

PAULINO CHANG, PETITIONER, VS. THE INTERMEDIATE APPELLATE COURT (FIRST CRIM. CASES DIVISION) AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. Nos. 68589-90. December 29, 1986

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Before us is a second Motion filed, with leave of Court, by petitioner, Paulino CHANG, seeking reconsideration of our Resolution of April 24, 1985 denying the Petition for Review for lack of merit. CHANG's first Motion for Reconsideration, filed on July 5, 1985, was denied on October 28, 1985 with the denial being final.

The aforementioned Petition seeks a review of the Decision, dated March 30, 1984, and of the Resolution, dated August 31, 1984, of respondent Appellate Court affirming the judgment of conviction rendered by the Regional Trial Court (RTC), Branch XXXII, Manila, dated April 15, 1983, against CHANG for Violation of the Bouncing Checks Law (BP Blg. 22), and for Estafa under Article 315 of the Revised Penal Code.

Specifically challenged herein is petitioner's conviction for the crime of Estafa.

The Information for Estafa reads:

"That on or about July 2, 1980, in the City of Manila, Philippines, the said accused, did then and there wilfully, unlawfully and feloniously defraud one Kiat Reaport, in the following manner, to wit: the said accused by means of false manifestation and fraudulent representations which he made to said Kiat Reaport to the effect that he is a businessman specializing in the importation of machineries and farm implements from the People's Republic of China; that said project was with the knowledge and blessings of the First Lady and several other high government officials; that his money as investment will surely and without fail make a return for investment of at least 30% in three (3) months, and that to assure said Kiat Reaport of the return of his investment should he so desire, said accused issued a postdated check in his favor covering the whole amount of his investment plus the 30% profit, and by means of other deceits of similar import, induced and succeeded in inducing said Kiat Reaport to invest P68,000.00, as in fact the latter gave and delivered to said accused P68,000.00 in cash, and simultaneously said accused gave and delivered to said Kiat Reaport, Bank of the Philippine Islands Check No. 124977 in the amount of P88,350.00 postdated October 2, 1980, with the assurance that said check was fully funded, said accused well knowing that said check was not fully funded for which reason the same was dishonored when presented for payment, and that all his manifestations and representations were false and untrue and were made solely with the view to obtain, as in fact he did obtain said amount, which once in his possession and with intent to defraud, he wilfully, unlawfully and feloniously misappropriated, misapplied and converted to his own personal use and benefit, to the damage and prejudice of said Kiat Reaport, in the afore-said amount of P68,000.00, Philippine Currency." [1]

The facts of the case as narrated by the Solicitor General, which the Appellate Court found supported by the evidence, reads:

"Appellant Paulino Chang was introduced to complainant Kiat Reaport as a very rich businessman by Johnson

Sy in August 1979 at the Mabini Mansion in Malate, Manila. Flaunting a Mercedes Benz 450 and bodyguard, appellant told Reaport and others with them that he was importing handtractors from the People's Republic of China which he then sells to the government (pp. 9-12, tsn, Sept. 29, 1981).

"Appellant learned that Reaport's own business is supplying peanuts to candy factories. That business, according to appellant, is too small. He invited Reaport to invest P200,000.00 in appellant's importation business with the assurance of a thirty percent (30%) profit in three months. This proposition was naturally enticing to Reaport for he had never earned that much before. But he was at first reluctant to agree because he did not have that kind of money (pp. 39-40, 43-44, 67, tsn, Feb. 10, 1982 p. 26, tsn, March 16, 1982). Reaport was told that the proposed venture was to be kept from the know-ledge of others. If he did riot have P200,000.00, appellant told him a lesser amount will do (pp. 18, 21, 29, tsn, March 16, 1982).

