

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. LEA SAGAN JULIANO, APPELLANT.

G.R. NO. 134120. January 17, 2005

Ponente: AZCUNA, J.

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AZCUNA, J.:

This case was certified to us for review by the Court of Appeals after finding appellant Lea Sagan Juliano guilty beyond reasonable doubt of Estafa under Article 315, paragraph 2(d), of the Revised Penal Code, in Criminal Case No. 2053, and that the proper penalty to be imposed should be reclusion perpetua.

Appellant was charged of violation of Batas Pambansa Bilang 22 (the Bouncing Checks Law) in Criminal Cases Nos. 2051 and 2052, and Estafa under Article 315, paragraph 2 (d), of the Revised Penal Code in Criminal Case No. 2053. The pertinent Information for Estafa reads as follows:

Criminal Case No. 2053

That on or about July 27, 1991, at Kalawag II, Municipality of Isulan, Province of Sultan Kudarat, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with intent to defraud and by means of false pretense, did then and there, willfully, unlawfully and feloniously, [purchase] one hundred ninety (190) Bags of Rice from JCT Agro-Development Corporation and in payment thereof, the said accused [did] make or draw and issue in favor of the said Corporation Check No. 142254 post-dated July 30, 1991 for a value of EIGHTY NINE THOUSAND EIGHT HUNDRED PESOS (P89,800.00), Philippine Currency, drawn against the Philippine Commercial International Bank, Isulan Branch, Isulan, Sultan Kudarat, knowing at the time of issue that she did not have funds with the drawee bank for payment of the said check and when presented for encashment, the same was dishonored by the said bank for reason “Drawn Against Insufficient Funds”, and on August 20, 1991, the said accused again issued PCIB Check Nos. 145452 and 145454 in the amounts of P50,000.00 and P39,800.00, respectively, in replacement of PCIB Check No. 142254 which was earlier dishonored, and when the said replacement checks were presented for encashment, the same were again dishonored by the drawee bank for the same reason, to the damage and prejudice of JCT Agro-Development Corporation in the said amount of P89,800.00.

CONTRARY TO LAW, particularly Article 315, paragraph 2(d) of the Revised Penal Code of the Philippines.[1]

When arraigned, appellant pleaded not guilty to the offenses charged. Joint trial of the three criminal cases ensued.[2]

The antecedent facts, as culled from the records,[3] are as follows:

At about 10:00 a.m. of July 27, 1991, appellant Lea Sagan Juliano purchased 190 sacks of milled rice worth P89,800 from the sales office of complainant JCT Agro-Development Corporation (“JCT”) in Kalawag II, Isulan, Sultan Kudarat. She issued postdated Check No. 142254 drawn against the Philippine Commercial International Bank (PCIB), Isulan, Sultan Kudarat, dated July 30, 1991 for P89,800 in payment of the goods. The sale was

evidenced by Ordered Goods Slip No. 5452[4] dated July 27, 1991, with the check number written thereon.

On July 30, 1991, Remedios Torres, JCT's cashier and acting manager, encashed the check, but the drawee bank refused payment because it was drawn against insufficient funds. Thereafter, Torres requested one Mrs. Graza to tell appellant to visit JCT'S office because the check she issued bounced.

Appellant went to JCT's office and Torres showed her the check that bounced. Appellant pleaded that Torres accept two checks to replace the first check that was dishonored, and Torres agreed. The replacement checks payable to JCT were (1) PCIB Isulan Branch Check No. 145452[5] dated August 20, 1991 for P50,000; and (2) PCIB Isulan Branch Check No. 145454[6] dated August 22, 1991 for P39,800. The Ordered Goods Slip was then revised upon Torres' instruction. Torres surrendered the first check, PCIB Check No. 142254, to appellant when she accepted the two replacement checks.

On their due dates, Torres encashed the two replacement checks, but they were dishonored by the drawee bank. The bank issued two Check Return Slips[7] indicating that payment was refused because the checks were "Drawn Against Insufficient Funds." JCT, through Torres, sent a demand letter[8] dated August 31, 1991 to appellant informing her of the dishonor of the replacement checks. Appellant received the demand letter on September 6, 1991.

Thereafter, appellant went to the office of JCT. Torres brought appellant to one Major Salvador of the PNP, Isulan, Sultan Kudarat. Before him, appellant executed a promissory note[9] dated September 10, 1991 wherein she promised to pay JCT as follows: (1) P20,000 on September 16, 1991; (2) P19,800 on September 23, 1991; (3) P20,000 on September 30, 1991; (4) P20,000 on October 7, 1991; and (5) P10,000 on October 14, 1991, which all amount to P89,800.

