

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERNST GEORG HOLZER AND MERCIDITA D. ALBISO, ACCUSED-APPELLANTS.

G.R. No. 132323. July 20, 2000

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision[1] of the Regional Trial Court, Branch 10, Dipolog City, convicting accused-appellants of estafa under Article 315(2)(d) of the Revised Penal Code and sentencing them to suffer 24 years of reclusion perpetua and to pay P100,000.00 as actual damages.

The information[2] against accused-appellants reads:

That on June 1, 1995 in the City of Dipolog, Philippines, and within the jurisdiction of this Honorable Court the above-named accused conspiring, confederating with and mutually helping one another, defraud one BERNHARD FORSTER by means of deceit, false pretenses and fraudulent acts executed prior to or simultaneously with the commission of the fraud, in the following manner: that accused made the private-complainant Ramos [should be Forster] to believe that their FEB&T check No. C054220 dated August 1, 1995 in the amount of P100,000.00 was duly covered by corresponding funds in the drawee bank, Far East Bank & Trust Company, Dipolog Branch; that they assured the private-complainant that the said check would not bounce; that the latter should accept it as payment of their obligation because the check has corresponding deposits; which deceit and pretenses, the accused did then and there wilfully, unlawfully and feloniously able to obtain and receive from him the sum of P100,000.00; however, when the said check was presented for payment with the said drawee bank, the same was dishonored and refused payment by the said bank for the reason that it was drawn against accuseds' insufficient funds thereat, and despite repeated demands made upon them to make good or pay their obligation, the accused failed and/or refused to do so, to the damage and prejudice of herein private-complainant in the aforestated amount.

CONTRARY TO LAW.

The prosecution presented two witnesses, Bernhard Forster, the complainant, and Jay Adraincem, general bookkeeper of the Far East Bank and Trust Company Branch in Dipolog City. The facts, as established by their testimonies, are as follows:

Accused-appellants are the owners of MGF ELECTRONICS SATELLITE SUPPLY, a business engaged in selling and installing satellite antenna system, with principal office at General Luna Street, Dipolog City.[3] In May 1995, accused-appellants installed in the house of complainant Bernhard Forster, in Maria Uray, Dapitan City, a single satellite antenna, for which complainant paid the total amount of P82,200.00.[4]

Complainant was not, however, satisfied with the satellite antenna installed and the equipment which came with it, i.e., television, remote control receiver, and manual receiver, which he thought were second-hand. Moreover, he wanted a bigger antenna. He was assured by accused-appellant Holzer that should new equipment arrive from

abroad, the used equipment would be replaced and another antenna would be given.[5]

On June 1, 1995, accused-appellant Holzer informed complainant that new equipment had arrived in Manila. His money, however, was not enough to secure the release of the equipment from the Bureau of Customs. For this reason, he asked complainant to lend him P100,000.00.

Complainant agreed and issued a check for P100,000.00 to accused-appellant Holzer. In exchange, the latter issued Check No. C054220 worth P100,000.00 and postdated August 1, 1995, which he and the accused-appellant Mercedita D. Albiso signed.

Before the due date, accused-appellant Holzer asked the complainant not to deposit the check on August 1, 1995. Four days later, accused-appellant again asked the latter not to deposit the check because the money from Switzerland to cover the check had not yet arrived.

Despite the request, however, complainant deposited the check on August 9, 1995. As to be expected, the check was dishonored for having been drawn against insufficient funds.[6]

On the same day, complainant filed a complaint for estafa against accused-appellants.[7] On September 20, 1995, accused-appellants were ordered arrested by Judge Wilfredo C. Martinez. Bail was fixed at P30,000.00 for each of the accused-appellants. Accused-appellant Holzer was committed to the City Jail of Dikayas, Dipolog City; accused-appellant Albiso, who had gone to Manila, was arrested subsequently.[8]

During the trial, bank records were presented showing that accused-appellants opened their Savings Account with Far East Bank and Trust Company in Dipolog City on March 10, 1995 (Account No. 0196-024-10-2) while their Current Account was opened on April 11, 1995 (Account No. 0096-00348-0). The current account of accused-appellants contained the words ATSA, for Automatic Transfer from Savings Account, which meant that should the current account be insufficient to cover a check issued by the drawers, and there are enough funds available in the savings account, there would be an automatic transfer from the savings account to the current account.

