

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ALOMA REYES AND TRICHIA MAE REYES (AT LARGE), ACCUSED.*G.R. NO. 154159. March 31, 2005*

Ponente: PUNO, J.

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This is a direct appeal[1] from the Sentence[2] of the Regional Trial Court of Davao City, Branch 11, finding appellant Alamo Reyes guilty beyond reasonable doubt of estafa by postdating a bouncing check under Article 315, paragraph 2(d) of the Revised Penal Code, as amended by Presidential Decree No. 818, and sentencing her to an indeterminate penalty of six (6) years and one (1) day to twelve (12) years of prison mayor as minimum to thirty (30) years of reclusion perpetua as maximum.[3]

Appellant claims that she issued the subject check in payment of a pre-existing obligation. Thus, her liability must be civil, not criminal. Private complainant Jules-Berne Alabastro counters that appellant, together with her daughter and co-accused Trichia Mae Reyes, issued him the check for rediscounting. He was allegedly lured to part with his money due to their seeming honest representations that the check was good and would never bounce.

The following information dated May 26, 1999 was filed against the appellant and Trichia Mae Reyes:

That sometime in February 1998, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, conspiring and confederating together, by means of false pretense and with intent to defraud, willfully, unlawfully and feloniously issued to JULES-BERNE I. ALABASTRO, Allied Bank, Toril Branch[,] Davao City Check No. 066815 – A dated March 31, 1998 in the amount of P280,000.00 in payment of an obligation, which the accused was able to obtain by reason of and simultaneously with the issuance of the said check, that when said check was presented to the drawee bank for encashment, the same was dishonored for the reason “ACCOUNT CLOSED” and after having been notified by such dishonor said accused failed and refused to redeem said check despite repeated demands, to the damage and prejudice of the complainant in the aforesaid amount.

CONTRARY TO LAW.[4]

A Warrant[5] for their arrest was subsequently issued. However, only appellant was arrested. She posted a cash bond for her provisional liberty.[6] Her co-accused had flown to Australia before her arrest warrant could be served. She remains at large.

Appellant pleaded not guilty upon arraignment.[7] Trial ensued.

Danilo Go, acting Branch Head of Allied Bank, Toril Branch, Davao City, testified for the prosecution. He presented an account ledger card[8] dated December 31, 1997. The account ledger card contained the transaction records of Allied Bank NOW (Negotiable Order of Withdrawal) Account No. 1333-00033-8 under the name Aloma Reyes and Trichia Mae Reyes[9] which was opened on January 27, 1997 and closed on March 26, 1997.[10] He explained that a NOW Account is a savings account where the drawer may issue checks payable only to a specific payee. A NOW check cannot be issued payable to “BEARER.” Hence, it cannot be further

negotiated.

Go identified the subject check as a NOW check issued under appellant's NOW Account. It was presented for payment with Allied Bank, the drawee bank of appellant, on April 2, 1998 but was returned to Metrobank, the depository bank of private complainant, on April 3, 1998 for the reason "account closed." [11]

On cross-examination, Go explained the other entries in the account ledger card. He reiterated that appellant only had a two-month transaction with Allied Bank under the NOW Account. On re-direct examination, he identified another document [12] containing "referral items." The document showed a list of NOW checks (the "referral items") presented to Allied Bank for clearing after the NOW Account had been closed. [13] These "referral items" were not listed in the account ledger card which he previously presented because once an account is closed, no further entries are entered in the account ledger card.

Private complainant Jules-Berne I. Alabastro was also presented by the prosecution. He testified that he was first introduced by Estrella Paulino to appellant and her daughter sometime in 1996 at his office in Davao City. The latter allegedly begged to have their personal checks discounted. Upon the assurance that their checks were good and considering that appellant and her sister used to be province mates of private complainant's parents, he allegedly discounted more or less five or six checks. When asked to present the checks, he explained that he had returned the checks each time they bounce. Upon return, appellant replaced them with cash. He only had in his possession the subject check -- the only check that appellant has not replaced with cash. [14]

He further testified that like the other checks which he previously discounted, he gave them cash for the subject check. When he deposited it to his account on its due date, it was dishonored by the drawee bank upon presentment for the reason "account closed." [15] He immediately notified appellant but the latter allegedly refused to replace it with cash. [16] He sent a demand letter by registered mail but appellant did not heed his demand. He thus filed the instant case.

