

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANILO GULION AND MARILYN MIONES, ACCUSED.

G.R. No. 141183. January 18, 2001

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

By this petition for review on certiorari under Rule 45 of the Revised Rules of Court, accused-appellant appeals his conviction on three counts of estafa under Article 315, paragraph 2(d) of the Revised Penal Code. The informations under which he was charged read:

Criminal Case No. 7647

That on or about March 26, 1990, in the Municipality of Tagum, Province of Davao, Philippines, and within the jurisdiction of this Honorable Court, accused Danilo Gulion, conspiring, confederating and with the help of accused Marilyn Miones who owns a checking account with Far East Bank and Trust Co., with intent to defraud, knowing that the said account did not have sufficient funds in the bank, did then and there wilfully, unlawfully and feloniously draw and issue Far East Bank and Trust Co. Check No. 30799 in the amount of FIFTEEN THOUSAND PESOS (P15,000.00), Philippine Currency, in exchange of cash in favor of Roselier Molina, and that upon presentation of the said check for payment of the bank within 90 days from date of issue, the same was dishonored for reason "Account Closed" and that inspite of notice of dishonor and repeated demands made, the said accused failed to make the necessary deposit to cover the amount of the check or to pay the same, to the damage and prejudice of the said Roselier Molina in the amount of P15,000.00.

Criminal Case No. 7648

That on or about March 13, 1990, in the Municipality of Tagum, Province of Davao, Philippines, and within the jurisdiction of this Honorable Court, accused Danilo Gulion, conspiring, confederating and with the help of accused Marilyn Miones who owns a checking account with Far East Bank and Trust Co., with intent to defraud, knowing that the said account did not have sufficient funds in the bank, did then and there wilfully, unlawfully and feloniously draw and issue Far East Bank and Trust Co. Check No. 25346 in the amount of FIFTEEN THOUSAND PESOS (P15,000.00), Philippine Currency, in exchange of cash in favor of Roselier Molina, and that upon presentation of the said check for payment of the bank within 90 days from date of issue, the same was dishonored for reason "Account Closed" and that inspite of notice of dishonor and repeated demands made, the said accused failed to make the necessary deposit to cover the amount of the check or to pay the same, to the damage and prejudice of the said Roselier Molina in the amount of P15,000.00.

Criminal Case No. 7649

That on or about March 18, 1990, in the Municipality of Tagum, Province of Davao, Philippines, and within the jurisdiction of this Honorable Court, accused Danilo Gulion, conspiring, confederating and with the help of accused Marilyn Miones who owns a checking account with Far East Bank and Trust Co., with intent to defraud, knowing that the said account did not have sufficient funds in the bank, did then and there wilfully, unlawfully and feloniously draw and issue Far East Bank and Trust Co. Check No. 25349 in the amount of FIVE THOUSAND PESOS (P5,000.00), Philippine Currency, in exchange of cash in favor of Roselier Molina, and that upon presentation of the said check for payment of the bank within 90 days from date of

issue, the same was dishonored for reason "Account Closed" and that inspite of notice of dishonor and repeated demands made, the said accused failed to make the necessary deposit to cover the amount of the check or to pay the same, to the damage and prejudice of the said Roselier Molina in the amount of P5,000.00.

The said criminal cases were jointly heard by the Regional Trial Court (Branch 1) of Tagum, Davao[1] only against accused-appellant. Accused Marilyn Miones remained at large.

