PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS., ELPIDIO HERNANDO AND ELENA ABAN HERNANDO, ACCUSED-APPELLANTS.

G.R. No. 125214. October 28, 1999

Ponente: PARDO, J.

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PARDO, J.:

The case before the Court is the appeal of accused spouses Elpidio Hernando and Elena Aban Hernando from the decision[1] of the Regional Trial Court, Branch 34, Manila, convicting each of them of estafa under Article 315, paragraph 2 (d) of the Revised Penal Code, and sentencing them "to each suffer imprisonment of thirty (30) years of "reclusion perpetua" and to indemnify complaint Johnny Sy the sum of P700,000.00.

On September 20, 1995, complainant Johnny Sy filed with the Office of the City Prosecutor, Manila, a complaint-affidavit against accused spouses Elpidio Hernando and Elena Aban Hernando alleging that the checks they issued to him on different dates were dishonored upon presentment to the bank for payment due to "Account Closed."

On December 22, 1995, Manila Assistant Prosecutor Daniel C. Villanueva filed with the Regional Trial Court, Manila, an information charging accused spouses Elpidio Hernando and Elena Aban Hernando with estafa, committed as follows:

> "That in or about and during the period comprised between May 11, 1995 and June 21, 1995, both dates inclusive in the City of Manila, Philippines, the said accused conspiring and confederating together and mutually helping each other did then and there wilfully [sic], unlawfully and feloniously defraud JOHNNY SY in the following manner, to wit: the said accused, well knowing that they did not have sufficient funds in the bank, and without informing the said JOHNNY SY of such fact, drew, made out and issued to the latter the following UNION CHECKS NOS:
>
> CHECK NO. DATE AMOUNT
>
> 1. 046-081102 May 25, 1995 P100,000.00
>
> 2. 046-081103 May 13, 1995 150,000.00
>
> 3. 046-081114 May 11, 1995 100,000.00
>
> 4. 046-081115 June 21, 1995 50,000.00
>
> 5. 046-081116 June 8, 1995 200,000.00
>
> 6. 046-081117 June 20, 1995 100,000.00

or in the total amount of P700,000.00 in exchange for cash received from JOHNNY SY on the same day, that upon presentation of the said check to the bank for payment, the same were dishonored and payment thereof refused for ACCOUNT CLOSED and said accused, notwithstanding due notice to him by the said complainant of

such dishonor of the said checks, failed and refused and still fails and refuses to deposit the necessary amount to cover the amount of the checks, to the damage and prejudice of the said JOHNNY SY in the aforesaid amount of P700,000.00, Philippine Currency.

"Contrary to law."[2]

On February 29, 1996, accused spouses were arraigned before the trial court and both pleaded not guilty to the information. Trial, thereafter, ensued.

The antecedent facts are undisputed:

The prosecution presented three witnesses, namely, Violeta Gonzales,[3] Renato Sanchez,[4] and complainant Johnny Sy;[5] while the defense presented accused Elpidio Hernando.[6]

For sometime before 1994, Spouses Elpidio and Elena Hernando were engaged in the importation and sale of Apple and IBM Computers, while complainant Johnny Sy was the owner of Palomino Club, a restaurant located at 727 Evangelista St., Quiapo, Manila, of which the spouses Hernando were good customers.

On July 14, 1994, Elena Aban Hernando opened a current account with the Union Bank of the Philippines, Sta. Cruz Manila Branch, in the name of Herban Trading, with herself as the signatory.[7]

Complainant Johnny Sy recounted that he first met accused spouses sometime in February 1995 in his Palomino Club, where Elena Hernando became a good customer. Out of "pakikisama" and because of Elpidio Hernando's assurances that the checks issued by his wife Elena Aban Hernando were good checks, complainant was induced to give money in the exchange for the checks. The simultaneous exchange of cash and checks took place on five (5) different dates, in a span of two (2) months.

