

[ **G.R. No. 120672, August 17, 2000** ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIO MYRNO TAN, ACCUSED-APPELLANT.**

**D E C I S I O N**

**QUISUMBING, J.:**

On appeal is the decision rendered on January 26, 1995, by the Regional Trial Court of Antipolo, Rizal, Branch 74, in Criminal Case No. 91-6398, finding appellant Mario Myrno Tan guilty of estafa under paragraph 2 (d) of Article 315 of the Revised Penal Code and sentencing him to *reclusion perpetua*.

In an Information dated January 11, 1991, Prosecutor Eduardo Fabian charged appellant with the crime of estafa allegedly committed as follows:

That in or about and during the month of July 1990 up to September 1990, in the Municipality of Antipolo, Province of Rizal, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, with intent to defraud New Durawood Company Inc., herein represented by one, Wilson M. Gaw and by means of deceit and false representation, did then and there wilfully, unlawfully and feloniously make out and issue Security Bank and Trust Company Check No. 293232 postdated October 1, 1990 in the amount of P254,037.00, to apply on account, well-knowing at the time of issue he did not have sufficient funds in or credit with the drawee bank for the payment in full of the face amount of such check 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 the reason of Drawn Against Insufficient Funds and, despite receipt of notice of such dishonor the accused failed to pay said payee the face amount of said check or make arrangement for full payment thereof within three (3) days after receiving notice, to the damage and prejudice of the said New Durawood Company, Inc. in the aforementioned amount of P254,037.00.

CONTRARY TO LAW.<sup>[1]</sup>

Upon arraignment, appellant, assisted by counsel, entered a plea of not guilty to the charge.<sup>[2]</sup> Thereafter, trial on the merits ensued. Subsequently, the trial court rendered its verdict finding appellant guilty as charged. The dispositive portion of its decision reads:

WHEREFORE, in view of the foregoing, and computing the penalty corresponding to the P254,037.00 amount defrauded in accordance with the foregoing provision, the Court hereby sentences accused Mario Myrno Tan to suffer the penalty of *Reclusion Perpetua* (the Indeterminate Sentence Law not being applicable to persons convicted of offenses punished with death or life imprisonment (Section 2, Act. No. 4105 as amended by Act. No. 4225), the Court cannot therefore impose a minimum penalty that is one degree lower than *Reclusion Perpetua*). In addition accused is

likewise sentenced to indemnify complainant New Durawood Company the amount of P254,037.00 by way of actual damages plus legal interest and to pay the Costs.

SO ORDERED.<sup>[3]</sup>

In view of the penalty imposed, the case is now before us on appeal.

The facts of this case on record are as follows:

Private complainant New Durawood Company is engaged in the buy and sell of construction materials, with Wilson Gaw (Gaw) serving as manager of its branch in Mayamot, Antipolo, Rizal. Appellant Mario Myrno Tan, owner of Hocson Trading, was among the regular customers of the company.

As a matter of practice between the parties, appellant would first place his orders for construction materials with private complainant. Then private complainant would compute the total amount involved and then show it to appellant. Thereafter, the company would prepare the invoice and appellant would issue post-dated checks in payment for the ordered supplies. The materials would then be delivered later either to appellant's warehouse in Caloocan City or the construction site. It was appellant's caretaker who received the materials and signed the delivery receipts.

Complainant's branch manager, Wilson Gaw, testified that:

Sometime in July or August 1990, appellant came to his store to procure construction supplies. After computing the total amount of the ordered materials, appellant issued a check. Appellant told Gaw about his (appellant's) big construction project and assured Gaw that the check appellant would issue as payment for the materials was as good as cash. Because of appellant's representation, Gaw accepted appellant's Security Bank and Trust Company (SBTC) Check No. 293232 post-dated October 1, 1990, in the amount of P254,037.00 corresponding to the amount of materials that appellant ordered. Thereafter, deliveries were made as evidenced by the following invoices<sup>[4]</sup> issued by private complainant:

INVOICE NO. & DATE	AMOUNT	RECEIVED BY
17442....9-8-90	P76,000.00	Ernie Conwi
15117....9-8-90	5,800.001	Nards A. Gabatin
15307....9-14- 90	7,643.00	N. A. Gabatin
15308....9-14- 90	151,554.00	unidentified person
15309....9-14- 90	3,040.00	Nards A. Gabatin
	P254,037.00	

The SBTC check paid by appellant was deposited by private complainant at the Rizal Commercial and Banking Corporation. But the check was dishonored as it was drawn against insufficient funds.

Another witness for the prosecution, Sylvia Gaerlan, testified that she was the current account bookkeeper of SBTC at Salcedo Village, Makati. She said that she called up appellant to inform him of the dishonor of said check, but it was only appellant's secretary who answered. The secretary in turn informed appellant of the check's dishonor.

Gaw said he made several verbal demands upon appellant to make good his check. Gaw claimed that when he went to see appellant and demanded payment from the latter, appellant said that he had no money. Next, the company sent a letter to appellant demanding payment of all his checks that bounced which amounted already to P1,657,483.61, including SBTC Check No. 293232. Even after the written demand, appellant still failed to redeem the bouncing checks.

Finally, the company filed several criminal cases against appellant because of the several bouncing checks he had issued. These criminal cases were filed in the different branches of the Regional Trial Court in Antipolo, Rizal. The present case involves only the abovesited SBTC check.

Appellant was arrested on February 7, 1991 pursuant to the order of arrest issued by the trial court. Upon application, appellant was allowed to post bail for his provisional liberty. Thereafter, on motion of the prosecution, the trial court directed the Commissioner of Immigration and Deportation to include appellant in its hold order list to prevent appellant from leaving the country.<sup>[5]</sup>

On the scheduled date of arraignment on March 13, 1991, appellant failed to appear and so the trial court ordered his immediate arrest. But in view of the valid reason manifested by appellant, the trial court recalled the warrant for appellant's arrest. Nonetheless, appellant failed to appear for his arraignment on July 10, 1991. Accordingly, the trial court issued an alias warrant for appellant's arrest and cancelled his bail bond in favor of the government. In the meantime, the case was archived until the appellant could be apprehended. On August 22, 1992, private complainant informed the trial court that appellant was being detained at the PNP Criminal Investigation Service field office in Cainta, Rizal in connection with other criminal cases filed against appellant. Based on said information, the trial court ordered the jail warden in PNP CIS in Cainta, Rizal to bring the appellant for the arraignment on October 21, 1992. Just the same, appellant failed to appear during said hearing.<sup>[6]</sup>

Later on, the police reported that appellant escaped from their detention center. On January 24, 1993, appellant was rearrested and then detained at the Rizal Provincial Jail. When he was finally arraigned on May 10, 1993, appellant pleaded not guilty to the charge.<sup>[7]</sup>

Testifying in his defense, appellant admitted issuing the check in question but vehemently denied having received the materials he ordered. Thus, he claimed he did not deposit the corresponding amount to fund the check. He declared that the persons who signed in the delivery receipts were not his authorized representatives. He also pointed out that all the invoices for the materials had a stamp marking them as paid for by MBTC (Metropolitan Bank and Trust Company) checks which were not his. He stated that Ernie Conwi, to whom the materials were delivered, had his own construction firm not in any way connected with his business.