Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

MARK MONTELIBANO,
Petitioner,

- *versus* -

LINDA YAP,
Respondent.

G.R. No. 197475

Present:

VELASCO, JR., *J.*,
Chairperson,
BERSAMIN,*
LEONEN,
MARTIRES, and
GESMUNDO,** *JJ.*

Promulgated:
December 6, 2017

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DECISION

MARTIRES, *J.*:

Before this Court is a petition for review on certiorari under Rule 45 of the Rules of Court, seeking to reverse and set aside the 17 February 2011[1] and 8 June 2011[2] Resolutions of the Court of Appeals *(CA)* in CA-G.R. CEB-CR No. 00571.

THE FACTS

Private complainant Linda Yap *(private complainant)* asserted that petitioner Mark Montelibano *(petitioner)* obtained a loan from her as additional capital for his business. Thereafter, petitioner issued a Metrobank – Cebu Guadalupe Branch check dated 31 May 2001 in the

* On Official Leave.
** On Leave.
1 *Rollo*, pp. 37-39; penned by Associate Justice Socorro B. Inting, with Associate Justices Pampio A. Abarintos and Edwin D. Sorongon, concurring.
2 Id. at 52-53; penned by Associate Justice Pampio A. Abarintos, with Associate Justices Eduardo B. Peralta and Gabriel T. Ingles, concurring.

amount of ₱2,612,500.00[3] *(the check)* as partial payment. When the check was presented for payment, it was dishonored for the reason that the account was closed.[4]

As petitioner failed to settle his obligation despite demands, he was charged with violation of Batas Pambansa Bilang 22 *(BP Blg. 22)* in an Information[5] which reads as follows:

> That sometime in the month of May, 2001, and for sometime prior and subsequent thereto, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, knowing at the time of the issuance of the check, he did not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, with deliberate intent, with intent to gain and of causing damage, did then and there issue, make or draw METROBANK – CEBU GUADALUPE BRANCH, Check No. 0127947 dated May 31, 2001, in the amount of P2,612,500.00 payable to Linda Yap, which check was issued in payment of an obligation, but which check when presented with the said bank, the same was dishonored for reason "ACCOUNT CLOSED", and despite notice and demands made to redeem or make good said check, said accused failed and refused an still fails and refuses to do so, to the damage and prejudice of said Linda Yap, in the amount aforestated.
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> CONTRARY TO LAW.

In an Order[6] dated 2 December 2003, the Municipal Trial Court in Cities *(MTCC),* Branch 2, Cebu City, directed the issuance of a bench warrant against the petitioner for failure to appear, despite due notice, when the case was called for arraignment and pre-trial.

Subsequently, the case was called again for arraignment and pre-trial on 10 March 2004, where the petitioner entered a plea of not guilty. On said date, the parties also moved for the termination of the pre-trial due to the possibility of an amicable settlement, which the MTCC granted.

When the case proceeded to trial, the MTCC gave petitioner an opportunity to file counter-affidavits and other controverting evidence within ten (10) days from receipt of any additional evidence which the prosecution may file. However, none was filed by petitioner even after receipt of the prosecution's additional affidavits and evidence.

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3 Id. at 99.
4 Id. at 143.
5 Id. at 96.
6 Id. at 76.

The initial presentation of evidence for the prosecution was postponed several times at the instance of the accused. On 20 October 2004, said presentation of evidence finally proceeded despite the absence of petitioner, who was notified of the scheduled hearing.

The prosecution presented the lone testimony of Nelson Arendain *(Nelson),* an employee of private complainant, who affirmed the veracity of the contents of the affidavit he had filed relative to the case.

Said affidavit confirmed that the check was issued by the petitioner, who signed the same in Nelson's presence; and that the check, when presented to the bank, was dishonored for the reason "account closed."

The prosecution also offered in evidence a demand letter dated 21 June 2001,[7] addressed to and received by the petitioner, notifying the petitioner of the check's dishonor and Linda's demand to be paid the amount therein.

The hearing for the cross-examination was scheduled on 7 December 2004; however, petitioner and counsel failed to appear at the scheduled hearing despite notice. The MTCC deemed said failure as a waiver of petitioner's right to cross-examine the prosecution's witness. The prosecution thereafter filed its formal offer of documentary exhibits, which were admitted for failure of the petitioner to comment and /or object thereto.

Subsequently, the petitioner failed to present its evidence despite due notice when the case was called for reception of evidence for the defense. As a consequence, the right of petitioner to present evidence was deemed waived but, upon motion for reconsideration, the MTCC allowed the reception of evidence and scheduled a hearing therefor.

