

ROBERTO TUGBANG, PETITIONER, VS. COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 56679. June 29, 1989

Ponente: CRUZ, J.

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CRUZ, J.:

The appellant's guilt is so obvious that we shall at the outset affirm his conviction. His defense is a palpable concoction that the lower courts did well to reject. We do so too.

Roberto Tugbang was charged with estafa under Article 315 of the Revised Penal Code. He was convicted by the trial court and sentenced accordingly.[1] The judgment was affirmed in toto by the Court of Appeals.[2]

The decision of the Court of Appeals was elevated to this Court in a petition for review which we denied on June 26, 1981.[3] The motion for reconsideration was likewise denied on September 14, 1981.[4] The motion for leave to file a second motion for reconsideration was granted in our resolution of November 9, 1981, but this was set aside when it was discovered that that motion had been filed late and entry of judgment had already been made on October 5, 1981.[5] Nevertheless, on April 23, 1982, the denial was itself revoked and the entry of judgment was withdrawn because Justice Ramon Aquino had inadvertently participated in the deliberation of the case without noticing that his wife, Justice Carolina Griño-Aquino, had concurred in the decision under challenge. The petition was given due course on that same date and the parties were required to submit their respective briefs.[6]

The Court has deliberated on the issues and the arguments raised by the parties and finds, as earlier stated, that there is no reason to reverse the appellant's conviction.

As established by the prosecution, the accused approached the complainant, Araceli de los Santos, who was her sister-in-law, in the late afternoon of May 5, 1977, and induced her to give him P10,000.00 in exchange for a check in the same amount which he said he could not encash because the bank was already closed at the time. The check was drawn by him against the Bank of the Philippine Islands, Iloilo Branch, and was dated May 6, 1977.[7] Araceli deposited the check the following day to her account with the Chartered Bank, but on May 12, 1977, she was informed that the check had been dishonored for insufficient funds.[8] She immediately advised the accused and demanded that he make good the amount of the check, but he never did. She then filed a complaint with the fiscal's office, which, after conducting a preliminary investigation, initiated the prosecution of the appellant.

For his part, the appellant denies that he ever approached Araceli and asked her to encash the check on that date as he was in fact in San Dionisio at the time. The check, he said, was issued and postdated a month earlier in payment to Araceli of a one-carat emerald ring he had bought from her as a wedding anniversary present for his wife, Araceli's sister. The purchase price was only P7,000.00, but there was an additional interest of 3% per month and he had rounded off the entire debt to P10,000.00 after deducting the previous payments made by him through two checks in the separate amounts of P280.00 and P350.00. As the check for P10,000.00 was issued by him in payment of a pre-existing obligation, he argued that he could not be guilty of estafa and was subject only to civil liability.[9]

Tugbang doubted why Araceli would willingly lend him P10,000.00 when she knew he was indebted to her mother in the sum of P200,000.00 and was in financial straits. He also noted that, although she claimed her sisters Charito and Aida were present when she encashed the check, neither of them was presented to corroborate her testimony. Moreover, she said earlier that the transaction took place on May 6, 1977, but later retracted her declaration and said the date was May 5, 1977, to support her statement that she deposited the check on May 6. He also wondered why she would have that much cash on hand at the time of the alleged incident and suggested the happenstance was suspiciously convenient. Finally, he contended that he could not have been convicted under Article 315, par. 2(a) of the Revised Penal Code because he had not made any false pretenses or misrepresentations to the damage of the complainant.

Even as fiction, the tale of the ring is too sketchy to be believable. Considering the value of the ring, one might ask why no written agreement was entered into by the parties and, if the appellant is to be believed, why no period for the payment was stipulated. The appellant could not even describe the ring short of saying that it had a one-carat emerald. He did not produce it in court, claiming his wife had pawned it but he could not name the pawnshop or present the pawnshop receipt. He also could not tell for what amount the ring had been pawned. While protesting that he was financially strapped, he nevertheless said he rounded off his indebtedness to P10,000.00 because of his delay in paying it although there was already a stipulated 3% monthly interest on which he said he had made payments with the two separate checks. As to these, Araceli testified that they were not interest payments at all. One was the fee for cooking lessons paid to one Selmo Bernas and the other was in payment for certain textiles purchased from her by Etchel, the appellant's wife.

One would suppose that the appellant was so convincing on that afternoon of May 6, 1977, that Araceli was moved to accommodate him. After all, he was her brother-in-law and besides he was presenting her with an apparently valid check that she felt she should not reject if only out of consideration for her sister Etchel. That is not an unnatural attitude. As it happened, she had the cash at the time which she was intending to take to Manila over the week-end for some business investment. And as for the non-presentation by the prosecution of witnesses to corroborate Araceli, suffice it to say that it is up to each party to determine what witnesses and evidence to produce on the basis of its own assessment of their necessity. The prosecution felt there was no need for such corroboration and in fact the trial court also thought so. We do too. And we also feel that the confusion as to the date of the incident is a minor detail that does not detract from the essential credibility of Araceli's testimony. At any rate, these are factual matters and the findings thereon are binding on this Court in the absence of the accepted exceptions. Such exceptions have not been established in this case.

The appellant contends he cannot be convicted under Article 315, par. 2(a) of the Revised Penal Code punishing swindling when committed:

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

(a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceptions.

His claim is that he has not committed any deceit or made any false pretenses, but his story just does not have the ring of truth. The evidence against him is strong and irrefutable. Of course he deceived Araceli when he

persuaded her to cash the P10,000.00 check. Of course he made false pretenses when he assured her she could encash it the following day as it was fully funded. And even if these acts do not fall squarely under the said provision, as he insists, they are nevertheless covered by Par. 2(d) of the same article. In fact, we believe this is the applicable provision because it specifically punishes false pretenses or fraudulent acts when committed:

(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. (As amended by Rep. Act. No. 4885, approved June 17, 1967.)

