ERNESTO T. PACHECO AND VIRGINIA O. PACHECO, PETITIONERS, VS. HON. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 126670. December 02, 1999

Ponente: YNARES_SANTIAGO, J.

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YNARES_SANTIAGO, J.:

Petitioner spouses are engaged in the construction business. Complainant Romualdo Vicencio was a former Judge and his wife, Luz Vicencio, owns a pawnshop in Samar. On May 17, 1989, due to financial difficulties arising from the repeated delays in the payment of their receivables for the construction projects from the DPWH,[1] petitioners were constrained to obtain a loan of P10,000.00 from Mrs. Vicencio. The latter acceded. Instead of merely requiring a note of indebtedness, however, her husband Mr. Vicencio required petitioners to issue an undated check as evidence of the loan which allegedly will not be presented to the bank. Despite being informed by petitioners that their bank account no longer had any funds, Mrs. Vicencio insisted that they issue the check, which according to her was only a formality. Thus, petitioner Virginia Pacheco issued on May 17, 1989 an undated RCBC[2] check with number CT 101756 for P10,000.00. However, she only received the amount of P9,000.00 as the 10% interest on the loan was already deducted. Mrs. Vicencio also required Virginia's husband, herein petitioner Ernesto Pacheco, to sign the check on the same understanding that the check is not to be encashed but merely intended as an evidence of indebtedness which cannot be negotiated.

On June 14, 1989, Virginia obtained another loan of P50,000.00 from Mrs. Vicencio. She received only P35,000.00 as the previous loan of P10,000.00 as well as the 10% interest amounting to P5,000.00 on the new loan were deducted by the latter. With the payment of the previous debt, Virginia asked for the return of the first check (RCBC check no. 101756) but Mrs. Vicencio told her that her filing clerk was absent. Despite several demands for the return of the first check, Mrs. Vicencio told Virginia that they can no longer locate the folder containing that check. For the new loan, she also required Virginia to issue three (3) more checks in various amounts – two checks for P20,000.00 each and the third check for P10,000.00. Petitioners were not amenable to these requirements, but Mrs. Vicencio insisted that they issue the same assuring them that the checks will not be presented to the banks but will merely serve as guarantee for the loan since there was no promissory note required of them. Due to her dire financial needs, Virginia issued three undated RCBC checks numbered 101783 and 101784 in the sum of P20,000.00 each and 101785 for P10,000.00, and again informed Mrs. Vicencio that the checks cannot be encashed as the same were not funded. Petitioner Ernesto also signed the three checks as required by Mrs. Vicencio on the same conditions as the first check.

On June 20 and July 21, 1989, petitioner Virginia obtained two more loans, one for P10,000.00 and another for P15,000.00. Again she issued two more RCBC checks (No. 101768 for P10,000.00 and No. 101774 for P15,000.00) as required by Mrs. Vicencio with the same assurance that the checks shall not be presented for payment but shall stand only as evidence of indebtedness in lieu of the usual promissory note.

All the checks were undated at the time petitioners handed them to Mrs. Vicencio. The six checks represent a total obligation of P85,000.00. However, since the loan of P10,000.00 under the first check was already paid when the amount thereof was deducted from the proceeds of the second loan, the remaining account was only P75,000.00. Of this amount, petitioners were able to settle and pay in cash P60,000.00 in July 1989. Petitioners never had any transaction nor ever dealt with Mrs. Vicencio's husband, the complainant herein.

When the remaining balance of P15,000.00 on the loans became due and demandable, petitioners were not able to pay despite demands to do so. On August 3, 1992, Mrs. Vicencio together with her husband and their daughter Lucille, went to petitioners' residence to persuade Virginia to place the date "August 15, 1992" on checks nos. 101756 and 101774, although said checks were respectively given undated to Mrs. Vicencio on May 17, 1989 and July 21, 1989. Check no. 101756 was required by Mrs. Vicencio to be dated as additional guarantee for the P15,000.00 unpaid balance allegedly under check no. 101774. Despite being informed by petitioner Virginia that their account with RCBC had been closed as early as August 17, 1989, Mrs. Vicencio and her daughter insisted that she place a date on the checks allegedly so that it will become evidence of their indebtedness. The former reluctantly wrote the date on the checks for fear that she might not be able to obtain future loans from Mrs. Vicencio.