FEBT Co.'s Jay Adraincem testified that, as early as April 1995, some checks issued by accused-appellants were already covered by the money transferred from the savings account by virtue of ATSA.[9] He further testified that based on the records, four checks issued by accused-appellants were dishonored by the bank on August 1, 1995 due to insufficient funds. On August 9, 1995, two checks, one of which was Check No. C054220, were also dishonored due to insufficient funds. Per bank policy, the current and savings account of accused-appellants were closed.[10]

The defense presented as its lone witness accused-appellant Ernst Georg Holzer, a Swiss national.

Accused-appellant Holzer testified that in May 1995, he installed a single satellite antenna in the house of complainant. After this transaction was completed, complainant came to him and asked if it was possible to watch German stations on his TV set. Accused-appellant, after consulting his foreign suppliers, answered in the affirmative and promised another antenna for the complainant.[11]

On June 1, 1995, he told complainant that the new equipment had arrived. However, he told complainant that he did not have enough money to secure the release of the equipment from the Bureau of Customs. He, therefore, asked for an advance payment of P100,000.00 for the antenna. According to accused-appellant, he issued Check No. C054220, postdated August 1, 1995, in the amount of P100,000.00 as security for his obligation of installing the second antenna in complainant's house. If he failed to install the antenna, he bound himself to return the amount advanced to him by means of the check in question.[12]

Accused-appellant Holzer claimed that he was able to install the antenna in complainant's house. However, since he did not know yet how much the antenna cost, he did not demand immediate payment from complainant.[13]

In November 1995, accused-appellant Holzer sent a letter from jail demanding from complainant payment of P102,345.75 for the antenna.[14] Complainant answered the letter stating that the prices quoted by accused-appellant were excessive and that he was willing to pay only P20,000.00.[15]

After trial, the lower court rendered judgment as follows:

WHEREFORE, in view of the foregoing and finding the accused guilty of estafa as defined and penalized under Par. 2(d) of Article 315 of the Revised Penal Code, and considering the amount of the fraud, accused are hereby sentenced to suffer 24 years of reclusion perpetua together with the accessory penalties and to indemnify the complaining witness by way of actual damages in the sum of P100,000.00 and to pay the costs.

SO ORDERED.[16]

Hence this appeal. Accused-appellants contend that their liability is only civil, not criminal. They argue (1) that Check No. C054220 was issued to secure the loan they obtained from complainant; (2) that there was no deceit on their part because they duly informed the complainant that the check was not yet funded; and (3) that complainant parted with his P100,000.00 not because of the check issued by them but because of the interest they agreed upon.

Art. 315(2)(d), as amended by R.A. No. 4885, states:

Art. 315. Swindling (estafa).- Any person who shall defraud another by any of the means mentioned hereinbelow... :

xxx

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

xxx

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 elements of estafa, as defined, are as follows:

(1) The offender has postdated or issued a check in payment of an obligation contracted at the time of the postdating or issuance.

(2) At the time of postdating or issuance of said check, the offender has no funds in the bank or the funds deposited were not sufficient to cover the amount of the check.

(3) The payee has been defrauded.[17]

In view of the amendment of Art. 315(2)(d) by R.A. No. 4885, the following are no longer elements of estafa:

1. knowledge of the drawer that he has no funds in the bank or that the funds deposited by him are not sufficient

2. failure to inform the payee of such circumstance[18]

The drawer of the dishonored check is given three days from receipt of the notice of dishonor to deposit the amount necessary to cover the check. Otherwise, a prima facie presumption of deceit will arise which must then be overcome by the accused.

First. Accused-appellant issued a postdated check in payment of an obligation. The first element was thus duly proven. It is admitted that accused-appellants issued Check No. C054220 on June 1, 1995, postdated August 1, 1995, to complainant Forster. The check was issued in exchange for the P100,000.00 loan received by accused-appellant Holzer on that day.

There is no merit in accused-appellants' contention that the check was given by them merely as a security for the faithful performance of their obligation to install a satellite antenna in complainant's house or even, as contended by them in their brief, as security for the payment of the loan of P100,000.00 contracted by them.

