

## THIRD DIVISION

[ G.R. No. 131540, December 02, 1999 ]

**BETTY KING, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,  
RESPONDENT.**

### DECISION

**PANGANIBAN, J.:**

Under Batas Pambansa Blg. 22 (BP 22), the prosecution must prove not only that the accused issued a check that was subsequently dishonored. It must also establish that the accused was *actually notified* that the check was dishonored, and that he or she failed, within five banking days from receipt of the notice, to pay the holder of the check the amount due thereon or to make arrangement for its payment. Absent proof that the accused received such notice, a prosecution for violation of the Bouncing Checks Law cannot prosper.

#### The Case

Before this Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the January 30, 1997 Decision<sup>[1]</sup> of the Court of Appeals<sup>[2]</sup> (CA) in CA-GR CR No. 18226 and its November 5, 1997 Resolution<sup>[3]</sup> denying reconsideration. The CA affirmed the June 14, 1994 Decision<sup>[4]</sup> of the Regional Trial Court (RTC) of Makati, Metro Manila<sup>[5]</sup> in Criminal Case Nos. 93-3335 to 93-3345 which convicted petitioner of 11 counts of violation of BP 22, otherwise known as the Bouncing Checks Law.

On April 28, 1993, Second Assistant Provincial Prosecutor Jaime A. Adoc filed against petitioner eleven separate Informations,<sup>[6]</sup> which are identically worded, except for the check number, the amount and the date, as follows:

"That in or about the month of January, 1992 in the Municipality of Las Piñas, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there willfully, unlawfully and feloniously make or draw and issue to EILEEN FERNANDEZ herein represented by \_\_\_\_\_ to apply on account or for value the check described below:

EQUITABLE BANK  
Check No. 021711  
In the amount of P50,000.00  
Postdated July 24, 1992

said accused well knowing that at the time of issue she/he did not have sufficient funds in or credit with the drawee bank for the payment in full of the face amount of such check upon their presentment, which check

when presented for payment within ninety (90) days from the date thereof were subsequently dishonored by the drawee bank for the reason 'Account Closed' and despite receipt of notice of such dishonor the accused failed to pay the face amount thereof or make arrangement for the full payment thereof within five (5) working days after receiving notice."<sup>[7]</sup>

When arraigned, petitioner, assisted by counsel, pleaded not guilty. After the prosecution presented its evidence and rested its case, petitioner filed a Demurrer to Evidence without leave of court, on the ground that the prosecution failed to prove her guilt beyond reasonable doubt. The trial court denied the Demurrer in its assailed Decision, the dispositive portion of which reads:

"WHEREFORE, premises considered, the demurrer to evidence without prior leave of court is DENIED for lack of merit.

Since accused has waived her right to present evidence, judgment is hereby rendered finding accused guilty beyond reasonable doubt of Violation of Batas Pambansa Bilang 22 in the eleven (11) above-entitled cases and is ordered to:

1. Suffer imprisonment for thirty (30) days, to pay a fine in the amount of P50,000.00, and to pay complainant Eileen Fernandez the amount of P50,000.00 as actual damages in Criminal Case No. 93-3335;

2. Suffer imprisonment for thirty (30) days, to pay a fine in the amount of P50,000.00, and to pay complainant Eileen Fernandez the amount of P50,000.00 as actual damages in Criminal Case No. 93-3336;

3. Suffer imprisonment for thirty (30) days, to pay a fine in the amount of P50,000.00, and to pay complainant Eileen Fernandez the amount of P50,000.00 as actual damages in Criminal Case No. 93-3337;

4. Suffer imprisonment for thirty (30) days, to pay a fine in the amount of P64,200.00, and to pay complainant Eileen Fernandez the amount of P64,200.00 as actual damages in Criminal Case No. 93-3338;

5. Suffer imprisonment for thirty (30) days, to pay a fine in the amount of P66,000.00, and to pay complainant Eileen Fernandez the amount of P66,000.00 as actual damages in Criminal Case No. 93-3339;

6. Suffer imprisonment for thirty (30) days, to pay a fine in the amount of P100,000.00, and to pay complainant Eileen Fernandez the amount of P100,000.00 as actual damages in Criminal Case No. 93-3340;

7. Suffer imprisonment for thirty (30) days, to pay a fine in the amount of P150,000.00, and to pay complainant Eileen Fernandez the amount of P150,000.00 as actual damages in Criminal Case No. 93-3341;

8. Suffer imprisonment for thirty (30) days, to pay a fine in the amount of P150,000.00, and to pay complainant Eileen Fernandez the amount of P150,000.00 as actual damages in Criminal Case No. 93-3342;

9. Suffer imprisonment for thirty (30) days, to pay a fine in the amount of P130,000.00, and to pay complainant Eileen Fernandez the amount of P130,000.00 as actual damages in Criminal Case No. 93-3343;

10. Suffer imprisonment for thirty (30) days, to pay a fine in the amount of P130,000.00, and to pay complainant Eileen Fernandez the amount of P130,000.00 as actual damages in Criminal Case No. 93-3344; and,

11. Suffer imprisonment for thirty (30) days, to pay a fine in the amount of P130,000.00, and to pay complainant Eileen Fernandez the amount of P130,000.00 as actual damages in Criminal Case No. 93-3345.”<sup>[8]</sup>

As already stated, the Court of Appeals affirmed the RTC in this wise:<sup>[9]</sup>

“WHEREFORE, the appealed decision is hereby affirmed [I]N TOTO. Costs against appellant.”

