

JOVITA SALES, PETITIONER, VS. HON. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. L-47817. August 29, 1988

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

In this appeal by certiorari, the petitioner assails: (a) the decision of the Court of Appeals in CA-G.R. No. 14106-C captioned "People of the Philippines v. Jovita Sales" affirming in toto the lower court's judgment of conviction; and (b) the appellate court's resolution denying the petitioner's motion for reconsideration.

The essential facts, which are not disputed, are as follows:

The petitioner issued two checks, to wit: Equitable Banking Corporation Check No. 13430152 for the sum of P2,000.00 and Equitable Banking Corporation Check No. 13430153 for the sum of P6,000.00, both dated January 30, 1971. The said checks were issued in favor of one Renato Magdaluyo notwithstanding the fact that on the face of each check it appeared that both were payable to cash. When both checks were presented for encashment or deposited for clearance with Magdaluyo's bank, the First United Bank, they were dishonored because the petitioner made a communication to her bank to issue a "stop payment" order regarding the same.

On May 26, 1971, at Magdaluyo's instance, an information was filed against the petitioner which reads as follows:

"That on or about the 30th day of January 1971, in Pasay City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent of gain, to deceive and defraud complainant herein Renato Magdaluyo of the amount of P8,000.00, did then and there wilfully, unlawfully and feloniously issue and make out Checks Nos. 13430152 and 13430153 in the amounts of P2,000.00 and P6,000.00, respectively, in exchange for P8,000.00 in cash which said checks upon pre-sentation to the Equitable Banking Corp., for encashment were dishonored and refused payment because the drawer thereof stopped payment of said checks and despite repeated demands made by the complainant herein for the return of the said amount of P8,000.00, said accused refused and failed and still refuses and fails to do so to the damage and prejudice of the owner thereof in the aforesaid amount of P8,000.00." (pp. 1-2, Appellant's Brief; p. 40, Rollo)

Upon arraignment, the petitioner entered a plea of not guilty.

After trial, the City Court of Pasay, Branch IV, instead of convicting the petitioner of the crime of estafa under Article 315, paragraph 2 and subparagraph (d) of the Revised Penal Code, as amended, as originally charged, found her guilty of the crime "Other deceits" as defined in Art. 318 of the same Code. The judgment of conviction dated August 31, 1972 reads:

"WHEREFORE, accused JOVITA SALES is hereby found by the Court, guilty beyond reasonable doubt for said charge of Estafa, condemning and sentencing her pursuant to Article 318 of the Revised Penal Code, to suffer the penalty of FOUR (4) MONTHS and ONE (1) DAY imprisonment of arresto mayor and to pay a fine of EIGHT THOUSAND (P8,000.00) PESOS; ordering her similarly to indemnify the offended party, Mr. Renato Magdaluyo, in said sum of EIGHT THOUSAND (P8,000.00) PESOS." (p. 21, Rollo)

On appeal, the public respondent affirmed the above judgment in toto. The denial of her motion for reconsideration by the public respondent prompted the petitioner to present her case before us raising the issue of whether or not she can validly be convicted under Article 318 of the Revised Penal Code, as amended, notwithstanding the fact that she was initially charged with estafa under an information alleging facts that constitute a violation of Art. 315, paragraph 2(d) of the same Code.

The grounds for reversal relied upon by the petitioner are that the Court of Appeals erred: (a) in not holding that the accused was deprived of her right to be duly informed of the charge against her and that the accused was convicted of a crime of which she was not duly informed; (b) in not holding that there was no crime of estafa in the case at bar; and (c) in not reversing the judgment appealed from in order that the accused be acquitted.

In resolving the issue presented by this petition, we consider the following questions:

- (1) Was the petitioner-accused informed of the nature of the crime of which she was convicted?
- (2) Did the act of the petitioner-accused in causing the "stop payment" order of the checks in question constitute the deceit referred to in Article 318 of the Revised Penal Code?

We answer the first query in the affirmative.

The contention of the petitioner alleging a violation of her fundamental constitutional right as an accused to be properly informed of the nature and cause of the accusation against her deserves no merit.

In the information filed against her, the petitioner was charged with the crime of estafa under Article 315, paragraph 2(d) of the Revised Penal Code which reads:

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"(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 Rep. Act No. 4885, approved June 17, 1967.)"

Under the aforequoted provision, the elements of estafa as defined therein are as follows: (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 (*People v. Sabio*, 86 SCRA 568). Basically, the two essential requisites of fraud or deceit and damage or injury must be established by sufficient and competent evidence in order that the crime of estafa may be established.

