

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CRESENCIA C. REYES, ACCUSED-APPELLANT.

G.R. Nos. 101127-31. November 18, 1993

Ponente: CRUZ, J.

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CRUZ, J.:

The appellant has instituted this proceeding for the reversal of the decision of the Regional Trial Court of Manila dated March 12, 1991, convicting her of estafa and violation of BP 22 under five separate informations which had been consolidated and tried jointly on her own motion.

From the un rebutted evidence of the prosecution, the trial court found that complainant Lorie Garcia came to know Cresencia Reyes through Manny Cabrera, a friend and business acquaintance of Garcia, who requested her to deliver rice to Reyes because he had no more stock to sell. Garcia initially refused but eventually agreed to sell to Reyes but only on the condition that Reyes first make a purchase order and, upon delivery, pay 50% of the cost of the rice, the balance to be paid with a postdated check.

The first purchase order was for 200 sacks. On April 4, 1986, Garcia delivered to Reyes 100 sacks of rice worth P31,500.00, for which two checks were issued by Reyes, each in the amount of P15,750.00. One was dated April 4, 1986 and the other April 10, 1986. On April 9, 1986, Garcia delivered 98 more sacks of rice to Reyes, and Reyes again issued two checks, each in the amount of P14,210.00, the first dated April 10, 1986, and the other April 15, 1986.

On April 9, 1986, Reyes placed another order for 200 sacks of rice, which Garcia delivered to her on the same day. While the 200 sacks were being unloaded, Reyes asked to buy an additional 200 sacks, and since there were 400 sacks of rice loaded on the truck, Garcia agreed to sell the whole stock to her.

For the 400 sacks (plus 2 more sacks to complete the first purchase order for 200 sacks), Reyes again issued two checks, each for P66,330.00, one dated April 9, 1986 and the other April 15, 1986.

All the checks were drawn against the Bank of the Philippine Islands at its España Branch.

Of the six checks issued by Reyes, only three were made good, to wit, the check dated April 4, 1986 for P15,750.00, which was encashed by Garcia; the check dated April 10, 1986 for P14,210.00, which was redeemed by Reyes; and the check dated April 9, 1986 for P66,330.00, which was paid by Reyes by installments.

The other three checks were, either upon encashment or deposit, returned by the drawee bank to Garcia due to "insufficient funds." Garcia notified Reyes of their dishonor and the latter promised to pay her their total value. Despite repeated demands on Reyes, however, she failed to make good the checks or to replace them with cash.

The five criminal cases filed against Reyes were Criminal Cases Nos. 86--51206 to 86-51208, for violation of BP 22 in connection with the issuance of BPI Check No. 308202 for P15,750.00,[1] BPI Check No. 308223 for P14,210.00,[2] BPI Check No. 308226 for P66,330.00,[3] and Criminal Cases Nos. 86-51209 and 86-51210, both

for estafa involving the same checks.

After the prosecution had rested its case, Reyes manifested through her counsel that she would file a demurrer to evidence. She did not do so during the 10-day period allowed her, whereupon the trial court, on motion of the prosecution, declared the cases submitted for decision. Instead of filing a motion for reconsideration, Reyes, assisted by her counsel, submitted a waiver of appearance.[4] Judge Angelina S. Gutierrez thereafter rendered the challenged decision in which she disposed as follows:

ACCORDINGLY, finding the guilt of the accused beyond reasonable doubt, she is hereby sentenced as follows:

In Criminal Case No. 51206, to suffer imprisonment of six (6) months and to pay the fine of P15,750.00;

In Criminal Case No. 51207, to suffer imprisonment of six (6) months and to pay the fine of P14,210.00;

In Criminal Case No. 51208, to suffer one year imprisonment and to pay the fine of P66,330.00;

In Criminal Case No. 51209, to suffer 22 years of reclusion perpetua together with the accessory penalties and to indemnify the complaining witness by way of actual damages in the sum of P80,540.00 and to pay the costs; and

In Criminal Case No. 51210, there being no modifying circumstances that attended the commission of the offense, to suffer a indeterminate penalty of six (6) years and 1 day of prision mayor as minimum to 14 years, 8 months and 1 day of reclusion temporal as maximum together with the accessory penalties and to indemnify the complaining witness by way of actual damages in the sum of P15,750.00 and to pay the costs.