On cross-examination, private complainant recounted that when he met appellant in 1996, she applied for a loan. He had also previously discounted five or six checks of appellant at varying amounts on different occasions. He, however, said that he was not a moneylender; he helped his wife in the flower shop business. He also refused to disclose the source of the money he used in allegedly discounting the subject P280,000.00-check. He said the source was "quite personal." [17]

To strengthen his rediscounting theory, private complainant averred that the subject check was complete when it was issued to him: his name, the signatures of appellant and her daughter, the date, and the amount of the subject check were already written on the instrument. He denied that he was the one who filled in the date and the amount of the subject check. [18]

The defense presented the sole testimony of appellant. She admitted that she started borrowing money from private complainant in 1996 when she was still engaged in the wholesale of softdrinks. Whenever she borrowed money, she replaced it with checks. However, she suffered business reverses and closed shop.

To pay her outstanding obligations with private complainant, the latter allegedly made her issue, in one and the same occasion, sixteen (16) NOW checks as installment payments. The first installment payment was to start at P6,000.00; the succeeding fifteen payments were to be at P13,000.00 each. The last installment was to fall on March 31, 1998.

Appellant explained that the subject check was one of the sixteen (16) checks. Four (4) of these checks were offered in evidence and marked as exhibits. [19] None of the checks was supposed to exceed the amount of P13,000.00. Hence, during her arrest, she was surprised to learn for the first time about the P280,000.00-check.

She got confused that there were two (2) NOW checks dated March 31, 1998: the subject check (Check No. 066815) with the amount of P280,000.00, and the other check (Check No. 066816),^[20] with the amount of P13,000.00.^[21]

On cross-examination, she said that she could not produce the other eleven (11) of the sixteen (16) checks. She admitted signing the checks with her daughter but maintained that the maximum amount she agreed to pay for her obligation was P13,000.00 per check. When asked about a P2,000.00^[22] check she issued as recorded in her account ledger card, she said that she probably issued it when her business was still good.^[23] She also claimed that she was not able to receive the demand letter sent to her home address. Most of the times, she was in the farm.^[24]

On re-direct examination, appellant claimed that it was private complainant who wrote the date and the amount in the subject check. She alleged that he was also the one who filled in the dates and the amounts on the other checks on exhibit. She allegedly authorized private complainant to fill in the blank entries for the dates and the amounts because she was grateful that the latter assented to the payment arrangement of P13,000.00 per installment. Furthermore, it was private complainant who would schedule the payment dates.^[25]

Appellant's outstanding obligation was allegedly P232,000.00 when she delivered the instruments. She placed all sixteen (16) checks on the office table of private complainant. They were already signed by her and her daughter. Private complainant thereafter wrote the dates and the amounts. She did not examine the checks after private complainant filled in the dates and the amounts. She was also not aware if private complainant wrote "P280,000.00" on the subject check. She allegedly only saw him write "P13,000.00" on the checks.^[26]

On rebuttal, private complainant maintained that the subject check was complete when it was handed to him for rediscounting. He did not know who filled in the date and the amount. He countered that it was appellant's and her daughter's signatures that were missing. They signed the checks in his presence. He speculated that appellant probably needed a big amount for their softdrinks business at that time. When asked to explain why there were two checks similarly dated March 31, 1998, he merely stated that "there was one check that bounced, Check No. 066815, in the amount of P280,000.00[,] dated March 31, 1998."^[27]

The court a quo convicted appellant upon finding that the prosecution had sufficiently proven the essential elements of estafa. Hence, this appeal.

Appellant raises the following Assignment of Errors:

I

The trial court seriously erred in treating the NOW Instrument as a cheCk within the meaning of Article 315 Paragraph 2(D) of the Revised Penal Code, considerING that it is a non-negotiable instrument, the same being payable only to the person specified therein and cannot be made payable to bearer or casH or be indorsed to a third person.

