

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LEONORA DY Y ABENIS, DEFENDANT-APPELLANT.

G.R. Nos. L-54912-13. November 23, 1981

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This case was certified to this Tribunal by the Court of Appeals[1] for final determination pursuant to Section 12, paragraph 2, Rule 124 of the Rules of Court, the imposable penalty being reclusion perpetua.

Leonora Dy y Abenis, herein appellant, was charged on June 30, 1977 with the crime of Estafa under Article 315, parag. 2(d) of the Revised Penal Code, committed by means of bouncing checks, before the Court of First Instance of Rizal, in Criminal Case No. Q-8078, under the following Information:

"That on or about the 19th day of May 1977, in Quezon City, Philippines, the above-named accused, with intent of gain and by means of deceit and false pretenses, executed prior to or simultaneously with the commission of the fraud, did, then and there, wilfully, unlawfully and feloniously defraud one PURITA COMANDANTE, in the following manner, as follows: the said accused executed and issued in favor of PURITA COMANDANTE, the following postdated checks, to wit:

1. Phil. Banking Corp. Check #2753 dtd. 5/23/77 P10,000.00
2. Phil. Banking Corp. Check #2754 dtd. 5/30/77 P10,000.00
3. Phil. Banking Corp. Check #2755 dtd. 6/10/77 P10,000.00
4. Phil. Banking Corp. Check #2756 dtd. 6/15/77 P5,000.00
5. Phil. Banking Corp. Check #2758 dtd. 5/21/77 P10,000.00
6. Phil. Banking Corp. Check #2759 dtd. 5/23/77 P10,000.00

Total = P55,000.00

in the total amount of P55,000.00, Philippine Currency, drawn against PHILIPPINE BANKING CORPORATION, Cubao Branch, in payment of her obligation, she knowing fully well at the time she issued the said checks that her accounts with the said bank were insufficient to cover up the amounts stated therein; consequently, these were dishonored by the bank when presented for payment, and said accused having been informed thereof, failed to redeem said checks despite repeated demands made upon her, to the damage and prejudice of said PURITA COMANDANTE in the total amount of P55,000.00, Phil. Currency.

"Contrary to law."[2]

On the same date, Appellant, together with Elizabeth Salen y Goong (at large), was charged with the same offense of Estafa before the same Court in Criminal Case No. Q-8079, under an Information which reads:

"That on or about the 19th day of May 1977, in Quezon City, Philippines, the above-named accused,

conspiring together, confederating with and mutually helping one another, with intent of gain and by means of deceit and false pretenses, executed prior to or simultaneously with the commission of the fraud, did, then and there wilfully, unlawfully and feloniously defraud one PURITA COMANDANTE in the following manner, as follows: the said accused pur-suant to their conspiracy executed and issued in favor of PURITA COMAN-DANTE the following postdated checks, to wit:

PHIL. NAT. BANK Check No. D-71189-R dtd. May 23/77 P10,000.00

PHIL. NAT. BANK Check No. D-71190-R dtd. May 23/77 P57,000.00

in the total amount of P67,000.00, Philippine Currency, drawn against PHILIPPINE NATIONAL BANK, Escolta Branch, in payment of their obligation, they knowing fully well at the time they issued the said checks that their accounts with the said bank were insufficient to cover up the stated amounts therein; consequently, these were dishonored by the bank when presented for payment, and said accused having been informed thereof, failed to redeem said checks despite repeated demands made upon them, to the damage and prejudice of said PURITA COMANDANTE in the total amount of P67,000.00, Philippine Currency.

