

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DINA LAPECEROS, ACCUSED-APPELLANT.

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

This is an appeal on the Judgment[1] of the Regional Trial Court (RTC), Branch 28, Mandaue City dated August 28, 2012 in Criminal Case No. DU-13821, finding accused-appellant Dina Lapeceros guilty beyond reasonable doubt of Estafa under Article 315, par. 2 (d) of the Revised Penal Code (RPC) and sentencing her to suffer 27 years and eight months of reclusion perpetua, as well as ordering her to pay private complainant the amount of P100,000.00 with 12% interest thereon computed from November 29, 2009 until fully paid and the cost of the proceedings.

The Antecedents

Accused-appellant Dina Lapeceros (Dina) was sued for Estafa under Article 315, paragraph 2 (d) of the Revised Penal Code. The criminal charge was upon the complaint of Delia Alveniz (Delia), who sued in behalf of Psalm Property Venture & Development (Psalm Property), the payee of the subject PENBank Check No. 0018683. The Information[2] against Dina reads, viz.:

That sometime in August 2004, in the City of Mandaue, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with fraudulent intent and by means of deceit, misrepresentation, did then and there, willfully, unlawfully and feloniously issued PENBANK Check No. LLC-0018683, dated September 15, 2004, in the amount of One Hundred Thousand Pesos (P100,000.00), Philippine Currency, payable to Psalm Property Venture and Development, and delivered to Delia Alveniz, in exchange of cash, with full knowledge that there is no sufficient funds with the drawee bank to cover the said check and without informing the payee thereof, thus when said check was presented for payment upon maturity, the same was dishonored and refused payment for reason: "Closed Account", and that despite notice of dishonor and demands on both [sic] accused to make good said check, they [sic] failed and refused to pay the check and/or make good the same, to the damage and prejudice of said Delia Alveniz in the amount aforestated.

CONTRARY TO LAW.

When arraigned Dina pleaded not guilty.[3] Subsequently, trial ensued.

Private complainant Delia was the lone prosecution witness. She testified on direct examination that she was engaged in real estate business and the name of her establishment was Psalm Property. Sometime on August 13, 2004, Dina went to the office of Psalm Property and requested Delia's husband to re-discount her check. Relying on Dina's assurance that the check would be funded upon maturity, Delia and her husband acquiesced to Dina's request. Dina issued PENBank Check No. 0018683[4] dated September 15, 2004 in the amount of P100,000.00. In exchange thereof, Delia and her husband gave Dina the full amount of the check. They did not deduct any advance interest as it was their way of helping her and also because Dina was a good agent of their real estate venture. Before the check matured, Dina called Delia and her husband to request for extension and the couple agreed not to deposit the check yet. Subsequently, Dina, however, kept asking for extension but she never paid.

Hence, Delia ultimately deposited the check on October 27, 2004 but it bounced for the reason “account closed”. Delia caused her lawyer to send two demand letters[5] to Dina. The latter, however, never redeemed the check, thus, the suit.

On cross-examination, Delia confirmed that PENBank Check No. 0018683, the subject of the instant estafa case, was also the subject of another criminal case for violation of Batas Pambansa (BP) Blg. 22 before the Municipal Trial Court in Cities, Mandaue City (MTCC Mandaue City). Delia identified a Memorandum of Agreement which was part of the evidence in the BP 22 case before the MTCC Mandaue City. Delia also confirmed that Dina did not execute a written receipt for the P100,000.00 and that the latter had collectible commissions from their firm.

