

SECOND DIVISION

[G.R. NO. 141066, February 17, 2005]

EVANGELINE LADONGA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

AUSTRIA-MARTINEZ, J.:

Petitioner Evangeline Ladonga seeks a review of the Decision,^[1] dated May 17, 1999, of the Court of Appeals in CA-G.R. CR No. 20443, affirming the Decision dated August 24, 1996, of the Regional Trial Court (RTC), Branch 3 of Bohol, in Criminal Case Nos. 7068, 7069 and 7070 convicting her of violation of *B.P. Blg. 22*, otherwise known as The Bouncing Checks Law.

The factual background of the case is as follows:

On March 27, 1991, three Informations for violation of *B.P. Blg. 22* were filed with the RTC, docketed as Criminal Case Nos. 7068 - 7070. The Information in Criminal Case No. 7068 alleges as follows:

That, sometime in May or June 1990, in the City of Tagbilaran, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating, and mutually helping with one another, knowing fully well that they did not have sufficient funds deposited with the United Coconut Planters Bank (UCPB), Tagbilaran Branch, did then and there willfully, unlawfully, and feloniously, draw and issue UCPB Check No. 284743 postdated July 7, 1990 in the amount of NINE THOUSAND SEVENTY-FIVE PESOS AND FIFTY-FIVE CENTAVOS (P9,075.55), payable to Alfredo Oculam, and thereafter, without informing the latter that they did not have sufficient funds deposited with the bank to cover up the amount of the check, did then and there willfully, unlawfully and feloniously pass on, indorse, give and deliver the said check to Alfredo Oculam by way of rediscounting of the aforementioned checks; however, upon presentation of the check to the drawee bank for encashment, the same was dishonored for the reason that the account of the accused with the United Coconut Planters Bank, Tagbilaran Branch, had already been closed, to the damage and prejudice of the said Alfredo Oculam in the aforestated amount.

Acts committed contrary to the provisions of *Batas Pambansa Bilang 22*.

[2]

The accusatory portions of the Informations in Criminal Case Nos. 7069 and 7070 are similarly worded, except for the allegations concerning the number, date and amount of each check, that is:

(a) Criminal Case No. 7069 - UCPB Check No. 284744 dated July 22, 1990 in the amount of P12,730.00;[3]

(b) Criminal Case No. 7070 – UCPB Check No. 106136 dated July 22, 1990 in the amount of P8,496.55.[4]

The cases were consolidated and jointly tried. When arraigned on June 26, 1991, the two accused pleaded not guilty to the crimes charged.[5]

The prosecution presented as its lone witness complainant Alfredo Oculam. He testified that: in 1989, spouses Adronico[6] and Evangeline Ladonga became his regular customers in his pawnshop business in Tagbilaran City, Bohol;[7] sometime in May 1990, the Ladonga spouses obtained a P9,075.55 loan from him, guaranteed by United Coconut Planters Bank (UCPB) Check No. 284743, post dated to dated July 7, 1990 issued by Adronico;[8] sometime in the last week of April 1990 and during the first week of May 1990, the Ladonga spouses obtained an additional loan of P12,730.00, guaranteed by UCPB Check No. 284744, post dated to dated July 26, 1990 issued by Adronico;[9] between May and June 1990, the Ladonga spouses obtained a third loan in the amount of P8,496.55, guaranteed by UCPB Check No. 106136, post dated to July 22, 1990 issued by Adronico;[10] the three checks bounced upon presentment for the reason "CLOSED ACCOUNT";[11] when the Ladonga spouses failed to redeem the check, despite repeated demands, he filed a criminal complaint against them.[12]

While admitting that the checks issued by Adronico bounced because there was no sufficient deposit or the account was closed, the Ladonga spouses claimed that the checks were issued only to guarantee the obligation, with an agreement that Oculam should not encash the checks when they mature;[13] and, that petitioner is not a signatory of the checks and had no participation in the issuance thereof.[14]

On August 24, 1996, the RTC rendered a joint decision finding the Ladonga spouses guilty beyond reasonable doubt of violating *B.P. Blg. 22*, the dispositive portion of which reads:

Premises considered, this Court hereby renders judgment finding accused Adronico Ladonga, alias Ronie, and Evangeline Ladonga guilty beyond reasonable doubt in the aforesaid three (3) criminal cases, for which they stand charged before this Court, and accordingly, sentences them to imprisonment and fine, as follows:

1. In Criminal Case No. 7068, for (sic) an imprisonment of one (1) year for each of them, and a fine in the amount of P9,075.55, equivalent to the amount of UCPB Check No. 284743;
2. In Criminal Case No. 7069, for (sic) an imprisonment for each of them to one (1) year and a fine of P12, 730.00, equivalent to the amount of UCPB Check No. 284744; and,
3. In Criminal Case No. 7070, with (sic) an imprisonment of one year for each of them and a fine of P8,496.55 equivalent to the

amount of UCPB Check No. 106136;

4. That both accused are further ordered to jointly and solidarily pay and reimburse the complainant, Mr. Alfredo Oculam, the sum of P15,000.00 representing actual expenses incurred in prosecuting the instant cases; P10,000.00 as attorney's fee; and the amount of P30,302.10 which is the total value of the three (3) subject checks which bounced; but without subsidiary imprisonment in case of insolvency.

With Costs against the accused.

SO ORDERED.^[15]

Adronico applied for probation which was granted.^[16] On the other hand, petitioner brought the case to the Court of Appeals, arguing that the RTC erred in finding her criminally liable for conspiring with her husband as the principle of conspiracy is inapplicable to *B.P. Blg. 22* which is a special law; moreover, she is not a signatory of the checks and had no participation in the issuance thereof.^[17]

On May 17, 1999, the Court of Appeals affirmed the conviction of petitioner.^[18] It held that the provisions of the penal code were made applicable to special penal laws in the decisions of this Court in *People vs. Parel*,^[19] *U.S. vs. Ponte*,^[20] and *U.S. vs. Bruhez*.^[21] It noted that Article 10 of the Revised Penal Code itself provides that its provisions shall be supplementary to special laws unless the latter provide the contrary. The Court of Appeals stressed that since *B.P. Blg. 22* does not prohibit the applicability in a suppletory character of the provisions of the Revised Penal Code (RPC), the principle of conspiracy may be applied to cases involving violations of *B.P. Blg. 22*. Lastly, it ruled that the fact that petitioner did not make and issue or sign the checks did not exculpate her from criminal liability as it is not indispensable that a co-conspirator takes a direct part in every act and knows the part which everyone performed. The Court of Appeals underscored that in conspiracy the act of one conspirator could be held to be the act of the other.

Petitioner sought reconsideration of the decision but the Court of Appeals denied the same in a Resolution dated November 16, 1999.^[22]

Hence, the present petition.

Petitioner presents to the Court the following issues for resolution:

1. WHETHER OR NOT THE PETITIONER WHO WAS NOT THE DRAWER OR ISSUER OF THE THREE CHECKS THAT BOUNCED BUT HER CO-ACCUSED HUSBAND UNDER THE LATTER'S ACCOUNT COULD BE HELD LIABLE FOR VIOLATIONS OF *BATAS PAMBANSA BILANG 22* AS CONSPIRATOR.
2. ANCILLARY TO THE MAIN ISSUE ARE THE FOLLOWING ISSUES:
 - A. WHETHER OR NOT CONSPIRACY IS APPLICABLE IN VIOLATIONS OF *BATAS PAMBANSA BILANG 22* BY INVOKING THE LAST SENTENCE OF ARTICLE 10 OF THE

REVISED PENAL CODE WHICH STATES:

Art. 10. Offenses not subject of the provisions of this Code. – Offenses which are or in the future may be punished under special laws are not subject to the provisions of this Code. This Code shall be supplementary to such laws, unless the latter should specially provide the contrary.

B. WHETHER OR NOT THE CASES CITED BY THE HONORABLE COURT OF APPEALS IN AFFIRMING IN TOTO THE CONVICTION OF PETITIONER AS CONSPIRATOR APPLYING THE SUPPLETORY CHARACTER OF THE REVISED PENAL CODE TO SPECIAL LAWS LIKE *B.P. Blg. 22* IS APPLICABLE.^[23]

Petitioner staunchly insists that she cannot be held criminally liable for violation of *B.P. Blg. 22* because she had no participation in the drawing and issuance of the three checks subject of the three criminal cases, a fact proven by the checks themselves. She contends that the Court of Appeals gravely erred in applying the principle of conspiracy, as defined under the RPC, to violations of *B.P. Blg. 22*. She posits that the application of the principle of conspiracy would enlarge the scope of the statute and include situations not provided for or intended by the lawmakers, such as penalizing a person, like petitioner, who had no participation in the drawing or issuance of checks.

