

GORETTI ONG, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 165275. September 23, 2008

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Goretti Ong (petitioner) was, by Information dated August 10, 1995, charged before the Regional Trial Court (RTC) of Manila for Estafa, without specification under what mode in Article 315 of the Revised Penal Code the offense was allegedly committed. The Information alleged as follows:

That on or about December 12, 1994, in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully and feloniously defraud ROSA CABUSO in the following manner, to wit: the said accused, well knowing that [s]he did not have sufficient funds in the bank, and without informing the said Rosa Cabuso of such fact, drew, made out and issued to the latter the following checks, to wit:
Allied Bank Check No. 76000242 dated January 13, 1995 in the amount of P76,654.00;

Banco de Oro Check No. 026265 dated January 15, 1995 in the amount of P76,654.00;

PS Bank Check No. 000928 dated January 18, 1995 in the amount of P100,000.00;

Banco de Oro Check No. 026270 dated January 15, 1995 in the amount of P100,000.00;

Banco de Oro Check No. 026266 dated January 20, 1995 in the amount of P76,654.00;

Banco de Oro Check No. 026267 dated January 25, 1995 in the amount of P96,494.00;

PS Bank Check No. 000927 dated January 31, 1995 in the amount of P96,494.00;

Banco de Oro Check No. 026271 dated January 31, 1995, in the amount of P100,000.00;

Banco de Oro Check No. 26268 dated January 31, 1995 in the amount of P76,654.00; and

PS Bank Check No. 000950 dated January 31, 1995 in the amount of P144,000.00.

all in the total amount of P923,110.00, in payment of assorted pieces of jewelry which the said accused ordered, purchased and received from the said complainant on the same day; that upon presentment of the said checks to the bank for payment, the same were dishonored and payment thereof refused for the reason "ACCOUNT CLOSED" and said accused, notwithstanding due notice to her by said complainant of such dishonor of the said checks, failed and refused and still fail[s] and refuse[s] to deposit the necessary amount to cover the amount of the checks, to the damage and prejudice of the said Rosa Cabuso in the aforesaid amount of P923,110.00, Philippine [c]urrency.[1] (Emphasis and underscoring supplied)

Petitioner had for years been buying jewelry from Gold Asia which is owned and operated by the family of Rosa Cabuso (the private complainant). While she normally bought jewelry on cash basis, she was allowed to issue postdated checks to cover the jewelry she bought in December 1994 up to February 1995, upon her assurance that

the checks would be funded on their due dates. When, on maturity, the checks were deposited, they were returned with the stamp "Account Closed."

Hence, petitioner was indicted for Estafa. She was likewise indicted for 10 counts of violation of B.P. 22 before the RTC of Manila, docketed as Criminal Case Nos. 213645-CR to 213654-CR.

The evidence presented by the prosecution in the Estafa case consisted of, inter alia, the 10 dishonored checks and the transcript of stenographic notes[2] taken during the trial of the B.P. 22 cases, which transcripts included those of the testimonies of representatives of the drawee banks Allied Bank, PSBank and Banco de Oro.

Petitioner, denying having intended to defraud the private complainant, gave her side of the case as follows:

On December 12, 1994, all the personal checks she had issued matured at the same time, but as her business was faring poorly, she was not able to fund those which she issued to the private complainant. On her request, however, the private complainant allowed her to pay on installment the amounts covered by the checks and she had in fact paid a total of P338,250, a fact admitted by the prosecution.

By Decision[3] of March 31, 2003, Branch 8 of the Manila RTC convicted petitioner of Estafa under Article 315, paragraph 2(a) of the Revised Penal Code in this wise:

While the parties are of the impression that the accused is charged with and is being tried for the crime of estafa committed by means of the issuance of bouncing checks [Art. 315, 2(d) of the Revised Penal Code], this Court is of the opinion that the Information sufficiently charges estafa through false pretenses under Paragraph 2(a) of the same article which provides:

"Art. 315. Swindling (estafa). - Any person who shall defraud another . . .

x 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:

a) By using a fictitious name or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; or by means of similar deceits."[4] (Emphasis and underscoring supplied)

Thus the trial court disposed:

WHEREFORE, the Court hereby renders judgment finding accused Goretti Ong GUILTY BEYOND REASONABLE DOUBT of the crime of Estafa defined and penalized under Article 315, paragraph 2(a) of the Revised Penal Code and hereby imposes on said accused the penalty of TWELVE (12) YEARS imprisonment and to pay private complainant Rosa Cabuso the amount of FIVE HUNDRED EIGHTY FOUR THOUSAND EIGHT HUNDRED SIXTY (P584,860.00) PESOS and cost of suit.[5] (Underscoring supplied)

Petitioner challenged the trial court's decision before the Court of Appeals, raising the issue of whether she could be convicted of Estafa under Article 315, paragraph 2(a) of the Revised Penal Code when she was, in the Information, charged of Estafa under Article 315, paragraph 2(d) of the same Code. She additionally raised the following issues:

x x x x

- Whether or not the decision of the trial court is valid even if it failed to comply with the provisions of the indeterminate sentence law;

- Whether or not the accused-appellant can be convicted of the crime of estafa despite the failure of the

prosecution to prove her guilt beyond reasonable doubt[.][6] (Underscoring supplied)

The Court of Appeals affirmed the conviction on appeal but modified the penalty and the amount of indemnity,[7] disposing as follows:

WHEREFORE, premises considered, the present appeal is hereby DISMISSED for lack of merit. The appealed decision dated March 31, 2003 of the trial court in Criminal Case No. 95-144421 is hereby AFFIRMED with MODIFICATION in that the accused-appellant is hereby instead sentenced to suffer an indeterminate prison term of four (4) years and two (2) months of prision correccional, as minimum, to twenty (20) years of reclusion temporal as maximum, and to indemnify the complaining witness in the amount of P585,514.00.

With costs against the accused-appellant.[8]

Her Motion for Reconsideration[9] having been denied, [10] petitioner filed the present petition,[11] faulting the appellate court for convicting her of Estafa despite her good faith and lack of criminal intent, and violating her constitutional right to be informed of the nature and cause of the accusation against her by affirming the trial court's decision finding her guilty of Estafa under Article 315, paragraph 2(a), when she was charged under paragraph 2(d) of the same Article.[12]

The appeal is impressed with merit.

Section 14(2) of Article III of the Constitution grants the accused the right to be informed of the nature and cause of the accusation. This is to enable the accused to adequately prepare for his defense. An accused cannot thus be convicted of an offense unless it is clearly charged in the complaint or information.[13]

From the allegations in an information, the real nature of the crime charged is determined.[17] In the case at bar, the Information alleged that petitioner issued the questioned checks knowing that she had no funds in the bank and failing to fund them despite notice that they were dishonored. These allegations clearly constitute a charge, not under paragraph 2(a) as the lower courts found but, under paragraph 2(d) of Article 315 of the Revised Penal Code which is committed as follows:

x x x x

(a) 2(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 this 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.

x x x x (Underscoring supplied)

Although the earlier quoted paragraph 2(a) and the immediately quoted paragraph 2(d) of Article 315 have a common element - false pretenses or fraudulent acts - the law treats Estafa under paragraph 2(d) by postdating a check or issuing a bouncing check differently. Thus, under paragraph 2(d), failure to fund the check despite notice of dishonor creates a prima facie presumption of deceit constituting false pretense or fraudulent act, which is not an element of a violation of paragraph 2(a).

Under paragraph 2(d), if there is no proof of notice of dishonor, knowledge of insufficiency of funds cannot be presumed, and unless there is a priori intent, which is hard to determine and may not be inferred from mere failure to comply with a promise, no Estafa can be deemed to exist. So holds the 2004 case of *People v. Ojeda*. [14]

x x x [N]otice of dishonor is required under both par. 2(d) Art. 315 of the R[evised] P[enal] C[ode] and Sec. 2 of BP 22. While the RPC prescribes that the drawer of the check must deposit the amount needed to cover his

check within three days from receipt of notice of dishonor, BP 22, on the other hand, requires the maker or drawer to pay the amount of the check within five days from receipt of notice of dishonor. Under both laws, notice of dishonor is necessary for prosecution (for estafa and violation of BP 22). Without proof of notice of dishonor, knowledge of insufficiency of funds cannot be presumed and no crime (whether estafa or violation of BP 22) can be deemed to exist.[15] (Emphasis and underscoring supplied)

Notice of dishonor being then an element of a charge under Article 2(d) under which petitioner was clearly charged, failure to prove it is a ground for acquittal thereunder.