"Contrary to law."[3]

Upon arraignment in both cases, Appellant entered a plea of not guilty. The two cases were subsequently ordered consolidated upon a defense motion.[4]

After trial, the Court of First Instance rendered judgment with the following dispositive portion:

"WHEREFORE, this Court finds the accused Leonora Dy y Abenis guilty as principal and beyond reasonable doubt of this crime of Estafa under Paragraph 2 (d) of Article 315 of the Revised Penal Code in both cases without any attending circumstances and, under the Indeterminate Sentence Law, hereby sentences her to suffer in each case an indeterminate penalty consisting of imprisonment of FOUR (4) YEARS and TWO (2) MONTHS of prision correccional as minimum and ELEVEN (11) YEARS of prision mayor as maximum with the accessories provided for by law. Further, she is sentenced to indemnify Purita Comandante in the amount of P87,000.00 in the two cases and to pay the costs of the proceedings."[5]

As Appellant was able to return to Complainant jewelry worth P35,000.00, that amount was eventually deducted from the indemnity ordered by the trial Court to be paid to complainant in Criminal Case No. Q-8079 thereby reducing her civil liability therein to P32,000.00.

On appeal, the Court of Appeals affirmed the conviction but imposed the new and heavier penalties prescribed by Presidential Decree No. 818, which had taken effect on October 22, 1975. The dispositive portion of the Appellate Court Decision reads:

"WHEREFORE, the conviction of the accused Leonora Dy y Abenis is affirmed, but the penalties imposed upon her by the trial court are here-by modified as follows:

"In Criminal Case No. Q-8078, she is hereby sentenced to suffer a straight penalty of twenty-three (23) years of reclusion perpetua, with the accessory penalties provided by law, to indemnify the complainant Purita Comandante in the sum of P55,000, and to pay the costs.

"In Criminal Case No. Q-8079, the accused Leonora Dy y Abenis is sentenced to suffer a straight penalty of twenty-one (21) years of reclusion perpetua, with the accessory penalties provided by law, to indemnify the complainant Purita Comandante in the sum of P32,000, and to pay the costs.

"We have imposed straight penalties on the accused because she is precluded from enjoying the beneficent provisions of the Indeterminate Sentence Law as the penalties imposable for the frauds she had committed fall within the range of life imprisonment or reclusion perpetua (Sec. 2, Indeterminate Sentence Law)." (Court of

Appeals Decision, p.32, Record, CA-G.R. Nos. 22632-33-CR).

However, instead of entering judgment the Court of Appeals certified the two cases to this Court for final determination, as earlier stated.

The facts as found by the trial Court, adopted by Appellant, restated in the Court of Appeals Decision, and as borne out by the records, are quoted hereunder:

"Purita Comandante first met the two accused on May 16, 1977 at about 10:00 o'clock a.m., in the Tanbunting Pawn Shop in Cubao, Quezon City. They were introduced to her by a certain Aida, an appraiser of the pawn shop, as buyers of jewelries. As she had no jewelry for sale at the time, she told the two accused who had offered to make some purchase 'bukas na lang'. She then met the two accused again on the following morning in the same pawn shop and showed to them a set of a pair of earrings and a ring. The two accused paid for the same in cash and asked her to show them more items of jewelry as they want to buy more. After agreeing with them to meet again in the after-noon, she returned to the pawn shop bringing along a bracelet and nine stones (90 points and 220 'chispas') valued at P35,000.00. The two accused bought them and gave to her in payment four (4) postdated checks - Philippine Banking Corporation Check No. 2753 for the amount of P10,000.00 and dated May 23, 1977 (Exh. 'A'), PBC Check No. 2755 for the amount of P10,000.00 and dated June 10, 1977 (Exh. 'B'), PBC Check No. 2756 for the amount of P5,000.00 and dated June 15, 1977 (Exh. 'C'), and PNB Check No. 71189 for the amount of P10,000.00 and dated May 23, 1977 (Exh. 'D'). The Philippine Banking Corporation checks were drawn by accused Leonora Dy alone while the Philippine National Bank checks were jointly drawn and signed by the two accused. A receipt (Exh. 'E') for the purchase and the payment therefor with four postdated checks was issued and signed by the two accused. Also, both accused noted down in a piece of paper (Exh. 'E-3') their respective addresses and the telephone number of Leonora Dy and gave the same to Purita Comandante. On the following day, May 18, 1977, at 11:00 o'clock a.m., the two accused saw her in her resi-dence at 367 De la Alas Street in Pasay City. They wanted more pieces of jewelry. As she had no jewelry at the time, they agreed to meet again. Subsequently, she showed a set of a ring and a pair of earrings, 'brillante & baget stone'. Again the accused bought and paid for them with PBC Check No. 2759 issued by Leonora Dy for the amount of P10,000.00 and dated May 23, 1977 (Exh. 'F'). A corresponding receipt showing the purchase and mode of pay-ment was issued and signed by both accused (Exh. 'G'). The check was given by Comandante to a certain Mrs. Nancy Ventura who is her supplier. A ring valued at P7,000.00 was also bought by the accused and paid for with another postdated check which was subsequently retrieved by them and the value thereof incorporated and included in three other postdated checks given for subsequent purchases. Comandante got a necklace with a 'brillante' cross and a pair of dia-mond earrings from Mrs. Nancy Ventura. These two pieces of jewelry were shown to the accused and they also agreed to buy them at the given price of P35,000.00 each. The accused first had the jewelries appraised at the Tambunting Pawn Shop and being satisfied with their quality, they paid for the same with three post-dated checks - PNB Check No. 71190 for amount of P57,000.00 and dated May 23, 1977 (Exh. 'H'), PBC Check No. 2758 for the amount of P10,000.00 and dated May 21, 1977 (Exh. 'I'), and PBC Check No. 2754 for the amount of P10,000.00 and dated May 30, 1977 (Exh. 'J'). The amounts of these three checks sum up to P77,000.00 as they included the other postdated check in the amount of P7,000.00 which was taken back by the accused to be consolidated with said three checks. This last transaction is evidenced by a receipt (Exh. 'L') signed by both accused. All these transactions were consummated in three days, from May 17 to May 19, 1977. While the receipt marked as Exh. 'G' is dated May 20, 1977 and the receipt marked as Exh. 'L' is dated May 23, 1977, they are not reflective of the true dates of their execution. The receipt marked Exh. 'I' is dated May 23, 1977, because it was on this date that the accused promised to pay for all the jewelries or return them if unsold by them. When presented for payment, all the eight (8) checks given by the accused to Comandante were dishonored by the drawee bank (Exhs. 'A-5', 'B-A', 'C-4', 'D-5', 'F-3', 'H-3', 'I-3' & 'J-3'), for reasons of 'insufficient fund' or 'no arrangement'. When the PBC Check dated May 21, 1977 was dis-honored when presented for payment on that date, Comandante became apprehen-sive and immediately made arrangements with Leonora Dy to meet with her. They met at a place near the New Frontier theater at Cubao, Quezon City, and Dy told Comandante to wait

until the follow-ing day as Elizabeth Salen was not around. When they met on the following day, Comandante told Dy to just return her jewelries. Dy then brought Comandante to the house of Salen at San Mateo, Rizal, where Comandante again told both accused this time that they return her jewelries and she in turn will return their checks. The accused then brought Comandante to Lerma St. in Sampaloc, Manila, ostensibly to look for their buyer who had taken the pieces of jewelry. After going around the block of the Far Eastern University, the accused, however, returned to San Mateo, Rizal. They told Comandante that the jewelries were with a certain Josie Paz, also of San Mateo. When Comandante and the two accused went to the house of Josie Paz, this Josie Paz showed surprise. Elizabeth Salen then whispered to the ears of Paz and after that Paz stated that the jewelries were with Nena Carpio of Quirino District. Again, Comandante with the two accused proceeded to the house of Nena Carpio at Caimito Street in Quirino District. When asked to give the jewelries, Carpio blurted out: 'I do not have the jewelries. You sue them.' Comandante then told the two accused that they go to the Metrocom and they proceeded thereto toge-ther with Bobot Reyes and Cecerina Coman-dante, daughter of Purita. At the Metrocom headquarters, the two accused gave written statements (Exhs. 'M' & 'N') admitting receipt by them of the jewelries and their issuance of all the postdated checks in question. The two accused were pointing to each other as the one responsible for the disappearance of the jewelries.

