

SECOND DIVISION

[G.R. No. 182210, October 05, 2015]

PAZ T. BERNARDO, SUBSTITUTED BY HEIRS, MAPALAD G. BERNARDO, EMILIE B. KO, MARILOU B. VALDEZ, EDWIN T. BERNARDO AND GERVY B. SANTOS, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

D E C I S I O N

BRION, J.:

We resolve the Petition for Review on Certiorari filed by accused petitioner Paz T. Bernardo (*Bernardo*) under Rule 45 of the Rules of Court, assailing the Court of Appeals (CA) August 31, 2007 decision^[1] and the March 14, 2008 resolution^[2] in CA-G.R. CR 28721, entitled "People of the Philippines v. Paz T. Bernardo." The appellate court affirmed the decision of the Regional Trial Court (RTC), Branch 56, Makati City, finding Bernardo guilty beyond reasonable doubt of five (5) counts of violation of Batas Pambansa Blg. 22 (*B.P. 22*).

The Factual Antecedents

In June 1991, Bernardo obtained a loan from the private complainant Carmencita C. Bumanglag (*Bumanglag*) in the amount of P460,000.00 payable on or before its maturity on November 30, 1991. That loan was evidenced by a promissory note^[3] Bernardo and her husband had executed, whereby the couple solidarity bound themselves to pay the loan with corresponding interest at 12% per annum payable upon default.^[4] As additional security, Bernardo gave Bumanglag the owner's duplicate copy of Transfer Certificate of Title No. (T-1034) 151841.

Prior to the loan's maturity, Bernardo took back the title from Bumanglag to use as a collateral in another transaction. In place of the title, Bernardo issued to Bumanglag the following five (5) Far East Bank and Trust Company (*FEBTC*) checks,^[5] posted on different dates in June 1992, covering the loan's aggregate amount:

| Check No. | Amount | Date |
|------------------|----------------|---------------|
| FEBTC No. 391033 | Php 100,000.00 | June 1, 1992 |
| FEBTC No. 391034 | Php 100,000.00 | June 8, 1992 |
| FEBTC No. 391035 | Php 100,000.00 | June 15, 1992 |
| FEBTC No. 391036 | Php 100,000.00 | June 22, 1992 |
| FEBTC No. 391037 | Php 60,000.00 | June 29, 1992 |

In September 1992, Bumanglag deposited these checks to Bernardo's account but they were dishonored; the reason given was "Account Closed." Bumanglag thus sent Bernardo a notice informing her of the dishonor of the checks. The demand went unheeded, prompting Bumanglag to initiate a criminal complaint against Bernardo

with the Office of the City Prosecutor of Makati for five (5) counts of violation of B.P. 22.

After the requisite preliminary investigation, the Office of the City Prosecutor of Makati City found probable cause to indict Bernardo for the offenses charged. Bernardo entered a not guilty plea on arraignment.

The prosecution rested its case on September 21, 1994. Bernardo took the witness stand only on May 9, 1996, to present her defense evidence.

In her testimony, Bernardo argued that she could not be held liable for violation of B.P. 22 because the questioned checks were presented beyond the 90-day period provided under the law. She also denied having received any notice of dishonor, which she insisted was essential to prove the material element of knowledge of insufficiency of funds.

In any case, she maintained that the checks were never meant to be presented as she had always paid her loans in cash, which she claimed to have done in the aggregate amount of P717,000.00. According to Bernardo, although Bumanglag returned to her the title to the property after payment, Bumanglag never bothered to issue her receipts. Bumanglag did not return the checks either.

Following Bernardo's cross-examination, the RTC reset the hearing for redirect examination to September 4, 1996.^[6] That hearing, however, was again reset to April 3, 1997, in view of the absence of Bernardo's counsel. When Bernardo and her counsel again failed to appear during the April 3, 1997 hearing, and in view of the numerous previous postponements the defense had asked for, the RTC considered her right to present additional evidence waived.

Bernardo moved for reconsideration but the RTC denied her motion. The RTC, however, gave her ten (10) days within which to submit her formal offer of evidence, which she failed to do. As a result, the RTC declared that Bernardo had waived her right to submit her formal offer of evidence.