On February 10, 1992, the trial court rendered a decision convicting accused-appellant on all charges. The dispositive portion of the decision provides:

WHEREFORE, premises considered, the guilt of accused DANILO GULION having been proven beyond reasonable doubt pursuant to Article 315, par. 2(d) of the Revised Penal Code, as amended by P.D. 818, after applying the Indeterminate Sentence Law, is hereby sentenced to serve an imprisonment at the National Penitentiary, Muntinlupa, in the following dispositions:

- Criminal Case No. 7647 - Six (6) years and One (1) day of prision mayor, minimum, to Twelve (12) years prision mayor, maximum. To indemnify Roselier Molina in solidum of P13,500.00;
- Criminal Case No. 7648 - Six (6) years and One (1) day of prision mayor, minimum, to Twelve (12) years prision mayor, maximum. To indemnify Roselier Molina in solidum of P13,500.00;
- Criminal Case No. 7649 - Six (6) years and One (1) day of prision mayor, minimum, to Eight (8) years prision mayor, maximum. To indemnify Roselier Molina in solidum of P4,500.00;
- With the accessory penalties of law.

SO ORDERED.[2]

With some slight modifications on the penalty imposed, the Sixth Division of the Court of Appeals[3] affirmed accused-appellant's conviction. Thus, in its decision dated June 4, 1999, the dispositive portion read:

WHEREFORE, premises considered, the decision subject of this appeal is hereby AFFIRMED with the following MODIFICATIONS:

- In Criminal Case No. 4647, accused-appellant is sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) day of prision mayor, as minimum, to twelve (12) years and one (1) day of reclusion temporal, as maximum.
- In Criminal Case No. 4648, accused-appellant is sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) day of prision mayor, as minimum, to twelve (12) years and one (1) day of reclusion temporal, as maximum.
- In Criminal Case No. 4649, accused-appellant is sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) day of prision mayor, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum.

SO ORDERED.[4]

It is not disputed that Gulion, herein accused-appellant, and Miones, accused-at-large, had separate checking accounts with the Far East Bank and Trust Company ("FEBTC") in Tagum, Davao: Gulion had Account No. 0093-00276-9, while Miones had Account No. 0093-00406-0.[5] The checks subject of this case, while bearing the signature of accused-appellant, came from the check booklet of accused-at-large, as clearly indicated by the fact that all three checks bore the account number 0093-00406-0 on their upper left corners.

As found by the Regional Trial Court, the three checks were negotiated to private complainant Roselier Molina

sometime on February 1990 under an arrangement termed "rediscounting", i.e., in exchange for cash, accused-appellant issued to Molina the checks, and the latter deducted ten percent (10%) from the proceeds thereof.[6] Thus, for Check Nos. 30799 and 25346, both in the amount of P15,000.00, Molina paid for each check P13,500.00 cash, and for Check No. 25349 in the amount of P5,000.00, he paid P4,500.00 cash. This appears to be a long-standing practice between Molina and accused-appellant, and Molina was in fact familiar with accused-appellant's signature as the latter often transacted with him using checks, instead of cash. On all their previous transactions, Molina was able to recover the amounts he loaned out to accused-appellant.

The checks in the instant case were delivered by accused-at-large to Molina at the latter's residence in Apokon Road, Tagum, Davao. The checks, which as earlier stated were signed by accused-appellant, were paid to "CASH" and indorsed by accused-at-large on their respective dorsal portions.

When, on due date, Molina negotiated the checks by presentment at the FEBTC in Tagum, Davao, all three checks were dishonored on the ground of "Account Closed and Signature Differs on File." Molina, through his lawyer, then demanded from accused-appellant the payment of the amounts covered by the said checks but the latter refused, maintaining that the checks were not his but accused-at-large's, and disowning that he issued any check in favor of Molina or that he had any outstanding obligations with him. Hence, the filing of this case.

In his defense, accused-appellant contended that he remembers signing three FEBTC checks in blank sometime when on his way to Banaybanay, Davao Oriental and was in a hurry to leave his office. He signed the checks that were laid out on his office table, thinking them to be his checks, prepared by his trusted secretary for the payment of the usual office bills and commissions (the dates, amounts and other details of which were customarily filled in later by his secretary). Molina did not call his attention to the three checks even after their dishonor on March 13, 18 and 26, 1990, respectively, and he only came to know of the irregularity in the checks he signed when he received a demand letter, dated June 18, 1990, from Molina's lawyer.

