

MANUEL NAGRAMPA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 146211. August 06, 2002

Ponente: DAVIDE, JR., C.J.

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DAVIDE, JR., C.J.:

In this petition for review on certiorari, petitioner assails his conviction for estafa in Criminal Case No. Q-90-15797 and for two counts of violation of Batas Pambansa Blg. 22 (Bouncing Checks Law) in Criminal Cases Nos. Q-90-15798 and Q-90-15799.

The accusatory portion of the information in Criminal Case No. Q-90-15797 for estafa reads as follows:

That on or about the 28th day of July 1989 in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to gain by means of false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud, did then and there, wilfully, unlawfully and feloniously defraud FEDCOR TRADING CORPORATION represented by FEDERICO A. SANTANDER by then and there making, drawing and issuing in favor of the latter the following checks, to wit:

CHECK NOS

AMOUNT

POSTDATED

473477

P75,000.00

August 31, 1989

473478

P75,000.00

September 30, 1989

drawn against the SECURITY BANK AND TRUST COMPANY in payment of an obligation, knowing fully well at the time of issue that he did not have any funds in the bank or his funds deposited therein was not sufficient to cover the amount of the checks that upon presentation of said checks to the said bank for payment, the same were dishonored for the reason that the drawer thereof, accused MANUEL NAGRAMPA did not have any funds therein and despite notice of dishonor thereof, accused failed and refused and still fails and

refuses to redeem or make good said checks, to the damage and prejudice of the said FEDCOR TRADING CORPORATION in such amount as may be awarded under the provisions of the Civil Code.

CONTRARY TO LAW.[1]

The accusatory portion of the information in Criminal Case No. Q-90-15798 for violation of B.P. Blg. 22 reads as follows:

That on or about the 28th day of July, 1989 in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously make, draw and issue in favor of FEDCOR TRADING CORPORATION represented by FEDERICO A. SANTANDER a check numbered 473478 drawn against the SECURITY BANK AND TRUST COMPANY, Escolta Branch, a duly established domestic banking institution, in the amount of P75,000.00, Philippine Currency, postdated September 30, 1989 in payment of an obligation, knowing fully well that at the time of issue that she/he did not have ANY funds in the drawee bank for the payment of such check; that upon presentation of said check to said bank for payment, the same was dishonored for the reason that the drawee bank of accused MANUEL NAGRAMPA did not have ANY funds therein and despite notice of dishonor thereof, accused failed and refused and still fails and refuses to redeem or make good said check, to the damage and prejudice of the said FEDCOR TRADING CORPORATION in the amount aforementioned and in such other amount as may be awarded under the provisions of the Civil Code.

Contrary to law.[2]

The information in Criminal Case No. Q-90-15799 is similarly worded as in Criminal Case No. Q-90-15798 except as to the date and number of the check.

Upon his arraignment, petitioner entered a plea of not guilty in each case.

At the trial on the merits, the prosecution presented Federico Santander, President of Fedcor Trading Corporation (hereafter FEDCOR), and Felix Mirano, signature verifier of the Escolta Branch of the Security Bank and Trust Company.

Federico Santander testified that on 28 July 1989, Corseno Bote, FEDCOR's Sales Manager, brought to FEDCOR petitioner Manuel Nagrampa (hereafter NAGRAMPA), General Manager of the Nagrampa Asphalt Plant in Montalban, Rizal. NAGRAMPA purchased a Yutani Poclain Backhoe Excavator Equipment for P200,000 from FEDCOR and paid in cash the down payment of P50,000. To cover the balance of P150,000, he issued Check No. 473477[3] postdated 31 August 1989 and Check No. 473478[4] postdated 30 September 1989 in the amount of P75,000 each. The checks were drawn against the Security Bank and Trust Company. Upon the assurance of FEDCOR's salesman that the checks were good, FEDCOR delivered to petitioner the equipment.[5]

Santander further testified that FEDCOR presented the checks for payment on 22 February 1990; however, they were dishonored on the ground that petitioner's account with the drawee bank, Security Bank, had already been closed. In a letter[6] dated 19 March 1990, sent through registered mail, FEDCOR demanded payment from petitioner; but the latter failed to pay. Hence, the above cases were filed against petitioner with the trial court.[7] During his cross-examination, Santander denied that the equipment was returned to FEDCOR. Ronnie Bote, son of Corseno Bote, was not an employee of FEDCOR but was merely its sales agent with no authority to receive returned equipment.[8]

