

LOLITA BAÑARES, PETITIONER, VS. HON. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.*G.R. No. 55992. February 14, 1991*

Ponente: REGALADO, J.

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Petitioner has instituted the proceeding at bar seeking the reversal of respondent court's decision of February 18, 1980 in CA-G.R. No. 21359-CR,[1] which affirmed the judgment of the then Court of First Instance of Negros Occidental in Criminal Case No. 1494[2] convicting her of estafa, and its resolution of January 6, 1981[3] denying her motion for reconsideration of said decision.

The trial court imposed on petitioner an indeterminate sentence of eight (8) years and one (1) day of prison mayor as minimum and twenty-one (21) years and four (4) months of reclusion perpetua as maximum, to indemnify the offended party in the amount of P43,000.00, without subsidiary imprisonment in case of insolvency, and to pay the costs. Respondent court, finding no reversible error in the appealed judgment, affirmed the aforesaid penalty in toto.

Insisting on her innocence, petitioner has come before us in this petition for review on certiorari, faulting respondent court as having allegedly committed very grave errors of law:

1. In failing to take into account the trial court's finding and the complainant's admission that the subject postdated check was issued only as receipt for the jewelry;
2. In its oversimplistic misinterpretation of the Padilla amendment in relation to the essential question of deceit, contrary to the doctrine of *People vs. Sabio, Sr.*, which gross error led the Court of Appeals into totally disregarding admitted and/or undisputed facts negating deceit in the case at bar, assuming arguendo that the postdated check was issued not as receipt but as payment for the jewelry;
3. In its failure to hold that the postdated check was in payment of pre-existing obligation, on the same arguendo assumption that, the postdated check was issued not as a receipt but as payment for the jewelry;
4. In holding that the Padilla amendment eliminated the defense that the accused had informed the offended party that the deposit in the bank may not be sufficient to cover the check, on the same arguendo assumption that the postdated check was issued not as a receipt but as payment for the jewelry;
5. In failing to appreciate the fact that when petitioner issued the subject check her account in the bank had not yet been closed, on the same arguendo assumption that the postdated check was issued not as a receipt but as payment for the jewelry;
6. In rejecting the petitioner's defense of accounting and set-off as 'immaterial', on the same arguendo assumption that the postdated check was issued not as a receipt but as payment for the jewelry;
7. In ignoring other admitted or undisputed facts further negating any supposed deceit on the part of the petitioner, on the same arguendo assumption that the postdated check was issued not as a receipt but as

payment for the jewelry;

8. In failing take into account the admitted or undisputed facts indicating that the postdated check for P43,000.00 was not issued for the subject jewelry valued at P49,000.00 but for other jewelry involved in a similar case wherein the petitioner was acquitted decisively; and

9. In affirming in toto the decision of the trial court instead of reversing the same and acquitting the petitioner."[4]

The records show that complainant Anita Diolosa Uy came to know petitioner Lolita Bañares sometime in September, 1974.[5] From then on, Uy and Bañares had several transactions involving the sale of jewelry. These transactions were arranged in the residence of Mrs. Angeles Zayco, sister of complainant, at Capitolville, Bacolod City, one of which was the October 7, 1974 transaction wherein Uy sold to Bañares one brilliant cut lady's ring and one pair of earrings worth P43,000.00 and in consideration whereof petitioner issued Metropolitan Bank and Trust Company Check No. BD 2364996 PA[6] with the assurance that the check was good and sufficiently funded.[7] It was only after petitioner had left the house of Mrs. Zayco that Uy discovered that said check was dated October 14, 1974.[8] Since the transaction was agreed to be on cash basis, upon realizing that the check was postdated she lost no time in calling up petitioner by telephone, but was informed that the latter had not yet arrived home. Subsequently, petitioner herself called and begged complainant to give her one week to make good the amount of the check, with the guarantee that the check was a reliable one. October 14, 1974 came but, again, petitioner begged for another twenty days to complete her deposit of the amount, to which Uy acceded.[9] On November 4, 1974, Uy sent one of her employees to Bacolod City to encash the check but he was not able to do so and, instead, he was given the bank's return slip[10] showing that petitioner's account had been closed.[11]

The following day, complainant went to Bacolod City and confronted petitioner, demanding from the latter the payment for the jewelry or, better still, the return of the same. However, petitioner could not comply with either demand since, as she admitted to complainant, she had pledged the jewelry. She requested for more time to settle the matter but complainant decided to file a case,[12] resulting in petitioner being charged in the following information:

"That on or about the 7th day of October, 1974, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused with intent to gain and by means of false pretenses and fraudulent acts executed prior to or simultaneously with the commission of the fraud, knowing fully well that her current account No. 1021 in the Metropolitan Bank and Trust Company, Bacolod Branch, Bacolod City was already closed and without informing the herein offended party, Anita Diolosa Uy of such fact did, then and there, willfully, unlawfully and feloniously issue, make out and deliver Metropolitan Bank and Trust Company Check No. 2364996 Bacolod Branch, postdated to October 14, 1974 in the amount of FORTY THREE THOUSAND PESOS (P43,000.00), Philippine Currency, payable to Anita Diolosa Uy as payment by the accused of one (1) pair of earrings mar(q)uise white perfect with several brillantes about 1carat each and one (1) ladies ring with brillantes round perfect about 3 carats 1 flumketh design on engaste which the said accused purchased the said Anita Diolosa Uy; that upon presentation of said check, however, to the Metropolitan Bank and Trust Company, Bacolod Branch, Bacolod City for encashment, the same was dishonored and refused payment because the accused's account with the aforesaid bank was already closed and said accused in spite of the notice given to her by said offended party that her check had been dishonored because her account with the aforesaid bank was already closed has failed and refused and still fails and refuses to deposit the amount necessary to cover her check, or to redeem said check within three (3) days from receipt of such notice, nor has the said accused returned the aforementioned jewelries to the herein offended party but, instead, once in possession of the same, misapplied, converted, and misappropriated the same or the proceeds thereof to her own personal use and benefit, thus causing damage and prejudice to the said Anita Diolosa Uy in the aforementioned amount of P43,000.00."[13]

After a careful review of the records, the Court rules that the present recourse is devoid of merit.

The first submission of petitioner is that the check in question was not intended for encashment but that it was actually merely a receipt,[14] advertent to the fact that complainant had admitted that for every jewelry she delivered to petitioner a corresponding check was given in return.

To buttress her theory, petitioner's brief attempts to expound on the nature of the jewelry business and the participation of the jewelry merchants. She seeks to impress on us that in said business when sales are on credit, checks may function and serve as promissory notes or securities depending on the intention of the parties.[15] Since we therefore have to ascertain the nature of the transaction in issue, we take note of the rule that in order to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered.[16]

Complainant Uy explicitly testified on direct examination in court as follows:

"COURT

x x x

x x x What was your reaction when your attention was drawn and you observed that the check issued to you and which you accepted on the agreement that the payment was to be in cash turned out to be postdated to October 14, 1974:

MRS. UY

I felt bad.

x x x

ATTY. CASTRO

What did you do, if anything, after you discovered that it is a postdated check?

MRS. UY

I was instructed by Mrs. Zayco to call up Mrs. Bañares.

ATTY. CASTRO

Did you call her?

MRS. UY

Yes, I called her UP.

x x x

ATTY. CASTRO

What conversation, if any, (sic) between you and Mrs. Bañares when she called you up?

MRS. UY

She beg (sic) me to allow her to be given one week's time so that it could be done on October 14.

COURT

What did she say? She begged you to consent to the postdated check then by giving her an allowance of one

week after which you could cash the check on October 15?

MRS. UY

Yes, sir.

x x x

COURT

What did you tell her regarding her request that you wait until October 15 to cash the check?

MRS. UY

I consented. She assured me that check was really a reliable check."^[17]

She clarified this matter further on cross-examination:

"ATTY. DITCHING

(To witness) You said that on October 7, 1974 you had a transaction with the accused involving jewelry amounting to Forty-three Thousand Pesos and before she gave you this check Exhibit 'A', was that transaction for cash or not?

MRS. UY

Yes, for cash basis.

ATTY. DITCHING

And she issued a check?

COURT

Let's qualify that question ...

ATTY. DITCHING

And did you not tell her that she better make good this matter because all other transactions which she had covering checks there is uncertainty regarding this?

COURT

Let us simplify that. (To witness) Did you not demand cash instead of check?

MRS. UY

Since if I would receive money in cash it would be very bulky for me and risky to go back to Iloilo City."^[18]

From the foregoing un rebutted facts, the transaction was clearly on cash basis although complainant accepted the check due to the inconvenience and risk of carrying cash from Bacolod City to Iloilo City. Complainant parted with her jewelry believing petitioner's assurance that the check was good and duly funded. She never doubted the veracity of petitioner's assurances which kept her from verifying with the bank whether the check was funded or not. The element of trust is imperative to those who are engaged in this kind of business, and complainant is not an exception. Complainant's trust in petitioner had been developed by their several prior business dealings and because of the praises for and recommendations in favor of petitioner by their mutual friends. Since the transaction was on cash basis, complainant naturally expected petitioner to issue a check dated on the same day when she turned over the jewelry.

Petitioner's own evidence failed to support her contention that the check was intended only as a receipt. If it was, she would not have made the aforesaid series of requests for extension of time to deposit the money. Such comportment of petitioner, betraying a devious scheme to defraud complainant, is further made manifest by the fact that her current account with the bank against which the check was issued had already been closed.