The first transaction took place on May 11, 1995 at the residence of accused spouses at No. 1624 M. Hizon Street, Sta. Cruz, Manila. Elpidio and Elena requested Johnny Sy to change their check to cash. Elena issued check no. 046-081104, drawn on Union Bank of the Philippines, Sta Cruz, Manila Branch in the amount of P100,000.00, payable to cash. Upon receipt of the checks, Johnny gave the cash equivalent to Elpidio.

Two days later, or on May 13, 1995, Elena issued check no. 046-081103 for P150,000.00 to Johnny who gave the cash equivalent to accused Elpidio inside the Palomino Club. Elena was not present when the exchange took place.

The third transaction transpired on May 28, 1995 at the office of Herban Trading at BF Condominium Building, Intramuros Manila. Johnny gave P100,000.00 to accused Elpidio Hernando, in exchange for check no. 046-081102. Though accused Elena was not present when the exchange took place, she was the one who signed and issued the check.

On June 8, 1995, Johnny gave P200,000.00 to accused Elpidio Hernando in exchange for check no. 046-081116 inside the office of Herban Trading. Just like the previous transactions, accused Elena was not present.

On June 20, 1995, complainant again met accused Elpidio at the office of Herban Trading. Check no. 046-081117 in the amount of P100,000.00 was changed to cash. Again, accused Elena was not around. It was accused Elpidio who received the cash.

The last exchange of check with cash was on June 21, 1995 at the office of Herban Trading in Manila. Johnny gave P50,00.00 cash to accused Elpidio in exchange for check no. 046-081115. Elena was not present.

In the second week of July 1995, Elena requested Johnny not to deposit the checks because Elpidio would pay them in cash. However, Elpidio failed to redeem the checks. When Johnny deposited the checks sometime on July

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28, 1995 or August 1, 1995, with Equitable Banking Corporation, they were dishonored because the account from which the checks were drawn had been closed on July 18, 1995 due to overdraft. On the day that the account was closed, Herban Trading indicated a zero balance.[8] Checks bearing the numbers 046-081102, 046-081103, 046-081104, 046-081116, and 046-081117 were all dishonored upon presentment for payment to the bank because the account had been closed.[9]

In December 1995, Johnny called Elpidio over the telephone and demanded payment. Instead of paying, Elpidio told complainant to "just wait," further threatening him that he had goons from Quiapo and plenty of friends who were politician like governors, congressmen and mayors.

Complainant Johnny Sy waited (10) months for accused spouses to pay. However, accused spouses failed to pay the value of the five checks, prompting Johnny to file the complaint for estafa with the City Prosecutor's Office.

On the other hand, the defense presented accused Elpidio Hernando[10] who admitted that complainant Johnny Sy had been acting as their financier lending money to them at an interest. He never denied the receipt of the money on the dates appearing on the checks. In all those transactions, his wife Elena was not present, except for the first exchange where she signed the check in the presence of the complainant. The checks were issued as proofs of the simultaneous delivery of the money and the checks on the dates appearing thereon. He denied that he assured the complainant that the checks were funded reasoning that if the checks were really funded there would be no need for them to borrow money at an interest.

Accused spouses asserted that the checks had been issued merely an evidence of their indebtedness to the complainant.

Based on these facts, the trial court concluded that the accused committed estafa. The checks were delivered at the time that accused Elpidio received the cash equivalent. The guarantee made by accused Elpidio that the checks were funded or would be funded and the good relationship existing between them enticed Johnny to give them money on the dates appearing on the checks. “Such assurance and delivery of the checks were,” according to the trial court, “the efficient cause of the defraudation.”[11]

Though Elpidio was not the drawer of the check, the trial court found that he conspired with his wife Elena in obtaining money from the complainant knowing fully well that the checks being negotiated were not funded. The wife issued the checks, while the husband transacted with the complainant to exchange the checks with cash.