Felix Mirano, the second prosecution witness, testified that he had been a signature verifier of Security Bank for twelve years. His duty was to verify the signatures of the clients of the bank. He brought with him the signature card for Account No. 0110-4048-19, petitioner's account against which the subject checks were drawn. He identified the signatures appearing on Checks Nos. 473477 and 473478 to be those of the petitioner. When asked

about the status of said account, he answered that the account had been closed in May 1985 yet.[9]

For his part, petitioner testified that on 28 July 1989, he bought from Corseno Bote a backhoe and paid P50,000 cash, as evidenced by an acknowledgment receipt[10] signed by Corseno Bote. In addition, he issued and handed to Corseno Bote two checks in the amount of P75,000 each, dated 31 August 1989[11] and 30 September 1989.[12] The agreement with Corseno Bote was that petitioner would replace the two checks with cash if the backhoe would be in good running condition. The backhoe was delivered at petitioner's jobsite on 29 July 1989. After five to seven days of use, the backhoe broke down. Such fact was reported to Ronnie Bote, and the backhoe was thus repaired. After one day of using it, the backhoe broke down again. Petitioner again reported the matter to Ronnie Bote, who told him that the equipment should be brought to the latter's office for repair. As evidence of the return of the equipment, petitioner presented a letter dated 3 October 1989[13] addressed to Electrobus Consolidated, Inc., requesting the release of the backhoe to Ronnie Bote for repair, with the alleged signature[14] of Ronnie Bote appearing at the bottom thereof to attest to his receipt of the equipment. After a week, petitioner demanded from Ronnie Bote the return of the backhoe, the P50,000 cash and the two postdated checks, but to no avail.[15] On cross-examination, he admitted that during the pendency of the case he paid, upon the advice of his counsel, the amount of P15,000, which he handed to FEDCOR's counsel Atty. Orlando Paray.[16]

On 30 September 1993, the trial court rendered a decision[17] finding petitioner guilty of two counts of violation of the Bouncing Checks Law and sentencing him to suffer imprisonment for two years and pay FEDCOR P150,000, with legal interest thereon from 9 October 1990 up to the time of full payment.

Petitioner appealed the decision to the Court of Appeals. The appeal was docketed as CA-G.R. CR. No. 18082. Upon noticing that the 30 September 1993 Decision of the trial court did not resolve the issue of petitioner's liability for estafa, the Court of Appeals issued on 19 May 1998 a resolution[18] ordering the return of the entire records of the case to the trial court for the latter to decide the estafa case against petitioner.

On 8 February 1999, the trial court rendered a decision[19] finding petitioner guilty beyond reasonable doubt of estafa and sentencing him to suffer imprisonment of seven years and four months of prision mayor as minimum to twelve years and six months of reclusion temporal as maximum. As might be expected, petitioner also appealed said decision to the Court of Appeals.

On 21 July 2000, the Court of Appeals rendered a decision[20] affirming in toto the decision of the trial court finding petitioner guilty of estafa and violations of the Bouncing Checks Law. It also denied petitioner's motion for reconsideration of the decision.[21] Hence, this petition.

Petitioner claims that he is not guilty of estafa because no damage was caused to FEDCOR, considering that the backhoe became unserviceable a few days after delivery and was eventually returned to FEDCOR through the latter's sales agent Ronnie Bote. He also asserts that he did not violate B.P. Blg. 22 either. The two checks issued by him were presented for payment only on 22 February 1990, or after more than five months from the date of the checks. Under Sections 1 and 2 of B.P. Blg. 22 FEDCOR, as payee, had the duty or obligation to encash or deposit the checks issued in its favor within ninety days from the date of issue. Since FEDCOR deposited the checks after this period, he cannot be faulted for their subsequent dishonor.

Alternatively, petitioner prays that in the event that his conviction for violations of B.P. Blg. 22 is sustained, the rulings in *Vaca v. Court of Appeals*[22] and *Lim v. People*[23] should be given retroactive effect in his favor so that only a fine may be imposed on him as penalty.

In arguing that petitioner's conviction for two counts of violation of B.P. Blg. 22 is correct, the Office of the Solicitor General relies heavily on the testimony of Felix Mirano that the account of petitioner had been closed

way back in May 1985, or four years prior to the issuance of the subject checks to FEDCOR. The date when the checks were encashed or deposited is immaterial because there was no more existing bank account against which they were drawn, and their dishonor was therefore certain even if the checks were presented for payment within the 90-day period from their issuance. With respect to petitioner's plea to impose on him the penalty of fine in the event that his conviction is affirmed, the OSG maintains that the penalty of imprisonment is appropriate considering petitioner's act of issuing worthless checks which showed his culpable violation of B.P. Blg. 22.

