JOY LEE RECUERDO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 168217. June 27, 2006

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before the Court is a Petition for Review on Certiorari of the Joint Decision[1] of the Court of Appeals (CA) in CA-G.R. CR No. 25983, affirming with modification the decision of the Regional Trial Court (RTC) of Malolos, Bulacan in Criminal Cases Nos. 2750-M-94, 2751-M-94 and 2807-M-94 for estafa.

As synthesized by the appellate court, the antecedents are as follows:

> In September 1994, three separate Criminal Informations charging Joy Lee Recuerdo of Estafa under Article 315, paragraph 2(d) of the Revised Penal Code involving 18 worthless bank checks were simultaneously filed by the Office of the Provincial Prosecutor of Bulacan, the accusatory portions of which read, thus:
>
> A. Six (6) Unitrust Checks
>
> Crim. Case No. 2750-M-94
>
> "That sometime in the second week of December, 1993, in the municipality of Meycauayan, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the said accused Joy Lee Recuerdo, with intent to gain and by means of deceit, false pretenses and fraudulent manifestations, and pretending to have sufficient funds with the Unitrust, Makati Commercial Center Branch, did then and there willfully, unlawfully and feloniously prepare, draw, make and issue the following postdated checks, to wit:

Check
No

Date

Amount

014355

April 5, 1994

P 22,000.00

014356

May 5, 1994

22,000.00

014357

June 5, 1994

22,000.00

014358

July 5, 1994

22,000.00

014359

August 5, 1994

22,000.00

014360

September 5, 1994

22,000.00

with the total amount of P132,000.00 drawn against the said bank, and deliver the said checks to the complaining witness Yolanda G. Floro as payment for pieces of jewelry she obtained from the said complainant, knowing fully well at the time the checks were issued that her representations were false for she had no sufficient funds in the said bank, so much that upon presentment of the said checks with the said bank for encashment, the same were dishonored and refused payment for having been drawn against an "Account Closed", and inspite of repeated demands to deposit with the said bank the amount of P132,000.00, the said accused failed and refused to do so, to the damage and prejudice of the said Yolanda G. Floro in the said amount of P132,000.00.

Contrary to law."

B. Six (6) PCI Bank Checks

Crim. Case No. 2807-M-94

"That sometime in the second week of December 1993, in the municipality of Meycauayan, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the said accused Joy Lee Recuerdo, with intent of gain and by means of deceit, false pretenses and fraudulent manifestations, and pretending to have sufficient funds with the PCI Bank, Makati-De La Rosa Branch, did then and there willfully, unlawfully and feloniously prepare, draw, make and issue the following postdated checks, to wit:

Check No.

Date

Amount

053051982A

March 28, 1994

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P 13,000.00

053051983A

April 28, 1994

13,000.00

053051984A

May 28, 1994

13,000.00

053051985A

June 28, 1994

13,000.00

053051986A

July 28, 1994

13,000.00

053051987A

August 28, 1994

13,000.00

with the total amount of P78,000.00 drawn against the said bank, and deliver the said checks to the complaining witness Yolanda G. Floro as payment for pieces of jewelry she obtained from the said complainant, knowing fully well at the time the checks were issued that her representations were false for she had no sufficient funds in the said bank, so much that upon presentment of the said checks with the said bank for encashment, the same were dishonored and refused payment for having been drawn against an "Account Closed", and inspite of repeated demands to deposit with the said bank the amount of P78,000.00, the said accused failed and refused to do so, to the damage and prejudice of the said Yolanda G. Floro in the said amount of P78,000.00.

Contrary to law.

C. Six (6) Prudential Bank Checks

Criminal Case No. 2751-M-94

That on or about the 7[th] day of February, 1994, in the municipality of Meycauayan, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the said accused Joy Lee Recuerdo, with intent of gain and by means of deceit, false pretenses and fraudulent manifestations, and pretending to have sufficient funds with the Prudential Bank, Legaspi Village Branch, did then and there willfully, unlawfully and feloniously prepare, draw, make and issue the following postdated checks, to wit:

Check No.

