

ROMELITO ZAGADO, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 76612. September 29, 1989

Ponente: BIDIN, J.

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BIDIN, J.:

This is a petition for review of the decision of the Court of Appeals* dated August 28, 1986, affirming with modification, the decision of the Regional Trial Court of Manila, Branch XXXIII, convicting petitioner for estafa, and from the resolution denying petitioner's motion for reconsideration.

The factual antecedents are as follows:

Sometime in February, 1979, the petitioner was in need of cash to defray expenses in connection with his appealed labor case. He sought assistance from his friend, Clemente Montuerto, and the latter issued to him two (2) postdated pay-to-cash checks, a PCIB Check in the amount of P3,000.00 and another, a Philippine Trust Co. Check in the amount of P2,000.00.

On February 28, 1979, Apolinario Mercado, another friend of the petitioner, brought and introduced the petitioner and Montuerto to complainant Josephine Serrano at the latter's office located at 504-A SMS Building, Juan Luna St., Manila. Petitioner and Montuerto requested the complainant and her husband to exchange with cash the two postdated checks which they had in their possession.

At first, complainant and her husband did not accede. But Mercado assured the complainant that the petitioner can afford to pay the money in exchange of the postdated checks. The petitioner then went to assure the complainant that the checks will be funded when encashed.

Persuaded by the representations and assurances of the petitioner, the complainant agreed to cash the checks and handed the amount of P5,000.00 to the petitioner.

Upon maturity of the checks, they were deposited but were dishonored and returned to the complainant, the reason being "Account Closed."

The complainant made demands upon petitioner to make good the amount of the checks. She also sent petitioner and Montuerto a demand letter for petitioner and Montuerto to make good the amount of the checks within five (5) days from the receipt of said letter.

In reply to the demand letter of the complainant, the petitioner asked for a forty-five (45) days grace period. But despite the expiration of the 45 days grace period, petitioner failed to make good the value of the checks.

When the case was brought by complainant before the Fiscal's Office, petitioner again promised to make good the amount of the checks, but notwithstanding such promise, the checks in question were not redeemed.

Petitioner and Clemente Montuerto were charged with estafa, as defined in paragraph 2(d) of Article 315 of the

Revised Penal Code, as amended by R.A. No. 4885 and P.D. No. 818, before the Regional Trial Court of Manila, Branch XXXIII, docketed as Criminal Case No. 55862. The information reads as follows:

"That on or about the 28th day of February, 1979, in the City of Manila, Philippines, the said accused, conspiring and confederating together and mutually helping and aiding one another, with intent to gain, did, then and there wilfully, unlawfully and feloniously defraud spouses Angel and Josephine Serrano in the following manner, to wit: the said accused, well knowing that they had no sufficient funds, deposited in the bank and by means of false manifestation and fraudulent representations which they made to that effect that their checks, Philippine Commercial and Industrial Bank (Makati Branch) Check No. 115998 and Philippine Trust Company (Caloocan Branch) Check No. 70642 in the amount of P3,000.00 and P2,000.00, respectively, are good and covered with sufficient funds, and by means of other similar deceits, induced said spouses Angel and Josephine Serrano to exchange said checks with cash in the total amount of P5,000.00, and to give and deliver to said accused the amount of P5,000.00; that the said accused fully well knew their manifestations and representations were false and untrue, as upon presentation of the said checks to the said banks for payment, they were dishonored and payment refused, for reason 'Account Closed' and that notwithstanding due notice to them by the said Serranos that the said checks have been dishonored, failed and refused to make good the said checks and pay the said amount, to the damage and prejudice of spouses Angel and Josephine Serrano in the aforesaid amount of P5,00.00, Philippine Currency.

"Contrary to law."

Accused Clemente Montuerto has not been arrested and still remains at large. Consequently, only petitioner was arraigned. Upon said arraignment, he pleaded not guilty.

After due trial, the trial court rendered its decision, dated October 3, 1983, finding the petitioner guilty of the crime charged. The dispositive portion of the decision reads as follows:

"WHEREFORE, in view of all the foregoing considerations, the Court finds the accused Romelito S. Zagado guilty beyond reasonable doubt of the crime of estafa under paragraph 2(d) of Article 315 of the Revised Penal Code, as amended, and there being no mitigating or aggravating circumstances present to offset each other and taking in favor of the accused the provisions of the Indeterminate Sentence Law, the Court hereby sentences the said accused to suffer the indeterminate penalty of imprisonment ranging from FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of prision correccional as minimum to SIX (6) YEARS and EIGHT (8) MONTHS of prision mayor as maximum with all the accessory penalties provided for by law; to indemnify the complainant Josephine Serrano the amount of P5,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs.

"It appearing that the accused Clemente Montuerto is still at large notwithstanding the lapse of time since the order of his arrest was issued and in order that this case against him may not appear pending for an indefinite period of time, it is hereby ordered that the above-entitled case with reference to said accused only, be sent to the files without prejudice on the part of the prosecution to prosecute him as soon as said accused is apprehended."

The petitioner appealed to the Court of Appeals which affirmed with modification the trial court's decision in the following tenor:

"WHEREFORE, the decision appealed from is MODIFIED by imposing on the appellant an indeterminate sentence of from 6 years and 1 day of prision mayor to 8 years, 8 months and 1 day of prision mayor medium. In all other respects, the appealed decision is AFFIRMED. Costs against the appellant.

"SO ORDERED."

His motion for reconsideration and/or new trial having been denied, the petitioner filed the instant petition.

In the resolution of August 17, 1987, the Court gave due course to the petition and required the parties to file their respective memoranda within twenty (20) days from notice (Rollo, p. 100). The memorandum for the petitioner was filed on October 6, 1987 (Rollo, p. 108), while the Solicitor General filed his manifestation and motion on September 28, 1987, adopting his comment and rejoinder as his memorandum (Rollo, p. 105).

Petitioner raised the following assignments of error:

I

RESPONDENT COURT OF APPEALS, WITH DUE RESPECT, MISINTERPRETED THE PROVISIONS OF ARTICLE 315 OF THE REVISED PENAL CODE INSOFAR AS HEREIN PETITIONER IS CONCERNED.

II

RESPONDENT COURT OF APPEALS, ALSO WITH DUE RESPECT, MISAPPREHENDED THE ESTABLISHED FACTS OF THE CASE THAT CLEARLY INDICATE THE ABSOLUTE ABSENCE OF CRIMINAL INTENT ON THE PART OF HEREIN PETITIONER TO COMMIT THE OFFENSE CHARGED.

III

RESPONDENT COURT OF APPEALS, AGAIN WITH DUE RESPECT, ERRED IN REFUSING TO ACQUIT HEREIN PETITIONER OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE NOT ONLY THE OFFENSE CHARGED BUT ALSO THE GUILT OF HEREIN PETITIONER BEYOND REASONABLE DOUBT.

IV

EVEN ASSUMING, ARGUENDO ONLY, THAT HEREIN PETITIONER IS LIABLE BY REASON OF THE AMOUNT HE RECEIVED FROM THE COMPLAINING WITNESS ON THE STRENGTH OF THE CHECKS DRAWN AND POSTDATED BY ACCUSED CLEMENTE MONTUERTO, SUCH LIABILITY IS PURELY CIVIL AND NOT CRIMINAL IN NATURE.

The petition is devoid of merit.

The main issue in this case is whether or not the liability of the petitioner is merely civil and not criminal in nature.

The petitioner contends that under Article 315, 2(d) of the Revised Penal Code, estafa is committed 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 checks. Since it was Clemente Montuerto who issued, indorsed and guaranteed the two checks in question, he (petitioner), who had nothing to do whatsoever with the said checks, cannot be convicted of estafa as charged in the information.

It is further argued by the petitioner that the postdated checks were issued as securities for the money he received as a loan from the complainant and his admission to the complainant's lawyer of his obligation to pay within a period of forty-five days from receipt of his letter-reply indicates his good faith and lack of criminal intent to defraud the complaining witness. For having received the cash equivalent of the subject checks, his liability, if any, is only civil in nature.

It was also stressed by the petitioner that in the absence of any finding of conspiracy between him and Montuerto

by the trial court and the Court of Appeals, he cannot be convicted of the crime of estafa.

The Solicitor General countered that even if the checks in question were issued by Clemente Montuerto, it was the petitioner who directly and personally used the checks and presented them to the complainant.

In negotiating directly and personally the postdated checks issued by Montuerto and obtaining their cash value from the complainant through deceit and fraudulent representations, both the trial and appellate courts correctly interpreted the petitioner's act as the efficient cause which constitutes the crime of estafa as defined and penalized under paragraph 2(d) of Article 315 of the Revised Penal Code.

It cannot be denied that when Montuerto issued the two postdated checks, he had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the checks. The fact that he went into hiding after the incident is an evidence of guilt.

The contention of the petitioner that he did not commit estafa because he did not issue or indorse the postdated checks is devoid of merit. While it is true that he did not issue or indorse the postdated checks, his and Montuerto's concerted acts with common design and purpose in encashing the questioned checks indicate the presence of conspiracy as charged in the information filed against them.

But as correctly ruled by the Court of Appeals, even without discussing the existence of conspiracy, appellant cannot escape liability by the fact alone that he did not ascertain whether or not Montuerto had sufficient funds to cover the check (Decision, CA-G.R. No. 02173, p. 4), citing *People vs. Isleta*, 61 Phil. 332 [1935].

It must be noted that when the petitioner was in need of money, he asked the financial assistance of his friend Montuerto, and the latter issued the two postdated checks. Since the petitioner could not encash the postdated checks at the banks, he and Montuerto went to another friend, Apolinario Mercado. Mercado brought and introduced the petitioner and Montuerto to complainant Josephine Serrano at the latter's office. Petitioner and Montuerto requested the complainant and her husband to exchange with cash the two postdated checks which they had in their possession. At first, the Serranos hesitated but with the assurance of Mercado and the petitioner to the complainant that the checks will be funded when encashed, the latter exchanged the two postdated checks with cash which she handed to the petitioner.

This issue has already been laid to rest by this Court in *People v. Isleta and Nuevo* (61 Phil. 334 [1935]) where appellant without having issued or indorsed the checks in question was held liable because of his guilty knowledge that his co-accused had no funds in the bank when he negotiated the checks.

Both the trial court and the Court of Appeals found the evidence of the prosecution proves beyond doubt the guilt of the appellant, and this Court finds no cogent reason to disturb their findings and conclusions.

WHEREFORE, the petition for review is Denied and the assailed decision and resolution of the Court of Appeals are Affirmed.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Feliciano, and Cortes, JJ., concur.

* Penned by Justice Vicente V. Mendoza and with the concurrence of Justices Josue N. Bellosillo and Hector C. Fule.

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