

ELIZABETH EUSEBIO-CALDERON, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 158495. October 21, 2004

Ponente: YNARES-SATIAGO, J.

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YNARES-SATIAGO, J.:

This is a petition for review under Rule 45 of the Rules of Court, assailing the Decision[1] dated April 30, 2001 of the Court of Appeals in CA-G.R. CR No. 23466, which reversed and set aside the Decision[2] dated June 17, 1999 of the Regional Trial Court of Malolos, Bulacan, Branch 79, acquitting the accused of the crime of Estafa in the consolidated Criminal Cases No. 1190-M-95, 1191-M-95, and 1192-M-95 but ordering her to pay civil liability to the following: Amelia Casanova in the total amount of P130,900.00; Teresita Eusebio in the total amount of P172,250.00; and Manolito Eusebio in the total amount of P60,000.00.

Petitioner Elizabeth Eusebio-Calderon was charged with Estafa in three separate Informations, to wit:

In Criminal Case No. 1190-M-95:

That in or about the months of May to November, 1994, in the municipality of Pulilan, province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of deceit, false pretenses and fraudulent manifestations, and pretending to have sufficient funds with the Allied Bank, Planters Bank and PCIBank, Plaridel Branch, did then and there willfully, unlawfully and feloniously, prepared, issue and make out the following checks to wit:

BANK CHECK NO. DATE AMOUNT

Allied Bank 16041982 11-30-94

P100,000.00

Planters Bank 115954 12-2-94

4,500.00

-do- 1159561 12-4-94

9,500.00

-do- 15109854 12-4-94

2,500.00

-do- 15109930 12-7-94

5,000.00

PCIB 214723 12-7-94

5,000.00

Planters Bank 115968 12-9-94

4,400.00

(Total Amount Supplied)

P130,000.00

drawn against the said banks, and deliver the said checks to one Amelia Casanova as exchange for cash received from the said Amelia Casanova, knowing fully well that at the time the checks were issued, her representations were false for she had no sufficient funds in the said bank, so much so, that upon presentation of the said checks with the said banks for deposit or encashment, the same were dishonored and refused payment for having been drawn against a "Closed Account" and in spite of repeated demands to deposit with the said banks the total amount of P130,900.00, the said accused failed and refused to do so, to the damage and prejudice of the said Amelia Casanova in the said total amount of P130,900.00.[3]

In Criminal Case No. 1191-M-95:

That in or about the months of May to November 1994, in the municipality of Pulilan, province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of deceit, false pretenses and fraudulent manifestations, and pretending to have sufficient funds with the Allied Bank, PCIBank and Planters Bank, Plaridel Branch, did then and there willfully, unlawfully and feloniously, prepared, issue and make out the following checks to wit:

BANK CHECK NO. DATE AMOUNT

Allied Bank 16076401 11-15-94

P54,500.00

-do- 16076402 11-30-94

105,000.00

PCIB 214730 11-30-94

2,500.00

PCIB 214796 11-30-94

1,750.00

Planters Bank 15109960 12-03-94

5,000.00

Allied Bank 16083156 12-03-94

2,500.00

Planters Bank 15094519 11-30-94

3,000.00

(Total Amount Supplied)

P172,250.00

drawn against the said banks, and deliver the said checks to one Teresita Eusebio as exchange for cash received from the said Teresita Eusebio, knowing fully well that at the time the checks were issued, her representations were false for she had no sufficient funds in the said bank, so much so, that upon presentation of the said checks with the said banks for deposit or encashment, the same were dishonored and refused payment for having been drawn against a "Closed Account" and inspite of repeated demands to deposit with the said banks the total amount of P172,250.00, the said accused failed and refused to do so, to the damage and prejudice of the said Teresita Eusebio in the said total amount of P172,250.00.[4]

In Criminal Case No. 1192-M-95:

That in or about the months of June to November, 1994, in the municipality of Pulilan, province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of deceit, false pretenses and fraudulent manifestations, and pretending to have sufficient funds with the Allied Bank and Planters Bank, Plaridel Branch, did then and there willfully, unlawfully and feloniously, prepared, issue and make out the following checks to wit:

BANK CHECK NO. DATE AMOUNT

Allied Bank 16083115 12-3-94

P2,500.00

-do- 16063578 12-6-94

50,000.00

-do- 16063577 12-6-94

2,500.00

-do- 16076436 12-13-94

2,500.00

Planters Bank 116202 12-13-94

2,500.00

(Total Amount Supplied)

P60,000.00

drawn against the said banks, and deliver the said checks to one Manolito G. Eusebio as exchange for cash received from the said Manolito G. Eusebio, knowing fully well that at the time the checks were issued, her representations were false for she had no sufficient funds in the said bank, so much so, that upon presentation of the said checks with the said banks for deposit or encashment, the same were dishonored and refused payment for having been drawn against a "Closed Account" and inspite of repeated demands to deposit with the said banks the total amount of P60,000.00, the said accused failed and refused to do so, to the damage and prejudice of the said Manolito G. Eusebio in the said total amount of P60,000.00.[5]

The private complainants, Teresita Eusebio, Amelia Casanova and Manolito Eusebio, are petitioner's aunt and cousins, respectively.

