PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. MERCEDITA DIMAL, ACCUSED-APPELLANT.

Ponente: ABDULWAHID, J.

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ABDULWAHID, J.:

This is an appeal from the Decision[1] dated November 24, 2011 of the Regional Trial Court (RTC), Branch 58, Angeles City, in Criminal Case No. 02-346, finding accused-appellant Mercedita Dimal guilty beyond reasonable doubt of the crime of estafa as defined in Article 315, paragraph 2 (d) of the Revised Penal Code, as amended by Republic Act No. 4885, and sentencing her to an indeterminate penalty of ten (10) years and one (1) day of prision mayor, as minimum, to sixteen (16) years and one (1) day of reclusion temporal, as maximum. Accused-appellant was also ordered to indemnify Leonora P. Rivera the amount of Ninety Four Thousand Thirty One Pesos and Eighty Eight Centavos (Php94,031.88) as of November 2011, which amount shall earn six percent interest (6%), until it is fully paid.

On June 28, 2002, accused-appellant was charged with the crime of estafa. The accusatory portion of the Information reads, as follows:[2]

> That on or about the 25th day of January 2002, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, well knowing that she has no more sufficient funds with the Bank of Commerce Bank (sic), Balibago, Angeles City Branch, and without informing this fact to the complainant LEONORA P. RIVERA, did then and there willfully, unlawfully and feloniously, with intent to defraud, issue and make out Bank of Commerce Check bearing Check No. 0020508 dated/ postdated January 25, 2002 in the amount of P134,621.00 as payment for 100 boxes of chicken legs the accused purchased from the complainant; that upon presentment of the said check with the bank for payment, the same was dishonored and refused payment for the reason of "ACCOUNT CLOSED", and demands from accused MERCEDITA DIMAL notwithstanding and for more than three (3) days from notice of such dishonor, the accused failed and refused and still fails and refuses to redeem the said check, to the damage and prejudice of the complainant LEONORA P. RIVERA in the aforementioned amount of ONE HUNDRED THIRTY FOUR THOUSAND SIX HUNDRED TWENTY ONE PESOS (P134,621.00), Philippine Currency.
>
> ALL CONTRARY TO LAW.

Upon arraignment on February 10, 2003, accused-appellant pleaded not guilty to the charges against her.[3] Thereafter, trial on the merits ensued.

The evidence for the prosecution show that on January 24, 2002, accused-appellant purchased from Leonora P. Rivera five (5) boxes of cutting fats intended for longaniza processing. The merchandise amounted to Php7,048.74 and as payment thereof, accused-appellant issued to Rivera a postdated check paid to cash (Check No. 0020506) from the Bank of Commerce.[4] Accused-appellant promised to replace the postdated check with cash on or before its due date on February 8, 2002.[5]

After picking up her first order, accused-appellant then placed with Rivera a second order for one hundred (100) boxes of chicken leg quarters, which she promised to pay for in cash.[6]

The following night, or on January 25, 2002, accused-appellant went to Rivera's house to pick up the 100 boxes of chicken leg quarters. After the boxes were loaded into accused-appellant's vehicle, she handed Rivera a postdated check (Check No. 0020508) for the amount of Php134,621.00 drawn from the Bank of Commerce.[7] Rivera reminded accused-appellant of her promise to pay for the merchandise in cash, however, accused-appellant explained that she was unable to withdraw cash and will just replace the check with cash the next day. When Rivera asked about the promised cash as payment for the chicken legs the following day, accused-appellant requested that Rivera deposit the check instead.[8]

On February 7, 2002, Rivera deposited the check for Php134,621.00 but it was returned by her bank for the reason of "Account Closed."[9] The check for Php7,048.74 was also not honored by her bank and returned for the same reason of "Account Closed."[10]

Accused-appellant for her part, did not deny obtaining five (5) boxes of cutting fats from Rivera for Php7,048.74, but insisted that they agreed on a payment term of thirty (30) days from receipt of the food items. Furthermore, accused-appellant maintained that Rivera offered 100 boxes of chicken leg quarters to accused-appellant for Php134,621.20, also with the same payment term of thirty (30) days from receipt, which accused-appellant accepted.[11]

The following evening, when accused-appellant picked up the 100 boxes of chicken leg quarters from Rivera's house, she was surprised when Rivera directed her to issue two (2) postdated checks for the cutting fats and chicken leg quarters. Accused-appellant informed Rivera that she will just pay in cash when the term becomes due in thirty (30) days. However, Rivera insisted on the issuance of the postdated checks, even after finding out that accused-appellant had already closed her checking account.[12]

