

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MEYNARD PANGANIBAN, ACCUSED-APPELLANT.

G.R. No. 133028. July 10, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

Presented before us is an appeal from the decision of Branch 136, Regional Trial Court of Makati City[1] convicting accused-appellant of estafa and sentencing him to reclusion perpetua based on the provisions of Article 315, paragraph 2(d) of the Revised Penal Code, as amended by Presidential Decree No. 818.

The Information under which accused-appellant was charged reads:

That on or about the 15th day of January, 1994 in the Municipality of Makati, Metro Manila, Philippines, the above-named accused, by means of false pretenses or fraudulent acts, executed prior to or simultaneously with the commission of fraud, did then and there willfully, unlawfully and feloniously make, draw and issue to complainant, La Perla Sugar Export Corporation, herein represented by Imelda Bernardino, PNB Check No. 009387 postdated January 18, 1994 in the amount of P3,425,000.00 in exchange for 5,000 bags of sugar which he purchased from complainant, knowing fully well that he had no sufficient funds or credit with the drawee bank to cover the value of the aforementioned checks, such that when said check was presented for payment with the drawee bank, the same was dishonored and returned for the reason "Stop Payment" or would have been dishonored for insufficiency of funds or credit had not the said accused, without any valid reason, ordered the drawee bank to stop payment thereof, and that despite demands made upon the accused to make good said check and/or to pay the cash equivalent thereof, said accused failed and refused and still fails and refuses to pay the amount, to the damage and prejudice of complainant.

CONTRARY TO LAW.[2]

Accused-appellant entered a plea of "Not Guilty" during arraignment. On November 9, 1994, pre-trial was held during which the following facts were stipulated upon: (1) accused-appellant purchased from private complainant, La Perla Sugar Export Corporation (hereafter, "La Perla") 5,000 bags of refined sugar valued at P3,425,000.00; (2) to effect delivery of the purchased sugar to accused-appellant, La Perla through its employee Imelda Bernardino issued to accused-appellant Delivery Order No. 9247 dated January 15, 1994[3] addressed to Batangas Sugar Refinery, Inc., Balayan, Batangas, directing the latter to deliver to bearer 5,000 bags of refined sugar in 50 kilo bags, chargeable against La Perla's sugar deposit with said refinery; (3) in payment of the aforesaid 5,000 bags of refined sugar, accused-appellant issued to La Perla a Philippine National Bank ("PNB")-Balayan Branch Check No. 009387 dated January 18, 1994[4] in the amount of P3,425,000.00; (4) the check was deposited by La Perla in its current account with Equitable Banking Corporation-Legaspi Village Branch in Makati City, but the same was dishonored by the drawee bank (PNB-Balayan Branch) for the reason "Payment Stopped"; (4) accused-appellant or his representative withdrew 5,000 bags of refined sugar from Batangas Sugar Refinery, Inc. pursuant to Delivery Order No. 9247; and (5) notwithstanding demands, accused-appellant was only able to make good on his obligation under the aforesaid check to the amount of P267,064.14.[5]

Thereafter, trial on the merits ensued and the prosecution presented Imelda Bernardino, a marketing assistant of La Perla, as its first witness. Bernardino testified that she was the one who sold to accused-appellant 5,000 bags of refined sugar valued at P3,425,000.00; that she gave to accused-appellant Delivery Order No. 9247 dated January 15, 1994 and received by way of payment PNB Check No. 009387 dated January 15, 1994 from accused-appellant; that this transaction took place at the La Perla office at 115 Y.L. Holdings Building, Herrera corner Salcedo Streets, Legaspi Village, Makati City, in the presence of accused-appellant's wife Winifreda Garcia Panganiban and accused-appellant's secretary, Minda Anib. The receipt for Delivery Order No. 9247 was signed by Minda Anib upon the instruction of accused-appellant.

Bernardino described the transaction between accused-appellant and La Perla as a "sale on a cash basis" or a "cash sale", which means that the Delivery Order authorizing withdrawal of sugar from Batangas Sugar Refinery was handed over simultaneously with the delivery of the check in payment of the sugar[6] --- the goods subject of said Delivery Order are then considered "out of sale", or considered already sold by La Perla.[7] Thus, Bernardino maintained, the reason which compelled La Perla to part with its Delivery Order was accused-appellant's issuance of the check.[8]

On January 19, 1994, La Perla deposited accused-appellant's check with its current account in Equitable Bank in Legaspi Village, Makati City. The stop-payment advice was received by the drawee bank, PNB-Balayan Branch, in the afternoon of January 21, 1994 and upon notice thereof, Bernardino called accused-appellant and the Batangas Sugar Refinery but failed to contact either. On January 22, 1994, she instructed someone from La Perla to go to the Batangas Sugar Refinery in order to stop the withdrawal of refined sugar pursuant to Delivery Order No. 9247, but all 5,000 bags have been withdrawn.