Offering an explanation for how the checks of accused-at-large found their way into his office, accused-appellant stated that accused-at-large was a client of his insurance business, also acted as an agent for him in selling insurance, and thus, habitually visited his office. He does not deny that they were well-acquainted as in fact he "introduced/recommended" accused-at-large when the latter applied to open a checking account with the FEBTC branch in Tagum, Davao.[7] Accused-appellant stated that accused-at-large must have placed on his office table the checks which he thereafter mistakenly signed, then filled in the other entries (particularly, making the checks payable to "CASH"; the respective amounts of P15,000.00, P15,000.00, and P5,000.00; and, postdating the checks to "March 13, '90", "3/18/90", and "March 26, '90"), indorsed the checks, and rediscounted the same with Molina in exchange for cash, less the 10% interest.[8]

Accused-appellant denied that he has ever "rediscounted" a check directly with Molina or through Miones, and any checks he may have issued to Molina were in payment of signed "chits" for food and drinks in the latter's restaurant.[9] Additionally, he contended that he could not have acted in conspiracy with accused-at-large Miones as he himself was defrauded by Miones when the latter issued him a check, from the same FEBTC checking account, which was also dishonored for the reason "Account Closed". This other check is the subject of a separate estafa case docketed as Criminal Case No. 7817 with the RTC in Tagum, Davao.[10]

The trial court was not persuaded by accused-appellant's explanation and found that, on the face of the questioned checks, accused-appellant was the drawer and accused-at-large a general indorser. It found the existence of an implied conspiracy between accused-appellant and accused-at-large, as manifested in accused-appellant's unique modus operandus of drawing checks from his co-conspirator's checking account to confuse the payee and evade liability.

In refusing to give credence to accused-appellant's defense of mistake or inadvertence, the trial court said that the account number 0093-00406-0 was stamped in clear and bold numbers on the face of the check, in a manner that was conspicuous and sufficient to place anyone signing the check "on guard".^[11] The trial court reasoned that if accused-appellant's explanation that he thought the checks were meant for payment of bills and agents' commissions was to be believed, why was there no evidence presented on the identity of these agents and billing offices? Rather, all the checks were paid to "CASH" and indorsed on their dorsal sides by accused-at-large Miones. Further, accused-appellant's testimony stood alone and uncorroborated; none of his employees testified that he indeed signed blank checks intended for payment of the usual office expenditures.

Thus, applying the provisions of Article 315, paragraph 2(d) of the Revised Penal Code, as amended, particularly, that the issuance of a check where there are no funds or insufficient funds to cover the amount represented by the check gives rise to a presumption that the check was issued in fraud of the payee, the trial court held such presumption to be un rebutted by accused-appellant. Instead, and despite of the demand letter sent to him by Molina's lawyer, accused-appellant refused to make good on the three checks he issued and invoked the convenient explanation that he signed these checks by mistake.

The Court of Appeals upheld the trial court's finding of conspiracy, and held that based upon the conduct of the two accused in the instant case, their closeness of personal association, concerted action and community of design, it is obvious that they conspired to defraud private complainant through issuing worthless checks.^[12] Thus, the CA decision reads:

In this case, the record is bereft of direct proof as to previous agreement between accused-appellant and his co-accused Miones to commit the crime charged. Conspiracy is however evident from the following acts and/or conduct of the said accused which were established through the evidence submitted by both the prosecution and the defense, viz: (1) Acts of accused-appellant's co-accused Miones showing closeness and familiarity with accused-appellant, such as, her act or conduct of freely walking in and out of accused-appellant's private office room with or without the presence of said appellant and with or without first getting permission from him despite the fact that she (Miones) is not in any way connected with the insurance business being managed by appellant; (2) accused-appellant's act of introducing Miones to Far East Bank, Tagum Branch, the bank where he (appellant) maintains a checking/current account, and recommending that Miones be accepted as such depositor; (3) Miones' act of opening a checking/current account with the said bank on December 6, 1989; (4) that subsequent thereto accused-appellant signed the subject checks owned by his co-accused Miones as drawer and/or issuer thereof in his private office room; (5) that Miones filled up the other details of the checks by writing on the face of each (of the) checks the following dates: "March 13, '90"; "3/18, '90" and "March 26, '90"; respective amounts covered by the checks and the word "CASH" as the payee thereof; (6) that Miones affixed her signature at the dorsal side of each of the subject checks as indorser and negotiated and personally delivered the checks to private complainant in exchange of cash; and (7) accused-appellant, when notified by private complainant of the dishonor of the subject checks, denied having issued the checks and refused to make any payment in connection therewith.^[13]