Accused-appellant further testified that she attempted to return the boxes of chicken leg quarters to Rivera as she could not sell them, seeing that they were overpriced. However, Rivera refused to accept the same.[13]

Defense witness Bernie Flores claimed to be accused-appellant's business partner and corroborated her testimony. He alleged that he was present when accused-appellant picked up the boxes of chicken leg quarters from Rivera's residence and that he heard accused-appellant inform Rivera that her checking account was already closed. However, despite this, Rivera insisted on the issuance of two (2) checks as collateral for the goods purchased by accused-appellant. Flores likewise testified that he heard accused-appellant request Rivera not to encash the checks because of the closure of her checking account.[14]

On June 18, 2007, in an attempt to settle the civil aspect of the case, accused-appellant tendered to Rivera One Hundred Thousand Pesos (Php100,000.00) as partial payment of the accrued interest and principal obligation, which the parties agreed to peg at Two Hundred Fifty Thousand Pesos (Php250,000.00). Accused-appellant also issued five (5) postdated checks in the amount of Thirty Thousand Pesos (Php30,000.00) each, representing the balance of One Hundred Fifty Thousand Pesos (Php150,000.00).[15] However, all five (5) of the postdated checks bounced, prompting Rivera to pursue her case against accused-appellant.[16]

On November 24, 2011, the RTC rendered the assailed Decision, the dispositive portion of which reads, as follows:[17]

> WHEREFORE, the Court hereby adjudges accused MERCEDITA DIMAL GUILTY of the crime of ESTAFA under Article 315 paragraph 2(d) of the Revised Penal Code as amended by Republic Act 4885 and sentences the said accused an indeterminate penalty of TEN (10) YEARS and ONE (1) DAY of prision mayor, as minimum, SIXTEEN (16) YEARS and ONE (1) DAY of reclusion temporal, as maximum, to indemnify Leonora P. Rivera in the amount of P134,621.00 with interest at 6% per annum deducting therefrom the amount partially made on June 18, 2007 (P8,077.26 per annum or P673.10 per month) from July 2, 2002, (59

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> months x P673.10 = P39,712.90 or a total of P174,333.90 less P100,000.00 made on June 18, 2007 = P74,333.90 which shall interest at 6% per annum = P4,460.03 or P371.66 per month from July 2007 to November 2011 x 53 months = P19,697.98 as interest) or a total civil obligation in the amount of NINETY FOUR THOUSAND THIRTY ONE PESOS and 88 CENTAVOS (P94,031.88) as of November 2011 which amount shall earn interest at 6% per annum, until the same is fully paid.
>
> Let a Warrant of Arrest be issued against accused MERCEDITA DIMAL for the execution of this Judgment.
>
> Furnish the accused and her counsel of this Decision and the Office of the City Prosecutor of Angeles.
>
> SO ORDERED.

On September 17, 2012, accused-appellant filed a Notice of Appeal,[18] to which the RTC gave due course in its Order[19] dated September 28, 2012.

The sole issue raised by accused-appellant for the consideration of this Court reads, as follows:[20]

> WHETHER OR NOT THE PROSECUTION FAILED TO ESTABLISH THE GUILT OF ACCUSED-APPELLANT FOR THE CRIME OF ESTAFA BEYOND REASONABLE DOUBT. (Emphasis supplied)

In resolving the issue, it is necessary to determine whether all the elements of estafa have been proven. More importantly, there is a need to determine if there was consideration for the issuance of the subject bouncing check.

Article 315 (2)(d)[21] of the Revised Penal Code 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 therefore 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. The false pretense or fraudulent act must be committed prior to or simultaneously with the issuance of the bad check.[22]

In the case at bar, accused-appellant asserts that the checks issued were merely used to guarantee her obligation with Rivera, a fact which Rivera herself confirms.[23]

After a close study of the evidence on record in this case, we are convinced that the RTC did not err in finding that accused-appellant's checks were issued for consideration. This is a clear case of estafa, considering that the unfunded postdated checks were issued in payment of an obligation contracted at the same time and without which the transactions would not have been consummated,[24] to wit:[25]

> ATTY. YABUT:
>
> Q:
>
> And the subject of this case, you filed this case for estafa because accused also purchased 100 boxes of commodities for business, is that correct?
>
> A:
>
> Yes sir.
>
> Q:

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And Madam Witness, also your agreement with the accused is that she would pay you in cash?

A:

Yes sir.

Q:

And during that day of January 25, 2002, she has no cash in hand, is that correct?

A:

Yes sir.

COURT (TO THE WITNESS)

That is why, she paid you in check, is that correct?