In its decision dated June 13, 1996, the trial court found accused spouses Elpidio Hernando and Elena Aban Hernando guilty beyond reasonable doubt of estafa. The dispositive portion of the decision reads:

> “WHEREFORE, finding both accused guilty beyond reasonable doubt of the crime of Estafa definded [sic] and punished under Art. 315, par. 2 sub-paragraph d in relation to Art. 315, par. 1 of the Revised Penal Code, both accused are hereby sentenced to each suffer imprisonment of thirty (30) years of reclusion perpetua (P.D. 818 amending 315 of the Revised Penal Code).
>
> “Both accused are hereby ordered to indemnify the victim/complainant, Johnny Sy, the sum of P700,000.00 representing the value of the checks, subject matter of this offense.
>
> “Both accused shall be credited with the full extent of their preventive imprisonment.
>
> “The bonds posted by both accused for their provisional liberty are hereby cancelled.
>
> “Accused Elpidio Hernando’s body is hereby committed to the custody of the Director of the Bureau of Correction National Penitentiary, Muntinglupa City, thru the City Jail Warden of Manila, while the body of accused Elena Aban Hernando is hereby committed to the custody of the Director of the Bureau of Correction

for Women, Mandaluyong City.

"SO ORDERED.

"Manila, Philippines, June 13, 1996.

"(Sgd.) ROMULO A. LOPEZ

"Judge"[12]

On June 20, 1996, accused spouses filed with the trial court a notice of appeal.[13]

Accused spouses raise three errors committed by the trial court: (1) erroneous application of the cited jurisprudence and commentaries to support the finding of fraud; (2) failure of the prosecution to establish the guilt of accused spouses beyond reasonable doubt; and (3) conspiracy between accused spouses was never proven.[14]

The appeal has no merit.

With regard to the first assignment of error, it is argued that the authority and jurisprudence cited by the trial court talked about the criminal liability of the drawer of the check. And since Elpidio Hernando was not the drawer of the checks, he should be acquitted.

This argument is flawed because there is a finding of conspiracy by the trial court.

"Where the acts of the accused collectively and individually demonstrate the existence of a common design towards the accomplishment of the same unlawful purpose, conspiracy is evident, and all the perpetrators will be liable as principals."[15] "Direct proof is not necessary to prove conspiracy but may be inferred from the acts of the accused before, during and after committing the crime which suggest that they acted in concert and in pursuance of the same objective."[16]

In this case, all the checks that bounced were issued and drawn by Elpidio Hernando's wife, Elena Aban Hernando. The checks, all payable to cash, were personally delivered and negotiated to Johnny Sy by Elpidio. Though he was not the drawer of the checks, accused Elpidio coaxed the complainant to exchange the checks with cash by guaranteeing that the checks were good checks and funded. In all the transactions, Elpidio was present and personally received the money. Though Elena was not present during the negotiation of the checks, except for the first transaction, she issued and signed the checks.

In relation to the third assignment of error, the trial court properly ruled that there was conspiracy. Considering the relationship between the accused, it is impossible that Elpidio would not be aware of the state of their finances. Both husband and wife, during that time, were aware that the checks issued by the wife were not funded.

"Settled is the rule 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 pre-existing obligation."[17] In this kind of estafa by postdating or issuing a bad check, deceit and damage are essential elements of the offense and have to be established with satisfactory proof to warrant conviction.[18]

Johnny Sy recounted how he came to know accused spouses and how he was persuaded in parting with his money in exchange for the checks. Elena Hernando became a good customer of Palomino Club, owned by the complainant. Out of "pakikisama" and the assurance made by Elpidio Hernando that the checks issued by his wife

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were funded, Johnny Sy gave his money to accused Elpidio. The guarantee and the simultaneous delivery of the checks by accused Elpidio Hernando were the enticement and the efficient cause of the defraudation committed against the complainant. For failing to pay the value of the five checks, complainant suffered damage in the amount of P700,000.00.