On May 15, 1994, petitioner visited her Aunt Teresita in Bulacan to borrow P50,000.00, in exchange for which she issued an Allied Bank Check No. 16076401, postdated November 15, 1994, in the amount of P52,500.00. On May 30, 1994, petitioner again borrowed from Teresita the amount of P100,000.00, in exchange for which she issued Allied Bank Check No. 16076402, postdated November 14, 1994, in the amount of P105,000.00.

Also on May 30, 1994, Amelia Casanova went to the drugstore of petitioner and lent her the amount of P100,000.00, allegedly to be used for the expansion of her business. In exchange, petitioner issued Allied Bank Check No. 16041982, postdated November 30, 1994, for P100,000.00 and six other checks in various amounts purportedly to cover the interests.

Manolito Eusebio alleges that in November 1994, petitioner borrowed money from him because she needed it for her pharmaceutical business. Manolito loaned her P50,000.00, for which she issued Allied Bank Check No. 16063578 covering the principal amount of the loan, dated December 6, 1994, and four other postdated checks for the interests thereon.

According to private complainants, petitioner assured them that the checks will be honored upon maturity. They gave her the money because she showed them her pieces of jewelry which convinced them that she has the ability to pay the loans.

In her defense, petitioner admits that she issued the checks but alleges that it was not done to defraud her creditors. She claims that her dealings with private complainants started in 1987 with her uncle Alberto, the husband of complainant Teresita and the father of Amelia and Manolito. Although her uncle died in 1989, she continued to make good the value of the postdated checks she issued until 1990. Finally, she asserts that she is an educated woman and she never had any intention to deceive the private complainants.

After trial, the lower court rendered a joint decision finding petitioner guilty beyond reasonable doubt of three counts of Estafa but ruled that her liability for the "interest checks" was only civil. The dispositive portion of the decision reads:

In Criminal Case No. 1190-M-95:

PREMISES CONSIDERED the complainant in Criminal Case No. 1190-M-95 wherein the complainant is one Amelia Casanova was able to prove beyond reasonable doubt the culpability of herein accused because she would not have parted with her P100,000.00 if not for the assurance that the check issued was properly funded.

WHEREFORE, the Court hereby renders judgment finding accused ELIZABETH E. CALDERON of Poblacion, Pulilan, Bulacan guilty beyond reasonable doubt of the crime of Estafa defined and penalized under Par. 2 (d) of Art. 315, Revised Penal Code as amended by P.D. 818 and sentencing the said accused as follows:

- To suffer an indeterminate sentence of imprisonment of nine (9) years and one (1) day of PRISION MAYOR as minimum to SEVENTEEN (17) YEARS FOUR (4) months and one (1) day of RECLUSION TEMPORAL as maximum;
- To suffer the accessory penalties provided by law;
- To pay the cost; and
- To indemnify the complainant Amelia Casanova the sum of P100,000.00. (Exh. "A")

Necessarily, the other checks exhibits "B", "C", "D", "E", "F" and "G" in the amount of P5,000.00, P5,000.00,

P4,400.00, P4,500.00, P9,500.00 and P 2,500.00 respectively in the total amount of P30,900.00 is hereby DISMISSED the same being civil in nature and are interest of transaction other than the principal amount of P100,000.00.[6]

In Criminal Case No. 1191-M-95:

PREMISES CONSIDERED, the court finds accused Elizabeth Calderon guilty beyond reasonable doubt of the crime of ESTAFA defined and penalized under Par. 2 (d) of Art. 315, Revised Penal Code as amended by P.D. 818 sentencing the said accused as follows:

- To suffer an indeterminate sentence of imprisonment of Ten (10) years and One (1) day of PRISION MAYOR as minimum to seventeen (17) years FOUR (4) months and one (1) day of RECLUSION TEMPORAL as maximum;
- To suffer the accessory penalties provided by law;
- To pay the cost; and
- To indemnify the complainant Teresita Eusebio the sum of P157,500.00 representing the two checks, exhibits "A" and "B".[7]