The Court of Appeals then stated that the fact that the checks accused-appellant signed were not his but accused-at-large's carries no significance since the conspiracy between them had been duly proven. The Court of Appeals was convinced that accused-appellant knew all along that the checks were not his and that the account of accused-at-large had no funds to cover the checks drawn.

In the instant petition, accused-appellant designates two grounds for the reversal of the decision of the Court of Appeals, namely:

- The decision appealed from erred in not applying the best evidence rule which rendered the checks owned by Miones and signed by Gulion as invalidly drawn, null and void, without force and effect; and

- The decision appealed from erred in applying the rulings in cited decisions of this Honorable Court on conspiracy, which, however, was invalidly deduced from acts that were not positively shown to have constituted common design and concerted effort, and the conclusion not following from the premise.[14]

Accused-appellant essentially reiterates the defense of mistake or inadvertence that he invoked before the lower courts; he stands by his story that he signed the three checks in blank thinking that they were his and were intended to pay office bills and agents' commissions. He asserts that he had no knowledge, consent or participation in the acts of accused-at-large of filling in the details of the checks, indorsing and delivering them to Molina, and receiving the proceeds thereof. He argues that he could not be convicted of estafa under Article 315, paragraph 2(d) of the Revised Penal Code because under the circumstances, there was no valid issuance of the subject checks nor any showing that the checks were issued by him to Molina in payment of an obligation.

It is a well-recognized rule that factual findings of trial courts, as well as their assessment of the credibility of witnesses, are entitled great weight and respect by this Court more so when these are affirmed by the Court of Appeals. The rule, however, is not without exceptions, such as: (1) when the conclusion is a finding grounded entirely on speculations, surmises and conjectures; (2) the inferences made are manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts or premised on the absence of evidence on record.[15] Especially in criminal cases where the accused stands to lose his liberty by virtue of his conviction, the Court must be satisfied that the factual findings and conclusions of the lower courts leading to his conviction satisfy the standard of proof beyond reasonable doubt.

The elements of estafa under Article 315, paragraph 2(d) of the Revised Penal Code, as amended, are the following: (1) postdating or issuing checks in payment of an obligation contracted at the time the checks were issued; (2) lack or insufficiency of funds to cover said checks; (3) knowledge on the part of the drawer of checks of such lack or insufficiency of funds; and (4) damage capable of pecuniary estimation to the payee thereof.[16] Underlying all these must be the presence of fraud or deceit.

The peculiarity of the instant case rests on the fact that the person who issued the checks is not the lawful owner of the checking account from which the checks were drawn. Thus, at the time these checks were issued by Gulion it is a foregone conclusion that Molina would never recover from the checks because the drawee bank would not recognize the signature of Gulion. In other words, the dishonor of the checks will not only be on account of lack or insufficiency of funds in Miones's account but also because the checks are invalid for having been issued by an unauthorized person. Thus, while to an extent we agree with accused-appellant that there was no valid issuance of the said checks we hold that accused-appellant could still be held liable for estafa under Article 315, paragraph 2(d) of the Revised Penal Code even if he is not the owner of the checking account in question if it is shown that he conspired with accused-at-large by knowingly signing the latter's checks to ensure Molina's inability to encash the said checks. Under a theory of conspiracy, it is sufficient that the accused is possessed of guilty knowledge that his co-accused had no funds in the bank when the checks were negotiated.[17]

There is thus an issue as to whether the prosecution has ably proved that accused-appellant conspired with accused-at-large by signing the checks, knowing that those were checks of Miones and that Miones had no funds in the bank to cover them when presented, with a view to cheat Molina of his money.

