

## **EIGHTEENTH DIVISION**

**[ CA-G.R. CR. NO. 01623, August 29, 2014 ]**

**NELSON T. UY, PETITIONER, VS. PEOPLE OF THE PHILIPPINES  
RESPONDENT.**

### **D E C I S I O N**

**INGLES, G. T., J.:**

#### **The Case**

This is a petition for review filed by petitioner Nelson Uy of the Decision<sup>[1]</sup> dated September 24, 2010 of the Regional Trial Court, Seventh Judicial Region, Branch 11, Cebu City in Criminal Case Nos. CBU-83714 to CBU-83730 which affirmed with modification the Decision<sup>[2]</sup> dated October 5, 2007, of the Municipal Trial Court in Cities, Seventh Judicial Region, Cebu City, Branch 4, finding petitioner guilty beyond reasonable doubt of the crime of Violation of BP Blg. No. 22 on fifteen (15) counts while acquitting him in Crim. Case Nos. 117104-R and 117113-R.

#### **The Facts**

##### *Version of the Prosecution*

Petitioner Nelson T. Uy issued seventeen (17) checks and delivered them to Jose Dy at the latter's residence at President Roxas St. Kasambagan, Cebu City drawn against Equitable PCI Bank, Cebu Borromeo-Magallanes Branch.

On November 10, 2000, petitioner and his wife, Magdalena Uy, executed a promissory note undertaking to pay their indebtedness in the amount of P 470,000.00 with 4% interest per month.

Upon presenting said checks for payment, these were dishonored by the drawee bank for the reason that the checks were either drawn against insufficient funds or his account was closed as reflected in the subject checks and the debit memo check return slips.

After the dishonor of the checks, demand letters dated August 7, 2001 and March 25, 2002 were sent to petitioner and received by him as evidenced by a certification from the Philippine Postal Corporation and letter of accused-appellant's counsel, Atty. Roland Mangubat addressed to Jose Dy's lawyer, Atty. Joey Luis B. Wee acknowledging receipt of the two demand letters and at the same time informing the latter that petitioner had filed a petition for voluntary insolvency with the RTC, Cebu on August 13, 2001.

## **The Charge**

In the separate, similarly-worded Informations (except for the dates of commission, the check numbers, the dates and the amounts of said checks) filed against him, petitioner was charged with the crime of BP Blg. 22 on seventeen (17) counts, as follows:

“That sometime in the month of November 2000, and for sometime subsequent thereto, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, knowing at the time of issue of the check, he do (sic) have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, with deliberate intent, with intent of gain and of causing damage, did then and there issue, make or draw Equitable PCI Bank Check No. 0419704 dated February 10, 2001 in the amount of P50,000.00 payable to Jose Dy, which check was issued in payment of an obligation of said accused, but when said check was presented with the bank, the same was dishonored for reason “ACCOUNT CLOSED” and despite notice and demands made to redeem or make good such check, said accused failed and refused and up to the present time still fails and refuses to do so, to the damage and prejudice of Jose Uy in the amount of aforestated.

CONTRARY TO LAW.”

The particulars of the Criminal Case Nos. with the respective checks, are enumerated as follows:

<u>CRIM CASE NO.</u>	<u>CHECK NO.</u>	<u>DATE</u>	<u>AMOUNT</u>
Crim Case No. 117098-R	0419704	February 10, 2001	P 50,000.00
Crim Case No. 117099-R	0419706	April 10, 2001	P 50,000.00
Crim Case No. 117100-R	0419708	April 10, 2001	P 50,000.00
Crim Case No. 117101-R	0419710	May 10, 2001	P 50,000.00
Crim Case No. 117102-R	0419712	June 10, 2001	P 50,000.00
Crim Case No. 117103-R	0419704	July 10, 2001	P 50,000.00
Crim Case No. 117104-R	0419716	August 10, 2001	P 50,000.00
Crim Case No. 117105-R	0419718	September 10, 2001	P 50,000.00
Crim Case No. 117106-R	0419702	January 10, 2001	P 50,000.00
Crim Case No. 117107-R	0419705	February 10, 2001	P 14,306.31
Crim Case No. 117108-R	0419707	March 10, 2001	P 13,226.34
Crim Case No. 117109-R	0419709	April 10, 2001	P 10,799.73
Crim Case No. 117110-R	0419711	March 10, 2001	P 10,799.73
Crim Case No. 117111-R	0419713	June 10, 2011	P 6,799.83
Crim Case No. 117112-R	0419715	July 10, 2001	P 4,959.88
Crim Case No. 117113-R	0419717	August 10, 2001	P 2,893.26
Crim Case No. 117114-R	0419703	January 10, 2001	P 4,959.88

Subsequently, petitioner was arraigned and pleaded "not guilty" to the crimes charged.

Trial ensued. The prosecution and the defense presented their respective pieces of evidence.

#### *Version of the Defense*

Petitioner narrated that he is engaged in the business of selling surplus spare parts in Cebu City and had a long standing business relation with complainant Jose Dy who is in the business of rediscounting checks. He used to refer persons to Jose Dy who wanted to have their checks rediscounted which included a certain Richard Ellis.

Under an agreement with Jose Dy, petitioner would be entitled to a commission for every client he referred to the former. He was also required to issue his own checks to guarantee the check of the clients he referred to Jose Dy. Petitioner admitted issuing seventeen checks to replace a check in the amount of P 470,000.00 which he issued to the latter that bounced. Petitioner issued said checks after Jose Dy went to his office and asked him to execute a promissory note which included therein the interest. Petitioner's wife also signed the promissory note because Jose Dy threatened to file a case against him if he refused. He added that he did not receive the amount from Jose Dy when he issued the checks amounting to P 470,000.00, said checks being a guarantee for other checks in the same amount which were rediscounted by Jose Dy. Petitioner claimed that it was Mr. Ellis who received the amount. The total face value of the seventeen checks which he subsequently issued covered the amount of the check which was replaced plus the 4% monthly interest thereon.

