

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARTIN L. ROMERO AND ERNESTO C. RODRIGUEZ, ACCUSED-APPELLANTS.

G.R. No. 112985. April 21, 1999

Ponente: PARDO, J.

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PARDO, J.:

The case before the Court is an appeal of accused Martin L. Romero and Ernesto C. Rodriguez from the Joint Judgment[1] of the Regional Trial Court, Branch 2, Butuan City, convicting each of them of estafa under Article 315, par. 2 (d) of the Revised Penal Code, in relation to Presidential Decree No. 1689, for widescale swindling, and sentencing each of them to suffer the penalty of life imprisonment and to jointly and severally pay Ernesto A. Ruiz the amount of one hundred fifty thousand pesos (P150,000.00), with interest at the rate of twelve percent (12%) per annum, starting September 14, 1989, until fully paid, and to pay ten thousand pesos (P10,000.00), as moral damages.

On October 25, 1989, Butuan City acting fiscal Ernesto M. Brocoy filed with the Regional Trial Court, Butuan City, an Information against the two (2) accused for estafa,[2] as follows:

"That on or about September 14, 1989, at Butuan City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused being the General Manager and Operation Manager which solicit funds from the general public for investment, conspiring, confederating together and mutually helping one another, by means of deceit and false pretense, did then and there willfully, unlawfully and feloniously deliberately defraud one Ernesto A. Ruiz by convincing the latter to invest his money in the amount of P150,000.00 with a promise return of 800% profit within 21 days and in the process caused the issuance of Butuan City Rural Rural [sic] Bank Check No. 158181 postdated to October 5, 1989 in the amount of One Million Two Hundred Thousand Pesos (P1,200,000.00) Philippine Currency, that upon presentation of said check to the drawee bank for payment the same was dishonored and that notwithstanding repeated demands made on said accused to pay and/or change the check to cash, they consistently failed and refused and still fail and refuse to pay or redeem the check, to the damage and prejudice of the complainant in the aforesaid amount of P1,200,000.00." [3]

On the same day, the city fiscal filed with the same court another information against the two (2) accused for violation of Batas Pambansa Bilang 22, arising from the issuance of the same check.[4]

On January 11, 1990, both accused were arraigned before the Regional Trial Court, Branch 5,[5] Butuan City, where they pleaded not guilty to both informations.

The prosecution presented its evidence on January 10, 1991, with complainant, Ernesto A. Ruiz, and Daphne Parrocho, the usher/collector of the corporation being managed by accused, testifying for the prosecution.

On August 12, 1991, the defense presented its only witness, accused Martin L. Romero.

On November 13, 1992, the parties submitted a joint stipulation of facts, signed only by their respective counsels. Thereafter, the case was submitted for decision.

On March 30, 1993, the trial court promulgated a Joint Judgment dated March 25, 1993. The trial court acquitted the accused in Criminal Case No. 3806[6] based on reasonable doubt, but convicted them in Criminal Case No. 3808[7] and accordingly sentenced each of them, as follows:

"IN VIEW OF THE FOREGOING, the Court hereby renders judgment, finding or declaring -

"(a) Accused Martin L. Romero and Ernesto C. Rodriguez innocent on reasonable doubt in Criminal Case No. 3806, for violation of Batas Pambansa Bilang 22;

"(b) Accused Martin L. Romero and Ernesto C. Rodriguez guilty beyond reasonable doubt in Criminal Case No. 3808 for estafa under P.D. 1689 for wide scale [sic] swindling and accordingly sentences them to suffer life imprisonment (Section 1 P.D. 1689) and ordered jointly and severally to return to Ernesto A. Ruiz the amount of One Hundred Fifty Thousand Pesos (P150,000.00) with interest thereon at the rate of Twelve percent (12%) per annum starting from September 14, 1989 until fully paid and to pay the amount of Ten Thousand Pesos (P10,000.00) as moral damages.

"In the service of their sentence, the accused pursuant to R.A. 6127, shall be credited for the preventive imprisonment they have undergone (PP vs. Ortencio, 38 Phil 941; PP vs. Gabriel, No. L-13756, October 30, 1959, cited in Gregorio's "Fundamentals of Criminal Law Review", P. 178, Seventh Edition, 1985)." [8]

On March 31, 1993, accused filed their notice of appeal, which the trial court gave due course on April 5, 1993. On March 16, 1994, this Court ordered the accused to file their appellants' brief.

Accused-appellants filed their brief on October 30, 1995, while the Solicitor General filed the appellee's brief on March 8, 1996.

