PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ELIZABETH CARDENAS, APPELLANT.

G.R. No. 178064. February 10, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

On complaint of Nenette Musni (Nenit), four Informations each charging Elizabeth Cardenas (appellant) with estafa were filed before the Regional Trial Court (RTC) of Laoag City.

Criminal Case No. 8740-13 alleged:

> x x x x
>
> That on or about the 15[th] day of October, 1994, in the City of Laoag, Philippines, and within the jurisdiction of this Honorable Court, the herein accused with deceit and intent to defraud, did then and there willfully, unlawfully and feloniously issue the following checks:
>
> CHECK NO.
>
> AMOUNT
>
> POSTDATED
>
> 001247A
>
> P401,000.00
>
> November 15, 1994
>
> 001248A
>
> P401,000.00
>
> December 15, 1994

in favor of Nenette[1] Musni, against the drawee Philippine Commercial and Industrial Bank [PCIB], Vigan Branch, affixing therein a signature different from her specimen signature on file with the drawee bank and representing that the checks will be paid when presented for payment, simultaneous to and as payment for jewelries purchased by the accused from Nenette Musni, which checks were subsequently dishonored by the drawee bank when presented for payment due to signature different on file and for having been drawn against insufficient funds, and despite notice to the accused of the dishonor of her checks and demands made upon her by Nenette Musni for the cash replacement of the checks, the accused had refused and failed to do so, to the damage and prejudice of Nenete Musni.[2]

Criminal Case No. 8741-13 alleged:

> That on or about the 15[th] day of November, 1994, in the City of Laoag, Philippines, and within the jurisdiction of this Honorable Court, the herein accused with deceit and intent to defraud, did then and there willfully, unlawfully and feloniously issue the following checks:
>
> CHECK NO.
>
> AMOUNT
>
> POSTDATED
>
> 001226A
>
> P250,000.00
>
> December 30, 1994
>
> 001227A
>
> P668,000.00
>
> December 15, 1994

in favor of Nenette Musni, against the drawee Philippine Commercial and Industrial Bank Vigan Branch, affixing therein a signature different from her specimen signature on file with the drawee bank and representing that the checks will be paid when presented for payment, simultaneous to and as payment for jewelries purchased by the accused from Nenette Musni, which checks were subsequently dishonored by the drawee bank when presented for payment due to signature different on file and for having been drawn against insufficient funds, and despite notice to the accused of the dishonor of her checks and demands made upon her by Nenette Musni for the cash replacement of the checks, the accused had refused to do so, to the damage and prejudice of Nenette Musni.[3]

x x x x

Criminal Case No. 8742-13 alleged:

> x x x x
>
> That on or about the 2[nd] day of November, 1994, in the City of Laoag, Philippines, and within the jurisdiction of this Honorable Court, the herein accused with deceit and intent to defraud, did then and there willfully, unlawfully and feloniously issue the following checks:
>
> CHECK NO.
>
> AMOUNT
>
> POSTDATED
>
> 001231A
>
> P 318,000.00
>
> February 20, 1995
>
> 001232A
>
> P 779,000.00
>
> December 25, 1994
>
> 001233A

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P1,093,000.00

January 15, 1995

in favor of Nenette Musni, against the drawee Philippine Commercial and Industrial Bank Vigan Branch, affixing therein a signature different from her specimen signature on file with the drawee bank and representing that the checks will be paid when presented for payment, simultaneous to and as payment for jewelries purchased by the accused from Nennette Musni, which checks were subsequently dishonored by the drawee bank when presented for payment due to signature different on file and for having been drawn against a closed account for Check No. 001231A and against insufficient funds for Check Nos. 001232A and 001233A, and despite notice to the accused of the dishonor of her checks and demands made upon her by Nenette Musni for the cash replacement of the checks, the accused had refused to do so, to the damage and prejudice of Nenette Musni.[4]

x x x x

Criminal Case No. 8743-13 alleged:

x x x x

That on or about the 15[th] day of December, 1994, in the City of Laoag, Philippines, and within the jurisdiction of this Honorable Court, the herein accused with deceit and intent to defraud, did then and there willfully, unlawfully and feloniously issue the following checks:

CHECK NO.

