

SECOND DIVISION

[G.R. No. 187174, August 28, 2013]

**FELY Y. YALONG, PETITIONER, VS. PEOPLE OF THE PHILIPPINES
AND LUCILA C. YLAGAN, RESPONDENTS.**

DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*^[1] are the Resolutions dated August 1, 2008^[2] and March 10, 2009^[3] of the Court of Appeals (CA) in CA-G.R. SP No. 104075 which dismissed petitioner Fely Y. Yalong's (Yalong) Petition for Review^[4] dated June 26, 2008 (subject petition for review), finding the same to be the improper mode of appeal.

The Facts

Stemming from a complaint filed by respondent Lucila C. Ylagan (Ylagan), an Information was filed before the Municipal Trial Court in Cities of Batangas City, Branch 1 (MTCC), docketed as Criminal Case No. 45414, charging Yalong for the crime of violation of Batas Pambansa Bilang 22^[5] (BP 22) as follows:

That on or about April 2, 2002 at Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, well-knowing that she does not have funds in or credit with the Export and Industry Bank, Juan Luna Branch, did then and there wilfully, unlawfully and feloniously draw, make and issue to Major Lucila Ylagan, Export and Industry Bank Check No. 0002578833 dated May 3, 2002 in the amount of FOUR HUNDRED FIFTY THOUSAND PESOS (P450,000.00), Philippine Currency, to apply on account or for value, but when said check was presented for full payment with the drawee bank, the same was dishonored by the drawee bank on the ground of "Account Closed," which in effect is even more than a dishonor for insufficiency of funds, despite notice of dishonor and demands made upon her to make good her check by making proper arrangement with the drawee bank or pay her obligation in full directly to Major Lucila Ylagan, accused failed and refused to do so, which acts constitute a clear violation of the aforesaid law, to the damage and prejudice of transaction in commercial documents in general and of Major Lucila Ylagan in particular in the aforementioned amount.

CONTRARY TO LAW. ^[6]

Upon arraignment, Yalong pleaded not guilty to the aforesaid charge. Hence, the case was set for pre-trial and thereafter, trial ensued.^[7]

During trial, Ylagan testified that sometime on April 2, 2002, Yalong borrowed from her the amount of P450,000.00 with a verbal agreement that the same would be paid back to her in cash and, as payment thereof, issued to her, *inter alia*, a postdated check dated May 3, 2002 in the similar amount of P450,000.00 (subject check). However, when Ylagan presented the subject check for payment on August 27, 2002, it was dishonored and returned to her for the reason "Account Closed." As verbal and written demands made on Yalong to pay her loan proved futile, Ylagan was constrained to file the instant criminal case.^[8]

In her defense, Yalong averred that she already paid her loan but did not require Ylagan to issue a receipt or acknowledge the same. Likewise, she claimed that the subject check belonged to her husband and that while she knew that the said check was not covered by sufficient funds, it was already signed by her husband when she handed it to Ylagan.^[9]

The MTCC Ruling and Subsequent Proceedings

On August 24, 2006, the MTCC rendered its Judgment^[10] (MTCC Decision), finding Yalong guilty beyond reasonable doubt of the crime of violation of BP 22 and accordingly sentenced her to suffer the penalty of imprisonment for a term of one year and ordered her to pay Ylagan the amount of P450,000.00, with legal interest of 12% per annum from October 10, 2002, including P25,000.00 as attorney's fees and costs of suit.^[11]

The MTCC found all the elements of the crime charged to have been duly established. It did not give credence to Yalong's defense that she did not own the checking account and that she was not the one who issued the subject check. On this score, it cited the case of *Ruiz v. People*^[12] wherein it was held that "[BP 22] 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."^[13] Further, it observed that Yalong failed to prove by clear and convincing evidence that she has completely paid the loan and thus, such defense must likewise fail.^[14]

Yalong filed a Supplemental Motion for Reconsideration and Recall the Warrant of Arrest^[15] dated October 15, 2006 which the MTCC treated as an original motion for reconsideration. The said motion was, however, denied in an Order^[16] dated December 5, 2006.

Consequently, Yalong filed a Notice of Appeal^[17] dated January 2, 2007 which was denied due course in an Order^[18] dated January 19, 2007, considering that the judgment against her was promulgated *in absentia* on account of her unjustified absence.

Dissatisfied, Yalong filed a Petition for Relief from Order and Denial of Appeal^[19] which was dismissed in an Order^[20] dated July 25, 2007 on the ground that Yalong had lost the remedies available to her under the law when she: (a) failed to appear without justifiable reason at the scheduled promulgation of the MTCC Decision; (b) did not surrender within 15 days from the date of such promulgation; (c) did not file

a motion for leave of court to avail of the remedies under the law; and (d) remained at large. Yalong moved for reconsideration^[21] which was, however, denied in an Order^[22] dated October 25, 2007. Aggrieved, Yalong filed a Petition for *Certiorari* with Petition for Bail (*certiorari* petition), docketed as Civil Case No. 8278, before the Regional Trial Court of Batangas City, Branch 7 (RTC).^[23]

The RTC Ruling

In a Resolution^[24] dated April 2, 2008 (RTC Resolution), the RTC denied Yalong's *certiorari* petition, finding the promulgation of the MTCC Decision *in absentia* to be valid as Yalong was duly notified of the scheduled date of promulgation on October 6, 2006 and yet failed to appear thereat.^[25] Furthermore, the RTC observed that Yalong did not make any effort to surrender within the time allowed by the rules and thus, lost the remedies available to her under the law.^[26]

Yalong filed a motion for reconsideration on April 30, 2008^[27] which was eventually denied in an Order^[28] dated May 27, 2008. As such, on June 26, 2008, she filed the subject petition for review before the CA.^[29]

The CA Ruling

In a Resolution^[30] dated August 1, 2008, the CA dismissed the subject petition for review on the ground that the "Order of the [RTC] was issued in the exercise of its original jurisdiction – where appeal [by filing a notice of appeal with the RTC] – and not a petition for review is the proper remedy."

Yalong filed a motion for reconsideration dated November 20, 2008^[31] which was, however, denied in a Resolution^[32] dated March 10, 2009. Hence, this petition.

The Issue Before the Court

The essential issue in this case is whether or not the CA properly dismissed the subject petition for review on the ground of improper appeal.

The Court's Ruling

The petition is bereft of merit.

While the Rules of Court (Rules) do not specifically state that the inappropriate filing of a petition for review instead of a required notice of appeal is dismissible (unlike its converse, *i.e.*, the filing of a notice of appeal when what is required is the filing of a petition for review),^[33] Section 2(a), Rule 41 of the Rules nonetheless provides that appeals to the CA in cases decided by the RTC in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the latter court. The said provision reads:

SEC. 2. *Modes of appeal.* –

(a) *Ordinary appeal.* – **The appeal to the Court of Appeals in cases**