

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BENITO GO BIO, JR., DEFENDANT-APPELLANT.

G.R. No. 68575. June 06, 1986

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Benito Go Bio, Jr., was charged with the crime of estafa punishable under Article 315 paragraph 2(d) of the Revised Penal Code, as amended. The crime was allegedly committed as follows:

"That on or about and sometime in the month of May, 1979, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deceit and intent to defraud and well knowing that he had no funds in the bank, did then and there, wilfully, unlawfully and feloniously issue and make out Bank of the Philippine Islands check No. 357728 postdated June 15, 1979 in the sum of Two Hundred Twenty Thousand (P220,000.00) Pesos, Philippine Currency in favor of Purita Tiu, in exchange for cash received simultaneously with the issuance of said check; that upon presentment for encashment of the aforesaid check with the Bank of the Philippine Islands the same was dishonored for reason of insufficiency of funds and despite repeated demands upon the accused to make good the aforementioned check, he refused and failed to make payments, to the damage and prejudice of Purita Tiu in the aforementioned sum of P220,000.00."

Upon arraignment, Go Bio pleaded "NOT GUILTY."

The evidence for the prosecution and accepted by the trial court as basis for the judgment of conviction was summarized by the trial court as follows:

"Sometime in May 1979, complainant Purita Tiu and her sister Filipinas Tan went to the house of their mother Go Cun at Quezon City upon their mother's request. They met Benito Go Bio, Jr., there who was introduced to them by their mother as the son of the late Benito Go Bio, Sr., a rich businessman, and the owner of the Occidental Hardware. That his wife is also the daughter of the owner of Go Soc and Sons in Manila. After the introductions, Mrs. Go Cun told her daughters that accused Benito Go Bio was encashing his check, but they informed their mother that their money in the amount of P420,000.00 which was earmarked for the construction of their house in Greenhills, San Juan, Metro Manila was in Olongapo City. Because of the plea of the accused and his assurances to the two sisters and their mother that he will have money in one month time from the date of the encashing of his checks, Purita and Filipinas assented to his request and representations. Benito Go Bio, Jr. did not leave the house of Go Cun that day until he was able to obtain a promise from Purita Tiu and Filipinas Tan to encash his checks in Olongapo City on May 15, 1979. Purita Tiu agreed to encash accused check of P220,000.00 and Filipinas promised P200,000.00.

"On May 15, 1979 as agreed upon, accused Benito Go Bio, Jr. went to Purita Tiu's residence at No. 70 Gordon Avenue, Olongapo City. He gave his check of P220,000.00 (Exhibit "A") to complainant and after receiving the cash amount of P220,000.00 from her, the accused affixed his signature on the check (Exhibit "A-1"). The check issued by the accused was drawn against the Bank of Philippine Islands, Check No. 357728 dated June 15, 1979 (Exhibit "A"). This transaction between the complainant and the accused was done in the presence of

Eusebia Miraflor and Filipinas Tan.

"On June 15, 1979, when the check fell due, complainant called up Benito Go Bio, Jr. on the phone and the accused requested her that his check be deposited with the bank on July 12, 1979 because he was expecting to collect P4,000,000.00 from the Silahis Hotel. With this request of the accused, complainant deposited Exhibit 'A' on July 12, 1979 with the Metro Bank, Binondo Branch soon after opening a new account thereat. However, the check was returned on July 13, 1979 by the bank with a return slip (Exhibit "B-1") containing the notation 'PNC' or present next clearing. After receiving the return slip from the Metro Bank, complainant made several demands from the accused to make good his check and notwithstanding several written requests for extension (Exhibits "C", "D", "E" and "F"), accused failed to pay his obligation to the complainant. The last requested extension was on September 17, 1979, but without waiting for September 19, the accused went to the residence of the complainant in Olongapo City on September 15 and informed her that she could finally deposit the check on September 20, 1979. On September 20, 1979, Purita Tiu re-deposited the check as instructed by the accused and was given a deposit slip (Exhibit "G"). When she went to the same Metro Bank, Binondo Branch on September 24, 1979, again she was issued a return slip from the Bank of the Philippine Islands, which stated 'Present Next Clearing' (Exhibit "G-3"). Thereafter, the complainant called the accused by phone in his office at the Occidental Hardware and complained why the check bounced again notwithstanding his instruction to deposit the same. Again, accused asked for a final chance to re-deposit the check on September 26, 1979. This time, the Bank of the Philippine Islands had already placed a notation in the return slip as having been drawn against insufficient funds (Exhibit "H-2"), and as a result thereof, she was required to pay P50.00 as penalty charge by the bank.