AMOUNT

POSTDATED

001222A

P400,000.00

March 31, 1995

001260A

P458,000.00

March 15, 1995

in favor of Nenette Musni, against the drawee Philippine Commercial Industrial Bank Vigan Branch, affixing therein a signature different from her specimen signature on file with the drawee bank for Check No. 001222A and representing that the checks will be paid when presented for payment, simultaneous to and as payment for jewelries purchased by the accused from Nenette Musni, which checks were subsequently dishonored by the drawee bank when presented for payment due to signature different on file for Check 001222A and for having been drawn against a closed account for both checks, and despite notice to the accused of the dishonor of her checks and demands made upon her by Nenette Musni for the cash replacement of the checks, the accused had refused to do so, to the damage and prejudice of Nenette Musni.[5] (Emphasis and underscoring supplied

x x x x

During pre-trial, the prosecution and the defense stipulated on the following, quoted verbatim:

IN CRIM. CASE NO. 8740-13

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- That on October 15, 1994, the accused received jewelries from the complaining witness at Laoag City;

- That the accused has a checking account with the PCIB, Vigan Branch, Vigan, Ilocos Sur;

- That due to such receipt of jewelries, the accused delivered to the complainant PCIB Vigan Branch Check No. 001247A covering the amount of P401,000.00 dated November 15, 1994 and Check No. 001248A in the amount of P401,000.00 dated December 15, 1994;

- That the two (2) checks were delivered by the accused to the complaining witness on October 15, 1994 at Laoag City;

- That the two (2) checks aforestated were presented for payment but dishonored.

IN CRIM. CASE NO. 8741-13

- That on November 15, 1994, the accused received jewelries from the complaining witness at Laoag City;

- That due to such receipt of jewelries, the accused delivered two (2) postdated checks, PCIB Vigan Branch Check No. 001226A dated December 30, 1994 covering the amount of P250,000.00 and Check No. 001227A dated December 15, 1994 in the amount of P668,000.00;

- That the above-mentioned checks were presented for payment with the drawee bank on their respective due dates;

- That said checks were dishonored by the drawee bank on the ground that the signature of the drawer differs from the signature on file. (Emphasis and underscoring supplied)

IN CRIM. CASE NO. 8742-13

- That on November 2, 1994, the accused received jewelries from the complaining witness at Laoag City;

- That due to the receipt of the jewelries, the accused delivered three (3) postdated checks to the complainant PCIB Vigan Branch Check No. 001231A dated February 20, 1995 in the amount of P318,000.00; Check No. 001232A dated December 25, 1994 in the amount of P779,000.00 and Check No. 001233A in the amount of P1,093,000.00 dated January 15, 1995;

- That the said three (3) checks aforementioned were presented for payment but dishonored because the signature[s] differ from the signature on file. (Emphasis and underscoring supplied)

IN CRIM. CASE NO. 8743-13

- That the accused on December 15, 1994 received jewelries from the complaining witness at Laoag City;

- That out of the receipt of the jewelries by the accused from the complaining witness, the accused delivered two (2) postdated checks, PCIB Vigan Branch Check No. 001222A dated March 31, 1995 in the amount of P400,000.0 and Check No. 001260A dated March 15, 1995 in the amount of P458,000.00;

- That said Check No. 001222A when presented for payment was dishonored because the signature on file is different from the signature on the check;

- That Check No. 001260A in the amount of P458,000.00 was delivered to the complainant with the signature of the accused, the same being signed by her on the same date of the delivery of the jewelries.[6] (Emphasis and underscoring supplied)

Culled from the evidence for the prosecution is its following version:[7]

Nenit (erroneously spelled as "Nenette" in the Informations), who does business under the name Bombom

Jewelries, buys pieces of jewelry from pawnshops for resale. In 1991, in the course of her business operation, she was introduced to appellant to whom she had since been selling gold. Their usual practice was to weigh the gold and agree on the price, after which appellant would issue checks covering the value thereof.

Nenit and appellant's transactions were regular until October 15, 1994 when appellant issued Check No. 001247A for P401,000 and Check No. 001248A for the same amount[8] covering payment of gold, which checks were dishonored. Nenit informed appellant of the dishonor, but she denied owing anything to her.

