

VICTORIA R. VALLARTA, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND THE HONORABLE JUDGE FRANCISCO LLAMAS, PASAY CITY COURT, RESPONDENTS.

G.R. No. L-40195. May 29, 1987

Ponente: CORTES, J.

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CORTES, J.:

The petitioner seeks a reversal of the Court of Appeals decision dated December 13, 1974 affirming the Trial Court's judgment convicting her of estafa. We denied the petition initially but granted a motion for reconsideration and gave the petition due course.

As found by the trial court and the Court of Appeals, Rosalinda Cruz, the private offended party, and accused Victoria Vallarta are long time friends and business acquaintances. On November 20, 1968, Cruz entrusted to Victoria Vallarta seven pieces of jewelry. In December of the same year, Vallarta decided to buy some items, exchanged one item with another, and issued a post-dated check in the amount of P5,000 dated January 30, 1969. Rosalinda Cruz deposited said check with the bank. However, upon presentment, the check was dishonored and Cruz was informed that Vallarta's account had been closed. Cruz apprised Vallarta of the dishonor and the latter promised to give another check. Later, Vallarta pleaded for more time. Still later, she started avoiding Cruz. Hence, this criminal action was instituted.

Based on the foregoing facts, both the trial court and the Court of Appeals found Vallarta guilty beyond reasonable doubt of the crime of estafa.

WE affirm.

Petitioner is charged under Art. 315 (2)(d) as amended by Rep. Act No. 4885, of the Revised Penal Code, which penalizes any person who shall defraud another "(b)y 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."

By virtue of Rep. Act No. 4885, "(t)he 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" is deemed prima facie evidence of deceit constituting false pretense or fraudulent act.

To constitute estafa under this provision 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 whether postdated or not. That is, the latter would not have parted with his money or other property were it not for the issuance of the check. Likewise, the check should not be issued in payment of a pre-existing obligation (*People v. Lilius*, 59 Phil. 339 [1933]).

In seeking acquittal, petitioner stresses that the transaction between her and Cruz was a "sale or return," perfected and consummated on November 20, 1968 when the seven pieces of jewelry were delivered. The check issued in December 1968 was therefore in payment of a pre-existing obligation. Thus, even if it was dishonored, petitioner claims that she can only be held civilly liable, but not criminally liable under Art. 315 (2) (d), Revised Penal Code. She also argues that at any rate, what prompted Cruz to deliver the jewelry was the social standing of petitioner Vallarta and not the postdated check.

She thus assigns as errors the finding of the Court a quo that the jewelries were entrusted on November 20, 1968, but the sale was perfected in December 1968, and the finding that there was deceit in the issuance of the postdated check.

In order to arrive at the proper characterization of the transaction between Vallarta and Cruz, that is, whether it was a "sale or return" or some other transaction, it is necessary to determine the intention of the parties.

The following excerpts from the transcript of stenographic notes are significant:

I. Direct Examination of Rosalinda Cruz:

Q: Now, what happened with that business transaction of yours with Mrs. Vallarta?

A: After that and after she finally agreed to buy two sets and changed the ruby ring with another ring, she gave me postdated check; I waited for January 30, 1969. I deposited the check in the Security Bank. And after that I knew (learned) that it was closed account (TSN, June 29, 1972, p. 9) (Underscoring supplied).

II. Cross-Examination of Rosalinda Cruz

Q: Now, you mentioned about certain jewelries in Exh. "A." Could you tell under your oath whether all the jewelries listed here (Exh. "A") were taken by Mrs. Vallarta at one single instance?

A: Yes, Sir. It was on one (1) day when I entrusted them to her so she can select what she wants (Id. at p. 22) (Underscoring supplied).

III. Cross-Examination of Rosalinda Cruz

COURT: But could you still recall or you cannot recall whether you agreed to reduce the cost to Five Thousand Eight Hundred (P5,800.00) Pesos?

A: Yes, Sir. I agreed to reduce it to Five Thousand Eight Hundred (P5,800.00) Pesos, Sir, when I went to see her in her house to finalize what jewelries she wanted (Id. at p. 26).

Note that Vallarta changed the ruby ring because it was not acceptable to her, and chose another ring. Likewise, the price to be paid for the jewelry was finally agreed upon only in December 1968. Thus, there was a meeting of the minds between the parties as to the object of the contract and the consideration therefore only in December 1968, the same time that the check was issued. The delivery made on November 20, 1968 was only for the purpose of enabling Vallarta to select what jewelry she wanted.

Properly, then, the transaction entered into by Cruz and Vallarta was not a "sale or return." Rather, it was a "sale on approval" (also called "sale on acceptance," "sale on trial," or "sale on satisfaction" [CIVIL CODE, art. 1502]). In a "sale or return," the ownership passes to the buyer on delivery (CIVIL CODE, art. 1502). (The subsequent return of the goods reverts ownership in the seller [CIVIL CODE, art. 1502]). Delivery, or tradition, as a mode of acquiring ownership must be in consequence of a contract (CIVIL CODE, art. 712), e.g. sale.

If there was no meeting of the minds on November 20, 1968, then, as of that date, there was yet no contract of sale which could be the basis of delivery or tradition. Thus, the delivery made on November 20, 1968 was not a

delivery for purposes of transferring ownership – the prestation incumbent on the vendor. If ownership over the jewelry was not transmitted on that date, then it could have been transmitted only in December 1968, the date when the check was issued. In which case, it was a "sale on approval" since ownership passed to the buyer, Vallarta, only when she signified her approval or acceptance to the seller, Cruz, and the price was agreed upon.

Thus, when the check which later bounced was issued, it was not in payment of a pre-existing obligation. Instead the issuance of the check was simultaneous with the transfer of ownership over the jewelry. But was the check issued simultaneously with the fraud?