"Appellant's method in convincing Reaport to come up with his investment was a marvel. Aside from the Mercedes Benz 450 and the bodyguard, appellant disclosed to Reaport that he personally know high ranking officials in the government, among them the First Lady, Gen. Ver and Deputy Minister Barbero (p. 16, tsn, Sept. 29, 1981). Once, in Reaport's presence, appellant appeared to have talked to Minister Barbero by telephone (pp. 18-19, id.). Reaport also saw him with a bundle of crisp P100 bills (p. 45, id.). On still another occasion, appellant wrote a note and sent his messenger to a bank with it. The latter returned with P10,000.00 in bills with consecutive serial numbers. All these, of course, within clear sight of Reaport (p. 102, tsn, Feb. 10, 1982).

"Finally, by the end of June, 1980, Reaport agreed to make an investment of P68,000.00 when he met appellant at the Tropicana Hotel. The money would be delivered on July 2, 1980. On said date, appellant called him up and instructed him to proceed to the Mabini Mansion coffee shop (pp. 32-33, 43-47, tsn, March 16, 1982; pp. 79, 83, tsn, Feb. 10, 1982).

"Inside the coffee shop, Reaport handed to appel-lant the P68,000.00 in cash contained in a paper bag. In turn, appellant gave to him Check No. 124977 (Exh. A, p. 69, Record) drawn against appellant's Current Account No. 0141-0091-76 with the Bank of the Philippine Islands, Escolta Branch and postdated October 2, 1980 for the sum of P88,350, payable to the order of 'cash'. This amount represents the amount invested by Reaport (P68,000) plus the 30% profit. Appellant explained that P50 was deducted from the actual total "for luck'. Reaport was told he could deposit the check on October 2, 1982, the date ap-pearing thereon (pp. 21-27, tsn, Sept. 29, 1981, pp. 91--94, tsn, Feb. 10, 1982).

"Reaport did not deposit the check on October 2, 1980 on request of appellant due to financial problems. Reaport informed appellant that he was himself in bad need of cash and will deposit the check on October 29, 1980. The check was deposited by Reaport on October 29, 1980 with the Philippine Bank of Communications, Elcano Branch in Binondo, Manila in his Account No. 741-0. After three days, the check was returned to Reaport by the drawee bank unpaid and stamped 'payment stopped' (Exh. A, p. 69, Record). Attached to the check was the return check slip (Exh. A-1, id) from the drawee bank indicating 'pay-ment stopped' (Exh. A-1-a, id.) as the reason for the dishonor (pp. 27-34, tsn, Sept. 29, 1981).

"Reaport personally informed appellant of the dishonor of the check and demanded that he replace it with cash. Appellant refused to comply with the demand because he had no money (pp. 35-36, tsn, Sept. 29, 1981). On March 4, 1981, Reaport's lawyer wrote appellant to reiterate the demand (Exh. B, p. 70, Record). The letter was received by appellant through his counsel (pp. 35-36, 38-43, id.). On March 18, 1981, two days after appellant's counsel received the demand letter, he replied, also by letter (Exh. 2, p. 241, Record), addressed to Reaport's counsel alleging that the check in question was in fact issued to another person in payment of gambling debts."

As a consequence, CHANG was charged in two separate Informations before the former Court of First Instance of Manila for Violation of BP Blg. 22 (Criminal Case No. R-81-739), and for Estafa (Criminal Case No. R-82-2834).

The thrust of CHANG's defense was to prove the absence of deceit in that he did not know REAPORT whom he called "Chiu" or "Tiu Hong" nor did he have any business dealings with him; that it is not true that REAPORT gave him P68,000.00 in cash; that the check in question was issued to a mahjong club and/or club members during a protracted mahjong session; that he signed the check in "blank" and entrusted it to the club sometime in October, 1980; that he had advised the bank to dishonor the check because it was a "gambling check", but he admitted that he had no funds in his current account; and that he received the letter-demand for payment but made no reply because he was not liable therefor as the check was not issued to REAPORT but was a product of gambling.