On the other hand, the defense dispensed with the presentation of Dina as witness after the parties stipulated on the following: (1) that Dina was acquitted by the MTCC Mandaue City in the charge for violation of BP 22, with qualification that the acquittal was based on the fact that there was no personal service of the notice of dishonor to her; (2) the Decision of RTC Branch 55, Mandaue City (RTC Branch 55) in the appeal from the the Decision of the MTCC Mandaue City absolved Dina of any civil liability for the subject check, with qualification that the said RTC Branch 55, Mandaue City decision was still being appealed to the Court of Appeals under CA-G.R. SP No. 04031; (3) that Dina offered as documentary exhibits before the MTCC Mandaue City the documents marked in the estafa case as Exhibits 1 to 8, consisting of memoranda of agreements, minutes of meeting, promissory notes, cash vouchers and the particulars; and (4) the existence of the transcript of stenographic notes of Delia's testimony during the trial for the BP 22 case before the MTCC Mandaue City.[6]

Dina then formally offered her documentary exhibits[7] consisting of: the transcript of stenographic notes of Delia's testimonies before the MTCC Mandaue City in the case for violation of BP 22; her (Dina's) own offer of documentary exhibits in the BP 22 case; the Decision of the RTC Branch 55 exonerating her from civil liability for the check that bounced; and the complaint for accounting and collection of sum of money which she filed against Delia's husband and one Ruel Arno which was pending before RTC Branch 27, Lapu-lapu City.

Upon the evidence presented by the parties, the trial court found Dina guilty beyond reasonable doubt of the crime charged. The dispositive portion of its Judgment reads, viz:

WHEREFORE, in view of the foregoing premises, judgment is rendered finding accused, DINA LAPECEROS, GUILTY beyond reasonable doubt of ESTAFA under Article 315, par. 2(a) [sic] of the Revised Penal Code and sentence her to the penalty of imprisonment of TWENTY-SEVEN 8/12 YEARS of reclusion perpetua.

Accused is further ordered to pay private complainant, Dina M. Laperos [sic] the amount of ONE HUNDRED THOUSAND (PHP. 100,000.00) PESOS with twelve percent (12%) interest thereon computed from 29 November 2004 until fully paid.

Accused is finally ordered to pay the costs of these proceedings.

SO ORDERED.[8]

Aggrieved by the decision, Delia brought this appeal[9] citing the following assignment of errors, thus:

I.

WITH ALL DUE RESPECT, THE COURT A QUO COMMITTED GRAVE REVERSIBLE ERROR WHEN IT CONVICTED THE ACCUSED-APPELLANT FOR ESTAFA, DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HER GUILT BEYOND REASONABLE DOUBT, IN THAT:

A)

THE SUBJECT POSTDATED CHECK WAS ISSUED WITHOUT CONSIDERATION AS THE ACCUSED-APPELLANT DID NOT OBTAIN ANY LOAN FROM THE PRIVATE COMPLAINANT. THE AMOUNT COVERED BY THE SUBJECT CHECK REPRESENTS ACCUSED- APPELLANT'S ADVANCE SHARE IN THE INCOME DERIVED FROM A PARTNERSHIP BUSINESS OF WHICH ACCUSED-APPELLANT HERSELF WAS ONE OF THE PARTNERS.

B)

THE ELEMENT OF "DAMAGE" IS ABSOLUTELY ABSENT IN THIS CASE, CONSIDERING THAT THE PRIVATE COMPLAINANT NEVER PARTED WITH HER MONEY OR ANY PROPERTY TO THE ACCUSED-APPELLANT AND THE AMOUNT COVERED BY THE SUBJECT POSTDATED CHECK REPRESENTS ACCUSED-APPELLANT'S ADVANCE SHARE IN THE INCOME DERIVED FROM A PARTNERSHIP BUSINESS OF WHICH SHE WAS ONE OF THE PARTNERS.

C)

THE ELEMENT OF "DECEIT" IS ABSOLUTELY ABSENT IN THIS CASE CONSIDERING THAT THE ACCUSED- APPELLANT NEVER INDUCED THE PRIVATE COMPLAINANT TO PART WITH HER MONEY OR PROPERTY IN EXCHANGE FOR THE SUBJECT POSTDATED CHECK.;

II.

