LUZ CAJIGAS AND LARRY CAJIGAS, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES AND COURT OF APPEALS, RESPONDENTS.

G.R. No. 156541. February 23, 2009

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This petition for review[1] assails the 24 July 2002 Decision[2] and 23 December 2002 Resolution[3] promulgated by the Court of Appeals in CA-G.R. CR No. 21278. The Court of Appeals affirmed with modification the 30 April 1997 Decision[4] of the Regional Trial Court of Ozamiz City, Branch 35, in Criminal Case Nos. RTC-1411 and RTC-1412 finding petitioners spouses Larry and Luz Cajigas guilty beyond reasonable doubt of two counts each of estafa under Article 315, paragraph 2(d) of the Revised Penal Code (RPC), as amended by Presidential Decree No. 818 (PD 818).

The Facts

Petitioners were charged with two counts each of estafa under Article 315, paragraph 2(d) of the RPC, as amended by PD 818. The Amended Informations in Criminal Case Nos. RTC-1411 and RTC-1412 read as follows:

> Criminal Case No. RTC-1411 (Amended Information)
>
> That on or about October 14, 1989, in the City of Ozamiz, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused spouses, conspiring and confederating together and/or mutually helping one another, with intent to gain, did then and there willfully, unlawfully and feloniously defraud Daisy Fuentes by means of false and fraudulent representations constituting deceit, well knowing that they have no sufficient funds deposited in the bank, and such fact was not disclosed to private offended party, draw, issue and negotiate FEBTC Check No. P 9019, dated November 14, 1989, covering the amount of P5,407.76; FEBTC Check No. P 9311, dated November 20, 1989, covering the amount of P6,558.00; FEBTC Check No. P 9313, dated November 25, 1989, covering the amount of P10,000.00; UCPB Check No. H 82285, dated November 30, 1989, covering the amount of P9,079.45 and UCPB Check No. H 82289, dated December 20, 1989, covering the amount of P2,713.00, and by means of said false pretenses or assurances and other similar deceits by active participation of accused Larry Cajigas induced private offended party to exchange aforestated checks with assorted jewelries in the amount of P33,758.21 for which the same did give and deliver to the above-named accused who fully well know that their manifestations and representation made to private offended party were false and untrue and upon presentation of FEBTC Checks Nos. P 9019, P 9311, P 9313, UCPB Checks Nos. H 82285 and H 82289 to the bank for payment the same were dishonored and unpaid for reason that the account of accused was closed and despite notice and demands made to them by private offended party that the aforestated checks were dishonored, the same failed and refused to make good said checks to the damage and prejudice of Daisy Fuentes in the amount of P33,758.21.[5]
>
> Criminal Case No. RTC-1412 (Amended Information)

> That on or about September 2, 1989, in the city of Ozamiz, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused spouses, conspiring and confederating together and/or mutually helping one another, with intent to gain, did then and there willfully, unlawfully and feloniously defraud Daisy Fuentes by means of false and fraudulent representations constituting deceit, well knowing that they have no sufficient funds deposited in the bank, and such fact was not disclosed to private offended party, draw, issue and negotiate ABC Check No. PA 660524012 F, dated October 2, 1989, covering the amount of P30,000.00 and ABC Check No. PA 660524014 F, dated October 5, 1989, covering the amount of P25,000.00 and by means of said false pretenses or assurances and other similar deceits by active participation of accused Larry Cajigas induced private offended party to exchange aforestated checks with assorted jewelries in the amount of P55,000.00 for which the same did give and deliver to the above-named accused who fully well know that their manifestations and representations made to private offended party were false and untrue and upon presentation of ABC Check No. PA 660524012 F and ABC Check No. PA 660524014 F to the bank for payment the same was dishonored and unpaid for reason that the account of accused was closed and despite notice and demands made to them by private offended party that the aforestated checks were dishonored, the same failed and refused to make good said checks to the damage and prejudice of Daisy Fuentes in the amount of P55,000.00.[6]

On arraignment, petitioners pleaded not guilty. Thereafter, trial ensued.

