

PIO TIMBAL, PETITIONER, VS. HON. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 136487. December 14, 2001

Ponente: VITUG, J.

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VITUG, J.:

A husband was held by the court a quo accountable for estafa through false pretense on account of a check issued by his wife.

Petitioner Pio Timbal and his wife Maritess Timbal were charged with the crime of estafa before the Regional Trial Court, Branch 216, of Quezon City. The accusatory Information under which the spouses were charged read:

"That on or about the 2nd day of February 1994, in Quezon City, Philippines, the said accused, conspiring together, confederating with and mutually helping each other, did, then and there, wilfully, unlawfully and feloniously defraud one JUDY I. BIGORNIA in the following manner, to wit: the said accused, pursuant to their conspiracy, well knowing that accused MARITESS TIMBAL did not have sufficient funds in the bank and without informing the said offended party of such fact, drew, made out and issued to the latter, a Capitol Bank Check No. 096700 postdated February 22, 1994 payable to the order of CASH in the amount of P80,716.00, Philippine Currency, simultaneously with the receipt of hog carcasses they purchased from the said offended party, that upon presentation of said check to the bank for payment, the same was dishonored and payment thereof refused for the reason "Account Closed" and said accused, notwithstanding due notice to said accused Maritess Timbal by the said offended party, Judy I. Bigornia, of such dishonor of said check, failed and refused and still fails and refuses to deposit the necessary amount to cover the amount of the check, to the damage and prejudice of the said offended party, Judy I. Bigornia, in the aforesaid amount of P80,716.00, Philippine currency."[1]

After the corresponding warrants of arrest were issued against the couple, petitioner Pio Timbal posted a surety bond but Maritess Timbal remained at large.

The evidence for the prosecution would tend to establish that on 02 February 1994, Judy I. Bigornia delivered hog meat to the spouses Timbal at their stall located at the Farmer's Market, Cubao, Quezon City. In payment, Maritess Timbal issued in favor of Bigornia Capitol Bank Check No. 096700, dated 22 February 1994, in the amount of P80,716.00. Petitioner was present when the check was issued and handed over by his wife Maritess to Bigornia. When the latter presented the check to the bank for encashment, it was dishonored on the ground that, as early as 15 February 1994, the account against which the instrument was drawn had been closed.

In his defense, petitioner contended that he had no active participation in the business of his wife and claimed that when the check was issued by his wife he was manning his own restaurant located at Fairview, Quezon City, and that, since 22 February 1994, he had not heard from her.

On 29 March 1996, after trial, the Regional Trial Court of Quezon City rendered judgment convicting petitioner of the crime charged; it concluded:

"WHEREFORE, in view of the foregoing, accused PIO TIMBAL is hereby found guilty beyond reasonable doubt of the crime of Estafa penalized under Article 315, par. 2(d) of the Revised Penal Code and he is hereby sentenced to suffer an indeterminate sentence of imprisonment of from 6 years and 1 day of Prison Mayor as minimum to 13 years of Reclusion Temporal as maximum.

"Further, he is hereby condemned to pay Mrs. Judy I. Bigornia the sum of P80,716.00, the unpaid value of the bouncing check issued by his co-accused, Maritess Timbal, with costs."[2]

Aggrieved, petitioner appealed the decision of the trial court to the Court of Appeals. In its now assailed decision, the appellate court affirmed in toto the judgment of the trial court. The appellate court rejected petitioner's defense of denial and alibi and ruled that for this defense to prosper, it must be shown that the accused could not have been physically present at the crime scene at the time of the incident. It agreed with the trial court that there was conspiracy between petitioner and his wife to defraud Bigornia.

Hence, the instant petition.

Reiterating the defense he has raised before the courts below, petitioner maintains his innocence and argues that his mere presence at the time of the issuance by his wife of the dishonored check, even if true, would not be sufficient to establish the existence of conspiracy absent any piece of evidence that might indicate his having taken part, enticed or persuaded Bigornia to receive the check in payment for the goods delivered by her.

The petition has merit.

Article 315, paragraph 2(d), of the Revised Penal Code, as amended by Republic Act 4885, for which petitioner has been indicted and convicted, penalizes estafa when committed -

"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

"(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 of the above offense are that - (a) a check has been drawn or postdated in payment of an obligation contracted at the time the check is issued; (2) there are no funds sufficient to cover the check; and (3) the payee sustains damage thereby.[3] In order to constitute estafa under the statutory provisions, the act of postdating or of issuing a check in payment of an obligation must be the efficient cause of the defraudation; accordingly, it should be either prior to or simultaneous with the act of fraud. In fine, the offender must be able to obtain money or property from the offended party by reason of the issuance, whether postdated or not, of the check. It must be shown that the person to whom the check is delivered would not have parted with his money or property were it not for the issuance of the check by the other party.[4]

The decision of the trial court, as well as that of the appellate court, would reveal that the main basis used in convicting petitioner was the fact of his presence at the time of the issuance of the check by his wife. Nothing else was shown nor reflected in the appealed decision that could indicate any overt act on the part of petitioner that would even remotely suggest that he had a hand in dealing with Bigornia. Appellant's mere presence at the scene of a crime would not by itself establish conspiracy, absent any evidence that he, by an act or series of acts, participated in the commission of fraud to the damage of the complainant.

While conspiracy need not be established by direct evidence, it is, nonetheless, required that it be proved by clear and convincing evidence[5] by showing a series of acts done by each of the accused in concert and in pursuance of the common unlawful purpose.[6] The degree of proof required to establish conspiracy, like the crime itself, is nothing less than proof beyond reasonable doubt.[7]

In criminal cases, conviction must rest on a moral certainty of guilt.[8] The burden of proof is upon the prosecution to establish each and every element of the crime and that it is the accused who has been responsible for its commission or that he has conspired with the malefactor. Certainly, there is no conspiracy in just being married to an erring spouse.

WHEREFORE, the petition is GRANTED. The decision of the Court of Appeals, affirming the judgment of conviction of the trial court of petitioner, is REVERSED and SET ASIDE. Petitioner Pio Timbal is ACQUITTED of the crime charged on reasonable doubt. Costs de oficio.

SO ORDERED.

Melo, (Chairman), Panganiban, Sandoval-Gutierrez, and Carpio, JJ., concur.

[1] Records, p. 7.

[2] Rollo, p. 29.

[3] Castro vs. Mendoza, 226 SCRA 611; People vs. Tongko, 290 SCRA 595.

[4] People vs. Reyes, 228 SCRA 13.

[5] Bayan vs. Court of Appeals, 181 SCRA 844.

[6] People vs. Quiñones, 183 SCRA 747.

[7] People vs. Camaddo, 217 SCRA 162.

[8] People vs. Quindipan, 253 SCRA 421.

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