THE DECISION RENDERED IN THE RELATED CRIMINAL CASE FOR VIOLATION OF BATAS PABANSA BLG. 22 BY THE REGIONAL TRIAL COURT, BRANCH 55 OF MANDAUE CITY, AS AFFIRMED BY THE HONORABLE COURT OF APPEALS, WHICH MADE A DEFINITIVE FACTUAL FINDING THAT THE PRIVATE COMPLAINANT "IS NOT THE OWNER OF THE MONEY BORROWED BY ACCUSED-APPELLANT" AND THAT PRIVATE COMPLAINANT "IS NOT AN INDISPENSABLE PARTY WITH RESPECT TO THE CIVIL ASPECT OF THE CASE" HAS ALREADY BECOME FINAL AND EXECUTORY. AS THIS DECISION INVOLVES THE CIVIL ASPECT OF THE VERY SAME POSTDATED CHECK SUBJECT OF THE INSTANT CASE, THE SAME IS CONCLUSIVE UPON THE PARTIES AND CANNOT ANYMORE BE RE-LITIGATED IN THE INSTANT CASE, UNDER THE PRINCIPLE OF RES JUDICATA, TO AVOID A LUDICROUS SPECTACLE WHERE TWO (2) COURTS RENDER TWO (2) DIAMETRICALLY OPPOSED DECISION ON ONE AND THE SAME ISSUE.

This Court's Ruling

The appeal is meritorious.

Dina's assignment of errors boil down to the question of whether or not her conviction was proper.

After perusing the records, We rule that it was not.

The records show that Dina was sued for violation of BP 22 for issuing PENBank Check No. 0018683, which was the same check subject of this estafa case. In the BP 22 case, Delia was also the private complainant. She filed the suit in behalf of her husband, the owner of Psalm Property. In that suit, Delia's allegations regarding the circumstances of the issuance of PENBank Check No. 0018683 were the same as what she claimed in the herein estafa case, specifically, that Dina requested such check to be re-discounted in exchange for cash.

On the other hand, for her defense in the BP 22 case, Dina had a different version of the circumstance surrounding the issuance of PENBank Check No. 0018683. She claimed that she, Delia's husband Avelino Alveniz, and one Ruel Arno were partners in real estate business. During their partnership meeting on August 12, 2004, it was

agreed that each of the partners would borrow money from the Monilar account, an account maintained by the partners for their real estate ventures. Their loans would be secured with postdated checks which would be made payable to Psalm Property. In accordance with the agreement, Dina issued PENBank Check No. 0018683.

When the MTCC Mandaue City decided the BP 22 case, it gave weight to Dina's version that the check was issued to secure her loan from the Monilar account. The MTCC held that the amount of P100,000.00 that was exchanged for PENBank Check No. 0018683 was from the Monilar account, thus:

xxx As can be gleaned from the evidences [sic] and testimonies of the prosecution witness Dina [sic] Alveniz, it is apparent, that indeed herein accused obtained a loan from Villa Monilar Account in the amount of One Hundred Thousand Pesos (P100,000.00), and in payment of said loan, accused issued postdated Penbank Check bearing check no. 0018683 dated September 15, 2004, and that the said check was subsequently dishonored by the drawee bank when presented for payment on the ground that the account was closed xxx[10] [Emphasis and underscoring supplied.]

When the MTCC Mandaue City's Decision was appealed to the RTC Branch 55, the latter court had findings alike with MTCC Mandaue City that the amount of P100,000.00 was borrowed from the partnership account, of which Dina was one of the partners. In fact, such point became the RTC Branch 55's justification to exonerate Dina from civil liability to Psalm Property and/or Delia, as neither owned the money. The RTC Branch 55's discussion is hereby quoted, viz.:

It is undisputed fact, as admitted by Delia Alveniz in her testimony in the lower court that her husband Avelino Alveniz, Dina M. Lapeceros and Ruel L. Erno are the developers of a parcel of land xxx owned by Emily Monilar located at Jugan, Consolacion, Cebu which is also subjected to another Memorandum of Agreement executed by the said developers and Emily Monilar. This development project established the what is known as the Monilar Account xxx.

Clearly, the Monilar Account is not the account of private complainant Psalm Property Venture & Development, but the account of the developers namely Avelino Alveniz, Roel L. Arno & Dina M. Lapeceros – the accused/appellant herein.