Through her driver, appellant sent JCT P10,000 for the installment due on September 16, 1991. JCT rejected the payment because it was short by P10,000. Appellant no longer made any payment. JCT then sent her a demand letter[10] dated October 21, 1991, through registered mail, reiterating the dishonor of the checks she issued and giving her five days from receipt of said letter to pay the amount of P89,800; otherwise, legal action would be taken against her.

The trial court found that appellant was guilty of Estafa under Article 315, paragraph 2(d), of the Revised Penal Code for issuing PCIB Check No. 142254, and violation of Batas Pambansa Bilang 22 for issuing PCIB Check Nos. 145452 and 145454. The dispositive portion of its decision reads:

WHEREFORE, upon all the foregoing considerations, the Court finds the accused, Lea Sagan Juliano, guilty beyond reasonable doubt of the crimes of Violation of Batas Pambansa Bilang 22, otherwise known as the Bouncing Checks law, and of the crime of Estafa under Article 315, 2 (d).

Accordingly, the Court hereby sentences:

IN CRIMINAL CASE NO. 2051

1. the accused, Lea Sagan Juliano, to pay a fine of SIXTY THOUSAND (P60,000.00) PESOS; and to pay the costs of suit;

IN CRIMINAL CASE NO. 2052

1. the accused, Lea Sagan Juliano, to pay a fine of FORTY THOUSAND (P40,000.00) PESOS; and to pay the costs of suit.

IN CRIMINAL CASE NO. 2053

1. the accused, Lea Sagan Juliano, to suffer the indeterminate penalty of imprisonment, ranging from FOUR (4) YEARS and TWO (2) MONTHS of prison correccional, as minimum, to FOURTEEN (14) YEARS of reclusion temporal, as maximum; to pay to the JCT Agro-Development Corporation, Isulan, Sultan Kudarat, the sum of EIGHTY NINE THOUSAND EIGHT HUNDRED (P89,800.00) PESOS, Philippine Currency, representing the value of ONE HUNDRED NINETY (190) BAGS of milled rice, with legal rate of interest from the date of filing of the Information in this case, until fully paid; and to pay the costs of suit.

IT IS SO ORDERED.[11]

Appellant appealed her conviction for Estafa in Criminal Case No. 2053 to the Court of Appeals. The appellate court found appellant guilty of the offense. It pointed out that Presidential Decree No. 818, which took effect on October 22, 1975, increased the penalty[12] provided in Art. 315, paragraph 2(d), of the Revised Penal Code. It held that pursuant to the said amendatory law and considering that the amount of the unpaid check is P89,800, appellant should be penalized by reclusion perpetua. Hence, the Court of Appeals referred the case to us in accordance with Section 13, Rule 124 of the 1985 Rules of Criminal Procedure.

Appellant raised the following issues:

1. The accused could not be found guilty of estafa under Article 315, 2(d) of the Revised Penal Code in the absence of proof beyond reasonable doubt that the accused employed deceit constituting false pretenses or any fraudulent act.
2. Appellant's failure to deposit the amount of PCI Bank check numbered 142254 for P89,800.00 in this case does not give rise to a prima facie evidence of deceit constituting false pretense or fraudulent act.
3. The appellant could not be convicted of estafa under Art. 315 (2) (d) of the Revised Penal Code due to the dishonor of the replacement checks because these were issued in payment of a pre-existing obligation.[13]

The trial court held appellant liable for Estafa for the following reasons: (1) The fact that appellant had insufficient funds in the bank to cover the check at the time she postdated or issued Check No. 142254 is sufficient to make her liable for Estafa; and (2) appellant's failure to deposit the amount necessary to cover her check within three days from receipt of notice from the payee or holder that said check had been dishonored for insufficiency of funds is prima facie evidence of deceit constituting false pretense or fraudulent act.

In the first and second assigned errors, appellant contends that she could not be found guilty of Estafa under Article 315, paragraph 2 (d), of the Revised Penal Code in the absence of proof beyond reasonable doubt that she employed deceit constituting false pretenses or any fraudulent act.