RTC Ruling

On May 28, 2003, the RTC issued its ruling finding Bernardo guilty of five counts of violation of B.P. 22.^[7] The RTC held that Bernardo failed to substantiate her claim of payment. The RTC further ruled that it is not the nonpayment of the obligation but the issuance of a worthless check that B.P. 22 punishes.

The RTC sentenced Bernardo to one (1) year imprisonment for each count of the offense charged and ordered her to indemnify Bumanglag the amount of P460,000.00, plus 12% interest and 5% penalty charges, from December 1, 1991, until full payment.^[8]

CA Ruling

On appeal, the CA affirmed Bernardo's conviction but deleted the penalty of imprisonment and in lieu thereof, imposed a P460,000.00 fine.^[9] The CA also retained the civil indemnity of P460,000.00 that the lower court imposed, plus 12%

interest from the time of the institution of the criminal charges until full payment.
[10]

In denying Bernardo's appeal, the CA noted that Bernardo failed to adduce sufficient evidence of payment. The CA further held that the 90-day period within which to present a check under B.P. 22 is not an element of the crime.

The CA also did not recognize any merit in Bernardo's claim that she had been denied due process, in view of the RTC's order waiving her right to present additional evidence.^[11] To the CA, Bernardo had sufficient opportunity to present her defense but did not avail of these opportunities. Instead, she and her counsel moved for postponement at least nine (9) times, not to mention their subsequent failure to appear four (4) times despite due notice of the scheduled hearings. These developments led the RTC to consider Bernardo's right to present additional evidence waived.^[12]

Bernardo moved for reconsideration but the CA denied her motion;^[13] hence, the present petition.^[14]

The Petition and Comment

Bernardo insists in her present petition^[15] that the CA erred in finding that she had been accorded due process; she was denied the full opportunity to present her defense and was thus deprived of the chance to prove her innocence of the crime charged.

She likewise avers that the CA erred in affirming her criminal and civil liabilities because the prosecution failed to prove her knowledge of insufficiency of funds. According to Bernardo, there was no violation of B.P. 22 because the checks were presented beyond the mandatory 90-day period. Moreover, Bernardo claimed that these subject checks were issued without consideration as she had already paid the loan.

The Office of the Solicitor General (OSG) posits in its Comment that Bernardo was given the opportunity to present her defense evidence.^[16] Citing *Wong v. CA*,^[17] the OSG further points out that the 90-day period provided in the law is not an element of the offense;^[18] it is simply one of the conditions to establish a *prima facie* presumption of knowledge of lack of funds.^[19]

The OSG also claims that Bumanglag failed to substantiate her claim that she had settled the obligation.^[20] In any event, the OSG asserted B.P. 22 penalizes the act of making and issuing a worthless check, not the nonpayment of the obligation.^[21]

Subsequent Developments

On March 14, 2011, Bernardo's counsel informed the Court of the petitioner's death on February 3, 2011, and provided, as well, the names of her heirs (her widower, Mapalad Bernardo, and children: Emilie B. Ko, Marilou B. Valdez, Edwin T. Bernardo, and Gervy B. Santos), and their address (26 Magdiwang St., Real Village 2, Tandang Sora, Quezon City). In due course, in our March 7, 2012 Resolution,^[22] we required

Bernardo's heirs to appear as substitutes for the deceased Bernardo in the present petition for purposes of Bernardo's civil liability.

Bernardo's heirs moved to reconsider our March 7, 2012 resolution. They argued that Bernardo's death extinguished her civil liability. In the alternative, they contended that any civil liability should be settled in a separate civil case.

We denied the heirs' motion in our June 27, 2012 resolution. We explained that Bernardo's civil liability survived her death as it is based on contract. Moreover, we observed that it would be costly, burdensome, and time-consuming to dismiss the present case and require the Bumanglags to file a separate civil action.