Date

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Amount

0011783 March 13, 1994 P100,000.00

0011784 April 13, 1994 100,000.00

0011785 May 13, 1994 100,000.00

0011786 June 13, 1994 100,000.00

0011787 July 13, 1994 100,000.00

0011788 August 13, 1994 100,000.00

with the total amount of P600,000.00 drawn against the said bank, and deliver the said checks to the complainant witness Yolanda G. Floro as payment for pieces of jewelry she obtained from the said complainant, knowing fully well at the time the checks were issued that her representations were false for she had no sufficient funds in the said bank, so much that upon presentment of the said checks with the said bank for encashment, the same were dishonored and refused payment for having been drawn against an "Account Closed", and inspite of repeated demands to deposit with the said bank the amount of P600,000.00, the said accused failed and refused to do so, to the damage and prejudice of the said Yolanda G. Floro in the said amount of P600,000.00

Contrary to law."

Evidence adduced by the Prosecution tend to establish that herein private respondent Yolanda G. Floro is engaged in the business of buying and selling of jewelry since 1985. She regularly conducts business at her residence located at No. 51 Interior, Poblacion, Meycauayan, Bulacan. Sometimes, though, it was Floro who would personally visit her customers to show and offer them the pieces of jewelry. Herein accused-appellant/petitioner Joy Lee Recuerdo, on the other hand, a dentist by profession, who was introduced to Floro by the latter's cousin Aimee Aoro in the first week of December 1993, became her customer. Sometime in the second week of December 1993, at around 7:30 in the evening, Recuerdo went to the house of Floro in Meycauayan, Bulacan and purchased from her two pieces of jewelry, to wit: a 2.19 carat diamond round stone in white gold setting worth P220,000.00 pesos, and one piece of loose 1.55 karat marquez diamond with a value of P130,000.00 pesos.

For the 2.19 carat diamond stone, accused issued and delivered to the complainant then and there ten post-dated checks each in the amount of P22,000.00 drawn against Unitrust Development Bank, Makati Commercial Center Branch. Only six (6) postdated checks, to wit: Checks Nos. 014356, 014357, 014358, 014359 and 014360 are subject of Criminal Case No. 2750-M-94. For the 1.55 carat marquez loose diamond, accused issued and delivered to complainant then and there ten (10) postdated checks, each in the amount of P13,000.00 drawn against PCI Bank, Makati, Dela Rosa Branch. Six of those checks are subject of Criminal Case No. 2807-M-94, to wit: Checks Nos. 053051983A, 053051984A, 053051985A, 053051986A and 053051987A, subject matter of Crim. Case No. 2751-M-94.

In yet another transaction that transpired in the early evening of February 7, 1994, Recuerdo once again proceeded at Floro's house in Meycauayan, Bulacan and bought another set of jewelry, this time a pair of diamond earrings worth P768,000.00 pesos. She was given seven (7) postdated checks one for P168,000.00 as downpayment and another six (6) postdated checks drawn against Prudential Bank, Legaspi Village, Makati Branch, each for P100,000.00 representing the balance in the aggregate amount of P600,000.00 pesos (Checks Nos. 100783, 01184, 01185, 011786, 011787 and 011788, Record, Criminal Case No. 2750-M-94, pp. 138-150) subject matter of Crim. Case No. 2751-M-94.

