

JUDE JOBY LOPEZ, PETITIONER, V.S. PEOPLE OF THE PHILIPPINES RESPONDENT.

G.R. No. 166810. June 26, 2008

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

This is a petition for review on certiorari filed by JUDE JOBY LOPEZ from the decision[1] dated January 12, 2005 of the Court of Appeals (CA), Ninth Division, in CA-G.R. CR No. 27057, affirming an earlier decision[2] of the Regional Trial Court (RTC), Branch 53, Sorsogon, Sorsogon, which found petitioner guilty beyond reasonable doubt of the crime of Estafa as defined under Article 315, par. 2(d) of the Revised Penal Code, as amended by Republic Act (R.A.) No. 4885 and sentenced him to suffer an indeterminate penalty of six (6) years and one (1) day of prision mayor, as minimum, to twelve (12) years and one (1) day of reclusion temporal, as maximum, and to indemnify the private complainant in the amount of Twenty Thousand Pesos (P20,000.00) plus costs.

On October 6, 1998, in the RTC of Sorsogon, an Information for estafa was filed against herein petitioner Jude Joby G. Lopez which was docketed in as Criminal Case No. 98-4690. The said Information alleged:

That on or about March 23, 1998, in the municipality of Sorsogon, province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to defraud, did then and there, willfully, unlawfully and feloniously, make, draw, and issue to apply on account and/or for value received a DBP Check No. 0859279 payable to EFREN R. ABLES in the amount of TWENTY THOUSAND PESOS (P20,000.00), Philippine Currency, knowing fully well that at the time of issue, accused did not have sufficient fund and/or his account is already closed with the drawee bank and that upon presentment of the check for payment on May 27, 1998, the same was dishonored and/or refused payment by the drawee bank for the reason that the account of the said accused is already closed and/or without sufficient fund and despite repeated demands after receipt of notice of said dishonor and thereafter made by Efren R. Ables, accused refused and still refuses to pay the latter, to his damage and prejudice in the aforementioned amount of P20,000.00, Philippine Currency.

Contrary to law. [3]

When arraigned on April 13, 1999, petitioner pleaded "Not Guilty" [4] to the offense charged. During the trial on the merits, the prosecution presented the testimonies of private complainant Efren R. Ables and Valentin Luzuriaga, a bank teller of the Development Bank of the Philippines (DBP). The prosecution presented Exhibits "A" to "E" with submarkings consisting of the check issued by the petitioner, the demand letter sent by private complainant to petitioner and bank records to show that the said check was dishonored as the account was closed even before the said check was issued. All of the aforesaid exhibits were admitted by the trial court in its Order dated August 27, 2001. On the other hand, petitioner did not present any witness but only offered his documentary evidence, consisting of: Exh. 1- the said demand letter of the private complainant; Exh. 1-A - stamp "Return to Sender" on the envelope of Exh. 1; Exh. 2 - the Transcript of Stenographic Notes (TSN of the Hearing on December 20, 1999); Exh. 2-a, page 9 of the said TSN; and Exh. 2-b, the No. 5 question and answer in Exh. 2.

The trial court convicted the accused (herein petitioner) of the crime of estafa penalized by Article 315, par. 2(d) of the Revised Penal Code as amended by R.A. No. 4885 in its decision dated June 17, 2002. The dispositive portion of the decision reads:

WHEREFORE, the Court finds the accused Jude Joby G. Lopez guilty beyond reasonable doubt of the crime of ESTAFA defined and penalized under Art. 315, par. 2 (d) of the Revised Penal Code as amended by R.A. 4885 and taking into consideration the Indeterminate Sentence Law, the Court hereby sentences him to suffer an imprisonment of Six (6) years and One (1) day of prision mayor as minimum to Twelve (12) years and One (1) day of reclusion temporal as maximum and to indemnify the private complainant, Efren Ables in the amount of P20,000.00 Philippine currency and to pay the costs.

SO ORDERED.[5]

In his Motion for Reconsideration, petitioner, citing the case of Pacheco v. Court of Appeals (G.R. No. 126670, December 2, 1999, 319 SCRA 595), argued that Ables knew at the time of the issuance of the check that accused had no funds in the bank and therefore, the element of deceit was absent. The said Motion for Reconsideration was denied by the trial court.

