

YOLANDA GARCIA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES RESPONDENT.

G.R. No. 144785. September 11, 2003

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is an appeal from the decision[1] dated August 30, 2000 of the Court of Appeals in CA-G.R. CR No. 22771 affirming in toto the decision of the Regional Trial Court, Branch 43 of Manila which found petitioner Yolanda Garcia guilty beyond reasonable doubt of the crime of estafa, and sentenced her to suffer the penalty of imprisonment ranging from six (6) years and one (1) day to ten (10) years and one (1) day of prision mayor, to indemnify the complainant in the amount of P87,000.00, and to pay the costs.

Petitioner Yolanda Garcia was charged with estafa in an information which reads:

That on or about and during the period comprised between June 20, 1995, and August 15, 1995, inclusive, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously defraud one DOLORES S. APOLONIO in the following manner, to wit: the said accused by means of false manifestations and fraudulent representations which she made to said DOLORES S. APOLONIO to the effect that accused has three (3) checks which according to her have sufficient funds and if encashed, the same will not be dishonored; and by means of other deceits of similar import, induced and succeeded in inducing the said DOLORES S. APOLONIO to accept the following checks:

Name of Bank

Check No.

Amount

Date

Payable to

Phil Nat'l Bank 046884 P28,000.00

6-20-'95

Cash

-do- 047416 34,000.00

8-15-'95

-do-

Pilipinas Bank 60042087 25,000.00

7-25-'95

Garcia Vegetable Dealer

as payments of assorted vegetables which accused purchased and received from said DOLORES S. APOLONIO in the total amount of P87,000.00, said accused knowing fully well that the said manifestations and representations were all false and untrue as said checks when presented to the bank for payment were all dishonored for the reason "Drawn Against Insufficient Funds", and were made solely for the purpose of obtaining, as in fact she did obtain assorted vegetables in the amount of P87,000.00; which once in her possession and with intent to defraud, she willfully, unlawfully and feloniously misappropriated, misapplied and converted the said assorted vegetables or the value thereof to her own personal use and benefit, to the damage and prejudice of the said owner in the aforesaid amount of P87,000.00, Philippine Currency.

CONTRARY TO LAW.[2]

Petitioner pleaded "not guilty" when arraigned. Trial on the merits then ensued.

For more than a year, petitioner had been buying assorted vegetables from Dolores Apolonio in Divisoria, Manila. Petitioner always paid in cash. However, in May 1995, petitioner thrice bought vegetables from Apolonio using three checks: one postdated June 20, 1995 for P28,000.00, drawn by her husband, Manuel Garcia; the second postdated July 25, 1995 for P34,000.00, drawn by her daughter Gigi Garcia; and the third postdated August 15, 1995 for P25,000.00, drawn by her nephew Jose Nadongga Jr. When the three checks were presented for payment, they were all dishonored for insufficiency of funds.

Hence, Apolonio instituted the aforesaid criminal case against petitioner.

In her defense, petitioner claimed that the amounts of the checks were already paid and that the same did not belong to her as they were only paid to her by her customers. She also maintained she did not have any transaction with the complainant in May 1995.

On December 29, 1998, the trial court rendered a decision, the dispositive portion of which reads:

WHEREFORE, in view of all the foregoing considerations, the Court finds the accused guilty beyond reasonable doubt of the crime of Estafa under Art. 315, Sec. 2(2) (sic) of the Revised Penal Code, as amended and there being no mitigating or aggravating circumstances and taking into account the provisions of the Indeterminate Sentence Law, the Court hereby sentences the accused Yolanda Garcia to suffer the indeterminate penalty of SIX (6) YEARS and ONE (1) DAY to TEN YEARS and ONE (1) DAY of prison mayor as maximum.

She should also indemnify the complainant in the amount of P87,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs.[3]

Petitioner appealed her conviction to the Court of Appeals, which, on August 30, 2000, rendered the assailed decision affirming the judgment of conviction rendered by the trial court.

In this petition for review, petitioner alleges that the Court of Appeals erred:

- In affirming the trial court's decision finding her guilty of the crime of estafa under Article 315, Section 2[d] of the Revised Penal Code as amended for issuing postdated checks, when she was charged in the information for the crime of estafa through false pretenses punishable under Art. 315, Section 2[a] of the Revised Penal Code.
- In convicting her of estafa under Article 315, Section 2[d] of the Revised Penal Code which penalizes those who issue postdated checks when petitioner did not issue or draw the postdated checks.