During the pendency of the appeal, on November 12, 1997, accused Ernesto Rodriguez died.[9] As a consequence of his death before final judgment, his criminal and civil liability ex delicto, were extinguished.[10]

Complainant Ernesto A. Ruiz was a radio commentator of Radio DXRB, Butuan City. In August, 1989, he came to know the business of Surigao San Andres Industrial Development Corporation (SAIDECOR), when he interviewed accused Martin Romero and Ernesto Rodriguez regarding the corporation's investment operations in Butuan City and Agusan del Norte. Romero was the president and general manager of SAIDECOR, while Rodriguez was the operations manager.

SAIDECOR started its operation on August 24, 1989 as a marketing business. Later, it engaged in soliciting funds and investments from the public. The corporation guaranteed an 800% return on investment within fifteen (15) or twenty one (21) days. Investors were given coupons containing the capital and the return on the capital collectible on the date agreed upon. It stopped operations in September, 1989.

On September 14, 1989, complainant Ernesto A. Ruiz went to SAIDECOR office in Butuan City to make an investment, accompanied by his friend Jimmy Acebu, and SAIDECOR collection agent Daphne Parrocho. After handing over the amount of one hundred fifty thousand pesos (P150,000.00) to Ernesto Rodriguez, complainant received a postdated Butuan City Rural Bank check instead of the usual redeemable coupon. The check indicated P1,000,200.00 as the amount in words, but the amount in figures was for P1,200,000.00, as the return on the investment. Complainant did not notice the discrepancy.

When the check was presented to the bank for payment on October 5, 1989, it was dishonored for insufficiency of funds, as evidenced by the check return slip issued by the bank.[11] Both accused could not be located and demand for payment was made only sometime in November 1989 during the preliminary investigation of this case. Accused responded that they had no money.

Daphne Parrocho,[12] testified that on September 14, 1989, complainant, with his friend Jimmy Acebu, approached her to invest the amount of P150,000.00 at SAIDECOR. As she has reached her quota, and therefore, no longer authorized to receive the amount, she accompanied them to the office of SAIDECOR at Ong Yiu District, Butuan City. Accused Ernesto Rodriguez accepted the investment and issued the check signed by him and Martin Romero.

For their defense, accused Martin Romero[13] testified that on September 14, 1989, he issued a check in the amount of P1,200,000.00 corresponding to the total of the P150,000.00 investment and the 800% return thereon. He claimed that the corporation had a deposit of fourteen million pesos (P14,000,000.00) at the time of the issuance of the check and four million pesos (P4,000,000.00) at the time SAIDECOR stopped operations. Romero knew these things because he used to monitor the funds of the corporation with the bank. He was not aware that the check he issued was dishonored because he never had the occasion to meet the complainant again after the September 14, 1989 transaction. He only came to know about this when the case was already filed in court sometime in the second or third week of January 1990.[14]

In this appeal, both accused did not deny that complainant made an investment with SAIDECOR in the amount of P150,000.00. However, they denied that deceit was employed in the transaction. They assigned as errors: (1) their conviction under P.D. 1689 due to the prosecution's failure to establish their guilt beyond reasonable doubt; and (2) the trial court's failure to consider the joint stipulation of facts in their favor.[15] There is no merit in this appeal. We sustain accused-appellant's conviction.

Under paragraph 2 (d) of Article 315, as amended by R.A. 4885,[16] the elements of estafa are: (1) a check was postdated or issued in payment of an obligation contracted at the time it was issued; (2) lack or insufficiency of funds to cover the check; (3) damage to the payee thereof.[17] The prosecution has satisfactorily established all these elements.

Fraud, in its general sense, is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust, or confidences justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another.[18] It is a generic term embracing all multifarious means which human ingenuity can device, and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated.[19]

Deceit is a specie of fraud. It is actual fraud, and consists in any false representation or contrivance whereby one person overreaches and misleads another, to his hurt. Deceit excludes the idea of mistake.[20] There is deceit when one is misled, either by guide or trickery or by other means, to believe to be true what is really false.[21] In this case, there was deception when accused fraudulently represented to complainant that his investment with the corporation would have an 800% return in 15 or 21 days.

Upon receipt of the money, accused-appellant Martin Romero issued a postdated check. Although accused-appellant contends that sufficient funds were deposited in the bank when the check was issued, he presented no officer of the bank to substantiate the contention. The check was dishonored when presented for payment, and the check return slip submitted in evidence indicated that it was dishonored due to insufficiency of funds.

