



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

LUCILLE DOMINGO,
Petitioner,

G.R. No. 173330

Present:

VELASCO, JR., J., *Chairperson*,
PERALTA,
ABAD,
MENDOZA, and
LEONEN, JJ.

- versus -

Promulgated:

MERLINDA COLINA,
Respondent.

JUN 17 2013

x-----

[Signature]

x

DECISION

PERALTA, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision¹ and Resolution² dated August 12, 2005 and May 26, 2006, respectively, of the Court of Appeals (CA) in CA-G.R. CR No. 27090.

The facts are as follows:

In an Information dated March 8, 1999, herein petitioner was charged before the Municipal Trial Court in Cities (MTCC), Davao City, with violation of *Batas Pambansa Bilang 22* (BP 22), to wit:

¹ Penned by Associate Justice Teresita Dy-Liacco Flores, with Associate Justices Edgardo A. Camello and Myrna Dimaranan-Vidal concurring; Annex "A" to Petition, *rollo*, pp. 25-42.

² Annex "B" to Petition, *rollo*, pp. 44-46.

That on or about February 28, 1998 in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, knowing fully well that he/she have (sic) no funds and /or credit with the drawee bank, wilfully, unlawfully and feloniously issued UCPB Check No. 0014924 dated February 28, 1998 in the amount of ₱175,000.00 in payment of an obligation in favor of Merlinda Dy Colina; but when the said check was presented to the drawee bank for encashment, the same was dishonored for the reason "ACCOUNT CLOSED" and despite notice of dishonor and repeated demands upon him/her to make good the check, he/she failed and refused to make payment or to deposit the face amount of the check, to the damage and prejudice of herein complainant in the aforesaid amount.³

The case proceeded to trial.

After the prosecution rested its case, the defense filed a Demurrer to Evidence.

On October 25, 2001, the MTCC issued an Order granting the demurrer to evidence holding that:

Taking into consideration the observations of this court that the evidence adduced in court by the prosecution in the records of this case failed to prove element[s] nos. 2 and 3 of the crime of violation of Batas Pambansa Bilang 22 charged against the accused Lucille Domingo per information in this case, this court finds and so holds that the demurrer to the evidence adduced in court by the prosecution in the records of this case filed by accused Lucille Domingo through her counsel with this court is well taken. Accordingly, it is granted. Correspondingly, this case is hereby ordered dismissed. Correlatively, the cash bond of accused Lucille Domingo in the amount of ₱20,000.00 under Official Receipt No. 11552806, dated December 2, 1999, deposited with the Office of the Clerk of Court of this court, is ordered canceled and the herein mentioned office is hereby directed to release the herein stated cash bond upon its receipt to accused Lucille Domingo.

SO ORDERED.⁴

The prosecution, through the private prosecutor, then filed a Motion for Reconsideration to the Order of Dismissal and In The Alternative To Reopen the Civil Aspect of the Case.⁵ The prosecution contended that even assuming that petitioner did not receive valuable consideration for her bounced check, she is nonetheless liable to respondent for the face value of the check as an accommodation party and, that petitioner's knowledge of the

³ See MTCC Order, Annex "C" to Petition, *rollo*, p. 47; see Petition for Review on *Certiorari*, *rollo*, p. 8.

⁴ *Rollo*, pp. 53-54.

⁵ Annex "1" to respondent's Memorandum, *id.* at 160-168.

insufficiency of her funds in or credit with the bank is presumed from the dishonor of her check.

On November 23, 2001, the MTCC issued another Order denying the prosecution's Motion. The MTCC held, thus:

After a thorough reevaluation of the evidence adduced in court by the prosecution in the records of this case in the light of the arguments proffered by the accused in support of her demurrer to the evidence adduced in court by the prosecution in the records of this case and of the factual and legal basis of this court in arriving at its conclusion in ordering the dismissal of this case vis-a-vis the arguments interposed by the prosecution in its motion for reconsideration of the order issued by this court, dated October 25, 2001, as diluted by the comments of accused Lucille Domingo, through her counsel, of the herein stated motion for reconsideration of the prosecution, this court finds no cogent reason to justify the reconsideration of the herein stated order. Correspondingly, the motion for reconsideration of the order of this court dated October 25, 2001 is denied. Correlatively, the alternate prayer of the private complainant, through her counsel, to reopen the civil aspect of this case is likewise denied. At any rate, although the herein mentioned order did not categorically state that the accused's act from which his civil liability in favor of the private complainant may arise does not exist in this case, in effect, the observations and ratiocinations stated by this court in support of its finding that the evidence adduced in court by the prosecution in the records of this case failed to prove all the elements of the crime of violation of Batas Pambansa Bilang 22, speaks for itself.

