



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

FELY Y. YALONG,

Petitioner,

G.R. No. 187174

Present:

- versus -

PEOPLE OF THE PHILIPPINES
and LUCILA C. YLAGAN,

Respondents.

CARPIO, J., Chairperson,
PERALTA,*
DEL CASTILLO,
PEREZ, and
PERLAS-BERNABE, JJ.

Promulgated:

AUG 28 2013

X-----X

DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*¹ are the Resolutions dated August 1, 2008² and March 10, 2009³ of the Court of Appeals (CA) in CA-G.R. SP No. 104075 which dismissed petitioner Fely Y. Yalong's (Yalong) Petition for Review⁴ dated June 26, 2008 (subject petition for review), finding the same to be the improper mode of appeal.

The Facts

Stemming from a complaint filed by respondent Lucila C. Ylagan (Ylagan), an Information was filed before the Municipal Trial Court in Cities of Batangas City, Branch 1 (MTCC), docketed as Criminal Case No.

* Designated Acting Member per Special Order No. 1525 dated August 22, 2013.

¹ Rollo, pp. 14-45.

² Id. at 48. Penned by Associate Justice Vicente Q. Roxas, with Associate Justices Bienvenido L. Reyes (now Supreme Court Justice) and Apolinario D. Bruselas, Jr., concurring.

³ Id. at 14-50. Penned by Associate Justice Apolinario D. Bruselas, Jr., with Associate Justices Bienvenido L. Reyes (now Supreme Court Justice) and Sixto C. Marella, Jr., concurring.

⁴ Id. at 110-150.

45414, charging Yalong for the crime of violation of Batas Pambansa Bilang 22⁵ (BP 22) as follows:

That on or about April 2, 2002 at Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, well-knowing that she does not have funds in or credit with the Export and Industry Bank, Juan Luna Branch, did then and there wilfully, unlawfully and feloniously draw, make and issue to Major Lucila Ylagan, Export and Industry Bank Check No. 0002578833 dated May 3, 2002 in the amount of FOUR HUNDRED FIFTY THOUSAND PESOS (₱450,000.00), Philippine Currency, to apply on account or for value, but when said check was presented for full payment with the drawee bank, the same was dishonored by the drawee bank on the ground of “Account Closed,” which in effect is even more than a dishonor for insufficiency of funds, despite notice of dishonor and demands made upon her to make good her check by making proper arrangement with the drawee bank or pay her obligation in full directly to Major Lucila Ylagan, accused failed and refused to do so, which acts constitute a clear violation of the aforecited law, to the damage and prejudice of transaction in commercial documents in general and of Major Lucila Ylagan in particular in the aforementioned amount.

CONTRARY TO LAW.⁶

Upon arraignment, Yalong pleaded not guilty to the aforesaid charge. Hence, the case was set for pre-trial and thereafter, trial ensued.⁷

During trial, Ylagan testified that sometime on April 2, 2002, Yalong borrowed from her the amount of ₱450,000.00 with a verbal agreement that the same would be paid back to her in cash and, as payment thereof, issued to her, *inter alia*, a postdated check dated May 3, 2002 in the similar amount of ₱450,000.00 (subject check). However, when Ylagan presented the subject check for payment on August 27, 2002, it was dishonored and returned to her for the reason “Account Closed.” As verbal and written demands made on Yalong to pay her loan proved futile, Ylagan was constrained to file the instant criminal case.⁸

In her defense, Yalong averred that she already paid her loan but did not require Ylagan to issue a receipt or acknowledge the same. Likewise, she claimed that the subject check belonged to her husband and that while she knew that the said check was not covered by sufficient funds, it was already signed by her husband when she handed it to Ylagan.⁹

⁵ “AN ACT PENALIZING THE MAKING OR DRAWING AND ISSUANCE OF A CHECK WITHOUT SUFFICIENT FUNDS OR CREDIT AND FOR OTHER PURPOSES.”

⁶ *Rollo*, p. 69.

⁷ *Id.* at 70.

⁸ *Id.* at 70-71.

⁹ *Id.* at 71-72.

The MTCC Ruling and Subsequent Proceedings

On August 24, 2006, the MTCC rendered its Judgment¹⁰ (MTCC Decision), finding Yalong guilty beyond reasonable doubt of the crime of violation of BP 22 and accordingly sentenced her to suffer the penalty of imprisonment for a term of one year and ordered her to pay Ylagan the amount of ₱450,000.00, with legal interest of 12% per annum from October 10, 2002, including ₱25,000.00 as attorney's fees and costs of suit.¹¹

The MTCC found all the elements of the crime charged to have been duly established. It did not give credence to Yalong's defense that she did not own the checking account and that she was not the one who issued the subject check. On this score, it cited the case of *Ruiz v. People*¹² wherein it was held that "[BP 22] is broad enough to include, within its coverage, the making and issuing of a check by one who has no account with a bank, or where such account was already closed when the check was presented for payment."¹³ Further, it observed that Yalong failed to prove by clear and convincing evidence that she has completely paid the loan and thus, such defense must likewise fail.¹⁴

Yalong filed a Supplemental Motion for Reconsideration and Recall the Warrant of Arrest¹⁵ dated October 15, 2006 which the MTCC treated as an original motion for reconsideration. The said motion was, however, denied in an Order¹⁶ dated December 5, 2006.