The prosecution has sufficiently established that the appellant issued the P10,000.00 check knowing that he had no funds to cover the said amount. Under R.A. No. 4885, amending this paragraph, 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 days from receipt of dishonor for lack or insufficiency of funds. The appellant never did make good his bouncing check.

But the appellant vigorously argues that he cannot be convicted under the information filed against him because he was charged therein with a violation of Article 315, par. 2(a) and not par. 2(d). The Court does not agree. Although it is true that Par. 2(d) was not specifically mentioned in the information, the allegations therein show that he was also being accused of a violation of that paragraph, as the text of the said information clearly shows:

That on or about the 6th day of May, 1977, in the City of Iloilo, Philippines, and within the jurisdiction of this Court, said accused, with deliberate intent and without any justifiable motive, by means of fraud, deceit, false pretenses and misrepresentation, defrauded Araceli de los Santos in the following manner: that on said date, said accused, approached Araceli de los Santos, pretending that he had money in the bank, but was unable to withdraw his deposit for it was already late in the afternoon and the bank is closed, and induced the latter to encash his Check No. C321595 dated May 6, 1977, in the amount of P10,000.00, drawn against the Bank of the Philippine Islands, Iloilo Branch, for he badly needed said amount on that very day; that by reason of the inducement and representation made by the accused Roberto Tugbang to said Araceli de los Santos, the latter delivered to said Roberto Tugbang cash amount in the sum of P10,000.00 and in return, said accused knowing fully well that at the time he did not have sufficient funds in the bank, did then and there wilfully, unlawfully and feloniously issue and make out Check No. J-321595 dated May 6, 1977, in the amount of P10,000.00, drawn against the Bank of the Philippine Islands, Iloilo Branch, the same was dishonored and refused payment, and the check was returned with annotation "Insufficiency of Funds"; that despite notice to the accused Roberto Tugbang that the check had been dishonored, said accused failed to deposit the amount necessary to cover the check within three days from his receipt of said notice, and until now have failed to make the deposit concerned, to the damage and prejudice of Araceli de los Santos in the aforementioned amount of P10,000.00.

There is no longer any question that what controls is not the designation of the offense charged or the particular law or part thereof allegedly violated but the description of the offense claimed to have been committed. We have said so in numerous cases, and there is no more need here to emphasize the obvious.[10] Furthermore —

It is well-settled rule in considering indictments that where an offense may be committed in any of several modes, and the offense, in any particular instance, is alleged to have been committed in two or more modes

specified, it is sufficient to prove the offense committed in any one of them, provided that it be such as to constitute the substantive offense^[11]

In the dispositive portion of its decision, the trial court declared:

WHEREFORE, the Court finds the accused ROBERTO TUGBANG guilty beyond reasonable doubt of the crime of Swindling defined and penalized under par. 2(a), Art. 315 of the Revised Penal Code, as amended by P.D. 818 and imposes upon him a prison term of eight (8) years, two (2) months and one (1) day of prision mayor medium, taken from its minimum period, as minimum, to ten (10) years, ten (10) months and twenty (20) days of prision mayor maximum, taken from its medium period, as maximum, and to suffer the accessory penalties provided by law.

The accused is further directed to pay the offended party, Araceli de los Santos, the sum of P10,000.00, plus the legal rate of interest from May 15, 1977 until full payment thereof, without subsidiary imprisonment in case of insolvency, and the costs.

Although violation of Par. 2(a) of Article 315 of the Revised Penal Code is punishable only with prision correccional in its minimum and medium periods,^[12] as correctly contended by the appellant, the penalty imposed upon him by the trial court is nevertheless still correct because that is the penalty prescribed by P.D. 818 for violation of Par. 2(d) of Article 315. The appellant has himself suggested that it is under this provision that, if at all, he should have been prosecuted. And so he has. Finally, let it be observed that P.D. 818 became effective on October 22, 1975, before this case arose, and so cannot be considered ex post facto as applied to him.

It is futile for the appellant to invoke his constitutional presumption of innocence because this has clearly been overcome by the evidence of record. His guilt has been proved beyond reasonable doubt and he must now suffer the consequences of his act.

WHEREFORE, the appealed decision is **AFFIRMED** with the modification only that the accused-appellant is declared guilty of violating Article 315, par. 2(d), of the Revised Penal Code, for which the correct penalty as above reproduced has been imposed upon him by the trial court. Costs against the accused-appellant.

SO ORDERED.

Narvasa (Chairman), Gancayco, and Medialdea, JJ., concur.

Griño-Aquino, J., took no part.

[1] Decided by Judge Josue N. Bellosillo.

[2] Penned by Justice Serafin R. Cuevas with Pascual and Griño-Aquino, JJ., concurring.

[3] Rollo, p. 59.

[4] Ibid., p. 93.

[5] Id., pp. 98; 109

[6] Id., p. 143.

[7] Id., pp. 23-24.

[8] Id., p. 24.

[9] Id., pp. 24-26; 30; 168.

[10] U.S. vs. Treyes, 14 Phil. 270; U.S. vs. him San, 17 Phil. 273; Oca vs. Judge Jimenez and Inocentes, 115 Phil. 420; People vs. Salac, 157 SCRA 508; People vs. Resayagba, 159 SCRA 426.

[11] U.S. vs. Tolentino, 5 Phil. 682.

[12] 2nd par. of Art. 315, Revised Penal Code.

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