A:

Yes sir.

ATTY. YABUT:

Q:

And that check would be used as a guaranty of her indebtedness in the amount of P134,621.00?

A:

Yes sir.

Q:

And she would just pay you the total cash the following day?

A:

Yes sir.

COURT (TO THE WITNESS):

Q:

Did she (sic) able to pay you the following day?

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A:

No sir.

ATTY. YABUT:

Q:

So the purpose of issuing the checks, just to guaranty, is that correct?

A:

Yes sir.

Q:

And you accepted that?

A:

Yes sir.

ATTY. YABUT:

I think that will be all for cross Your Honor.

COURT:

The Court will make some clarification.

(TO THE WITNESS)

Q:

You said earlier that afterwards, the accused was not able to pay you as agreed upon?

A:

Yes, Your Honor.

Q:

But she did not pay?

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A:

Yes sir.

Q:

What did you do when she was not able to pay you the following day?

A:

I called her sir.

Q:

And then what else?

A:

I was trying to contact her but she never replied. (Emphasis supplied)

Nieva vs. Court of Appeals[26] is clear that to constitute estafa, 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 the check or that the person to whom the check was delivered would not have parted with his money or property had there been no check issued to him. Stated otherwise, the check should have been issued as an inducement for the surrender by the party deceived of his money or property and not in payment of a preexisting obligation. (Emphasis supplied)

Accordingly, we sustain the RTC when it ruled in this wise:[27]

> Admittedly, accused issued a post dated check at the time of the purchase of the chicken leg quarters. Were it not for the issuance of the subject check, complainant would not have parted with her goods. xxx (Emphasis supplied)

Upon being informed that the check bounced,[28] accused-appellant failed to give an adequate explanation why she issued the check without value. In Echaus v. Court of Appeals, the Supreme Court ruled that "the fact that the postdated checks xxx were not covered by sufficient funds when they fell due, in the absence of any explanation or justification by petitioner, satisfied the element of deceit in the crime of estafa, as defined in paragraph 2 of Article 315 of the Revised Penal Code."[29]

Furthermore, Article 315, paragraph 2 (d) of the Revised Penal Code, as amended by Republic Act No. 4885, states that the failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack or insufficiency of funds shall be prima facie evidence of deceit constituting false pretense or fraudulent act.

While Rivera admitted during the cross-examination that the postdated check was issued as a guaranty or evidence of indebtedness pending payment with cash the following day, a careful review of the facts of the case leaves no doubt in the mind of this Court that the issued postdated check was the efficient cause of defraudation, without which, Rivera would not have parted with her goods.

Besides, accused-appellant's defense that Rivera was well aware that her checking account had long been closed,

yet she still demanded that the checks be issued as guaranty, deserves scant consideration, because such is contrary to human experience. As an established businesswoman, it defies common sense for Rivera to demand worthless securities as a guaranty for the purchase of goods of substantial value. We agree with the RTC's ratiocination, thus:[30]

> xxx While accused raised as her defense that private complainant knew that the check is already a closed account and that it was merely issued to guarantee payment, the same could not be taken as gospel truth considering that if the check is already a closed account, why would the private complainant accept a worthless check to guarantee the payment of the purchases made by the accused? In this case there was deception when accused represented to the complainant to accept in the meantime the subject check and that she would replace the same in cash on the following day, which however was not complied with as she in fact failed to pay the purchase she made. (Emphasis supplied)

Finally, it is well-established that when it comes to credibility, the trial court's assessment deserves great weight and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The reason is obvious. Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate testimonial evidence properly.[31]

In light of the fact that accused-appellant is guilty beyond reasonable doubt of the crime of estafa under Article 315, paragraph 2 (d) of the RPC, as amended by P.D. No. 818, accused-appellant is liable to suffer the penalty provided under P.D. No. 818, thus:

> SEC. 1. Any person who shall defraud another by means of false pretenses or fraudulent acts as defined in paragraph 2(d) of Article 315 of the Revised Penal Code, as amended by Republic Act No. 4885, shall be punished by:
>
> 1. The penalty of reclusion temporal if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos but the total penalty which may be imposed shall in no case exceed thirty years. In such cases, and in connection with the accessory penalties which may be imposed under the Revised Penal Code, the penalty shall be termed reclusion perpetua;

In the case at bar, the total value of the dishonored check is Php134,621.00. Considering that the face value thereof exceeds the amount of Php22,000.00, the penalty of reclusion temporal should be imposed in its maximum period, which is from seventeen (17) years, four (4) months and one (1) day to twenty (20) years, adding one year for each additional Php10,000.00.[32] Accordingly, adding eleven (11) years to the maximum penalty of twenty (20) years gives a total penalty of thirty-one (31) years. However, since the total penalty imposed shall not exceed thirty (30) years, the maximum shall be pegged at thirty (30) years of reclusion perpetua.