Later, petitioners were surprised to receive on August 29, 1992 a demand letter from Mrs. Vicencio's spouse informing them that the checks when presented for payment on August 25, 1992 were dishonored due to "Account Closed". Consequently, upon the complaint of Mrs. Vicencio's husband with whom petitioners never had any transaction, two informations for estafa, defined in Article 315(2)(d) of the Revised Penal Code, were filed against them. The informations which were amended on April 1, 1993 alleged that petitioners "through fraud and false pretenses and in payment of a diamond ring (gold necklace)" issued checks which when presented for payment were dishonored due to account closed.[3] After entering a plea of not guilty during arraignment, petitioners were tried and sentenced to suffer imprisonment and ordered to indemnify the complainant in the total amount of P25,000.00.[4] On appeal, the Court of Appeals (CA) affirmed the decision of the court a quo.[5] Hence this petition.

Estafa may be committed in several ways. One of these is by postdating a check or issuing a check in payment of an obligation, as provided in Article 315, paragraph 2(d) of the RPC, viz:

> "ART. 315. Swindling (estafa). Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:
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> x x x x x x 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:
>
> x x x x x x 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."

The essential elements in order to sustain a conviction under the above paragraph are:

> 1. that the offender postdated or issued a check in payment of an obligation contracted at the time the check was issued;

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2. that such postdating or issuing a check was done when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check;

3. deceit or damage to the payee thereof.[6]

The first and third elements are not present in this case. A check has the character of negotiability and at the same time it constitutes an evidence of indebtedness. By mutual agreement of the parties, the negotiable character of a check may be waived and the instrument may be treated simply as proof of an obligation. There cannot be deceit on the part of the obligor, petitioners herein, because they agreed with the obligee at the time of the issuance and postdating of the checks that the same shall not be encashed or presented to the banks. As per assurance of the lender, the checks are nothing but evidence of the loan or security thereof in lieu of and for the same purpose as a promissory note. By their own covenant, therefore, the checks became mere evidence of indebtedness. It has been ruled that a drawer who issues a check as security or evidence of investment is not liable for estafa.[7] Mrs. Vicencio could not have been deceived nor defrauded by petitioners in order to obtain the loans because she was informed that they no longer have funds in their RCBC accounts. In 1992, when the Vicencio family asked Virginia to place a date on the check, the latter again informed Mrs. Vicencio that their account with RCBC was already closed as early as August 1989. With the assurance, however, that the check will only stand as a firm evidence of indebtedness, Virginia placed a date on the check. Under these circumstances, Mrs. Vicencio cannot claim that she was deceived or defrauded by petitioners in obtaining the loan. In the absence of the essential element of deceit,[8] no estafa was committed by petitioners.

Both courts below relied so much on the fact that Mrs. Vicencio's husband is a former Judge who knows the law. He should have known, then, that he need not even ask the petitioners to place a date on the check, because as holder of the check, he could have inserted the date pursuant to Section 13 of the Negotiable Instruments Law (NIL).[9] Moreover, as stated in Section 14 thereof, complainant, as the person in possession of the check, has prima facie authority to complete it by filling up the blanks therein. Besides, pursuant to Section 12 of the same law, a negotiable instrument is not rendered invalid by reason only that it is antedated or postdated.[10] Thus, the allegation of Mrs. Vicencio that the date to be placed by Virginia was necessary so as to make the check evidence of indebtedness is nothing but a ploy. Petitioners openly disclosed and never hid the fact that they no longer have funds in the bank as their bank account was already closed. Knowledge by the complainant that the drawer does not have sufficient funds in the bank at the time it was issued to him does not give rise to a case for estafa through bouncing checks.[11]

Moreover, a check must be presented within a reasonable time from issue.[12] By current banking practice, a check becomes stale after more than six (6) months. In fact a check long overdue for more than two and one-half years is considered stale.[13] In this case, the checks were issued more than three years prior to their presentment. In his complaint, complainant alleged that petitioners bought jewelry from him and that he would not have parted with his jewelry had not petitioners issued the checks. The evidence on record, however, does not support the theory of the crime.