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> Floro deposited the aforementioned checks at Liberty Savings & Loan Association, Meyc[a]uayan, Bulacan. Upon presentment for encashment by said depositary bank with the different drawee banks on their respective maturity dates, the six (6) Prudential Bank checks were all dishonored for having been drawn against closed accounts. With her pieces of jewelry still unpaid, Floro, through counsel, made formal demands requiring Requerdo to pay the amounts represented by the dishonored checks (Record, supra, pp. 123, 138, and 151). Floro's efforts to obtain payment, though, only proved futile as Requerdo continuously refused to pay the value of the purchased pieces of jewelry.
>
> Upon her arraignment on March 1, 1995 in Criminal Case No. 2807-M-94, and on April 4, 1995 in Criminal Case Nos. 2750-M-94 and 2751-M-94, Recuerdo, with the assistance of counsel, pleaded not guilty. (Record, Criminal Case No. 2807-M-94, p. 40; Criminal Case No. 2750-M-94, p. 58). Considering the identity of the parties concerned, and the nature of the transactions from which the charges of Estafa trace its roots, the three criminal cases were consolidated. Joint trial then ensured. Recuerdo, on separate dates, posted three Personal Bail Bonds to obtain provisional liberty (Record, Criminal Case No. 2750-M-94, p. 21; 2807-M-94, p. 27; 2751-M-94, p. 17).
>
> By way of defense, Recuerdo posited the theory that the trial court of Malolos, Bulacan is devoid of jurisdiction to take cognizance of the criminal cases against her, insisting that all the essential elements of the crime of Estafa involving the bad checks occurred at the City of Makati, in that, all her business transactions with Floro, to wit; the purchase of the pieces of jewelry and the subsequent issuance of and delivery of the subject bank checks in payment thereof which eventually bounced, all took place and were executed at her Dental Clinic located at the Medical Towers at Suite 306, Herrera corner Ormaza Streets Legaspi Village Makati City. Furthermore, Recuerdo argued that her act of issuing the dishonored checks does not constitute the offense of Estafa considering that the subject checks were not issued and delivered to Floro simultaneous to the purchase of the pieces of jewelry, but only several days thereafter, when she had already thoroughly examined the jewelry and is fully satisfied of its fine quality (TSN, Joy Lee Recuerdo, January 16, 1996, pp. 3-18).[2]

On July 28, 1997, the trial court rendered a Joint Decision convicting petitioner Joy Lee Recuerdo of two counts of estafa under Article 315, paragraph 2(d) of the Revised Penal Code. The fallo of the decision reads:

> WHEREFORE, this Court finds the accused JOY LEE RECUERDO GUILTY beyond reasonable doubt of two (2) counts of estafa, defined and penalized under Article 315, par. 2[b] (sic) of the Revised Penal Code and hereby sentences her as follows:
>
> - In Criminal Case Nos. 2750-M-94 and 2807-M-94, to suffer an indeterminate penalty of imprisonment ranging from six (6) years and one (1) day of prison correccional as minimum to twelve (12) years and one (1) day reclusion temporal as maximum and to pay Yolanda Floro by way of civil indemnity the amount of P210,000.00 pesos plus interest from the filing of the information until fully paid; and
>
> - In Criminal Case No. 2751-M-94, to suffer an indeterminate penalty of imprisonment ranging from six (6) minimum to twelve (12) years and one (1) day of reclusion temporal as maximum and to pay Yolanda Floro by way of civil indemnity the amount of P600,000.00 pesos plus interest from the filing of the information until fully paid.
>
> In both cases, accused shall pay the costs of the suit.
>
> SO ORDERED.[3]

Petitioner appealed the decision to the CA on the following assignment of errors:

> I.
>
> The Regional Trial Court erred in finding that the Municipal Trial Court, Meycauayan, Bulacan, Branch I did

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> not pass upon the merits of the criminal cases filed against the petitioner by confining and limiting itself merely to the dispositive portion of the Joint Decision dated 28 January 1998 rendered by the latter court, instead of reading the Joint Decision as a whole to get its true meaning and intent.
>
> II.
>
> The Regional Trial Court erred in affirming the judgment of conviction rendered by the Municipal Trial Court, Meycauayan, Bulacan, Branch II which is in derogation of the petitioner's right against double jeopardy considering that the latter was previously acquitted of the same criminal cases by the Municipal Trial Court of Meycauayan, Bulacan, Branch I.
>
> III.
>
> The Regional Trial Court erred in finding that all proceedings in the court a quo have been made in the presence and with the authority of the public prosecutor, in the face of the undisputed fact that the appeal initiated by the private respondent is fatally defective because it was filed without the concurrence, permission and authority of the public prosecutor, in this case, the provincial prosecutor of Bulacan.[4]