With the application of the Indeterminate Sentence Law, the minimum of the indeterminate sentence can be anywhere within the range of the penalty next lower in degree to the penalty prescribed by the RPC for the crime. The penalty prescribed under Article 315, paragraph 2 (d) of the RPC, as amended by P.D. No. 818, is reclusion temporal. The penalty next lower in degree is prision mayor. The minimum term of the indeterminate penalty should be anywhere within six (6) years and one (1) day to twelve (12) years of prision mayor.[33]

Taking into account the excess of the amount defrauded from the base of Php22,000.00, there is a need to modify the maximum of the imposable penalty from sixteen (16) years and one (1) day of reclusion temporal to thirty (30) years of reclusion perpetua. Likewise, considering the partial payment made by accused-appellant, we deem it just to modify the minimum to six (6) years and one (1) day of prision mayor from the original ten (10) years

and one (1) day of prision mayor.

As regards the civil liability, we see no reason to depart from the ruling of the RTC, considering that the RTC rightfully accounted for the partial payment made by accused-appellant on June 18, 2007, and imposed the requisite six percent (6%) interest per annum in computing her total civil liability.

WHEREFORE, the Decision dated November 24, 2011 of the RTC, Branch 58, Angeles City, in Criminal Case No. 02-346, finding accused-appellant guilty beyond reasonable doubt of the crime of estafa, is MODIFIED to read, as follows:

> Finding accused-appellant Mercedita Dimal GUILTY beyond reasonable doubt of one (1) charge of estafa, she is hereby sentenced to suffer an indeterminate penalty of six (6) years and one (1) day of prision mayor as minimum, to thirty (30) years of reclusion perpetua as maximum.
>
> Accused-appellant is ordered to INDEMNIFY Leonora P. Rivera in the amount of NINETY FOUR THOUSAND THIRTY ONE PESOS and EIGHTY-EIGHT CENTAVOS (P94,031.88) as of November 2011, representing her civil liability, which amount shall earn interest at six percent (6%) per annum, until the same is fully paid.
>
> Let a warrant of arrest be issued against accused MERCEDITA DIMAL for the execution of this Judgment.
>
> Further, let the accused and her counsel, as well as the Office of the City Prosecutor of Angeles City, Pampanga, be furnished with copies of this Decision.

SO ORDERED.

Barza and Cruz, JJ., concur.

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[1] Records, pp. 325-333.

[2] Id. at 1.

[3] Id. at 77.

[4] Id. at 12.

[5] Id. at 9.

[6] Ibid.

[7] Id. at 14.

[8] Id. at 9.

[9] Id. at 14-15.

[10] Id. at 12-13.

[11] Rollo, p. 13.

[12] Ibid.

[13] TSN, November 22, 2005, p. 6 and TSN, February 16, 2009, p. 8.

[14] TSN, June 29, 2010, pp. 5-8.

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[15] Records, p. 213.

[16] Id. at 332.

[17] Id. at 332-333.

[18] Id. at 354.

[19] Id. at 355.

[20] Rollo, p. 25.

[21] Art. 315. Swindling (estafa).- Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

xxx xxx xxx

> 2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:
>
> xxx xxx xxx
>
> (d) By postdating a check, or issuing a check in payment of an obligation when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check. The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack or insufficiency of funds shall be prima facie evidence of deceit constituting false pretense or fraudulent act. (As amended by R.A. No. 4885, June 17, 1967.
>
> xxx xxx xxx

[22] People vs. Tan, 338 SCRA 330, 336-337 (2000), citing People vs. Chua, 315 SCRA 326 (1999)..

[23] TSN, February 17, 2004, p. 5.

[24] See Echaus vs. Court of Appeals, 134 SCRA 42, 47 (1985).

[25] TSN, February 17, 2004, pp. 4-6.

[26] 272 SCRA 1, 11 (1997), citing People vs. Reyes, 228 SCRA 13, 19 (1993).

[27] Records, p. 331.

[28] Id. at 11.

[29] 134 SCRA 42, supra at 48.

[30] Records, p. 331.

[31] People vs. Quemeggen, 594 SCRA 94, 101-102 (2009), citing People vs. Lara, 505 SCRA 137, 152 (2006).

[32] See Spouses Cajigas vs. People, 580 SCRA 54, 67-68 (2009).

[33] Id. at 68.

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