In Criminal Case No. 1192-M-95:

WHEREFORE, the court hereby renders judgment finding accused Elizabeth Calderon guilty beyond reasonable doubt of the Crime of ESTAFA defined and penalized under Par. 2 (d) of Art. 315 of the Revised Penal Code as amended by P.D. 818 and sentencing the said accused as follows:

- To suffer an indeterminate sentence of imprisonment of FOUR (4) years 2 months and one (1) day of PRISION CORRECCIONAL as minimum to eight (8) years and one (1) day of PRISION MAYOR;
- To suffer the accessory penalties provided by law;
- To pay the costs; and
- To indemnify the complainant Manolito Eusebio the sum of P50,000.00.

The other checks exhibit "B" to "E" are hereby DISMISSED.[8]

The trial court denied petitioner's Motion for Reconsideration for lack of merit.[9] Hence, petitioner appealed the judgment of the trial court to the Court of Appeals.

In its Decision dated April 30, 2001, the Court of Appeals disposed of the appeal as follows:

WHEREFORE, the Decision appealed from in so far as it bears on the criminal liability of the accused is REVERSED and SET ASIDE and a new judgment is issued ACQUITTING the accused of the crimes charged on the ground that her guilt has not been proven beyond reasonable doubt. However, she is held civilly liable as follows:

In Criminal Case No. 1190-M-95: To indemnify Amelia Casanova the total amount of P130,900.00;

In Criminal Case No. 1191-M-95: To indemnify Teresita Eusebio the total amount of P172,250.00;

In Criminal Case No. 1192-M-95: To indemnify Manolito Eusebio the total amount of P60,000.00;

all with interest thereon at the rate of 12% per annum effective December 20, 1994, the date of complainants' demand thru their counsel, until fully paid, and to pay costs.

SO ORDERED.[10]

In the instant petition for review, petitioner raises the following errors:

- The Honorable Court of Appeals failed to consider that on the face of the Decision rendered by the Presiding Judge of RTC – Branch 17, Malolos City, that interest checks were dismissed but found the appellant guilty with respect to the principal loan checks in the three cases above mentioned.
- The Honorable Court of Appeals failed to consider that the whole transactions that transpired between appellant and private appellees covered a period lasting in years whereby private appellees charged appellant highly usurious interests which under current jurisprudence maintains that usurious interests are void.
- With utmost due respect, the Honorable Court of Appeals failed to consider that under the sorry state of affairs which petitioner experienced when the instant three criminal cases were pending before RTC – Branch 79, Malolos City, that private respondents should have filed a separate civil complaint for their alleged claim of Sum of Money.[11]

The issues for resolution are as follows: (1) Did the Court of Appeals err in finding the appellant civilly liable to complainants with respect to the interest in the principal loan despite the dismissal of the interest checks by the Regional Trial Court? (2) Is the interest agreed upon by the parties usurious? (3) Should the private respondents file a separate civil complaint for the claim of Sum of Money?

We find the petition meritorious. Since the 1st and 3rd issues are interrelated they shall be discussed jointly.

In a criminal case, an appeal throws the whole case wide open for review. Issues whether raised or not by the parties may be resolved by the appellate court.[12] When petitioner appealed her conviction, the dismissal of the interest checks by the lower court did not preclude the Court of Appeals from reviewing such decision and modifying her civil liability. The appeal conferred upon the appellate court full jurisdiction and rendered it competent to examine the records, revise the judgment appealed from, increase the penalty and cite the proper provision of the penal law.[13]

Under Article 29 of the Civil Code, when the accused in a criminal prosecution is acquitted on the ground that his guilt has not been proven beyond reasonable doubt, a civil action for damages for the same act or omission may be instituted. The judgment of acquittal extinguishes the liability of the accused for damages only when it includes a declaration that the fact from which the civil liability might arise did not exist.[14] Thus, Section 1, paragraph (a) of Rule 111 of the Rules of Court provides:

SECTION 1. Institution of criminal and civil actions. – (a) When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action.

In the case of *Manantan v. Court of Appeals*,[15] we elucidated on the two kinds of acquittal recognized by our law as well as its different effects on the civil liability of the accused. Thus:

x x x. First is an acquittal on the ground that the accused is not the author of the act or omission complained of. This instance closes the door to civil liability, for a person who has been found to be not the perpetrator of any act or omission cannot and can never be held liable for such act or omission. There being no delict, civil liability *ex delicto* is out of the question, and the civil action, if any, which may be instituted must be based on grounds other than the delict complained of. This is the situation contemplated in Rule 111 of the Rules of Court. The second instance is an acquittal based on reasonable doubt on the guilt of the accused. In this case, even if the guilt of the accused has not been satisfactorily established, he is not exempt from civil liability which may be proved by preponderance of evidence only. This is the situation contemplated in Article 29 of

the Civil Code, x x x.