Petitioner's argument that the element of damage to private complainant FEDCOR is lacking is disputed by the OSG by pointing out petitioner's failure to prove the return of the backhoe to FEDCOR. Ronnie Bote, the person to whom the backhoe was allegedly returned, was not presented as a witness to corroborate petitioner's testimony. But even granting *arguendo* that the backhoe was indeed received by Ronnie Bote, there is no showing that he acted for, and on behalf of, FEDCOR in doing so considering that he was not an employee of FEDCOR.

The petition is without merit.

Section 1 of B.P. Blg. 22 provides:

SECTION 1. Checks without sufficient funds. -- Any person who makes or draws and issues any check to apply on account or for value, knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, which check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment, shall be punished by imprisonment of not less than thirty days but not more than one (1) year or by a fine of not less than but not more than double the amount of the check which fine shall in no case exceed Two Hundred Thousand Pesos, or both such fine and imprisonment at the discretion of the court.

The same penalty shall be imposed upon any person who, having sufficient funds in or credit with the drawee bank when he makes or draws and issues a check, shall fail to keep sufficient funds or to maintain a credit or to cover the full amount of the check if presented within a period of ninety (90) days from the date appearing thereon, for which reason it is dishonored by the drawee bank.

Two distinct acts are punished under the above-quoted provision:

(1)The making or drawing and issuance of any check to apply on account or for value, knowing at the time of issue that the drawer does not have sufficient funds in, or credit with, the drawee bank; and

(2)The failure to keep sufficient funds or to maintain a credit to cover the full amount of the check if presented within a period of ninety days from the date appearing thereon, for which reason it is dishonored by the drawee bank.[24]

In the first situation, the drawer knows of the insufficiency of funds to cover the check at the time of its issuance; while in the second situation, the drawer has sufficient funds at the time of issuance but fails to keep sufficient funds or maintain credit within ninety days from the date appearing on the check. The check involved in the first offense is worthless at the time of issuance, since the drawer has neither sufficient funds in, nor credit with, the drawee bank at the time; while that involved in the second offense is good when issued, as the drawer has sufficient funds in, or credit with, the drawee bank when issued. In both instances, the offense is consummated by the dishonor of the check for insufficiency of funds or credit.[25]

It can be gleaned from the allegations in the information that petitioner is charged with the first type of offense under B.P. Blg. 22.

The elements of the first type of offense are as follows:

- (1) The making, drawing and issuance of any check to apply for account or for value;
- (2) The knowledge of the maker, drawer, or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment; and
- (3) The subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.[26]

Petitioner admitted that he issued the two postdated checks worth P75,000 each. He did not deny that the same were dishonored on the ground that the account from which they were to be drawn was already closed at the time the checks were presented for payment. Neither did he rebut the prosecution's evidence that the account against which he drew his two postdated checks had been closed in May 1985 yet, or more than four years prior to the drawing and delivery of the checks.

The fact that the checks were presented beyond the 90-day period provided in Section 2 of B.P. Blg. 22 is of no moment. We held in *Wong v. Court of Appeals*[27] that the 90-day period is not an element of the offense but merely a condition for the prima facie presumption of knowledge of the insufficiency of funds; thus:

That the check must be deposited within ninety (90) days is simply one of the conditions for the prima facie presumption of knowledge of lack of funds to arise. It is not an element of the offense. Neither does it discharge petitioner from his duty to maintain sufficient funds in the account within a reasonable time thereof. Under Section 186 of the Negotiable Instruments Law, "a check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay." By current banking practice, a check becomes stale after more than six (6) months, or 180 days.

In *Bautista v. Court of Appeals*,[28] we ruled that such prima facie presumption is intended to facilitate proof of knowledge, and not to foreclose admissibility of other evidence that may also prove such knowledge; thus, the only consequence of the failure to present the check for payment within the 90-day period is that there arises no prima facie presumption of knowledge of insufficiency of funds.[29] The prosecution may still prove such knowledge through other evidence.

In this case, FEDCOR presented the checks for encashment on 22 February 1990, or within the six-month period from the date of issuance of the checks, and would not therefore have been considered stale had petitioner's account been existing. Although the presumption of knowledge of insufficiency of funds did not arise, such knowledge was sufficiently proved by the un rebutted testimony of Mirano to the effect that petitioner's account with the Security Bank was closed as early as May 1985, or more than four years prior to the issuance of the two checks in question.

Thus, we find no error in the Court of Appeals' affirmation of the trial court's decision convicting petitioner of violations of B.P. Blg. 22.