Petitioner averred that all the checks he issued to Joel Dy bounced because Mr. Ellis's customer who issued the check did not give him funds therefor. Jose Dy and Mr. Ellis signed a contract in the office of Atty. Wee wherein Mr. Ellis agreed to replace all the checks which bounced in relation to the checks amounting to P 470,000.00 issued by a customer of Mr. Ellis. Said contract freed him from any liability for the 17 checks he issued which bounced. Further, petitioner posited that Jose Dy wanted to recover twice for the same transaction from him and Mr. Ellis when the complainant also filed cases against Mr. Ellis for the replacement checks which bounced.

Petitioner attested that he and his wife filed a petition for voluntary insolvency with the RTC wherein they enumerated the names of the creditors which included therein Jose Dy and a list of checks which he issued to the latter,

#### **THE MTCC Ruling**

On October 5, 2007, the Municipal Trial Court in Cities, Seventh Judicial Region, Cebu City, Branch 4, rendered a Decision,<sup>[3]</sup> convicting petitioner on fifteen (15) counts of Violation of BP No. 22, in Criminal Case Nos. CBU-83714 to CBU 83730, the dispositive portion of which reads:

"WHEREFORE, foregoing considered, accused is hereby declared GUILTY beyond reasonable doubt of violation of BP Blg. 22 on fifteen counts, all the elements of the offense having been established. He is hereby sentenced to FOUR (4) months of imprisonment for each count.

He is ACQUITTED in Crim Case Nos. 117104-R and 117113-R in view of the failure of the prosecution to establish the element of knowledge of the insufficiency of his funds or credit with the drawee bank.

Further, he is hereby ordered to pay the private complainant civil liability in the amount of the face value of the seventeen (17) checks subject hereof plus legal interest of 12%per annum from August 10, 2001 until fully paid and the amount of P5,870.00 for the legal fees paid by the complainant in filing these cases.

SO ORDERED."

Dismayed, petitioner filed an appeal with the Regional Trial Court, Seventh Judicial Region, Branch 11, Cebu City.

### **The RTC Ruling**

On September 24, 2010, the RTC, Branch 11, Cebu City denied the appeal and affirmed with modification the MTCC Decision, the pertinent portion of which is as follows:

"WHEREFORE, premises considered, the Decision of Municipal Trial Court in Cities, Branch 4, Cebu City, is affirmed with modification. The penalty of imprisonment is modified to penalty of fine in an amount equal to the amount of each check issued but in no case shall exceed the total amount of Php 200,000.00 with the commensurate subsidiary imprisonment in case of insolvency.

SO ORDERED."

Petitioner filed a Motion<sup>[4]</sup> for Reconsideration which was denied in an Order<sup>[5]</sup> dated February 16, 2011.

Aggrieved, petitioner now comes to this Court seeking a reversal of his conviction and assigning the following errors:

#### **I.**

"WHETHER OR NOT THE HONORABLE REGIONAL TRIAL COURT ERRED IN PARTIALLY AFFIRMING THE DECISION OF THE MUNICIPAL TRIAL COURT FINDING CONVICTING (SIC) ACCUSED-APPELLANT FOR VIOLATION OF

BP BLG 22;

II.

WHETHER OR NOT THE HONORABLE REGIONAL TRIAL COURT ERRED IN PARTIALLY AFFIRMING THE DECISION OF THE MUNICIPAL TRIAL COURT FINDING THE ACCUSED-APPELLANT CIVILLY LIABLE ON ALL COUNTS; and

III.

WHETHER OF NOT THE HONORABLE TRIAL COURT ERRED FOR ITS FAILURE TO DETERMINE NOVATION."

Petitioner's Contentions:

The RTC erred in convicting petitioner for violation of BP Blg No. 22 because he issued the subject checks merely as a guaranty and not as payment to the complainant; (2) the elements of BP Blg No. 22 were not sufficiently proven by the prosecution and (3) that novation had already absolved petitioner from criminal liability.

**THIS COURT'S RULING:**

I.

Elements of BP Blg 22  
established by the prosecution

Petitioner contends that his conviction is improper because not all the elements for violation of BP 22 were proven by the prosecution. First, petitioner asserts that the subject checks were not issued on account or for value but were issued to private complainant to replace a check he had issued to the latter worth P470,000.00. He stresses that he issued the checks only as a guaranty for a customer check of Richard Ellis. Petitioner posits that while it has been held in many cases that guaranty checks still fall within the contemplation of BP 22, these do not find application in the cases at bar. He explained that he issued the 17 checks after complainant came to his office and asked him to execute a promissory note that included the amount of the interest due. He had no choice but to sign the promissory note with his wife and thereafter issued the 17 checks upon threats of the complainant. Said total amount of the checks were to cover the amount of P470,000.00 plus 4% interest per month. Petitioner emphasizes that it was Richard Ellis who received the amount of P470,000.00 and not him. According to petitioner, these facts were not even rebutted by the prosecution.

Petitioner maintains that complainant knew all along that he never received the consideration and that the checks he issued were not for his account. But Jose Dy still encashed the check petitioner initially issued.

***We are not persuaded.***

In order to be liable for violation of BP Blg. 22, the following elements must be