Even assuming for the sake of argument that the check was dishonored without any fraudulent pretense or fraudulent act of the drawer, the latter's failure to cover the amount within three days after notice creates a rebuttable presumption of fraud.[22]

Admittedly (1) the check was dishonored for insufficiency of funds as evidenced by the check return slip; (2) complainant notified accused of the dishonor; and (3) accused failed to make good the check within three days. Presumption of deceit remained since accused failed to prove otherwise. Complainant sustained damage in the amount of P150,000.00.

Accused-appellant also contends that had the trial court admitted the Admission and Stipulation of Facts of November 9, 1992, it would prove that SAIDECOR had sufficient funds in the bank.

Accused-appellant relies on the fact that there was a discrepancy between the amount in words and the amount in figures in the check that was dishonored. The amount in words was P1,000,200.00, while the amount in figures was P1,200,000.00. It is admitted that the corporation had in the bank P1,144,760.00 on September 28, 1989, and P1,124,307.14 on April 2, 1990. The check was presented for payment on October 5, 1989. The rule in the Negotiable Instruments Law is that when there is ambiguity in the amount in words and the amount in figures, it would be the amount in words that would prevail.[23]

However, this rule of interpretation finds no application in the case. The agreement was perfectly clear that at the end of twenty one (21) days, the investment of P150,000.00 would become P1,200,000.00. Even if the trial court admitted the stipulation of facts, it would not be favorable to accused-appellant.

The factual narration in this case established a kind of Ponzi scheme.[24] This is "an investment swindle in which high profits are promised from fictitious sources and early investors are paid off with funds raised from later ones." It is sometimes called a pyramid scheme because a broader base of gullible investors must support the structure as time passes.

In the recent case of *People vs. Priscilla Balasa*,[25] this Court held that a transaction similar to the case at hand is not an investment strategy but a gullibility scheme, which works only as long as there is an ever increasing number of new investors joining the scheme. It is difficult to sustain over a long period of time because the operator needs an ever larger pool of later investors to continue paying the promised profits to early investors. The idea behind this type of swindle is that the "con-man" collects his money from his second or third round of investors and then absconds before anyone else shows up to collect. Necessarily, these schemes only last weeks, or months at most, just like what happened in this case.

The Court notes that one of the accused-appellants, Ernesto Rodriguez, died pending appeal. Pursuant to the doctrine established in *People vs. Bayotas*,[26] the death of the accused pending appeal of his conviction extinguishes his criminal liability as well as the civil liability *ex delicto*. The criminal action is extinguished inasmuch as there is no longer a defendant to stand as the accused, the civil action instituted therein for recovery of civil liability *ex delicto* is *ipso facto* extinguished, grounded as it is on the criminal case. Corollarily, the claim for civil liability survives notwithstanding the death of the accused, if the same may also be predicated on a source of obligation other than *delict*. [27]

Thus, the outcome of this appeal pertains only to the remaining accused-appellant, Martin L. Romero. The trial court considered the swindling involved in this case as having been committed by a syndicate[28] and sentenced the accused to life imprisonment based on the provisions of Presidential Decree 1689, which increased the penalty for certain forms of swindling or *estafa*. [29] However, the prosecution failed to clearly establish that the corporation was a syndicate, as defined under the law. The penalty of life imprisonment cannot be imposed. What would be applicable in the present case is the second paragraph of Presidential Decree No. 1689, Section 1, which provides that:

"When not committed by a syndicate as above defined, the penalty imposable shall be reclusion temporal to reclusion perpetua if the amount of the fraud exceeds 100,000 pesos."

Article 77 of the Revised Penal Code on complex penalties provides that "whenever the penalty prescribed does not have one of the forms specially provided for in this Code, the periods shall be distributed, applying by analogy the prescribed rules," that is, those in Articles 61 and 76.[30] Hence, where as in this case, the penalty provided by Section 1 of Presidential Decree No. 1689 for estafa under Articles 315 and 316 of the Code is reclusion temporal to reclusion perpetua, the minimum period thereof is twelve (12) years and one (1) day to sixteen (16) years of reclusion temporal; the medium period is sixteen (16) years and one (1) day to twenty (20) years of reclusion temporal; and the maximum period is reclusion perpetua.

In the case at bar, no mitigating or aggravating circumstance has been alleged or proved. Applying the rules in the Revised Penal Code for graduating penalties by degrees[31] to determine the proper period,[32] the penalty for the offense of estafa under Article 315, 2(d) as amended by P.D. 1689 involving the amount of P150,000.00 is the medium of the period of the complex penalty in said Section 1, that is, sixteen (16) years and one (1) day to twenty (20) years. This penalty, being that which is to be actually imposed in accordance with the rules therefor and not merely imposable as a general prescription under the law, shall be the maximum range of the indeterminate sentence.[33] The minimum thereof shall be taken, as aforesaid, from any period of the penalty next lower in degree, which is, prision mayor.