Petitioner appealed to the CA, reiterating his argument that the element of deceit was not proven and that the lower court imposed excessive penalty. The CA rendered its Decision on January 12, 2005 in CA-G.R. CR No. 27057 affirming in toto the decision of the trial court in this case.

Hence, the petitioner interposed this appeal, contending that the CA erred -

- In affirming the decision of the lower court convicting the accused of the crime of estafa.
- In not applying the provisions of the negotiable instruments law.
- In not ruling on the excessive penalty imposed by the trial court.

We find no merit in the instant appeal.

Article 315, paragraph 2(d), of the Revised Penal Code, as amended by R.A. 4885 penalizes estafa when committed as follows:

2. By means of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

xxx

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 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.

By settled jurisprudence, the elements of the crime of estafa, as defined in the above quoted provision of law, are as follows: (1) the offender has postdated or issued a check in payment of an obligation contracted at the time of the postdating or issuance; (2) at the time of postdating or issuance of said check, the offender has no funds in the bank or the funds deposited are not sufficient to cover the amount of the check; and (3) the payee has been defrauded. Damage and deceit are essential elements of the offense and must be established with satisfactory proof to warrant conviction, while the false pretense or fraudulent act must be committed prior to, or simultaneous with, the issuance of the bad check. The drawer of the dishonored check is given three days from receipt of the notice of dishonor to cover the amount of the check, otherwise, a prima facie presumption of deceit arises.[6]

Further it is settled that it is criminal fraud or deceit in the issuance of a check which is made punishable under the Revised Penal Code, and not the nonpayment of a debt. Deceit is the false representation of a matter of fact whether by words or conduct by false or misleading allegations or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury. Concealment which the law denotes as fraudulent implies a purpose or design to hide facts which the other party ought to have. The postdating or issuing of a check in payment of an obligation when the offender had no funds in the bank or his funds deposited therein are not sufficient to cover the amount of the check is a false pretense or a fraudulent act.[7]

The trial court and the CA found these elements of the crime charged present in this case. There is no dispute as to the findings of fact of the CA that respondent gave the sum of P20,000.00 to the accused in exchange for a postdated check in the same amount issued by petitioner and that the said check was dishonored by the bank. We quote the appellate court's factual findings, which sustained the trial court's decision as follows:

Indisputably, on March 23, 1998, appellant issued and postdated a check with a value equivalent to the sum of P20,000.00 which he obtained from Efren. He accomplished deceit when he led Efren to believe that, prior to, or simultaneous with, their arrangement, the subject check is good upon its maturity on April 30, 1998. However, the check turned out to be worthless because, when Efren deposited it with the Legaspi Savings Bank, the same was dishonored due to "Account Closed". Evidently, Efren was prejudiced and damaged by appellant's fraudulent ploy.[8]

In the motion for reconsideration of the decision of the trial court finding petitioner guilty of the crime of estafa, the latter raised only the issue of whether or not deceit was proven by the prosecution. Petitioner likewise dwelt on the said issue in his appeal to the CA.

Re: First and Second Assigned Errors

In his first assignment of error, petitioner anchored his argument that no deceit was established by the prosecution because of the failure of the latter to prove the fact of receipt by petitioner of the notice of dishonor of the check. Petitioner argued that no presumption or prima facie evidence of guilt would arise if there is no proof as to the date of receipt by the drawer of the said notice "since there would simply be no way of reckoning the crucial 3-day period" from receipt of notice of dishonor of the check within which the amount necessary to cover the check may be done as provided by paragraph 2(d) of Article 315 of the Revised Penal Code, as amended.

On this issue, the CA ruled as follows:

As against appellant's insistence, the prima facie presumption of deceit perforce applies here. It must be noted that exactly on the same day, May 29, 1998, after Efren received the Debit Memo (Exh. "B") on the rubber check from the Legaspi Savings Bank, he called, then sent a demand letter (Exh. "C") to, appellant, informing him of its dishonor.[9] (Emphasis supplied)

We sustain the CA. The receipt by the drawer of the notice of dishonor is not an element of the offense. The presumption only dispenses with the presentation of evidence of deceit if such notification is received and the drawer of the check failed to deposit the amount necessary to cover his check within three (3) days from receipt of the notice of dishonor of the check. The presumption indulged in by law does not preclude the presentation of other evidence to prove deceit. It is not disputed by petitioner that, as found by the CA, respondent Ables "called" up petitioner to inform him of the dishonor of the check. Moreover, when petitioner issued the check in question on March 23, 1998, he knew that his current account with the DBP was a closed account as early as January 27, 1998.