Another prosecution witness, Antonio Fernandez, who was a supervisor of the Batangas Sugar Refinery, declared that based on the records of the refinery the withdrawals were made under the name "Babylyn General Merchandise", to whom accused-appellant endorsed Delivery Order No. 9247. This, however, is denied by accused-appellant. The records of Batangas Sugar Refinery further show that the withdrawals were effected on three separate dates: January 19, 1994 in the amount of 1,500 bags; January 21, 1994, 2,800 bags; and January 22, 1994, 1,200 bags.[9]

Enrique Orense, an assistant manager of PNB-Balayan Branch, testified that based on the ledger accounts[10] of the bank, the check subject of the case was deposited under accused-appellant's Current Account No. 315-810696-4 for clearing on January 20, 1994, but was dishonored for the reason "payment stopped". The balance in accused-appellant's current account as of January 20, 1994 was P2,241,957.43. Orense further testified that he was not the one who received the stop-payment order, which in practice is required by the bank to be in writing[11], nor was he in possession of a copy thereof --- thus, he cannot attest as to when such order was received, and who made it.[12]

Based on the bank records brought by Orense, as of January 15, 1994 (or the date of the issuance of the check to La Perla) accused-appellant had a balance of P9,423.19 in his account. This balance was maintained on the dates January 17 and 18, but on January 19, 1994 a deposit was made in the amount of P3,325,000.00. However, by the time Check No. 009387 issued to La Perla was deposited on the early morning of January 20, 1994 the remaining balance as earlier stated was P2,241,957.43.

Before the filing of the complaint for estafa in the lower court, partial payments were made by accused-appellant to La Perla by means of the following: checks in the total amount of P267,064.14, and a 10-wheeler Isuzu cargo truck with tanker valued at P400,000.00. Accused-appellant also delivered to La Perla a transfer certificate of title over a parcel of land in Tuy, Batangas.

Accused-appellant's version of the story, corroborated by his wife, is that he issued PNB Check No. 009387 in blank, then entrusted it to his secretary, Minda Anib, for delivery to La Perla. He and La Perla allegedly had a long-standing business relationship, which resulted in the establishment of mutual confidence and trust. Thus, save for his signature, it was "Mel" of La Perla who filled in the other entries in the check, including the amount of P3,425,000.00 and the date January 18, 1994.

As evidence of the fact that La Perla and her husband had been transacting business since 1989, whereby La Perla bought sugar quedans from her husband, Winifreda Panganiban presented several purchase vouchers with amounts ranging from P500,000.00 to P5,000,000.00. To show that accused-appellant had sufficient funds to cover payment of the check she also submitted a statement of account issued by PNB-Balayan Branch which declared that as of January 19, 1994 Current Account No. 315-810696-4 had a balance of P3,434,423.90.

On January 15, 1994, Winifreda allegedly overheard her husband ordering 5,000 bags of sugar by telephone. She claims that she does not know who he dealt with, or what the purchase price was. The next day, her husband sent a check to La Perla through Minda Anib. When Winifreda came to know that it was a blank check sent through Minda Anib, and when Anib did not come back to Batangas later that day, Winifreda grew apprehensive and called up PNB-Balayan Branch sometime "between January 17 to 20" to order the payment of the check to be stopped.[13] When Anib came back on January 18, 1994, Winifreda asked her why she did not come back sooner and Anib replied that there was a death in her family.[14]

In light of the foregoing testimonies, the trial court held that against the positive assertion of Imelda Bernardino that accused-appellant, together with his wife and Minda Anib, went to the La Perla office to deliver the check and receive the delivery order, accused-appellant's contention that it was Minda Anib alone who went to the La Perla office to deliver a blank check is suspicious and inspires disbelief. Also, the defense's claim that it was Winifreda, not accused-appellant, who ordered that payment on the check be stopped was incredible and contrary to human experience considering that based on Winifreda's testimony she had no knowledge of her husband's transaction with La Perla, or to whom the blank check was issued and for what purpose. The lower court also noted that this is totally in contradiction with accused-appellant's claim in the trial of the B.P. 22 ("Bouncing Checks" Law) case which arose from the same incident that it was he who gave the stop-payment order.