The Office of the Solicitor General disagrees with petitioner and echoes the declaration of the Court of Appeals that some provisions of the Revised Penal Code, especially with the addition of the second sentence in Article 10, are applicable to special laws. It submits that *B.P. Blg. 22* does not provide any prohibition regarding the applicability in a suppletory character of the provisions of the Revised Penal Code to it.

Article 10 of the RPC reads as follows:

ART. 10. *Offenses not subject to the provisions of this Code.* – Offenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code. This Code shall be supplementary to such laws, unless the latter should specially provide the contrary.

The article is composed of two clauses. The first provides that offenses which in the future are made punishable under special laws are not subject to the provisions of the RPC, while the second makes the RPC supplementary to such laws. While it seems that the two clauses are contradictory, a sensible interpretation will show that they can perfectly be reconciled.

The first clause should be understood to mean only that the special penal laws are controlling with regard to offenses therein specifically punished. Said clause only restates the elemental rule of statutory construction that special legal provisions prevail over general ones.^[24] *Lex specialis derogant generali*. In fact, the clause can be considered as a superfluity, and could have been eliminated altogether. The

second clause contains the soul of the article. The main idea and purpose of the article is embodied in the provision that the "code shall be supplementary" to special laws, unless the latter should specifically provide the contrary.

The appellate court's reliance on the cases of *People vs. Parel*,^[25] *U.S. vs. Ponte*,^[26] and *U.S. vs. Bruhez*^[27] rests on a firm basis. These cases involved the suppletory application of principles under the then Penal Code to special laws. *People vs. Parel* is concerned with the application of Article 22^[28] of the Code to violations of Act No. 3030, the Election Law, with reference to the retroactive effect of penal laws if they favor the accused. *U.S. vs. Ponte* involved the application of Article 17^[29] of the same Penal Code, with reference to the participation of principals in the commission of the crime of misappropriation of public funds as defined and penalized by Act No. 1740. *U.S. vs. Bruhez* covered Article 45^[30] of the same Code, with reference to the confiscation of the instruments used in violation of Act No. 1461, the Opium Law.

B.P. Blg. 22 does not expressly proscribe the suppletory application of the provisions of the RPC. Thus, in the absence of contrary provision in *B.P. Blg. 22*, the general provisions of the RPC which, by their nature, are necessarily applicable, may be applied suppletorily. Indeed, in the recent case of *Yu vs. People*,^[31] the Court applied suppletorily the provisions on subsidiary imprisonment under Article 39^[32] of the RPC to *B.P. Blg. 22*.

The suppletory application of the principle of conspiracy in this case is analogous to the application of the provision on principals under Article 17 in *U.S. vs. Ponte*. For once conspiracy or action in concert to achieve a criminal design is shown, the act of one is the act of all the conspirators, and the precise extent or modality of participation of each of them becomes secondary, since all the conspirators are principals.^[33]

All these notwithstanding, the conviction of the petitioner must be set aside.

Article 8 of the RPC provides that "a conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it." To be held guilty as a co-principal by reason of conspiracy, the accused must be shown to have performed an overt act in pursuance or furtherance of the complicity.^[34] The overt act or acts of the accused may consist of active participation in the actual commission of the crime itself or may consist of moral assistance to his co-conspirators by moving them to execute or implement the criminal plan.^[35]

In the present case, the prosecution failed to prove that petitioner performed any overt act in furtherance of the alleged conspiracy. As testified to by the lone prosecution witness, complainant Alfredo Oculam, petitioner was merely present when her husband, Adronico, signed the check subject of Criminal Case No. 7068.^[36] With respect to Criminal Case Nos. 7069-7070, Oculam also did not describe the details of petitioner's participation. He did not specify the nature of petitioner's involvement in the commission of the crime, either by a direct act of participation, a direct inducement of her co-conspirator, or cooperating in the commission of the offense by another act without which it would not have been accomplished. Apparently, the only semblance of overt act that may be attributed to petitioner is