- In convicting her of estafa under Article 315, Section 2[d] of the Revised Penal Code when there is no evidence that she had knowledge that the postdated checks she allegedly delivered to complainant were without sufficient funds.
- In not considering that she delivered said checks to complainant in payment of a pre-existing obligation so that her liability if at all is civil in nature.
- In not reversing and setting aside the trial court's decision and in not acquitting her instead.[4]

Petitioner basically claims that her constitutional right to be informed of the nature and cause of the accusation against her was violated because, although she was charged with estafa under Article 315, Section 2[a], as amended, which penalizes false manifestations or fraudulent representations in defraudation of another, she was instead convicted of estafa under Article 315, Section 2[d] which penalizes the issuance of postdated checks that were not funded or were insufficiently funded.

Petitioner further claims she was not the issuer or the drawer of said checks, and had no knowledge that they were unfunded or underfunded. In any case, assuming that she indeed issued or drew the checks, they were in payment of a pre-existing obligation. Consequently, she could not be held liable for estafa and her liability is only civil in nature.

Section 14(2) of Article III of the 1987 Constitution provides that an accused has the right to be informed of the nature and cause of the accusation against him. Indeed, Section 6, Rule 110 of the Revised Rules of Criminal Procedure requires that the acts and omissions complained of as constituting the offense must be alleged in the Information. Section 8 thereof provides that the Information shall state the designation of the offense given by the statute and aver the acts or omissions constituting the offense. The real nature of the crime charged is determined by the facts alleged in the Information and not by the title or designation of the offense contained in the caption of the Information. It is fundamental that every element of which the offense is comprised must be alleged in the Information. What facts and circumstances are necessary to be alleged in the Information must be determined by reference to the definition and essential elements of the specific crimes.[5]

Article 315, paragraph 2(a) of the Revised Penal Code provides that swindling or estafa by false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud is committed by "using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by other similar deceits." The elements of estafa under this penal provision are: (1) the accused defrauded another by means of deceit; and (2) damage or prejudice capable of pecuniary estimation is caused to the offended party or third party.[6]

A careful reading of the Information clearly shows that petitioner was charged with estafa under Article 315, paragraph 2 (a) of the Revised Penal Code. The Information alleged that petitioner "by means of false manifestations and fraudulent representations x x x to the effect that accused has three checks which according to her have sufficient funds and if encashed the same will not be dishonored; x x x induced x x x Dolores S. Apolonio to accept the following checks x x x as payment of assorted vegetables x x x in the total amount of P87,000.00." [7]

There is, however, no basis for petitioner to conclude that she was convicted for estafa under Article 315, paragraph 2(d) of the Revised Penal Code which penalizes any person who shall defraud another by postdating or issuing a check or issuing a check in payment of an obligation when the offender has no funds in the bank or his funds deposited therein are not sufficient to cover the amount of check. The elements of this form of estafa are: (1) postdating or issuing a check in payment of an obligation contracted at the time the check was issued; (2) lack or insufficiency of funds to cover the check; and (3) damage to the payee thereof.[8]

While the typographical error in the dispositive portion of the trial court's decision did not help in clearing this matter by saying that, "x x x the Court finds the accused guilty beyond reasonable doubt of the crime of Estafa under Art. 315, Sec. 2(2) of the Revised Penal Code, x x x,"[9] the body of the trial court's decision clearly discusses the elements of estafa under Article 315, paragraph 2(a), thus:

The elements of estafa are (1) that the accused defrauded another by abuse of confidence or by means of deceit; and (2) that the damage or prejudice capable of pecuniary estimation is caused to the offended party.

In the instant case when accused convinced the complainant assuring her that the postdated checks she was giving as payment of the vegetables of the same amount that she got, are funded as they belong to her relatives, when actually they are bad checks, she employed deceit. In so doing, the complainant is damaged to the tune of P87,000.00 which is the value of the vegetables.

Another element to be proven in estafa is knowledge that at the time she negotiated the checks, the drawer has no sufficient funds in the bank. The fact that the checks were postdated at some future date is evidence enough to show that at the time of negotiation the drawer did not have sufficient funds in the bank or his funds deposited therein were not sufficient to cover the amount of the checks.[10]

Even supposing that the trial court apparently discussed estafa under Article 315, paragraph 2(d), it was only pointing out the absurdity of petitioner's argument, thus:

When accused testified that she does not use the checks of other persons, what did she mean during the pre-trial that the checks subject of this case belong to her customers and given to her in payment? Is she not in effect saying that she gave to the complainant the three checks of her customers to pay her own purchases? This again is an admission that she really used the checks of other persons to pay her obligation.