On November 2, 1994, appellant again issued three checks drawn against PCIB Vigan Branch representing payment of gold: Check No. 001231A for P318,000, Check No. 001232A for P779,000, and Check No. 001233A for P1,093,000.[9] Again the checks were dishonored.

Still again on November 15, 1994, appellant issued two postdated checks drawn against PCIB Vigan Branch representing payment of gold purchased from Nenit: Check No. 001226A for P250,000 and Check No. 01227A for P668,000.[10] Still again the checks were dishonored.

Finally, on December 15, 1994, appellant issued to Nenit two postdated checks, both drawn against PCIB Vigan Branch: Check No. 001222A for P400,000, and Check No. 001260A for P458,000 representing payment of gold[11] Like the previous checks, these two were dishonored.

Nenit demanded the settlement of the dishonored checks, but appellant maintained not having any obligations to her.

In defense,[12] appellant claimed that, except for Check No. 1260A, one of the two checks subject of the fourth case, Crim. Case No. 8743-13, all the checks subject of the cases were unsigned as they were issued as a "secondary collateral."

Explaining the circumstances under which the checks were issued, appellant stated that whenever Nenit entrusted to her jewelry for resale, she was required to and did sign receipts and did issue the unsigned checks; that failing to resell the jewelry, she would return them and ask Nenit to return to her the receipts she signed and the unsigned checks, but Nenit would merely claim that she would tear them; and that with respect to Check No. 1260A, for P458,000, she having sold the jewelry covered thereby, she affixed her signature thereon, but she did not cause the check to be honored because she and Nenit agreed to offset the amount thereof against the amount which Nenit and her son owed her for jewelry they had borrowed from her. [13]

Appellant thus claimed that the signatures attributed to her on all the checks, except Check No. 1260A for P458,000, were forged, in support of which she presented National Bureau of Investigation (NBI) Senior Documents Examiner Adela Cruz-Demantillo (Adela) who examined the signatures on the questioned checks and concluded that the signature on Check No. 1260A and those on other checks were not made by one and the same person.[14]

Branch 13 of the Laoag City RTC, by Decision of September 30, 2003, convicted appellant of the four counts of estafa, disposing as follows:

> WHEREFORE, the Court renders judgment finding the accused GUILTY beyond reasonable doubt of the crime of Estafa on four (4) counts as charged and therefore sentences her to suffer for each of the charges the indeterminate penalty of imprisonment ranging from TWELVE YEARS of prision mayor as maximum to THIRTY YEARS
> of reclusion perpetua and to pay the private complainant the sum of P4,768,000.00 representing her total obligation and with legal interest thereon to be reckoned from the finality of this judgment, with costs against her.

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SO ORDERED.[15]

On intermediate review, the Court of Appeals, by Decision[16] of November 20, 2006, acquitted appellant in the first and second cases â”€ Criminal Case Nos. 8740-13 and 8741-13 â”€, the checks subject thereof having been dishonored because the signatures thereon differed from the specimen signatures of appellant on file at the drawee bank. The Court of Appeals reasoned:

> It may be recalled that criminal and penal statutes are strictly construed against the State, that is, they cannot be enlarged by intendment, implication, or by any equitable considerations. In other words, the language cannot be enlarged beyond the ordinary meaning of its terms in order to carry out into effect the general purpose for which the statute was enacted. The reason for dishonor goes into the element of the felony and may not justly be ignored. When the law speaks of "insufficiency of funds" as the reason for dishonor, it means just that and nothing else. x x x [17]

The appellate court, however, affirmed the conviction of appellant in the third and fourth cases â”€ Criminal Case Nos. 8742-13 and 8743-13. Thus it disposed:

> WHEREFORE, in view of the foregoing, the court hereby ACQUITS the accused of charges in Criminal Case Nos. 8740 and 8741, for insufficiency of evidence; and AFFIRMS the Decision insofar as it found the accused guilty beyond reasonable doubt of two (2) counts of estafa defined and penalized under Article 315, 2(d) of the Revised Penal Code, in Criminal Case Nos. 8742 and 8743; with the modification that the accused is to pay the private complainant the sum of P3,048,000.00,[18] instead of P4,768,000.00.
>
> The penalty imposed, "x x x sentence[ing] her to suffer for each of the charges of the indeterminate penalty of imprisonment ranging from TWELVE YEARS of prison mayor to THIRTY YEARS of reclusion perpetua, is MAINTAINED.
>
> The herein judgment is further appealable to the Supreme Court by notice of appeal filed with this court.
>
> IT IS SO ORDERED.[19] (Emphasis and italics in the original; underscoring supplied)

Hence, the present appeal. Both the prosecution and the defense manifested their intention not to file supplemental briefs and to adopt the respective briefs which were considered by the Court of Appeals.[20]

In affirming appellant's conviction in the third and fourth cases, the appellate court noted that the checks subject thereof were dishonored due to "payment stopped" or "account closed."[21] Only photocopies of the checks bearing "payment stopped" or "account closed" stamped thereon form part of the records,[22] however. While the Court of Appeals observed that photocopies of the checks, which were not objected to, may be admitted as an exception to the best evidence rule after the offeror has laid the foundation for the unavailability of the originals, without bad faith on his part, and has proved their existence, due execution, loss or unavailability and content/substance,[23] the photocopies of the checks still may not be appreciated as they were not formally offered in evidence.[24]

More importantly, it bears noting that, as reflected above, the relevant stipulations of the prosecution and defense during pre-trial were that the checks, except Check No. 001260A which is one of the two checks subject of the fourth case, were dishonored because the signatures therein were different from appellant's signature on file.[25]

The prosecution contends, however, that appellant intentionally altered her own signature on the checks.[26] In light, however, of the findings of the handwriting expert and, indeed, from the naked eye, a comparison of the questioned signatures with the standard signature of appellant,[27] the possibility that appellant's signature on the checks in question was forged is not ruled out.

Respecting Check No. 001260A which, admittedly, was signed by appellant,[28] appellant did not deny that it

was dishonored for insufficiency of funds and that demand was made for the settlement of the amount covered by it.[29] She claimed, however, that she and Nenit agreed to set off the amount of the check against the value of the jewelry which Nenit and her son had borrowed from her.[30] In support of her claim, she presented receipts. Brushing aside this claim, the trial court made the following observations which this Court finds well-taken:

> Neither can the Court believe that there was an off-setting arrangement with respect to PCIB Check No. 1260A in the amount of P458,000.00. Again, while the accused would claim that the jewelry all valued at P420,000.00 that Carlito Musni received from her as contained in the receipts that the latter issued, the Court observes that there were no indications in the said receipts that the items therein mentioned were to offset the jewelry that the accused had taken from the complainant for which she issued the aforementioned check. There is also no such indication in the receipt issued by complainant for a Rosita earring valued of P100,000.00 which was part of the alleged offsetting. Moreover, if there was an offsetting, the accused has not fully explained why the value of the jewelry that complainant and Carlito Musni received from her were more than the value of the check which is P458,000.00. x x x[31] (Underscoring supplied)

Nevertheless, the acquittal of appellant with regard to Check No. 001260A is in order.

Undoubtedly, appellant was, in Criminal Case No. 8743-13, charged under Article 315, par. 2(d) of the Revised Penal Code which provides:

> Art. 315 2(d) Swindling (estafa). - Any person who shall defraud another by any of the means herein below . . .
>
> 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 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. (Emphasis supplied)

The above-quoted accusatory portion of the Information in said case alleges that when Check No. 001260A was drawn, appellant "represent[ed] that the [same] w[ould] be paid when presented for payment simultaneous to and as payment for jewelr[y purchased]."