In deference to the desire of the prosecution, let it be stated herein that the act from which the civil liability of the accused in favor of the private complainant may arise, does not exist in this case.

SO ORDERED.⁶

Respondent appealed the civil aspect of the case to the Regional Trial Court (RTC) of Davao City.

On September 30, 2002, the RTC rendered its Decision, the dispositive portion of which reads, thus:

WHEREFORE, the judgment appealed from is hereby MODIFIED, ordering the accused-appellee [Lucille] Domingo to pay complainant Melinda Colina the civil liability arising [out] of the offense charged in the amount of ₱175,000.00, plus interest of 12% per annum counted from the filing of the [complaint] and cost of suit.

SO ORDERED.⁷

⁶ Annex "D" to Petition, *id.* at 55.

⁷ Annex "E" to Petition, *id.* at 58.

Petitioner filed a motion for reconsideration, but the RTC denied it.

Aggrieved, petitioner filed a petition for review with the CA.

On August 12, 2005, the CA rendered its assailed Decision dismissing petitioner's petition for review and affirming the RTC Decision *in toto*.

Petitioner's motion for reconsideration was denied via the questioned CA Resolution dated May 26, 2006.

Hence, the instant petition for review on *certiorari* based on the following Reasons/Arguments:

(a)

THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION IN UPHOLDING THAT THE RTC-BRANCH 16 OF DAVAO CITY HAS JURISDICTION TO ENTERTAIN AN APPEAL INTERPOSED WHICH WAS VIOLATIVE OF SECTION 2, RULE 111 OF THE RULES ON CRIMINAL PROCEDURE WHEN THE TRIAL COURT (MTCC-BRANCH 6 OF DAVAO CITY) HAD ALREADY RULED THAT THE ACT FROM WHICH THE CIVIL LIABILITY MAY ARISE DID NOT EXIST.

(b)

THE COURT OF APPEALS ERRED IN DENYING PETITIONER'S REQUEST TO ADDUCE EVIDENCE ON THE CIVIL ASPECT AND RULED THAT THE PETITIONER HAS WAIVED THAT RIGHT DESPITE THE FACT THAT THE DEMURRER TO EVIDENCE FILED WAS WITH PRIOR LEAVE OF COURT.⁸

The petition lacks merit.

The last paragraph of Section 2, Rule 111 of the Revised Rules on Criminal Procedure provides:

The extinction of the penal action does not carry with it extinction of the civil action. However, the civil action based on delict shall be deemed extinguished **if there is a finding** in a final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist.⁹

⁸ *Rollo*, p. 13.

⁹ Emphasis supplied.

Moreover, the second paragraph of Section 2, Rule 120 of the same Rules states that:

In case the judgment is of acquittal, it shall state whether the evidence of the prosecution absolutely failed to prove the guilt of the accused or merely failed to prove his guilt beyond reasonable doubt. **In either case, the judgment shall determine if the act or omission from which the civil liability might arise did not exist.**¹⁰

In the instant case, the Orders of the MTCC, dated October 25, 2001 and November 23, 2001, did not contain any such finding or determination. The Court agrees with the CA that in acquitting petitioner in its Order dated October 25, 2001, the MTCC did not rule on the civil aspect of the case. While it subsequently held in its November 23, 2001 Order that “the act from which the civil liability of the accused in favor of the private complainant may arise does not exist in this case,” the MTCC, nonetheless, failed to cite evidence, factual circumstances or any discussion in its October 25, 2001 Decision which would warrant such ruling. Instead, it simply concluded that since the prosecution failed to prove all the elements of the offense charged, then the act from which the civil liability might arise did not exist. The MTCC held that its observations and ratiocinations in its October 25, 2001 Order justified its conclusion. However, after a careful review of the abovementioned Orders, the Court finds nothing therein which the MTCC could have used as a reasonable ground to arrive at its conclusion that the act or omission from which petitioner's civil liability might arise did not exist.

