

SECOND DIVISION

[G.R. NO. 142641, July 17, 2006]

**PACIFICO B. ARCEO, JR., PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

CORONA, J.:

This petition for review on certiorari assails the April 28, 1999 decision^[1] and March 27, 2000 resolution^[2] of the Court of Appeals in CA-G.R. CR No. 19601 affirming the trial court's judgment finding petitioner Pacifico B. Arceo, Jr. liable for violation of Batas Pambansa Blg. (BP) 22, otherwise known as the "Bouncing Checks Law."

The facts of the case as found by the trial court and adopted by the Court of Appeals follow.

On March 14, 1991, [petitioner], obtained a loan from private complainant Josefino Cenizal [] in the amount of P100,000.00. Several weeks thereafter, [petitioner] obtained an additional loan of P50,000.00 from [Cenizal]. [Petitioner] then issued in favor of Cenizal, Bank of the Philippine Islands [(BPI)] Check No. 163255, postdated August 4, 1991, for P150,000.00, at Cenizal's house located at 70 Panay Avenue, Quezon City. When August 4, 1991 came, [Cenizal] did not deposit the check immediately because [petitioner] promised [] that he would replace the check with cash. Such promise was made verbally seven (7) times. When his patience ran out, [Cenizal] brought the check to the bank for encashment. The head office of the Bank of the Philippine Islands through a letter dated December 5, 1991, informed [Cenizal] that the check bounced because of insufficient funds.

Thereafter, [Cenizal] went to the house of [petitioner] to inform him of the dishonor of the check but [Cenizal] found out that [petitioner] had left the place. So, [Cenizal] referred the matter to a lawyer who wrote a letter giving [petitioner] three days from receipt thereof to pay the amount of the check. [Petitioner] still failed to make good the amount of the check. As a consequence, [Cenizal] executed on January 20, 1992 before the office of the City Prosecutor of Quezon City his affidavit and submitted documents in support of his complaint for [e]stafa and [v]iolation of [BP 22] against [petitioner]. After due investigation, this case for [v]iolation of [BP 22] was filed against [petitioner] on March 27, 1992. The check in question and the return slip were however lost by [Cenizal] as a result of a fire that occurred near his residence on September 16, 1992. [Cenizal] executed an Affidavit of Loss regarding the loss of the check in question and the return slip.^[3]

After trial, petitioner was found guilty as charged. Aggrieved, he appealed to the Court of Appeals. However, on April 28, 1999, the appellate court affirmed the trial court's decision in toto. Petitioner sought reconsideration but it was denied. Hence, this petition.

Petitioner claims that the trial and appellate courts erred in convicting him despite the failure of the prosecution to present the dishonored check during the trial. He also contends that he should not be held liable for the dishonor of the check because it was presented beyond the 90-day period provided under the law. Petitioner further questions his conviction since the notice requirement was not complied with and he was given only three days to pay, not five banking days as required by law. Finally, petitioner asserts that he had already paid his obligation to Cenizal.

Petitioner's contentions have no merit.

SIGNIFICANCE OF THE 90-DAY PERIOD FOR PRESENTMENT OF THE CHECK

Petitioner asserts that there was no violation of BP 22 because the check was presented to the drawee bank only on December 5, 1991 or 120 days from the date thereof (August 4, 1991). He argues that this was beyond the 90-day period provided under the law in connection with the presentment of the check. We disagree.

Section 1 of BP 22 provides:

SECTION 1. *Checks without sufficient funds.* ¹ 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.

In *Wong v. Court of Appeals*,^[4] the Court ruled that the 90-day period provided in the law is not an element of the offense. Neither does it discharge petitioner from

his duty to maintain sufficient funds in the account within a reasonable time from the date indicated in the check. According to current banking practice, the reasonable period within which to present a check to the drawee bank is six months. Thereafter, the check becomes stale and the drawer is discharged from liability thereon to the extent of the loss caused by the delay.

Thus, Cenizal's presentment of the check to the drawee bank 120 days (four months) after its issue was still within the allowable period. Petitioner was freed neither from the obligation to keep sufficient funds in his account nor from liability resulting from the dishonor of the check.

APPLICABILITY OF THE BEST EVIDENCE RULE

Petitioner's insistence on the presentation of the check in evidence as a condition sine qua non for conviction under BP 22 is wrong. Petitioner anchors his argument on Rule 130, Section 3, of the Rules of Court, otherwise known as the best evidence rule. However, the rule applies only where the content of the document is the subject of the inquiry. Where the issue is the execution or existence of the document or the circumstances surrounding its execution, the best evidence rule does not apply and testimonial evidence is admissible.^[5]

The gravamen of the offense is the act of drawing and issuing a worthless check.^[6] Hence, the subject of the inquiry is the fact of issuance or execution of the check, not its content.

Here, the due execution and existence of the check were sufficiently established. Cenizal testified that he presented the originals of the check, the return slip and other pertinent documents before the Office of the City Prosecutor of Quezon City when he executed his complaint-affidavit during the preliminary investigation. The City Prosecutor found a *prima facie* case against petitioner for violation of BP 22 and filed the corresponding information based on the documents. Although the check and the return slip were among the documents lost by Cenizal in a fire that occurred near his residence on September 16, 1992, he was nevertheless able to adequately establish the due execution, existence and loss of the check and the return slip in an affidavit of loss as well as in his testimony during the trial of the case.

Moreover, petitioner himself admitted that he issued the check. He never denied that the check was presented for payment to the drawee bank and was dishonored for having been drawn against insufficient funds.

PRESENCE OF THE ELEMENTS OF THE OFFENSE

Based on the allegations in the information,^[7] petitioner was charged for violating the first paragraph of BP 22. The elements of the offense are:

1. the making, drawing and issuance of any check to apply to account or for value;
2. knowledge of the maker, drawer, or issuer that at the time of issue he