The check could not have been issued to secure the faithful performance by accused-appellants of their obligation to install an antenna in complainant's house for if it was, the delivery of the antenna would have rendered the check without effect. The fact is that even after they had delivered the antenna to complainant, accused-appellant Holzer still had to pay the P100,000.00.

Nor could the check have been intended as security for the loan of P100,000.00 from the complainant. Accused-appellant contracted the loan and, therefore, his obligation was to pay it. In this case, Holzer promised to pay on August 1, 1995 when the subject check matured. There was no other means agreed upon to pay the debt. If the check was issued to secure the loan, then complainant and accused-appellant could have agreed on a method of payment, upon the failure of accused-appellants to comply with which, complainant would have recourse to Check No. C054220.

The check was thus not issued as an evidence of the accused-appellant's debt to the complainant but rather, as payment of the former to the latter.

Second. Accused-appellants had no sufficient funds in the bank to cover the check at the time of its issuance. This is the second element of the crime, which we also find to have been duly proven. On June 1, 1995, when they issued the checks, accused-appellants had insufficient funds in the bank. This fact was admitted by accused-appellant Holzer himself:

Q

When did you issue this check to Mr. Forster?

A

1st week of June as I have testified here.

Q

So 1st day of June, 1995, you have money in the bank?

A

Yes.

Q

May I see the record?

A

Yes.

Q

(The Prosecution examining the record.)

First week of June the record says between May 31 and June 5 only P30,000.00?

A

It is P60,000.00.

Q

The post dated check August 1, 1995, at that time, you have no sufficient funds in your drawee Bank?

A

No.[19]

On the other hand, as early as April 1995, the current account of accused-appellants no longer had sufficient funds. When asked about a particular check issued to one Anabelle Ramos which was honored in April 1995, Jay Adraincem, of the Far East Bank and Trust Company Branch in Dipolog City, answered:

- Actually, these checks were issued by them [accused-appellants]. We can see the validation of the bank. Check No. 054207 was encashed to us on April 17, 1995. We can also see this transaction in their statement. This P4,800.00 was encashed April 17, when this check No. 054207 was honored. We can see the ATSA. Meaning, this P4,800.00 comes from the Savings Account. This P9,000.00 and P15,000.00 can also be seen in this statement, meaning for encashment.[20]

Thus, it appears that accused-appellants were running out of funds as early as April 1995, shortly after they opened their savings and current account with Far East Bank and Trust Company in Dipolog City.

Third. There is, however, no evidence that deceit accompanied the issuance of the check. This is the third element, which we find was not proven. The prosecution presented no evidence to show that a notice of dishonor had been to sent accused-appellants. Though complainant testified that he demanded payment from accused-appellant Holzer and waited for several days after the check had been dishonored, his affidavit, dated August 9, 1995, showed that he filed his complaint on the same day the check was dishonored. Complainant failed to explain the discrepancy when confronted about this:

PROS. MAH:

Q

Now, when you received the check as payment of the obligations of the accused to you this post dated check dated August 1, 1995, what did you do with the check?

A

When the due [date] arrived he went to me and requested not to deposit the check on August 1, 1995 but few days later and about four days he again told me that the money from Switzerland has not arrived. I wanted to find out.

Q

So, you deposited the check with the drawee Bank?

A

He kept on coming to me and telling me that his money from Switzerland has not arrived yet.[24]

There is, therefore, no proof that complainant was defrauded.[25]

The prosecution failed to show what the parties' transaction really was. Complainant said that the P100,000.00 which he gave accused-appellant Holzer was a loan, but he also said it was an advance payment. Thus he testified:

Q

With respect to the first antenna system that he installed when was that?

A

I cannot remember maybe May or something like that.

Q

In May of what year?

A

Last year.

Q

Were you able to pay the installation fee?

A

Yes, in full and advance the first one and also the second.[26]

....

Q

You let him borrow money?

A

Yes, the first one was for the antenna and the second was a loan which he needed to bring to Manila according to him.

Q

You forgot that you were installing another antenna?

A

The first one that he installed I paid in advance and the second which I also paid partly, the second antenna not yet paid.

Q

So, you paid partly for the second?

A

Yes.

Q

How much?