Petitioner's alternative prayer for the modification of penalty by retroactively applying *Vaca v. Court of Appeals*[30] and *Lim v. People*[31] must likewise be denied. We quote Administrative Circular No. 13-2001 clarifying Administrative Circular No. 12-2000; thus:

The clear tenor and intention of Administrative Circular No. 12-2000 is not to remove imprisonment as an alternative penalty, but to lay down a rule of preference in the application of the penalties provided for in B.P. Blg. 22.

The pursuit of this purpose clearly does not foreclose the possibility of imprisonment for violators of B.P. Blg. 22. Neither does it defeat the legislative intent behind the law.

Thus, Administrative Circular No. 12-2000 establishes a rule of preference in the application of the penal provisions of B.P. Blg. 22 such that where the circumstances of both the offense and the offender clearly indicate good faith or a clear mistake of fact without taint of negligence, the imposition of a fine alone should be considered as the more appropriate penalty. Needless to say, the determination of whether the circumstances warrant the imposition of a fine alone rests solely upon the Judge. Should the Judge decide that imprisonment is the more appropriate penalty, Administrative Circular No. 12-2000 ought not be deemed a hindrance.

In this case, when petitioner issued the subject postdated checks even though he had no more account with the drawee bank, having closed it more than four years before he drew and delivered the checks, he manifested utter lack of good faith or wanton bad faith. Hence, he cannot avail himself of the benefits under Administrative Circular No. 12-2000.

We likewise sustain petitioner's conviction for the crime of estafa.

The crime of estafa under paragraph 2(d) of Article 315 of the Revised Penal Code, as amended, 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) lack or insufficiency of funds to cover the check; and (3) damage to the payee thereof.[32]

Settled is the rule that, to constitute estafa, the act of postdating or issuing a check in payment of an obligation must be the efficient cause of defraudation and, as such, it should be either prior to, or simultaneous with, the act of fraud. The offender must be able to obtain money or property from the offended party because of the issuance of the check, or the person to whom the check was delivered would not have parted with his money or property had there been no check issued to him. Stated otherwise, the check should have been issued as an inducement for the surrender by the party deceived of his money or property, and not in payment of a pre-existing obligation.[33]

The existence of the first two elements in the case at bar is not disputed. Petitioner maintains that the third element is not present.

Damage as an element of estafa may consist in (1) the offended party being deprived of his money or property as a result of the defraudation; (2) disturbance in property right; or (3) temporary prejudice.[34]

In this case, the deprivation of the property of FEDCOR is apparent. Undoubtedly, the reason why FEDCOR delivered the backhoe to petitioner was that the latter paid the P50,000 down payment and issued two postdated checks in the amount of P75,000 each.

Petitioner's claim that he returned the equipment was not duly proved; he never presented as witness the agent who allegedly received the equipment from him. Moreover, he admitted that he never wrote FEDCOR about the return of the allegedly defective backhoe to Ronnie Bote; neither did he go to FEDCOR to claim the return of the equipment or of the cash down payment and the two checks.[35] Such admissions belie his allegation that he returned the equipment to FEDCOR. Besides, on cross-examination he admitted that during the pendency of the case, he paid Santander, through FEDCOR's lawyer, on two separate occasions in the total amount of P15,000 upon the advice of his own lawyer that he had to pay because he was guilty; thus:

Q During the pendency of this case you paid Engr. Santander cash, is that correct?

A I paid the amount of P10,000.00 and then another P5,000.00 because according to my first lawyer I have to pay this because I am guilty and this is B.P. case [sic].

Q You delivered the money to Engr. Federico Santander?

A To you Atty. Paray.

Q And I was the lawyer of Engr. Federico Santander?

A Yes, sir.[36]

If indeed petitioner returned the backhoe to Ronnie Bote and yet the latter did not heed his demands for the return of his cash payment and the checks, he (petitioner) should have, at the very least, gone to or written FEDCOR itself about the matter. Instead, he again paid FEDCOR the amount of P15,000 during the pendency of the case. Such payment to FEDCOR negates his claim that he returned the backhoe; it may even be tantamount to an offer of compromise. Under Section 27 of Rule 130 of the Rules on Evidence, an offer of compromise in criminal cases is an implied admission of guilt.

Finally, by appealing his conviction, petitioner has thrown the whole case open for review. It becomes the duty of this Court to correct any error as may be found in the appealed judgment, even though it was not made the subject of assignment of errors.[37] This Court finds to be erroneous the penalty imposed by the trial court for the crime of estafa, as affirmed by the Court of Appeals, which is seven years and four months of prision mayor as minimum to twelve years and six months of reclusion temporal as maximum. The penalty for estafa committed by means of bouncing checks has been increased by Presidential Decree No. 818, which took effect on 22 October 1975. Section 1 thereof provides in part as follows:

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:

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....

