

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PRIMITIVA DIZON, LIBERTY MARTINEZ, AND ANICETA AQUINO, ALIAS “ANNIE” ACCUSED. ANICETA AQUINO, ACCUSED-APPELLANT.

G.R. No. 130742. July 18, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

This is an appeal from the decision[1] of the Regional Trial Court (RTC) of Kalookan City, Branch 130 dated August 18, 1997 finding accused-appellant ANICETA ("ANNIE") AQUINO guilty beyond reasonable doubt as co-principal of the crime of Estafa in Criminal Case No. C-43198.

On May 6, 1993, accused-appellant Aniceta ("Annie") Aquino together with Primitiva S. Dizon and Liberty Martinez were charged with the crime of Estafa under Article 315 paragraph 2 (d) of the Revised Penal Code in an information[2] that reads:

"That on or about the 22nd day of December, 1991 in Kalookan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually aiding one another, defrauded and deceived one MARIE ANTOINETTE DACUMA, in the following manner, to wit: the said accused received from complainant four hundred (400) sacks of rice valued at P200,000.00 and in payment thereof accused Primitiva S. Dizon issued in favor of said complainant the following checks, to wit:

Check No

Date

Bank

Amount

05410011

12/23/91

Pilipinas

Bank

P50,000.00

05410013

1/07/92

-

do -

P50,000.00

05410014

12/23/91

-

do -

P50,000.00

05410015

01/07/92

-

do -

P50,000.00

when accused knew fully well at the time that they have no sufficient funds in the bank and would not have such funds even on the date stated on the face thereof and upon presentment of such checks to the drawee bank for payment, the same was (sic) dishonored for the reason "ACCOUNT CLOSED", that despite due notice as required by Republic Act No. 4885 and notwithstanding repeated demands, the herein accused, did then and there wilfully, unlawfully and feloniously refuse and fail to make good her checks in the total amount of P200,000.00 and still refuse and fail to do so, to the damage and prejudice of the said complainant in the total amount of P200,000.00.

Contrary to law."

Of the three accused, only Aniceta ("Annie") Aquino was arrested and brought to trial. Her co-accused Primitiva S. Dizon and Liberty Martinez remained at large. There was however unverified information that accused Liberty Martinez was shot to death on September 24, 1994. When arraigned, Aniceta Aquino entered a plea of not guilty. During the trial that ensued, the prosecution presented complainant Marie Antoinette Dacuma as its lone witness and submitted as evidence the four checks and other documents to establish its case. Accused Aniceta ("Annie") Aquino was the lone witness presented by the defense and her evidence consisted mainly of her testimony.

In a decision dated August 18, 1997, the Regional Trial Court of Kalookan City disposed the case as follows:

"WHEREFORE, the prosecution having proven the guilt of the accused beyond reasonable doubt, the Court finds the accused ANICETA ("ANNIE") AQUINO, guilty as co-principal of the crime of ESTAFA, defined and penalized under Article 315, paragraph 2 (d) of the Revised Penal Code, and there being no mitigating or aggravating circumstances that attended the commission of the crime, hereby sentences her to suffer an imprisonment of THIRTY (30) YEARS of reclusion perpetua, together with all the accessory penalties prescribed by law, to indemnify the private offended party, MARIE ANTOINETTE DACUMA jointly and severally with her co-accused Primitiva Dizon and Liberty Martinez, in the amount of TWO HUNDRED THOUSAND PESOS (P200,000.00), without subsidiary imprisonment in case of insolvency, and to pay 1/3 of the costs.

The bail bond of the accused is hereby cancelled pursuant to Sections 5 and 7, Rule 114 of the 1985 Rules on Criminal Procedure, as amended.

The case against accused PRIMITIVA DIZON and LIBERTY MARTINEZ is ARCHIVED, without prejudice to its revival and prosecution as soon as said accused shall have been apprehended. Let an alias Warrant of Arrest be issued which need not be returned until the accused are arrested.

With regard to accused LIBERTY MARTINEZ, the Trial Prosecutor is hereby ordered to inquire into the veracity of the report that said accused is already dead, and if found to be affirmative, to submit a certified copy of the death certificate to be attached to the record.

SO ORDERED."[3]

In meting out the judgment of conviction the trial court cited the following "uncontroverted evidence on record," to wit: (1) The complainant Marie Antoinette Dacuma delivered 400 sacks of rice valued at P200,000.00 (at P500.00 per sack) to the accused Primitiva Dizon, Liberty Martinez and Annie Aquino on December 22, 1991 as evidenced by the Delivery Receipt No. 001 (Exhibit A); (2) The rice was received by accused Liberty Martinez (Exhibit A-3); (3) Simultaneously with the delivery of the rice on December 22, 1991 accused Primitiva Dizon made and issued four (4) postdated checks (Exhibits B, C, D, E), drawn against Pilipinas Bank, as payment of (sic) the rice; (4) When the four (4) checks were presented for payment, they were dishonored by the drawee bank and returned unpaid together with the notice of dishonor (Exhibits B-1, C-1, D-1 and E-1) for the reason "Account Closed". Aside from the return slips, the words "Account Closed" are also stamped conspicuously across the face of each check; (5) The complainant notified the accused of the dishonor of the checks and made demands upon them to make good the checks or pay the rice, but they failed to redeem the checks or pay the rice, thereby causing damage and prejudice to the complainant in the amount of P200,000.00, representing the value of the 400 sacks of rice.[4]