II

Assuming arguendo that the NOW Instrument is a check within the ambit of Article 315 Paragraph 2(D) of the Revised Penal Code, the trial court seriously erred in finding that fraud and/or deceit attended the issuance of the NOW instrument. From the prosecution's as well as the defense's evidence glare (sic) the fact that:

- The NOW instrument, together with the other NOW Instruments, was issued in payment of a pre-existing debt.
- The NOW instrument was a mere evidence of a loan or security thereof serving The same purpose as a

promissory note.

III

The trial court seriously erred in concluding that the prosecution sufficiently proved the essential elements of the crime charged. To be sure, the prosecution's evidence fell short of the degree of proof, that is proof beyond reasonable doubt, required by law to be established in order to overcome the constitutionally enshrined presumption of innocence in favor of accused-appellant. Verily:

- The prosecution's evidence are severely flawed, and, by themselves, insufficient and unreliable.
- The inconsistencies in the testimony of the defense's lone witness are harmless and should not have prejudiced the defense in light of the principle of law that the prosecution must establish the guilt of the accused by the strength of its own evidence and not on the weakness of the defense's evidence or lack of it.

C. The prosecution's evidence does not fulfill the test of moral certainty and therefore is insufficient to support a judgment of conviction.[28]

We shall resolve the appeal by determining the pivotal issue: whether all the elements of estafa under Article 315, paragraph 2(d) of the Revised Penal Code were sufficiently established in the case at bar.

Under Article 315, paragraph 2(d) of the Revised Penal Code, estafa is committed by any person who shall defraud another by false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud. It is committed with the following essential elements which must be proved to sustain a conviction:

- postdating or issuance of a check in payment of an obligation contracted at the time the check was issued;
- lack of sufficiency of funds to cover the check; and
- damage to the payee thereof.[29]

Appellant avers that the subject check does not fall within the meaning of Section 185 of the Negotiable Instruments Law which defines a "check" as a "bill of exchange drawn on a bank payable on demand." First, the NOW check is drawn against the savings, not the current account, of appellant. Second, it is payable only to a specific person or the "payee" and is not valid when made payable to "bearer" or to "cash." [30] Appellant quotes the restriction written on the face of a NOW check:

"NOW" shall be payable only to a specific person, natural or juridical. It is not valid when made payable to "BEARER" or to "CASH" or when [i]ndorsed by the payee to another person. Only the payee can encash this "NOW" with the drawee bank or deposit it in his account with the drawee bank or with any other bank.

Appellant posits that this condition strips the subject check the character of negotiability. Hence, it is not a negotiable instrument under the Negotiable Instruments Law, and not the "check" contemplated in Criminal Law.[31]

We disagree.

Section X223 of the Manual of Regulations for Banks defines Negotiable Order of Withdrawal (NOW) Accounts as interest-bearing deposit accounts that combine the payable on demand feature of checks and the investment feature of savings accounts.

The fact that a NOW check shall be payable only to a specific person, and not valid when made payable to "BEARER" or to "CASH" or when indorsed by the payee to another person, is inconsequential. The same restriction is produced when a check is crossed: only the payee named in the check may deposit it in his bank account. If a third person accepts a cross check and pays cash for its value despite the warning of the crossing, he

cannot be considered in good faith and thus not a holder in due course. The purpose of the crossing is to ensure that the check will be encashed by the rightful payee only.[32] Yet, despite the restriction on the negotiability of cross checks, we held that they are negotiable instruments.[33]

To be sure, negotiability is not the gravamen of the crime of estafa through bouncing checks. It is the fraud or deceit employed by the accused in issuing a worthless check that is penalized.

Deceit, to constitute estafa, should be the efficient cause of defraudation. It must have been committed either prior or simultaneous with the defraudation complained of.[34] There must be concomitance: the issuance of a check should be the means to obtain money or property from the payee. Hence, a check issued in payment of a pre-existing obligation does not constitute estafa even if there is no fund in the bank to cover the amount of the check.[35]

Appellant maintains that the subject check was one of the sixteen (16) checks she issued at once to private complainant in payment of a pre-existing obligation.[36] The court a quo however upheld private complainant's theory that appellant issued him the subject check for rediscounting in February 1998, long after her account was closed on March 26, 1997.

We reverse.