The main thrust of petitioner's second, third, fourth, fifth, sixth and seventh assigned errors hinges on the issue of deceit. She argues that false pretense or deceit should attend the issuance of the check in order that its dishonor will constitute estafa under Article 315, paragraph 2(d), of the Revised Penal Code. She contends that the fact that she had allegedly informed complainant that the check in question might not be covered with sufficient funds in the bank negates false pretense or deceit on her part. Even assuming that she did give that information, this would be unavailing under the proven factual setting of this case. As pointed out by the Solicitor General, former Senator Ambrosio Padilla who authored Republic Act. No. 4885, clarified this matter thus: "This amendment by Republic Act No. 4685 eliminates the defense x x x that the drawer of the check had informed the payee that the funds deposited in the bank may not be sufficient to cover the amount of his check." [19]

She further asserts that even if she failed to make good the check within three days from notice of its dishonor, she may not be convicted of estafa if no deceit attended the issuance of the check, as when the check was issued in payment of a pre-existing obligation. It should be recalled that as earlier demonstrated, however, the postdated check was issued not as payment for a pre-existing obligation but as the consideration for petitioner's purchase of the jewelry of complainant and was, therefore, the efficient cause for complainant's parting with the merchandise in favor of petitioner.

Article 315, paragraph 2(d), of the Revised Penal Code, as amended by Republic Act No. 4885, provides:

"Art. 315. Swindling (estafa). - Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

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:

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."

The amendment has eliminated both the phrase "the offender knowing at the time that he had no funds in the bank" and the requirement under the previous provision for the drawer to inform the payee that he had no funds in the bank or the funds deposited by him were not sufficient to cover the amount of the check. Moreover, it is significant to note that the time or occasion for the commission of the false pretense or fraudulent act has not at all been changed by the amendment.[20] The offender must be able to obtain money or property from the offended party because of the issuance of a check whether postdated or not, that is, the latter would not have parted with his money or other property were it not for the issuance of the check,[21] which was what transpired in the case at bar.

The presumption under Article 315, paragraph 2(d), as amended by Republic Act No. 4885, prescribes a period of

time within which the drawer/issuer of the check must pay the creditor, otherwise, a prima facie inference of deceit constituting false pretense or fraudulent Act will arise. The explanatory note of Senate Bill No. 413 which became Republic Act No. 4885 states: "It is true that a check may be dishonored without any fraudulent pretense or fraudulent act of the drawer. Hence, the drawer is given three (3) days to make good the said check by depositing the necessary funds to cover the amount thereof. Otherwise, a prima facie presumption will arise as to the existence of fraud, which is an element of the crime of estafa."

There is, of course, no constitutional objection to a law providing that the presumption of innocence may be overcome by a contrary presumption founded upon the experience of human conduct, and enacting what evidence shall be sufficient to overcome such presumption of innocence. The legislature may provide for prima facie evidence of guilt of the accused and shift the burden of proof provided there be a rational connection between the facts proved and the ultimate fact presumed so that the inference of the one from proof of the others is not unreasonable and arbitrary because of lack of connection between the two in common experience.[22]

There can be no doubt that postdating 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, is a false pretense or fraudulent act.[23] In the case at bar, the matter was aggravated by the fact that the bank account of petitioner was not only insufficient but already closed. Worse, petitioner could not comply with the demand of complainant for at least the return of the jewelry because the former had pledged them. These circumstances characterize the element of deceit constitutive of the crime of estafa. 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.[24]

Petitioner insists that she acted in good faith in her aforesaid dealing with complainant, there being a mutual creditor-debtor relationship necessitating accounting, set-off and settlement between them such that their relationship must be deemed as purely civil in nature.[25] We find no merit in this contention. While petitioner and complainant may have had prior transactions, as earlier explained they specifically agreed on the nature of their transaction with respect to the pieces of jewelry subject of this case. We repeat for emphasis that the catenated acts of petitioner in issuing a bad check, in asking for several extensions of time to complete her deposit, in closing her account with the bank and in subsequently pledging the said jewelry could not but be indubitable indicia of bad faith on her part.

On her eighth assigned error, petitioner represents that the P43,000.00 check in issue was not for the earrings and lady's ring involved in the instant case, which was valued at P49,000.00, but for one 4-carat diamond ring subject matter of another case wherein she was acquitted. It is obvious, of course, that these are factual matters raised by way of defense. Definitely, petitioner has the burden of evidence thereon but it does not appear that she has discharged that evidential onus to the satisfaction of either the court a quo or respondent court. Their factual findings are entitled to our respect and our evaluation thereof warrants acceptance of the same.