After joint trial of the two cases, CHANG was found guilty of the felonies charged and sentenced, in the Violation of BP Blg. 22 case, to imprisonment of one year; and in the Estafa case to imprisonment of 2 years, 4 months and 1 day, as minimum, to 16 years and 1 day, as maximum, and to indemnify the offended party in the sum of P88,350.00, plus costs.

On appeal, respondent Appellate Court affirmed the conviction but modified the penalties by reducing the maximum ceiling of imprisonment in the Estafa case from 16 years to 12 years, and the amount of the indemnity from P88,350.00 to P68,000.00.

Hence, the instant Petition for Review filed on October 29, 1984 before this Court by CHANG essentially claiming that, assuming REAPORT gave him P68,000.00 as investment, his liability would only be civil; and that the cash check involved was a complete nullity since it was, in fact, given by CHANG to another person for payment of a gambling debt.

It appears that in another criminal case entitled *People vs. Paulino L. Chang*, CHANG was also charged with Estafa before the then Court of First Instance of Manila under more or less similar circumstances but involving another complainant and the amount of P1.5M (the 2nd CASE).

At the time this Petition was filed, the 2nd CASE was pending decision before the Appellate Court as AC-G.R. No. 00527-CR, with the Solicitor General recommending acquittal.

In his Petition, as well as in subsequent pleadings, CHANG further stressed the said Solicitor General's recommendation for acquittal in the 2nd CASE.

In his Comment to the Petition, the Solicitor General submitted that CHANG's liability is criminal and not merely civil; that CHANG beguiled REAPORT; that CHANG committed Estafa, not only through false pretenses but also, through his issuance of an unfunded postdated check; that his (Solicitor General's) recommendation for CHANG's acquittal in the 2nd CASE, which was a separate case pending then before the Appellate Court cannot apply to the present case for, although the two cases have some resemblance, the transactions were far apart and the environmental circumstances and the victims were different; and that CHANG issued the unfunded check, not to pay off a gambling debt but, in exchange for money received by him from REAPORT.

As previously stated, we had denied the Petition by minute resolution on April 24, 1985.

On May 7, 1985, CHANG moved for elevation of the 2nd CASE to this instance and to hold determination of this Petition in abeyance. We denied the Motion on May 13, 1985. CHANG's first Motion for Reconsideration was also denied with finality on October 28, 1985.

In the 2nd CASE, conviction was affirmed by the IAC on August 29, 1985.

CHANG filed a Second Motion for Reconsideration on November 21, 1985. The Solicitor General's recommendation for acquittal in the 2nd CASE was again stressed by CHANG. Apparently, CHANG did not

know of the IAC's previous affirmation in the 2nd CASE.

On June 25, 1986, we required the incumbent Solicitor General to comment on the Second Motion for Reconsideration, which comment was filed on September 3, 1986 and reiterated the recommendation of his predecessor-in-office that the judgment of conviction be affirmed.

There is no question that the check issued by CHANG bounced for insufficiency of funds, so that he should be held guilty of violation of BP Blg. 22.[2] As both the Trial Court and the Appellate Court had found:

"x x x. The drawee bank's statement of accounts respecting that of appellant would indicate that on October 2, 1980, the date of the check, the balance of appellant's account No. 0141-0091-76 was only P73.95 (Exh. 'D-1'); as of October 29, 1980 his debit balance was P96.05 (Exhs. 'D-2' and 'D-2a'); at the end of November, 1980, the balance was P28.95 (Exhs. 'F' and 'F-1') as of December 1980, the debit balance was P6.05 (Exhs. 'F' and 'F-1')."

The defense that "the check was issued as a gambling check for money lost at gambling", hence, illegal and void from the very beginning, lacks credence. CHANG issued the check in payment of an obligation to return the money he got from REAPORT, including a 30% profit. It was not by way of guaranteeing REAPORT's investment. It was the inducement to convince REAPORT of a sure return of his money plus the profit promised. As the Appellate Court had observed, the "gambling debt" theory is "characterized with circumstances doubly hard to believe." In essence, that matter is one of credibility, which the Trial Court and the Appellate Court are better fitted to pass upon.