While findings of fact of trial courts are accorded not only respect, but at times, finality, this rule admits of exceptions, as when there is a misappreciation of facts.

The evidence on record debunks the rediscounting theory of private complainant. He did not part with his money out of the fraudulent assurances of appellant that the subject check was good and would never bounce.

A careful examination of the records establishes that appellant issued him the subject check in payment of a pre-existing obligation. Both private complainant and appellant concur in their testimonies that they met sometime in 1996. Both parties also admit that at this point, appellant started borrowing money from private complainant.

It cannot be denied that the subject check, like the four other NOW checks on exhibit, was issued and signed by the same persons and charged to the same NOW Account at Allied Bank. Private complainant's theory that these checks were previously issued to him for rediscounting at different times is incredulous:

Atty. Zamora- The question is, how many checks were discounted for the accused. More or less 5 or 6 checks[?]

x x x

Witness- There were previous checks discounted but on different occasions.[37]

Atty. Zamora- xxx You said there were 5 or six checks discounted. You have list of those?

Atty. Alabastro- Already answered. No list.[38]

It puzzles the Court that after the NOW check dated August 31, 1997 bounced on September 3, 1997 for the reason "ACCOUNT CLOSED," private complainant would still discount appellant's checks in succession. It baffles us more that private complainant would discount a P280,000.00-check in February 1998 despite knowledge of the closure of appellant's NOW Account.

We held in *Pacheco v. Court of Appeals*[39] that there is no estafa through bouncing checks when it is shown that private complainant knew that the drawer did not have sufficient funds in the bank at the time the check was issued to him. Such knowledge negates the element of deceit and constitutes a defense in estafa through bouncing checks.

In the case at bar, private complainant knew that appellant did not only have insufficient funds; he knew her NOW Account was closed at the time he allegedly discounted the subject check. This is proven by the following undisputed facts:

First. Appellant presented four (4) NOW checks, each bearing the amount of P13,000.00, and respectively dated August 31, 1997, January 31, 1998, March 1, 1998 and March 31, 1998.

The evidence on record shows that private complainant deposited the NOW check dated August 31, 1997 to his Metrobank account on September 1, 1997. On September 2, 1997, Metrobank returned the instrument to Allied Bank with the notation "ACCOUNT CLOSED." Hence, as early as September 2, 1997, private complainant already knew that appellant's NOW Account had been closed.[40]

Second. Fatal to private complainant's case are his own admissions as to when he received the subject check. In his Affidavit-Complaint[41] dated February 25, 1999, private complainant stated, viz.:

x x x That sometime in Feb. 1998, a certain ALOMA REYES AND TRICHIA MAE REYES x x x came to me and begged to have their personal check discounted with earnest representations that their check was good check and would never bounce and because of their seeming honest representations I was lured to discount their check which is ---

ALLIED BANK CHECK NO. 066815-A DATED MAR. 31, 1998 AMOUNTING TO P280,000.00.

They handed the check to me and I simultaneously gave them the money;[42] (emphasis supplied)

In the Information filed, it was stated, viz.:

That sometime in February 1998, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, conspiring and confederating together, by means of false pretense and with intent to defraud, willfully, unlawfully and feloniously issued to JULES-BERNE I. ALABASTRO, Allied Bank, Toril Branch[,] Davao City Check No. 066815 – A dated March 31, 1998 in the amount of P280,000.00 x x x[43] (emphasis supplied)

If the subject check was issued to him in February 1998, as he alleges, at that time he already knew that the NOW Account where the subject NOW check is charged was closed. The NOW checks on record are irrefragable pieces of evidence that private complainant knew the NOW Account was closed.

In light of the established facts, private complainant's rediscounting theory must fail. Appellant issued the subject check in payment of a pre-existing obligation. When the NOW Account was closed on March 26, 1997, private complainant already had in his possession the NOW check in question. It was one of the sixteen (16) NOW checks previously issued by private complainant before the closure of the NOW Account. No deceit or damage attended the transaction. There being none in the case at bar, there can be no estafa through bouncing checks.