The Court's Ruling

We deny the petition for lack of merit. Preliminary Matters

Classes of Civil Liabilities

An act or omission causing damage to another may give rise to several distinct civil liabilities on the part of the offender.^[23] If the conduct constitutes a felony, the accused may be held civilly liable under Article 100 of the Revised Penal Code (*ex delicto*).^[24] This particular civil liability due the offended party is rooted on facts that constitute a crime.^[25] Otherwise stated, **civil liability arises from the offense charged.**^[26] It is not required that the accused be convicted to be entitled to civil liability based on *delict*. As long as the facts constituting the offense charged are established by preponderance of evidence, civil liability may be awarded.^[27] Moreover, the civil liability based on *delict* is deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately, or institutes the civil action prior to the criminal action.^[28]

The same act or omission, however, may also give rise **to independent civil liabilities** based on other sources of obligation. Article 1157 of the Civil Code enumerates these other sources of obligation from which the civil liability may arise as a result of the same act or omission: (a) law (b) contracts; (c) quasi-contracts, and (d) quasi-delicts. Among these are the civil liabilities for intentional torts under Articles 32^[29] and 34^[30] of the Civil Code and for *quasi-delicts* under Article 2176 of Civil Code.^[31] For conduct constituting defamation, fraud, and physical injuries, the Civil Code likewise grants the offended party the right to institute a civil action independently of the criminal action under Article-33 of the Civil Code.

Thus, it is entirely possible for one to be free from civil liability directly arising from a violation of the penal law and to still be liable civilly based on contract or by laws other than the criminal law.^[32] Such civil actions may proceed independently of the criminal proceedings and regardless of the result of the criminal action,^[33] subject however, to the caveat that the offended party cannot recover damages twice for the same act or omission.^[34]

Bernardo's civil liability may be enforced in the present case despite her death.

As a general rule, the death of an accused pending appeal extinguishes her criminal

liability and the corresponding civil liability based solely on the offense (delict). The death amounts to an acquittal of the accused based on the constitutionally mandated presumption of innocence in her favor, which can be overcome only by a finding of guilt - something that death prevents the court from making.^[35] **In a sense, death absolves the accused from any earthly responsibility arising from the offense** — a divine act that no human court can reverse, qualify, much less disregard.^[36] The intervention of death of the accused in any case is an injunction by fate itself so that no criminal liability and the corresponding civil liability arising from the offense should be imposed on him.^[37]

The independent civil liabilities, however, survive death and an action for recovery therefore may be **generally** pursued but only by filing a separate civil action and subject to Section 1, Rule 111 of the Rules on Criminal Procedure as amended.^[38] This separate civil action may be enforced against the estate of the accused.^[39]

In B.P. 22 cases, the criminal action shall be deemed to include the corresponding civil actions. Instead of instituting two separate cases, only a single suit is filed and tried.^[40] This rule was enacted to help declog court dockets, which had been packed with B.P. 22 because creditors used the courts as collectors. As we observed in *Hyatt v. Asia Dynamic Electrix Corp.*:^[41]

Because ordinarily no filing fee is charged in criminal cases for actual damages, the payee uses the intimidating effect of a criminal charge to collect his credit *gratis* and sometimes, upon being paid, the trial court is not even informed thereof. The inclusion of the civil action in the criminal case is expected to significantly lower the number of cases filed before the courts for collection based on dishonored checks. It is also expected to expedite the disposition of these cases. Instead of instituting two separate cases, one for criminal and another for civil, only a single suit shall be filed and tried. It should be stressed that the policy laid down by the Rules is to discourage the separate filing of the civil action.

As a necessary consequence of this special rule, the civil liabilities arising from the issuance of a worthless check are deemed instituted in a case for violation of B.P. 22; the death of Bernardo did not automatically extinguish the action. The independent civil liability based on contract, which was deemed instituted in the criminal action for B.P. 22, may still be enforced against her estate in the present case. We thus rule on the present action to determine Bumanglag's civil liability.

Substantive Aspect

Bernardo was not denied due process.

We meticulously went over the entire record, and confirmed that Bernardo had not at all been deprived of her day in court. She was afforded ample opportunity to present evidence in her defense but she did not give this case the serious attention it deserved. For good reason - *i.e.*, the repeated absences of Bernardo and her counsel - the trial court eventually considered her right to present defense evidence waived.