Petitioner disclaim employing deceit by asserting that respondent knew that petitioner had no funds with the bank,

as he was so informed by the petitioner himself at the time of the issuance of the check (Appellant's Brief, CA-G.R. No. 27057). Assuming that petitioner did so, petitioner could not escape culpability because he was not in a position to make good the check at any time since his current account was already closed. This fact petitioner failed to disclose to respondent.

The absence of proof as to receipt of the written notice of dishonor notwithstanding, the evidence shows that petitioner had actual notice of the dishonor of the check because he was verbally notified by the respondent and notice whether written or verbal was a surplusage and totally unnecessary considering that almost two (2) months before the issuance of the check, petitioner's current account was already closed. Under these circumstances, the notice of dishonor would have served no useful purpose as no deposit could be made in a closed bank account.

Pertinently, Section 114(d) of the Negotiable Instruments Law provides:

Sec. 114 - When notice need not be given to drawer. -Notice of dishonor is not required to be given to the drawer in either of the following cases:

Xxx

d. Where the drawer has no right to expect or require that the drawee or acceptor will honor the check.

Since petitioner's bank account was already closed even before the issuance of the subject check, he had no right to expect or require the drawee bank to honor his check. By virtue of the aforementioned provision of law, petitioner is not entitled to be given a notice of dishonor.

We now review the penalties imposed by the appellate court, affirming in toto the judgment of the trial court.

Presidential Decree (P.D.) No. 818[10] amended Article 315 of the Revised Penal Code insofar as the penalties for felonies under paragraph 2(d) are concerned, viz:

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;

2nd. The penalty of prision mayor in its maximum period, if the amount of the fraud is over 6,000 pesos but does not exceed 12,000 pesos;

3rd. The penalty of prision mayor in its medium period, if such amount is over 200 pesos but does not exceed 6,000 pesos; and

4th. By prision mayor in its minimum period, if such amount does not exceed 200 pesos.

The Indeterminate Sentence Law provides that if an offense is punished by the Revised Penal Code or its amendments, the court shall sentence the accused to an indeterminate penalty, the maximum term of which shall be that which, in view of the attending circumstances, can be properly imposed under the rules of the Revised Penal Code, while the minimum term of which shall be within the range of the penalty next lower to that prescribed by the Code for the offense.

Under Article 315, as amended by P.D. No. 818, the penalty of reclusion temporal is imposed if the amount

defraud is over P12,000.00 but does not exceed P22,000.00. The amount involved in this case is within the above-mentioned range. Applying the Indeterminate Sentence Law, the maximum imposable penalty is reclusion temporal while the minimum term should be within the range of the penalty next lower to that prescribed by the Code for the offense, which is prision mayor. Thus, the CA correctly affirmed the penalty imposed by the trial court which is six (6) years and one (1) day of prision mayor as minimum to twelve years (12) and one (1) day of reclusion temporal as maximum.

WHEREFORE, premises considered, the petition is hereby DENIED for utter lack of merit, and the Decision appealed from is AFFIRMED in toto.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio, Corona, and Azcuna, JJ., concur.

[1] Penned by Associate Justice Magdangal M. De Leon, and concurred in by then Associate Justices Romeo A. Brawner and Mariano C. del Castillo; rollo, pp. 17-23.

[2] RTC Record, pp. 154-157.

[3] Id. at 1-2.

[4] Id. at 29.

[5] Id. at 157.

[6] *People v. Juliano*, G.R. No. 134120, January 17, 2005, 448 SCRA 370, 379, citing *People v. Holzer*, G.R. No. 132323, July 20, 2000, 336 SCRA 319; *People v. Chua*, G.R. No. 130632, September 28, 1999, 315 SCRA 326, 336; and *People v. Ojeda*, G.R. Nos. 104238-58, June 3, 2004, 430 SCRA 436.

[7] *Recuerdo v. People*, G.R. No. 168217, June 27, 2006, 493 SCRA 517, citing *Villarta v. CA*, No. L-40195, May 29, 1987, 150 SCRA 336; *Guinhawa v. People*, G.R. No. 162822, August 25, 2005, 468 SCRA 278.

[8] Rollo, p. 21.

[9] Id. at 22.

[10] Took effect on October 22, 1995.

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