Petitioner averred that the trial court had no jurisdiction over the offenses charged because the crimes were committed in Makati City and not in Malolos, Bulacan where the Informations were filed. The prosecution failed to prove the essential element of deceit because she drew and delivered the postdated checks to the private complainant after the jewelries had been delivered. Moreover, she was denied the right to due process.

On August 23, 2004, the CA rendered judgment affirming with modification the decision of the RTC as to the penalty meted on the appellant. Petitioner filed a motion for reconsideration insisting that based on the evidence on record, out of the 17 subject checks, nine were honored by the drawee banks. Moreover, she made partial payments of the amounts of the subject checks while the case was pending in the CA. Contrary to the finding of the trial court and the appellate courts that she acted with deceit when she drew and delivered the checks in payment of the pieces of jewelry she purchased from the private complainant, she in fact acted in good faith; hence, should be acquitted based on the decision of this Court in People v. Ojeda.[5] The CA denied the motion on May 20, 2005.

Petitioner filed the instant petition contending that:

> THE COURT OF APPEALS HAS DECIDED THE CASE CONVICTING THE PETITIONER IN A WAY PROBABLY NOT IN ACCORD WITH –
>
> - THE BENEFICENT RULING OF THE SUPREME COURT ENUNCIATED IN PEOPLE OF THE PHILIPPINES V. CORA ABELLA OJEDA (G.R. NOS. 104238-58, JUNE 3, 2004) WHERE IT HELD THAT A DEBTOR'S OFFER TO ARRANGE A PAYMENT SCHEME WITH HIS CREDITOR AND PAYMENT OF THE OBLIGATION INDICATE GOOD FAITH THAT SUCCESSFULLY REBUTS THE PRESUMPTION OF DECEIT.
>
> - WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT ENUNCIATED IN BORROMEO V. COURT OF APPEALS, PEOPLE V. CLORES, ET AL., PEOPLE V. BAUTISTA AND PEOPLE V. BENITO GO BIONG, JR. DIRECTING THAT IN CRIMINAL CASES, ALL CIRCUMSTANCES AGAINST GUILT AND IN FAVOR OF INNOCENCE MUST BE TAKEN INTO ACCOUNT.
>
> - THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN CONJUNCTION WITH THE ESTABLISHED JURISPRUDENCE WHICH HOLDS THAT WHEN FACED WITH TWO PROBABILITIES, ONE CONSISTENT WITH GUILT AND THE OTHER WITH INNOCENCE, THE SCALES OF JUSTICE SHOULD TILT IN FAVOR OF INNOCENCE.

> - THE APPLICABLE DECISION OF THE SUPREME COURT WHICH DIRECTS THAT IN ESTAFA CASES, IT IS OF PRIMORDIAL SIGNIFICANCE FOR THE PROSECUTION TO PROVE THE EXACT DATE OF THE TRANSACTION AND THE EXACT DATE OF THE ISSUANCE OF THE CHECKS.[6]

Petitioner avers that she acted in good faith and exerted her utmost efforts to confer with the private complainant to settle her obligations. She points out that she made monthly cash payments to lessen her civil liability and later on, for convenience, deposited the monthly payments at the private complainant's bank account with the Bank of the Philippine Islands. She continued to make payments even during the pendency of the case in the CA, and continues to make deposits to private complainant's bank account.

Petitioner asserts that her efforts to settle her civil obligations to the private complainant indicate that she has no intention of duping the latter, as well as the absence of deceit on her part. That she failed to comply with her obligations by failing to make good the checks as they fell due does not suggest deceit, but at best only financial hardship in fulfilling her civil obligations. Thus, there is no factual and legal basis to convict her of estafa. Petitioner insists that criminal intent in embezzlement is not based on technical mistakes as to the legal effect of a transaction honestly entered into, and there can be no embezzlement if the mind of the person doing the act is innocent or if there is no wrongful purpose.