"Purita Comandante identified the accused Leonora Dy as the person who took her jewelries and issued and delivered to her the postdated checks in question, and two photographs (Exhs. 'P' & 'P-1') as those of Elizabeth Salen.

"Leonora Dy, taking the witness stand in her defense, denied responsibility for Comandante's jewelries and the dishonored checks, stating that it was with Elizabeth Salen alone that Comandante transacted. She further stated that she met Elizabeth Salen on May 7, 1977 at the Tambunting Pawn Shop where she (Dy) was then pawning a Seiko wrist watch and a ring. Salen proposed to buy the watch and ring and after agreement, Salen paid her right then and there the amount of P350.00. The balance of P300.00 was paid at the house of Salen in San Mateo, Rizal where they proceeded to immediately. Subsequently, Salen called her on the telephone and meeting at the Tambunting Pawn Shop, Salen returned to her the wrist watch because it was of some sentimental value to her. Salen asked her to accompany her to the Philippine Banking Corporation for the purpose of opening a checking account. Failing there, they proceeded to the Philippine National Bank where they succeeded with the help of a friend, Cesar Untalan, but with the condition that it be a joint account with her as Salen was not known to the bank. She acceded to the arrangement and a joint checking account was opened with an initial deposit of P1,000.00. The PNB checks (Exhs. 'D' & 'H') were signed by her only because it was a joint account with Elizabeth Salen. With respect to the PBC Checks (Exhs. 'A', 'B', 'C', 'F', 'I' & 'J'), she explained that they were borrowed by Elizabeth Salen to pay the latter's purchases from Purita Comandante with the assurance that Salen will make the corresponding deposit at their due dates. With the help of the Metrocom the pair of earrings valued at P35,000.00 was recovered and returned to Purita Comandante (Exh. '5')."[6]

The defense charges the trial Court with having erred in convicting Appellant of the crime of Estafa contending that the sale of jewelries was null and void since complainant Purita Comandante was not the owner of those items and, therefore, Appellant was under no obligation to pay, and committed no deceit in issuing the rubber checks. These checks, the defense adds, were intended merely as "security or guaranty for the eventual sale of the jewelries."

We find no merit in those arguments.

The elements of the crime of Estafa committed by means of bouncing checks defined under Article 315, paragraph 2(d) of the Revised Penal Code, are the following: (1) postdating or issuance of 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.[7]

Ownership is not a necessary element of the crime of Estafa. As aptly pointed out by the Court of Appeals:

"x x In estafa, the person prejudiced or the immediate victim of the fraud need not be the owner of the goods. Thus, article 315 of the Revised Penal Code provides that 'Any person who shall defraud another (it does not say 'owner') by any of the means mentioned hereinbelow shall be punished x x x.' All that is necessary is that the loss should have fallen on someone other than the perpetrators of the crime. (People vs. Yu Chai Ho, 53 Phil. 874; People v. Samoa, CA-G.R. No. 20933-R, March 7, 1960; People v. Jacinto, CA--G.R. No. 5065-R, May 25, 1951; Wilson & Dolores, 52 Phil. 919; U.S. vs. Almazan & Martinez, 20 Phil. 225; U.S. v. Sotelo, 28 Phil. 147)."[8]

In Estafa, "to defraud is to deprive of some right, interest or property by a deceitful device".[9] Complainant had such interest in the jewelries in question. Whether she delivered those jewelries as the owner herself or on behalf of the true owner is not of decisive importance.

There is no question that Appellant issued the postdated checks to Complainant in payment for the jewelries handed to them on the same occasion and not as mere guaranty or security for their return or eventual sale. As Appellant herself admitted in her extrajudicial statement, Exhibit "N", the checks were given by them to Purita Comandante in payment for the pieces of jewelry they received from the latter.[10] Even in her direct testimony in Court, Appellant also declared that her checks were used by Elizabeth Salen to pay for the pieces of jewelry.[11]

There is no question either about the presence of deceit. Were it not for the issuance by Appellant of checks, which she falsely pretended to be covered by sufficient funds, Complainant would not have parted with the jewelry. Insufficiency of funds to cover the checks was substantiated by the evidence which showed that some of the postdated checks in question were dishonored by the drawee banks for having been "drawn against insufficient fund" and others for "no arrange-ment". Further, appellant's testimony showed that with an initial deposit of only P1,000.00, she and Elizabeth Salen opened a joint checking account with the Philippine National Bank in May 1977 and issued in the same month postdated checks against said checking account amounting to P67,000.00. Her testimony also disclosed that the highest deposit she had in her per-sonal checking account at the Philippine Banking Corpo-ration was only P2,000.00, yet, she issued against said checking account postdated checks amounting to P55,000.00.

