Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

AMADA RESTERIO,
Petitioner,

- *versus* -

PEOPLE OF THE PHILIPPINES,
Respondent.

G.R. No. 177438

Present:

SERENO, C.J.,
LEONARDO-DE CASTRO,
BRION,*
BERSAMIN, and
REYES, *JJ.*

Promulgated:

24 SEP 2012

x----------x

D E C I S I O N

BERSAMIN, *J.*:

The notice of dishonor required by *Batas Pambansa Blg. 22* to be given to the drawer, maker or issuer of a check should be written. If the service of the written notice of dishonor on the maker, drawer or issuer of the dishonored check is by registered mail, the proof of service consists not only in the presentation as evidence of the registry return receipt but also of the registry receipt together with the authenticating affidavit of the person mailing the notice of dishonor. Without the authenticating affidavit, the proof of giving the notice of dishonor is insufficient unless the mailer personally testifies in court on the sending by registered mail.

---

* Vice Justice Martin S. Villarama, Jr., who is on leave per Special Order No. 1305 dated September 10, 2012.

Antecedents

The petitioner was charged with a violation of *Batas Pambansa Blg. 22* in the Municipal Trial Court in Cities (MTCC) in Mandaue City through the information that alleged as follows:

> That on May, 2002, or thereabouts, in the City of Mandaue, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent of gain, did there and then willfully, unlawfully and feloniously make, draw and issue ChinaBank Check bearing No. AO141332, dated June 3, 2002, in the amount of ₱50,000.00 payable to the order of Bernardo T. Villadolid to apply on account or for value, the accused fully knowing well that at the time of the issuance of said check that she does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment; or the accused having sufficient funds in or credit with the drawee bank when she make/s or draw/s and issue/s a check but she failed to keep sufficient funds or maintain a credit to cover the full amount of the check, which check when presented for encashment was dishonored by the drawee bank for the reason "ACCT. CLOSED" or would have been dishonored for the same reason had not the drawer, without any valid reason ordered the bank to stop payment, and despite notice of dishonor and demands for payment, said accused failed and refused and still fails and refuses to redeem the check or to make arrangement for payment in full by the drawee of such check within five (5) banking days after receiving the notice of dishonor, to the damage and prejudice of the aforenamed private complainant, in the aforestated amount and other claims and charges allowed by civil law.
>
> CONTRARY TO LAW.[1]

After trial, the MTCC found the petitioner guilty as charged, disposing as follows:

> WHEREFORE, decision is hereby rendered finding the accused, AMADA Y. RESTERIO, GUILTY beyond reasonable doubt for Violation of Batas Pambansa Bilang 22 and sentences her to pay a fine of FIFTY THOUSAND PESOS (₱50,000.00) and to pay her civil liabilities to the private complainant in the sum of FIFTY THOUSAND PESOS (₱50,000.00), TEN THOUSAND PESOS (₱10,000.00) as attorney's fees and FIVE HUNDRED SEVENTY[-]FIVE PESOS (₱575.00) as reimbursement of the filing fees.
>
> SO ORDERED.[2]

---

1 *Rollo*, pp. 34-39; penned by Associate Justice Isaias P. Dicdican, with Associate Justice Romeo F. Barza and Associate Justice Priscilla Baltazar-Padilla concurring.

2 Id. at 2-3.

The petitioner appealed, but the RTC affirmed the conviction.[3]

By petition for review, the petitioner appealed to the CA, stating that: (*a*) the RTC erred in affirming the conviction and in not finding instead that the Prosecution did not establish her guilt beyond reasonable doubt; and (*b*) the conviction was contrary to existing laws and jurisprudence, particularly *Yu Oh v. Court of Appeals*.[4]

On December 4, 2006, the CA found the petition to be without merit, and denied the petition for review.[5]

Issues

The petitioner assails the affirmance of her conviction by the CA based on the following grounds, to wit:

> THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS AND REVERSIBLE ERROR AND WITH GRAVE ABUSE OF DISCRETION IN IGNORING THE APPLICABILITY IN THE PRESENT CASE THE DECISION OF THE SUPREME COURT IN THE CASE OF ELVIRA YU OH VS. COURT OF APPEALS, G.R. NO. 125297, JUNE 26, 2003.
>
> THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS AND REVERSIBLE ERROR AND WITH GRAVE ABUSE OF DISCRETION IN NOT FINDING THAT THE PROSECUTION FAILED TO PROVE ALL THE ESSENTIAL ELEMENTS OF THE CRIME OF VIOLATION OF BATAS PAMBANSA BILANG 22.
>
> THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS AND REVERSIBLE ERROR AND WITH GRAVE ABUSE OF DISCRETION IN NOT FINDING THAT NO NOTICE OF DISHONOR WAS ACTUALLY SENT TO THE PETITIONER.
>
> THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS AND REVERSIBLE ERROR AND WITH GRAVE ABUSE OF DISCRETION IN NOT FINDING THAT THE PROSECUTION FAILED TO ESTABLISH THE GUILT OF THE PETITIONER BEYOND REASONABLE DOUBT.[6]

---

3 Id. at 3.
4 Id.
5 Id. at 34.
6 Id. at 13-14.

The appeal hinges on whether or not all the elements of a violation of *Batas Pambansa Blg*. 22 were established beyond reasonable doubt.

Ruling

The petition is meritorious.

For a violation of *Batas Pambansa Blg*. 22, the Prosecution must prove the following essential elements, namely:

> (1) The making, drawing, and issuance of any check to apply for account or for value;
>
> (2) The knowledge of the maker, drawer, or issuer that at the time of issue there were no sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment; and
>
> (3) The dishonor of the check by the drawee bank for insufficiency of funds or credit or the dishonor for the same reason had not the drawer, without any valid cause, ordered the drawee bank to stop payment.[7]

The existence of the first element of the violation is not disputed. According to the petitioner, she was "required to issue a check as a collateral for the obligation," and that "she was left with no alternative but to borrow the check of her friend xxx and used the said check as a collateral of her loan."[8] During her cross-examination, she stated that she did not own the check that she drew and issued to complainant Bernardo Villadolid.[9]

Yet, to avoid criminal liability, the petitioner contends that *Batas Pambansa Blg*. *22* was applicable only if the dishonored check was actually owned by her; and that she could not be held liable because the check was issued as a mere collateral of the loan and not intended to be deposited.

---

7 *Ting v. Court of Appeals*, G.R. No. 140665, November 13, 2000, 344 SCRA 551, 556-557.
8 *Rollo*, p. 16.
9 Id. at 49.

The petitioner's contentions do not persuade.

What *Batas Pambansa Blg. 22* punished was the mere act of issuing a worthless check. The law did not look either at the actual ownership of the check or of the account against which it was made, drawn, or issued, or at the intention of the drawee, maker or issuer. Also, that the check was not intended to be deposited was really of no consequence to her incurring criminal liability under *Batas Pambansa Blg. 22*. In *Ruiz v. People*,[10] the Court debunked her contentions and cogently observed:

> In *Lozano v. Martinez*, this Court ruled that 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 and putting them in circulation. The law includes all checks drawn against banks. The law was designed to prohibit and altogether eliminate the deleterious and pernicious practice of issuing checks with insufficient or no credit or funds therefor. Such practice is deemed a public nuisance, a crime against public order to be abated. **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. It is a crime classified as *malum prohibitum*. The law is broad enough to include, within its coverage, the making and issuing of a check by one who has no account with a bank, or where such account was already closed when the check was presented for payment.** As the Court in *Lozano* explained:
>
> > The effects of the issuance of a worthless check transcends the private interests of the parties directly involved in the transaction and touches the interests of the community at large. The mischief it creates is not only a wrong to the payee or holder, but also an injury to the public. The harmful practice of putting valueless commercial papers in circulation, multiplied a thousandfold, can very well pollute the channels of trade and commerce, injure the banking system and eventually hurt the welfare of society and the public interest. As aptly stated –
> >
> > > The "check flasher" does a great deal more than contract a debt; he shakes the pillars of business; and to my mind, it is a mistaken charity of judgment to place him in the same category with the honest man who is unable to pay his debts, and for whom the constitutional inhibition against "imprisonment for debt, except in cases of fraud" was intended as a shield and not a sword.
>
> Considering that the law imposes a penal sanction on one who draws and issues a worthless check against insufficient funds or a closed account in the drawee bank, **there is, likewise, every reason to penalize a person who indulges in the making and issuing of a check on an account**

[10] G.R. No. 160893, November 18, 2005, 475 SCRA 476.

