

FIRST DIVISION

[CA-G.R. CR No. 35007, June 19, 2014]

**VENERANDO SANTOS AND ROLANDO SANTOS, PETITIONERS, VS.
DAYAL NANDWANI AND PEOPLE OF THE PHILIPPINES,
RESPONDENTS.**

D E C I S I O N

BARRIOS, M. M., J.:

This is a petition for review under Rule 42 of the 1997 Rules of Civil Procedure from the Decision dated 31 January 2012^[1] of the Regional Trial Court, Branch 212, Mandaluyong City that affirmed the conviction of petitioners for Violation of BP Blg. No. 22. The dispositive portion reads:

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*WHEREFORE, premises considered, the assailed Joint Decision of the Metropolitan Trial Court of Mandaluyong City, Branch 60 in Criminal Case Nos. 79039, 79040 and 79041 is hereby **AFFIRMED** in toto.*

SO ORDERED.

THE FACTS

Petitioners Venerando Santos and Rolando Santos are directors of Ultra-Tech Corporation, a firm engaged in construction business. In order to jumpstart and revitalize the operations, additional capital was needed. Hence, petitioners, as officers of the company, loaned from private respondent the total amount of Seven Million Pesos (P7,000,000.00). Petitioners issued and delivered to private respondent three (3) postdated Philippine Savings Bank (PSB) checks: PSB Check No. 0000120170 dated 23 September 1998 for One Million Pesos (P1,000,000.00); PSB Check No. 0000120171 dated 24 September 1998 for One Million Pesos (P1,000,000.00); and PSB Check No. 0000120206 dated 03 January 1999 for Five Million Pesos (P5,000,000.00).

It is contended, however, that said checks were not meant to serve as payment to the latter when said checks become due and demandable, but were issued to serve as evidence of their indebtedness to private respondent. Moreover, petitioners argue that they have substantially settled their obligation with private respondent in the total amount of Four Million Two Hundred Eighty Thousand Seven Hundred Ninety Nine and 90/100 (P4,280,799.90) evidenced by several checks, vouchers and summary of payment; thus, novation had set in which obliterated incipient criminal liability.

When presented for payment, the aforesaid checks were dishonored for having been drawn against insufficient funds and/or closed account. On 08 March 1999, private respondent sent a demand letter to petitioners asking them to settle the obligation.

[2] On 11 March 1999, petitioner Venerando Santos sent a letter to private respondent offering a construction equipment as payment of their obligation.[3] Obviously rejecting the offer, private respondent sent another demand letter dated 15 March 1999, but to no avail.[4]

Consequently, private respondent initiated three (3) criminal complaints against petitioners, and thereafter, three (3) Informations for Violation of BP Blg. No. 22 were filed with the MeTC of Mandaluyong City. In Criminal Case No. 79039[5] the accusatory portion of the Information against petitioners read:

xxx

That sometime in September, 1998, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, did, then and there willfully, unlawfully and feloniously make or draw and issue to Dayal Nandwani, to apply on account or for value the check described below:

*Check : 0000120170
No.
Drawn : PS Bank
Against
Amount : P1,000,000.00
of
Dated : September 23, 1998
Payable : Dayal Nandwani
to*

said accused well knowing that at the time of issue they did not have sufficient funds in or credit with the drawee bank for the payment in full of the face amount of such check upon its presentment, which check when presented for payment within ninety (90) days from the date thereof was subsequently dishonored by the drawee bank for reason "ACCOUNT CLOSED" and despite receipt of notice of such dishonor, the accused failed to pay said payee the face amount of said check or make an arrangement for full payment thereof within five (5) banking days after receiving notice to the damage and prejudice of the said payee in the aforementioned amount.

CONTRARY TO LAW.

The Information in the other two (2) criminal cases (Nos. 79040 and 79041) are similarly worded, except for the dates, check numbers and amounts thereof as aforementioned.

When arraigned, petitioners pleaded not guilty to three (3) counts of violation of BP Blg. No. 22. After due proceedings, the MeTC of Mandaluyong City rendered a Joint Decision[6] convicting petitioners for the offense charged.

On appeal by herein petitioners, the court a quo rendered the now assailed Decision affirming in toto the decision of MeTC of Mandaluyong City. Petitioners' Motion for Reconsideration was denied.

In this petition, petitioners argue:

I

IT MISERABLY ERRED IN NOT FINDING BOTH ACCUSED NOT GUILTY OF VIOLATION OF B.P. BLG. 22.

II

IT COMMITTED SERIOUS ERROR IN NOT FINDING THAT THE AMOUNTS OF THE SUBJECT CHECKS HAD ALREADY BEEN SUBSTANTIALLY SETTLED.

III

IT COMMITTED SERIOUS ERROR IN FACT AND IN LAW IN NOT FINDING THAT NOVATION HAS SET IN TO OBLITERATE ANY INCIPIENT CRIMINAL LIABILITY ON THE PART OF BOTH ACCUSED.

IV

IT SERIOUSLY ERRED IN FACT AND IN LAW IN NOT FINDING THAT THE LOANS REPRESENTED BY THE SUBJECT CHECKS ARE CORPORATE LIABILITY OF ULTRA-TECH AND NOT THE PERSONAL LIABILITY OF THE ACCUSED IN CONSONANCE WITH THE WELL-ESTABLISHED SEPARATE JURIDICAL PERSONALITY OF A CORPORATION, AND IN FINDING THAT THE ACCUSED DID NOT DENY THAT THE LOANS WERE THEIR OBLIGATIONS.

V

IT SERIOUSLY ERRED IN NOT FINDING THAT ACCUSED VENERANDO F. SANTOS DID NOT RECEIVE THE REQUISITE NOTICE UNDER B.P. BLG. 22.

OUR RULING

The petition has no merit.

For Violation of Batas Pambansa Blg. No. 22 to prosper, the prosecution must prove the following essential elements, namely:

- 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 there were no sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment; and
- 3) The dishonor of the check by the drawee bank for insufficiency of funds or credit or the dishonor for the same reason had not the drawer, without any valid cause, ordered the drawee bank to stop payment.

In the instant case, petitioners argue that the first element is lacking because subject checks were issued only as evidence of their indebtedness and should not be applied for account or for value. Petitioners contention is untenable. In *People vs.*