"Because of the accused's actuations and failure to pay and fund his check, the complainant already fed up took the appropriate action to file the case before the Fiscal's Office."

Go Bio denied the charge. According to him the check which forms the basis of the prosecution was one of three (3) checks delivered by him to Go Cun, mother of the complainant, to pay his pre-existing obligation. The defense evidence was summarized by the trial court as follows:

"xxx [A]ccused Benito Go Bio, Jr., testified that he is a businessman engaged in hardware business, merchandising and trading. He came to know Go Cun, the mother of Purita Tiu and Filipinas Tan thru William Tan, his sales manager at the Occidental Hardware. He borrowed money from Go Cun in 1978 but because of business failure and reverses, he was not able to pay the sum total of the obligation, principal and interest, which amounted to P670,000.00. The principal obligation approximately totalled P420,000.00. That sometime in May, 1979, Mrs. Go Cun together with Purita Tiu came to see him in his office in Manila to find out what happened to his delay in the payment of the interest. He was introduced to Purita Tiu on May 15, 1979, when Go Cun and Purita Tiu came over to his office, and William Tan, the branch manager of the accused informed them that he (accused) will settle his obligation which amounted to P670,000.00. However, Go Cun, the mother of the com-plainant requested that the sum of P670,000.00 be broken down into three separate checks, as follows: to Go Cun - P250,000.00; P220,000.00 payable to Purita Tiu and the other check in the amount of P200,000.00 - payable to Filipinas Tan. The three checks as stated were prepared and delivered by the accused to Go Cun in his office. The accused requested that the checks be postdated one month from May 15, 1979, with the further request that on the due date of the checks the accused will call Go Cun first to inform her whether she will deposit the check or not. Accused asked for several extensions of time to make good his debts; he denied having any transaction or business dealings with the complainant Purita Tiu on May 15, 1979; but maintained that his business dealings was only with Go Cun, the mother of the complainant. However, on one occasion, particularly September 1979, the accused dropped by at the house of Purita Tiu in Olongapo City after he came from Iba, Zambales, to ask for consideration to extend his obligation. Purita Tiu granted his request for extension but asked him to prepare a document that he will make good his promise (Exhibit "F").

After trial, Go Bio was found guilty of the crime of estafa. The dispositive portion of the trial court's decision

reads:

"WHEREFORE, finding the accused Benito Go Bio, Jr. guilty as charged under Article 215 of the Revised Penal Code, par. 2(d) as amended by Republic Act 4885 and Presidential Decree 818, the Court hereby sentences him to suffer the penalty of reclusion perpetua but in no case to exceed thirty (30) years imprisonment; to pay private complainant Purita Tiu the amount of P220,000.00 with legal rate of interest computed from May 1979 with subsidiary imprisonment in case of failure to do so; and, to pay the costs of this proceedings."

In this appeal, appellant Go Bio assigns the following alleged errors of the trial court:

I.

THE TRIAL COURT ERRED IN FINDING THAT IT WAS AT #70 GORDON DRIVE, OLONGAPO CITY THAT THE ACCUSED-APPELLANT ENCASHED HIS BPI CHECK NO. 357728, POST-DATED JUNE 15, 1979, FROM PURITA TIU.

II.

THE TRIAL COURT ERRED IN NOT HOLDING THAT THE THREE (3) CHECKS INCLUDING CHECK NUMBER 357728 WERE ALL PREPARED AND DELIVERED BY BENITO GO BIO, JR., THROUGH WILLIAM TAN AT THE RESIDENCE OF GO CUN IN QUEZON CITY.

II.

THE TRIAL COURT ERRED IN NOT HOLDING THAT THE THREE (3) CHECKS INCLUDING CHECK NUMBER 357728 WERE ALL PREPARED AND DELIVERED BY BENITO GO BIO, JR., THROUGH WILLIAM TAN AT THE RESIDENCE OF GO CUN IN QUEZON CITY.

III.

THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE LONE TESTIMONY OF THE PROSECUTION WITNESS EUSEBIA MIRAFLOR, AS TO THE NATURE OF THE ENCASHMENT OF BPI CHECK NUMBER 357728.

IV.

