

SECOND DIVISION

[G. R. No. 137191, November 18, 2002]

**BEN B. RICO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,
RESPONDENT.**

D E C I S I O N

QUISUMBING, J.:

For review on certiorari is the decision^[1] dated June 15, 1998 of the Court of Appeals in CA-G.R. CR No. 19764, affirming the judgment^[2] of the Regional Trial Court of Laoag City which found the petitioner guilty of five counts of violation of Batas Pambansa Blg. 22 (the Bouncing Checks Law), and the resolution^[3] dated January 7, 1999 denying petitioner's motion for reconsideration.

Petitioner Ben Rico was a "*pakyaw*" contractor who used to purchase construction materials on credit from private complainant Ever Lucky Commercial (ELC), represented by Victor Chan, Manager. Petitioner made payments either in cash or by postdated checks. On several occasions, he issued checks to ELC, which were dishonored by the bank upon presentment for payment for "insufficiency of funds" or "closed account", as follows:

<u>CHECK NO.</u>	<u>DATE</u>	<u>DATE OF DISHONOR</u>	<u>REASON FOR DISHONOR</u>	<u>AMOUNT</u>
04142	Nov. 5, 1990	Nov. 13, 1990	Insufficient funds	P 81,800.00
1759806	Apr. 19, 1990	Apr. 20, 1990	Insufficient funds	25,000.00
1759808	Apr. 20, 1990	Apr. 23, 1990	Account Closed	4,834.00
1759810	Apr. 11, 1990	Apr. 16, 1990	Insufficient funds	39,000.00
1759812	Apr. 11, 1990	Apr. 16, 1990	Insufficient funds	15,250.00
1759811	May 2, 1990	May 3, 1990	Account Closed	<u>12,550.00</u>
TOTAL				<u>P178,434.00</u>

Consequently, petitioner was charged under several informations docketed as Criminal Cases Nos. 5796, 5797, 5798, 5799 and 5800 for violation of Batas Pambansa Blg. 22. The information in Criminal Case No. 5796 reads:

That on or about the 27th day of October, 1990, in the City of Laoag, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there wilfully, unlawfully and feloniously draw and issue Check No. 04142 in the amount of Eighty One Thousand Eight Hundred Pesos (P81,800.00), dated November 5, 1990, drawn against the Philippine Commercial and International Bank, Laoag

City Branch, in favor of the Ever Lucky Commercial, as payee, in payment of construction materials which he purchased on credit from the said Ever Lucky Commercial, located at Brgy. No. 12, Gen. Segundo Ave., Laoag City, of which Mr. Victor Chan is the Gen. Manager, knowing fully well that he had no sufficient funds deposited with the drawee bank to cover the payment thereof, as in fact it was dishonored when presented for payment to the drawee bank on November 13, 1990, on the ground that it was drawn against insufficient funds, and the accused, despite due notice to him of the dishonor of said check had not paid the amount thereof nor had he made arrangements for its payment in full by the drawee bank within five (5) banking days from receipt of the notice of dishonor, to the damage and prejudice of the Ever Lucky Commercial in the amount of ₱81,800.00, Philippine Currency.

CONTRARY TO LAW.^[4]

The other informations are similarly worded, except for the check number and their amounts and the dates of issue which are hereunder itemized as follows:

<u>CRIMINAL CASE NO.</u>	<u>CHECK NO.</u>	<u>DATE</u>	<u>AMOUNT</u>
5797	1759806	Apr. 19, 1990	₱ 25,000.00
5798	1759808	Apr. 20, 1990	₱ 4,834.00
5799	1759810	Apr. 11, 1990	₱ 39,000.00
	1759812	Apr. 11, 1990	₱ 15,250.00
5800	1759811	May 2, 1990	₱ 12,550.00

The five informations were consolidated by the lower court. Upon arraignment, petitioner pleaded not guilty to all the charges, and trial on the merits ensued.

The prosecution established that petitioner, who used to purchase construction materials on credit from ELC, issued the above-cited checks as payment for the materials and that they were dishonored upon presentment for payment to the bank either for "insufficient funds" or "account closed". After the checks were dishonored, ELC demanded payments from petitioner, who failed to make good his undertaking to replace the checks. No formal written demand letter or notice of dishonor, however, was sent to the petitioner. It was also established by the prosecution that ELC, through its manager, issued several receipts covering several payments in various amounts made by petitioner as replacement of some dishonored but returned checks as well as for payment of materials purchased. No official receipts covering the materials purchased, however, were presented in court as evidence.^[5]

In his defense, petitioner did not deny that he issued the subject checks and that they were dishonored upon presentment for payment with the drawee bank. He claimed, however, that he already paid the amounts covered by the checks, totalling ₱284,340.50, including interest. In support thereof, he submitted as evidence the following official receipts issued by ELC^[6]

<u>OFFICIAL RECEIPT NO.</u>	<u>DATE</u>	<u>AMOUNT</u>
3290	Apr. 24, 1990	₱ 65,000.00
3298	Apr. 27, 1990	90,733.50
3411	May 3, 1990	10,000.00
3683	Sept. 4, 1990	68,607.00
3866	Jan. 5, 1991	50,000.00
TOTAL		<u>₱284,340.50</u>

