

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. CORA ABELLA OJEDA, APPELLANT.

G.R. Nos. 104238-58. June 03, 2004

Ponente: CORONA, J.

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CORONA, J.:

For review is the decision[1] dated June 21, 1991 of the Regional Trial Court of Manila, Branch 38, the dispositive portion of which read:

WHEREFORE, the Court finds accused Cora Abella Ojeda guilty beyond reasonable doubt of the crime of Estafa as defined and penalized under paragraph 2(d) of Article 315 of the Revised Penal Code, as amended by Rep. Act 4885, in Criminal Case No. 88-66228 and hereby sentences her to suffer a penalty of reclusion perpetua, with the accessories provided by law and with credit for preventive imprisonment undergone, if any, in accordance with Article 29 of the Revised Penal Code as amended, and to pay complainant Ruby Chua the amount of Two Hundred Twenty Eight Thousand Three Hundred Six (P228,306.00) Pesos with interests thereon from the time of demand until fully paid.

Likewise, the Court also finds the said accused guilty for Violation of Batas Pambansa Blg. 22 in Criminal Cases Nos. 88-66230, 88-66232, 88-66235 to 88-66240, 88-66242, 88-66243, 88- 66245 to 88-66248 (14) counts and hereby sentences her to suffer a penalty of one year of imprisonment for each count. On the other hand, the other charges docketed as Criminal Cases Nos. 88-66229, 88-66231, 88-66233, 88-66234, 88-66241 and 88-66244 are hereby dismissed for insufficiency of evidence.

Costs against accused in all instances.[2]

Appellant Cora Abella Ojeda was charged in 21 separate Informations for estafa in Criminal Case No. 88-66228 and for violation of Batas Pambansa (BP) 22 in Criminal Case Nos. 88-66229 to 88-66248.

The Information charging Ojeda with estafa read:

That on or about the first week of November, 1983, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously defraud RUBY CHUA in the following manner, to wit: the said accused, well knowing that she did not have sufficient funds in the bank and without informing the said Ruby Chua of such fact drew, made out and issued to the latter the following post-dated Rizal Commercial Banking Corporation checks, to wit:

Check No.

Date Amount

1. 033550 Nov. 5, 1983 P17,100.00
2. 041782 Nov. 5, 1983 5,392.34
3. 042935 Nov. 6, 1983 1,840.19

4. 041799 Nov. 9, 1983 11,953.38
 5. 033530 Nov. 10, 1983 19,437.34
 6. 041714 Nov. 10, 1983 26, 890.00
 7. 042942 Nov. 10, 1983 1,941.59
 8. 041783 Nov. 12, 1983 5,392.34
 9. 041800 Nov. 14, 1983 11,953.39
 10. 041788 Nov. 15, 1983 3,081.90
 11. 033529 Nov. 15, 1983 19,437.34
 12. 041784 Nov. 18, 1983 5,392.34
 13. 042901 Nov. 18, 1983 11,953.38
 14. 042902 Nov. 23, 1983 11,953.38
 15. 041785 Nov. 25, 1983 5,392.34
 16. 042903 Nov. 29, 1983 11,953.38
 17. 033532 Nov. 29, 1983 13,603.22
 18. 041786 Nov. 30, 1983 5,392.34
 19. 042905 Dec. 8, 1983 11,953.39
 20. 043004 Dec. 10, 1983 2,386.25
 21. 042907 Dec. 15, 1983 11,953.38
 22. 042906 Dec. 18, 1983 11,953.39
- P228,306.60

in payment of various fabrics and textile materials all in the total amount of P228,306.60 which the said accused ordered or purchased from the said RUBY CHUA on the same day; that upon presentation of the said checks to the bank for payment, the same were dishonored and payment thereof refused for the reason 'Account Closed', and said accused, notwithstanding due notice to her by the said Ruby Chua of such dishonor of the said checks, failed and refused and still fails and refuses to deposit the necessary amount to cover the amount of the checks to the damage and prejudice of the said RUBY CHUA in the aforesaid amount of P228,306.60, Philippine currency.

Contrary to law.

