

FRANCIS LEE, PETITIONER, VS. COURT OF APPEALS, PEOPLE OF THE PHILIPPINES AND PELAGIA PANLINO DE CHIN, RESPONDENTS.

G.R. No. 90423. September 06, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for review on certiorari to set aside the decision of the Court of Appeals dated June 29, 1989 which reversed the decision of the Regional Trial Court (RTC), National Capital Judicial Region, Branch 129 at Caloocan City, Metro Manila, and reinstated as well as affirmed in toto the decision of the Metropolitan Trial Court (MTC), Branch 2, same city. The RTC decision found the petitioner guilty of the crime of light coercion, the dispositive portion of which reads:

"IN VIEW OF ALL THE FOREGOING, the judgment appealed from is hereby modified. The accused Francis Lee is hereby found guilty beyond reasonable doubt of the crime of light coercion, as penalized under paragraph 2 of Article 287 of the Revised Penal Code and he is hereby sentenced to suffer a penalty of TWENTY (20) DAYS of ARRESTO MENOR and to pay one-third (1/3) of the costs." (p. 40, Rollo)

On the other hand, the MTC decision convicted the petitioner of the offense of grave coercion, the pertinent portion of the same is hereby quoted as follows:

"WHEREFORE, premises considered, the Court finds the accused Francis Lee, guilty beyond reasonable doubt of the offense of Grave Coercion, as charged, defined and penalized under Art. 286 of the Revised Penal Code, and is hereby sentenced to suffer an imprisonment of THREE (3) MONTHS, of arresto mayor, medium, and to pay a fine of P250.00, with cost.

"The accused is further ordered to indemnify the offended party, Pelagia Paulino de Chin, by way of civil liability the sum of P5,000.00 as moral damages and the sum of P2,000.00 as exemplary damages.

"x x x." (p. 33, Rollo)

The facts as stated by the respondent Court of Appeals are undisputed, thus:

"At about 10:00 o'clock in the morning of June 20, 1984, the complainant Maria Pelagia Paulino de Chin, 23 years old, was fetched from her house at 112 BLISS Site, 8th Avenue, Caloocan City by Atanacio Lumba, a bank employee, upon the instruction of the petitioner Branch Manager Francis Lee of Pacific Banking Corporation (hereinafter referred to as bank). Upon arriving at the office of Pacific Banking Corporation located at Caloocan City, petitioner Francis Lee did not attend to her immediately. After an hour later, the petitioner confronted the complainant about a forged Midland National Bank Cashier Check No. 3526794, which the latter allegedly deposited in the account of Honorio Carpio. During the said confrontation, the petitioner Francis Lee was shouting at her with piercing looks and threatened to file charges against her unless and until she returned all the money equivalent of the subject cashier check. Accordingly, the complainant was caused to sign a prepared withdrawal slip, and later, an affidavit prepared by the bank's lawyer, where she was made to admit that she had swindled the bank and had return the money equivalent of the spurious check. During her stay at the said bank, the complainant, who was five (5) months in the family way, was watched by

the bank's employees and security guards. It was about six o'clock in the afternoon of the same day when the complainant was able to leave the bank premises.

"Upon the other hand, the petitioner, 37 years old, presented his version, basically a denial of the charges, to wit: he was the Branch Bank Manager of Pacific Banking Corporation. After having been informed that Midland National Bank Cashier Check No. 3526794 was dishonored for being spurious, he examined the relevant bank records and discovered that complainant Maria Pelagia Paulino de Chin was instrumental in inducing their bank to accept the subject dollar check and was also the one who withdrew the proceeds thereof, by utilizing a withdrawal slip purportedly signed by Honorio Carpio. Petitioner, thru Atanacio Lumba, invited the complainant to his office. Responding to his invitation, the complainant arrived at the bank before noon of June 20, 1984, but was not attended to immediately as the petitioner had to attend to other bank clients. The complainant was merely informed about the subject fake dollar check that was deposited with said bank upon her assurance that it was genuine. The complainant was not compelled into signing the withdrawal slip, but she acted freely and voluntarily in executing her affidavit and in returning the money equivalent of the subject check. There was nothing unusual during her lengthy stay in the bank." (pp. 44-45, Rollo)

The sole issue posed in this petition is whether or not the acts of petitioner in simply "shouting at the complainant with piercing looks" and "threats to file charges against her" are sufficient to convict him of the crime of grave coercion (p. 6, Rollo).