On the contrary, the tenor of the Orders of the MTCC is that the dismissal of the criminal case against petitioner was based on reasonable doubt. As may be recalled, the MTCC dismissed the criminal case on the ground that the prosecution failed to prove the second and third elements of BP 22, *i.e.*, (2) the check is applied on account or for value and (3) the person issuing the check knows at the time of its issuance that he does not have sufficient funds in or credit with the bank for the full payment of the check upon its presentment. This only means, therefore, that the trial court did not convict petitioner of the offense charged, since the prosecution failed to prove her guilt beyond reasonable doubt, the quantum of evidence required in criminal cases. Conversely, the lack of evidence to prove the aforesaid elements of the offense charged does not mean that petitioner has no existing debt with respondent, a civil aspect which is proven by another quantum of evidence, a mere preponderance of evidence. Moreover, from the above pronouncement of the MTCC as to the prosecution's failure to prove the second and third elements of the offense charged, it can be deduced that the prosecution was able to establish the presence of the first

¹⁰ Emphasis supplied.

and fourth elements, *i.e.*, (1) a person draws and issues a check and (4) the check is dishonored by the bank for insufficiency of funds or credit. Hence, the fact that petitioner was proven to have drawn and issued a check and that the same was subsequently dishonored for inadequate funds leads to the logical conclusion that the fact from which her civil liability might arise, indeed, exists. On the basis of the foregoing, the RTC correctly entertained respondent's appeal of the civil aspect of the case.

With respect to the second argument, the Court finds no cogent reason to depart from the ruling of the CA in its Resolution dated May 26, 2006 that for petitioner's failure to invoke her right to present evidence, despite the clear ruling by the RTC that she is civilly liable, she is deemed to have waived such right. Petitioner may not argue that her right to due process was violated, because she was given the opportunity to raise this issue a number of times both in the RTC and the CA. Petitioner does not dispute that neither in her Motion for Reconsideration of the Decision of the RTC nor in her Petition for Review, as well as in her Memorandum filed with the CA, did she raise the issue of her right to present evidence on the civil aspect of the present case. As correctly observed by the CA, it was only in her Motion for Reconsideration of the CA Decision that she brought up such matter. Where a party was given the opportunity to defend his interests in due course, he cannot be said to have been denied due process of law.¹¹ The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense.¹² Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of due process.¹³ The question is not whether petitioner succeeded in defending her rights and interests, but simply, whether she had the opportunity to present her side of the controversy.¹⁴

In the instant case, petitioner was able to participate in all the proceedings before the lower courts, and, in fact, obtained a favorable judgment from the MTCC. She also had a similar opportunity to ventilate her cause in the CA. Simply because she failed to avail herself of all the remedies open to her did not give her the justification to complain of a denial of due process. She cannot complain because she was given the chance to defend her interest in due course, for as stated above, it was such opportunity to be heard that was the essence of due process.

Equally settled is the rule that no question will be entertained on appeal unless it has been raised in the proceedings below.¹⁵ Points of law,

¹¹ *Gomez v Alcantara*, G.R. No. 179556, February 13, 2009, 579 SCRA 472, 488.

¹² *Id.*

¹³ *Id.*

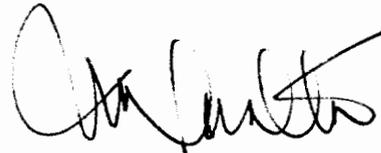
¹⁴ *Pasiona, Jr. v. Court of Appeals*, G.R. No. 165471, July 21, 2008, 559 SCRA 137, 149.

¹⁵ *Lim v. Mindanao Wines & Liquor Galleria*, G.R. No. 175851, July 4, 2012, 675 SCRA 628, 638, citing *Besana v. Mayor*, G.R. No. 153837, July 21, 2010, 625 SCRA 203, 214.

theories, issues and arguments not brought to the attention of the lower court, administrative agency or quasi-judicial body, need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage.¹⁶ For her failure to timely invoke her right to present evidence, petitioner is already estopped.

WHEREFORE, the instant petition for review on *certiorari* is **DENIED**. The assailed Decision and Resolution of the Court of Appeals, dated August 12, 2005 and May 26, 2006, respectively, in CA-G.R. CR No. 27090, are **AFFIRMED**.

SO ORDERED.



DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



ROBERTO A. ABAD
Associate Justice



JOSE CATRAL MENDOZA
Associate Justice



MARVIC MARIO VICTOR F. LEONEN
Associate Justice

¹⁶ *Id.*

ATTESTATION

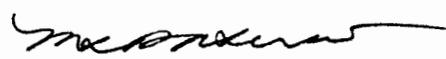
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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