The Informations charging Ojeda for violation of BP 22 were similarly worded except for the amounts of the checks, the check numbers and the dates of the checks:

That on or about the first week of November 1983, in the City of Manila, Philippines, the said accused did then and there wilfully, unlawfully and feloniously make or draw and issue to RUBY CHUA to apply on account or for value Rizal Commercial Banking Corp. Check No. 041784 dated November 18, 1983 payable to Ruby Chua in the amount of P5,392.34, said accused well knowing that at the time of issue he/she/they did not have sufficient funds in or credit with the drawee bank or payment of such check in full upon its presentment, which check, when presented for payment within ninety (90) days from the date thereof was subsequently dishonored

by the drawee bank for insufficiency of funds, and despite receipt of notice of such dishonor, said accused failed to pay said complainant the amount of said check or to make arrangement for full payment of the same within five (5) banking days after receiving said notice.

Contrary to law.

The pertinent facts of the case follow.

Appellant Cora Abella Ojeda used to buy fabrics (telas) from complainant Ruby Chua. For the three years approximately she transacted business with Chua, appellant used postdated checks to pay for the fabrics she bought. On November 5, 1983, appellant purchased from Chua various fabrics and textile materials worth P228,306 for which she issued 22 postdated checks bearing different dates and amounts.

Chua later presented to the bank for payment check no. 033550 dated November 5, 1983 in the amount of P17,100[3] but it was dishonored due to "Account Closed." [4] On April 10, 1984, Chua deposited the rest of the checks but all were dishonored for the same reason. [5] Demands were allegedly made on the appellant to make good the dishonored checks, to no avail.

Estafa and BP 22 charges were thereafter filed against appellant. The criminal cases were consolidated and appellant, on arraignment, pleaded not guilty to each of the charges.

On the whole, appellant's defense was grounded on good faith or absence of deceit, lack of notice of dishonor and full payment of the total amount of the checks.

With the exception of six checks [6] which did not bear her signature, appellant admitted that she issued the postdated checks which were the subject of the criminal cases against her. She, however, alleged that she told Chua not to deposit the postdated checks on maturity as they were not yet sufficiently funded. Appellant also claimed that she made partial payments to Chua in the form of finished garments worth P50,000. This was not rebutted by the prosecution.

The trial court convicted appellant of the crime of estafa as defined and penalized under paragraph 2(d) of Article 315 of the Revised Penal Code (RPC), and sentenced her to reclusion perpetua. The trial court also convicted appellant of violation of BP 22 for issuing bouncing checks. However, the court a quo held her guilty of only 14 counts out of the 22 bouncing checks issued. The court reasoned:

xxx This is due to the fact that of the 22 checks, two of them are not covered by the indictment. This refers to Check No. 042935 dated November 6, 1983 in the amount of P1,840.19 (Exhibit D) and Check No. 042942 dated November 10, 1983 in the amount of P1,941.59 (Exhibit F). And of the total number of checks, six of them were not signed by the accused but by the latter's husband (Exhibits C,H,J,M,R and O). The accused should not be liable for the issuance of the 6 checks in the absence of any showing of conspiracy. [7]

Appellant appealed to this Court, seeking acquittal. Her counsel, however, failed to file the appellant's brief within the prescribed period. Her appeal was thus dismissed in a resolution of this Court dated October 14, 1992. [8]

In her motion for reconsideration, appellant asked this Court to reverse its order of dismissal in the interest of substantial justice and equity. [9] We initially found no compelling reason to grant her motion and resolved to deny with finality appellant's MR in a resolution dated February 3, 1993. [10] Appellant thereafter filed a "Second and Urgent Motion for Reconsideration," attaching thereto an "Affidavit of Desistance" of complainant Ruby Chua which stated in part:

xxx xxx xxx.

- that the defendant Mrs. Cora Ojeda has already fully paid her monetary obligation to me in the amount of P228,306.00 which is the subject of the aforementioned cases;

xxx xxx xxx.

- That as the private complainant, I am now appealing to the sense of compassion and humanity of the good justices of the Supreme Court to reconsider the appeal of Mrs. Cora Ojeda and I solemnly pray that the criminal liability be extinguished with her civil liability.[11]

In a resolution dated March 17, 1993,[12] this Court denied the second MR for having been filed without leave of court. In the same resolution, this Court ordered the entry of judgment in due course.

Appellant thereafter filed another motion dated April 21, 1993, praying that she be recommended to then President Fidel V. Ramos for executive clemency. In support of such motion, she once more attached the affidavit of desistance[13] of complainant Ruby Chua which categorically declared that “the defendant, Ms. Cora Ojeda, (had) already fully paid her monetary obligations to (Chua) in the amount of P228,306 which (was) the subject of the aforementioned cases.”[14]

In view of such special circumstances, this Court issued a resolution dated June 9, 1993[15] recalling its resolutions dated October 14, 1992, February 3, 1993 and March 17, 1993 for humanitarian reasons and in the interest of justice, and in order that this Court may resolve appellant’s appeal on the merits.[16]

Hence, the instant appeal with the following assignments of error:

I.

THE LOWER COURT ERRED IN FINDING THAT DECEIT WAS EMPLOYED BY ACCUSED APPELLANT WHEN SHE ISSUED THE CHECKS TO THE PRIVATE COMPLAINANT.

II.

THE LOWER COURT ERRED IN NOT FINDING THAT THE ISSUANCE BY THE ACCUSED-APPELLANT OF THE CHECKS TO THE PRIVATE COMPLAINANT WAS MERELY A MODE OF PAYMENT WHICH ARRANGEMENT HAD BEEN THEIR PRACTICE FOR THREE (3) YEARS.

III.

THE LOWER COURT ERRED IN NOT FINDING THAT GOOD FAITH IS A VALID DEFENSE AGAINST ESTAFA BY POSTDATING A CHECK

IV.

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED OF FOURTEEN (14) COUNTS OF B.P. 22 WHEN THERE WAS NO PROOF OF NOTICE OF DISHONOR TO THE ACCUSED.

V.

THE LOWER COURT ERRED IN NOT FINDING THAT SINCE 13 OF THE 14 CHECKS WERE DEPOSITED ONLY AFTER THE LAPSE OF THE 90 DAY PERIOD, HENCE, THE PRIMA FACIE PRESUMPTION OF KNOWLEDGE DOES NOT APPLY.[17]

Appellant firmly denies any criminal liability for estafa. She argues there was no deceit employed when she issued the checks because she never assured Chua that the checks were funded. Chua allegedly knew all along that the checks were merely intended to guarantee future payment by appellant.

Appellant further claims good faith in all her transactions with Chua for three years. She explained that her failure to fund the checks was brought about by the collapse of the country's economy in the wake of the Aquino assassination in 1983. The capital flight and financial chaos at that time caused her own business to shut down when her customers also failed to pay her. Despite the closure of her business, appellant maintains that she did her best to continue paying Chua what she owed and, when she could no longer pay in cash, she instead paid in kind in the form of finished goods. But these were not enough to cover her debts. Nevertheless, she spared no effort in complying with her financial obligations to Chua until she was gradually able to pay all her debts, a fact fully admitted as true by complainant in her affidavit.

From the foregoing, appellant contends that the element of deceit thru abuse of confidence or false pretenses was not present. Thus, her guilt was not established with satisfactory proof. Appellant asserts that good faith on her part was a valid defense to rebut the prima facie presumption of deceit when she issued the checks that subsequently bounced.

Furthermore, out of the 14 checks cited in the decision of the trial court, only one check was deposited within 90 days from due date. This was check no. 033550 dated November 5, 1983. The rest of the checks were deposited only on April 10, 1984 or more than 90 days from the date of the last check.[18]

Appellant also denies she received any notice of dishonor of the checks, contrary to the findings of the trial court. She was not even aware that cases had already been filed against her for violation of BP 22. Since there was allegedly no proof of notice[19] of the dishonor of the checks, appellant claims that she cannot be convicted of violation of BP 22.