On the other hand, the prosecution's refutation of petitioner's aforesaid theory inspires and deserves more credence. It is true that complainant initially appraised the pieces of jewelry in question at P49,000.00 but the evidence shows that she reduced the price to P43,000.00 because petitioner agreed to pay for the same on cash basis. The prosecution points out that the case involving a 4-carat diamond ring wherein petitioner was absolved is an entirely different matter from the present case. There were two separate acts of deceit committed on different dates, although directed against only one person.[26]

That petitioner was acquitted by another court in another case involving a different piece of jewelry under a

different factual setting obviously cannot dictate a like exculpation under the proven facts of the instant case. At any rate, the foregoing contentions of the People are based on the factual findings of both lower courts and, the same not being negated by the evidence nor abraded by any suggestion of implausibility, we do not feel at liberty to disturb the same.

We do not, however, agree with the penalty imposed by the court a quo on petitioner and affirmed by respondent court. Both courts and the contending parties themselves appear to have taken their bearings thereon from the penalties provided by Article 315, paragraph 2(d), of the Revised Penal Code, as amended by Presidential Decree No. 818, the relevant portion of which reads:

"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 not exceed thirty years. In such cases, and in connection with the accessory penalties which may be imposed under the provisions of this Code, the penalty shall be termed reclusion perpetua;"[27]

Said amendment increasing the penalty for this type of estafa under paragraph 2(d) took effect on October 22, 1975 while the crime charged in the present case and of which petitioner was convicted took place on October 7, 1974. Evidently, Presidential Decree No. 818 cannot be given retroactive effect, hence the penalty to be imposed on petitioner shall be that provided by the law at the time of the commission of the offense[28] which, for the crime of estafa involved in this case, was as follows:

"1st. The penalty of prision correccional in its maximum period to prision mayor in its minimum period, 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 not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed prision mayor or reclusion temporal, as the case may be;"

In view of the amount involved in this case, the basic principal penalty shall be imposed in its maximum period, or six (6) years, eight (8) months and twenty-one (21) days to eight (8) years, to which shall be added an incremental penalty of two (2) years since the amount of the defraudation is P43,000.00. The minimum range of the indeterminate sentence shall consist of the next two periods in the graduated scale immediately following the penalty prescribed for the crime,[29] that is, prision correccional in its minimum and medium periods, or six (6) months and one (1) day to four (4) years and two (2) months, to be imposed in any period of such range.

WHEREFORE, judgment is hereby rendered sentencing petitioner to serve an indeterminate penalty of two (2) years, eleven (11) months and eleven (11) days of prision correccional, as minimum, to eight (8) years, eight (8) months and twenty-one (21) days of prision mayor, as maximum. As thus MODIFIED, the challenged decision and resolution of respondent court are hereby AFFIRMED in all other respects.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

[1] Associate Justice Juan A. Sison, ponente, and Associate Justices Mama D. Busran and Rodolfo A. Nocon concurring.

[2] Original Record, 457-465.

- [3] Rollo, 180-181
- [4] Brief for the Petitioner, 1-4; Rollo, 198.
- [5] TSN, February 14, 1975, 10.
- [6] Exhibit "A"; Original Record, 108.
- [7] TSN, February 14, 1975, 11-20.
- [8] Ibid., id., 22.
- [9] Ibid., id., 27-30.
- [10] Exhibit "B"; Original Record, 109.
- [11] TSN, February 14, 1975, 31-37.
- [12] Ibid., id., 38-44.
- [13] Original Record, 1.
- [14] Brief for the Petitioner, 23; Rollo, 198.
- [15] Ibid., 5; id., 198.
- [16] Article 1371, Civil Code.
- [17] TSN, February 14, 1975, 24-27.
- [18] Ibid., id., 101-102.
- [19] Brief for the Respondents, 8, citing Padilla, Revised Penal Code, Bk. III, 1972 ed., 337; Rollo, 218.
- [20] People vs. Sabio, Sr., et al., 86 SCRA 568 (1978), citing Congressional Record, Senate, Volume II, No. 37, March 20, 1967, 931-937.
- [21] Vallarta vs. Court of Appeals, et al., 150 SCRA 336 (1987).
- [22] People vs. Mingoa, 92 Phil. 856 (1953).
- [23] Vallarta vs. Court of Appeals, et al., ante.
- [24] People vs. Sabio, Sr., et al., supra.
- [25] Brief for the Petitioner, 31; Rollo, 198.
- [26] Brief for the Respondents, 10-11; Rollo, 220-221.
- [27] The penalty of reclusion perpetua contemplated in the amendatory decree is not the reclusion perpetua referred to in Arts. 25, 27, 70 and 71 of the Revised Penal Code and Sec. 2 of Act No. 4103 (Indeterminate Sentence Law) which has a duration of 30 years and, among others, disqualifies the convict from entitlement to an indeterminate sentence.
- [28] Arts. 21 and 22, Revised Penal Code; People vs. Villaraza, et al., 81 SCRA 95 (1978).
- [29] Arts. 61(5) and 71, Revised Penal Code.

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