Consequently, Yalong filed a Notice of Appeal¹⁷ dated January 2, 2007 which was denied due course in an Order¹⁸ dated January 19, 2007, considering that the judgment against her was promulgated *in absentia* on account of her unjustified absence.

Dissatisfied, Yalong filed a Petition for Relief from Order and Denial of Appeal¹⁹ which was dismissed in an Order²⁰ dated July 25, 2007 on the ground that Yalong had lost the remedies available to her under the law when she: (a) failed to appear without justifiable reason at the scheduled promulgation of the MTCC Decision; (b) did not surrender within 15 days from the date of such promulgation; (c) did not file a motion for leave of court to avail of the remedies under the law; and (d) remained at large.

¹⁰ Id. at 69-76. Penned by Acting Judge Alberico B. Umali.

¹¹ Id. at 75.

¹² G.R. No. 160893, November 18, 2005, 475 SCRA 476.

¹³ Id. at 489.

¹⁴ *Rollo*, pp. 74-75.

¹⁵ Id. at 77-87.

¹⁶ Id. at 88-90. Penned by Presiding Judge Dorcas P. Ferriols-Perez.

¹⁷ Id. at 91-92.

¹⁸ Id. at 93.

¹⁹ Id. at 21.

²⁰ Id. at 99-100.

Yalong moved for reconsideration²¹ which was, however, denied in an Order²² dated October 25, 2007. Aggrieved, Yalong filed a Petition for *Certiorari* with Petition for Bail (*certiorari* petition), docketed as Civil Case No. 8278, before the Regional Trial Court of Batangas City, Branch 7 (RTC).²³

The RTC Ruling

In a Resolution²⁴ dated April 2, 2008 (RTC Resolution), the RTC denied Yalong's *certiorari* petition, finding the promulgation of the MTCC Decision *in absentia* to be valid as Yalong was duly notified of the scheduled date of promulgation on October 6, 2006 and yet failed to appear thereat.²⁵ Furthermore, the RTC observed that Yalong did not make any effort to surrender within the time allowed by the rules and thus, lost the remedies available to her under the law.²⁶

Yalong filed a motion for reconsideration on April 30, 2008²⁷ which was eventually denied in an Order²⁸ dated May 27, 2008. As such, on June 26, 2008, she filed the subject petition for review before the CA.²⁹

The CA Ruling

In a Resolution³⁰ dated August 1, 2008, the CA dismissed the subject petition for review on the ground that the "Order of the [RTC] was issued in the exercise of its original jurisdiction – where appeal [by filing a notice of appeal with the RTC] – and not a petition for review is the proper remedy."

Yalong filed a motion for reconsideration dated November 20, 2008³¹ which was, however, denied in a Resolution³² dated March 10, 2009. Hence, this petition.

The Issue Before the Court

The essential issue in this case is whether or not the CA properly dismissed the subject petition for review on the ground of improper appeal.

²¹ Id. at 21.

²² Id. at 101-103.

²³ Id. at 21.

²⁴ Id. at 104-107. Penned by Pairing Judge Ernesto L. Marajas.

²⁵ Id. at 105.

²⁶ Id. at 107.

²⁷ Id. at 22.

²⁸ Id. at 108-109.

²⁹ Id. at 22.

³⁰ Id. at 48.

³¹ Id. at 51-68.

³² Id. at 49-50.

The Court's Ruling

The petition is bereft of merit.

While the Rules of Court (Rules) do not specifically state that the inappropriate filing of a petition for review instead of a required notice of appeal is dismissible (unlike its converse, *i.e.*, the filing of a notice of appeal when what is required is the filing of a petition for review),³³ Section 2(a), Rule 41 of the Rules nonetheless provides that appeals to the CA in cases decided by the RTC in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the latter court. The said provision reads:

SEC. 2. *Modes of appeal.* –

(a) *Ordinary appeal.* – **The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from** and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner. (Emphasis and underscoring supplied)

In the case at bar, records reveal that Yalong filed a petition for *certiorari* with the RTC and that the latter court rendered a Resolution dated April 2, 2008 dismissing the same. It is fundamental that a petition for *certiorari* is an original action³⁴ and, as such, it cannot be gainsaid that the RTC took cognizance of and resolved the aforesaid petition in the exercise of its original jurisdiction. Hence, based on the above-cited rule, Yalong should have filed a notice of appeal with the RTC instead of a petition for review with the CA. As a consequence of Yalong's failure to file a notice of appeal with the RTC within the proper reglementary period, the RTC Decision had attained finality which thereby bars Yalong from further contesting the same.

