

SECOND DIVISION

[G.R. NO. 140425, March 10, 2005]

JESSE^[1] YOUNG, PETITIONER, VS. COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

On appeal before us is the Decision^[2] of the Court of Appeals in CA-G.R. CR No. 20850, promulgated on October 6, 1999, affirming *in toto* the Decision of the Regional Trial Court (RTC) of Manila (Branch 13) in Criminal Case No. 82-5584^[3] which found Jesse Young guilty beyond reasonable doubt of violating *Batas Pambansa* (BP) Blg. 22, otherwise known as the "Bouncing Checks Law."

On March 24, 1982, an Information was filed accusing Jesse of violating *BP Blg. 22*, committed as follows:

That on or about August 29, 1981 in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully and feloniously make or draw and issue to Ines Uy to apply on account or for value Phil. Bank of Communications Check No. 575748 dated Aug. 29, 1981 payable to cash in the amount of P20,000.00, said accused knowing fully well that at the time of issue, he/she did not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, which check, when presented within ninety (90) days from the date thereof, was subsequently dishonored by the drawee bank for the reason of insufficient funds and despite receipt of notice of such dishonor, said accused failed to pay said Ines Uy the amount of said check or to make arrangement for payment in full of the same within five (5) banking days after receiving said notice.

Contrary to law.^[4]

Upon arraignment, Jesse pleaded not guilty to the charge.^[5] Thereafter, trial ensued.

The prosecution and the defense differ in their version of the events that preceded the filing of the above-quoted Information.

The gist of the prosecution evidence is as follows:

On July 11, 1981, Jesse together with his mother Aida Young^[6] and his sister Juliet Young^[7] went to the house of private complainant Ines Uy asking her to encash three checks with a total value of P50,000.00.^[8] Since Ines is a close friend of the

Youngs and because they badly needed money, Ines agreed to exchange the three checks with cash.^[9] One of the checks is Philippine Bank of Communications (PBC) Check No. 575748 dated August 29, 1981 with a value of P20,000.00 drawn by Jesse.^[10] On August 31, 1981, Ines deposited said check in her account with the Consolidated Bank and Trust Corporation (CBTC).^[11] On September 1, 1981, CBTC called her up informing her that the subject check was dishonored because there was a stop payment order and because of insufficiency of funds to cover the amount appearing in the check.^[12] Thereafter, Ines informed Jesse through telephone that PBC Check No. 575748 was dishonored.^[13] Jesse assured her that he would make good the check. However, he did not fulfill his promise.^[14] This prompted Ines to seek the help of her lawyer. Her lawyer wrote a demand letter and sent the same to Jesse who refused to receive the same.^[15]

On the other hand, Jesse denied having exchanged PBC Check No. 575748 for cash with Ines, contending that he and his sister never went to the house of private complainant.^[16] He claims that the check, subject matter of the present case, is one of the seven postdated checks which he gave to Ines as replacement for ten checks earlier drawn by his sister in favor of Ines. The ten checks were supposed to answer for the obligations of their mother to Ines.^[17] Jesse claims that when he issued the seven checks to Ines, he told her not to deposit these checks on their due dates for presentment because he did not have sufficient funds;^[18] and that he should call her up first because the availability of the funds to cover the amounts of the checks will depend on their collections and receivables.^[19] Jesse admitted that six out of the seven checks he issued were dishonored.^[20] However, he claims that while Ines informed him when four of the seven checks were dishonored, the latter never notified him when the last two checks, including PBC Check No. 575748, were dishonored.^[21] Neither did he receive any demand from Ines, formal or otherwise, for the payment of the check subject matter of the present case, after its dishonor.^[22] Jesse admitted that with respect to the subject check, he issued a stop payment order on August 3, 1981.^[23] He gave no reason for issuing the stop payment order.

After trial, the RTC rendered judgment finding Jesse guilty beyond reasonable doubt of violating BP Blg. 22, and meted him the penalty of imprisonment for one year. The trial court further ordered Jesse to pay complainant the sum of P20,000.00 as civil liability.^[24]

Aggrieved by the trial court's decision, Jesse filed an appeal with the Court of Appeals.

On October 6, 1999, the Court of Appeals rendered a Decision affirming *in toto* the decision of the RTC.

Hence, Jesse filed the present petition raising a single issue, to wit:

WHETHER OR NOT THE CONVICTION OF PETITIONER OF THE CRIME CHARGED IS PROPER IN THE ABSENCE OF PRIOR DEMAND FOR PAYMENT OF THE FACE VALUE OF SUBJECT CHECK.^[25]

Petitioner is accused of violation of *BP Blg. 22*, Section 1 of which provides as follows:

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 (30) 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 the Act.

A reading of the above-quoted provision of law shows that it penalizes two (2) distinct acts. First, the act of making or drawing and issuing any check to apply on account or for value, knowing at the time of issue that the drawer does not have sufficient funds in or credit with the drawee bank; and, second, having sufficient funds in or credit with the drawee bank the drawer 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.^[26]

In the present case, petitioner was charged, tried and convicted under the first act, the essential elements of which are as follows:

(1) The making, drawing and issuance of any check to apply for 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 such 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.

^[27]

There is no dispute that the subject check was drawn for value received.

Petitioner never disputed that he issued PBC Check No. 575748 and that said check was dishonored on two grounds: first, he ordered the bank to stop payment for no

valid reason and; second, for insufficiency of funds.

However, petitioner claims that he was not given notice of dishonor. He contends that under Section 2 of *BP Blg. 22*, notice of dishonor or demand for payment coupled with his failure to pay within five banking days is a prerequisite before he can be charged for violation of *BP Blg. 22*.

We do not agree.

Section 2 of *BP Blg. 22* provides:

Sec. 2. Evidence of knowledge of insufficient funds. – The making, drawing, and issuance of a check payment of which is refused by the drawee because of insufficient funds in or credit with such bank, when presented within ninety (90) days from the date of the check, shall be prima facie evidence of knowledge of such insufficiency of funds or credit unless such maker or drawer pays the holder thereof the amount due thereon, or makes arrangements for payment in full by the drawee of such check within five (5) banking days after receiving notice that such check has not been paid by the drawee.

It must be emphasized that the second element of the offense punished under the first paragraph of Section 1 of *BP Blg. 22* is “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 such check in full upon its presentment.” In *King vs. People*,^[28] we held that:

[t]o hold a person liable under BP 22, it is not enough to establish that a check issued was subsequently dishonored. It must be shown further that the person who issued the check knew “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.” Because this element involves a state of mind which is difficult to establish, Section 2 of the law creates a prima facie presumption of such knowledge, . . .

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In other words, the prima facie presumption arises when a check is issued. But the law also provides that the presumption does not arise when the issuer pays the amount of the check or makes arrangement for its payment “within five banking days after receiving notice that such check has not been paid by the drawee.” Verily, BP 22 gives the accused an opportunity to satisfy the amount indicated in the check and thus avert prosecution. As the Court held in *Lozano v. Martinez*, the aforecited provision serves to “mitigate the harshness of the law in its application.” This opportunity, however, can be used only upon receipt by the accused of a notice of dishonor. . . .

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Thus, in order to create the prima facie presumption that the issuer knew of the insufficiency of funds, it must be shown that he or she received a