Petitioner further avers that she should be benefited by the Court's ruling in People v. Ojeda,[7] considering that the facts therein are parallel if not almost identical to this case, the only difference being that, in the Ojeda case, the accused-appellant was able to fully settle her civil obligations. Petitioner points out that she is still paying her obligations to the private complainant and further argues that:

> [i]n Criminal Case No. 2750-M-94, the petitioner issued ten (10) postdated Unitrust Development Bank checks to the private complainant for the purchase of a 2.19 carat diamond stone in white gold setting. Out of the ten (10) checks, four checks were duly funded when presented for acceptance and payment. In Criminal Case No. 2807-M-94, the petitioner issued ten (10) post-dated PCI Bank checks to the private complaint for the purchase of a 1.55 carat marquez loose diamond. The first four (4) checks were duly funded when presented for acceptance and payment. In Criminal Case No. 2751-M-94, the petitioner issued seven (7) post-dated Prudential Bank checks to the private complainant for the purchase of a pair of diamond earrings. The amount covered by the first check was paid and settled. The rest bounced.
>
> The petitioner respectfully submits that the act of the petitioner --- OF DULY FUNDING SOME OF THE POST-DATED CHECKS WHICH SHE ISSUED, SPECIFICALLY THOSE WHICH BECAME DUE FIRST OR EARLIER – is and should be considered in law as, a CIRCUMSTANCE INDICATING GOOD FAITH AND ABSENCE OF DECEIT.[8]

For its part, the Office of the Solicitor General asserts:

> In the case of Ojeda, the prosecution failed to prove deceit. Ojeda never assured Chua the checks were funded. Chua knew that the checks were issued to guarantee future payments. Furthermore, Ojeda did not only make arrangements for payment but she fully paid the entire amount of the dishonored checks.
>
> In the instant case, the elements of deceit and damage were established by convincing evidence. Petitioner Recuerdo issued the subject bank checks as payment for the pieces of jewelry simultaneous to the transactions, that is, on the very same occasion when the pieces of jewelry were bought. The issuance of the check by Recuerdo was the principal inducement to private complainant to part with the subject jewelries (CA Decision, pp. 12-13). In addition, petitioner only promised to replace the dishonored checks but she did not settle her obligations with private complainant. Assuming that there was an offer to settle her obligations, this will not overturn the findings of the trial court and the Court of Appeals as to the presence of deceit.
>
> The guilt of petitioner was

> proven beyond reasonable
> doubt.
>
> The crime of Estafa under Article 315, paragraph 2(d) of the Revised Penal Code has the following basic elements:Postdating or issuance of a check in payment of an obligation contracted simultaneously at the time the check was issued;
>
> The postdating or issuance was done when the offender had no funds in the bank, or that his funds deposited therein were not sufficient to cover the amount of the check; and
>
> Damage to the payee thereof (Justice Luis B. Reyes, The Revised Penal Code, Thirteenth Edition 1993, Book Two, p. 693; People v. Panganiban, 335 SCRA 354).

The existence of the foregoing elements of the crime was concretely established by the prosecution through convincing evidence, warranting petitioner's conviction of the offense of Estafa.

The trial court found private complainant Floro's testimony that petitioner issued the subject checks as payment for the purchase of pieces of jewelry simultaneous to their transactions to be categorical and credible. There was sufficient evidence established by the prosecution that the checks were issued by the accused to the complainant in exchange of the pieces of jewelry given to her on two separate occasions.

The issue of deceit raised by petitioner is a factual issue and must be proved by evidence. The finding of the trial court and the Court of Appeals that the issuance of petitioner was tainted with fraud or deceit is a factual finding that binds this Honorable Court (Jose R. Guevarra vs. The Hon. Court of Appeals, et al., G.R. No. 100894, prom. January 26, 1993).[9]

In reply, petitioner avers that she is a dentist/orthodontist with a fairly established practice at the Medical Towers, Ibarra St., Legaspi Village, Makati City. She did not move out of her office because she had no intention to renege on her obligations to the private complainant.