In justifying the conviction of accused Aniceta ("Annie") Aquino as co-principal in the commission of the crime of estafa, the trial court declared that the overwhelming evidence adduced by the prosecution show that the three accused conspired together to defraud complainant Marie Antoinette Dacuma.

Through counsel Public Attorney's Office (PAO), accused-appellant Aniceta ("Annie") Aquino interposed the present appeal contending that:

"THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE INSUFFICIENCY OF EVIDENCE."[5]

The PAO avers that the trial court anchored its findings of conspiracy on the acts of accused-appellant of facilitating and initiating the meeting between the other two accused and the complainant and in convincing the latter to sell rice to the former and following it up till the delivery of the same, which acts are not sufficient indicia of conspiracy to defraud complainant.

Accused-appellant in her separate brief[6] contends that the trial court committed a grave and serious reversible error in not acquitting the accused-appellant on the ground that the prosecution failed to establish her guilt beyond reasonable doubt. Accused-appellant avers that her only participation in the transaction was limited to her act of introducing the other accused to the complainant and her presence during the questioned transaction which acts do not sufficiently show that she, together with her co-accused, conspired to defraud private complainant invoking the settled rule that conspiracy must be proved as indubitably as the crime itself which is estafa, through clear and convincing evidence. She also claims that since criminal responsibility is only personal, accused-appellant may not be held criminally liable for the alleged fraudulent acts of the other accused.

The crime charged is estafa under Article 315, paragraph 2 (d) of the Revised Penal Code (RPC) as amended by Republic Act No. 4885 which provides that:

"Swindling (estafa) is committed by any person who shall defraud another by means of post-dating 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 trial court ruled that the prosecution's evidence sufficiently proved and established the charge that there was conspiracy among the three (3) accused to defraud private complainant. Hence, the conviction of accused-appellant as a co-principal in the commission of the crime of estafa.

The Court is not convinced that the conspiracy to defraud private complainant was proven.

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[7] It is unity of purpose and intention in the commission of a crime.[8] There is conspiracy if at the time of the commission of the offense, the acts of two or more accused show that they were animated by the same criminal purpose and were united in their execution,[9] or where the acts of the malefactors indicate a concurrence of sentiments, a joint purpose and a concerted action.[10] To establish conspiracy, there must be proof that two or more persons agreed to commit the crime.[11] However, mere knowledge, acquiescence or agreement to cooperate is not enough to constitute one as a conspirator, absent any active participation in the commission of the crime, with a view to the furtherance of the common design and purpose.[12] In other words, to hold an accused guilty as a co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or furtherance of the plan to commit the felony.[13] And to be the basis for a conviction, conspiracy must be proved in the same manner as any element of the criminal act itself.[14] The same degree of proof required to establish the crime is necessary to support a finding of the presence of conspiracy, that is, it must be shown to exist as clearly and convincingly as the commission of the offense itself.[15]

In the case at bar, the requirement that conspiracy must be proved by evidence beyond reasonable doubt was not satisfied by the prosecution insofar as accused-appellant is concerned. There is no evidence on record to show that accused-appellant had any agreement or understanding with co-accused Primitiva Dizon and Liberty Martinez for them to defraud private complainant Marie Antoinette Dacuma in the amount of P200,000.00 by enticing the latter to sell and deliver four hundred (400) sacks of rice and to issue unfunded postdated checks as payment therefor. Nowhere in those acts and admissions pointed out by the trial court as evidence of accused-appellant's participation in the conspiracy was it shown that accused-appellant knew or was aware that the four (4) postdated checks (Exhs. B, C, D and E) issued and drawn by accused Primitiva Dizon on December 22, 1991, which she admittedly handed to private complainant as payment for the four hundred (400) sacks of rice delivered to accused Liberty Martinez on the same day, were without or had no sufficient funding and that accused Primitiva

Dizon's account with the drawee Pilipinas Bank was already "Closed". It bears stress that the elements of estafa under Paragraph 2 (d) of Article 315, Revised Penal Code, are: (1) postdating or issuing a check in payment of an obligation contracted at the time of the check's issuance; (2) lack or insufficiency of funds to cover the check; (3) knowledge on the part of the drawer of the check of such circumstance; and (4) damage or prejudice capable of pecuniary estimation to the payee thereof.[16] Accused-appellant cannot be presumed to have knowledge of the non-existence or insufficiency of the funds in the bank account of Primitiva Dizon at the time of the issuance of the four (4) postdated checks on December 22, 1991 as such legal presumption applies to the drawer or issuer of the check.[17] In sum, accused-appellant was not proven to be privy to the acts of accused Primitiva Dizon in issuing the four checks.