To enable the complainant to obtain means, diversion or amusements that will serve to alleviate the moral sufferings undergone by him, by reason of the failure of the accused to return his money, moral damages are imposed against accused-appellant Martin L. Romero in the amount of twenty thousand pesos (P20,000.00).[34] To serve as an example for the public good, exemplary damages are awarded against him in the amount of fifteen thousand pesos (P15,000.00).[35]

WHEREFORE, the Court hereby AFFIRMS WITH MODIFICATION the appealed judgment. The Court hereby sentences accused-appellant Martin Romero to suffer 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, to indemnify Ernesto A. Ruiz in the amount of one hundred fifty thousand pesos (P150,000.00) with interest thereon at six (6%) per centum per annum from September 14, 1989, until fully paid, to pay twenty thousand pesos (P20,000.00) as moral damages and fifteen thousand pesos (P15,000.00), as exemplary damages, and the costs.

SO ORDERED.

Davide, Jr., C.J., Melo, and Kapunan, JJ., concur.
Ynares-Santiago, J. no part.

[1] Joint Judgment, dated March 25, 1993, Rollo, pp.15-23.

[2] Docketed as Criminal Case No. 3808.

[3] Rollo, p. 7.

[4] Docketed as Criminal Case No. 3806.

[5] During the arraignment of the accused the presiding judge of Branch 5, Regional Trial Court, Butuan City was Hon. Edelwina C. Pastoral.

[6] Violation of Batas Pambansa Bilang 22.

[7] Violation of Article 315, par. 2 (d) of the Revised Penal Code, in relation to Presidential Decree 1689.

[8] Joint Judgment, Rollo, pp. 92-93.

[9] Rollo, p. 170.

[10] People vs. Tugbang, 196 SCRA 341, 345 citing People vs. Satorre, 72 SCRA 439.

[11] Original Records, Criminal Case. No. 3808, p. 41-42.

[12] tsn, January 10, 1991.

[13] tsn, August 12, 1991.

[14] tsn, August 12, 1991, Rollo, p. 206.

[15] Rollo, pp. 72-85.

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

1. x x x

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) x x x

(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 RA 4885, B.P. 22 and P.D. 1689).

[17] Jovita Sales vs. Court of Appeals, 164 SCRA 717, 721, citing the case of People vs. Sabio, 86 SCRA 568.

[18] 37 Am Jur 2d §1, p. 19.

[19] People vs. Priscilla Balasa, G.R. No. 106357; G.R. Nos. 108601-02, September 3, 1998.

[20] 37 Am Jur 2d §2, p. 20.

[21] Quirico Abela vs. Cesario C. Golez, 131 SCRA 12.

[22] Reyes, The Revised Penal Code, Book II, p. 697, citing the explanatory note of Senate Bill No. 413; Article 315, par. 2(d), Revised Penal Code, as amended by Republic Act 4885; Vallarta vs. Court of Appeals, 150 SCRA 336, 343.

[23] Section 17, Act No. 2031.

[24] Named after Charles Ponzi who promoted the scheme in the 1920s, the original scheme involved the issuance of bonds which offered 50% interest in 45 days or a 100% profit if held for 90 days.; People vs. Priscilla Balasa, supra.

[25] People vs. Priscilla Balasa, supra.

[26] 236 SCRA 239, 251.

[27] People vs. Bayotas, supra.

[28] A syndicate consists of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme, and the defraudation results in the misappropriation of moneys contributed by stockholders or members of rural banks, cooperatives, "samahang nayon(s)," or farmers' associations, or funds solicited by corporations/associations from the general public.[Section 1, P.D. 1689].

[29] There was a need to provide for higher penalty to prevent acts of defraudation or misappropriation of funds solicited by corporations/associations from the general public which erodes the confidence of the public in the banking and cooperative system, contravenes the public interest, and constitutes economic sabotage that threatens the stability of the nation. [Preamble, P.D. 1689]

[30] People vs. Lian, 255 SCRA 532, on p.541.

[31] Article 61, Revised Penal Code.

[32] Article 64, Ibid.

[33] People vs. Lian, supra, on p. 542.

[34] Prudenciado vs. Alliance Transport System, Inc., 148 SCRA 440, 449.

[35] Lopez vs. Pan American World Airways, 16 SCRA 431.

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