the checks subject matter of these cases to the Bohol People's Lumber Corporation only as an evidence of indebtedness and in compliance with the requirements of said corporation for purchase on credit. Their agreement was that the checks would not be presented or deposited to the bank for payment but they shall be replaced by the accused with cash as the checks were not funded with the knowledge of the complainant. But despite such agreement, Bohol People's Lumber Corp. presented the checks to the bank for payment.

Accused claimed that no written notice was sent to him to give him the opportunity to make good the checks or make arrangement with the bank within five (5) banking days from receipt of the written notice. If ever there was a written notice of dishonor sent to him as claimed by private complainant Engr. Albert Uy, he did not receive the same. He only knew that the checks were dishonored when he received the Court Order directing him to submit counter-affidavit.

On cross-examination, accused admitted that he issued the subject checks in payment of the construction materials procured from Engr. Albert M. Uy. He had conversation with Engr. Uy regarding his checks which bounced and he undertook to pay obligation in installment. He made payment of P15,872.00."

Unfortunately, the MTCC did not lend credence to the to the defense put up by appellant.

THE RULING OF THE MUNICIPAL TRIAL COURT IN CITIES

"WHEREFORE, Judgment is hereby rendered as follows:

1. In Criminal Case No. 16630:

Finding accused Pacifico T. Branzuela guilty beyond reasonable doubt of Violation of Batas Pambansa Bilang 22, he is hereby sentenced to suffer the penalty of fine of FIFTEEN THOUSAND EIGHT HUNDRED TWELVE PESOS (P15,812.00) Philippine Currency, with subsidiary imprisonment in case of insolvency and to pay the private complainant Engr. Albert M. Uy the sum of FIFTEEN THOUSAND EIGHT HUNDRED TWELVE PESOS (P15,812.00) representing the value of PRBank Check No. 0108311 dated May 24, 2005 and to reimburse private complainant the filing fee expenses in this case in the total amount of ONE THOUSAND THREE HUNDRED NINETY[-]TWO PESOS AND 50/100 (P1,392.50) and to pay the costs;

x x x x

SO ORDERED."

In convicting the petitioner, the MTCC ratiocinated, that,

"The main issue to be resolved is whether or not accused can be held guilty of Violation of Batas Pambansa Bilang 22.

Section 1 of Batas Pambansa Bilang 22 provides for the elements of the crime to be committed, to wit:

- 1) the making, drawing and issuance of any check to apply to 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 reason ordered the bank to stop payment.

Based on the evidence presented, the Court finds that elements 1 and 3 are present. Accused issued the checks in question and the checks when presented for payment were dishonored for the reason "DRAWN AGAINST INSUFFICIENT FUNDS" or "ACCOUNT CLOSED". Whether the checks were issued as security or guaranty as claimed by accused is of no moment. Criminal liability attaches whether the checks were issued in payment of an obligation or to guarantee payment of that obligation. 'What the law punishes is the issuance of a bouncing check and not the purpose for which the check was issued, nor the terms and conditions of its issuance – the contention that the accused issued the checks merely to guarantee payment of her obligation is hardly a defense.' (*Caras vs. Court of Appeals and People of the*

As to element No. 2 of knowledge by the accused that at the time of issue of the subject checks he does not have sufficient funds or credit with the drawee bank for the payment of the checks in full upon its presentment. It is difficult for the prosecution to prove this element because it involves a state of the mind. However, Section 2 of Batas Pambansa Bilang 22 provides that:

'The making, drawing and issuance of a check payment of which is refused by the drawee bank 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.'

The evidence shows that the checks were presented for payment within ninety (90) days from the date of the checks. There was a demand letter dated May 4, 2006 signed by complainant's counsel, Atty. Florendo C. Columnas, addressed to the accused (Exh. "C") and sent by registered mail on May 11, 2006 as shown by registry receipt No. 4447 (Exh. "C-1") and was received by someone whose signature is not legible per registry return receipt (Exh. "C-2").

The accused, however, denied having received a demand letter or notice of dishonor.

The Court noted that the demand letter (Exh. "C") was sent to the accused at Purok 5, Barangay Mariveles, Dauis, Bohol. It is the same address used by the Court when furnishing copies of Orders and subpoena to the accused and one was received by one Jean Branzuela, one time by his wife and another was received by one whose signature resembles that of the accused. These means that communications for the accused at his given addresses were received.

The Court believes that the demand letter was received at the residence of the accused as it was delivered by the letter carrier at this given address and was received by one of the occupants thereat. The signature of the recipient even resembles two (2) major strokes of the accused's signature as appearing in the subject checks, in his counter-affidavit and in his signatures on the records when made to sign for his appearances on agreed court settings.

As held by the Supreme Court in a long line of cases, the gravamen of the offense is the act of making and issuing a worthless check or any check that is dishonored upon its presentment for payment (*Lim vs. People*, 340 SCRA 497). It is a crime classified as *malum prohibitum*. The mere act of issuing a worthless check, either as a deposit, as a guarantee, or even as an evidence of a pre-existing debt or as a mode of payment is covered by B.P 22.

The Court therefore finds the prosecution to have prove the guilt of the accused Pacifico T. Branzuela beyond reasonable doubt of Violation of Batas Pambansa Bilang