According to petitioner, the difference between the total amount as reflected in the receipts and the total amount covered by the subject checks represented interest. [7] He also admitted that he did not retrieve the dishonored checks as they were not yet fully paid. [8]

On March 13, 1996, the trial court rendered its judgment as follows:

(1) In Criminal Case No. 5796, the accused is hereby found guilty beyond reasonable doubt of the violation of BP Bilang 22. He is sentenced to suffer the straight penalty of ONE (1) YEAR imprisonment and to indemnify the offended party in the amount of P81,800.00;

(2) In Criminal Case No. 5797, the accused is hereby found guilty beyond reasonable doubt of the violation of BP Bilang 22. He is sentenced to suffer the straight penalty of SIX (6) MONTHS imprisonment and to indemnify the offended party in the amount of P25,000.00;

(3) In Criminal Case No. 5798, the accused is hereby found guilty beyond reasonable doubt of the violation of BP Bilang 22. He is sentenced to suffer the straight penalty of THREE (3) MONTHS imprisonment and to indemnify the offended party in the amount of P4,834.00;

(4) In Criminal Case No. 5799, the accused is hereby found guilty beyond reasonable doubt of the violation of BP Bilang 22. He is sentenced to suffer the straight penalty of ONE (1) YEAR Imprisonment and to indemnify the offended party in the amount of P54,250.00; and

(5) In Criminal Case No. 5800, the accused is hereby found guilty beyond reasonable doubt of the violation of BP Bilang 22. He is sentenced to suffer the straight penalty of SIX (6) MONTHS imprisonment and to indemnify the offended party in the amount of P12,550.00.

Costs against the accused.

SO ORDERED. [9]

In convicting petitioner, the trial court noted that petitioner had admitted the issuance and dishonor of the subject checks, and he could not escape criminal liability as it found his defense of payment off-tangent. [10] It ruled that the alleged payments do not apply to the subject checks but for the other materials purchased, and granting they were applicable, they could only affect his civil liability. [11] Further, the trial court concluded that a mathematical computation of the payments made by the petitioner *vis-a-vis* the subject checks did not give credence to the stance of petitioner. The trial court found it illogical for petitioner to have paid more than the amounts covered by the subject checks without a single alleged payment matching any of the amounts written in the subject checks, and with petitioner paying more than his outstanding liabilities at some point. [12]

Aggrieved, petitioner filed an appeal before the Court of Appeals, which affirmed the trial court's decision. The Court of Appeals found petitioner's defense of payment untenable and not proven by clear and convincing evidence. It further stated that even if there were payment, petitioner failed to prove that it was made within five

days from receipt of notice of dishonor.^[13] In relation thereto, it ruled that the testimonial evidence of private complainant declaring that immediate demands to pay were made on petitioner is in themselves notices of dishonor.^[14] Petitioner's motion for reconsideration was denied in a resolution dated January 7, 1999.

Hence, this petition raising issues based on the alleged errors of the appellate court.

MAIN ISSUE:

THE APPELLATE COURT COMMITTED A GRAVE MISTAKE IN AFFIRMING THE TRIAL COURT'S FINDING THAT THE PETITIONER IN THE FIVE (5) CRIMINAL CASES IS GUILTY BEYOND REASONABLE DOUBT OF THE VIOLATION OF BP BILANG 22 AND SENTENCING HIM TO SUFFER THE PENALTY IMPOSED THEREIN.

SUB-ISSUES

I

THE APPELLATE COURT ERRED IN SHIFTING UNTO THE PETITIONER THE BURDEN OF PROVING HIS OWN INNOCENCE INSTEAD OF LAYING THE BURDEN UPON THE PROSECUTION TO PROVE THE GUILT OF PETITIONER BEYOND REASONABLE DOUBT.

II

THE APPELLATE COURT ERRED IN FINDING THAT DEFENSE OF PAYMENT BY PETITIONER DID NOT OVERTHROW THE PRIMA FACIE EVIDENCE OF KNOWLEDGE OF THE INSUFFICIENCY OF FUNDS AT THE TIME OF ISSUANCE OF THE CHECKS AND THAT THE DEMANDS FOR PAYMENT MADE TO PETITIONER ARE IN THEMSELVES NOTICES OF DISHONOR.

III

THE APPELLATE COURT ERRED IN AFFIRMING THE TRIAL COURT'S FINDING THAT THE PAYMENTS MADE BY THE PETITIONER TO THE EVER LUCKY COMMERCIAL (ELC) AS EVIDENCED BY OFFICIAL RECEIPT ISSUED BY ELC REFER TO OTHER TRANSACTIONS BETWEEN THE PETITIONER AND ELC AND NOT TO THE DISHONORED CHECKS.

IV

THE APPELLATE COURT ERRED IN AFFIRMING THE TRIAL COURT'S ANALYSIS DEBUNKING PETITIONER'S DEFENSE OF PAYMENTS.^[15]

In our view, the principal issue for our resolution is whether or not petitioner's guilt has been established beyond reasonable doubt.

Petitioner contends that he should be acquitted of all charges because he already paid his obligations to Ever Lucky Commercial. He likewise avers that the prosecution failed to establish all the elements of the crime, particularly that he had knowledge of the insufficiency of his funds in the bank at the time he issued the checks. This failure, according to petitioner, can be traced to the prosecution's inability to prove that notices of dishonor were sent to him.