The petition is denied for lack of merit.

Estafa through false pretense or fraudulent act under Paragraph 2(d) of Article 315 of the Revised Penal Code, as amended by Republic Act No. 4885, is committed as follows:

> 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 essential elements of the felony are: (1) a check is postdated or issued in payment of an obligation contracted at the time it is issued; (2) lack or insufficiency of funds to cover the check; and (3) damage to the payee thereof.[10] It is criminal fraud or deceit in the issuance of a check which is made punishable under the Revised Penal Code, and not the non-payment of a debt.[11] 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.[12] Concealment which the law denotes as fraudulent implies a purpose or design to hide facts which the other party ought to have.[13] 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.[14]

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There is no false pretense or fraudulent act if a postdated check is issued in payment of a pre-existing obligation.[15] As the Court emphasized in Timbal v. Court of Appeals:[16]

> x x x In order to constitute Estafa under the statutory provisions, the act of postdating or of issuing a check in payment of an obligation must be the efficient cause of the defraudation; accordingly, it should be either prior to or simultaneous with the act of fraud. In fine, the offender must be able to obtain money or property from the offended party by reason of the issuance, whether postdated or not, of the check. It must be shown that the person to whom the check is delivered would not have parted with his money or property were it not for the issuance of the check by the other party.

Estafa is a felony committed by dolo (with malice). For one to be criminally liable for estafa under paragraph (2)(d) of Article 315 of the Revised Penal Code, malice and specific intent to defraud are required.

General criminal intent is an element of all crimes but malice is properly applied only to deliberate acts done on purpose and with design. Evil intent must unite with an unlawful act for there to be a felony. A deliberate and unlawful act gives rise to a presumption of malice by intent. On the other hand, specific intent is a definite and actual purpose to accomplish some particular thing.

The general criminal intent is presumed from the criminal act and in the absence of any general intent is relied upon as a defense, such absence must be proved by the accused. Generally, a specific intent is not presumed. Its existence, as a matter of fact, must be proved by the State just as any other essential element. This may be shown, however, by the nature of the act, the circumstances under which it was committed, the means employed and the motive of the accused.[17]

The law provides that, in estafa, prima facie evidence of deceit is established upon proof that 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 for lack or insufficiency of funds. A prima facie evidence need not be rebutted by a preponderance of evidence, nor by evidence of greater weight. The evidence of the accused which equalizes the weight of the People's evidence or puts the case in equipoise is sufficient. As a result, the People will have to go forward with the proof. Should it happen that, at the trial the weight of evidence is equally balanced or at equilibrium and the presumption operates against the People who has the burden of proof, it cannot prevail.[18]

There can be no estafa if the accused acted in good faith because good faith negates malice and deceit.[19] Good faith is an intangible and abstract quality with no technical meaning or statutory definition, and it encompasses, among other things, an honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage. An individual's personal good faith is a concept of his own mind, therefore, may not conclusively be determined by his protestations alone. It implies honesty of intention and freedom from knowledge of circumstances which ought to put the holder upon inquiry. The essence of good faith lies in an honest belief in the validity of one's right, ignorance of a superior claim, and absence of intention to overreach another.[20] In People v. Gulion,[21] the Court held that:

> Good faith is a defense to a charge of Estafa by postdating a check. This may be manifested by the accused's offering to make arrangements with his creditor as to the manner of payment or, as in the present case, averring that his placing his signature on the questioned checks was purely a result of his gullibility and inadvertence, with the unfortunate result that he himself became a victim of the trickery and manipulations of accused-at-large.[22]

In the present case, the prosecution adduced proof beyond reasonable doubt of the guilt of the petitioner of the crime charged. The trial court gave credence and probative weight to the evidence of the People and disbelieved that proferred by the petitioner.