Article 286 of the Revised Penal Code provides:

"ART. 286. Grave coercions. -- The penalty of arresto mayor and a fine not exceeding 500 pesos shall be imposed upon any person who, without authority of law, shall, by means of violence, prevent another from doing something not prohibited by law, or compel him to do something against his will, whether it be right or wrong.

"If the coercion be committed for the purpose of compelling another to perform any religious act or to prevent him from so doing, the penalty next higher in degree shall be imposed."

Considering that the present case does not involve violence but intimidation, the provisions of Article 1335 of the New Civil Code on intimidation are relevant. It states:

"Art. 1335. x x x.

"There is intimidation when one of the contracting parties is compelled by a reasonable and well-grounded fear of an imminent and grave evil upon his person or property, or upon the person or property of his spouse, descendants or ascendants, to give his consent.

"To determine the degree of the intimidation, the age, sex and condition of the person shall be borne in mind.

"A threat to enforce one's claim through competent authority, if the claim is just or legal, does not vitiate consent."

As a general rule, the findings of facts of the Court of Appeals command utmost respect. However, such findings are disregarded if there appears in the record some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misinterpreted that, if considered, would affect the result of the case (see *San Sebastian College v. Court of Appeals, et al.*, G.R. No. 84401, May 15, 1991).

While the appellate court emphasized the pregnancy and feminine gender of the complainant, it overlooked other significant personal circumstances which are material in determining the presence of coercion in this case.

The records show that complainant is a highly educated person who is familiar with banking procedures. She is a graduate of Business Administration major in Banking and Finance from NCBA. She also finished one semester

of MA in graduate school. In 1983, complainant worked with the Insular Bank of Asia and America as a bank teller (TSN, November 20, 1984, pp. 5-7; Records, pp. 96-98).

Likewise, it appears that complainant actively participated in the deposit and withdrawal of the proceeds of the controversial check. We find that she told Honorio Carpio (Carpio, for short), a relative and payee of the check, to open a savings account with the Pacific Banking Corporation (Bank, for short) and accompanied him; that subsequently, she presented a Midland National Bank Cashier's check payable to Carpio in the sum of \$5,200.00 to Mr. Lamberto R. Cruz (Cruz, for short), PRO Manager, Foreign Department; that she claimed that she was requested by her uncle to deposit the check for collection; that she was a bank depositor and she "knew somebody downstairs"; that she assured Cruz that the check would be honored between banks (TSN, April 15, 1985, pp. 89-92; Records, 180-183); that on June 11, 1984, the bank, after the usual clearing period, sent out a notice to Carpio that the proceeds of the check were already credited to his account but the same was returned to the bank because the address was false or not true; that the total amount of the check in pesos was P92,557.44; that the total deposit of Carpio was P92,607.44, his initial deposit of P50.00 being added to the amount of the check; that on the same day, complainant personally inquired from the bank whether the proceeds of the check have already been credited to Carpio's account (TSN, June 11, 1985, p. 163, records. p. 163); that upon an affirmative answer, the bank records show that on that day, the complainant withdrew the sum of P12,607.00 thru a withdrawal slip purportedly signed by Carpio; that in the interim, Carpio allegedly left abroad (Annex C, p.17, Records); that on June 13, 1984, she withdrew the sum of P80,000.44 from Carpio's account by means of a withdrawal slip allegedly signed by Carpio and then, she closed his account; that out of the said amount, she redeposited the sum of P50,000.00 to her own savings account and received in cash the remaining balance of P30,000.44; and on June 15 and 18, 1984, complainant withdrew the amounts of P2,000.00 and P18,000.00, respectively from her savings account (Exh. "3", Records, p. 15, in relation to TSN, October 8, 1985, pp. 194-195, Records, pp. 286-287).