To constitute estafa under Article 315, par. 2(d) of the Revised Penal Code, the issuance of a check should be the means to obtain money or property from the payee.[32] In Ilagan v. People,[33] the therein accused was charged with estafa for indorsing postdated checks which were dishonored on maturity. In acquitting the accused, the Court noted that he and the payee had been priorly engaged for four years in rediscounting transactions hence; the Court held that it would have been unnecessary for the accused to assure the payee that the checks would be sufficiently funded on maturity to convince her to change them with cash.[34]

In the case at bar, it is gathered that during her transactions since 1991 with Nenit, appellant usually issued postdated checks after jewelry was turned over to her and that in fact some of the postdated checks previously issued were dishonored but were not made subject of criminal complaints. Appellant did not thus have to assure Nenit when she issued on November 15, 1994 Check No. 001260A postdated December 30, 1994 that it would be funded on maturity to convince her to part off with the jewelry. In other words, the issuance of the check was not the means to obtain the jewelry. Appellant did not thus employ fraud. Ergo she did not commit estafa.

However, appellant's civil liability under Check No. 001260A for P458,000 stands in the absence of evidence that she had, as she claimed, already settled the same.

WHEREFORE, the Decision of the Court of Appeals dated November 20, 2006 is SET ASIDE.

Appellant, Elizabeth Cardenas, is ACQUITTED in Criminal Case No. 8742-13.

Appellant is likewise ACQUITTED in Criminal Case No. 8743-13. She is, however, declared civilly liable to the private complainant, Nenette a.k.a. Nenit Musni, insofar as the case involves Check No. 001260A, and is ORDERED to pay her its face value of Four Hundred Fifty Eight Thousand (P458,000.00) Pesos.

SO ORDERED.

Quisumbing, (Chairperson), Tinga, Velasco, Jr., and Brion, JJ., concur.

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[1] Sometimes spelled as "Nenit" or "Nenita."

[2] Records, Vol. I, p. 1.

[3] Records, Vol. II, p. 1.

[4] Records, Vol. III, p. 1.

[5] Records, Vol. IV, p. 1.

[6] Records, Vol. I, pp. 77-78.

[7] Vide TSN, May 31, 2000, pp. 2-21; TSN, August 8, 2000, pp. 1-24; TSN, October 5, 2000, pp. 23-41; TSN, March 12, 2001, pp. 43-51; TSN, September 18, 2001, pp. 1-25.

[8] Vide records, Vol. I, pp. 32-33.

[9] Vide records, Vol. III, pp. 32-34.

[10] Vide records, Vol. II, pp. 32-33.

[11] Vide records, Vol. IV, pp. 32-33.

[12] TSN, November 20, 2001, pp. 3-20; TSN, January 29, 2002, pp. 52-70; TSN, March 7, 2002, pp. 72-79; TSN, May 7, 2002, pp. 2-18; July 11, 2002, pp. 81-102.

[13] Exhibit "2" and submarkings, records, Vol. I, pp. 216-219.

[14] TSN, August 22, 2002, pp. 26-27; Exhibit "4," records, Vol. I, pp. 224-225.

[15] Id.at 249.

[16] Penned by Court of Appeals Associate Justice Apolinario D. Bruselas, Jr. with the concurrences of Associate Justices Josefina Guevara-Salonga and Vicente Q. Roxas. CA rollo, pp. 235-258.

[17] CA rollo, p. 249.

[18] The Court of Appeals did not explain how it arrived at P3,048,000.

[19] CA rollo, pp. 287-288.

[20] Rollo, pp. 32-34, 36-37.

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[21] CA rollo, pp. 250-251.

[22] Records, Vol. III, pp. 32-34; records, Vol. IV, p. 32.

[23] CA rollo, p. 255. The checks were not available during trial because they were with the Metropolitan Trial Court before which they were subject of a case for the violation of Batas Pambansa Blg. 22 (vide TSN, May 31, 2000, p. 16).

[24] Vide TSN, September 18, 2001, pp. 24-25; TSN, June 19, 2003, pp. 12-14.

[25] Records vol. I, pp. 77-78.

[26] CA rollo, p. 210.

[27] Vide Exhibits "5" and "7."

[28] Vide TSN, January 29, 2002, pp. 68-69; records, Vol. I, p. 78.

[29] TSN, May 31, 2000, pp. 9-11.

[30] TSN, June 19, 2003, pp. 6-10.

[31] Records, Vol. I, pp. 278-279.

[32] Vide People v. Reyes, G.R. No. 154159, March 31, 2005, 454 SCRA 635, 647.

[33] G.R. No. 166873, April 27, 2007, 522 SCRA 699.

[34] Id., at 711.

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