On the other hand, the Solicitor General contends that appellant was criminally liable for issuing worthless checks. Complainant Chua accepted the postdated checks as payment because of appellant's good credit standing. She was confident that appellant's checks were good checks. Thus, no assurances from appellant that the checks were sufficiently funded were needed for Chua to part with her goods. And when the checks later bounced, appellant betrayed the confidence reposed in her by Chua.

The Solicitor General also argues that there was a simultaneous exchange of textile materials and checks between complainant and appellant. Complainant Chua would not have parted with her *telas* had she known that appellant's checks would not clear. Appellant obtained something in exchange for her worthless checks. When she issued them, she knew she had no funds to back up those checks because her account had already been closed. Yet, she did not inform Chua that the checks could not be cashed upon maturity. She thus deceived Chua into parting with her goods and the deceit employed constituted *estafa*.

We grant the appeal.

DECEIT AND DAMAGE AS ELEMENTS OF ESTAFA

Under paragraph 2 (d) of Article 315 of the RPC, as amended by RA 4885,[20] the elements of *estafa* are: (1) a check is postdated or issued in payment of an obligation contracted at the time it is issued; (2) lack or insufficiency of funds to cover the check; (3) damage to the payee thereof. Deceit and damage are essential elements of the offense and must be established by satisfactory proof to warrant conviction.[21] Thus, the drawer of the dishonored check is given three days from receipt of the notice of dishonor to cover the amount of the check. Otherwise a prima facie presumption of deceit arises.

The prosecution failed to prove deceit in this case. The prima facie presumption of deceit was successfully rebutted by appellant's evidence of good faith, a defense in *estafa* by postdating a check.[22] Good faith may be

demonstrated, for instance, by a debtor's offer to arrange a payment scheme with his creditor. In this case, the debtor not only made arrangements for payment; as complainant herself categorically stated, the debtor-appellant fully paid the entire amount of the dishonored checks.

It must be noted that our Revised Penal Code was enacted to penalize unlawful acts accompanied by evil intent denominated as crimes *mala in se*. The principal consideration is the existence of malicious intent. There is a concurrence of freedom, intelligence and intent which together make up the "criminal mind" behind the "criminal act." Thus, to constitute a crime, the act must, generally and in most cases, be accompanied by a criminal intent. *Actus non facit reum, nisi mens sit rea*. No crime is committed if the mind of the person performing the act complained of is innocent. As we held in *Tabuena vs. Sandiganbayan*:^[23]

The rule was reiterated in *People v. Pacana*, although this case involved falsification of public documents and estafa:

"Ordinarily, evil intent must unite with an unlawful act for there to be a crime. *Actus non facit reum, nisi mens sit rea*. There can be no crime when the criminal mind is wanting."

American jurisprudence echoes the same principle. It adheres to the view that criminal intent in embezzlement is not based on technical mistakes as to the legal effect of a transaction honestly entered into, and there can be no embezzlement if the mind of the person doing the act is innocent or if there is no wrongful purpose.

The accused may thus prove that he acted in good faith and that he had no intention to convert the money or goods for his personal benefit.^[24] We are convinced that appellant was able to prove the absence of criminal intent in her transactions with Chua. Had her intention been tainted with malice and deceit, appellant would not have exerted extraordinary effort to pay the complainant, given her own business and financial reverses.

LACK OF NOTICE OF DISHONOR

We also note that the prosecution presented virtually no evidence to show that the indispensable notice of dishonor was sent to and received by appellant. Excerpts from the following testimony of complainant are significant:

ATTY. ANGELES:

Q

Now, Mrs. Witness, when these checks from Exhibits 'A' to 'V' have bounced, what steps, did you do?

A

I consulted my lawyer and she wrote a Demand Letter.

COURT:

Q

What is the name of that lawyer?

A

Atty. Virginia Nabora.

ATTY. ANGELES:

Q

Now, you mentioned a Demand Letter sent by Atty. Virginia Nabor, I am showing to you this Demand Letter dated March 16, 1988, will you kindly examine the same if this is the same Demand Letter you mentioned a while ago?

A

Yes, sir.

Q

Now, on this second page of this Demand Letter there is a signature above the printed name Virginia Guevarra Nabor, do you know the signature, Mrs. Witness?

A

Yes, that is the signature of my lawyer.

ATTY. ANGELES:

May we request that this Demand Letter dated March 16, 1988 consisting of two (2) pages, Your Honor, be marked as Exhibit 'W' and that the signature on the second page of this letter of Virginia Guevarra Nabor be encircled and be marked as Exhibit 'W-1' and that the attached Registry Receipt, Your Honor, be marked as Exhibit 'W-2'.

COURT:

Mark them.

ATTY. ANGELES:

Q

Now, Mrs. Witness, why do you know that this is the signature of Virginia Guevarra Nabor?

A

After preparing that I saw her sign the letter.

Q

Now, after sending this Demand Letter, do you know If the accused herein made payments or replaced the checks that were issued to you?

COURT:

Q

Of course, you assumed that the accused received that letter, that is his basis on the premise that the accused received that letter?

ATTY. ANGELES:

A

Yes, Your Honor.

COURT:

Q

What proof is there to show that accused received the letter because your question is premises (sic) on the assumption that the accused received the letter?

ATTY. ANGELES:

Q

Now, do you know Mrs. Witness if the accused received the letter?

A

There is a registry receipt.

COURT:

Q

Now, later on after sending that letter, did you have communication with the accused?

A

I kept on calling her but I was not able to get in touch with her.

Q

But do you know if that letter of your lawyer was received by the accused?

A

I was not informed by my lawyer but I presumed that the same was already received by the accused.

ATTY. ANGELES:

Q

Now, aside from sending this Demand Letter, do you know what your lawyer did?

A

We filed a case with the Fiscal's.[25]

Aside from the above testimony, no other reference to the demand letter was made by the prosecution. The prosecution claimed that the demand letter was sent by registered mail. To prove this, it presented a copy of the demand letter as well as the registry return receipt bearing a signature which was, however, not even authenticated or identified. A registry receipt alone is insufficient as proof of mailing.[26] "Receipts for registered letters and return receipts do not prove themselves; they must be properly authenticated in order to serve as proof of receipt of the letters." [27]

It is clear from the foregoing that complainant merely presumed that appellant received the demand letter prepared and sent by her lawyer. She was not certain if appellant indeed received the notice of dishonor of the checks. All she knew was that a demand letter was sent by her lawyer to the appellant. In fact, right after complainant made that presumption, her lawyer filed the criminal cases against appellant at the Fiscal's office [28] without any confirmation that the demand letter supposedly sent through registered mail was actually received by appellant.

With the evident lack of notice of dishonor of the checks, appellant cannot be held guilty of violation of BP 22. The lack of such notice violated appellant's right to procedural due process. "It is a general rule that when service

of notice is an issue, the person alleging that the notice was served must prove the fact of service.”[29] The burden of proving receipt of notice rests upon the party asserting it and the quantum of proof required for conviction in this criminal case is proof beyond reasonable doubt.

When, during the trial, appellant denied having received the demand letter, it became incumbent upon the prosecution to prove that the demand letter was indeed sent through registered mail and that the same was received by appellant. But it did not. Obviously, it relied merely on the weakness of the evidence of the defense.

This Court therefore cannot, with moral certainty, convict appellant of violation of BP 22. The evident failure of the prosecution to establish that she was given the requisite notice of dishonor justifies her acquittal.[30]

As held in *Lao vs. Court of Appeals*: [31]

“It has been observed that the State, under this statute, actually offers the violator ‘a compromise by allowing him to perform some act which operates to preempt the criminal action, and if he opts to perform it the action is abated.’ This was also compared ‘to certain laws allowing illegal possessors of firearms a certain period of time to surrender the illegally possessed firearms to the Government, without incurring any criminal liability.’ In this light, the full payment of the amount appearing in the check within five banking days from notice of dishonor is a ‘complete defense.’ The absence of a notice of dishonor necessarily deprives an accused an opportunity to preclude a criminal prosecution. Accordingly, procedural due process clearly enjoins that a notice of dishonor be actually served on petitioner. Petitioner has a right to demand – and the basic postulates of fairness require -- that the notice of dishonor be actually sent to and received by her to afford her the opportunity to avert prosecution under B.P. 22.