Estafa, under Article 315, paragraph 2(d) of the Revised Penal Code, as amended by Republic Act No. 4885, has the following elements: (1) postdating or issuance of a check in payment of an obligation contracted at the time the check was issued; (2) lack of sufficiency [sic] of funds to cover the check; and (3) damage to the payee thereof.[19]

"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. 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."[20]

"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. There is deceit when one is misled, either by guile or trickery or by other means, to believe to be true what is really false."[21]

These elements were present in this case. (1) Accused Elpidio never denied that his wife signed and issued the checks on the dates appearing thereon. (2) The bank representatives presented by the prosecution testified that accused Elena opened a current account on July 14, 1994 with the Union Bank of the Philippines, Sta. Cruz Branch, which was subsequently closed on July 18, 1995 due to overdraft. When the checks were presented for payment to complainant's bank, the Equitable Banking Corporation, they were dishonored for lack of funds. In fact at the time that the current account was closed, it indicated a zero balance. (3) Despite the lapse of ten (10) months, accused spouses failed to pay the money covered by the five checks, to the detriment of the complainant.

The failure of the complainant to immediately deposit with the bank the five checks issued by Elena cannot be used as a defense by accused spouses. Johnny was prevailed upon by Elena not to deposit the checks because Elpidio would pay him in cash. This should not be taken against complainant.

Again, accused spouses would like the Court to believe that the checks were only evidence of a pre-existing indebtedness or obligation to escape criminal liability. However, the facts are clear that there is no pre-existing obligation. Complainant gave his money to accused spouses in exchange for the checks simultaneously delivered to him. Stated otherwise, if not for the concurrent delivery of the checks, the complainant would not have parted with his money. Accused spouses obviously deceived the complainant taking advantage of the complainant's trust in them.

In light of the foregoing, we find no reason to disturb the factual findings of the trial court.

Accused spouses were charged with estafa under Article 315, par. 2 (d) of the Revised Penal Code, as amended by Presidential Decree No. 818,[22] which increased the penalty for estafa committed by means of bouncing checks. The trial court convicted accused spouses and sentenced them "to each suffer imprisonment of thirty (30) years of reclusion perpetua." This is an error. The proper penalty imposable should not be thirty (30) years (straight) but an indeterminate penalty.[23] The requirement of imposing an indeterminate sentence in all criminal offenses whether punishable by the Revised Penal Code or by special laws, with definite minimum and maximum terms, as the Court deems proper within the legal range of the penalty specified by the law is mandatory.[24]

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Presidential Decree No. 818 provides:

> "SECTION 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:
>
> 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;
>
> xxx."

Hence, if the amount of the fraud exceeds twenty-two thousand pesos, the penalty of reclusion temporal is imposed in its maximum period, adding one year for each additional ten thousand (P10,000.00) pesos but the total penalty shall not exceed thirty (30) years, which shall be termed reclusion perpetua. As used herein, reclusion perpetua is not the prescribed penalty for the offense. It merely describes the penalty actually imposed on account of the amount of the fraud involved, which exceeds twenty two thousand (P22,000.00) pesos.

"Under the Indeterminate Sentence Law, if the offense is punished by the Revised Penal Code, such as estafa, the court shall sentence the accused to an indeterminate penalty, the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the Revised Penal Code, and the minimum term of which shall be within the range of the penalty next lower to that prescribed by the Code for the offense."[25] "The penalty next lower should be based on the penalty prescribed by the Code for the offense, without first considering any modifying circumstance attendant to the commission of the crime. The determination of the minimum penalty is left by law to the sound discretion of the court and it can be anywhere within the range of the penalty next lower without any reference to the periods into which it might be subdivided. The modifying circumstances are considered only in the imposition of the maximum term of the indeterminate sentence."[26]

Here, the complainant was defrauded in the amount of seven hundred thousand (P700,000.00) pesos. The fact that the amount involved in the instant case exceeds P22,000.00 should not be considered in the initial determination of the indeterminate penalty; instead the matter would be so taken as analogous to modifying circumstances in the imposition of the maximum term of the full indeterminate sentence. This accords with the rule that penal laws are construed in favor of the accused.[27]

Applying the above-cited provision, accused shall be meted an indeterminate sentence, the maximum of which shall be taken from the maximum period of the basic penalty,[28] that is, reclusion temporal, to be imposed in its maximum period, plus one (1) year for each additional P10,000.00 of the amount of the fraud, but the total penalty shall not exceed thirty (30) years.[29]