Lastly, the third essential element of this kind of Estafa, i.e., damage to the payee of the worthless checks, is also clearly present. Except for the jewelry recovered worth P35,000.00, Complainant was damaged and prejudiced in the total amount of P87,000.00 in the two cases.

During the pendency of this case before this Tribunal, Atty. Tomas P. Matic, Jr. entered his appearance as private prosecutor in substitution of Attys. Montano, Miguel and Associates, and filed a Motion for Preliminary Attachment of the properties of Appellant for the satisfaction of her liability of not less than P87,000.00 in the event that the judgment of the Court of Appeals is affirmed by this Court, pursuant to Section 1(b), Rule 57 and Section 1(b), Rule 127 of the Rules of Court, claiming that the judgment under review is an action for property embezzled or fraudulently misapplied or converted to her own use by an agent or person in a fiduciary capacity. In his Comment, the Solicitor General in-terposed no objection provided Complainant executes the affidavit and posts the bond required by law.

That Motion for the issuance of a Writ of Preliminary Attachment need no longer be acted on, however, since by virtue of this Decision other processes may be issued for the execution of the judgment herein rendered with the rules on civil cases followed,[12] it being understood that as far as the civil liability is concerned, execution may issue immediately upon promulgation of the judgment.

We come now to the penalty. We sustain the application of and the penalties imposed by the Court of Appeals pursuant to Presidential Decree No. 818, which took effect on October 22, 1975, the transactions subject of this case having occurred in 1977. Section 1(1st) of said Decree reads:

"SECTION 1. Any person who shall defraud another by means of false pretenses or fraudulent acts as de-fined in paragraph 2(d) of Article 315 of the Revised Penal Code, as amended by Republic Act No. 4885, shall be punished by:

1st. 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."

WHEREFORE, we hereby affirm the conviction of appellant LEONORA DY y ABENIS of the crime of Estafa and sentence her to suffer:

In Criminal Case G.R. No. L-54912 (Q-8078), the penalty of twenty-three (23) years of reclusion perpetua, with the accessory penalties provided by law; to indemnify the complainant Purita Comandante in the amount of P55,000.00; and to pay the costs;

In Criminal Case G.R. No. L-54913 (Q-8079), the penalty of twenty-one (21) years of reclusion perpetua, with the accessory penalties provided by law, to in-demnify the complainant Purita Comandante in the amount of P32,000.00, and to pay the costs.

SO ORDERED.

Teehankee, (Acting Chief Justice), Makasiar, Fernandez, and Guerrero, JJ., concur.

[1] Fourth Division, composed of JJ. Crisolito Pascual, Serafin R. Cuevas and Carolina C. Griño-Aquino (ponente).

[2] p. 1, Record, Criminal Case No. Q-8078.

[3] p. 1, Record, Criminal Case No. Q-8079.

[4] p. 11, Ibid.

[5] p. 71, Record, Ibid.

[6] Court of Appeals Decision, pp. 24-27, Record, CA-G.R. Nos. 22632-33-CR.

[7] People vs. Hon. Sabio Sr., 86 SCRA 568, 579-580 (1978).

[8] p. 30, Record, CA-G.R. Nos. 22632-33-CR.

[9] People vs. Quesada, 60 Phil. 515, 520 (1934).

[10] p. 14, Exhibits for prosecution.

[11] t.s.n., June 5, 1978, pp. 8-9; 13-14; 19-20.

[12] Eraña, et al vs. Panzani, 74 Phil. 272 (1943).

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