Version of the Prosecution

Private complainant Daisy Fuentes (Daisy) testified that she is a businesswoman engaged in the selling of ready-to-wear clothes (RTW) and jewelries. On 2 September 1989, petitioners went to Daisy's house in Lam-an, Ozamiz City and bought jewelries from her totaling P55,000. Petitioners paid for the jewelries by issuing two postdated Allied Bank Checks dated 2 and 5 October 1989, respectively. Daisy alleged that petitioners assured her that the checks were sufficiently funded. These checks, however, were dishonored by the drawee bank for the reason "Account Closed."

On 14 October 1989, Daisy claimed that petitioners went again to her house and purchased jewelries worth P33,000. As payment for the jewelries, petitioners issued five postdated checks, two United Coconut Planters Bank (UCPB) checks dated 30 November and 20 December 1989 and three Far East Bank and Trust Company (FEBTC) checks dated 14, 20, and 25 November 1989. Petitioners again assured Daisy that the checks were funded. However, the checks, except UCPB Check No. 82289 dated 20 December 1989 in the amount of P2,713.00, bounced for the reason "Account Closed." Daisy no longer presented UCPB Check No. 82289 for payment because she already knew that Luz's UCPB account had been closed when Daisy presented the other UCPB check. As early as 10 August 1989, Luz's UCPB account was already closed.[7]

Daisy further claimed that she went twice to the house of petitioners to demand payment. On her first visit, petitioners allegedly evaded Daisy and on the second time, Daisy discovered that petitioners were no longer residing there. Daisy searched for petitioners in Zamboanga and Cagayan de Oro City until the latter were located sometime in 1994 in Sucat, Parañaque, where they were finally arrested.

On rebuttal, Daisy explained the circumstances surrounding the issuance of the receipt allegedly replacing the bounced postdated checks involved in this case. Daisy stated that she had a transaction with Luz involving pawn papers and purchased whichever pawned items she liked.[8] Daisy explained that she signed the receipt with only the following written on it: "I received eleven (11) pieces of pawn papers from Luz Cajigas."[9] Daisy denied that she signed the receipt as replacement for all the checks issued by Luz.[10] Daisy also stated that Larry had previously transacted with her involving purchase orders of RTWs in Geegee Shopping Center.

The prosecution likewise presented Santiago Parojinog, a UCPB Senior Teller, who testified that Luz opened a

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current account with UCPB on 9 July 1989 and closed it on 10 August 1989.[11] Emmanuelito M. Enao (Enao), a Current and Savings Account Bookkeeper of FEBTC in Ozamiz City, testified that Luz opened a current account with FEBTC in September 1989 and closed it on 16 November 1989, and he showed photocopies of a ledger containing Luz's account.[12] Alex Donor, a Current and Savings Accounts Bookkeeper of Allied Bank, testified that Luz opened a current account with Allied Bank which was closed before October 1989.[13]

Version of the Defense

Larry denied the charges against him. Larry testified that he knew Daisy and her husband, Atty. Fuentes, but he never went to Daisy's house. He also stated that he had not seen the checks issued by his wife and co-accused Luz; that he and his wife did not have any joint bank account; and that he did not make any assurance that the checks subject of the criminal cases were sufficiently funded. On cross-examination, Larry testified that he was not aware of the transactions between his wife, Luz, and Daisy.