On the other hand, the minimum of the indeterminate sentence shall be within the range of the penalty next lower in degree to that prescribed by the Code for the offense, without first considering any modifying circumstance[30] nor the incremental penalty for the amount in excess of twenty two thousand (P22,000.00) pesos.[31] Such penalty is prision mayor,[32] with a duration of six (6) years and one (1) day to twelve (12) years.[33]

WHEREFORE, the Court hereby AFFIRMS with modification the decision of the trial court in Criminal Case No. 95-146895, finding accused spouses Elpidio Hernando and Elena Aban Hernando guilty beyond reasonable doubt of estafa, defined and penalized under Article 315, paragraph 2 (d) of the Revised Penal Code, and sentencing each of them to suffer an indeterminate penalty of twelve (12) years of prision mayor, as minimum, to thirty (30)

years of reclusion perpetua, as maximum, and to indemnify complainant Johnny Sy in the amount of P700,000.00.

Costs in both instances against accused-appellants.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Kapunan, and Ynares-Santiago, JJ., concur.

Puno, J., on official business abroad.

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[1] In Criminal Case No. 95-146895, dated June 13, 1996, Judge Romulo A. Lopez, presiding.

[2] Information, Rollo, p.1.

[3] Manager, Union Bank of the Philippines, Sta. Cruz, Manila branch; TSN, March 14, 1996.

[4] Branch Operation Officer, Union of the Bank Philippines, Sta Cruz, Manila branch; TSN, March 15, 1996.

[5] TSN, March 15, 1996.

[6] TSN, May 3, 1996.

[7] TSN, March 14, 1996, pp. 4-6.

[8] Id., at p. 7.

[9] Id., at pp. 6-11.

[10] TSN, May 3, 1996.

[11] Regional Trial Court Decision, Rollo, p. 22.

[12] Regional Trial Court Decision, Rollo, pp. 23-24.

[13] Notice of Appeal, Rollo, p. 25.

[14]] Appellant’s Brief, Rollo, pp. 29-49, at p. 34.

[15] People vs. Sancholes, 271 SCRA 527[1997] .

[16] People vs. Asto, 277 SCRA 697[1997].

[17] Nieva vs. Court of Appeals, 272 SCRA 1, 11[1997].

[18] People vs. Grospe, 157 SCRA 154, 161[1988] .

[19] People vs. Martin Romero, G.R. No. 112985, April 21, 1999.

[20] People vs. Martin Romero, supra.

[21] People vs. Martin Romero, supra.

[22]] Amending Article 315 of the Revised Penal Code by increasing the penalties for estafa committed by means of bouncing checks.

[23] People vs. Viente, 225 SCRA 361, 373[1993]; Argoncillo vs. Court of Appeals, 292 SCRA 313, 330[1998].

[24] Bacar vs. de Guzman, 271 SCRA 328, 340[1997]; People vs. Lee, Jr., 132 SCRA 66[1984]; Argoncillo vs.

Court of Appeals, supra.

[25] Barrameda vs. Court of Appeals, G.R. No. 96428, September 2, 1999; Nizurtado vs. Sandiganbayan, 239 SCRA 33, 47[1994]; Jacobo vs. Court of Appeals, 270 SCRA 270[1997]; Fontanilla vs. People, 327 Phil. 1114, 1129[1997].

[26] People vs. Gabres, 335 Phil. 242, 257[1997]; People vs. Sanchez, 291 SCRA 333[1998]

[27] Quinto vs. People, G.R. No. 126712, April 14, 1999.

[28] People vs. Ortiz-Miyake, 344 Phil 598, 614-615[1997].

[29] People vs. Saley, 291 SCRA 715, 755[1998]; People vs. Tongko, 290 SCRA 595, 601[1998].

[30] People vs. Gabres, supra; Quinto vs. People, supra.

[31]] People vs. Ortiz-Miyake, supra, citing People vs. Pabalan, 262 SCRA 574[1996].

[32] Article 61(2) in relation to Article 71, Revised Penal Code.

[33] Article 27, Revised Penal Code.

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