The RTC decision further stated ---

From the evidence on record the reason of the accused in ordering the drawee bank to stop the payment of the check in question was to give way for the encashment of the various checks he issued to different creditors. This is obvious from the movement of his account with the drawee bank, PNB Balayan branch showing that on the date of the transaction subject of this case on January 15, 1994, the accused's account with the PNB Balayan branch had a deposit of only P9,423.90 (Exhs. D, D-1 and D-2). This is the same balance in his account on January 17 and on January 18, 1994 (TSN, Sept. 19, 1995, p. 23).

As of January 19, 1994, accused had a deposit of P3,325,000.00 which obviously came from or represents the proceeds from the sale of 5,000 bags of refined sugar made by the accused to Babylyn General Merchandising, Inc., but on the same day, the account of the accused had only a reducing balance of P2,241,957.43 (TSN, Sept. 19, 1995, p. 23).

Consequently, on the following date, January 20, 1994, when the check in question reached the PNB Balayan branch for clearing, there was no sufficient funds in the account of the accused to cover the value of the aforesaid check, thus prompting the accused to stop the payment of the check issued to the La Perla Sugar Export Corporation. The accused knew this fact and admitted that on the aforesaid date, January 20, 1994, his deposit with the PNB Balayan branch was not sufficient to cover the value of the aforesaid check:

ATTY. LABRIAGA

Q: You mentioned earlier that this check was caused to be annotated with the words "stop payment", and that on January 20, 1994, were there still sufficient funds to cover the check?

WITNESS

A: As far as I know there was (sic) sufficient funds to cover the check, sir. Ang pagkakaalam ko, kulang na po yata. (TSN, July 9, 1996, p. 13).[15]

Based on the foregoing, the trial court ruled that the fact that accused-appellant issued checks to other creditors, all of which were collectible on the same period as La Perla's, was not a valid cause for him to order stoppage of payment of La Perla's check. Consequently, it held accused-appellant guilty beyond reasonable doubt of estafa, although the partial payments he earlier made reduced his civil liability to private complainant. Thus, the dispositive portion of the assailed decision declares:

WHEREFORE, and in consideration of all the foregoing, the Court finds the accused Meynard Panganiban guilty beyond reasonable doubt of the crime of Estafa, punishable under Article 315, par. 2(d) of the Revised Penal Code, as amended by Presidential Decree No. 818 and hereby sentences him to suffer the penalty of reclusion perpetua, and to pay the private complainant, by way of civil liability, the sum of P2,757,935.86 plus legal interest thereon from January 21, 1994, until the same is fully paid (after deducting payments made by the accused in the amount of P267,064.14 and the value of the truck in the amount of P400,000.00) plus costs.

It is so ordered.[16]

In his Brief, accused-appellant assigns the following errors of the lower court: (1) the conviction is erroneous, the prosecution having failed to prove the elements of estafa as alleged in the information; (2) the evidence on record contradicts the allegations in the information; (3) the guilt of accused-appellant was not established beyond reasonable doubt; (4) there was no deceit in the acts of accused-appellant; and (5) the RTC decision was based on mere conjectures and suppositions.[17]

Accused-appellant contends that his conviction should be reversed because the element of fraud or deceit was not proved. Adhering to his version of the incident, he argues that the "stop payment" order was justified and was for valid cause, for when Minda Anib did not return at the close of day on January 15, 1994 his wife grew concerned that the check could have been delivered to the wrong hands. He insists that the "stop payment" order was made in good faith, and was not meant to evade payment of the debt to La Perla.

He also dismisses as false the allegation in the information that "despite demands made upon the accused to make good said check and/or to pay the cash equivalent thereof, said accused failed and refused and still fails and refuses to pay the amount xxx". Accused-appellant points to the fact that he had made partial payments to La Perla in satisfaction of the obligation, including the sale of a cargo truck and the delivery of a title to prime land in Batangas, the value of which land is "substantial, and if sold freely, may even serve to wipe out the accused-appellant's entire obligation to the private complainant." [18]

The crime of estafa under Article 315, paragraph 2(d) of the Revised Penal Code 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) insufficiency of funds to cover the check; and (3) damage to the payee thereof.[19] As with all other forms of estafa, the element of fraud or bad faith is indispensable.[20]