> **belonging to another with the latter's consent, which account has been closed or has no funds or credit with the drawee bank**.[11] (Bold emphases supplied)

The State likewise proved the existence of the third element. On direct examination, Villadolid declared that the check had been dishonored upon its presentment to the drawee bank through the Bank of the Philippine Islands (BPI) as the collecting bank. The return check memorandum issued by BPI indicated that the account had already been closed.[12] The petitioner did not deny or contradict the fact of dishonor.

The remaining issue is whether or not the second element, *that is*, the knowledge of the petitioner as the issuer of the check that at the time of issue there were no sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, was existent.

To establish the existence of the second element, the State should present the giving of a written notice of the dishonor to the drawer, maker or issuer of the dishonored check. The rationale for this requirement is rendered in *Dico v. Court of Appeals*,[13] to wit:

> To hold a person liable under B.P. Blg. 22, the prosecution must not only establish that a check was issued and that the same was subsequently dishonored**, it must further be shown that accused knew at the time of the issuance of the check that he did not have sufficient funds or credit with the drawee bank for the payment of such check in full upon its presentment.**
>
> **This knowledge of insufficiency of funds or credit at the time of the issuance of the check is the second element of the offense. Inasmuch as this element involves a state of mind of the person making, drawing or issuing the check which is difficult to prove, Section 2 of B.P. Blg. 22 creates a *prima facie* presumption of such knowledge.** Said section 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 (90) days from the date of the check, shall be *prima facie* evidence of knowledge of

---

11 Id. at 489-490.
12 *Rollo*, p. 48.
13 G.R. No. 141669, February 28, 2005, 452 SCRA 441.

> 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. The notice of dishonor may be sent by the offended party or the drawee bank. The notice must be in writing. A mere oral notice to pay a dishonored check will not suffice. The lack of a written notice is fatal for the prosecution.**[14] (Bold emphases supplied)

The giving of the written notice of dishonor does not only supply the proof for the second element arising from the presumption of knowledge the law puts up but also affords the offender due process. The law thereby allows the offender to avoid prosecution if she pays the holder of the check the amount due thereon, or makes arrangements for the payment in full of the check by the drawee within five banking days from receipt of the written notice that the check had not been paid.[15] The Court cannot permit a deprivation of the offender of this statutory right by not giving the proper notice of dishonor. The nature of this opportunity for the accused to avoid criminal prosecution has been expounded in *Lao v. Court of Appeals*:[16]

> It has been observed that the State, under this statute, actually offers the violator 'a compromise by allowing him to perform some act which operates to preempt the criminal action, and if he opts to

---

14 Id. at 456-458.
15 Id.
16 G.R. No. 119178, June 20, 1997, 274 SCRA 572.

> perform it the action is abated' xxx In this light, the full payment of the amount appearing in the check within five banking days from notice of dishonor is a 'complete defense.' **The absence of a notice of dishonor necessarily deprives an accused an opportunity to preclude a criminal prosecution. Accordingly, procedural due process clearly enjoins that a notice of dishonor be actually served on petitioner. Petitioner has a right to demand – and the basic postulate of fairness require – that the notice of dishonor be actually sent to and received by her to afford her the opportunity to avert prosecution under B.P. 22."**[17] (Bold emphases supplied)

To prove that he had sent the written notice of dishonor to the petitioner by registered mail, Villadolid presented the registry return receipt for the first notice of dishonor dated June 17, 2002 and the registry return receipt for the second notice of dishonor dated July 16, 2002. However, the petitioner denied receiving the written notices of dishonor.