Despite the inconsistencies[44] in the testimony of appellant, these were minor and did not destroy her credibility nor shatter the theory of the defense. To be sure, the prosecution failed to prove the guilt of appellant beyond reasonable doubt. As a matter of right, the constitutional presumption of innocence of appellant must be favored regardless of the inconsistencies in her testimony or the weakness of her own defense.

Appellant, however, is not without liability. An accused acquitted of estafa may be held civilly liable in the same case where the facts established by the evidence so warrant. In the case at bar, the records lack sufficient evidence to determine the amount of her remaining obligation.

This Court is not a trier of facts and where the evidence on record is not sufficient to warrant a conclusion, the

case should be remanded to the court a quo for reception of further evidence.

IN VIEW WHEREOF, appellant Aloma Reyes is ACQUITTED of estafa under Article 315, paragraph 2(d) of the Revised Penal Code, as amended. The assailed Sentence of the Regional Trial Court of Davao City, Branch 11, dated March 13, 2002 is REVERSED and SET ASIDE. The case is REMANDED to the court a quo for the determination of appellant's civil liability. The Director of the Bureau of Corrections is DIRECTED to release her IMMEDIATELY unless she is being lawfully held for another offense.

SO ORDERED.

Austria-Martinez, Callejo, Sr., Tinga, and Chico-Nazario, JJ., concur.

[1] Rule 122, Section 2(c) of the Revised Rules of Criminal Procedure.

[2] Rollo, 16-21.

[3] Sentence, 5-6; Rollo, 20-21.

[4] Original Records (OR), 1. Emphasis in the original.

[5] Id. at 7.

[6] Id. at 10, 14-15.

[7] Id. at 28.

[8] Exhibit D; List/Record of Exhibits, 7.

[9] TSN, November 9, 1999, at 5.

[10] Id. at 10-11.

[11] Id. at 8.

[12] Exhibit F; List/Record of Exhibits, 9.

[13] TSN, November 9, 1999, at 15-16.

[14] TSN, February 21, 2000, at 4.

[15] Id. at 5.

[16] Id. at 7.

[17] TSN, August 15, 2000, at 7.

[18] Id. at 19-20.

[19] These four checks on exhibit bounced as the NOW Account was closed. Upon dishonor by the drawee bank, appellant allegedly told private complainant that she would replace the checks with cash. Upon payment in cash, the checks were returned to her one by one.

[20] Exhibit 3; List/Record of Exhibits, 13.

[21] TSN, March 12, 2001, at 1-8.

[22] This NOW check also bounced. See Exhibit D, List/Record of Exhibits, 7.

[23] When asked for further explanation, she said that she could not remember the circumstances that the P20,000.00-check was issued.

[24] TSN, March 12, 2001, at 8-18.

[25] Id. at 18-21.

[26] Id. at 20-25.

[27] TSN, June 18, 2001, at 1-15.

[28] Appellant's Brief, 8-9; Rollo, 77-78.

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

[30] Rollo, 70-71.

[31] Id. at 71.

[32] Bataan Cigar and Cigarette Factory, Inc. v. Court of Appeals, 230 SCRA 643 (1994).

[33] In Cruz v. Court of Appeals, 233 SCRA 301 (1994), the Court held that cross checks or restricted checks are negotiable instruments within the coverage of Batas Pambansa Blg. 22.

[34] People v. Fortuno, 73 Phil. 407 (1941).

[35] People v. Lilius, 59 Phil. 339 (1933).

[36] Rollo, 85.

[37] TSN, August 15, 2000, at 5.

[38] Id. at 6-7.

[39] 319 SCRA 595 (1999).

[40] Exhibit 4; List/Record of Exhibits, 14.

[41] Exhibit C; List/Record of Exhibits, 4.

[42] Affidavit-Complaint; OR, 3.

[43] Supra Note 4.

[44] The following inconsistencies in the testimony of appellant were raised in the Appellee's Brief:

- The total amount of her pre-existing obligation which she claimed to be P232,000.00 and the total value of the 16 checks she allegedly issued do not coincide.

- There is a P20,000.00-entry in the account ledger card when she claims that none of the checks she issued to complainant exceeds P13,000.00. Private complainant however failed to prove that the P20,000.00 check was issued to him. The evidence on record does not show to whom it was issued.

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