In the instant case, the presence of the first element is not contested. There is no pre-existing obligation; rather, the obligation which gave rise to the issuance of the check was the purchase of 5,000 bags of refined sugar from La Perla. Clearly, La Perla would not have parted with its delivery order for the sugar if not for the simultaneous delivery by accused-appellant of the postdated check. The second and third elements were also successfully

proved by the prosecution. The bank records follow the movement of the funds in accused-appellant's account, and establish that on January 15, 1994 (when accused-appellant issued the postdated check) and on January 18, 1994 (the date on the check), his account had a balance of only P9,423.19. By the time the check was deposited for clearing, the balance of P2,241,957.43 was still insufficient to cover his obligation of P3,425,000.00 to La Perla. Furthermore, a "stop payment" order had been issued, ensuring the impossibility of La Perla's recovery under the said check.

However, all this would amount to only civil liability on the part of accused-appellant unless it is satisfactorily shown that fraud or deceit attended his issuance of the check. In this connection, accused-appellant invokes our ruling in *People vs. Singson*, 215 SCRA 534, which also involved a sugar trader who purchased sugar by the issuance of several postdated checks which were subsequently dishonored. In acquitting her, this Court found reasonable doubt on the existence of fraud, since in the trade of commodities such as sugar and rice it is not unusual that postdated checks are used for the purchase of such goods, and that these checks are funded by the goods' subsequent resale. The Court was convinced that Sucrex Marketing Corporation (the wholesaler in the Singson case) had knowledge that the means by which Singson would fund or cover her checks would be by reselling the sugar she purchased, and concluded that upon such knowledge there can be no deceit. Noteworthy also is the fact that as soon as the checks were dishonored, Singson offered to make replacement checks and when these, again, were dishonored, made partial cash payments and returned to Sucrex the unsold bags of sugar.

Singson serves to underscore the rule in estafa that the fraudulent intentions of the accused must have been shown to exist at the time of the issuance and postdating of the checks or prior thereto. Where such fact of fraud is not ably proven, and the inability to make good on the check may have been occasioned by unforeseen business reverses after the obligation had been taken out, there can only be civil liability but no conviction for estafa. Unfortunately for accused-appellant, the factual considerations of the herein case do not merit application of the above rule.

The two cases are similar only in the sense that both Singson and accused-appellant resold the sugar they purchased from their respective wholesalers in time for the maturity of their postdated checks. However, unlike the accused Singson, accused-appellant had outstanding obligations with creditors other than La Perla, all of which were covered by postdated checks issued against the same bank account as where La Perla's check was to be drawn. Thus, while accused-appellant did sell his sugar to Babylyn General Merchandising, enabling him to make a deposit of P3,325,000.00 on January 19, 1994, his other creditors encashed their checks also on the same date, effectively reducing the balance in accused-appellant's account to P2,241,957.43.

Despite his denials during testimony, it is obvious that accused-appellant was aware, at the time he made out the postdated checks to his creditors including La Perla, that he would have several debts maturing at the same time, all of which are recoverable from the same bank account. Thus, by purchasing and immediately reselling La Perla's sugar and depositing the substantial proceeds thereof, he was able to pay off his other creditors; then, knowing that the balance is insufficient to cover La Perla's check, he immediately ordered the drawee bank to stop its payment. These circumstances, taken together, indicate the accused-appellant's intent to deceive and defraud La Perla at the time he issued the check --- he knew that he could not pay all of his debts from the proceeds of La Perla's sugar alone, least of all La Perla from whom he incurred the largest debt. Had La Perla been aware of the existence of accused-appellants' other creditors, it certainly would not have authorized withdrawal of the sugar.

It also does not help accused-appellant's cause that the trial court saw through his untruthful and elaborate alibi. In its decision, the trial court observed that "the demeanor of both the accused and his wife, whose claim of lack of knowledge regarding the nature of the transaction entered into by her husband and private complainant, served all the more to reveal the fraudulent scheme employed by the accused to the damage and prejudice of the private

complainant." [21] Thus, the trial court dismissed the wife's testimony as nothing but a "desperate attempt" to save her husband from likely conviction. [22] We come to the same conclusion as the trial court upon a reading of the transcripts. In one instance, accused-appellant could not directly answer whether he endorsed Delivery Order No. 9247 to Babylyn General Merchandising, thus enabling the latter to withdraw the sugar from the refinery. At first, he denied the accusation and even insisted that the delivery order was not given to him by Minda Anib but after some vigorous questioning, he conceded that he did sell the delivery order but could not remember if it was to Babylyn General Merchandising. [23]

