

FIRST DIVISION

[G.R. No. 148557, August 07, 2003]

**FELICITO ABARQUEZ, PETITIONER, VS. COURT OF APPEALS
(SPECIAL FORMER SEVENTH DIVISION) AND THE PEOPLE OF
THE PHILIPPINES, RESPONDENTS.**

D E C I S I O N

YNARES-SANTIAGO, J.:

This is an appeal from the decision of the Court of Appeals^[1] which affirmed with modification the decision of the Regional Trial Court of Dagupan City, Branch 41,^[2] finding petitioner Felicito Abarquez guilty beyond reasonable doubt of five (5) counts of violations of Batas Pambansa Blg. 22 or the Bouncing Checks Law.

There is no dispute that petitioner issued in favor of Fertiphil Corporation five (5) checks drawn against Republic Planters Bank, Dagupan Branch. The checks issued are as follows:

Check No.	Date	Amount
2956654	June 5, 1986	P372,000.00
2956655	June 5, 1986	P340,000.00
2954047	June 13, 1986	P 27,600.00
2956660	June 27, 1986	P 58,500.00
2956662	July 1, 1986	P 52,200.00

Likewise, it is undisputed that the checks were dishonored for having been drawn against insufficient funds. Fertiphil demanded that petitioner make good the checks but to no avail, prompting the former to file criminal complaints against him. Consequently, five informations for violation of BP Blg. 22 were filed with the RTC of Dagupan City, Branch 41. The information in Criminal Case No. D-8135^[3] reads:

That on or about the 14th day of June, 1986, in the City of Dagupan, Philippines, and within the territorial jurisdiction of this Honorable Court, the above-named accused FELICITO ABARQUEZ, did then and there willfully, unlawfully and criminally, draw, issue and deliver to FERTIPHIL CORPORATION, Makati, Metro Manila, a Republic Planters Bank check No. 2956660, Dagupan City Branch, postdated June 27, 1986, in the amount of FIFTY-EIGHT THOUSAND FIVE HUNDRED PESOS (P58,500.00) Philippine currency, in payment of several bags of fertilizer purchased from said corporation, although the said accused knew fully well that his funds deposited in the said bank, if any, were not sufficient to cover its face value, such that when the said check was presented to the drawee bank for payment, the same was dishonored for reason `DRAWN AGAINST INSUFFICIENT FUNDS' and returned to the complainant and despite notice of dishonor and to make good said check, accused failed and/or refused to pay and/or make good the amount of said check

despite the lapse of more than five (5) banking days, to the damage and prejudice of the herein complainant, Fertiphil CORPORATION, represented by NOEL DE LA ROSA, Chief Accountant, in the aforesaid amount of P58,500.00 and other consequential damages.

Contrary to Batas Pambansa Bilang 22.

Except for the dates of commission, the check numbers, the dates and the amounts of said checks, the following informations were similarly worded. In Criminal Case No. D-8136,^[4] petitioner issued Check No. 2954047 on May 10, 1986 postdated June 13, 1986 in the amount of P27,600.00. In Criminal Case No. D-8137,^[5] petitioner issued Check No. 2956662 on June 16, 1986 postdated July 1, 1986 in the amount of P52,200.00. In Criminal Case No. D-8176,^[6] petitioner issued Check No. 2956665 on June 5, 1986 in the amount of P340,000.00 and, in Criminal Case No. D-8177,^[7] petitioner issued Check No. 2956654 on June 5, 1986 in the amount of P372,000.00.

After trial on the merits, the court *a quo* rendered its decision disposing as follows:

WHEREFORE, the accused Felicito Abarquez is found guilty beyond reasonable doubt of violation of Batas Pambansa Bilang 22 as charged in Criminal Case Nos. D-8135, D-8136, D-8137, D-8176 and D-8177 and hereby imposes upon him for each case, the penalty of One (1) year imprisonment and to indemnify Fertiphil Corporation the total amount of P844,500.00 and to pay the costs.

SO ORDERED.^[8]

Petitioner appealed to the Court of Appeals, which affirmed with modification the decision of the trial court, thus:

IN VIEW OF THE FOREGOING, the judgment appealed from is AFFIRMED with MODIFICATION. In line with Administrative Circular No. 12-2000 issued by the Supreme Court En Banc on November 12, 2000, judgment is hereby rendered ordering appellant to pay a fine of ONE MILLION SEVEN HUNDRED THOUSAND SIX HUNDRED PESOS (P1,700,600.00) which is double the total amount of the five checks issued by appellant. The penalty of imprisonment is deleted.