Petitioner's insistence of her good faith and her reliance on the ruling of this Court in the Ojeda case were raised as a mere afterthought in a last ditch effort to secure her acquittal, as these arguments were invoked only in her motion for reconsideration of the CA decision. In Pascual v. Ramos,[23] this Court held that if an issue is raised only in the motion for reconsideration of the appellate court's decision, it is as if it was never raised in that court at all.

Petitioner's defense of good faith is even belied by the evidence of the prosecution and her own evidence. When the postdated checks issued by petitioner were dishonored by the drawee banks and the private complainant made demands for her to pay the amounts of the checks, she intransigently refused to pay; she insisted that she issued and delivered the postdated checks to the private complainant after the subject pieces of jewelry had been delivered to her. Petitioner never offered to pay the amounts of the checks after she was informed by the private complainant that they had been dishonored by the drawee banks, the private complainant thus charged her with estafa before the RTC. It was only during the period of January 4, 2005 to June 27, 2005, after the CA promulgated its decision affirming the decision of the trial court, that petitioner made several payments to the private complainant. While petitioner appended the deposit slips[24] to her motion for reconsideration in the CA and her petition in this Court, there is no showing as to which checks they were made in payment for. In fine, it was the spectre of a long prison term which jolted petitioner into making remittances to the private complainant, after the CA affirmed the decision of the trial court and increased the penalty meted on her, and not because she had acted in good faith in her transactions with the private complainant. To reiterate, petitioner rejected the demands of the private complainant to pay the amounts of the dishonored checks.

While it is true that nine of the 17 postdated checks petitioner issued and delivered to the private complainant were honored by the drawee banks, such a circumstance is not a justification for her acquittal of the charges relative to the dishonored checks. The reimbursement or restitution to the offended party of the sums swindled by the petitioner does not extinguish the criminal liability of the latter. It only extinguishes pro tanto the civil liability.[25] Moreover, estafa is a public offense which must be prosecuted and punished by the State on its own motion even though complete reparation had been made for the loss or damage suffered by the offended party.[26] The consent of the private complainant to petitioner's payment of her civil liability pendente lite does not entitle the latter to an acquittal. Subsequent payments does not obliterate the criminal liability already incurred.[27] Criminal liability for estafa is not affected by a compromise between petitioner and the private complainant on the former's civil liability.[28]

Petitioner cannot find solace in the Court's ruling in the Ojeda case. The CA correctly refuted the submission of the petitioner in its decision, thus:

> This Court is in full agreement with the position advanced by the Office of the Solicitor General that on account of the glaring dissimilarities between the factual backdrop of the case of Ojeda, on one hand, and the material facts obtaining in the case at bench, on the other, the doctrine in the former case may not be applied to benefit accused-appellant. Indeed, even accused-appellant herself was quick to admit that the facts of her case are not entirely on all fours with those that obtained in the case of Ojeda. At the outset, emphasis must be made of the fact that the acquittal of the accused in the Ojeda case was brought about by a combination of reasons not obtaining in the present case. First, the Supreme Court ruled out the existence of deceit and intent to defraud in the case of Ojeda in view of the fact that the accused therein performed extraordinary efforts to gradually pay and settle her monetary obligations with the private complainant, and this convinced the High Court that the acts of the accused were not tainted with malice, bad faith and criminal intent. Verily, the accused in the Ojeda case not only made determined and honest arrangements to pay the private complainant, but was likewise able to actually satisfy with completeness the sums she owed the latter, and this was evidenced by an affidavit of desistance where the private complainant categorically declared that the accused already paid in full her monetary obligations. The facts in the instant case, however, are totally different.