Maybe she has in mind that since she is not the maker of the checks she cannot be guilty of estafa. But she is wrong. In the case of *People v. Isleta, et.al.*, 61 Phil. 332 and reiterated in the case of *Zalgado v. CA*, 178 SCRA 146, it was held that the appellant who only negotiated directly and personally the check drawn by another is guilty of estafa because he had "guilty knowledge that at the time he negotiated the check, the drawer has no sufficient funds." [11]

In other words, whether petitioner was charged under either paragraph 2(a) or 2(d) of Article 315 of the Revised Penal Code, she would still be guilty of estafa because damage and deceit, which are essential elements of the offense, have been established with satisfactory proof. The fraudulent act was committed prior to or simultaneous with the issuance of the bad check. The guarantee and the simultaneous delivery of the checks by petitioner were the enticement and the efficient cause of the defraudation committed against Apolonio who suffered damage amounting to P87,000.00 as a result of the fraud committed by petitioner in paying him underfunded checks drawn by three different persons.

Fraud, in its general sense, is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust, or confidences justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another. It is a generic term embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated. Deceit is a specie of fraud.[12]

In fact, the Court of Appeals saw through petitioner's deceit when it observed, thus:

Appellant's scheme is obvious. She wanted to get vegetables from Apolonio for free. In order to escape from any criminal liability, she asked her husband, daughter and nephew to issue the bouncing checks. And certainly, the scheme was deceitful. The appellant could not have been unaware of the insufficient funds of her

relatives to support the checks they issued but she tendered the checks to Apolonio with the assurance that they were funded. Appellant could have exerted efforts to settle her account upon notice of the dishonored checks if she were in good faith.[13]

In view of the foregoing, we see no need to discuss the other assigned errors.

Petitioner was charged with estafa under Article 315, paragraph 2[a] of the Revised Penal Code. The proper imposable penalty is prision correccional in its maximum period to prision mayor in its minimum period, if the amount of fraud is over P12,000.00 but does not exceed P22,000.00; 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 P10,000.00; but the total penalty which may be imposed shall not exceed twenty years. In such cases, the penalty shall be termed prision mayor or reclusion temporal, as the case may be.[14]

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. 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.[15]

In this case, petitioner defrauded Apolonio in the amount of P87,000.00. The fact that the amount exceeds P22,000.00 should not be considered in the initial determination of the indeterminate penalty; instead the matter should be so taken as analogous to modifying circumstances in the imposition of the maximum term of the full indeterminate sentence. This accords with the rule that penal laws are construed in favor of the accused.[16]

Hence, the maximum penalty to be imposed on petitioner should be taken from the maximum period of the basic penalty, i.e., prision mayor in its minimum period, which ranges from four (4) years, two (2) months and one (1) day to eight (8) years.

The minimum penalty, applying the Indeterminate Sentence Law, shall be taken from the penalty next lower in degree than the basic penalty which is prision correccional in its minimum and medium period, in any of its periods, the range of which is from six (6) months and one (1) day to four (4) years and two (2) months.

Thus, the trial court erred in imposing the penalty which ranges from six (6) years and one (1) day to ten (10) years and one (1) day. The proper penalty should be four (4) years and two (2) months of prision correccional, as minimum, to fourteen (14) years of reclusion temporal, as maximum.

WHEREFORE, in light of the foregoing, the Court hereby AFFIRMS with MODIFICATION the decision of the trial court finding Yolanda Garcia guilty of estafa under Article 315, paragraph 2[a] of the Revised Penal Code, and sentencing her to suffer the indeterminate penalty of four (4) years and two (2) months of prision correccional, as minimum, to fourteen (14) years of reclusion temporal, as maximum, and to indemnify the complainant in the amount of P87,000.00. With costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, and Carpio, JJ., concur.
Azcuna, J., on official leave.

[1] Penned by Associate Justice Salome A. Montoya and concurred in by Associate Justices Romeo J. Callejo Sr. (now Associate Justice of the Supreme Court) and Martin S. Villarama Jr.

[2] CA Records, p. 13.

[3] Penned by Judge Manuela F. Lorenzo of the Regional Trial Court of Manila, Branch 43.

[4] Appellant's Brief, Rollo, pp. 14-15.

[5] Naya v. Spouses Abing, G.R. No. 146770, 27 February 2003.

[6] People v. Balasa, 356 Phil. 362, 382 (1998).

[7] Information, Records, p. 13.

[8] People v. Tan, G.R. No. 120672, 17 August 2000, 338 SCRA 330, 336-337.

[9] Decision, Records, pp. 53, 56; underscoring ours.

[10] Id., pp. 53, 55.

[11] Id.

[12] People v. Hernando, 375 Phil. 1078, 1091 (1999).

[13] Court of Appeals Decision, Rollo, pp. 29, 33.

[14] Article 315 of the Revised Penal Code.

[15] People v. Hernando, 375 Phil. 1078, 1094 (1999).

[16] People v. Hernando, *supra*.

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