The evidence on record equally supports CHANG's conviction for Estafa. Complainant testified on the facts constitutive of the fraud, and both the Trial Court and the Appellate Court extended credibility to him and not to CHANG's denials that he had any business contact/deal with Complainant, nor his claim that the cash check Complainant said was given to him, was in fact given by CHANG to another person for payment of a gambling debt. The disquisition by the Trial Court regarding the fraudulent scheme, quoted with approval by the Appellate Court, suffices to rest the issue:

"On the basis of the evidence presented by the prosecution, the Court finds that Reaport handed P68,000.00 to the accused upon the prior and/or simultaneous representations of the accused that he is engaged in the importation of the hand tractors from RPC; that in connection therewith, he even guaranteed a profit of 30% in three months; that he is a rich businessman with a 450 Mercedes Benz car, with bodyguard, and influential with the Government higher-ups with whom he sells the tractors; that Reaport believed such representations to be true; that as a matter of fact, the accused to assure a fruitful return of his investment in favor of Reaport, issued a check for P88,350 for the purpose. This should be the most efficient cause for the defraudation. Indeed, when the check was delivered to Reaport, the accused knew and should be expected to know that he had no funds in the bank then, or on the date of the check, on the strength of which the accused was able to obtain P68,000.00 in exchange of a worthless check.' (Decision, p. 9)."

It is true that if the amount were invested as capital in a business, an accused would not be liable for Estafa as his liability would be civil.[3] However, we find as established that CHANG had employed deceit to induce REAPORT to deliver the sum for investment not only through his acts of misrepresentation that led REAPORT to believe that CHANG was moneyed and had influence and connections in high places, but also in that simultaneously with the delivery of the sum by REAPORT, CHANG resorted to the deceitful practice of issuing an unfunded check for P88,350.00, ostensibly with a profitable return on investment, to perpetrate the fraud. It turned out that he never had this money in the bank. He was never able to make good the dishonored check despite notice.

We are not persuaded by CHANG's argument that CHANG was not charged with Estafa through the issuance of a

postdated check. The Information sufficiently alleges that CHANG had "issued a postdated check x x x covering the whole amount of his investment plus the 30% profit" which he "simultaneously gave and delivered" to REAPORT, "with the assurance that said check was fully funded, x x x well knowing that said check was not fully funded for which reason the same was dishonored when presented for payment x x x".

CHANG had presented no evidence to overcome the proof by the prosecution that he had employed false pretenses in defrauding REAPORT, nor did he adduce any evidence whatsoever that he had invested REAPORT's money as he (CHANG) had repre-sented to him (REAPORT). He even disowned knowing REAPORT and having had any transaction with him, indicating thereby that everything he made REAPORT believe was false and fabricated.

In fine, the conjunto of the facts narrated by the Complainant has established fraud, deceit and damage, essential elements of the crime of Estafa. Moreover, the fraud can be deemed to have been confirmed by CHANG's defense that there was never a deal between him and REAPORT, and the claim that he had given the cash check to a gambling creditor.

ACCORDINGLY, the Court is constrained to deny petitioner's Second Motion for Reconsideration and this denial is FINAL.

SO ORDERED.

Yap, (Chairman), Narvasa, Cruz, and Feliciano, JJ., concur.

[1] pp. 86-87, Rollo.

[2] "SECTION 1. Checks without sufficient funds. - Any person who makes or draws and issues any check to apply on account or for value, knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, which check is subsequently dis-honored by the drawee bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment, shall be punished by imprisonment of not less than thirty days but more than one (1) year or by fine of not less than but not more than double the amount of the check which fine shall in no case exceed Two Hundred Thousand Pesos, or both such fine and imprisonment at the discretion of the Court."

[3] U.S. vs. Clarin, 17 Phil. 84 (1910).

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