THE TRIAL COURT ERRED WHEN IT AFFIRMED THE CONTENTION OF THE PROSECUTION THAT IN THE NORMAL COURSE OF EVENTS, ACCUSED-APPELLANT BENITO GO BIO, JR., WOULD NOT HAVE REQUESTED PURITA TIU FOR EXTENSION, IF AS HE CLAIMS, THE CHECK (EXHI-BIT "A") WAS NOT ENCASHED WITH PURITA TIU, AND IN ALL PROBABILITY, THE LATTER ENCASHED THE CHECKS OF THE ACCUSED-APPELLANT, WITH HER MOTHER GO CUN, AND SISTER FILIPINAS TAN, IN THE AMOUNTS INDICATED THEREON.

V.

THE TRIAL COURT ERRED IN HOLDING THAT THE VARIANCE AND CONTRADICTIONS IN THE TESTIMONY OF BENITO GO BIO, JR., TENDED MORE TO PROVE THAT THE CHECK ISSUED TO PURITA TIU BY THE ACCUSED-APPELLANT, WHICH WAS POST--DATED JUNE 15, 1979, WAS INDEED ENCASHED BY PURITA TIU IN HER RESIDENCE IN OLONGAPO CITY.

VI.

THE TRIAL COURT ERRED IN FINDING THAT TO SECURE CASH, THE ACCUSED-APPELLANT FALSELY REPRESENTED THAT HIS CHECK WILL BE FULLY FUNDED UPON MATURITY, AND THAT THIS WAS DONE AT THE TIME HE ISSUED THE POSTDATED CHECK TO PAY FOR THE CASH HE RECEIVED FROM PURITA TIU IN EXCHANGE THEREOF.

VII.

THE TRIAL COURT ERRED WHEN AFTER THE EVIDENCES HAD BEEN ADDUCED IT FAILED TO DISMISS THE CASE AND INSTEAD CONVICTED THE ACCUSED-APPELLANT FOR THE CRIME CHARGED AND SENTENCED HIM TO RECLUSION PERPETUA, AWARE OF THE FACT THAT IT DID NOT HAVE JURISDICTION OVER THE CASE.

VIII.

THE TRIAL COURT ERRED IN HOLDING THE ACCUSED-APPELLANT BENITO GO BIO, JR., LIABLE FOR ESTAFA, UNDER ARTICLE 315(2) (d) OF THE REVISED PENAL CODE, FOR HAVING ISSUED A BAD CHECK EVEN IF THE CHECK HAD BEEN ISSUED IN PAYMENT OF A PRE-EXISTING OBLIGATION.

IX.

THE TRIAL COURT ERRED IN HOLDING THAT THERE IS SUFFICIENT EVIDENCE AGAINST THE ACCUSED-APPELLANT TO JUSTIFY HIS CONVICTION FOR ESTAFA UNDER ARTICLE 315 (2) (d) OF THE REVISED PENAL CODE AS AMENDED BY REPUBLIC ACT NO. 4885 AND PRESIDENTIAL DECREE NO. 818.

Two issues are raised by the appellant in the above assignments of errors, namely - (1) whether or not the Regional Trial Court of Olongapo City has jurisdiction over his case and (2) whether or not, based on the evidence on record, the guilt of the appellant on the estafa charge was established beyond reasonable doubt.

The issue of jurisdiction may be resolved on whether or not the facts as alleged in the complaint, if hypothetically admitted constitute the elements of the offense as defined by law.

The facts should be taken as they are alleged in the complaint. The general principles governing jurisdiction in cases of estafa punishable under Article 315, paragraph 2(d) of the Revised Penal Code have been defined in *People v. Yabut* (76 SCRA 624), to wit:

"Estafa by postdating or issuing a bad check under Art. 315, par. 2(d) of the Revised Penal Code may be a transitory or continuing offense. (*Tuzon v. Cruz*, 66 SCRA 238-39) Its basic elements of deceit and damage (*US v. Rivera*, 23 Phil. 390 [1912]) may independently arise in separate places. In the event of such occurrence, the institution of the criminal action in either place is legally allowed. Section 14(a), Rule 110 of the Revised Rules of Court provides: 'In all criminal prosecutions the action shall be instituted and tried in the Court of the municipality or province wherein the offense was committed or any one of the essential ingredients thereof took place.' The theory is that a person indicted with a transitory offense may be validly tried in any jurisdiction where the offense was in part committed. (*Moran*, Comments on the Rules of Court, Vol. 4, 1970 ed., at 61; *People v. Yumang*, 11 SCRA 99; *Tuzon v. Cruz*, ante.) However, if all the acts material and essential to the time and requisite of its consummations occurred in one municipality or province, the court of that municipality or province has the sole jurisdiction to try the case."

The basic element of deceit in the estafa charged in the information took place in Olongapo City. The records show that the Regional Trial Court of Olongapo City has jurisdiction over the case.

Anent the second issue, the point to be resolved is whether or not the presumption of innocence in favor of the appellant was overthrown by the prosecution's evidence.

There is no question that the appellant issued a postdated check worth P220,000.00 in favor of Purita Tiu and that this check, when presented for encashment to the drawee bank after its maturity date, was not honored for insufficiency of funds. The controversy lies in the circumstances surrounding the issuance of the check. The prosecution's evidence tended to show that the check was issued in exchange for cash given by Purita Tiu to the appellant on the same occasion. On the other hand, the defense evidence tried to show that the check was issued in payment of the appellant's pre-existing obligation to Go Cun, Purita Tiu's mother.

In upholding the prosecution's evidence on the transaction involving the issuance of the check in question, the trial court relied heavily on inconsistencies in the testimonies of the defense witnesses.

The trial court cited the following inconsistencies: 1) The claim of appellant Go Bio that he had no dealings with appellee Purita Tiu and that the three (3) checks were all prepared and delivered by him to Go Cun in her office which is in contradiction with testimony of defense witness William Tiu who declared that he was the one who delivered the three checks to Go Cun at her residence in Quezon City; 2) The declaration of the appellant that he never had any business dealing with appellee Purita Tiu which is in contradiction to his admission that he executed several requests addressed to Purita Tiu asking for extensions for the deposit of the check; 3) The appellant admitted in his counter-affidavit submitted to the Fiscal's Office that he borrowed P670,000.00 from Go Cun which is in contradiction to his claim that the P670,000.00 he owed to Go Cun was the sum total of his obligation, his principal loan of P400,000.00 plus cash interest.

To warrant conviction, it is necessary for the prosecution to show that the P220,000.00 check was issued in exchange for P220,000.00 in cash which was turned over by Purita Tiu to the accused at the same time that the check was drawn and delivered to her. The supposed inconsistencies do not prove the simultaneous transaction which formed the basis for the alleged criminal act.

The trial court relied on minor discrepancies in the appellant's testimony to arrive at a conclusion that the third check for P220,000.00 was not in payment of a pre-existing obligation. The court overlooked the established doctrine that a litigant must rely on the strength of his evidence and not on the weakness of the evidence of his adversary. This principle is most significant in criminal cases since conviction calls for proof beyond reasonable doubt that the accused is really the perpetrator of the crime. We have ruled that:

"x x x The Constitutional presumption of innocence continues until overthrown by proof of guilt beyond reasonable doubt, which requires moral certainty which convinces and satisfies the reason and conscience of those who are to act upon it. (*Borromeo v. Court of Appeals*, 131 SCRA 318)."

Bearing in mind the foregoing, the vital question to be resolved is whether or not the prosecution has presented the necessary quantum of evidence to warrant the conviction of the appellant.

The record shows that the nature of the transaction as testified by Purita Tiu was corroborated by Eusebia Miraflor, overseer of Tiu's apartment who happened to be conveniently present when her boss gave P220,000.00 in cash to the appellant. Miraflor testified to the effect that - 1) On May 15, 1979, she was called by Purita Tiu to her house "because there was something needed in the apartment; 2) She saw Filipinas Tan, Tiu's sister in the house; 3) While in the house she saw the appellant arrive; 4) After the arrival of the appellant, he and Purita Tiu had a conversation and, thereafter, Tiu entered her room and when she came out she had a bag of money; 5) The

money which was in bundles was counted in the presence of the appellant; 6) Thereafter, the appellant brought out a check which he signed and handed to Purita Tiu; and that 7) the money was placed by the appellant in his attache bag after which he left.

Miraflor's testimony shows that she clearly remembers all the minute details including the sequences of events during the transaction between Purita Tiu and the appellant. According to her testimony, Miraflor was with Tiu and the appellant throughout the time that the transaction was going on. And yet, Miraflor admitted that she did not know how much money was involved. She stated that she had no idea about how many bundles of money were brought out.

It is not shown why the Filipino caretaker of an apartment building who had nothing to do with a confidential transaction should be allowed to witness the counting of P220,000.00 in paper bills by persons of Chinese background who were sufficiently intimate to deal in hundreds of thousands of pesos at a time. It is even more strange that this caretaker paid no attention to the money being counted in her presence but clearly recalled other unimportant and minor details that transpired at the time. There is no rule that disqualifies employees and even relatives from testi-fying for one with dominance over them but the testimony of the complainant's overseer in this case manifests a degree of bias which neutralizes her credibility. (People v. Narvaez, 121 SCRA 389).

Purita Tiu testified that she loaned P220,000.00 to the appellant upon the representations of her mother Go Cun. She testified that her sister Filipinas Tan, who was also prevailed upon by their mother to loan money to Benito Go Bio, was likewise present when the cash was turned over in exchange for the post-dated check. Yet, these two key figures who were more knowledgeable and better witnesses than the apartment caretaker who was merely visiting, were not presented as witnesses.

There are other unexplained loose ends in the prosecution evidence. Purita Tiu has a current account in an Olongapo City bank. The more common procedure for a transaction of loan would be the issuance of a check to be immediately encashed in the nearby bank. Or the exchange of money should take place in an office where security precautions can be taken. Instead of giving a check to Go Bio and helping him cash it at her bank, Purita Tiu happened to have P220,000.00 cash lying around in her house. The money was in bundles and so must have come from a bank. It was earmarked for the construction of a house in Greenhills, San Juan, Metro Manila but was conveniently available for Go Bio in Olongapo at the time. The bag with the money was brought out into the sala and the cash was counted out with the encargada of an apartment building idly watching the whole thing.

If there is any material inconsistency in the testimony, it is found in the evidence for the prosecution and not in the defendant's evidence.

We reiterate the rule in *Borromeo v. Court of Appeals* (supra):

xxx xxx xxx

"x x x (E)very circumstance against guilt and in favor of innocence must be taken into account and suspicion no matter how strong should not sway judgment. Where the evidence, as here, gives rise to two probabilities, one consistent with the defendant's innocence and another indicative of his guilt, that which is favorable to the accused should be considered."

The accused-appellant testified that in the expansion of his import business, the complainant's mother Go Cun had been a financier or lender. There had been various earlier transactions where he paid P2,500.00 interest every month for every P100,000.00 he borrowed from the old lady. Because of sudden business reverses involving the failure of Pagasa Farms to pay about P6,000,000.00 worth of sprayer, Go Bio failed to pay a P670,000.00 loan on time. A 30-day extension was given by Go Cun if postdated checks broken up into three for the amount would be

issued. The evidence shows that on May 15, 1979 Go Bio drew three checks all postdated to June 15, 1979. These checks are:

BPI Check No. 357726 - P200,000.00 - Filipinas Tan

BPI Check No. 357727 - P250,000.00 - Go Cun

BPI Check No. 357728 - P220,000.00 - Purita Tan

The checks bear consecutive numbers. They were issued on the same day and postdated to a same date. They are payable to Go Cun and her daughters. The evidence for a pre-existing P670,000.00 debt is quite strong, much stronger than a simultaneous exchange of P220,000.00 cash for BPI Check No. 357728. In accordance with this Court's pronouncement in *People v. Sabio, Sr.* (86 SCRA 568), the appellant is not guilty of the crime charged. The postdated check which was subsequently dishonored for insufficiency of funds, issued in payment of a pre-existing obligation, does not constitute estafa as defined and penalized under Article 315 par. 2(d) of the Revised Penal Code, as amended by RA No. 4885 and P.D. 818. As this Court ruled in the *People v. Sabio* case:

xxx xxx xxx

"x x x Is there deceit and damage when a bad check is issued in pay-ment 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."

Thus, following the principle laid down by *People v. Quesada* (60 Phil. 515), the defendant-appellant's liability is merely civil in nature and not criminal. In this regard, as the evidence for a pre-existing debt is clear and no additional evidence is required to establish the same, a separate civil action is no longer warranted. Moreover, considering the fact that this case has been pending since 1979, it would be unjust to the complainant to require him to file an unnecessary separate civil action (*Padilla v. Court of Appeals*, 129 SCRA 558).

With this in mind, we therefore hold that the defendant-appellant is liable in the amount of Two Hundred Twenty Thousand Pesos (P220,000.00) to the complainant.

In this type of case, the line which separates the acts of an accused who committed estafa from the dealings of a person who merely incurred a civil obligation is a rather thin one. We cannot affirm a sentence of reclusion perpetua in the absence of proof which establishes criminal culpability beyond reasonable doubt.

WHEREFORE, the decision of the trial court is hereby REVERSED and SET ASIDE. Appellant Benito Go Bio, Jr. is ACQUITTED of the crime of ESTAFA on grounds of reasonable doubt, but is ordered to pay the indebtedness of P220,000.00 with legal rate of interest from May 1979.

SO ORDERED.

Feria, (Chairman), Fernan, Alampay, and Paras, JJ., concur.

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