Luz, on the other hand, testified that she had been transacting with Daisy from 1986 to 1989 involving jewelries and purchase orders.[14] Luz admitted issuing the checks subject of these cases.[15] As their usual practice, Luz would purchase items from Daisy payable in five months and Luz would issue postdated checks before getting the items. If the amount involved was small, Daisy would wait for it to accumulate, then Luz would issue a check.[16] Luz would then redeem the checks. However, in the present criminal cases, Daisy did not return the checks after several demands to do so. Luz denied going to Daisy's house but she claimed that she transacted in Daisy's beauty parlor. Luz stated that she owed P3,500 only as remaining balance to be paid by pawn tickets.[17] Luz further claimed that she issued a replacement receipt for all the checks she issued, including the checks subject of these cases.[18]

After the trial, the Regional Trial Court of Ozamiz City, Branch 35, found petitioners guilty as charged, thus:

> WHEREFORE, finding accused spouses Larry and Luz Cajigas guilty beyond reasonable doubt of estafa punishable under Art. 315, par. 2(d) of the Revised Penal Code, as amended by PD 818 without modifying circumstances, this Court renders judgment sentencing them to two indeterminate penalties of six (6) years and one (1) day of prision mayor to seventeen (17) years, four (4) months and one (1) day of reclusion temporal and to indemnify the complainant P55,000.00 in Crim Case No. 1412 and P33,758.21 in Crim. Case No. 1411. This Court, however, finds that the strict enforcement of the provisions of Art. 315 as amended by PD 818 results in the imposition of a clearly excessive penalty, taking into account the degree of malice and injury caused by the offense. It therefore, recommends to the Chief Executive, through the Secretary of Justice, that the penalties imposed herein be commuted. With costs.
>
> SO ORDERED.[19]

The Ruling of the Court of Appeals

The Court of Appeals affirmed the conviction of the petitioners for two counts each of estafa under Article 315, paragraph 2(d) of the RPC, as amended by PD 818.

Contrary to petitioners' view, the Court of Appeals held that there were no inconsistencies between Daisy's testimonies during the cross-examination and rebuttal. Daisy simply explained the purpose and the circumstances that led her to sign the replacement receipt. The appellate court also stated that the discrepancies between the statements in Daisy's affidavit and testimony did not impair her credibility as affidavits are taken ex parte and are often incomplete or inaccurate.

The appellate court also found that Daisy was justified in filing the criminal cases only after four years from the date of the commission of the crime because she still had to determine the whereabouts of petitioners.

On Larry's culpability, the Court of Appeals agreed with the trial court that although Larry did not sign and issue the checks, he was still liable as a co-conspirator because he had known Daisy for a longer time.

The Court of Appeals further ruled that petitioners' failure to timely object to the admission of the photocopies of the ledger presented by the prosecution witness, Enao, constitutes a waiver of the right to object. Besides, objection to the admission of evidence for being hearsay cannot be raised for the first time on appeal.

In increasing the penalty imposed on petitioners, the Court of Appeals cited the case of People v. Flores.[20] Thus, the Court of Appeals disposed of the case, as follows:

> WHEREFORE, premises considered, with the modification that they should be, as they hereby are, sentenced each to serve an indeterminate penalty of twelve (12) years of prision mayor as minimum to twenty one (21) years of reclusion perpetua as maximum, in Criminal Case No. RTC-1411, and twelve (12) years of prision mayor as minimum to twenty three (23) years of reclusion perpetua as maximum, in Criminal Case No. RTC-1412, the judgment rendered by the trial court against accused-appellants Luz Cajigas and Larry Cajigas is AFFIRMED in all other respects. No pronouncement as to costs.
>
> SO ORDERED.[21]

Hence, this petition.

The Issue

The main issue in this case is whether petitioners are guilty beyond reasonable doubt of two counts of estafa under Article 315, paragraph 2(d) of the RPC, as amended by PD 818.

The Ruling of the Court

The petition is partly meritorious.

Luz is guilty of two counts of estafa
under Article 315, 2(d) of the RPC

Paragraph 2(d), Article 315 of the RPC provides:

> ART. 315. Swindling (estafa). - any person who shall defraud another by any of the means mentioned hereinbelow x x x
>
> 2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:
>
> x x x
>
> (d) By postdating a check, or issuing a check in payment of an obligation when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check. The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack or insufficiency of funds shall be prima facie evidence of deceit constituting false pretense or fraudulent act.