In other words, the said three (3) developers borrowed money from their own account. xxx

Clearly, the evidence present [sic] by the parties herein are eloquent proof that Alveniz, Lapeceros and Arno are the owners of the money borrowed by Dina Lapeceros, and not Psalm Property Venture & Development. Xxx

This Court finds and so holds that the lower court committed reversible error in awarding the amount of P100,000.00 in favor of Psalm Property Venture & Development and/or Delia Alveniz. As correctly pointed out by accused-appellant, there is no evidence on the records that warrants the award of P100,000.00 to Psalm Property Venture & Development and/or Delia Alveniz.[11] [Emphasis and underscoring supplied.]

The RTC Branch 55's decision was also appealed to this Court via a petition for review in CA-G.R. SP No. 04301. In resolving the petition, We sustained the findings of the RTC that the check was a security for the loan that Dina obtained from the partnership account, thus:

Contrary to the protestations of petitioner, We find the evidence sufficient to sustain the findings of the RTC that the subject check was issued as a security for a loan which respondent obtained from the Monilar Account of which she is also a co-developer. The bare allegation of petitioner that respondent approached her husband to have the subject check rediscounted, sans proof, obviously belies her claim vis-à-vis respondent[']s evidence, i.e. the minutes of the meeting held on August 12, 2004 and Memorandum of Agreement. Among those documents, the authenticity and genuineness of which have been admitted by the petitioner, are the xxx Memorandum of Agreement with Emily Monilar for the development of a real property similarly located in

Jugan, Consolacion, Cebu thus the Monilar Account.

xxx the mere showing that the subject check is in the name of petitioner Psalm Property Venture and Development does not altogether create a conclusive presumption of entitlement to the face value of said check, in its favor, in view of respondent's evidence to the contrary. The minutes of the meeting held on August 12, 2004 shows that Avelino Alveniz, Ruel L. Arno and respondent Dina M. Lapeceros agreed that instead of issuing checks as payment for their respective loans of P100,000.00 each from the Monilar Account, each partner would just issue a post-dated check in the name of Psalm Property Venture and Development which shall be deposited in the Villa Monilar Account.[12] [Emphasis and underscoring supplied.]

When Delia elevated Our ruling to the Supreme Court, the Highest Court denied her petition in a Resolution dated October 10, 2011. The said Resolution already became final and executory per Entry of Judgment[13] dated March 6, 2012.

Noteworthy, the BP 22 case involved PENBank Check No. 0018683, which is the same check subject of the herein estafa case. In the BP 22 case, the MTCC Mandaue City, the RTC Branch 55 and this Court were one in finding that the check was issued as a security for the loan that Dina obtained from the Monilar account and that the money exchanged with such check did not belong to Delia or to Psalm Property.

Under the doctrine of res judicata, a final judgment or decree on the merits rendered by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits and on all points and matters determined in the previous suit. The foundation principle upon which the doctrine rests is that the parties ought not to be permitted to litigate the same issue more than once; that when a right or fact has been judicially tried and determined by a court of competent jurisdiction, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them in law or estate.[14]

The findings in the BP 22 case, particularly insofar as the circumstances surrounding the issuance of the check and the ownership of the money that was exchanged with it are concerned, are therefore conclusive in the case at bar. These matters had been specifically put in issue when Delia cited the following as one of her assigned errors in CA-G.R. SP No. 04301 that:

THE SAME RTC-APPELLATE COURT GRAVELY ERRED IN CONCLUDING THAT THE MONEY BORROWED BY RESPONDENT IS OWNED BY THE PARTNERS AND ITS PAYMENT IS TO BE COURSED THROUGH PSALM PROPERTY VENTURE AND DEVELOPMENT.

