

## SECOND DIVISION

[ G.R. No. 221836, August 14, 2019 ]

**ESTHER ABALOS Y PUROC, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### DECISION

**REYES, J. JR., J.:**

#### The Case

Petitioner Esther P. Abalos (petitioner) comes to this Court appealing<sup>[1]</sup> her conviction for the crime of Estafa rendered by the Court of Appeals (CA) in its Decision dated May 20, 2015,<sup>[2]</sup> in CA-G.R. CR No. 35633, which affirmed the indeterminate penalty of four years and two months of *prision correccional* as minimum to 20 years of *reclusion temporal* as maximum and actual damages of P232,500.00 imposed by the Regional Trial Court (RTC), but modified the legal interest at 6% per annum from finality of the decision until fully paid.

#### The Version of the Prosecution

In April 2011, petitioner, who introduced herself as "Vicenta Abalos," accompanied by Christine Molina (Molina), went to the office of private complainant Elaine D. Sembrano (Sembrano) at Manulife, Baguio City and offered to her two EastWest Bank checks for rediscounting.<sup>[3]</sup> The checks were signed by petitioner in Sembrano's office, as follows:

Check No.	Dated	Amount
0370031	May 3, 2011	P 17,500.00
0370032	June 1, 2011	<u>250,000.00</u>
		P 267,500.00 <sup>[4]</sup>

Sembrano agreed to rediscount the checks upon assurance of petitioner and her companion, Molina, that they were good checks.<sup>[5]</sup> Sembrano gave the amount of P250,000.00 less 7% as interest. Sometime later, she learned from friends that petitioner's name was Esther and not "Vicenta."<sup>[6]</sup> When Sembrano presented the checks for payment on due dates, the checks were dishonored.<sup>[7]</sup> Sembrano then engaged the services of Benguet Credit Collectors to collect from petitioner. Petitioner failed to make good the checks such that a demand letter was sent to petitioner which she received on October 23, 2011.<sup>[8]</sup> Despite the said demand,

petitioner made a promise to pay, but up to this date, nothing was received by Sembrano.<sup>[9]</sup> For failure to pay her loans, a complaint for estafa under Article 315 of the Revised Penal Code (RPC) was filed against petitioner.

### **The Version of the Defense**

Petitioner denied the accusations. She claimed that the checks were issued only as a collateral for a loan together with the title to a property in the name of "Vicenta Abalos."<sup>[10]</sup> She stated that she did not personally transact with Sembrano<sup>[11]</sup> and that it was Molina who transacted with her and she merely accompanied Molina to Sembrano's office in April 2011.<sup>[12]</sup> As a requirement for the release of the loan, petitioner was asked to present as collateral an original certificate of title and a check, which she agreed.<sup>[13]</sup> When she was informed that the loan was ready, she together with Molina proceeded to the office of Sembrano purposely to receive the money.<sup>[14]</sup> Before taking the money from Sembrano, petitioner was asked to sign a real estate mortgage offering the title as a collateral to the loan.<sup>[15]</sup> After she and Molina received the money from Sembrano, they went to a convenience store where Molina gave petitioner P100,000.00 and petitioner handed back to Molina P20,000.00 as commission.<sup>[16]</sup> Petitioner insists that the checks she issued were merely to serve as collateral for the loan and not for the purpose of rediscounting the same.<sup>[17]</sup>

### **The Ruling of the RTC**

On November 29, 2012, the RTC rendered a Decision<sup>[18]</sup> finding petitioner guilty, viz.:

WHEREFORE, all premises duly considered, the [c]ourt finds the accused, GUILTY as charged. Applying the provisions of the Indeterminate Sentence Law, there being no aggravating and mitigating circumstance, the accused is hereby sentenced to suffer the penalty of imprisonment of four (4) years and two (2) months of *prision correctional* as minimum to twenty (20) years of *reclusion temporal* as maximum.

The accused is likewise found to be civilly liable to pay the private complainant the amount of Php232,500.00 as and by way of actual damages, with legal interest thereon to be computed from the date of the filing of this case, until the same is fully paid.

SO ORDERED.<sup>[19]</sup>

### **The Ruling of the CA**

On appeal, the CA affirmed the conviction, but fixed the rate of interest at 6% per

annum, thus:

**WHEREFORE**, premises considered, the appeal is **DISMISSED**. The Decision dated November 29, 2012 of the Regional Trial Court, Branch 60, Baguio City, in Criminal Case No. 32571-R, finding [appellant] guilty of [Estafa] is **AFFIRMED with MODIFICATION** that appellant is directed to pay private complainant the amount of P232,500.00 as and by way of actual damages, with legal interest **at six percent (6%) per annum from finality of this Decision until fully paid**.

SO ORDERED.<sup>[20]</sup>

The CA is convinced that the false pretense of petitioner is apparent when she, together with her companion knowingly and intelligently misrepresented herself as "Vicenta Abalos" by showing to Sembrano a Transfer Certificate of Title in the name of Vicenta Abalos, a BIR ID Card, a Community Tax Certificate all bearing the name of Vicenta Abalos, and by signing the subject checks as "Vicenta Abalos." These pieces of evidence assured Sembrano that petitioner can make good the checks she issued as she has the means to do so prompting her to part with her money. The CA likewise ruled that mere issuance of a check and its subsequent non-payment is a *prima facie* evidence of deceit.