Appellant alleges that when she issued postdated PCIB Check No. 142254 on July 27, 1991, she represented that the check would be fully funded on July 30, 1991. She stated that when complainant JCT accepted the postdated check, it was aware that the funds for the said payment would become available only on the maturity date of the check. JCT was also aware that the postdated check would be fully funded from the proceeds of another check which had not yet been cleared for payment.

Appellant asserts that when JCT agreed to accept the postdated check, it was aware of and in effect accepted the risk that the postdated check would not be funded in case the check that was supposed to fully fund the same would not be cleared. She alleges that the officers of JCT must have known that notwithstanding her representation, there was always a chance that the said check would not be funded on its maturity date for a variety of reasons, among them force majeure. Some of those who purchased rice on credit from her (appellant) may not pay their obligations. The fact that she (appellant) was mistaken in her belief that she would be able to fund the check on its maturity date does not prove deceit.

Appellant maintains that her actions thereafter also belied any intention to defraud. After she was notified of the dishonor of the first check, she did not hide or abscond, but she offered to replace the first check with two checks. Appellant also contends that when JCT accepted the replacement checks in place of PCIB Check No. 142254, she was relieved of her obligation of funding said check. Hence, she alleges that she is not covered by the prima facie presumption of fraud under Article 315, paragraph 2(d), of the Revised Penal Code. She claims that since deceit is absent in this case, she is not liable for Estafa under Article 315, paragraph 2(d), of the Revised Penal Code.

We agree.

Article 315, paragraph 2 (d), of the Revised Penal Code states:

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

...

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

...

(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 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 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.[14] Damage and deceit are essential elements of the offense and must be established with satisfactory proof to warrant conviction, while the false pretense or fraudulent act must be committed prior to, or simultaneous with, the issuance of the bad check.[15] The drawer of the dishonored check is given three days from receipt of the notice of dishonor to cover the amount of the check, otherwise, a prima facie presumption of deceit arises. [16]

As regards the first reason of the trial court in holding appellant liable for Estafa, we find that appellant did not deceive complainant JCT by stating that she had sufficient funds in the bank on the date of issuance of the check. JCT knew that the postdated check was not yet funded as of the date of its issuance and that it would be funded on July 30, 1991. Prosecution witness Remedios Torres testified, thus:

...

PRO. DE PERALTA:

...

Q:- The check which you said ... was used by Lea Sagan Juliano which is PCIB Check No. 142254 dated July 30, 1991, why is it dated July 30 when the transaction occurred on July 29?

A: - She placed it post dated with her assurance that she deposited at PCIB and it is not yet cleared and it will be cleared on July 30, 1991.

Q:- You said her deposit was not yet cleared, why, did she tell you that she deposited a check at the PCIB of Isulan?

A: - Yes, sir.”[17]

As regards the second reason of the trial court for holding appellant liable for Estafa, we note that appellant no longer deposited the amount necessary to cover the first check within three days from receipt of the verbal notice of dishonor of said check because complainant JCT had accepted the replacement checks and surrendered the first check to appellant, which indicated that JCT no longer held appellant liable for the payment of her obligation under the first check.

It has been established that after the dishonor of the first check, PCIB Check No. 142254, Remedios Torres, JCT’s acting manager, verbally informed appellant at JCT’s office that she was unable to encash said check due to insufficiency of funds, but she did not demand that appellant make good PCIB Check No. 142254 within three days from receipt of said notice. Instead, on the same occasion, Torres accepted PCIB Check No. 145452 dated August 20, 1991 for P50,000 and PCIB Check No. 145454 dated August 22, 1991 for P39,800 as the replacement of PCIB Check No. 142254, which first check she surrendered to appellant. JCT was then holding appellant liable for payment under the replacement checks, PCIB Checks Nos. 145452 and 145454, and no longer under PCIB Check No. 142254. Torres testified, thus:

...

PRO. DE PERALTA:

Q: - And since you said PCIB Check No. 142254 in the total amount of P89,800.00 [bounced] because of insufficiency of funds, what did you do next?

A: - I went to the residence of Mrs. Graza to [ask] Mrs. Lea Sagan Juliano is she still purchasing from her the same rice and I found out she had been there very often so I asked Mrs. Graza to help or tell us if ever Mrs. Lea Sagan Juliano to come over and visit our office because the check she issued in payment of the 190 sacks of rice in the total amount of [P]89,800 [bounced].

...

Q: - When Mrs. Lea Sagan Juliano appeared in your Office at Kalawag II, what did you tell her?

