

EIGHTEENTH DIVISION

[CA-G.R. CR. NO. 01725, September 12, 2014]

**LAURA REYES, 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 Laura Reyes of the Decision^[1] dated June 28, 2011, of the Regional Trial Court, Sixth Judicial Region, Branch 35, Iloilo City in Crim Case No.11-69840 which affirmed the Decision^[2] dated November 5, 2010 of the Municipal Trial Court in Cities (MTCC), Sixth Judicial Region, Branch 1, Iloilo City, in Crim Case No. 4500 finding accused guilty beyond reasonable doubt of the crime of Violation of BP Blg. 22.

The Facts

Prosecution's Version

Private complainant Chiu Han Sing Cembrano and petitioner Laura Reyes have known each other for twenty years. In the past, they have been engaged in many business transactions.

Sometime in April, 2003, petitioner together with a certain Botsoy Garganera went to the residence of Mr. Cembrano located at Ledesma Street, Iloilo City in order to exchange petitioner's International Exchange Bank Check No. 139604 dated May 2, 2003, with a face value of P300,000.00 for cash.

Because of petitioner's insistent pleas and the fact that Mr. Cembrano already knew her for a long time, the latter gave petitioner P300,000.00 cash. In exchange, petitioner signed the check in Mr. Cembrano's presence and gave it to him.

The said check was deposited by Mr. Cembrano with drawee bank Rizal Commercial Bank Corporation (RCBC). However, said check was returned with the remark stamped dishonored for the reason "DAIF" or Drawn Against Insufficient Funds.

Mr. Cembrano made oral demands from petitioner to pay the amount of the check. When the check remained unpaid despite verbal demands, Mr. Cembrano sent a formal demand letter dated September 15, 2004 to petitioner which was received by the latter. Despite repeated demands, petitioner failed to settle her obligation.

The Charge

In the Information^[3] filed against her, petitioner was charged with the crime of Violation of BP 22 as follows:

"That on or about the month of April, 2003, in the City of Iloilo, Philippines and within the jurisdiction of this Court, the above named accused Laura Reyes, did then and there willfully, unlawfully, and criminally make out and issue and draw in favor of Chin Han Sing Cembrano to apply on account or for value the check described below:

CHECK NO.	139604
DRAWN AGAINST	International Exchange Bank, Iloilo Branch
IN THE AMOUNT OF	P 300,000.00
POSTDATED	May 2, 2003
PAYABLE TO	Chin Han Sing Cembrano

said accused well knowing that at the time of issue thereof, he/she had no sufficient funds in or credit with said bank for payment of in full of the face amount of the check upon the presentment, which check when presented for payment was subsequently dishonored by the drawee bank for reason "Drawn Against Insufficient Fund" and despite notice of such dishonor, the accused failed to pay said payee the face amount of said check or to make arrangement for full payment within five (5) banking days after receiving notice.

CONTRARY TO LAW."

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

Petitioner's Version

Petitioner denied going to the house of Mr. Cembrano with Botsoy Garganera sometime in April, 2003. Petitioner claimed that around that time, Mr. Cembrano went to her store and demanded that a check be issued to him. Petitioner was not aware how her check came to be in the possession of Mr. Cembrano which was later dishonored.

According to petitioner, it came to her knowledge that she allegedly issued a check in favor of Mr. Cembrano only after a demand letter dated September 15, 2004 was sent to her by the latter. She was made to believe that said check was the one she issued to guaranty the loan of Botsoy Garganera.

Petitioner discovered that the International Exchange Bank Check No. 139604 did not bear her correct signature and was thus forged. She refused to pay the face

value of the amount of the check, insisting that the signature therein is not hers.

Trial ensued. The prosecution presented Chiu Han Sing Cembrano as witness. On the other hand, only petitioner testified in her defense.

THE MTCC Ruling

On November 5, 2010, the Municipal Trial Court in Cities (MTCC), Sixth Judicial Region, Branch 1, Iloilo City, rendered a Decision,^[4] convicting petitioner of the crime of BP 22, the dispositive portion of which reads:

"WHEREFORE, the court finds accused Laura Reyes GUILTY beyond reasonable doubt of the crime of Violation of Batas Pambansa Bilang 22 and hereby sentences her to pay the fine of Two Hundred Thousand Pesos (P200,000.00) with subsidiary imprisonment of SIX (6) MONTHS in case she fails to pay the same. The Court likewise sentences her to pay the private complainant Chiu Han Sing Cembrano the face value of the International Exchange Check No. 139604 in the amount of Three Hundred Thousand Pesos (P300,000.00) and the filing fees in the amount of P2,861.30.

SO ORDERED."

Dismayed, petitioner filed an appeal with the Regional Trial Court, Seventh Judicial Region, Branch 35, Iloilo City.