The mere presentment of the two registry return receipts was not sufficient to establish the fact that written notices of dishonor had been sent to or served on the petitioner as the issuer of the check. Considering that the sending of the written notices of dishonor had been done by registered mail, the registry return receipts by themselves were not proof of the service on the petitioner without being accompanied by the authenticating affidavit of the person or persons who had actually mailed the written notices of dishonor, or without the testimony in court of the mailer or mailers on the fact of mailing. The authentication by affidavit of the mailer or mailers was necessary in order for the giving of the notices of dishonor *by registered mail* to be regarded as clear proof of the giving of the notices of dishonor to predicate the existence of the second element of the offense. No less would fulfill the quantum of proof beyond reasonable doubt, for, as the Court said in *Ting v. Court of Appeals*:[18]

> Aside from the above testimony, no other reference was made to the demand letter by the prosecution. As can be noticed from the above exchange, the prosecution alleged that the demand letter had been sent by mail**. To prove mailing, it presented a copy of the demand letter as well as the registry return receipt. However, no attempt was made to**

---

17 Id. at 594.

18 *Ting v. Court of Appeals*, *supra* note 7, at p. 560.

show that the demand letter was indeed sent through registered mail nor was the signature on the registry return receipt authenticated or identified. It cannot even be gleaned from the testimony of private complainant as to who sent the demand letter and when the same was sent. In fact, **the prosecution seems to have presumed that the registry return receipt was proof enough that the demand letter was sent through registered mail and that the same was actually received by petitioners or their agents.**

As adverted to earlier, it is necessary in cases for violation of Batas Pambansa Blg. 22, that the prosecution prove that the issuer had received a notice of dishonor. It is a general rule that when service of notice is an issue, the person alleging that the notice was served must prove the fact of service (58 Am Jur 2d, Notice, § 45). The burden of proving notice rests upon the party asserting its existence. Now, ordinarily, preponderance of evidence is sufficient to prove notice. **In criminal cases, however, the quantum of proof required is proof beyond reasonable doubt. Hence, for Batas Pambansa Blg. 22 cases, there should be clear proof of notice.** Moreover, it is a general rule that, when service of a notice is sought to be made by mail, it should appear that the conditions on which the validity of such service depends had existence, otherwise the evidence is insufficient to establish the fact of service (C.J.S., Notice, § 18). **In the instant case, the prosecution did not present proof that the demand letter was sent through registered mail, relying as it did only on the registry return receipt. In civil cases, service made through registered mail is proved by the registry receipt issued by the mailing office and an affidavit of the person mailing of facts showing compliance with Section 7 of Rule 13 (See Section 13, Rule 13, 1997 Rules of Civil Procedure). If, in addition to the registry receipt, it is required in civil cases that an affidavit of mailing as proof of service be presented, then with more reason should we hold in criminal cases that a registry receipt alone is insufficient as proof of mailing. In the instant case, the prosecution failed to present the testimony, or at least the affidavit, of the person mailing that, indeed, the demand letter was sent. xxx**

Moreover, petitioners, during the pre-trial, denied having received the demand letter (p. 135, Rollo**). Given petitioners' denial of receipt of the demand letter, it behooved the prosecution to present proof that the demand letter was indeed sent through registered mail and that the same was received by petitioners.** This, the prosecution miserably failed to do. Instead, it merely presented the demand letter and registry return receipt as if mere presentation of the same was equivalent to proof that some sort of mail matter was received by petitioners. **Receipts for registered letters and return receipts do not prove themselves; they must be properly authenticated in order to serve as proof of receipt of the letters** (Central Trust Co. v. City of Des Moines, 218 NW 580).

Likewise, for notice by mail, **it must appear that the same was served on the addressee or a duly authorized agent of the addressee. In fact, the registry return receipt itself provides that "[a] registered article must not be delivered to anyone but the addressee, or upon the addressee's written order, in which case the authorized agent must write the addressee's name on the proper space and then affix legibly his own signature below it."** In the case at bar, no effort was made to show that the demand letter was received by petitioners or their agent. All that we have on record is an illegible signature on the registry receipt as