On the date set for the hearing, however, the defense counsel filed a motion to withdraw as counsel, with the conformity of the petitioner, which was granted. Again, the hearing for the reception of evidence for the petitioner was reset to 5 July 2005. On said date, petitioner again failed to appear; the MTCC granted the prosecution's motion to consider petitioner's right to present evidence as waived.

On 11 July 2005, petitioner, through his new counsel, filed a motion for reconsideration of said order. This was granted by the MTCC because

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7 Id. at 100.

the prosecution failed to appear during the hearing for said motion despite notice. A hearing was again set for the reception of evidence for the defense.

However, instead of presenting evidence, the defense filed a memorandum,[8] asserting that the prosecution failed to establish petitioner's guilt beyond reasonable doubt because he was never identified as the one who signed and issued the check. The defense alleged that the accused was not present in court when the sole witness for the prosecution testified, such that the latter was not able to identify him.

After the prosecution filed its comment thereto, the case was submitted for decision.

The MTCC Ruling

The MTCC found petitioner guilty beyond reasonable doubt of the crime charged and sentenced him to imprisonment of one (1) year.[9] He was also ordered to pay the amount appearing on the subject check, with interest at twelve percent (12%) per annum from the date of demand. The MTCC found petitioner's contention untenable, because the prosecution's failure to personally identify the petitioner during hearing can be attributed to petitioner's failure to appear despite due notice.

The RTC Ruling

Aggrieved, petitioner appealed to the Regional Trial Court *(RTC)*. The RTC rendered judgment[10] affirming *in toto* the decision of the MTCC. It ruled that the positive identification of the accused must be established beyond reasonable doubt when the defense pleads alibi. However, the defense of petitioner is not alibi. The RTC ruled, moreover, that the petitioner's right to adduce evidence on his behalf was considered waived due to his failure to appear in court and present its defense from the time the prosecution presented evidence up to the time the case was submitted for decision. Further, it opined that no justice or equity is served if the accused can evade conviction by simply failing to appear during trial despite due notice.

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8 Id. at 81-84.

9 Id. at 47-50; penned by Presiding Judge Anatalio S. Necesario.

10 Id. at 74-75; penned by Presiding Judge Geraldine Faith A. Econg.

The CA Ruling

When petitioner elevated the case to the CA on a petition for review under Rule 42, the CA dismissed the petition for failure of the petitioner to attach to the petition a certified true copy of the decision rendered by the MTCC, in violation of Section 2, Rule 42, of the Rules of Court. The petitioner filed a motion for reconsideration which the CA denied in a Resolution[11] dated 8 June 2011.

Hence, the instant petition raising the following issues:

I.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS, THE SPECIAL EIGHTEENTH (18TH) DIVISION AND NINETEENTH (19TH) DIVISION, HAVE DECIDED A QUESTION OF SUBSTANCE PROBABLY NOT IN ACCORD WITH LAW OR WITH APPLICABLE DECISION OF THE SUPREME COURT WHEN IT ERRONEOUSLY DISMISSED WITH PREJUDICE THE PETITION FOR REVIEW RELYING ON SHEER TECHNICALITIES RATHER THAN ON THE MERITS WHICH CLEARLY CAUSED GREAT INJUSTICE AND UNDUE PREJUDICE TO THE PETITIONER DESPITE HIS HAVING COMPLIED WITH AND SUBMITTED THE REQUIREMENTS MANDATED BY THE RULES.

II.

WHETHER OR NOT THE HONORABLE APPELLATE COURT ERRED PALPABLY IN NOT ALLOWING THE SUBSTANTIVE ARGUMENTS OF PETITIONER MERITING REVERSAL OF PETITIONER'S CONVICTION PARTICULARLY ON FAILURE OF PRIVATE RESPONDENT TO IDENTIFY THE PETITIONER AND LACK OF AUTHORITY OF HER SOLE WITNESS TO TESTIFY IN COURT RESULTING IN PETITIONER'S CONVICTION THEREBY DEPRIVING HIM OF OTHER ADEQUATE REMEDY THAN SEEKING RELIEF THROUGH THIS INSTANT PETITION FOR REVIEW ON CERTIORARI.

In sum, petitioner contends that the CA rigidly applied the rules of procedure and should have allowed his petition in the interest of substantial justice, especially since petitioner had subsequently complied with the required attachments by submitting with his motion for reconsideration a certified true copy of the MTCC's decision. More importantly, petitioner asserts that his substantive arguments merit a reversal of his conviction on the grounds that he was never identified in open court, casting reasonable doubt that he is the accused charged with violation of BP Blg. 22, and that

[11] Id. at 52-53.

there was no evidence establishing that the lone prosecution witness was authorized by private complainant to testify.

