

**HANIEL R. CASTRO AND PIO C. CASTRO, PETITIONERS, VS. HON. RAFAEL T. MENDOZA, JUDGE OF THE COURT OF FIRST INSTANCE OF CEBU, BRANCH VI, AND THE PEOPLE OF THE PHILIPPINES, RESPONDE...**

*G.R. No. 50173. September 21, 1993*

Ponente: VITUG, J.

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**VITUG, J.:**

Father and son, Pio Castro and Haniel Castro, filed this Petition for Review on Certiorari which prays for the reversal of the decision[1] of the court a quo finding them guilty of estafa penalized under the provisions of Article 315, paragraph 2 (d), of the Revised Penal Code, as amended by Republic Act 4885 and Presidential Decree No. 818, for issuing a “bad check”. The information[2] reads:

“That on or about the 21st day of April, 1975, and for sometime prior and subsequent thereto, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conniving and confederating together and mutually helping each other, with deliberate intent of gain and by means of false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud, to wit: knowing fully well that they did not have sufficient funds deposited with the Insular Bank of Asia and America, Tagbilarang Branch, and without informing complainant Victor Elipe of that circumstance, with intent to defraud said Victor Elipe, did then and there wilfully, unlawfully and feloniously issue or make out a check dated April 21, 1975, bearing No. TAG 1600-702, in the amount of P18,200.00, in payment of construction materials, and when said check was presented for encashment with the said bank, the same was dishonored for the reason that they had no funds deposited thereat, and despite notice and repeated demands made upon them by Victor Elipe to make good said check, have failed and refused and still fail and refuse to make good said check, to the damage and prejudice of Mr. Victor Elipe in the amount aforesated.

CONTRARY TO LAW.”

The facts of the case that led to the filing of the criminal information arose prior to the enactment on 03 April 1979 of Batas Pambansa Blg. 22.[3]

A chance meeting between Pio Castro and Victor Elipe in October, 1974, on board a boat bound for Surigao from Cebu City got them to converse. Castro learned that Elipe had just opened in Cebu City a hardware store. Castro, on the other hand, needed to procure materials for the construction of his apartment house at Tagbilaran City. He proposed to buy, and Elipe agreed to sell, the items that the latter could supply on cash basis.

As orders were placed on different dates by Pio Castro, so also were deliveries made by Elipe between 09 October 1974 and 25 November 1974. Each time, no payment was made; deliveries, however, continued until the total unpaid account reached P18,081.15. Elipe kept on making demands for payment but Castro, on every such occasion, would ask for an extension of time within which to pay.

Finally, on 21 April 1975, Haniel Castro, a son of Pio Castro, went to see Elipe in Cebu City. The young Castro

issued on even date an Insular Bank of Asia and America check No. TAG 1600702 for the entire amount due from his father. When presented for encashment, the check was dishonored because the bank account had by then already been closed.

Demands for payment of the due obligation were again made by Elipe. In return, he got either excuses or promises from the two Castros. Exasperated, Elipe filed his complaint that led to the filing of the estafa case against both Pio and Haniel Castro.

On 06 February 1979, the court a quo, after due hearing, rendered judgment[4], finding the two accused guilty of estafa as charged, and the two were accordingly sentenced; thus-

WHEREFORE, IN VIEW OF ALL THE FOREGOING, the Court finds both accused, Pio Castro and Haniel Castro, GUILTY beyond reasonable doubt of the crime of Estafa, having confederated and connived in the commission thereof, and hereby sentences each of them to suffer imprisonment of an indeterminate penalty of ONE (1) YEAR, EIGHT (8) MONTHS AND TWENTY-ONE (21) DAYS as minimum to FIVE (5) YEARS, TWO (2) MONTHS and TWENTY (20) DAYS as maximum; to suffer the accessory penalties provided for by law; to indemnify the complainant Victor Elipe the amount of P18,081.80 without subsidiary imprisonment in case of insolvency; and, to pay the costs of the proceedings.

SO ORDERED.

In this petition, the conviction by the court a quo is questioned basically on the ground that the factual settings gave rise to a civil, not criminal, liability.

We agree. The Solicitor General himself recommends for acquittal.

