

FIRST DIVISION

[G.R. NO. 145006, August 30, 2006]

**DAVID TAN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND
CAROLYN ZARAGOZA, RESPONDENTS.**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on *Certiorari* filed by accused David Tan (petitioner) assailing the Decision^[1] of the Court of Appeals (CA) dated February 11, 2000, and the Resolution dated September 4, 2000.

The antecedent facts as accurately narrated by the MTC in its Decision are as follows:

David Tan, the accused herein, stands charged with the crime of Violation of Batas Pambansa Bilang 22 (6 counts) in six (6) separate informations which read as follows:

x x x x x x x x

Records show that the accused, assisted by counsel, entered a plea of Not Guilty, upon being arraigned. Thereafter, these cases were set for trial on the merits, which cases were consolidated and tried jointly.

Carolyn Zaragoza, of legal age, the private complainant, testified among others that: She met the accused through their common friend, Paul Dy while they were having some business negotiations (Witness identified the accused through his pictures which were attached to his bail bond, as said accused failed to appear in court despite notice, said pictures were marked as Exhs. "J", "J-1" and "J-2"); that during her first meeting with the accused, they had a loan transaction which was followed by another loan transaction on June 27, 1994 in the amount of ₱1 Million, and for which she gave the accused a Metrobank Check No. 001430 in the amount of ₱950,000.00 (Exhs. "K" & "K-1"), having deduced the 5% interest from said loan. Thereafter, the accused issued several PCIBANK Checks, among which are numbered as follows: x x x When all these checks were deposited at her account with the City Trust Bank, Sucat (Parañaque) Branch, they all bounced for reason "Account Closed." She thereafter tried to contact the accused but he (accused) refused to talk to her. The accused was sent by her lawyer a formal demand through registered mail, for him to pay in cash the aforementioned bounced/dishonored checks but to no avail. In filing this case she engaged the services of a lawyer for ₱50,000.00 acceptance fee and ₱1,000.00 per appearance in court; that said accused should pay the

corresponding interest of ₱50,000.00 which had become due since November 1994 other than the principal obligation.

Despite ample opportunity given to the accused to present its evidence, it still failed to do so; hence, the court in its Order dated March 18, 1997, the case was deemed submitted for decision.

On May 27, 1997, the MTC rendered judgment, to wit:

IN VIEW OF THE FOREGOING, this Court finds the accused David Tan guilty beyond reasonable doubt of the crime of Violation of Batas Pambansa Blg. 22 in six (6) counts, and hereby sentences said accused to an imprisonment of six (6) months for each case, and to indemnify the private complainant in the amount of ₱600,000.00 representing the total amount of the subject checks, plus interest thereon in the amount of ₱50,000.00 and attorney's fees in the amount of ₱20,000.00 and to pay the costs.

SO ORDERED.^[2]

Petitioner filed a motion for reconsideration with the MTC wherein he denied receipt of the demand letter^[3] dated October 30, 1995 marked as Exhibit "R" and alleged that said evidence was not included in the formal offer of evidence. Said motion for reconsideration was denied. He then appealed the case to the Regional Trial Court of Parañaque, Branch 258 (RTC), with the following assignment of errors:

1. The trial court gravely erred in finding appellant guilty beyond reasonable doubt of the crime of Violation of B.P. 22 on six (6) counts (sic);
2. The trial court gravely erred in ordering appellant to indemnify the private complainant the value of the six (6) checks in question, plus the sum of ₱50,000.00 interest and ₱20,000.00 attorney's fees.^[4]

On April 16, 1999, the RTC promulgated its Decision, the dispositive portion of which reads as follows:

WHEREFORE, the Decision of the Court a quo is **MODIFIED** to read, thus:

IN VIEW OF THE FOREGOING, this Court finds the accused David Tan guilty beyond reasonable doubt of the crime of Violation of Batas Pambansa Bilang 22 in six (6) counts, and hereby sentences said accused to an imprisonment of six (6) months for each case, and to indemnify the private complainant in the amount of ₱600,000.00 representing the total amount of the subject checks, plus interest thereon at the legal rate from the filing of the Information until fully paid and to pay the costs.

In view of the foregoing the court a quo is directed to issue a Warrant of Arrest against the accused which need not be returned until he has been arrested.

SO ORDERED.^[5]

Petitioner moved for reconsideration of the foregoing Decision but per Order dated July 5, 1999, the RTC denied the same.