On May 13, 1992, the First Division referred en consulta to the Court en banc the question of whether the appellant, having been sentenced to serve 22 years of reclusion perpetua, should be allowed to remain on bail during the pendency of her appeal.[5] On August 7, 1992, the Court en banc ordered the surrender of Reyes by her bondsman to the Regional Trial Court of Manila, Branch 37, for her confinement by the Bureau of Corrections.[6]

In the appellant's brief, it is alleged that the trial court committed grave errors:

- (1) In convicting Reyes of estafa and violation of BP 22 when on the face of the evidence itself it is clear that the issuance of the checks in question was involved in a credit transaction and that the said checks were issued by the latter as guarantee for the payment of her civil obligation to the complainant;
- (2) In holding her guilty of estafa under Art. 315, par. 2(d) of the Revised Penal Code when there was no deceit employed by her in the issuance of the checks in question;
- (3) In holding that there was sufficient evidence against her to justify her conviction for estafa under Art. 315, par. 2(d) of the Revised Penal Code and for violation of BP 22; and
- (4) In convicting her for the crime of estafa under Art. 315, par. 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.

The Court, after deliberating on the above assignment of errors and the briefs submitted by the parties, finds for the People.

We re-affirm at the outset the established doctrine that:

While the filing of the two sets of Information under the provisions of Batas Pambansa Bilang 22 and under the provisions of the Revised Penal Code, as amended, on estafa, may refer to identical acts committed by petitioner, the prosecution thereof cannot be limited to one offense, because a single criminal act may give rise

to a multiplicity of offenses and where there is variance or differences between the elements of an offense in one law and another law as in the case at bar there will be no double jeopardy because what the rule on double jeopardy prohibits refers to identity of elements in the two (2) offenses. Otherwise stated, prosecution for the same act is not prohibited. What is forbidden is prosecution for the same offense. Hence, the mere filing of the two (2) sets of information does not itself give rise to double jeopardy (*People v. Miraflores*, 115 SCRA 570).[7]

The gravamen of the offense punished by BP 22 is the act of making and issuing a worthless check or a check that is dishonored upon its presentment for payment.[8] The law has made the mere act of issuing a bad check a *malum prohibitum*, an act proscribed by the legislature for being deemed pernicious and inimical to public welfare.[9]

According to Chief Justice Pedro L. Yap in the landmark case of *Lozano v. Martinez*: [10]

The effects of the issuance of a worthless check transcends the private interests of the parties directly involved in the transaction and touches the interest of the community at large. The mischief it creates is not only a wrong to the payee or holder, but also an injury to the public. The harmful practice of putting valueless commercial papers in circulation, multiplied a thousandfold, can very well pollute the channels of trade and commerce, injure the banking system and eventually hurt the welfare of society and the public interest.

The appellant argues that the questioned checks were not intended for deposit or encashment but merely to guarantee payment of her obligations to Garcia who, she stresses, admitted that for every delivery of rice the corresponding checks were given in return. She contends that in credit transactions, a check may serve merely as a guaranty for the payment of the amount indicated therein, to be redeemed later by the drawer "on the maturity date of the check or on a much later date, depending on the availability of funds of the latter."

It is now settled that BP 22 applies even in cases where the dishonored checks were issued merely in the form of a deposit or a guaranty and not as actual payment. The law does not make any distinction. Criminal liability attaches to the drawer of the check whether it was issued in payment of an obligation or merely to guarantee the said obligation. As we held in *Que v. People*: [11]

x x x Inasmuch as the law does not make any distinction in this regard, no such distinction can be made by means of interpretation or application. Furthermore, the history of the enactment of subject statutes evinces the definite legislative intent to make the prohibition all embracing, without making any exception from the operation thereof in favor of a guarantee. This intent may be gathered from the statement of the sponsor of the bills xxx which was enacted later into BP 22, when it was introduced before the Batasang Pambansa that the bill was introduced to discourage the issuance of bouncing checks, to prevent checks from becoming "useless scrap of paper" and to restore respectability to checks, all without distinction as to the purpose of the issuance of the checks x x x.

Consequently, what are important are the facts that the accused had deliberately issued the checks in question to cover accounts and that the checks were dishonored upon presentment regardless of whether or not the accused merely issued the checks as a guarantee. (Emphasis added).

Even on the assumption, then, that the subject checks were given by the appellant as a mere guaranty and not as payment, this circumstance will not absolve Reyes from her violation of BP 22.

The appellant has also been convicted under Art. 315 (2) (d) of the Revised Penal Code, as amended by R.A. No. 4885, which penalizes any person who shall defraud another "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."

To constitute estafa under this provision, the act of postdating or issuing a check in payment of an obligation must be the efficient cause of the defraudation; as such, it should be either prior to or simultaneous with the act of fraud.[12] The offender must be able to obtain money or property from the offended party because of the issuance of the check, whether postdated or not.[13] It must be shown that the person to whom the check was delivered would not have parted with his money or property were it not for the issuance of the check by the other party. Stated otherwise, the check should have been issued as an inducement for the surrender by the party deceived of his money or property and not in payment of a pre-existing obligation.

