

SIXTEENTH DIVISION

[CA-G.R. SP No. 126541, June 23, 2014]

**MARLON ECHAVEZ, PETITIONER, VS. NORA COLIAMCO,^[1]
RESPONDENT.**

D E C I S I O N

MACALINO, J:

This is a Petition for Review under Rule 42 of the Rules of Court assailing the 23 August 2010 Decision^[2] (“assailed Decision”) and 22 August 2012 Resolution^[3] (“assailed Resolution”) of the Regional Trial Court (RTC) of Paniqui, Tarlac, Branch 67 in Criminal Case Nos. 223-09; 031-10 and 015-10 to 024-10 entitled “*People of the Philippines v. Marlon Echavez and Marilou Gonzales.*” The said assailed Decision and assailed Resolution affirmed the 17 November 2009 Decision^[4] of the Municipal Trial Court (MTC) of Paniqui, Tarlac in Criminal Case Nos. 10632-43 involving a violation of BP 22 or the Bouncing Checks Law.

The Facts of the Case^[5]

It appears that on various occasions, Petitioner Marlon Echavez (“Petitioner”) and Accused Marilou Gonzales (“Accused Gonzales”), purchased from Respondent Nora Coliamco (“Respondent”) large quantities of lumber and construction materials. Respondent also gave cash to Petitioner and Accused Gonzales. Upon receipt thereof, Accused Gonzales and Petitioner issued to Respondent Westmont Bank check no. 007250 in the amount of Php2,827,550.00 and another Westmont Bank check no. 007521 in the amount of Php537,042.30. However, when the two (2) Westmont Bank checks were presented for payment by Respondent, all were dishonored for the reason “account closed”.

Respondent thereafter went to the house of Accused Gonzales in Magna Gardens, Tarlac, Tarlac to inform the latter of the dishonor of the checks and to demand payment from her. Accused Gonzales issued ten (10) RCBC replacement checks in exchange for the two (2) Westmont Bank checks that bounced. However, the ten (10) RCBC checks were also dishonored when presented for payment.

Despite oral and written demands, Petitioner and Accused Gonzales refused and failed to settle their obligation. Thus, Respondent filed a criminal complaint for violation of BP 22 against them.

Finding probable cause, twelve (12) separate Informations for violation of BP 22 were filed against Petitioner and Accused Gonzales before the MTC of Paniqui, Tarlac.

During their arraignment on separate dates, Petitioner and Accused Gonzales pleaded not guilty to the charge against them.

Trial thereafter ensued.

On 17 November 2009, the MTC of Paniqui, Tarlac rendered a Decision^[6] acquitting Petitioner and Accused Gonzales of the crime of violation of BP 22 for failure of the prosecution to prove their guilt beyond reasonable doubt. However, they were adjudged to solidarily pay the amount of Php3,364,592.30 equivalent to the face value of the two (2) Westmont checks they issued. The dispositive portion of the MTC Decision states:

“WHEREFORE, in Criminal Cases Nos. 10632 and 10633, the Court finds that the prosecution failed to present evidence to prove the guilt of the accused beyond reasonable doubt for the commission of the crime of Violation of Batas Pambansa Bilang 22. However, both accused Marilou Gonzales and Marlon Echaves (sic) are hereby adjudged to be solidarily liable to pay civil liability equivalent to the face amount of Westmont Bank check nos. 007520 and 007521 in the sum of Php2,827,550.00 and Php537,042.30, respectively or a total of Php3,364,592.30. That upon finality of this judgment, accused are solidarily liable to pay interest at the rate of twelve (12%) (sic) per cent per annum until full satisfaction thereof.

In Criminal Cases Nos. 10634, 10635, 10636, 10637, 10638, 10639, 10640, 10641, 10642, and 10643, the Court also finds (sic) the prosecution failed to present sufficient evidence to prove the guilt of the accused beyond reasonable doubt, hence, both accused are hereby ACQUITTED. No pronouncement as to cost.

SO ORDERED.”^[7]

Thus, Petitioner appealed the said MTC Decision before the RTC of Paniqui, Tarlac.^[8]

On 23 August 2010, the RTC rendered the assailed Decision^[9] affirming the MTC Decision. The decretal portion of the assailed Decision reads:

“WHEREFORE, premises considered, the decisions (sic) appealed from is AFFIRMED.

SO ORDERED.”^[10]

Petitioner filed a Motion for Reconsideration^[11] of the assailed Decision. However, the same was denied in the assailed Resolution,^[12] the *fallo* of which states:

“WHEREFORE, premises considered, the instant Motion for Reconsideration is hereby Denied for lack of merit.

SO ORDERED.”^[13]

Aggrieved, Petitioner filed the instant Petition^[14] on 2 October 2012. As per Judicial Records Division (JRD) Verification Report^[15] dated 15 May 2013, Respondent failed to file her Comment to the instant Petition.

Thereafter, on 6 November 2013, Petitioner filed his Memorandum^[16] while Respondent failed again to file her Memorandum as per verification made through

entries in the Court's Case Management Information System (CMIS) as of 12 March 2014.^[17]

Hence, the instant Petition was submitted for decision without Respondent's Memorandum.^[18]

The Issues

WHETHER OR NOT THE ABSENCE OF NOTICE OF DISHONOR AND DEMAND FOR PAYMENT RESULTS IN PETITIONER'S DISCHARGE AS DRAWER OF CHECKS AND THEREFORE FROM ANY CIVIL LIABILITY.

WHETHER OR NOT THE ISSUANCE OF THE TEN (10) REPLACEMENT CHECKS BY ACCUSED GONZALES AND ITS ACCEPTANCE BY RESPONDENT CREATED A NOVATION BY SUBSTITUTION OF DEBTOR AND THUS DISCHARGED PETITIONER FROM ANY CIVIL OBLIGATION.

The Court's Ruling

The instant Petition lacks merit.

Here, Petitioner was acquitted of the crime of violation of BP 22 for failure of the prosecution to establish beyond reasonable doubt all the elements of the crime. Particularly, Petitioner was acquitted due to lack of notice of dishonor. However, he was made civilly liable for the payment of the face value of the two (2) Westmont bank checks he and Accused Gonzales issued in favor of Respondent as settled is the rule that the extinction of the penal action does not carry with it the extinction of the civil liability where the acquittal is based on reasonable doubt as only preponderance of evidence is required^[19] in civil cases.

However, Petitioner argues that the absence of notice of dishonor and demand for payment from Respondent results in his discharge as drawer of the two (2) Westmont Bank checks and consequently from any civil liability arising from the issuance thereof.

We disagree. True, Section 89 of the Negotiable Instruments provides that when a negotiable instrument has been dishonored by non-acceptance or non-payment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged. However, the mere lack of notice of dishonor to Petitioner will not discharge him from payment of civil liability as the basis thereof is the fact that he and Accused Gonzales owed Respondent the amount corresponding to the face value of the two (2) Westmont Bank checks they issued. In the case of *Lim v. Mindanao Wines & Liquor Galleria*,^[20] the Supreme Court said:

"xxx xxx xxx

In any case, even if the Court treats the subject dismissal as one based on insufficiency of evidence as Emilia wants to put it, the same is still tantamount to a dismissal based on reasonable doubt. As may be recalled, the MTCC dismissed the criminal cases because one essential element of BP 22 was missing, i.e., the fact of the bank's dishonor. The evidence was insufficient to prove said element of the crime as no proof of dishonor of the checks was presented by the prosecution. This,