Moreover, petitioner posits that the prosecution failed to establish the elements of the offense because the date of receipt of the notice of dishonor given to petitioner, while contained in the demand letter offered as documentary evidence, was never separately and independently marked and offered in evidence. Thus, according to petitioner, there is uncertainty as to when the five (5)-day period given to an accused to satisfy the amount of the check or make arrangements for its payment would be reckoned, because the court cannot consider evidence not formally offered. Consequently, petitioner asseverates that the presumption of knowledge by the issuer of the insufficiency of his funds did not arise.

THE COURT'S RULING

This Court finds no reason to reverse the judgment of conviction rendered by the MTCC and affirmed by the RTC.

On the procedural aspect, the Court has held that the subsequent submission of the certified true copy of the assailed decision with the motion for reconsideration is substantial compliance with the rules.[12] Thus, this point may be conceded to petitioner.

Nonetheless, petitioner's contentions on the merits of this case miserably fail to convince this Court.

Petitioner asks this Court to reverse his conviction on the following grounds: (1) that the lone prosecution witness was not authorized by the private complainant to testify; (2) that the date of receipt of notice of dishonor was not separately marked and identified in the prosecution's formal offer of evidence, preventing the presumption of knowledge from arising; and (3) there is reasonable doubt as to his identity as the accused in the instant case because he was never identified in open court.

Anent the first ground, petitioner must be reminded that in criminal cases, the offended party is the State, and "the purpose of the criminal action is to determine the penal liability of the accused for having outraged the State with his crime . . . . In this sense, the parties to the action are the People of the Philippines and the accused. The offended party is regarded merely as a witness for the state."[13] As such, the Rules dictate that criminal

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[12] *Quilo v. Bajao,* G.R. No. 186199, 7 September 2016.
[13] *Bumatay v. Bumatay,* G.R. No. 191320, 25 April 2017.

actions are to be prosecuted under the direction and control of the public prosecutor.[14] Clearly, the discretion on who to present as witnesses is vested with the public prosecutor, and no authority from the private complainant is required.

On the second ground, the date of receipt embodied in the demand letter, which was formally offered in evidence, is part and parcel of said demand letter, such that the date of receipt by petitioner therein may be considered by the trial court along with the other contents of the letter. No separate identification and offer of the date of receipt is necessary, because the Rules only dictate that "the court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified."[15] The demand letter was formally offered, and the date of receipt is contained therein. A perusal of the prosecution's Formal Offer of Documentary Exhibits[16] reveals that the purpose specified for the offer of the letter was "to show the fact that the **accused was duly notified of the dishonor of the subject checks** and likewise demanded to settle the same, but he failed until the present."[17] The purpose of showing due notification necessarily includes the date of said notification, which is the date of receipt as stated in the demand letter offered.

Moreover, what the Bouncing Checks Law requires is that the accused must be **notified in writing** of the fact of dishonor.[18] This notice gives the issuer an opportunity to pay the amount on the check or to make arrangements for its payment within five (5) days from receipt thereof, in order to prevent the presumption of knowledge of the insufficiency of funds from arising.

Petitioner admittedly received the 21 June 2001 demand letter of private complainant, expressing the dishonor of the subject check. In the memorandum he filed before the CA, petitioner admits that he is "not unaware of the fact that a date, June 11 [sic], 2001 appeared at the bottom of the NOTICE OF DISHONOR just below the signature of PETITIONER-APPELLANT."[19] He never disputed receipt of said letter, as in fact, he does not dispute that the signature below said date of receipt is his. He merely harps on the alleged infirmity in the marking and offer of said date.

Notably also, it appears on record that during the proceedings before the MTCC, both the prosecution and the defense jointly moved for the

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[14] Section 5, Rule 110, Revised Rules of Criminal Procedure, as amended by A.M. No. 02-2-07-SC.
[15] Section 34, Rule 132, Rules of Court.
[16] *Rollo*, pp. 112-113.
[17] Id. at 113.
[18] *Azarcon v. People,* 636 Phil. 347, 355 (2010).
[19] *Rollo*, p. 106.

termination of pre-trial due to the possibility that the case could be settled amicably as to its civil aspect, which the trial court granted[20]— indicating petitioner's awareness that the subject check was dishonored and that he had an outstanding obligation to private complainant. It was never shown that petitioner paid nor made arrangements to pay the amount on the check, as in fact the trial before the MTCC proceeded and the court ordered petitioner to pay the amount. Clearly, the 5-day period within which to settle his obligation had long expired and petitioner is presumed to have had knowledge of the insufficiency of his funds at the time he issued the subject check.