In CA-G.R. SP No. 04301, this Court affirmed the common finding of the MTCC Mandaue City and RTC Branch 55 that the check was issued, not as payment of Dina's obligation from Delia, but as security for the former's loan from the Monilar account. Since this Court's decision already attained finality, We cannot now, without infringing the rule on res judicata, sustain Delia's claim in this estafa case that it was her personal money that she parted in exchange for Dina's check. The rule is that material facts or questions which were in issue in a former action and therein admitted or judicially determined, are conclusively settled by a judgment rendered therein; and that such facts or questions become res judicata and may not again be litigated in a subsequent action between the same parties or their privies, regardless of the form the issue may take in the subsequent action, whether the subsequent action involves the same or a different form of proceedings, or whether the second action is upon the same or a different cause of action, subject matter, claim or demand, as the earlier action.[15]

Since the factual findings in the BP 22 case apply to the present case, Dina could not be convicted of estafa under Article 315 (2)(d) of the Revised Penal Code, which penalizes any person who shall defraud another by postdating a check or issuing a check in payment of an obligation when the offender has no funds in the bank or his funds deposited therein are not sufficient to cover the amount of check. The elements of this form of estafa are: (1)

postdating or issuing a check in payment of an obligation contracted at the time the check was issued; (2) lack or insufficiency of funds to cover the check; and (3) damage to the payee thereof.

Damage and deceit are essential elements of the offense and must be established with satisfactory proof to warrant conviction. From the settled facts, however, these essential elements do not obtain in this case.

Damage as an element of estafa may consist in the offended party being deprived of his money or property as a result of the defraudation.[16] There was no damage to Delia in view of the final finding of fact that she did not part with any amount in exchange for Dina's check. As found in the decision on the BP 22 case, the money obtained by Dina did not belong to Delia but to the Monilar account.

There was also no deceit. To constitute estafa under Article 315, par. 2(a), the act of postdating or issuing a check in payment of an obligation must be the efficient cause of defraudation, and as such it should be either prior to, or simultaneous with the act of fraud. The offender must be able to obtain money or property from the offended party because of the issuance of a check ~ that is, the latter would not have parted with his money or other property were it not for the issuance of the check.[17] At the risk of repetition, Dina did not obtain any money from Delia. Dina issued PENBank Check No. 0018683 to guarantee the payment of her loan. Moreover, Dina's issuance of the check was not even the cause for her to be able to obtain the loan, as it was actually the partners' agreement that was embodied in the Minutes[18] of their meeting dated August 12, 2004.

As damage and deceit were not proven, Dina's conviction must necessarily be reversed and her acquittal of the crime is in order.

WHEREFORE, the appeal is GRANTED. The Judgment of the Regional Trial Court, Branch 28, Mandaue City dated August 28, 2012 in Criminal Case No. DU-13821, is hereby REVERSED and SET ASIDE.

DINA LAPECEROS is ACQUITTED of the charge against her on the ground of reasonable doubt. The bailbond posted for her provisional liberty is cancelled and released.

SO ORDERED.

Hernando, Chairperson and Azcarraga-Jacob, JJ., concur.

[1] Record, pp. 252-257.

[2] Record, p. 1.

[3] See Order of arraignment, record, p. 46.

[4] Record, p. 88.

[5] Record, pp. 89-90.

[6] See Order dated February 18, 2010, record, pp. 114-115 and portion under the heading Defense's Evidence in the Judgment, record, p. 254.

[7] Record, pp. 117-120.

[8] Record, p. 257.

[9] See Notice of Appeal, record, pp. 261-262.

[10] Rollo, p. 67.

[11] Record, pp. 204-205.

[12] Rollo, pp. 78-79.

[13] Rollo, pp. 81-82.

[14] See *Balais-Mabanag v. Register of Deeds of Quezon City*, G.R. No. 153142. March 29, 2010.

[15] See *Heirs of Pael v. Court of Appeals*, G.R. No. 133547. November 11, 2003.

[16] See *Nagrampa v. People of the Philippines*, G.R. No. 146211. August 6, 2002.

[17] See *People of the Philippines v. Cuyugan*, G.R. Nos. 146641-43. November 18, 2002.

[18] Record, p. 218.

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