However, this is not to say that the conviction of accused-appellant rested solely on the weakness of the defense, as insisted by defense counsel in their brief. Quite to the contrary, the evidence of the prosecution, consisting of the testimonies of Imelda Bernardino and Antonio Fernandez and the entries in the bank ledger presented by Enrique Orense sufficiently and cohesively prove the elements of estafa under Article 315, par. 2(d) of the Revised Penal Code. The crime was proven beyond reasonable doubt, but the trial court also observed from accused-appellant's and his wife's prevaricated testimonies a resolve to further deceive and conceal the truth of the transaction. After all, the trial court is most competent to deal with and resolve the issue of credibility of witnesses, having had the firsthand privilege of observing their behavior on the stand, and we see no reason in the herein case not to uphold it.

We also sustain the finding of the lower court that accused-appellant's partial payments only mitigate his civil liability. The lower court is correct in not treating the delivery of a title to land to La Perla as payment; such delivery does not transfer ownership, nor indicate an intent to transfer, and there is no proof submitted that a deed of sale was executed conveying to La Perla ownership over the said parcel of land.

Finally, some clarifications on the impossible penalty. The trial court convicted accused-appellant to reclusion perpetua, following the amendment to Article 315, par. 2(d) of the Revised Penal Code by Presidential Decree No. 818, which increased the penalty for estafa committed by means of bouncing checks.

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 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

As used in Presidential Decree No. 818, reclusion perpetua is not the prescribed penalty for the offense, but merely describes the penalty actually imposed on account of the amount of the fraud involved, which exceeds P22,000.00. [24] *People vs. Hernando*, G.R. No. 125214, promulgated October 28, 1999, summarizes the rules in determining the impossible penalty in such cases:

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]

Applying the above rules to the instant case, accused-appellant shall suffer an indeterminate sentence, the maximum of which shall be reclusion temporal 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. The minimum of this indeterminate sentence shall be within the range of the penalty next lower to that prescribed by the Code for the offense. Such penalty is prision mayor, with a duration of six (6) years and one (1) day to twelve (12) years.[27] In accord with standing jurisprudence[28], we fix the minimum period of the indeterminate sentence in the herein case at twelve (12) years.

WHEREFORE, the assailed decision is AFFIRMED with MODIFICATION. Accused-appellant Meynard Panganiban is hereby declared GUILTY beyond reasonable doubt of estafa under Article 315, paragraph 2(d) of the Revised Penal Code, and sentenced 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 La Perla Sugar Export Corporation in the amount of P2,757,935.86 plus legal interest thereon from January 21, 1994 until fully paid.

SO ORDERED.

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

[1] Presided by Judge Jose R. Bautista.

[2] Records of the Case, 1.

[3] Exh. "A"; Records of the Case, 109.

[4] Exh. "B"; Records of the Case, 110.

[5] RTC Decision; Rollo, 23.

[6] TSN, February 23, 1995, 6-7.

[7] Ibid., 10.

[8] TSN, June 15, 1995, 25.

[9] Exhs. "F" to "O"; Records of the Case, 203-212; TSN,

[10] Exh. "D"; Records of the Case, 112.

[11] TSN, September 19, 1995, 17.

[12] Ibid., 18.

[13] TSN, March 28, 1996, 17.

[14] Ibid., 15.

[15] RTC Decision; Rollo, 34-35.

- [16] RTC Decision; Rollo, 35-36.
- [17] Accused-Appellant's Brief; Rollo, 63-64.
- [18] Accused-Appellant's Brief; Rollo, 72.
- [19] Pacheco vs. Court of Appeals, G.R. No. 126670, December 2, 1999; People vs. Tongko, 290 SCRA 595.
- [20] People vs. Singson, 215 SCRA 534.
- [21] RTC Decision; Rollo, 35.
- [22] Ibid., 32-33.
- [23] TSN, July 9, 1996, 28.
- [24] People vs. Hernando, G.R. No. 125214, October 28, 1999.
- [25] Citing Barrameda vs. Court of Appeals, G.R. No. 96428, September 2, 1999; Fontanilla vs. People, 327 Phil. 1114; Jacobo vs. Court of Appeals, 270 SCRA 270; Nizurtado vs. Sandiganbayan, 239 SCRA 33.
- [26] Citing People vs. Sanchez, 291 SCRA 333; People vs. Gabres, 335 Phil. 242.
- [27] Article 27, Revised Penal Code.
- [28] People vs. Hernando, supra.

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