To our mind, the circumstantial evidence pointed out by the prosecution and adopted by the trial court are not sufficient to prove accused-appellant's participation in the defraudation of private complainant. The circumstances proven fail to establish the conspiracy with accused-appellant to defraud Dacuma by means of the issuance of bum checks. The issuance of the postdated checks which are not funded in payment of an obligation contracted at the time of the issuance of the checks is an essential element giving rise to the offense of estafa under paragraph 2(d) of Article 315. Without evidence showing how accused-appellant participated in the defraudation of Dacuma by the issuance of unfunded checks in payment of the rice, conspiracy cannot be appreciated against her.[18] The Court has held that mere presence of an accused in the crime scene or at the discussion of a conspiracy, even approval of it, without any active participation in the same, is not enough for purposes of conviction.[19] Here the admitted interest of accused-appellant in the consummation of the transaction does not render her privy to the issuance of the bad checks.

The Court notes that accused-appellant in her defense testimony, admitted her presence during the different stages of the transaction, namely: the delivery of the rice and of the checks; that she followed-up the delivery of the rice; and that she handed the checks in question to the complainant.[20] But she clarified during the redirect examination that she was interested in the transaction because of the expectation of getting a commission.[21] The evidence shows her interest and participation in the consummation of the transaction but does not suffice to establish a conspiracy to commit estafa.

Even granting that the evidence in this case consisting of the testimony of lone prosecution witness Marie Antoinette Dacuma and her documentary evidence namely: Delivery Receipt No. 001 (Exh. "A") and the four (4) postdated checks (Exhs. "B", "C", "D" and "E") and the testimony of accused-appellant as lone witness for the defense, is capable of two inferences, one of which is consistent with the presumption of innocence of accused-appellant of the crime charged and the other consistent with her guilt as co-principal in the commission of the crime of estafa, the situation calls for the application of the "equipoise rule"[22] pursuant to which the Court has to acquit accused-appellant because the prosecution's evidence does not fulfill the test of moral certainty and therefor is insufficient to support a judgment of conviction.[23] It is the long standing policy of the Court that when the guilt of the accused has not been proven with moral certainty, the constitutional presumption of innocence of the accused must be favored and his exoneration granted as a matter of right regardless of the weakness or even the absence of his defense.[24]

WHEREFORE, the decision of the Regional Trial Court of Kalookan City, Branch 130, in Criminal Case No. C-43198 is hereby REVERSED. Accused-appellant Aniceta ("Annie") Aquino is ACQUITTED on the ground that her guilt has not been proved beyond reasonable doubt. Her immediate release from detention at the Correctional Institution for Women is hereby ordered unless there are other lawful and valid grounds for her continued detention. No costs.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

[1] Penned by Judge Jaime T. Hamoy.

[2] Record, p. 1.

[3] RTC Decision, pp. 12-13; Record, pp. 177-178.

[4] Ibid., pp. 8-10.

[5] See Appellant's Brief, Rollo, p. 101.

[6] Rollo, pp. 147-162.

[7] Art. 8, Revised Penal Code.

[8] People vs. Lising, 285 SCRA 595.

[9] People vs. Fabro, 277 SCRA 19; People vs. Hilario, 284 SCRA 344.

[10] People vs. Sumbillo, 271 SCRA 428.

[11] People vs. Albao, 287 SCRA 129.

[12] People vs. Alas, 274 SCRA 310; People vs. Quinao, 269 SCRA 495.

[13] People vs. Elijarde, 306 SCRA 188.

[14] People vs. Cupino. G.R. No. 125688, April 3, 2000 and the cases cited therein.

[15] People vs. Berroya, 283 SCRA 111.

[16] Bañares vs. Court of Appeals, 194 SCRA 59; People vs. Reyes, 282 SCRA 105; People vs. Martin Romero, 306 SCRA 90; People vs. Elpidio Hernando and Elena Aban Hernando. G.R. No. 125214, October 28, 1999.

[17] Llamado vs. Court of Appeals, 270 SCRA 423.

[18] People vs. Ragon, 282 SCRA 90.

[19] People vs. Berroya, supra; People vs. Hilario, supra.

[20] TSN, July 22, 1996, pp. 6-15; 19-20; 25-27.

[21] Ibid., pp. 33-34.

[22] The rule states that "if the inculpatory facts and circumstances are capable of two or more explanations, one of which is inconsistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction." cited in the cases of People vs. Lagnas, 222 SCRA 745; 762; People vs. Maongco, 230 SCRA 562, 572; People vs. Ramilla, 227 SCRA 583.

[23] People vs. Ferras, 289 SCRA 94; People vs. Cavaling, 293 SCRA 267.

[24] People vs. Cosep, 290 SCRA 378.

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