The existence of a conspiracy may be implied from the conduct of the accused before, during and after the commission of the crime, showing that the accused had acted under a common purpose or design.[18] Like the crime itself, the conspiracy must be proven beyond reasonable doubt.[19] The Court of Appeals found that apart from the signature of accused-appellant on the checks of accused-at-large, there were sufficient indicators from the evidence of both prosecution and defense that accused-appellant shared a personal closeness and familiarity with accused-at-large. To recapitulate: Miones freely walked in and out of Gulion's private office room with or

without securing the permission of the latter; and, when Miones opened a checking account with FEBTC, she was recommended by Gulion. The Court of Appeals also noted that Miones opened her FEBTC checking account on December 6, 1989, or just a few months before the checks were issued and negotiated to Molina.

For circumstantial evidence to convict, the Rules of Court require that: (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[20] We find that while the abovenamed circumstances establish the friendship between the two accused and the trust that accused-appellant reposed upon accused-at-large, they are insufficient to merit the conclusion that accused-appellant conspired with accused-at-large by affixing his signatures on the latter's checks knowingly and with an intent to defraud Molina. A closer look at the circumstances under which the checks were negotiated reveal that it was Miones alone who delivered the checks to Molina and received payment therefor. There is no evidence that Miones was authorized by accused-appellant to exchange, on his behalf, the checks for cash. There is also no evidence that accused-appellant received from Miones any portion of the proceeds of the said checks. It is principal in a case of estafa through postdated checks that the accused must have been shown to have obtained money or property from the offended party because of the issuance of the check.[21] There is likewise no showing of past instances where Molina "rediscounted" Gulion's checks through Miones; the lower courts simply and unquestioningly accepted as fact that Miones was an authorized agent of Gulion in transacting with Molina.

In other words, the prosecution failed to show by the conduct of accused-appellant before, during and after the commission of the crime that he was a participant to the defraudation of Molina. It certainly cannot be conclusively inferred from proof of his friendship with accused-at-large, or from his adamant refusal to pay Molina, or to even recognize the existence of the debt.

In contrast to the weakness of the prosecution's evidence, accused-appellant presented a fairly cohesive and logical explanation for how his signatures figured in the questioned checks. He stated that as the proprietor of an insurance agency, he habitually signed blank checks for agents' commissions and office bills, which his secretary then filled out with the pertinent names of payees, dates and amounts. He signed Miones's checks while in a hurry as he had an appointment at another town, thinking them to be the usual blank checks laid out by his secretary on his table for his signature. His insistence that the checks were so much like his own is believable, because he also had a checking account with FEBTC. Contrary to the RTC's observation that his story was incredible because the account number displayed on the upper left hand corners of the checks would have readily informed him that the checks were not his, we find that such oversight is not highly unlikely if we consider that the first six figures of his and Miones's account numbers are the same. Following his version of the story, it is not altogether improbable that a trusted friend of his like Miones (who was frequently in and out of his office and could have been very familiar with his work habits and schedules) took advantage of his carelessness and stealthily placed her three blank checks on his office table with the design to obtain money from Molina using his signature. Then Miones filled in the other details in the checks, by postdating them, making them payable to "CASH", and even affixing her signature thereto as indorser.

Not surprisingly, the checks were dishonored upon presentment, for the reason "Account Closed and Signature Differs on File." Accused-appellant came to know of his alleged involvement in these unpaid obligations only when Molina's lawyer sent him a demand letter, to which his reaction was to disown owing any debts to, or having issued any checks in favor of, Molina.