> evidence that someone received the letter. As to whether this signature is that of one of the petitioners or of their authorized agent remains a mystery. **From the registry receipt alone, it is possible that petitioners or their authorized agent did receive the demand letter. Possibilities, however, cannot replace proof beyond reasonable doubt. There being insufficient proof that petitioners received notice that their checks had been dishonored, the presumption that they knew of the insufficiency of the funds therefor cannot arise.**
>
> As we stated in *Savage v. Taypin* (G.R. No. 134217, May 11, 2000, 311 SCRA 397), "penal statutes must be strictly construed against the State and liberally in favor of the accused." Likewise, the prosecution may not rely on the weakness of the evidence for the defense to make up for its own blunders in prosecuting an offense. Having failed to prove all the elements of the offense, petitioners may not thus be convicted for violation of Batas Pambansa Blg. 22. (Bold emphases supplied)

Also, that the wife of Villadolid *verbally* informed the petitioner that the check had bounced did not satisfy the requirement of showing that written notices of dishonor had been made to and *received* by the petitioner. The verbal notices of dishonor were not effective because it is already settled that a notice of dishonor must be *in writing*.[19] The Court definitively ruled on the specific form of the notice of dishonor in *Domagsang v. Court of Appeals*:[20]

> **Petitioner counters that the lack of a *written notice* of dishonor is fatal. The Court agrees.**
>
> **While, indeed, Section 2 of B.P. Blg. 22 does not state that the notice of dishonor be in writing, taken in conjunction, however, with Section 3 of the law, *i.e.*, "that where there are no sufficient funds in or credit with such drawee bank, such fact *shall always be explicitly stated in the notice of dishonor or refusal,*" a mere oral notice or demand to pay would appear to be insufficient for conviction under the law.** The Court is convinced that **both the spirit and letter of the Bouncing Checks Law would require** for the act to be punished thereunder not only that the accused issued a check that is dishonored, but **that** likewise **the accused has actually been notified in writing of the fact of dishonor.** The consistent rule is that penal statutes have to be construed strictly against the State and liberally in favor of the accused. (Bold emphases supplied; italics in the original text)

---

[19] *Marigomen v. People*, G.R. No. 153451, May 26, 2005, 459 SCRA 169, 180.
[20] G.R. No. 139292, December 5, 2000, 347 SCRA 75, 83-84.

In light of the foregoing, the proof of the guilt of the petitioner for a violation of *Batas Pambansa Blg. 22* for issuing to Villadolid the unfunded Chinabank Check No. LPU-A0141332 in the amount of ₱50,000.00 did not satisfy the quantum of proof beyond reasonable doubt. According to Section 2 of Rule 133, *Rules of Court*, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt, which does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty; only a moral certainty is required, or that degree of proof that produces conviction in an unprejudiced mind. This is the required quantum, *firstly*, because the accused is presumed to be innocent until the contrary is proved, and, *secondly*, because of the inequality of the position in which the accused finds herself, with the State being arrayed against her with its unlimited command of means, with counsel usually of authority and capacity, who are regarded as public officers, "and with an attitude of tranquil majesty often in striking contrast to that of (the accused) engaged in a perturbed and distracting struggle for liberty if not for life."[21]

Nonetheless, the civil liability of the petitioner in the principal sum of ₱50,000.00, being admitted, was established. She was further liable for legal interest of 6% *per annum* on that principal sum, reckoned from the filing of the information in the trial court. That rate of interest will increase to 12% *per annum* upon the finality of this decision.

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the decision of the Court of Appeals promulgated on December 4, 2006, and **ACQUITS** petitioner **AMADA RESTERIO** of the violation of *Batas Pambansa Blg*. 22 as charged for failure to establish her guilt beyond reasonable doubt.

The Court **ORDERS** the petitioner to pay to **BERNARDO VILLADOLID** the amount of ₱50,000.00, representing the face value of Chinabank Check No. LPU-A0141332, with legal interest of 6% *per annum*

---

[21] 1 Wharton, § 1, quoted in Salonga, *Philippine Law on Evidence*, 3rd Ed., 1964, p. 771.

from the filing of the information until the finality of this decision, and thereafter 12% *per annum* until the principal amount of ₱50,000.00 is paid.

No pronouncement on costs of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ARTURO D. BRION
Associate Justice

BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice