

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS. ROBERTO TUGBANG AND MA. ELNORA SETIAS, DEFENDANTS-APPELLANTS.*G.R. No. 76212. April 26, 1991*

Ponente: MEDIALDEA, J.

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In Criminal Case No. 8740 of the then Court of First Instance of Iloilo City, Roberto Tugbang and Ma. Elnora Setias were charged under an information (pp. 1-5, Rollo), dated September 9, 1987, with "Estafa thru Falsification of a Commercial Documents" which reads as follows:

"That during the period comprised from the last week of August to the month of September, 1976, in the City of Iloilo, Philippines, and within the jurisdiction of this Court, said accused, conspiring and confederating with each other, working together and helping one another, with deliberate intent and without any [justifiable] [motive], by means of fraud, deceit, false pretenses and misrepresentation, defrauded Gloria de los Santos in the following manner: that during said period, said accused, approached Gloria de los Santos, misrepresenting themselves as the General Manager and Treasurer of the SouthWest Development and Industrial Group, Inc., Iloilo City, and induced the latter to transfer her investments in the money market from Genbancor and Bancom Development Corporation to the SouthWest Development and Industrial Group, Inc., which was likewise supposedly engaged in the money market business, by misrepresenting that her money invested would receive a higher return and that her investments would be more protected as SouthWest Development and Industrial Group, Inc., would issue her postdated checks for whatever amount she had invested and all that she had to do to assure the return of her capital would be to encash such checks later on, that her investments would regularly earn interest at the end of each month which would be personally paid to her at the Office of the SouthWest Development and Industrial Group, Inc.; that because of the assurances given by the accused, particularly Roberto Tugbang, who happens to be the son-in-law of Gloria de los Santos, the latter made an initial investment of P20,000.00, by reason of which the accused issued and made out Check No. 322527 in the amount of P20,000.00, postdated April 2, 1977, drawn against the Bank of the Philippine Islands, Iloilo Branch, allegedly as security for the P20,000.00 investment made by Gloria de los Santos, and in the process misrepresented such check to her to be that of SouthWest Development and Industrial Group, Inc., duly signed by the accused in their respective capacities as General Manager and Treasurer thereof; that at the end of September, 1976, the accused Ma. Elnora Setias delivered to Gloria de los Santos an amount allegedly representing the return of her investment of P20,000.00, thereby inducing Gloria de los Santos to make more investments with the [SouthWest] Development and Industrial Group, Inc., especially so when the accused Ma. Elnora Setias continued delivering to her at the end of each month from September to December, 1976, an amount allegedly representing the return of her investment; that the offended party, by reason of the inducements and misrepresentation made by the accused, had delivered to the latter an aggregate amount of P262,800.00, for which the accused issued her the following checks allegedly as security for her investments, and supposedly issued by the SouthWest Development and Industrial Group, Inc., duly signed by them as General Manager and Treasurer thereof, to wit: Check No. 322527 postdated April 2, 1977, in the amount of P20,000.00; Check No. 0337305 postdated April 13, 1977, in the amount of P2,800.00; Check No. C322536 postdated April 15, 1977 in the amount of P30,000.00; Check No. C322537 postdated April 18, 1977 in the amount of P50,000.00; Check No. C337302 postdated May 8, 1977 in the amount of P20,000.00; Check No.

C337303 postdated May 12, 1977 in the amount of P10,000.00; Check No. C337308 postdated May 15, 1977, in the amount of P30,000.00; Check No. 337301 postdated June 7, 1977, in the amount of P50,000.00; and Check No. C337309 postdated June 21, 1977, in the amount of P50,000.00, all drawn against the Bank of the Philippine Islands, Iloilo Branch; that in the month of January, 1977, the accused surprisingly stopped delivering such interest payments or return of investments to said Gloria de los Santos and the former started avoiding her, causing her to be suspicious; that upon inquiry, Gloria de los Santos discovered that Southwest Development and Industrial Group, Inc., had never engaged in the money market business and that it had never authorized the accused to represent them in such kind of business, and that the checks allegedly issued by the accused were not, and never were, the checks of Southwest Development and Industrial Group, Inc., and that the accused were never authorized to sign checks in behalf of the corporation in connection with supposed money market business; that the accused, knowing fully well that the above-mentioned checks that they had uttered and delivered to Gloria de los Santos, did not belong to Southwest Development and Industrial Group, Inc., and that they were not authorized to sign the same, had made untruthful statements in a narration of facts, when they knew that they had a legal obligation to disclose the truth of what had been narrated by them, and that by reason of their misrepresentations, deceit, fraud and falsification, they had, wilfully, unlawfully, and feloniously appropriated and converted to their own use and benefit, the sum of P262,800.00 belonging to Gloria de los Santos, to the damage and prejudice of the latter in the said amount, and that notwithstanding repeated demands made upon them to return said amount, they failed and refused and until now fail and refuse to do so."

On the date set for their arraignment, October 21, 1977, both accused waived their right to the reading of the information and pleaded not guilty (p. 106, Records).

After hearing, the trial court on December 17, 1980, rendered a decision (pp. 31-32, Rollo) the dispositive portion of which reads as follows:

"WHEREFORE premises considered, both accused Roberto Tugbang and Ma. Elnora Setias are hereby found guilty beyond reasonable doubt of the complex crime of Estafa Thru Falsification of Commercial Document as punished under Article 172 in relation to Article 315 2 [d] both of the Revised Penal Code and both are hereby each sentenced to an imprisonment of Thirty (30) Years or Reclusion Perptua pursuant to P.D. No. 818 dated October 22, 1975, together with all the accessory penalties and to pay the cost.

"Further, both accused are hereby condemned to pay jointly and severally Mrs. Gloria N. de los Santos the sum of P262,800.00, the unpaid value of the nine bouncing checks issued by them in exchange for cash plus an interest of 18% per annum compounded annually until fully paid in view of the fact that money taken was on money market placements, P100,000 moral damages, P100,000 exemplary damages against Tugbang only in order to set an example to other sons-in-law not to cheat and take advantage of their parents-in-law; and, P30,000 attorney's fee.

"Appeal bond is hereby fixed at P60,000.00 each.

"SO ORDERED."

From their conviction, both accused appealed to the Court of Appeals which, on October 17, 1986, referred the matter to Us since the penalty imposed was reclusion perpetua. Sometime in 1984, one of the accused, Roberto Tugbang, died. (p. 84, Rollo). As a consequence of the death of the accused before rendition of final judgment, his criminal and civil liability is extinguished (People v. Satorre, et al., No. L-26282, August 27, 1976, 72 SCRA 439). Hence, this review on appeal shall pertain only to accused Elnora Setias.

The allegations of both parties are as follows:

The private complainant, Gloria de los Santos, is the mother-in-law of the accused Roberto Tugbang, the latter

being married to the former's daughter, Echel de los Santos. She testified that sometime in September, 1976 she was approached by Roberto Tugbang and Elnora Setias who, representing themselves as the manager and treasurer of SouthWest Development Corporation, respectively, persuaded her to withdraw her money at PHILCOM and to invest it instead at SouthWest where it would earn a much higher dividend. She accepted the proposal of the accused and on September, 1976 she gave them twenty thousand (P20,000.00) pesos. As evidence of her investment she was issued a postdated Bank of the Philippine Island (BPI) check for the same amount. At the end of the month, she received from accused Setias an unspecified amount in cash supposedly representing her dividend. During the succeeding months until January, 1977, Gloria de los Santos increased her investment amounting in all, including her initial investment, to two hundred sixty thousand (P260,000.00) pesos. For every investment she added she was issued postdated BPI checks as evidence therefor. In all, she received eight BPI checks (Exhs. "A" to "H").

At the end of each month, Setias would call on Gloria de los Santos to meet the latter at the building where SouthWest was holding office to hand her dividend. All the dividends she was given were in cash except for February, 1977 when she was issued a BPI check numbered C337305, postdated April 13, 1977, in the amount of two thousand eight hundred (P2,800.00) pesos (Exh. "I"). Ms. de los Santos approximates the total dividends she was given at thirty thousand (P30,000.00) pesos.

Failing to receive her dividend for March, 1977 Gloria de los Santos complained to the accused and was told to deposit the checks she was given on the dates they fall due. She deposited the checks with the Chartered Bank at Iloilo City but they were all dishonored by the drawee bank, the BPI. According to Mr. Clemente Alcibar, an employee of the BPI in charge of recording checks returned to the bank at the time material to this case, the checks were dishonored for insufficiency of funds and for no other reasons. More accurately, however, the notices of dishonor show that the checks were returned without being paid either because it was "not arranged for" or for "insufficiency of funds" or, as far as the check deposited after June 15, 1977 is concerned, for reason that the account was already "closed."

It is not clear whether, as the information alleged, SouthWest was not engaged in money market transactions. Gloria de los Santos did not specify what kind of investment the accused asked her to make with the corporation. Nevertheless, it is not disputed that the private complainant's money was not invested with SouthWest and that the checks issued to her were not that of the corporation but rather of Rochel General Merchant, a trading firm owned by Tugbang. According to Mr. Alcibar, checking account no. 2535-2, in the name of Rochel General Merchant and against which the checks under consideration were issued, was opened by Tugbang and his wife on February 4, 1977. It was, however, closed about four (4) months after or on June 15, 1977.

It appears that Tugbang was engaged in several business ventures, one of which was Rochel, which he set up sometime in late 1976 contemporaneous with his being the treasurer of SouthWest from 1975 to August, 1977. Tugbang admitted having received money from his mother-in-law but denied having misrepresented any transaction to her. He claims that the money he received were his personal loans used for his varied business which unfortunately suffered "financial reverses." He admitted having issued the postdated checks but explained that they were meant to be "collaterals" for his said loans and regretted he failed to repay them. Tugbang cited an instance where he obtained a loan for fifty thousand (P50,000.00) pesos from Ms. de los Santos and repaid it with a BPI check numbered 322524 dated March 25, 1977 (Exh. 2- Tugbang). This check, also drawn against the account of Rochel in favor of Gloria de los Santos, appears to have been honored by the BPI on April 1, 1977. Tugbang explained that for this loan he only received forty eight thousand (P48,000.00) pesos, his mother-in-law having discounted two thousand (P2,000.00) pesos as interest.

Consistent with his statement that the money he obtained from Gloria de los Santos were his "personal" loans,

Tugbang, while identifying the signature appearing on the checks besides his was that of his co-accused Setias, made it clear that the latter did not sign as a co-drawer.

Setias was the manager of a business firm by the name of GBI. This firm has its office at the same building housing SouthWest where Tugbang works. On February 4, 1977, at the time she was holding this position she was also appointed by Tugbang as attorney-in-fact of Rochel "to make, sign, execute, and deliver any contract or any other document of whatever nature or kind, including the signing, indorsement, encashment, and negotiation of which may be necessary or proper in connection with the acquisition of the sole distributorship of ROCHEL GENERAL MERCHANT," giving Setias "full power and authority to do x x x every act x x x necessary as fully to all intents and purposes x x x (Exh. 1-Setias)."

Although the power of attorney given to Setias may appear broad, the purpose of her appointment as told by Tugbang was simply to monitor outgoing checks and to deliver them to the person concerned:

"A. My purpose for this is that you know I can (sic) always out from the office and because I have nobody to transact in issuing or giving checks to any other person which is being paid, so I requested Miss Elnora Setias to check all the out going check which I duly signed and gave to my secretary for the purpose of counter checking and giving check to the person concerned. I requested Miss Elnora Setias to countersign the check for the reason and security.

"Q. Countersign the check?

"A. For the reason of counterchecking and for the reason of security of my accounts, I requested Miss Elnora Setias to countersign the outgoing check of Rochel General Merchant.

"Q. x x x. As proprietor of Rochel General Merchant, do I understand from you that you have intended to authorize Miss Setias to sign any check in your behalf, your purpose you mean is to countersign?

"A. The purpose is when I operated Rochel General Merchant, I know that the office of Miss Setias is also located there and so I requested her to countersign all my outgoing check. My purpose was to, let her countersign what is being issued." (tsn, July 21, 1980, p. 10)

Setias confirmed the foregoing. She also did not deny that on several occasions she was requested by Tugbang to deliver some cash to Gloria de los Santos. She added that on some occasions it was Tugbang's wife, Echel, who gets money for Gloria de los Santos. She, however, stated that she did not know the reason why Tugbang was giving money and issuing checks to his mother-in-law. She reasoned that this was not her concern and it would be improper for her to ask because it was their (Tugbang and de los Santos') "personal affair."

Both accused testified that Setias was not compensated as an agent of Rochel and for the several errands she did for Tugbang. She stated that she acceded to Tugbang's request as a favor to Tugbang and his wife, both being her friends.

It was a favor she was assured she would not be held accountable:

"Q. Miss Setias, you said that when you were requested by Roberto Tugbang to countersign for him in the check x x x, it did not occur to you that you would be implicated later on regarding the issuance?

"A. For the first time it did not occur to me, I trusted Mr. Roberto Tugbang and I asked him, joking, 'I might pay your obligation' but he said then I will make the release and I trusted Roberto Tugbang. Roberto Tugbang can be trusted also.

"Q. So that the more you did not fear of being implicated when Roberto Tugbang signed Exh. '2' which is a Deed of Acknowledgment and Release?

"A. I did not know that I will be implicated." (tsn, September 12, 1980, p. 24)

The Deed of Acknowledgment and Release referred to was executed by both accused on March 24, 1977 where Tugbang acknowledged sole responsibility for whatever documents Setias might have signed as an agent of Rochel General Merchant.

It was on the face of these facts that the trial court convicted both the accused.

Upon due deliberation, We agree with appellant Setias that the facts adduced cannot support her conviction for estafa by postdating bad checks under Article 315 [2][d] thru falsification of commercial document under Article 172 in relation to paragraph [4] of Article 171 of the Revised Penal Code.

On the issue of falsification, it is not disputed that the checks were genuine and on their face do not appear falsified. It is the opinion of the trial court, however, that:

"When the accused wrote the various amounts appearing on the faces of the nine checks in question, there was no doubt that they were making untruthful narration of facts. The fact is that according to Clemente Alcibar, employee of the Bank of the Philippine Islands where accused Tugbang opened Account No. 2535-2 for Rochel General Merchant, there never was deposited sufficient amount to cover any of the checks in question x x x.

"Evident from the issuance of the nine checks in question is the failure of the accused to disclose to Mrs. de los Santos that her cash of P262,800.00 was to be invested in the Rochel General Merchant instead of SouthWest Development and Industrial Group Inc. Tugbang, being a son-in-law, and Setias being a family friend, it was not only their legal obligation but also a moral duty on their part to tell where the money of Mrs. de los Santos was to be invested.

"Looking at the matter from another angle, it was the legal duty of the accused to write only the truth in issuing the checks, for any untruthful entries therein would naturally affect their integrity." (pp. 29-30, Rollo)

Article 172 of the Revised Penal Code punishes any private individual who shall commit any of the falsification enumerated in Article 171 in any public or official document or letter of exchange or any other kind of commercial document. One of the acts of falsification enumerated in Article 171 under which, based on the above quoted portion of the decision, the accused were convicted of is by making "untruthful statements in a narration of facts."

The word "statements" under the Article, however, refers to statements made in a document and not oral recitations of facts. This is clear enough from the wordings of Article 172 when it mentions falsifications in "public or official document" or "letter of exchange" or in "commercial document." Being so, it is erroneous to consider the failure of the accused to disclose to Gloria de los Santos that her money was to be invested at Rochel General Merchant and not at SouthWest Development Corporation as constituting falsification by false narration of facts.

Equally clear is the error of the trial court to consider the act of the accused in drawing checks which have no corresponding deposit to cover it in the drawee bank as falsification. The amount written on a check is not a narration of facts made by the drawer representing that he has money in the bank but rather a check is an order in writing addressed to the drawee bank to pay the "holder" of the check the amount written thereon (See Sections 126 and 185, Negotiable Instruments Law). The Untruthful statement must refer to a narration of facts and by narration of facts is meant a recital of things accomplished, of deeds, occurrence or happening. Thus, a statement expressing an erroneous conclusion of law cannot be considered as falsification (People v. Yanza, 107 Phil. 888) and more certainly, as in this case, neither is an "order" to pay a narration of facts.

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 of sufficiency of funds to cover the check; and (3) damage to the payee thereof. The first element requires that the check must have been issued to pay an obligation contracted by the drawer at the time of the issuance of the check. In this case, however, the criminal information referred to the checks as an assurance that the private complainant's investment would be returned to her. They were issued as "security" for her investment. The private complainant, on the witness stand, repeatedly referred to the checks as "evidence" of her investment (pp. 94, 102, 111, 117, t.s.n., August 24, 1978). Based on these, it would appear that the checks issued by the accused were not meant to be as payment.

It is also clear that under the law, the false pretense or fraudulent act must be executed prior to or simultaneously with the commission of the fraud. The issuance of the check should be the means to obtain a valuable consideration from the payee. In short, 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 (People v. Sabio, Sr., L-45490, November 20, 1978, 86 SCRA 568).

In this case, however, there was no showing that the complainant parted with her money by reason of the issuance by the accused of the checks. While the criminal information and the testimony of Gloria de los Santos assert that the checks were issued between September, 1976 and January, 1977 (p. 115, t.s.n., August 24, 1978) in "exchange" for the investment she makes and every other additional investments, it appears from the testimony of Mr. Clemente Alcibar that the checking account against which the checks were issued was only opened on February 4, 1977 (p. 150, t.s.n., March 12, 1979; p. 209, t.s.n., September 12, 1980). It would thus appear that it was impossible for the accused to have issued the checks at the time they were given the money by the complainant. At the time, account no. 2535-2 does not exist and the check stubs have not been issued the accused. The checks issued, therefore, could not have been the efficient cause of the defraudation.

The trial court in discarding the defense's theory simply reasoned that the checks could not have been issued as collaterals for the alleged loans because they were worthless, unsupported by sufficient funds. But this argument cannot be sustained because the conclusion is drawn before the facts. The checks could have been issued as collaterals to be encashed at a later date, at which time Tugbang hoped or expected to have deposited money to cover the amount of the checks.

Further, it was not disputed that there was an occasion when Tugbang had borrowed money from Gloria de los Santos and in fact paid her with a check drawn against the account of Rochel General Merchant and was from the same batch/stubs as all the other checks subject of this case.

We find it peculiar that complainant never noticed that the check she was paid with by Tugbang for his personal loan was similar and bore the same account number as the other checks she was issued (Exhibits "A" to "H") which she claims she was made to believe as that of SouthWest.

Also, considering the large amount of money involved, it is hard to believe she never mentioned her supposed investment at SouthWest to her daughter, Echel, who could have told her that the checks being issued to her was against the account of Rochel which she (Echel) and her husband had opened.

The foregoing We think supports Tugbang's assertion that the money he obtained from Gloria de los Santos were his personal loans and that as both accused assert, appellant Setias has nothing to do with that transaction. In Our opinion, the presumption of appellant Setias' innocence has not been overcome.

Nevertheless, an accused acquitted of a criminal charge may nevertheless be held in the same case civilly liable

where the facts established by the evidence so warrants (Nuñez v. Court of Appeals, G.R. 80216, December 7, 1988, Third Division, Minute Resolution). In the instant case, the trial court correctly found that appellant Setias is jointly liable with Tugbang for the unpaid value of the check signed by both of them in the amount of P262,800.00. Since the other accused Tugbang had already died before judgment and his civil liability already extinguished, appellant Setias is herein adjudged liable to de los Santos for half of the aforesaid amount with legal interest until fully paid. We find that award by the trial court of moral and exemplary damages is not proper and thus, should be set aside.

ACCORDINGLY, the judgment of the lower court is hereby REVERSED and the accused-appellant Ma. Elnora Setias is ACQUITTED of the crime of Falsification of a Commercial Document under Article 172 in relation to Article 171(4) as well as Article 315 2(d) of the Revised Penal Code. Appellant Setias is civilly liable to de los Santos in the amount of P131,400.00 with legal interest until fully paid.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Griño-Aquino, JJ., concur.

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