A

(Witness presenting to his counsel a receipt with No. 054 dated 5/31/95 in the amount of P55,400.00; the second receipt No. 007 dated May 31, 1995 in the amount of P1,300.00 this P1,300 represents the installation fee.)

....

Q

Did it mention that this P55,400.00 is for the payment for the second?

A

I think it was combined an additional second antenna. It was mixed up payment.

Q

But the statement, balance payment for a single satellite TV?

A

What does has that when I have answered some related matters to this case.

Q

What does it mean when it is stated balance payment for a single satellite TV?

A

You better ask Mr. Holzer. That can be answered by him.[27]

Indeed, the evidence adduced by the parties shows that the P100,000.00 given by the complainant to accused-appellant Holzer was a loan. It was not an advance, as claimed by Holzer, because if it was, Holzer

would not need to issue a check in exchange. It appears that after delivering the antenna, accused-appellant Holzer looked to complainant for payment, something he would not do had the amount of P100,000.00 he had received been given to him as payment for the antenna.

On the other hand, the check which he issued was intended as payment for the loan of P100,000.00. It could not have been given as a security or as a mere evidence of the debt because accused-appellant himself intended to encash it on its due date. That is why accused-appellant asked complainant not to deposit the check until his money from Switzerland arrived.[28] Had the check been given as security for the faithful performance of accused-appellant's obligation to install the antenna, there would have been no need for complainant to encash the check.

It appears that complainant instituted this case through the prodding of one Anabelle Ramos, a complainant in five other estafa cases against accused-appellants. The trial of the six cases against accused-appellants $\frac{3}{4}$ one of which is this criminal case $\frac{3}{4}$ was conducted jointly. We cannot, however, base accused-appellants' conviction on the number of estafa cases filed against them and the evidence presented in the other cases. Each case must be proven independently of each other. In this case, we find the evidence to be wanting.

There is no doubt that complainant suffered damage as a result of the dishonored check. However, where deceit is not proven, the accused cannot be convicted of estafa under Art. 315 (2)(d) of the Revised Penal Code. At most, he can only be held civilly liable.

This is such a case. Accused-appellants' liability is civil. In accordance with the ruling in *Padilla v. Court of Appeals*,[29] accused-appellants must be held liable for P100,000.00 in actual damages to complainant.

WHEREFORE, the decision of the trial court is set aside and another one is entered acquitting accused-appellants of the charge against them on the ground of reasonable doubt but ordering them to pay the complainant the amount of P100,000.00 as actual damages.

The Director of Prisons is hereby directed to forthwith cause the release of accused-appellants unless the latter are being lawfully held for another cause and to inform the Court accordingly within ten (10) days from notice hereof.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

[1] Per Judge Wilfredo C. Martinez.

[2] Records, pp. 1-2.

[3] TSN, pp. 10-11, Jan. 9, 1997.

[4] Records, pp. 67-68; Exhs. 1, 2, & 3.

[5] TSN, pp. 8-9, Nov. 7, 1996.

[6] Id. at 4-5.

[7] Records, p. 3; Exh. 4.

[8] See Records, p. 9.

[9] TSN, pp- 5-6, 29, Sept. 17, 1996.

- [10] Id. at 8, 16.
- [11] TSN, pp. 5-6, Jan. 9, 1997.
- [12] TSN, pp. 6-7, Jan. 9, 1997; TSN, pp. 18-19, March 11, 1997.
- [13] TSN, pp. 7-8, Jan. 9, 1997.
- [14] Records, pp. 71-73; Exh. 5, 6, & 7.
- [15] Id. at 74-76; Exh. 8.
- [16] Rollo, p. 28.
- [17] A. Gregorio, Fundamentals of Criminal Law Review 832 (1997).
- [18] Id.
- [19] TSN, p.20, March 11, 1997.
- [20] See TSN, p. 29, Sept. 17, 1996. (Emphasis supplied)
- [21] TSN, pp. 5-6, 13-14, Nov. 7, 1996.
- [22] Id. at 6.
- [23] Id., at 5-6.
- [24] Id., at 4-5.
- [25] See People v. Lilius, 59 Phil. 339 (1933)
- [26] TSN, p. 8, Nov. 7, 1996. (Emphasis supplied)
- [27] Id. at 9-10.
- [28] Id. at 4-5.
- [29] 129 SCRA 558 (1984).**

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