> Contrary to the contention of accused-appellant, she never made a determined and earnest effort to arrange and settle with Floro with the end in view of paying her monetary obligations. In truth, accused-appellant simply promised to pay Floro the value of the dishonored checks that were issued in payment for the pieces of jewelry. However, that was all there was to it, and lamentably said promise turned out to be an empty one as accused-appellant never made good her commitment to pay for the value of the dishonored checks. Accused-appellant never arranged a payment scheme with Floro, and as the facts of the case would disclose she never made any gradual payment to Floro as shown by the fact that the value of the dishonored checks remained unpaid, in direct contrast with the facts of the Ojeda case where the accused was able to pay in full. Suffice it to say that accused-appellant failed to perform any concrete act to show that she had the intention of paying Floro for the value of the purchased pieces of jewelry, in order to somehow rebut the fact duly established by the prosecution that deceit attended her business dealings with Floro. It must be reiterated that We have found that accused-appellant issued the subject bank checks as payment for the pieces of jewelry simultaneous with her transactions with Floro, and that was, on the very same occasion when the pieces of jewelry were purchased, first, on the second week of December 1993, and subsequently, on February 7, 1994. It being clear that the subject bank checks were issued simultaneous with said transactions, it likewise became evident that deceit attended accused-appellants' dealings with Floro for the same only goes to show that the bum checks were issued to Floro in order to induce her to part with the pieces of jewelry in favor of accused-appellant.
>
> In addition to the foregoing, the High Court likewise found in the Ojeda case that the prosecution miserably failed to adduce evidence to establish that the indispensable element of notice of dishonor was sent to and was received by the accused therein. In the case at bench, however, it is undisputed that after the dishonor of the subject bank checks Floro, through counsel, made repeated formal demands requiring accused-appellant to pay for the value of the bum checks, perforce the notice of dishonor which is required to properly prosecute and eventually convict an accused of the crime of Estafa under Article 315, paragraph 2(d) of the Revised Penal Code has been sufficiently met.[29]

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED. The Decision and Resolution of the Court of Appeals are AFFIRMED. No costs.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Austria-Martinez, and Chico-Nazario, JJ., concur.

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[1] Penned by Associate Justice Rosmari D. Carandang with Associate Justices Andres B. Reyes, Jr. and Monina Arevalo-Zenarosa concurring, rollo, pp. 38-56.

[2] Rollo, pp. 39-44.

[3] Id. at 44.

[4] Id. at 48.

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

[6] Rollo, pp. 22-23.

[7] Supra note 5.

[8] Rollo, pp. 29-30.

[9] Id. at 114-117.

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[10] People v. Ojeda, supra note 5, at 444-445.

[11] Vallarta v. Court of Appeals, May 29, 1987, 150 SCRA 336, 345.

[12] Guinhawa v. People, G.R. No. 162822, August 25, 2005, 468 SCRA 278, 302, citing People v. Balasa, 356 Phil. 362, 382-383 (1998).

[13] Id. at 302.

[14] Vallarta v. Court of Appeals, supra note 11, at 344 (1986).

[15] People v. Go Bio, Jr., 226 Phil. 170, 182 (1986).

[16] 423 Phil. 617, 622 (2001).

[17] W.L. BURDICK, LAW OF CRIME, Vol. I 139-140 (1946).

[18] Bautista v. Sarmiento, G.R. No. L-45137, September 23, 1985, 138 SCRA 587, 593 (1985).

[19] People v. Ojeda, supra note 5 at 445.

[20] Philippine National Bank v. De Jesus, G.R. No. 149295, September 23, 2003, 411 SCRA 557, 561.

[21] 402 Phil. 653 (2001).

[22] Id. at 669.

[23] 433 Phil. 449, 459 (2002).

[24] Rollo, pp. 67-70.

[25] Sajot v. Court of Appeals, 364 Phil. 182, 187 (1999).

[26] People v. Ladera, 398 Phil. 588, 602 (2002).

[27] See Dayawon v. Badilla, A.M. No. MTJ-00-1309, September 6, 2000, 339 SCRA 702, 707

[28] See People v. Ladera, supra note 26 at 602.

[29] Rollo, pp. 59-61.

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