It is recalled that Garcia was unwilling at first to deal with Reyes but was finally persuaded when she issued the two checks in payment for the first 100 sacks of rice. One of these checks was encashed before the second could mature and be subsequently dishonored. Believing that Reyes's credit was good, Garcia accepted two more checks from her in payment for another 100 sacks, and Reyes redeemed one of them before the other could mature and be subsequently dishonored. Garcia was still unaware of Reyes's deception when she entered into their last sale of 400 sacks, for which Reyes issued another two checks in payment, one of which was also to be dishonored later. In all this series of transactions, Garcia was induced to sell because of the checks issued by the appellant which the complainant believed to be funded.

The deceit practiced by Reyes on Garcia is all too palpable. Reyes was able to maintain Garcia's confidence by making good three of the checks she had issued and thus giving Garcia the impression that the other checks, which she could not yet present for payment, would be honored. Reyes's timing was clever. She saw to it that one of her checks for the first delivery was valid (and was subsequently encashed) before she made her second purchase, for which she issued two more checks. She redeemed one of these checks before she bought the final 400 sacks, for which she issued another two checks. All this time, Garcia believed that the remaining postdated checks she had yet to encash were all good when they were in fact all worthless.

The three postdated checks that were subsequently dishonored were issued at a time when funds in her account were insufficient and even nil. Two of these checks were dated April 10, 1986, and the third April 15, 1986. The records of the drawee bank showed that Reyes had a zero balance at the time the checks were issued and also when they were presented for payment.[14] The dishonored checks she had issued to Garcia had a total value of P96,290.00, and this represented the damage sustained by Garcia because of the appellant's deceit. Reyes had issued these checks upon her fraudulent assurance to Garcia that they were fully funded.

Her situation worsened when she failed to make good the checks within three days from receipt of notice of their dishonor and the demand from the complainant for their value. Her failure to take advantage of this grace period offered by the law raised the prima facie inference of deceit consisting of "false pretense or a fraudulent act." [15]

The appellant's final contention is that, prior to the delivery of the rice, she had agreed that only 50% of the purchase price would be paid upon delivery and that the remaining 50% would be covered by a postdated check. Hence, as the subject checks covered the balance of the purchase price of the 600 sacks of rice, they were issued in payment of a pre-existing obligation and so did not violate Article 315 of the Revised Penal Code or BP 22.

The facts established by the prosecution belie this assertion. The evidence to the contrary is overwhelming. There is no doubt that the subject checks were issued by Reyes (and accepted by Garcia) in exchange for the three deliveries of rice as each delivery was made. We are satisfied that the postdated checks were issued by the appellant not as payment for a pre-existing obligation but as the consideration for each shipment of rice she received from the complainant.

The argument that the postdated checks were promissory notes and not for negotiation is so unsubstantial as to deserve no serious attention.

The Court notes the following observations of the trial court on the personality of the appellant:

Accused, past 50, is a physically handicapped lady whose height is barely two (2) feet. In fact, whenever she came to court, she was always assisted by one or two companions. But she is well educated and speaks English fluently. The Court discerns that it is this unique combination of bizarre physical make-up and seeming trustworthiness which led others, like herein complainant, to repose their confidence in her. Her counsel manifested that she is also facing similar charges in other branches of this Court.

It is indeed pathetic that the appellant should suffer the physical handicap above described, but what is especially tragic is that she has chosen to use this handicap for the deception of Garcia, who trusted her partly out of sympathy for her abnormal appearance. By her deceitfulness, Reyes has forfeited all feelings of charity or kindness toward her and earned instead the punishment of the laws she has scorned.

WHEREFORE, the challenged decision is AFFIRMED and the appeal is DENIED, with costs against the appellant. It is so ordered.

Davide, Jr., and Quiason, JJ., concur.
Bellosillo, J., on leave.

[1] Exhibit "B," Original Record, p. 252.

[2] Exhibit "B-1," Ibid., p. 254.

[3] Exhibit "B-2," Id., p. 253.

[4] Original Record, p. 288.

[5] Rollo, p. 40.

[6] Ibid., pp. 103-116.

[7] Nierras v. Dacuycuy, 181 SCRA 8.

[8] Lozano v. Martinez, 146 SCRA 338.

[9] People v. Laggui, 171 SCRA 305; People v. Nitafan, 215 SCRA 79; Que v. People, 154 SCRA 160; People v. Manzanilla, 156 SCRA 279.

[10] 146 SCRA 340.

[11] 154 SCRA 160.

[12] Vallarta v. Court of Appeals, 150 SCRA 336.

[13] People v. Tugbang, 196 SCRA 341; People v. Sabio, 86 SCRA 568; Bañares v. Court of Appeals, 194 SCRA 59; Vallarta v. Court of Appeals, 150 SCRA 336.

[14] Original Record, p. 255.

[15] People v. Singson, 215 SCRA 534; Bañares v. Court of Appeals, 194 SCRA 59.

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