The RTC Ruling

On June 28, 2011, the RTC, Branch 35, Iloilo City rendered a Decision,^[5] denying petitioner's appeal and affirming the MTCC Decision, the pertinent portion of which is as follows:

xxx xxx xxx

"We agree with the disquisition made by the trial court. Its findings were duly supported by testimonial and documentary evidence and absent any clear error, the same is binding upon this court. It has made specific recital of facts to support its conclusion that accused-appellant issued the check. It also agrees with the trial court when it said that the accused-appellant should have presented her other checks which were dishonored to resolve whether her signature appearing in the check is indeed a forgery. The accused-appellant failed to refute the private complainant's positive and categorical testimony that the subject check was signed by her before him. Moreover, if indeed her signature was forged, accused-appellant could have filed a criminal case for falsification against the private complainant when she received the demand letter from him.

The accused-appellant maintains that the specimen signature and that in her counter-affidavit are glaringly different from the signature appearing in subject check that there is even no need to present or call on an expert witness to testify on these conspicuous difference to support her claim of forgery.

We are not persuaded.

As a rule, forgery cannot be presumed, it must be proved by clear, positive and convincing evidence. Mere allegation of forgery is not evidence and the burden of proof lies on the party alleging it. Here, the accused-appellant did not even present the evidence required by the trial court. We find that the evidence offered by the accused-appellant failed to discharge their burden.

WHEREFORE, all the foregoing considered, the Decision of the Municipal Trial Court in Cities, Branch I, Iloilo City dated November 5, 2010 in Criminal Case No. 4500 is affirmed in toto.

SO ORDERED.”

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

I.

“THE APPELLATE COURT ERRED IN AFFIRMING THE DECISION OF THE TRIAL COURT CONVICTING THE PETITIONER IN THE MIDST OF OVERWHELMING EVIDENCE TO PROVE THE SIGNATURE FOUND ON THE INTERNATIONAL EXCHANGE BANK NO. 139604 DOES NOT BELONG TO THE ACCUSED; and

II.

THE APPELLATE COURT ERRED IN RULING THAT AN EXPERT WITNESS IS NECESSARY IN ORDER TO DETERMINE WHETHER A SIGNATURE IS A FORGERY.”

THIS COURT'S RULING:

I.

Forgery

Petitioner admits that there is no dispute that International Exchange Bank Check No. 139604 was issued and subsequently dishonored. However, petitioner asserts that the signature embodied on the subject check is not hers and is therefore a forgery. Petitioner submitted several specimens of her genuine signature, ie. the signatures found in her counter-affidavit taken from the trial court's Notice of Hearing which she signed after every hearing, and the signature appearing in the verification of her Motion for Reconsideration. According to petitioner, the differences of the signature affixed on the subject check compared to her specimen signatures

are very apparent even to the naked eye. She submits then that there is no need to call an expert witness to testify as to the conspicuous difference in signatures. Petitioner further adds that as between complainant's testimony that he is familiar with her signature, and petitioner's exhibits showing that the signature on the subject check was not her genuine signature, the former's claim should be upheld.

Petitioner concedes that there is no need for an expert witness to determine if indeed the signature on the subject check is genuine for the reason that the variances in the signature appearing on the check compared to her specimen signatures are unmistakable and clear. Accordingly, petitioner asserts that she is entitled to acquittal because she did not issue the subject check in the first place.

Petitioner's argument is bereft of merit.

Section 23 of the Negotiable Instruments Law (NIL) provides:

"Sec. 23. FORGED SIGNATURE, EFFECT OF. — When a signature is forged or made without authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority.

A forged signature, whether it be that of the drawer or the payee, is wholly inoperative and no one can gain title to the instrument through it. A person whose signature to an instrument was forged was never a party and never consented to the contract which allegedly gave rise to such instrument."

Under this provision, a forged signature is a real or absolute defense, and a person whose signature on a negotiable instrument is forged is deemed to have never become a party thereto and to have never consented to the contract that allegedly gave rise to it. ^[6]

Too, in ***Associated Bank vs Court of Appeals***,^[7] the Supreme Court declared that: "*A forged signature, whether it be that of the drawer or the payee, is wholly inoperative and no one can gain title to the instrument through it. A person whose signature to an instrument was forged was never a party and never consented to the contract which allegedly gave rise to such instrument.*"

It bears stressing, however, that forgery is not presumed. Forgery must be proved with clear and convincing evidence.^[8] Whoever alleges it has the burden of proving the same.^[9] Thus, in the case at bar, we are tasked to determine if there is indeed forgery in the first place.

Under the Rules of Court, the genuineness of a handwriting may be proved by the following: (1) A witness who actually saw the person writing the instrument; (2) A witness familiar with such handwriting and who can give his opinion thereon, such