A Petition for Review was then filed by petitioner with the CA, alleging as follows:

With due respect to the Honorable Regional Trial Court, Branch 258, Parañaque City, it committed reversible error, thus:

1. In affirming the trial court's verdict of conviction despite the prosecution's failure to prove the guilt of herein petitioner/accused beyond reasonable doubt.
2. In affirming the trial court's verdict awarding damages to private respondent.
3. In ordering the trial court to issue warrant of arrest against petitioner despite the fact that its verdict affirming the trial court's decision is not yet final and executory.^[6]

The CA dismissed the appeal and affirmed the RTC Decision, ruling that petitioner's guilt had indeed been proven beyond reasonable doubt since the existence of the element that he had knowledge of the insufficiency of funds in or credit with the drawee bank at the time he issued the checks is established by the demand letter dated October 30, 1995 notifying him of the dishonor of the checks he issued. The CA further pointed out that the RTC had already deleted the MTC's award for interest in the amount of ₱50,000.00 and attorney's fees, hence, on said issue, there is no error that needs to be corrected. As to the order for the issuance of a warrant of arrest, the CA held that "[i]t is a constitutional mandate that once accused is convicted in the Regional Trial Court, bail becomes a matter of discretion upon the court and no longer a matter of right."^[7]

Petitioner filed a motion for reconsideration where he argued that no evidentiary weight should be given to the demand letter dated October 30, 1995 because, **although included in the formal offer of evidence by the prosecution, it was not presented during trial for proper identification, hence, it should not have been admitted into evidence even if the defense failed to object to the formal offer thereof.** Petitioner insisted that the prosecution did not have proof of notice of dishonor, thus, petitioner's guilt had not been proven beyond reasonable doubt.

The CA denied said motion for reconsideration in its Resolution^[8] dated September 4, 2000 holding that since said issue was never raised before the trial court nor before the RTC, the same can no longer be considered by the reviewing court.

Hence, this petition where it is alleged that:

- I. THE APPELLATE COURT ERRED IN AFFIRMING IN TOTO THE LOWER COURT'S VERDICT OF CONVICTION DESPITE THE PROSECUTION'S FAILURE TO PROVE THE GUILT OF PETITIONER/ACCUSED BEYOND REASONABLE DOUBT MUCH MORE SO CONSIDERING THAT THE PROOF OF NOTICE OF DISHONOR HAS NOT BEEN SATISFACTORILY PROVEN OR IS BASED ON EVIDENCE NOT PROPERLY IDENTIFIED

AND OFFERED.

X X X X X X X X

II. THE APPELLATE COURT ERRED IN AFFIRMING THE TRIAL COURT'S VERDICT AWARDING DAMAGES TO PRIVATE RESPONDENT.

X X X X X X X X

III. THE APPELLATE COURT ERRED IN SUSTAINING THE REGIONAL TRIAL COURT WHICH ORDERED AN INFERIOR COURT TO ISSUE A WARRANT OF ARREST AGAINST PETITIONER DESPITE THE FACT THAT ITS VERDICT AFFIRMING THE INFERIOR COURT'S DECISION IS NOT YET FINAL AND EXECUTORY.^[9]

The petition is imbued with merit.

With regard to the first assignment of error, petitioner reiterates his argument that no evidentiary weight should be given to the demand letter dated October 30, 1995 because, **although included in the formal offer of evidence by the prosecution, it was not presented during trial for proper identification and should not have been admitted into evidence even if the defense failed to object to the formal offer thereof.**

It is quite true that this Court has ruled that objection to the admissibility of evidence, if not made at the time such evidence is offered, shall be deemed waived.^[10] **However, in all cases where said rule had been applied, the assailed testimonial or object evidence had been duly presented during the course of the trial.**

In the present case, a judicious examination of the entire record shows that, indeed, **the demand letter dated October 30, 1995 was never presented during the course of the trial.**

The transcript of stenographic notes^[11] for the hearing held on September 26, 1996 shows that the presentation of the testimony of the bank representative testifying for the prosecution was dispensed with since the opposing parties stipulated that the testimony of a bank representative would prove the following:

x x x the witness will be testifying on the points that at the time the six checks were presented for payment, the first two checks were dishonored for being "Drawn Against Insufficient Funds" while the third up to the sixth checks were dishonored for reason of "account closed" and per records of the bank, the account of the accused was not sufficient to cover the amount of the checks issued by the accused as well as the domestic current account of the accused and we have here the documents, the ledger of the accused which would prove that the accounts of the accused, both savings and current were not sufficient to cover the checks issued by the accused to the complainant?^[12]

The only other prosecution witness is private complainant Carolyn Zaragosa (Zaragosa), whose testimony is to the effect that after the checks bounced, she