Petitioner NAGRAMPA defrauded FEDCOR in the amount of P135,000 (P150,000 [value of the checks] minus P15,000 [payment made by petitioner during the pendency of these cases]). Applying P.D. No. 818 and the Indeterminate Sentence Law, the maximum penalty shall be reclusion temporal in its maximum period, plus one year for each additional P10,000 of the amount of the fraud; and the minimum shall be prision mayor, which is the penalty next lower to that prescribed for the offense without first considering any modifying circumstances or the incremental penalty for the amount of fraud in excess of P22,000.[38]

WHEREFORE, the instant petition is DENIED. The decision of the Court of Appeals upholding the decisions of the Regional Trial Court of Quezon City, Branch 80, in Criminal Cases Nos. Q-90-15797, Q-90-15798 and Q-90-15799 is hereby AFFIRMED, with the modification that petitioner Manuel Nagrampa is hereby sentenced to suffer (1) an imprisonment of one year for each of the two counts of violation of B. P. Blg. 22, and (2) an indeterminate penalty of eight years and one day of prision mayor as minimum to twenty-eight years, four months and one day of reclusion perpetua as maximum for the crime of estafa; and to pay private complainant Fedcor Trading Corporation the amount of P135,000, plus legal interest thereon from 9 October 1990 up to the time of full payment.

SO ORDERED.

Vitug, Kapunan, Ynares-Santiago, and Austria-Martinez, JJ., concur.

[1] OR, Criminal Case No. Q-90-15797, 1.

[2] Original Record (OR), Criminal Case No. Q-90-15798, 1.

[3] Exhibit "A," OR, 133.

- [4] Exh. "B," OR, 134.
- [5] TSN, 18 March 1992, 3-4, 9.
- [6] Exh. "C," OR, 135.
- [7] TSN, 18 March 1992, 5, 9-11.
- [8] TSN, 24 August 1992, 7-8.
- [9] TSN, 29 September 1992, 3-6.
- [10] Exh. "1," OR, 146.
- [11] Exh. "2," (Exh. "A" for the Prosecution), OR, 133.
- [12] Exh. "3" (Exh. "B" for the Prosecution), OR, 134.
- [13] Exh. "4" (Exh. "E" –Rebuttal for the Prosecution), OR, 147.
- [14] Exh. "4-A."
- [15] TSN, 28 October 1992, 6-17, 26.
- [16] Id., 21-22.
- [17] Rollo, 23-29. Per Judge Efren N. Ambrosio.
- [18] Rollo, 57-58. Per Vasquez, Jr., J., with Martin, Jr. and Regino, JJ., concurring.
- [19] Id., 59-62. Per Judge Agustin S. Dizon.
- [20] Id., 86-95. Per Vasquez, Jr., J., with Umali and Rosario, Jr., JJ., concurring.
- [21] Id., 100.
- [22] 298 SCRA 656 1998.
- [23] 340 SCRA 497 2000.
- [24] Bautista v. Court of Appeals, G.R. No. 143375, 6 July 2001.
- [25] Supra note 24.
- [26] Lim v. People, G.R. No. 143231, 26 October 2001; See also Navarro v. Court of Appeals, 234 SCRA 639, 643 1994; Nieva v. Court of Appeals, 272 SCRA 1, 12 [1997] ; Vaca v. Court of Appeals, supra note 22, at 661; Lim v. People, supra note 23, at 502; Bautista v. Court of Appeals, supra note 24.
- [27] 351 SCRA 100, 111 2001.
- [28] Supra note 24.
- [29] See also Wong v. Court of Appeals, supra note 27.
- [30] Supra note 22.
- [31] Supra note 23.
- [32] People v. Tongko, 290 SCRA 595, 600 1998. See People v. Tugbang, 196 SCRA 341, 350-351 1991; People v. Tan, 338 SCRA 330, 336 2000; Timbal v. Court of Appeals, G.R. No. 136487, 14 December 2001.
- [33] Nieva v. Court of Appeals, supra note 26, at 11; See also Timbal v. Court of Appeals, supra.
- [34] 2 LUIS B. REYES, THE REVISED PENAL CODE 793 (Fourteenth ed. 1998).
- [35] TSN, 16 November 1992, 6-7.
- [36] TSN, 28 October 1992, 21-22.
- [37] People v. Tangan, G.R. No. 105830, 15 January 2002.
- [38] People v. Hernando, 317 SCRA 617, 629-631 1999; People v. Panganiban, 335 SCRA 354, 369-370 2000.

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