A: - When she arrived at our office I showed her the check that [bounced].

Q: - And what transpired next?

A: - Then afterwards she told me she asked for consideration to give or allow certain period to pay that said check by issuing us again another check to be staggered so that she can be able to pay the amount because of her pleadings I let her issue by surrendering the previous check and she issued me the two checks dated August 20 and 22.

Q: - When you said surrendered the check in the amount of P89,800.00, are you referring to PCIB check no. 142254?

A: - That was the check I returned to her.[18]

In accepting the two replacement checks and surrendering the first check to appellant instead of demanding payment under the first check (PCIB Check No. 142254) on the same day that JCT’s Acting Manager informed appellant of the dishonor of the first check, JCT led appellant to believe that she no longer had to deposit the necessary amount to cover the first check within three days from the verbal notice of dishonor. On July 31, 1991, appellant’s balance in her account with PCIB Isulan Branch was P78,400. It is possible that appellant could have deposited P11,400 to make good the first check worth P89,800 if JCT made it clear that it was demanding payment under the first check.

It would have been different if JCT accepted the replacement checks three days after appellant's receipt of the verbal notice of dishonor of the first check, because by then the prima facie evidence of deceit against appellant for failure to deposit the amount necessary to cover the first check within three days from receipt of the notice of dishonor, under Article 315, paragraph 2(d), of the Revised Penal Code, would have been established.

Under the circumstances of this case, the fact that appellant no longer deposited the amount necessary to cover the first check, PCIB Check No. 142254, within the required period cannot be considered prima facie evidence of deceit against appellant. For it was due to complainant JCT's own act of accepting the replacement checks and surrendering the first check to appellant that appellant was no longer obliged to deposit the amount necessary to cover the first check within three days from receipt of the verbal notice of dishonor as JCT was no longer holding her liable for payment under the said check. The surrender of the first check, PCIB Check No. 142254, to appellant would explain why the prosecution failed to submit said check in evidence, and merely relied on testimonial evidence to prove the issuance of the check.

In failing to prove the element of deceit by appellant, the prosecution failed to prove beyond reasonable doubt that appellant is guilty of Estafa under Article 315, paragraph 2(d), of the Revised Penal Code.

Nevertheless, appellant's civil liability to JCT remains, in the amount of P89,800, which is the value of the sacks of rice she purchased.

The third assigned error need not be discussed since the trial court did not convict appellant of Estafa for the issuance of PCIB Checks Nos. 145452 and 145454.

WHEREFORE, the decision of the Regional Trial Court of Isulan, Sultan Kudarat, Branch 19, in Criminal Case No. 2053, is SET ASIDE and appellant Lea Sagan Juliano is ACQUITTED of the crime of Estafa under Article 315, paragraph 2(d), of the Revised Penal Code. Appellant is ordered to pay JCT Agro-Development Corporation, Isulan, Sultan Kudarat, the sum of Eighty-Nine Thousand Eight Hundred Pesos (P89,800.00), representing the value of 190 bags of milled rice, with legal rate of interest from the date of filing of the Information in this case, until fully paid.

No costs.

SO ORDERED.

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

[1] Records (Crim. Case No. 2053), p. 39.

[2] Trial Court Decision, CA Rollo, p. 8.

[3] TSN, March 23, 1994, pp. 7-29; September 19, 1994, pp. 6-20.

[4] Exh. "A," Records (Crim. Case No. 2053), p. 155.

[5] Exh. "B," Records (Crim. Case No. 2053), p. 5.

[6] Exh. "C," Records (Crim. Case No. 2053), p. 5.

[7] Exhs. "E" and "F," Records (Crim. Case No. 2053), p. 159.

[8] Exh. "G," Records (Crim. Case No. 2053), p. 7.

[9] Exh. "1," Records (Crim. Case No. 2053), p. 204.

[10] Exh. “2,” Records (Crim. Case No. 2053), p. 203.

[11] Supra, note 2, at 13-14.

[12] P.D. No. 818, Section 1:

“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:

1[st]. 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”

[13] Rollo, pp. 66, 74, 75.

[14] People v. Holzer, 319 Phil. 196, 203.

[15] People v. Chua, 315 SCRA 326, 336 (1999).

[16] People v. Ojeda, G.R. Nos. 104238-58, June 3, 2004.

[17] TSN, March 23, 1994, pp. 12-13.

[18] Id. at 15-16.

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