Anent the third ground, this Court has already clarified that in-court identification is not essential where there is no doubt that the person alleged to have committed the crime and the person charged in the information and subject of the trial are one and the same, *viz*:

> Indeed, during her testimony, complainant positively and categorically identified appellant, husband of her sister Loida, as the offender. This categorical and positive identification leaves no doubt as to the identity of Appellant Quezada as the rapist.
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> We do not see the absolute need for complainant to point to appellant in open court as her attacker. **While positive identification by a witness is required by the law to convict an accused, it need not always be by means of a physical courtroom identification**. As the Court held in *People v. Paglinawan*:
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> > ". . . . Although it is routine procedure for witnesses to point out the accused in open court by way of identification, the fact that the witness . . . did not do so in this case was because the public prosecutor failed to ask her to point out appellant, hence such omission does not in any way affect or diminish the truth or weight of her testimony."
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> **In-court identification of the offender is essential only when there is a question or doubt on whether the one alleged to have committed the crime is the same person who is charged in the information and subject of the trial. This is especially true in cases wherein the identity of the accused, who is a stranger to the prosecution witnesses, is dubitable**. In the present case, however, there is no doubt at all that the rapist is the same individual mentioned in the Informations and described by the victim during the trial.[21] (emphasis supplied)

This Court does not find that such doubt exists in this case.

Notably, petitioner never denied that he is the person indicted in the information, much less offered proof that he is not the same person being

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[20] Id. at 47.

[21] *People v. Quezada*, 425 Phil. 877, 883 (2002).

charged with the offense. He merely proffers that he was not identified in open court by the prosecution's sole witness as the one who issued and signed the check. He does not dispute that he issued and signed the check as, in fact, on the date set for his arraignment and after being arraigned, he and the prosecution jointly moved to terminate the pre-trial in an attempt to settle the obligation arising from the issued check. This is a patent acknowledgment that he is the person being charged with committing the offense and subject of the trial. It strains credulity to believe that he would willingly attempt to settle an obligation created by a bouncing check if he were not the same person charged with issuing it.

Moreover, it must be noted that the lack of identification by the witness in open court was due to petitioner's failure to appear, despite due notice, on the date set for the prosecution's presentation of evidence, in which the testimony of Nelson was offered. In its judgment, the MTCC noted that the initial presentation of evidence for the prosecution was postponed at the instance of accused until it was finally heard on 20 October 2004, despite the petitioner's absence, even though the latter was aware of the scheduled hearing. Again, when the cross-examination was set for hearing, petitioner and counsel failed to appear, prompting the MTCC to deem his absence as a waiver of his right to cross-examination and to direct the prosecution to formally offer its documentary exhibits.[22]

Clearly, the failure to identify petitioner in open court was directly attributable to his actions. To sustain petitioner's assertion and absolve him of penal liability on this ground alone would open the floodgates for malefactors to evade conviction by the simple expedient of refusing to appear on scheduled hearings where they expect to be identified in court. This sets a dangerous precedent and is undoubtedly antithetical to the foundations of our justice system.

While petitioner's conviction is affirmed, this Court deems it proper to impose a fine instead of the penalty of imprisonment meted by the MTCC and sustained by the RTC, in view of Supreme Court Administrative Circular No. 12-2000, as clarified by Administrative Circular No. 13-2001, establishing a rule of preference in the application of the penalties provided for in BP Blg. 22.

The Court has held that the policy of redeeming valuable human material and preventing unnecessary deprivation of personal liberty and economic usefulness should be considered in favor of an accused who is not shown to be a habitual delinquent or a recidivist.[23] Here, there is no

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[22] *Rollo*, p. 48.

[23] *Saguiguit v. People*, 526 Phil. 618, 629 (2006).

indication that petitioner is a habitual delinquent or a recidivist. Forbearing to impose imprisonment would also not depreciate the seriousness of the offense, or work violence on the social order, or otherwise be contrary to the imperatives of justice.

WHEREFORE, the conviction of petitioner Mark Montelibano is **AFFIRMED** with the following **MODIFICATIONS:** The penalty of imprisonment is deleted. Instead, petitioner is ordered to pay a fine of ₱200,000.00, subject to subsidiary imprisonment in case of insolvency pursuant to Article 39 of the Revised Penal Code, as amended by Republic Act No. 10159. Petitioner is also ordered to pay the private complainant the amount of ₱2,612,500.00, at six percent (6%) legal interest per annum from the date of finality of herein judgment until fully paid.

SO ORDERED.

SAMUEL R. MARTIRES
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

(On Official Leave)
LUCAS P. BERSAMIN
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

(On Leave)
ALEXANDER G. GESMUNDO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
JAN 04 2018