³³ Under Section 2, Rule 50 of the Rules, the filing of a notice of appeal instead of a required petition for review is considered an erroneous appeal and is dismissible outright, *viz.*:

SEC. 2. *Dismissal of improper appeal to the Court of Appeals.* – An appeal under Rule 41 taken from the Regional Trial Court to the Court of Appeals raising only questions of law shall be dismissed, issues purely of law not being reviewable by said court. **Similarly, an appeal by notice of appeal instead of by petition for review from the appellate judgment of a Regional Trial Court shall be dismissed.** (Emphasis supplied)

x x x x

³⁴ “x x x [A] petition for *certiorari* is an original and independent action that was not part of the trial that had resulted in the rendition of the judgment or order complained of. x x x.” (*China Banking Corporation v. Cebu Printing and Packaging Corporation*, G.R. No. 172880, August 11, 2010, 628 SCRA 154, 167, citing *Tagle v. Equitable PCI Bank*, G.R. No. 172299, April 22, 2008, 552 SCRA 424, 441.)

In this relation, it must be pointed out that Yalong's contention that a petition for review may be treated as a notice of appeal since the contents of the former already include the required contents of the latter cannot be given credence since these modes of appeal clearly remain distinct procedures which cannot, absent any compelling reason therefor, be loosely interchanged with one another. For one, a notice of appeal is filed with the regional trial court that rendered the assailed decision, judgment or final order, while a petition for review is filed with the CA. Also, a notice of appeal is required when the RTC issues a decision, judgment or final order in the exercise of its original jurisdiction, while a petition for review is required when such issuance was in the exercise of its appellate jurisdiction. Thus, owing to these differences, Yalong's filing of the subject petition for review cannot be simply accorded the same effect as the filing of a notice of appeal.

Verily, jurisprudence dictates that the perfection of an appeal within the period and in the manner prescribed by law is jurisdictional and non-compliance with such requirements is considered fatal and has the effect of rendering the judgment final and executory. To be sure, the rules on appeal must be strictly followed as they are considered indispensable to forestall or avoid unreasonable delays in the administration of justice, to ensure an orderly discharge of judicial business, and to put an end to controversies. Though as a general rule, rules of procedures are liberally construed, the provisions with respect to the rules on the manner and periods for perfecting appeals are strictly applied and are only relaxed in very exceptional circumstances on equitable considerations, which are not present in the instant case.³⁵ As it stands, the subject petition for review was the wrong remedy and perforce was properly dismissed by the CA.

Besides, even discounting the above-discussed considerations, Yalong's appeal still remains dismissible on the ground that, *inter alia*, the MTCC had properly acquired jurisdiction over Criminal Case No. 45414. It is well-settled that violation of BP 22 cases is categorized as transitory or continuing crimes, which means that the acts material and essential thereto occur in one municipality or territory, while some occur in another. Accordingly, the court wherein any of the crime's essential and material acts have been committed maintains jurisdiction to try the case; it being understood that the first court taking cognizance of the same excludes the other. Stated differently, a person charged with a continuing or transitory crime may be validly tried in any municipality or territory where the offense was in part committed.³⁶ Applying these principles, a criminal case for violation of BP 22 may be filed in any of the places where any of its elements occurred – in particular, the place where the check is drawn, issued, delivered, or dishonored.³⁷

³⁵ See *Heirs of Gaudiano v. Benemerito*, G.R. No. 174247, February 21, 2007, 516 SCRA 416, 421-422.

³⁶ See *Rigor v. People*, G.R. No. 144887, November 17, 2004, 442 SCRA 450, 463-464.

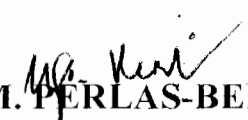
³⁷ *Id.* at 464.

In this case, while it is undisputed that the subject check was drawn, issued, and delivered in Manila, records reveal that Ylagan presented the same for deposit and encashment at the LBC Bank in Batangas City where she learned of its dishonor.³⁸ As such, the MTCC correctly took cognizance of Criminal Case No. 45414 as it had the territorial jurisdiction to try and resolve the same. In this light, the denial of the present petition remains warranted.


As the Court finds the above-stated reasons already sufficient to deny the present petition, it is unnecessary to delve on the other ancillary issues in this case.


WHEREFORE, the petition is **DENIED**. Accordingly, the Resolutions dated August 1, 2008 and March 10, 2009 of the Court of Appeals in CA-G.R. SP. No. 104075 are hereby **AFFIRMED**.

SO ORDERED.


ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson


DIOSDADO M. PERALTA
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice

³⁸ Rollo, p. 89.

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.

**ANTONIO T. CARPIO**

Associate Justice
Chairperson, Second 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