There were six checks given by petitioners to Mrs. Vicencio but only two were presented for encashment. If all were issued in payment of the alleged jewelry, why were not all the checks presented? There was a deliberate choice of these two checks as the total amount reflected therein is equivalent to the amount due under the unpaid obligation. The other checks, on the other hand, could not be used as the amounts therein do not jibe with the amount of the unpaid balance. Following complainant's theory that he would not have sold the jewelries had not petitioners issued "postdated" checks, still no estafa can be imputed to petitioners. It is clear that the checks were not intended for encashment with the bank, but were delivered as mere security for the payment of the loan and under an agreement that the checks would be redeemed with cash as they fell due. Hence, the checks were not

intended by the parties to be modes of payment but only as promissory notes. Since complainant and his wife were well aware of that fact, they cannot now complain there was deception on the part of petitioners. Awareness by the complainant of the fictitious nature of the pretense cannot give rise to estafa by means of deceit.[14] When the payee was informed by the drawer that the checks are not covered by adequate funds it does not give rise to bad faith or estafa.[15]

Moreover, complainant's allegations that the two subject checks were issued in 1992 as payment for the jewelry he allegedly sold to petitioners is belied by the evidence on record. First, complainant is not engaged in the sale of jewelry.[16] Neither are petitioners. If the pieces of jewelry were important to complainant considering that they were with him for more than twenty-five years already,[17] he would not have easily parted with them in consideration for unfunded personal checks in favor of persons whose means of living or source of income were unknown to him.[18] Applicable here is the legal precept that persons are presumed to have taken care of their business.[19]

Second, petitioners' bank account with RCBC was opened on March 26, 1987 and was closed on April 17, 1989, during the span of which they were issued 10 check booklets with the last booklet issued on April 6, 1989. This last booklet contains 50 checks consecutively numbered from 101751 to 101800. The two subject checks came from this booklet. All the checks in this booklet were issued in the year 1989 including the two subject checks, so that the complainants' theory that the jewelry were sold in 1992 cannot be believed.

The rule that factual findings of the trial court bind this court is not absolute but admits of exceptions such as when the conclusion is a finding grounded on speculation, surmise, and conjecture and when the findings of the lower court is premised on the absence of evidence and is contradicted by the evidence on record.[20] Based on the foregoing discussions, this Court is constrained to depart from the general rule. Equally applicable is what Vice-Chancellor Van Fleet once said:[21]

> "Evidence to be believed must not only proceed from the mouth of a credible witness but must be credible in itself – such as the common experience and observation of mankind can approve as probable under the circumstances. We have no test of the truth of human testimony, except its conformity to our knowledge, observation and experience. Whatever is repugnant to these belongs to the miraculous, and is outside of judicial cognizance."

Petitioners, however, are not without liability. An accused acquitted of a criminal charge may nevertheless be held civilly liable in the same case where the facts established by the evidence so warrant.[22] Based on the records, they still have an outstanding obligation of P15,000.00 in favor of Mrs. Vicencio. There was mention that the loan shall earn interests. However, an agreement as to payment of interest must be in writing, otherwise it cannot be valid,[23] although there was actual payment of interests by virtue of the advance deductions from the loan. Once the judgment becomes final and executory, the amount due is deemed equivalent to a forbearance of credit during the interim period from the finality of judgment until full payment, in which case it shall earn legal interest at the rate of twelve per cent (12%) per annum pursuant to Central Bank (CB) Circular No. 416.[24]

WHEREFORE, the assailed Decision is REVERSED and SET ASIDE. Petitioners are ACQUITTED of the charge of estafa but they are ORDERED to pay Mrs. Vicencio the amount of P15,000.00 without interest. However, from the time this judgment becomes final and executory, the amount due shall earn legal interest of twelve percent (12%) per annum until full payment.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

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[1]Department of Public Works and Highways.

[2]Rizal Commercial Banking Corporation.

[3]Except as to the date and time of commission, the jewelries involved, the amount of the check and the check number, the amended informations in Criminal Case No. C-1708-1709 identically read: "That on or about the 15[th] day of August, 1992, at about 8:00 o'clock in the morning, in the Municipality of Catarman, Province of Northern Samar, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, with intent to gain, through fraud and false pretenses and in payment of a diamond ring, did, then and there wilfully and unlawfully issue an RCBC Check with No. CT 101774 in the amount of FIFTEEN THOUSAND (P15,000.00) PESOS, and when presented for payment on August 19, 1992, the RCBC in Catarman dishonored the check on the ground that it was drawn against "ACCOUNT CLOSED", and despite notice accused failed to pay to the actual damage and prejudice of Romualdo Vicencio in the amount aforestated." (Regional Trial Court (RTC) Records in Criminal Case No. C-1709, p. 24).