Dissatisfied, petitioner filed the instant appeal.

### **The Issue**

Petitioner submits for the Court's consideration the lone issue that —

**THE [CA] ERRED IN FINDING THAT PETITIONER IS GUILTY OF ESTAFA CONSIDERING THAT THE REAL TRANSACTION BETWEEN THE PARTIES, AS DEFINED BY LAW, IS NOT CRIMINAL IN NATURE, BUT CIVIL ONLY.**<sup>[21]</sup>

Petitioner insists that not all elements of estafa were established. The element of deceit and/or false pretenses are lacking because the issuance of the checks was not the factor that induced private complainant to grant the loan, but the intercession made by Molina and the interest to be earned on the money lent.<sup>[22]</sup> It was Molina who maneuvered the transaction with private complainant by assuring the latter that petitioner will pay the loan.<sup>[23]</sup>

Petitioner also zeroed-in on the irreconcilable conflict between Sembrano's affidavit and her testimony in open court. In her affidavit, Sembrano stated that the checks were offered to her for rediscounting, while her testimony in open court, she admitted that the checks were used for collaterals.<sup>[24]</sup> This inconsistency put doubt on the testimony of Sembrano, but strengthened petitioner's claim that the checks

were meant to be collaterals of the loan which are supposed to be encashed only upon non-payment.<sup>[25]</sup>

### **The Ruling of the Court**

As can be inferred from the records, petitioner was convicted of estafa under Article 315, paragraph 2(d) of the RPC,<sup>[26]</sup> which provides:

ART. 315. *Swindling (estafa)*. — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

x x x x

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

x x x x

(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. (As amended by R.A. [No.] 4885, approved June 17, 1967.)

This kind of estafa is committed by any person who shall defraud another by false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud. The elements are: (1) postdating or issuing a check in payment of an obligation contracted at the time the check was issued; (2) lack of sufficient funds to cover the check; (3) knowledge on the part of the offender of such circumstances; and (4) damage to the complainant.<sup>[27]</sup>

The prosecution was able to establish beyond reasonable doubt all the aforesaid elements of estafa.

There is no question that petitioner issued two checks in the total amount of P267,500.00 in payment for an obligation. The issued checks have insufficient funds as proven by the fact that they were dishonored for the reason "account closed." Because petitioner knew too well that she was not the owner of the check, petitioner had no knowledge whether the checks were sufficiently funded to cover the amount drawn against the checks. Petitioner did not inform Sembrano about the insufficiency/lack of funds of the checks. Thus, upon presentment for payment, the

checks were eventually dishonored causing damages to Sembrano in the total amount of P267,500.00,<sup>[28]</sup> as what was reflected in the issued checks.

What sets apart the crime of estafa from the other offense of this nature (*i.e.*, Batas Pambansa Bilang 22) is the element of deceit. Deceit has been defined as "the false representation of a matter of fact, whether by words or conduct by false or misleading allegations or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury."<sup>[29]</sup>

In *Juaquico v. People*<sup>[30]</sup> the Court reiterated that in the crime of estafa by postdating or issuing a bad check, deceit and damage are essential elements of the offense and have to be established with satisfactory proof to warrant conviction. To constitute estafa, deceit must be the efficient cause of the defraudation, such that the issuance of the check should be the means to obtain money or property from the payer<sup>[31]</sup> resulting to the latter's damage. In other words, the issuance of the check must have been the inducement for the surrender by the party deceived of his money or property.<sup>[32]</sup>

The element of deceit was established from the very beginning when petitioner misrepresented herself as Vicenta Abalos, the owner of the check. To fortify the misrepresentation, petitioner issued and signed the checks in front of Sembrano<sup>[33]</sup> presumably to show good faith on her part. Petitioner also showed Sembrano documents such as an Identification Card and Community Tax Certificate to prove that she is Vicenta Abalos. And lastly, she showed a transfer certificate of title of a land registered under the name of "Vicenta Abalos" presumably guaranteeing her capability to pay. As observed by the RTC, at the outset, petitioner's fraudulent scheme was already evident.

The misrepresentation of petitioner assured Sembrano that she is indeed dealing with Vicenta Abalos who has sufficient means and property, and the capacity to make good the issued checks. It is safe to say that Sembrano was induced to release the money to petitioner relying on the latter's false pretense and fraudulent act. Evidently, petitioner's act of issuing a worthless check belonging to another who appears to have sufficient means is the efficient cause of the deceit and defraudation. Were it not for the said circumstance, Sembrano would not have parted with her money. At any rate a *prima facie* presumption of deceit arises when the drawer of the dishonored check is unable to pay the amount of the check within three days from receipt of the notice of dishonor.<sup>[34]</sup>

In its last ditch effort to enfeeble the case against her, petitioner pointed out the inconsistency in the evidence of the prosecution specifically with the testimonies of Sembrano herself. In her affidavit, Sembrano stated that the checks were offered to her for rediscounting, while her testimony in open court, she admitted that the checks were used for collaterals.<sup>[35]</sup> For a discrepancy to serve as basis for acquittal, it must refer to significant facts vital to the guilt or innocence of the accused. An inconsistency, which has nothing to do with the elements of the crime, cannot be a ground to reverse a conviction.<sup>[36]</sup> The inconsistency referred to in this case does not attach upon the very element of the crime of estafa.