Stated otherwise, responsibility under BP 22 was personal to appellant; hence, personal knowledge of the notice of dishonor was necessary. Consequently, while there may have been constructive notice to appellant regarding the insufficiency of her funds in the bank, it was not enough to satisfy the requirements of procedural due process.

Finally, it is worth mentioning that notice of dishonor is required under both par. 2(d) Art. 315 of the RPC and Sec. 2 of BP 22. While the RPC prescribes that the drawer of the check must deposit the amount needed to cover his check within three days from receipt of notice of dishonor, BP 22, on the other hand, requires the maker or drawer to pay the amount of the check within five days from receipt of notice of dishonor. Under both laws, notice of dishonor is necessary for prosecution (for estafa and violation of BP 22). Without proof of notice of dishonor, knowledge of insufficiency of funds cannot be presumed and no crime (whether estafa or violation of BP 22) can be deemed to exist.

WHEREFORE, the decision of the trial court is hereby REVERSED and SET ASIDE. Appellant Cora Abella Ojeda is ACQUITTED in Criminal Case No. 88-66228 for estafa and in Criminal Case Nos. 88-66230, 88-66232, 88-66235 to 88-66240, 88-66242, 88-66243, 88-66245 to 88-66248 for violation of BP 22.

SO ORDERED.

Vitug, (Chairman), Sandoval-Gutierrez, and Carpio-Morales, JJ., concur.

[1] Penned by Judge Arturo U. Barias, Jr.

[2] Rollo, p. 40.

[3] Exhibit “A”.

[4] Exhibit “Y”.

[5] Exhibits “X”, “Y”, “AA”, “BB” and “CC”.

[6] Exhibits “C”, “H”, “J”, “M”, “O” and “R”.

[7] Record, p. 139.

[8] Rollo, p. 47.

[9] Rollo, p. 49.

[10] Rollo, p. 52.

[11] Ibid., p. 61.

[12] Rollo, p. 62.

[13] Rollo, p. 70.

[14] Ibid.

[15] Rollo, p. 76.

[16] Rollo, p. 76.

[17] Rollo, pp. 87-88.

[18] Section 2 of BP 22 states:

SEC. 2. Evidence of knowledge of insufficient funds. – The making, drawing and issuance of a check payment of which is refused by the drawee because of insufficient funds in or credit with such bank, when presented within ninety (90) days from the date of the check, shall be prima facie evidence of knowledge of such insufficiency of funds or credit unless such maker or drawer pays the holder thereof the amount due thereon, or makes arrangements for payment in full by the drawee of such check within five (5) banking days after receiving notice that such check has not been paid by the drawee.

[19] Ibid.

[20] Art. 315 par. 2(d) of the Revised Penal Code states:

(d) 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. The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack or insufficiency of funds shall be prima facie evidence of deceit constituting false pretense or fraudulent act.

[21] People vs. Chua, 315 SCRA 326 [1999].

[22] People vs. Gulion, 349 SCRA 610 [2001]; Vallarta vs. Court of Appeals, 150 SCRA 336 [1987]; People vs. Villapando, 56 Phil. 31 [1931].

[23] 268 SCRA 332 [1997].

[24] Lecaroz vs. Sandiganbayan, 305 SCRA 396 [1999].

[25] TSN, December 7, 1989, pp. 37-43.

[26] Ting vs. Court of Appeals, 344 SCRA 551 [2000], citing Central Trust Co. vs. City of Des Moines, 218 NW

580.

[27] Ting vs. Court of Appeals, *ibid*.

[28] TSN, December 7, 1989, pp. 42-23.

[29] Ting vs. Court of Appeals, *supra*, citing 58 Am Jur 2d, Notice, § 45.

[30] Caras vs. Court of Appeals, 366 SCRA 371 [2001].

[31] Lao vs. Court of Appeals, 274 SCRA 572 [1997].

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