

## EN BANC

[ G.R. No. 173330, June 17, 2013 ]

**LUCILLE DOMINGO, PETITIONER, VS. MERLINDA COLINA,  
RESPONDENT.**

### D E C I S I O N

**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 Decision<sup>[1]</sup> and Resolution<sup>[2]</sup> 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:

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 P175,000.00 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.<sup>[3]</sup>

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 P20,000.00 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.<sup>[4]</sup>

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.<sup>[5]</sup> 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 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.<sup>[6]</sup>

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 P175,000.00, plus interest of 12% per annum counted from the filing of the [complaint] and cost of suit.

SO ORDERED.<sup>[7]</sup>

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.<sup>[8]</sup>

The petition lacks merit.

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