An accused who is acquitted of Estafa may nevertheless be held civilly liable where the facts established by the evidence so warrant.[16] Petitioner Elizabeth Calderon is clearly liable to the private respondents for the amount borrowed. The Court of Appeals found that the former did not employ trickery or deceit in obtaining money from the private complainants, instead, it concluded that the money obtained was undoubtedly loans for which petitioner paid interest. The checks issued by petitioner as payment for the principal loan constitute evidence of her civil liability which was deemed instituted with the criminal action.

The civil liability of petitioner includes only the principal amount of the loan. With respect to the interest checks she issued, the same are void. There was no written proof of the payable interest except for the verbal agreement that the loan shall earn 5% interest per month. Under Article 1956 of the Civil Code, an agreement as to payment of interest must be in writing, otherwise it cannot be valid.[17] Consequently, no interest is due and the interest checks she issued should be eliminated from the computation of her civil liability.

However, while there can be no stipulated interest, there can be legal interest pursuant to Article 2209 of the Civil Code.[18] It is elementary that in the absence of a stipulation as to interest, the loan due will now earn interest at the legal rate of 12% per annum.[19] In the case of *Eastern Shipping Lines, Inc. v. Court of Appeals*, [20] we established the guidelines particularly for the award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof as follows:

When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code. (Emphasis supplied)

Hence, petitioner is liable for the payment of legal interest per annum to be computed from December 20, 1994, the date when she received the demand letter. After the judgment becomes final and executory until the obligation is satisfied, the amount due shall earn interest at 12% per year, the interim period being deemed equivalent to a forbearance of credit.[21]

In view of our ruling that there can be no stipulated interest in this case, there is no need to pass upon the second issue of whether or not the interests were usurious.

WHEREFORE, in view of the foregoing, the Decision of the Court of Appeals in CA-G.R. CR No. 23466 is **AFFIRMED** with the **MODIFICATION** that petitioner is ordered to pay Amelia Casanova the sum of P100,00.00; Teresita Eusebio the sum of P157,500.00; and Manolito Eusebio the sum of P50,000.00 as civil liability with legal interest of twelve percent (12%) per annum from December 20, 1994 until its satisfaction.

Costs de oficio.

SO ORDERED.

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

[1] Rollo, pp. 62-84; penned by Associate Justice Portia Aliño-Hormachuelos; concurred in by Associate Justices Fermin A. Martin, Jr. and Mercedes Gozo-Dadole.

- [2] Records, pp. 551-597; penned by Judge Arturo G. Tayag.
- [3] Id., pp. 551-552.
- [4] Id., pp. 552-553.
- [5] Id., p. 553.
- [6] Id., pp. 594-595.
- [7] Id., p. 596.
- [8] Id., p. 597.
- [9] Id., p. 612.
- [10] Rollo, p. 83.
- [11] Id., pp. 18-19.
- [12] *People v. Salva*, G.R. No. 132351, 10 January 2002, 373 SCRA 55, 64.
- [13] *People v. Las Piñas, Jr.*, G.R. No. 133444, 20 February 2002, 377 SCRA 377, 383.
- [14] *Sapiera v. Court of Appeals*, G.R. No. 128927, 14 September 1999, 314 SCRA 371, 375.
- [15] G.R. No. 107125, 29 January 2001, 350 SCRA 387, 397-398.
- [16] *Serona v. Court of Appeals*, G.R. No. 130423, 18 November 2002, 392 SCRA 35, 45.
- [17] *Pacheco v. Court of Appeals*, G.R. No. 126670, 2 December 1999, 319 SCRA 595, 608.
- [18] Article 2209. If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of interest agreed upon, and in the absence of stipulation, the legal interest, which is six percent per annum (increased by the Monetary Board to twelve percent per annum under Central Bank Circular No. 416).
- [19] *Sulit v. Court of Appeals*, G.R. No. 119247, 17 February 1997, 268 SCRA 441, 448.
- [20] G.R. No. 97412, 12 July 1994, 234 SCRA 78, 95.
- [21] *Delsan Transport Lines, Inc. v. C & A Construction, Inc.*, G.R. No. 156034, 1 October 2003, 412 SCRA 524, 532.

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