SO ORDERED.^[9]

Not satisfied with the decision, petitioner is now before us and submits the following issues:

1. Whether the trial court and the Court of Appeals erred in convicting petitioner in Criminal Case No. D-8137 though the check subject thereof was dishonored for being drawn against uncollected deposit (DAUD) and not for being drawn against insufficient funds (DAIF) or closed account (CA) which are the only punishable acts under BP 22;

2. Whether the trial court and the Court of Appeals erred in convicting petitioner in Criminal Case Nos. D-8135 and D-8136 despite the un rebutted evidence showing payment thereof after the dishonor by the drawee bank;
3. Whether the trial court and the Court of Appeals erred in convicting the accused in Criminal Case Nos. D-8176 and D-8177; and
4. Whether the Court of Appeals erred in imposing the penalty of fine in the amount of One Million Seven Hundred Thousand Six Hundred pesos (P1,700,600.00) which is double the total amount of the five checks despite the express provision of BP 22 that the fine imposed shall in no case exceed Two Hundred Thousand pesos (Sec. 1, BP 22).^[10]

Petitioner admits having issued the subject checks but insists that he is not liable under BP Blg. 22. Thus, in Criminal Case No. D-8135, Abarquez alleges that although Check No. 2956660 dated June 27, 1986 in the amount of P58,500.00 was dishonored by the bank on July 3, 1986 for insufficiency of funds, the same however was paid on July 28, 1986 via telegraphic transfer through Republic Planters Bank, Dagupan Branch as evidenced by O.R. No. 902575 before any notice of dishonor or demand to pay the same was made.

In Criminal Case No. D-8136, petitioner submits that Check No. 2954047 dated June 13, 1986 in the amount of P27,600.00 was likewise dishonored for insufficiency of funds. He avers however that even before any notice of dishonor or demand to pay the same was made, he already made the corresponding payments by means of a demand draft and telegraphic transfer through Republic Planters Bank, Dagupan Branch on July 17, 1986 and August 19, 1986, as evidenced by O.R. Nos. 902868 and 902672.

As regards Check No. 2956662 in the amount of P52,500.00 which is the subject of Criminal Case No. D-8137, petitioner admits that the same was dishonored, but alleges that he could not be made liable under BP Blg. 22, as the same was dishonored for having been drawn against uncollected deposits and not against insufficiency of funds.

As to Check No. 2956655 issued in the amount of P340,000.00 and Check No. 2956654 for P372,000.00, the subject of Criminal Case Nos. D-8176 and D-8177 respectively, which were dishonored for insufficiency of funds, petitioner argues that he could not be made liable under the Bouncing Checks Law, considering that both checks were not issued for account or for value as they were merely intended to secure the payment of his debt to Fertiphil after reconciliation of their books of account.

In *Meriz v. People*,^[11] it was held that the essential elements of the offense penalized under BP Blg. 22 are:

1. The making, drawing and issuance of any check to apply to 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 or credit with the drawee bank for the payment of such check in full upon its presentment; and
3. 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.

Both the spirit and letter of the Bouncing Checks Law require, for the act to be punished under said law, not only that the accused issued a check that was dishonored, but that likewise the accused was actually notified in writing of the fact of dishonor. The consistent rule is that penal statutes have to be construed strictly against the State and liberally in favor of the accused.^[12]

The *prima facie* presumption that the drawer has knowledge of the insufficiency of funds or credit at the time of the issuance, or on the presentment for payment, of the check may be rebutted by payment of the value of the check either by the drawer or by the drawee bank within five banking days from notice of the dishonor given to the drawer. The payment thus becomes a complete defense regardless of the strength of the evidence offered by the prosecution. It must be presupposed, then, that the issuer received a notice of dishonor and that, within five days from receipt thereof, he failed to pay the amount of the check or to make arrangement for its payment.^[13]

In *Caras v. Court of Appeals*,^[14] we note that the law provides for a *prima facie* rule of evidence. Knowledge of insufficiency of funds in or credit with the bank is presumed from the act of making, drawing, and issuing a check payment of which is refused by the drawee bank for insufficiency of funds when presented within 90 days from the date of issue. However, this presumption is rebutted when it is shown that the maker or drawer pays or makes arrangements for the payment of the check within five banking days after receiving notice that such check had been dishonored. Thus, it is essential for the maker or drawer to be notified of the dishonor of her check, so he could pay the value thereof or make arrangements for its payment within the period prescribed by law.

In Criminal Case No. D-8135, petitioner paid the face value of the subject check in the amount of P58,500.00 even before Fertiphil made any formal written demand to pay the face value of the dishonored check.^[15] In fact, petitioner paid the face value of the check on July 28, 1986, a little over three weeks from the time the check was presented for payment on July 3, 1986. Petitioner was only informed through a demand letter dated September 27, 1986, or two months after petitioner paid the face value of the dishonored check.^[16] Petitioner, therefore, cannot be held liable under B.P. 22 in Criminal Case No. D-8135.

In Criminal Case No. D-8136, petitioner paid the face value of Check No. 2954047 in the amount of P27,000.00 by means of Demand Draft and Telegraphic Transfer on July 17, 1986.^[17] In fact, petitioner paid the face value of the dishonored check on the same day the subject check was presented for payment, on July 17, 1986, and before the formal written demand letter was sent to petitioner on September 27,