In the light of the foregoing circumstances, petitioner's demand that the private respondent return the proceeds of the check accompanied by a threat to file criminal charges was not improper. There is nothing unlawful on the threat to sue. In the case of *Berg v. National City Bank of New York* (102 Phil. 309, 316), We ruled that:

"x x x It is a practice followed not only by banks but even by individuals to demand payment of their accounts with the threat that upon failure to do so an action would be instituted in court. Such a threat is proper within the realm of the law as a means to enforce collection. Such a threat cannot constitute duress even if the claim proves to be unfounded so long as the creditor believes that it was his right to do so."

The Solicitor General argues that the complainant was intimidated and compelled into disclosing her time deposit, signing the typewritten withdrawal slip and the affidavit by the petitioner's threat to detain her at the bank.

At this point, there is a need to make a distinction between a case where a person gives his consent reluctantly and against his good sense and judgment and where he gives no consent at all, as where he acts against his will under a pressure he cannot resist. Thus, in *Vales v. Villa* (35 Phil. 769, 789), We ruled:

"x x x It is clear that one acts as voluntarily and independently in the eye of the law when he acts reluctantly and with hesitation as when he acts spontaneously and joyously. Legally speaking he acts as voluntarily and freely when he acts wholly against his better sense and judgment as when he acts in conformity with them. Between the two acts there is no difference in law. But when his sense, judgment, and his will rebel and he refuses absolutely to act as requested, but is nevertheless overcome by force or intimidation to such an extent that he becomes a mere automaton and acts mechanically only, a new element enters, namely, a disappearance of the personality of the actor. He ceases to exist as an independent entity with faculties and judgment, and in his place is substituted another -- the one exercising the force or making use of the intimidation. While his hand signs, the will which moves it is another's. While a contract is made, it has, in reality and in law, only one party to it; and, there being only one party, the one using the force or the intimidation, it is unenforceable for

lack of a second party.

"From these considerations it is clear that every case of alleged intimidation must be examined to determine within which class it falls. If it is within the first class it is not duress in law, if it falls in the second, it is."

The circumstances of this case reveal that the complainant, despite her protestations, indeed voluntarily, albeit reluctantly, consented to do all the aforesaid acts.

Bearing in mind her involvement in the deposit and encashment of the check, the complainant admitted to being nervous upon being informed that the check was spurious (TSN, November 20, 1984, p. 15; Record, p. 106)

We find that complainant's lengthy stay at the bank was not due to the petitioner's threat. It was rather due to her desire to prove her innocence. Her testimony on this point is a revelation:

"Atty. Dizon: (counsel for petitioner)

You are always talking of signing the withdrawal slip by force, is it not that earlier you admitted that no actual force was employed upon you in connection with the signing of this document and the force that you are claiming was the alleged shouting against you coupled with the statement that you could not leave?

"A. Yes, Sir.

"Q. When Mr. Lee was requiring you to sign the withdrawal slip did it not occur to you to leave the bank?

"Atty. Pangilinan:

The question has already been answered she said she cannot leave because she is being threatened.

"Atty. Dizon:

That was during the time when she first met Mr. Lee.

"Court:

Witness may answer.

"A. When I was about to sign the withdrawal slip I inquired from him if I signed it I can leave already but he insisted that I should not leave, Sir.

"Q. When he told you that did it not occur to you to stand up and go out of the bank?

"A. No, Sir.

"Q. Why?

"A. He was insisting that I return the amount I have withdrawn especially on June 18 when I withdrew P18,000.00, Sir.

"COURT

The question is why did you not leave and disregarded him?

"A. Because I cannot just leave him that way, Your Honor.

"Atty. Dizon:

Why? hat was the reason that you cannot leave him?

"A. Because he is insisting that the responsibility of one person be my responsibility and at that time I was

feeling nervous and he did not tell me to stand up and leave, Sir." (ibid, pp. 18-20, Records, pp. 109-111)

In her insistence to clear up her name, it is not farfetched for Us to think that the complainant voluntarily but grudgingly returned the money to show good faith. Thus, it was she who informed the petitioner about the existence of the RCBC Time Deposit Certificate (Exh. "A", pp. 4-5, Records). The allegation that she did so because of petitioner's threats came from the complainant herself. She has not been able to present any other witness to buttress her claim.

Further, We find that contrary to complainant's allegations in her affidavit (ibid, p. 5) it was not the petitioner who suggested the encashment of the RCBC Time Deposit Certificate but her sister; and that again, it was not the petitioner who agreed to the sister's suggestion but Cruz, the PRO Manager, Foreign Department of the bank (TSN, January 8, 1985, pp. 40- 41, Records, pp. 131-132).

Moreover, while complainant claimed that her freedom of movement was restrained, she, however, was able to move about freely unguarded from the office of the petitioner situated at the ground floor to the office of Cruz at the mezzanine floor where her sister found her (ibid, pp. 39-40, Records, pp. 130-131). Undoubtedly, during that time, there were many bank clients who transacted business with the bank (TSN, November 20, 1984, p. 21; Records, p. 112). The bank security guards then were at their posts. Complainant herself admitted that they manifested no overt acts to prevent her from leaving despite the alleged loud threats of the petitioner (ibid, pp. 20-21, Records, pp. 111-112) which could be heard considering that the door to petitioner's office was kept open (TSN, October 8, 1985, p. 184, Records, p. 276). Given such atmosphere, the complainant still did not leave the bank.

The respondent court cited the prepared typewritten withdrawal slip and the non-presentation of the complainant's passbook as indicators of her involuntary acts.

We disagree. The petitioner testified that the general rule was that the bank requires the presentation of the passbook whenever withdrawals are made. However, there was an exception to this rule, i.e. when the depositor is a regular customer in depositing or withdrawing money in the bank (TSN, October 8, 1985, pp. 189-190, Records, pp. 281-282). The prosecution failed to submit evidence to rebut his contentions. Besides, the trial court's conclusion that the withdrawal slip was typewritten was without basis considering that the complainant merely averred that the withdrawal slip was already prepared when she signed it (Exh. "A", Records, p. 4).

We also take exception to the following ruling of the appellate court:

"It must be noted that the position of a bank manager is one of prestige and dignity and when the said bank was cheated or swindled it certainly reflects on the capability and efficiency of the manager and one can just imagine the kind of mental attitude and feeling of anger the latter would have towards the alleged swindler. Shouting, raising of voice and dagger looks are common characteristics of an angry man and that was what accused Lee exhibited to a fragile weaker sex and pregnant offended party. It would be natural to get angry with someone who had victimized you. Naturalness, however is not always righteous. It is like taking the law into your hands and that was what the accused Lee did." (CA Decision, pp. 11-12, Rollo, pp. 52-53)

This pronouncement creates an impression that the petitioner had made a personal case out of the situation. However, the evidence does not support this view. We find that at the time the check was deposited and encashed, the petitioner was then on leave (TSN, June 11, 1985, p. 156; Records, p. 248). Under this circumstance, it is not fair to consider the bank's mistake in accepting and paying the check as the petitioner's mistake which could militate against his efficiency. The petitioner attributed the mistake in the payment of the forged check to the usual risks in banking business. He stated:

Atty. Pangilinan, Private prosecutor (authorized by the Fiscal to prosecute the case in the latter's stead)

"Q So you no longer consider him (Carpio) as entitled in (sic) the proceeds of the chek (sic) and therefore at that point of (sic) time you will now concede that the payment made by you to him was a big mistake?

"A When we were asking for the respondent and we were locating Honorio Carpio and we cannot locate him, I consider that a mistake, Sir.

"Q It was a big mistake as a matter of fact?

"A When it comes to the falling of the business considering the big amount I would say big mistake but only a mistake, it was a usual risk in banking business, Sir.

"Q But of course Mr. Lee, being a mistake that mistake will harm and tense your personality as a Bank Manager?

"A It is up to our Manager to decide but when it comes to other transactions I am handling Three Million Plus and considering that check I don't think with all modesty it will affect me, Sir.

"Q But you are called upon to try to recover any money which was in your judgment was unlawfully taken from you by anybody?

"A When it comes to procedure I don't think it was unlawfully taken, as a matter of fact it was our bank who credited this account, Sir.

"Q So it is your bounded (sic) duty to recover money which was paid to someone else (sic) which payment is not due to him, am I correct?

"A It is the duty of our lawyer to recover it, Sir.

"Q Is it not a fact that your lawyer is only your agent?

"Atty. Dizon:

I think we are going too far, it has nothing to do with the particular incident subject matter of the criminal offense.

"Court:

I see the point of the defense but the witness is very intelligent, I can see the point of counsel, because in order not to effect his integrity he resorted to this, for example in case of a bank employee who stole P500.00 and the other one is P200.00, it could have the same mistake which is supposed to be admonished by removal. You answer.

"A Yes that is the same case whether it is small or big but when it comes to the Manager the Head Office is very understanding when it comes to bogus checks and of course my work is a supervisory, Sir." (ibid, pp. 170-171; Records, pp. 263-264)

The most telling proof of the absence of intimidation was the fact that the complainant refused to sign the promissory note in spite of the alleged threats of the petitioner (TSN, January 8, 1985, p. 48; Records, p. 139). American authorities have declared that "(t)he force which is claimed to have compelled criminal conduct against the will of the actor must be immediate and continuous and threaten grave danger to his person during all of the time the act is being committed. That is, it must be a dangerous force threatened 'in praesenti.' It must be a force threatening great bodily harm that remains constant in controlling the will of the unwilling participant while the act is being performed and from which he cannot then withdraw in safety." (State v. Hood, 165 NE 2d, 28, 31-32, Underlining ours).

The complainant proffered excuses for her action. For one, she claimed that her sister's presence helped her

recover her composure (TSN, November 20, 1984, p. 29 Records, p. 120).

We are not persuaded. If indeed she had recovered her composure because of her sister's presence, she could have just left the premises in a huff without encashing the RCBC Time Deposit Certificate or if they (complainant and sister) were already at the RCBC, they could have desisted from encashing the check and then could have left for home notwithstanding the alleged presence of Mr. Lumba who was no longer in his own bank but among the RCBC clients or she could have refused to sign the affidavit which was handed to her first before the promissory note. Yet, she did neither of these logical possibilities.

Secondly, she averred that she refused to sign the promissory note because she was able to read its contents unlike the affidavit and she realized that she would have a great responsibility to return the amount taken by Carpio (*ibid*, pp. 27-28, Records, pp. 118- 119).

Such an excuse is flimsy and weak. It is strange that complainant's, sister, who was with her, failed to corroborate her statement that she was denied the opportunity to read the affidavit. Her bare assertion simply confirms the voluntariness of her actions. All her disputed acts were geared towards proving her good faith. Complainant was willing to return the sum of P48,000.00 she took since it was only up to this amount where her involvement lies. However, as soon as she realized that she would have the enormous task of reimbursing the bank the balance of the proceeds of the forged check allegedly taken by Carpio, she refused to cooperate any further. Notwithstanding the alleged threats of petitioner, she did not budge. Thus, We find it as a logical consequence that she merely asked for the receipt of the P18,000.00 she deposited rather than the cancellation of her earlier withdrawal. On this point, complainant claimed that after her refusal to sign the document, she no longer insisted on the return of the money because she felt that it was the only way she could leave the bank premises (TSN, November 20, 1984, p. 31, Records, p. 120). This pretense, however, was belied by her subsequent actuations. We find that she and her sister left the bank unescorted to eat their snack; that they were required by the petitioner to come back; and that they decided not to eat but instead went home (TSN, November 20, 1984, pp. 31-32, Records, pp. 122-123 and January 8, 1965, pp. 49-50, Records, pp. 140-141). With such behavior, We are at a loss to understand how coercion could attach in this case. Obviously, the complainant has not been cowed into submission.

Against this backdrop, We hold that coercion did not exist in this case. Consequently, the petitioner should be acquitted.

ACCORDINGLY, the decision appealed from is hereby REVERSED and a new one hereby, entered ACQUITTING the accused of the crime of grave coercion.

SO ORDERED.

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

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