[4]The dispositive portion of the RTC Decision (Branch 19, Catarman, Northern Samar) dated August 4, 1993 penned by Judge Cesar R. Cinco, p. 6 reads: "WHEREFORE, the Court hereby finds Ernesto Pacheco y Tambuyat, also known as Erning, and Virginia Pacheco y Oledan, also known as Virgie, GUILTY beyond reasonable doubt as co-principals in the crimes of estafa defined and penalized under paragraph 2(d) of Article 315 of the Revised Penal Code, amended by Republic Act 4885 and Presidential Decree 818, as charged under the informations and sentences each, to wit:

In Criminal Case No. C-1708, to suffer an imprisonment ranging from EIGHT (8) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of prision mayor, as minimum, to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of reclusion temporal, as maximum, to jointly and severally indemnify Atty. Romualdo Vicencio in the amount of P15,000.00 and to pay the costs; and,

In Criminal Case No. C-1709, to suffer an imprisonment ranging from EIGHT (8) YEARS, EIGHT (8) MONTHS and ONE (1) DAY, as minimum, to TEN (10) YEARS, EIGHT (8) MONTHS and ONE (1) day, as maximum, of prision mayor, to indemnify jointly and severally Atty. Romualdo Vicencio in the amount of P10,000.00 and to pay the costs. SO ORDERED." (Rollo, p. 128).

[5]The dispositive portion of the Court of Appeals (CA) Decision promulgated March 19, 1996 penned by Justice Romeo Callejo, Sr. with Justices Antonio Martinez (now a retired member of this Court) and Delilah Vidallon-Magtolis, concurring, p. 14 reads: "IN THE LIGHT OF THE FOREGOING, the Decision appealed from is hereby AFFIRMED in toto. With costs against the Appellants. SO ORDERED." (Rollo, p. 21).

[6]People v. Ong, 204 SCRA 942 (1991); People v. Tugbang, 196 SCRA 341 (1991); Sales v. CA, 164 SCRA 717 (1988); People v. Sabio, Jr., 86 SCRA 568 (1978).

[7]People v. Tugbang, 196 SCRA 341 (1991).

[8]Buaya v. Polo, 169 SCRA 471 (1989); People v. Grospe, 157 SCRA 154 (1988); US v. Rivera, 23 Phil. 383.

[9]When date may be inserted. – Where an instrument expressed to be payable at a fixed period after date is

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issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date. (Italics supplied).

[10]Ante-dated and post-dated. – The instrument is not invalid for the reason only that it is ante-dated or post-dated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery.

[11]See Magno v. CA, 210 SCRA 471 (1992).

[12]Section 186, NIL. Within what time a check must be presented. - A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.

[13]Montinola v. Philippine National Bank, 88 Phil. 178 (1951).

[14]People v. Concepcion, 44 Phil. 544.

[15]Firestone Tire and Rubber Co. of the Philippines v. Inez Chavez and Co., 18 SCRA 356 (1966).

[16]Transcript of Stenographic Notes (TSN), July 20, 1993, p. 49.

[17]TSN, April 29, 1993, p. 12.

[18]TSN, April 29, 1993, p. 9.

[19]Rules of Court, Rule 131, Sec. 3. Disputable presumptions. - The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

> x x x x x x x x x(d) That a person takes ordinary care of his concerns;x x x x x x x x x(p) That private transactions have been fair and regular.

[20]Smith Kline & French Laboratories, Ltd. v. CA, 342 Phil. 187 citing among others Vda. De Alcantara v. CA, 252 SCRA 457 (1996); Republic v. IAC, 196 SCRA 335 (1991); Fernan v. CA, et al., 181 SCRA 546 (1990); People v. Traya, 147 SCRA 381 (1987); Tolentino v. de Jesus, 56 SCRA 67 (1974).

[21]Cited in Daggers v. Van Dyck, 37 N.J. Eq., 130, 132; See also People v. Cara, 283 SCRA 96 (1997).

[22]People v. Tugbang, 196 SCRA 341 (1991); Nuñez v. CA, G.R. No. 80216, December 7, 1988, Minute Resolution.

[23]Article 1956, New Civil Code.

[24]Philippine National Bank v. CA, 331 Phil. 1079, 263 SCRA 766 (1996) citing Eastern Shipping Lines v. CA, 234 SCRA 78 (1994).

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