The elements of estafa under paragraph 2(d), Article 315 of the RPC are (1) the postdating or issuance of a check in payment of an obligation contracted at the time the check was issued; (2) lack of sufficiency of funds to cover the check; and (3) damage to the payee.[22]

In the present case, the prosecution sufficiently established Luz's guilt beyond reasonable doubt for two counts of estafa under Article 315, paragraph 2(d) of the RPC. Luz admits issuing the subject postdated checks as payment

for the jewelries she purchased from Daisy. In their various transactions, Daisy always required the issuance of checks in exchange for the jewelries purchased by Luz.[23] Daisy testified thus:

> Q:
>
> By the way, Mrs. Witness, how long have you been with this business of buying and selling jewelries?
>
> A:
>
> Long time ago, sir.
>
> Q:
>
> More or less, since when?
>
> A:
>
> Since the year 1986.
>
> Q:
>
> Up to the present?
>
> A:
>
> Yes, sir.
>
> Q:
>
> And therefore, in this business of jewelries of yours, when you transact to sell, there is always an involvement of checks as being payment? Is it not?
>
> A:
>
> Yes, sir, when they bought or buy jewelries, they paid me by check, because I will not give jewelries if they have no check.
>
> Q:
>
> And so, you are very familiar insofar of the use of checks being issued by your client, is it not?
>
> A:
>
> Yes, sir.[24]

Since Daisy would not have parted with the jewelries had it not been for Luz's issuance of the subject postdated checks, the checks were clearly issued as inducement for the surrender by Daisy of the jewelries.[25] The issuance of the checks was simultaneous to the delivery of the jewelries. It was a customary practice between the parties that Luz had to issue checks as payment for the jewelries she purchased from Daisy. Daisy also testified that she accepted the checks as payment for the jewelries precisely because Luz assured her that the checks were funded and would not bounce.[26] Relying on such assurance, Daisy even negotiated some of the checks to her jewelry suppliers.[27]

However, Luz claims that she replaced the checks with pawn tickets, as evidenced by the replacement receipt allegedly signed by Daisy.

Though admitting that she signed the replacement receipt, Daisy denies that it was intended to replace the subject checks. Daisy explains that the phrase "as replacement for all my checks" was merely inserted by Luz after she

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signed the document, which, Daisy insists, only serves as a receipt for the pawn tickets. Daisy claims that the pawn tickets did not replace the dishonored checks.

The Court finds that the replacement receipt merely evidences the fact of receipt by Daisy of the pawn tickets covering various items. Though there appears the following phrase "as replacement for all my checks," this particular phrase does not clearly and convincingly indicate that the pawn tickets replaced all the bounced postdated checks which Luz issued to Daisy. The total value and the number of checks supposedly intended to be replaced by the receipt were undetermined. The amount of the checks allegedly to be replaced was left blank. There were also no details (check numbers, dates, and drawee banks) of the checks specifically covered by the replacement receipt.

Moreover, according to Luz, she had a remaining balance of P3,500, which prompted her to give the pawn tickets to Daisy to settle this unpaid balance.[28] However, Luz also testified that the total market value of the items covered by the pawn tickets is roughly P300,000.[29] It is highly incredible that Luz would give Daisy the pawn tickets covering various valuable items totaling P300,000 when her supposed unpaid balance was only P3,500. Luz failed to explain why there was a disparity between her unpaid balance and the value of the pawn tickets. Also, Luz did not substantiate her claim that she only had P3,500 as unpaid balance.

On the other hand, the prosecution failed to prove beyond reasonable doubt Larry's guilt for the crime of estafa under Article 315, paragraph 2(d) of the RPC.