Article 315, paragraph 2 (d) of the Revised Penal Code, as amended by Republic Act No. 4885, for which the petitioners have been charged and convicted, penalizes estafa when committed, among other things, -

“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 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. x x x.”

The essential requirements of the above offense are that (1) a check is drawn or postdated in payment of an obligation contracted at the time the check was issued; (2) there are no funds sufficient to cover the check; and (3) the payee sustains damage thereby.

In *People vs. Sabio, et al.*, G.R. No. L-45490; *Tan Tao Liap vs. Court of Appeals*, G.R. L-45711; and *Lagua vs. Cusi*, G.R. L-42971[5], jointly decided by this Court en banc, reiterated in *People v. Tugbang*[6], we held:

x x x (W)hat is significant to note is that the time or occasion for the commission of the false pretense or fraudulent act has not at all been changed by the amendment (R.A. 4885). The false pretense or fraudulent act must be executed prior to or simultaneously with the commission of the fraud. Thus, under Article 315, paragraph 2(d) of the Revised Penal Code, as amended by Republic Act No. 4885, the following are the elements of estafa: (1) postdating or issuance of a check in payment of an obligation contracted at the time the check was issued; (2) lack or insufficiency of funds to cover the check; and (3) damage to the payee thereof. Now, it is asked: Is there deceit and damage when a bad check is issued in payment of a pre-existing obligation? It is clear that under the law, the false pretense or fraudulent act must be executed prior to or simultaneously with the commission of the fraud. To defraud is to deprive some right, interest, or property by deceitful device. In the issuance of a check as payment for a pre-existing debt, the drawer derives no material

benefit in return as its consideration had long been delivered to him before the check was issued. In short, the issuance of the check was not a means to obtain a valuable consideration from the payee. Deceit, to constitute estafa should be the efficient cause of the defraudation. Since an obligation has already been contracted, it cannot be said that the payee parted with his property or that the drawer has obtained something of value as a result of the postdating or issuance of the bad check in payment of a pre-existing obligation.

Finally, considering the absence of an express provision in the law, the postdating or issuance of a bad check in payment of a pre-existing obligation cannot be penalized as estafa by means of deceit, otherwise, the legislature could have easily worded the amendatory act to that effect. Since the language of the law is plain and unambiguous, We find no justification in entering into further inquiries for the purpose of ascertaining the legislative intent. Moreover, laws that impose criminal liability are strictly construed. The rule, therefore, that the issuance of a bouncing check in payment of a pre-existing obligation does not constitute estafa has not at all been altered by the amendatory act.

Evidently, the law penalizes the issuance of a check only if it were itself the immediate consideration for the reciprocal receipt of benefits. In other words, the check must be issued concurrently with, and in exchange for, a material gain to make it a punishable offense under Article 315, paragraph 2(d) of the Revised Penal Code. In the issuance of a check to pay a pre-existing obligation, as in the instant case, the drawer derives no such contemporary gain in return since the obligation sought to be settled is already incurred and outstanding before the check is issued.

Elipse by continuing to still effect sales and deliveries to the petitioners even without promptly getting paid, for all intents and purposes, had sold on credit, the amounts due thus turning into simple money obligations. Batas Pambansa Blg. 22 which now penalizes the mere issuance of a check by a drawer knowing that it will not be honored cannot obviously apply retroactively to the petitioners.

WHEREFORE, the judgment appealed from is REVERSED and SET ASIDE. The petitioners are ACQUITTED of the crime charged.

**SO ORDERED.**

Bidin, Romero, and Melo, JJ., concur.

Feliciano, J., (Chairman), on leave.

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[1] Penned by Judge Rafael T. Mendoza of then Court of First Instance, Cebu, Branch VI.

[2] Rollo 9-10.

[3] “AN ACT PENALIZING THE MAKING OR DRAWING AND ISSUANCE OF A CHECK WITHOUT SUFFICIENT FUNDS FOR CREDIT AND FOR OTHER PURPOSES”, otherwise known as the Bouncing Check Law.

[4] Rollo, 9-24.

**[5] 86 SCRA 568/1978/.**

[6] G.R. No. 76212, 196 SCRA 341/1991/.

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