Republic Act No. 4885, amending Art. 315(2)(d), Revised Penal Code, establishes a prima facie evidence of deceit upon proof that the drawer of the check failed to deposit the amount necessary to cover his check within three (3) days from receipt of notice of dishonor for lack or insufficiency of funds.

Admittedly, (1) the check was dishonored as Vallarta's account had been earlier closed; (2) she was notified by Cruz of the dishonor; and, (3) Vallarta failed to make it good within three days. Deceit is therefore presumed.

Petitioner lays stress on her being an alumna of a reputable school, on her having a husband who is a bank manager, and on the big land-holdings of her father, and argues that it was these qualifications and not the post-dated check which prompted Cruz to deliver the jewelry (Rollo, pp. 78-79; Motion for Reconsideration, pp. 10-11). Hence, there was no deceit. It is thus suggested that a person of petitioner's social standing cannot be guilty of deceit, at least in so far as issuing bouncing checks is concerned. This reasoning does not merit serious consideration. If accepted, it could result in a law that falls unequally on persons depending on their social position.

Did Cruz part with the jewelry solely because she knew Vallarta to be rich, or did she do so because of the check issued to her? As the trial court and the Court of Appeals found, petitioner was able to obtain the jewelry because she issued the check. Her failure to deposit the necessary amount to cover it within three days from notice of dishonor created the prima facie presumption established by the amendatory law, Rep. Act No. 4885, which she failed to rebut.

Petitioner, however, contends that Rep. Act No. 4885 is unconstitutional. She claims that even as the presumption of deceit established by Rep. Act No. 4885 is stated under the guise of being prima facie, it is in effect a conclusive presumption, because after the prosecution has proved that: (1) the check has been dishonored; (2) notice has been given to the drawer; and, (3) three days from notice, the check is not funded or the obligation is not paid, the accused is held guilty. Thus, it is alleged, the constitutional presumption of innocence is violated.

Contrary to petitioner's assertion, the presumption of deceit under Rep. Act No. 4885 is not conclusive. It is rebuttable. For instance, We ruled in the case of *People v. Villapando* (56 Phil. 31 [1931]) that good faith is a defense to a charge of estafa by postdating a check, as when the drawer, foreseeing his inability to pay the check at maturity, made an arrangement with his creditor as to the manner of payment of the debt.*

Moreover, it is now well settled that "there is no constitutional objection to the passage of a law providing that the presumption of innocence may be overcome by a contrary presumption founded upon the experience of human conduct, and enacting what evidence shall be sufficient to overcome such presumption of innocence" (*People v. Mingoa*, 92 Phil. 856 [1953] at 858-59, citing *I COOLEY, A TREATISE ON THE CONSTITUTIONAL LIMITATIONS*, 639-641). And the "legislature may enact that when certain facts have been proved they shall be prima facie evidence of the existence of the guilt of the accused and shift the burden of proof provided there be a rational connection between the facts proved and the ultimate fact presumed so that the inference of the one from proof of the others is not unreasonable and arbitrary because of lack of connection between the two in common

experience" (People v. Mingoa, supra. See also US v. Luling, 34 Phil. 725 [1916]).

There can be no doubt that the "postdating or issuing of 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," is a false pretense or a fraudulent act. It is so characterized by Art. 315 (2)(d), Revised Penal Code. Republic Act No. 4885 does nothing more than limit the period within which the drawer/issuer must pay the creditor.

Petitioner also argues that Rep. Act No. 4885 violates the constitutional injunction against imprisonment for non-payment of debt. Ironically, she does not question the constitutionality of Art. 315(2)(d), Revised Penal Code, which defines the crime she is being accused of, and provides for its punishment. In fact, she concedes the constitutionality of the latter statute. She further concedes that a person may be imprisoned for "criminal fraud" covered by Art. 315 (2) of the Revised Penal Code.

In People v. Sabio (No. L-45490, November 20, 1978, 86 SCRA 568), this Court ruled that Rep. Act No. 4885 has not changed the rule established in Art. 315 (2) (d) prior to the amendment; that Republic Act No. 4885 merely established the prima facie evidence of deceit, and eliminated the requirement that the drawer inform the payee that he had no funds in the bank or the funds deposited by him were not sufficient to cover the amount of the check. Thus, even with the amendment introduced by Rep. Act No. 4885 it is still criminal fraud or deceit in the issuance of a check which is made punishable under the Revised Penal Code, and not the non-payment of the debt.

Petitioner also assigns as error the denial by the trial court of her motion for reconsideration. Her motion was directed at the finding of the trial court that no payments were made. Alleging that a check drawn by one Sison was given by petitioner to Cruz in payment of the rubber check, petitioner claims that had her motion for reconsideration been granted, she would have called to the witness stand the Branch Manager of Security Bank and Trust Company, Pasay City, where the check was allegedly deposited by Cruz, for said bank manager to identify the owner-holder of the savings account to which the amount in Sison's check had been credited (Brief for Petitioner, p. 46).

Granting that the bank manager's testimony would have been as alleged by petitioner. Our decision would remain. As correctly observed by both the trial court and the Court of Appeals (Court of Appeals Decision, pp. 2-3), the payments petitioner allegedly made were not shown to have any relevance to the obligation in question.

WHEREFORE, finding no error in the assailed decision of the Court of Appeals, the same is AFFIRMED. Costs against the petitioner.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Gancayco, Padilla, Bidin, and Sarmiento, JJ., concur.

Feliciano, J., on leave.

* See also People v. Lilius, supra, where the drawer, upon issuing the check, stated that he was not sure whether he had sufficient funds in the drawee bank, and that if he did not have, he would cable to have sufficient funds placed to his credit.

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