The Court of Appeals erred in sustaining the trial court's finding that Larry is guilty as a co-conspirator of Luz for the two counts of estafa. The trial court found Larry guilty of the crime charged based on the following circumstances: "It was he, and not his wife, who had a longer acquaintance with [Daisy]; it was he whom [Daisy allegedly] trusted more; he had credit transactions with [Daisy] as shown by Exhibit "Q"; and he, together with his family, fled from Ozamiz City, leaving no address."[30] Exhibit "Q" is a purchase order from Geegee Shopping Center issued by Daisy in favor of Larry, which the prosecution presented to rebut Larry's claim that he had no previous transaction with Daisy.

As a rule, conspiracy must be established with the same quantum of proof as the crime itself and must be shown as clearly as the commission of the crime.[31] In the present case, the prosecution failed to discharge its burden of establishing conspiracy between Luz and Larry based on proof beyond reasonable doubt. There was no proof, unlike in People v. Isleta,[32] that Larry had knowledge that Luz, the issuer of the checks, had no funds in the bank. The following facts were not disputed: (1) it was Luz, not Larry, who usually purchased jewelries from Daisy; (2) it was Luz, not Larry, who issued and directly negotiated the checks as payment for the jewelries; and (3) the checks were all drawn against Luz's personal bank accounts.[33] The previous transaction between Larry and Daisy involving a purchase order with Geegee Shopping Center was absolutely separate and different from the transactions between Luz and Daisy, which mainly involved the sale of jewelries. Besides, whether Larry had previously transacted with Daisy does not convincingly prove conspiracy between Luz and Larry in defrauding Daisy. Likewise, the fact that Daisy knew Larry longer than Luz does not prove Larry's guilt for the crime charged.

There is also no evidence on record to show that Larry had any agreement or understanding with his wife and co-accused Luz to defraud Daisy.[34] In Timbal v. Court of Appeals,[35] which involved an estafa case against a husband on account of a check issued by his wife, the Court held that the accused's mere presence at the scene of a crime would not by itself establish conspiracy, absent any evidence that he, by an act or series of acts, participated in the commission of fraud to the damage of the complainant.[36]

The penalty imposable on Luz

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Considering that Luz is guilty beyond reasonable doubt for the crime of estafa under Article 315, paragraph 2(d) of the RPC, as amended by PD 818, Luz is sentenced to suffer the penalty provided under PD 818, thus:

> 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:
>
> 1. 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;

In Criminal Case No. RTC-1411, the total value of the dishonored checks is P33,758.21 while in Criminal Case No. RTC-1412, the total value of the checks is P55,000. Considering that the total face value of the checks in both criminal cases exceeds P22,000, the penalty of reclusion temporal should be imposed in its maximum period, which is from 17 years, 4 months and 1 day to 20 years, adding one year for each additional P10,000.[37] Accordingly, in Criminal Case No. RTC-1411, one year is added to 20 years, for a total of 21 years of reclusion perpetua. In Criminal Case No. RTC-1412, three years are added to 20 years, for a total of 23 years of reclusion perpetua.

Applying the Indeterminate Sentence Law, the minimum of the indeterminate sentence can be anywhere within the range of the penalty next lower in degree to the penalty prescribed by the RPC for the crime.[38] The determination of the minimum term of the indeterminate sentence should be done without considering any modifying circumstance attendant to the commission of the crime and without reference to the periods into which it may be subdivided.[39] The penalty prescribed under Article 315, paragraph 2(d) of the RPC, as amended by PD 818, is reclusion temporal. The penalty next lower in degree is prision mayor. The minimum term of the indeterminate penalty should be anywhere within six years and one day to 12 years of prision mayor.[40]

WHEREFORE, we PARTIALLY GRANT the petition. We SET ASIDE the 24 July 2002 Decision and 23 December 2002 Resolution of the Court of Appeals in CA-G.R. CR No. 21278. We find petitioner Luz Cajigas GUILTY beyond reasonable doubt of two counts of estafa under Article 315, paragraph 2(d) of the Revised Penal Code, as amended by Presidential Decree No. 818. In Criminal Case No. RTC-1411, petitioner Luz Cajigas is sentenced to suffer an indeterminate penalty of six years and one day of prision mayor as minimum to twenty-one years of reclusion perpetua as maximum. In Criminal Case No. RTC-1412, she is also sentenced to suffer an indeterminate penalty of six years and one day of prision mayor as minimum to twenty-three years of reclusion perpetua as maximum. She is likewise ordered to pay the total amount of P88,758.21 corresponding to the value of the checks. We ACQUIT petitioner Larry Cajigas in both criminal cases based on reasonable doubt.

