

SECOND DIVISION

[G.R. No. 182301, January 31, 2011]

**JAIME ALFEREZ, PETITIONER, VS. PEOPLE OF THE PHILIPPINES
AND PINGPING CO, RESPONDENTS.**

DECISION

NACHURA, J.:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Court of Appeals (CA) Decision^[1] dated December 13, 2007 and Resolution^[2] dated March 4, 2008 in CA-G.R. CEB-CR No. 00300.

The facts of the case, as culled from the records, are as follows:

Petitioner Jaime Alferez purchased construction materials from Cebu ABC Sales Commercial. As payment for the goods, he issued three (3) checks for the total amount of P830,998.40. However, the checks were dishonored for having been drawn against a closed account. Petitioner was thus charged with three (3) counts of violation of *Batas Pambansa Bilang* (B.P. Blg.) 22 before the Municipal Trial Court in Cities (MTCC), Cebu City. The cases were raffled to Branch 3 and docketed as Criminal Case Nos. 40985-R to 40987-R.^[3] During the trial, the prosecution presented its lone witness, private complainant Pingping Co.^[4] Thereafter, the prosecution formally offered the following documentary evidence:

1. BPI Check No. 492089 dated 29 April 1994 in the sum of P78, 889.95;
2. BPI Check No. 492010 dated 22 June 1994 in the sum of P30,745.90;
3. BPI Check No. 492011 dated 22 June 1994 in the sum of P721,362.55;
4. The demand letter dated 7 July 1994 addressed to petitioner;
5. The registry receipt of the Post Office;
6. The face of the Registry Return Receipt;
7. The dorsal side of the Registry Return Receipt;
8. The Returned Check Ticket dated 23 June 1994; and
9. The reason for the dishonor.^[5]

Instead of presenting evidence, petitioner filed a Demurrer to Evidence^[6] on August 8, 2003, or approximately ten (10) months after the prosecution rested its case. Petitioner averred that the prosecution failed to show that he received the notice of dishonor or demand letter.

On March 4, 2005, the MTCC issued a resolution^[7] denying petitioner's Demurrer to Evidence, and rendering judgment finding petitioner guilty as charged, the

dispositive portion of which reads:

WHEREFORE, the Court finds the accused guilty beyond reasonable doubt of the crime of issuing bouncing checks as defined and penalized under Section 1 of Batas Pambansa Blg. 22 and hereby sentences the accused the following:

1. To pay a fine of Php830,998.40 and in case of insolvency to suffer subsidiary imprisonment;
2. To pay private complainant the total face value of the checks in the amount of Php830,998.40 plus 1% interest per month beginning from the filing of the complaint.

SO ORDERED.^[8]

Aggrieved, petitioner appealed to the Regional Trial Court (RTC), Branch 21, Cebu City. The RTC rendered Judgment^[9] affirming *in toto* the MTCC decision. Petitioner moved for reconsideration, but it was denied in an Order^[10] dated December 16, 2005. In the same Order, the RTC modified the MTCC resolution by sentencing petitioner to suffer the penalty of imprisonment for six (6) months for each count of violation of B.P Blg. 22, instead of fine as originally imposed.

Undaunted, petitioner elevated the matter to the CA *via* a petition for review under Rule 42 of the Rules of Court. In the assailed Decision, the CA dismissed the petition for lack of merit. It sustained petitioner's conviction as the elements of the crime had been sufficiently established. As to the service on petitioner of the notice of dishonor, the appellate court pointed out that petitioner did not testify, and that he did not object to the prosecution's evidence aimed at proving the fact of receipt of the notice of dishonor. Consequently, the registry receipt and the return card adequately show the fact of receipt. As to petitioner's contention that he was denied his right to present evidence after the denial of his demurrer to evidence, the CA held that there was no such denial since it was merely the consequence of the filing of demurrer without leave of court. Finally, as to the imposition of the penalty of imprisonment instead of fine, the CA found no grave abuse of discretion on the part of the RTC since it was shown that petitioner acted in bad faith.^[11]

On March 4, 2008, the CA denied petitioner's motion for reconsideration. Hence, this petition anchored on the following issues:

Whether the Registry Receipt and Registry Return Receipt alone without presenting the person who mailed and/or served the demand letter is sufficient notice of dishonor as required by BP 22.

Whether the filing of the Demurrer of (sic) Evidence without leave and denied by the trial court is a waiver of the right of the petitioner (the accused before the trial court) to present his evidence in support and to rebut the evidence of the respondent particularly with respect to the civil

aspect of the case.

On the alternative (if the petitioner is guilty), whether the accused should only be mete[d] the penalty of fine as imposed by the trial court (MTCC).

[12]

The petition is partly meritorious.

After a careful evaluation of the records of the case, we believe and so hold that the totality of the evidence presented does not support petitioner's conviction for violation of B.P. Blg. 22.

Section 1 of B.P. Blg. 22 defines the offense, as follows:[13]

Section 1. *Checks without sufficient funds.*--Any person who makes or draws and issues any check to apply on account or for value, knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, which check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment, shall be punished by imprisonment of not less than thirty days but not more than one (1) year or by a fine of not less than but not more than double the amount of the check which fine shall in no case exceed Two Hundred Thousand Pesos, or both such fine and imprisonment at the discretion of the court.

The same penalty shall be imposed upon any person who, having sufficient funds in or credit with the drawee bank when he makes or draws and issues a check, shall fail to keep sufficient funds or to maintain a credit to cover the full amount of the check if presented within a period of ninety (90) days from the date appearing thereon, for which reason it is dishonored by the drawee bank.

Where the check is drawn by a corporation, company or entity, the person or persons who actually signed the check in behalf of such drawer shall be liable under this Act.

Accordingly, this Court has held that the elements of the crime are, as follows: (1) the making, drawing, and issuance of any check to apply on account or for value; (2) the knowledge of the maker, drawer, or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of the check in full upon its presentment; and (3) the subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit, or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.[14]

In this case, the first and third elements of the crime have been adequately established. The prosecution, however, failed to prove the second element. Because this element involves a state of mind which is difficult to establish, Section 2 of B.P.