Good faith is a defense to a charge of estafa by postdating a check.[22] This may be manifested by the accused's offering to make arrangements with his creditor as to the manner of payment[23] or, as in the present case, averring that his placing his signature on the questioned checks was purely a result of his gullibility and

inadvertence, with the unfortunate result that he himself became a victim of the trickery and manipulations of accused-at-large.

We further note from the findings of the RTC that in all the previous transactions of accused-appellant with Molina, he always made good on the checks he issued. It is also undisputed that accused-appellant himself filed a case for estafa against Miones, respecting a check for P15,000.00 which Miones drew in favor of accused-appellant from the same FEBTC checking account subject of this case. Obviously, accused-appellant had abandoned the trust with which he regarded Miones as he also deemed himself defrauded by her issuance of yet another worthless check. Moreover, the check in this other estafa case was issued by Miones on February 3, 1990, postdated to February 16, 1990,[24] or about the same time as the checks in the instant case were issued and negotiated. Accused-appellant even testified that he accompanied the police in arresting Miones, who fled to Butuan City.[25]

We cannot fully agree with the reasoning of both the RTC and the Court of Appeals that this other estafa case has no significance to the case at bench, simply because it involves a different check. In the present case where there is no direct proof of conspiracy between the accused, and where an implied conspiracy is sought to be proved by an evaluation of the conduct of accused-appellant before, during, and after the commission of the crime, accused-appellant's acts of filing estafa charges against his supposed co-conspirator, and his actively seeking her arrest and participating in the operations that led to her arrest, cast doubt on the prosecution's theory of implied conspiracy.

Based on all the foregoing, we hold that accused-appellant cannot be held guilty for estafa under Article 315, paragraph 2(d) of the Revised Penal Code because the evidence of the prosecution absolutely failed to prove his guilt.

WHEREFORE, the questioned decision of the Court of Appeals is REVERSED and accused-appellant Danilo Gulion is ACQUITTED. He is ordered immediately RELEASED from confinement unless held for some other legal cause. No costs.

SO ORDERED.

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

[1] Presided by Judge Marcial L. Fernandez.

[2] RTC Decision; Rollo, 55.

[3] The decision was written by the Division Chairman, Associate Justice Quirino D. Abad-Santos, Jr. Associate Justices Romeo J. Callejo, Sr. and Mariano M. Umali concurred.

[4] CA Decision; Rollo, 65-66.

[5] RTC Decision; Rollo, 50.

[6] Ibid., 48.

[7] Petition; Rollo, 19.

[8] Ibid., 22.

[9] Ibid., citing TSN, January 23, 1992, 9-12.

[10] Ibid., 27.

[11] RTC Decision; Rollo, 50.

[12] CA Decision; Rollo, 63.

[13] Ibid., Rollo, 62-63.

[14] Petition; Rollo, 22.

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

[16] People vs. Dizon, G.R. No. 130742, July 18, 2000.

[17] See People vs. Hernando, 317 SCRA 617, and Zagado vs. Court of Appeals, 178 SCRA 146, where the accused, who did not issue nor indorse the postdated checks in question but were the ones who negotiated the same with the parties aggrieved, were held liable for estafa upon a finding of conspiracy with the issuers of the said checks.

[18] People vs. Sumampong, 290 SCRA 471; People vs. Gungon, 287 SCRA 618.

[19] People vs. Hilario, 284 SCRA 344.

[20] Sec. 4, Rule 133, Revised Rules of Court; cited in People vs. Llaguno, 285 SCRA 124; People vs. Mendoza, 284 SCRA 705; People vs. Bato, 284 SCRA 223.

[21] People vs. Hernando, 317 SCRA 617; Nieva vs. Court of Appeals, 272 SCRA 1; People vs. Grospe, 157 SCRA 154.

[22] Vallarta vs. Court of Appeals, 150 SCRA 336, citing People vs. Villapando, 56 Phil. 31.

[23] Id.

[24] Petition; Rollo, 27.

[25] RTC Decision; Rollo, 54. Subsequently, Miones escaped detention and, at the time of the filing of this petition, has remained at large.

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