SO ORDERED.

ANTONIO T. CARPIO
Associate Justice

WE CONCUR:

REYNATO S. PUNO
Chief Justice
Chairperson

RENATO C. CORONA
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ARTURO D. BRION[*]
Associate Justice

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[*] Designated member per Special Order No. 570.

[1] Under Rule 45 of the Rules of Court.

[2] Rollo, pp. 8-26. Penned by Associate Justice Mariano C. Del Castillo, with Associate Justices Conchita Carpio Morales (now a member of this Court) and Martin S. Villarama, Jr., concurring.

[3] Id. at 28-29. Penned by Associate Justice Mariano C. Del Castillo, with Associate Justices Delilah Vidallon-Magtolis and Martin S. Villarama, Jr., concurring.

[4] Id. at 120-126. Penned by Judge Ma. Nimfa Penaco-Sitaca.

[5] Records (Criminal Case No. RTC-1411), pp. 39-40.

[6] Records (Criminal Case No. RTC-1412).

[7] Exhibit "I," Records (Criminal Case No. RTC-1411), p. 184.

[8] TSN, 17 February 1997, pp. 4, 7.

[9] Id. at 11.

[10] Id. at 15.

[11] TSN, 11 July 1995, p. 3.

[12] TSN, 14 July 1995, pp. 3, 5, 6.

[13] Id. at 14.

[14] TSN, 25 September 1996, p. 4.

[15] Id. at 32, 33.

[16] Id. at 34.

[17] TSN, 24 September 1996, pp. 13, 14.

[18] TSN, 24 September 1996, p. 15; TSN, 25 September 1996, p. 8.

[19] Rollo, p. 126.

[20] 426 Phil. 187 (2002).

[21] Rollo, pp. 25-26.

[22] Firaza v. People, G.R. No. 154721, 22 March 2007, 518 SCRA 681, 688.

[23] See Ilagan v. People, G.R. No. 166873, 27 April 2007, 522 SCRA 699.

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[24] TSN, 12 July 1995, pp. 4-5.

[25] People v. Reyes, G.R. Nos. 101127-31, 18 November 1993, 228 SCRA 13.

[26] TSN, 12 July 1995, pp. 8, 12.

[27] TSN, 12 July 1995, p. 9.

[28] TSN, 24 September 1996, pp. 14-15.

[29] TSN, 25 September 1996, p. 29.

[30] Records (Criminal Case No. RTC-1411), p. 205.

[31] Sim, Jr. v. People, G.R. No. 159280, 18 May 2004, 428 SCRA 459.

[32] 61 Phil. 332 (1935). Cited in Ilagan v. People, G.R. No. 166873, 27 April 2007, 522 SCRA 699.

[33] See Ramos-Andan v. People, G.R. No. 136388, 14 March 2006, 484 SCRA 611.

[34] People v. Dizon, 390 Phil. 1176 (2000).

[35] 423 Phil. 617, 622 (2001).

[36] Id. See also People v. Dizon, supra.

[37] People v. Dinglasan, 437 Phil. 621 (2002).

[38] Firaza v. People, G.R. No. 154721, 22 March 2007, 518 SCRA 681. See People v. Temporada, G.R. No. 173473, 17 December 2008. See also People v. Gabres, G.R. Nos. 118950-54, 6 February 1997, 267 SCRA 581 and People v. Saley, 353 Phil. 897 (1998).

[39] Firaza v. People, supra.

[40] Id.; People v. Dinglasan, supra.

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