In affirming the trial court's decision, the Court of Appeals relied on the ruling in the 2003 case of *Garcia v. People*[16] wherein this Court upheld the appellate court's affirmance of the trial court's conviction of the accused for Estafa under Article 315, "Section 2(2) [sic] of the Revised Penal Code." In that case, the accused was charged as follows:

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

Name of Bank

Check No.

Amount

Date

Payable to

Phil. Nat'l. Bank

046884

P28,000.00

6-20-'95

Cash

- do -

047416

34,000.00

8-15-'95

- do -

Pilipinas Bank

60042087

25,000.00

7-25-'95

Garcia Vegetable
Dealer

as payments of assorted vegetables which accused purchased and received from said DOLORES S. APOLONIO in the amount of P87,000.00, said accused knowing fully well that the said manifestations and representations were all false and untrue as said checks when presented to the bank for payment were all dishonored for the reason "Drawn Against Insufficient Funds," and were made solely for the purpose of obtaining, as in fact she did obtain assorted vegetables in the amount of P87,000.00; which once in her possession and with intent to defraud, she willingly, unlawfully and feloniously misappropriated, misapplied and converted the said assorted vegetables or the value thereof to her own personal use and benefit, to the damage and prejudice of the said owner in the aforesaid amount of P87,000.00, Philippine Currency.[17] (Underscoring supplied)

The therein accused Garcia argued that since, under the above-quoted Information, she was charged of Estafa under Article 315, paragraph 2(a) of the Revised Penal Code, it was error for the appellate court to affirm her conviction by the trial court under Article 315, paragraph 2(d).

The Court in Garcia held that there is "no basis for [her] to conclude that she was convicted under Article 315, paragraph 2(d)," but that "[e]ven supposing that the trial court apparently discussed estafa under Article 315, paragraph 2(d), it was only pointing out the absurdity of [Garcia's] argument that she could not be held liable under Article 315 paragraph 2(d) as she was

not the drawer of the therein involved checks." Reliance on Garcia is thus misplaced.

In the case at bar, as priorly stated, petitioner was charged under paragraph 2(d), but there is no evidence that petitioner received notice of dishonor of all, except one (Allied Bank Check No. 7600042 for P76,654), of the questioned checks. Hence, with respect to all but one of the checks, the prima facie presumption of knowledge of insufficiency of funds did not arise.

This leaves it unnecessary to pass on the evidence for the defense. Suffice it to state that petitioner's defenses of good faith and lack of criminal intent, defenses to a malum in se like Estafa, are not difficult to credit. For, on notice of the lack of sufficient funds in her bank account, to cover the Allied Bank check, petitioner offered to pay in installment, to which the private complainant agreed, the amount covered by the said check, as well as the others. As reflected above, the prosecution stipulated that petitioner had made a total payment of P338,250, which amount is almost one-third of the total amount of the ten checks or more than the amount covered by the P76,654 Allied Bank check.

IN FINE, the prosecution having failed to establish all the elements of Estafa under Article 315, paragraph 2(d) under which petitioner was clearly charged, her acquittal is in order. The judgment bearing on her civil liability stands, however.

WHEREFORE, the petition is partly GRANTED. Petitioner, Goretti Ong, is ACQUITTED of the crime charged for failure of the prosecution to prove her guilt beyond reasonable doubt. The decision bearing on her civil liability is AFFIRMED, however.

Costs against petitioner.

SO ORDERED.

Quisumbing, Tinga, Velasco, Jr., and Brion, JJ., concur.

[1] Records, p. 1.

[2] Exhibit "A"-"L," id. at 162-212.

[3] Id. at 400-405.

[4] Id. at 402-403.

[5] Id. at 405.

[6] CA rollo, p. 65.

[7] Decision of June 11, 2004, penned by Court of Appeals Associate Justice Martin S. Villarama, Jr. with the concurrence of Associate Justices Regalado E. Maambong and Lucenito N. Tagle, id. at 148-158.

[8] Id. at 157.

[9] Id. at 161-164.

[10] Id. at 177.

[11] Rollo, pp. 7-34.

[12] Id. at 16.

[13] Vide *People v. Almendral*, G.R. No. 126025, July 6, 2004, 433 SCRA 440, 450-451.

[17] *Garcia v. People*, 457 Phil. 713, 716 (2003).

[14] G.R. Nos. 104238-58, June 3, 2004, 430 SCRA 436.

[15] Id. at 449.

[16] 457 Phil. 713 (2003).

[17] Id. at 716-717.

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