On the other hand, Article 318 of the same Code partly provides that:

"Other deceits. - The penalty of arresto mayor and a fine of not less than the amount of the damage caused and not more than twice such amount shall be imposed upon any person who shall defraud or damage another by any other deceit not mentioned in the preceding articles of this chapter."

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Clearly, the principal elements of deceit and damage are likewise present in the preceding article cited. The petitioner's conviction under the latter provision instead of that with which she was charged was merely an application of the rule on variance between allegation and proof defined under Rule 120, section 4 of the Revised Rules of Court which states that:

"Judgment in case of variance between allegation and proof. - When there is variance between the offense charged in the complaint or information, and that proved or established by the evidence, and the offense as charged is included in or necessarily includes the offense proved, the defendant shall be con-victed of the offense proved included in that which is charged, or of the offense charged included in that which is proved."

Simply put, an accused may be convicted of an offense proved provided it is included in the charge or of an offense charged which is included in that which is proved. In the case at bar, the petitioner was con-victed of the crime falling under "Other deceits" which is necessarily included in the crime of estafa under Article 315, paragraph 2(d) considering that the elements of deceit and damage also constitute the former. Hence, the petitioner's right to be properly informed of the accusation against her was never violated.

Anent the second question, we similarly give an affirmative answer.

The records of the instant case show the following evidence for the prosecution, to wit:

"In the evening of January 30, 1971, while Renato Magdaluyo was in his house at 1839 Leveriza Street, Pasay City, accused Jovita Sales, an old acquaintance arrived at his house (p. 7, t.s.n., March 14, 1972). Accused requested Renato Magdaluyo to have her two checks (Exhs. 'A' and 'B') changed to cash as she needed money that evening urgently (Id.). Magdaluyo accommodated the accused by giving her P8,000.00 in cash which was the total amount of the two checks which he got from the accused. (p. 12, t.s.n., Mar. 4, 1972)

"Magdaluyo then deposited the two checks (Exhs. 'A' & 'B') with the First United Bank, but thereafter, he was notified by the Bank that it was not cashed because payment was stopped (p. 14, Id.). He then looked for the accused and when he finally saw her through the help of a mutual friend (p. 19, Id.), the accused promised him to pay the amount of the dishonored checks in cash. However, the promise was never fulfilled. (p. 21-22, Id.) A formal demand was then made upon the accused (Exh. 'D', p. 51, Rec.), and when no compliance was still made, this charge of estafa was filed." (p. 22, Rollo; Underlining supplied)

In the case of *United States v. Lee Cheng Poe* (39 Phil. 466), we held that:

"There can be no doubt that there are times in business transactions which completely justify a person in stopping the payment of checks issued by him, and that he incurs no criminal responsibility by so doing. But if these checks were issued by the accused and he received the money for them, as charged in the querella [complaint] and as found by the lower court, from the offended party, Gan Yong, and if at the time the accused cashed the checks he had the intention of stopping payment on them, these facts would constitute the crime of estafa. x x x." (at p. 471)

It can be gleaned from the evidence presented by the prosecution that the petitioner's act of causing the "stop payment" order of the checks in question undoubtedly makes her liable for the crime of estafa. It was only the failure on the part of the prosecution to show that the accused had insufficient funds in the bank to cover the checks in question at the time she postdated them that prevented petitioner's conviction of the crime as charged. The other elements of the crime - under Art. 315, paragraph 2(d) having been proved which included those of deceit and damage, it was no error to convict the petitioner of the crime under Article 318 of the Revised Penal Code as earlier explained.

The petitioner states that the P8,000.00 repre-sent the balance of a gambling debt totalling P43,000.00. After the petitioner paid P35,000.00, complainant Renato Magdaluyo allegedly waived the P8,000.00 only to insist on its payment later or "if you don't want to pay, you cannot leave this place." From the petitioner's defense, it would therefore appear that the P8,000.00 in two checks represented not only a gambling loss which cannot be legally enforced but also an imposition extracted from the petitioner through threat and intimidation.

These allegations are factual issues, the resolution of which is the function of the trial court and the Court of

Appeals. Unfortunately for the petitioner, she was unable to present convincing proof of the truth of her story. There being substantial evidence supporting the findings of the two courts below, we are bound by their factual findings.

WHEREFORE, IN VIEW OF THE FOREGOING, this petition is hereby DISMISSED. The questioned decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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