Hence, this Petition.<sup>[10]</sup>

### **The Facts** **Evidence for the Prosecution**

The Office of the Solicitor General<sup>[11]</sup> summarized the facts, as viewed by the prosecution, in this wise:

“On several occasions in January, 1992, at Las Piñas, Metro Manila, petitioner discounted with complainant Ellen Fernandez several Equitable Bank checks postdated from July 23 to 29, 1992 in the total amount of P1,070,000.00 in exchange for cash in the amount of P1,000,000.00. When the checks were deposited for payment, they were dishonored by the drawee bank because they were drawn against an account without sufficient funds. Petitioner failed to make good the checks despite demand. (Memorandum dated April 7, 1993 of Assistant Provincial Prosecutor to the Rizal Provincial Prosecutor)

“During the hearing on the merits of this case on September 17, 1998, the prosecution offered in evidence its documentary evidence. Petitioner admitted the genuineness and due execution of the documents presented.”<sup>[12]</sup>

### **Evidence for the Defense**

As noted earlier, petitioner filed a Demurrer to Evidence without leave of court. In doing so, she waived her right to present evidence and submitted the case for judgment on the basis of the documentary exhibits adduced by the prosecution.<sup>[13]</sup>

### **Ruling of the Court of Appeals**

In affirming the trial court, the Court of Appeals explained that the prosecution proved all the elements of the crime. The CA also pointed out that the failure of petitioner to sign the pretrial order was not fatal to the prosecution, because her

conviction was based on the evidence presented during the trial.

### **The Issues**

Petitioner submits the following issues for the Court's consideration:

"I

Whether or not the trial court and the Court of Appeals gravely erred in admitting in evidence all the documentary evidence of the prosecution though their due execution and genuineness were not duly established in evidence pursuant to the provisions of the Rules of Court and prevailing jurisprudence;

"II

Whether or not the trial court and the Court of Appeals gravely erred in declaring that Rule 118, Section 4 of the Rules of Court, as applied in the case of Fule vs. Court of Appeals, 162 SCRA 446, which states that no agreement or admission made or entered during the pre-trial conference shall be used in evidence against the accused unless reduced to writing and signed by him and his counsel, is inapplicable in the case at bar;

"III

Whether or not the trial court and the Court of Appeals gravely erred in ruling that the burden of evidence has already been shifted from the prosecution to the defense despite the definite factual issues in the pre-trial order; and

"IV

Whether or not the trial court and the Court of Appeals erred in ruling that the prosecution has proven the guilt of the accused beyond reasonable doubt albeit the prosecution did not produce any evidence."<sup>[14]</sup>

In the main, the resolution of the Petition hinges on (1) the admissibility and (2) the sufficiency of the prosecution evidence.

### **This Court's Ruling**

The Petition has merit insofar as it contends that the elements of the crime charged have not all been proven beyond reasonable doubt.

#### **First Issue:**

#### **Admissibility of Documentary Evidence**

Because the first, the second and the third issues raised by petitioner all refer to the same matter, they will be discussed together. She contends that the pieces of documentary evidence presented by the prosecution during pretrial are inadmissible, because she did not sign the pretrial agreement as required under Section 4 of Rule 118 of the Rules of Court.<sup>[15]</sup> Hence, she argues that there is no basis for her conviction.

True, a pretrial agreement not signed by a party is inadmissible. However, the conviction of petitioner was based not on that agreement but on the documents submitted during the trial, all of which were admitted without any objection from her counsel. During the hearing on September 17, 1993, the prosecution offered as evidence the dishonored checks, the return check tickets addressed to private complainant, the notice from complainant addressed to petitioner that the checks had been dishonored, and the postmaster's letter that the notice had been returned to sender. Petitioner's counsel did not object to their admissibility. This is shown by the transcript of stenographic notes taken during the hearing on September 17, 1993:vee

“COURT:

You have no objection to the admissibility, not that the Court will believe it.

ATTY. MANGERA

No, Your Honor.

COURT:

Exhibits 'A' to 'A' to 'K' are admitted.

ATTY. MAKALINTAL:

We offer Exhibit 'L', the return-check ticket dated July 27, 1992, relative to checks No. 021745 and 021746 indicating that these checks were returned DAIF, drawn against insufficient funds; Exh. M, returned check ticket dated July 28, 1992, relative to Check No. 021727, 021711 and 021720 likewise indicating the said checks to have been drawn against insufficient funds, Your Honor. Exhibit N, returned check ticket dated July 29, 1992, relative to Check Nos. 021749 and 021748, having the same indications;

Exhibits O, returned check ticket dated July 29, 1992 relative to Check Nos. 021750 and 021753, with the same indications;

Exhibits P, returned check ticket dated August 4, 1992 relative to Check No. 021752, having the same indication as being drawn against insufficient funds;

Exhibit Q, the demand letter sent to the accused by Atty. Horacio Makalintal dated August 3, 1992;

Exhibit R, the letter-request for certification addressed to the Postmaster General sent by the same law office dated 17 September 1992, showing that the said letter was dispatched properly by the Central Post Office of Makati;

Exhibit S, 1st Indorsement of the Makati Central Post Office dated 21 September 1992;