

FIRST DIVISION

[G.R. No. 157943, September 04, 2013]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GILBERT REYES WAGAS, ACCUSED-APPELLANT.**

D E C I S I O N

BERSAMIN, J.:

The Bill of Rights guarantees the right of an accused to be presumed innocent until the contrary is proved. In order to overcome the presumption of innocence, the Prosecution is required to adduce against him nothing less than proof beyond reasonable doubt. Such proof is not only in relation to the elements of the offense, but also in relation to the identity of the offender. If the Prosecution fails to discharge its heavy burden, then it is not only the right of the accused to be freed, it becomes the Court's constitutional duty to acquit him.

The Case

Gilbert R. Wagas appeals his conviction for *estafa* under the decision rendered on July 11, 2002 by the Regional Trial Court, Branch 58, in Cebu City (RTC), meting on him the indeterminate penalty of 12 years of *prision mayor*, as minimum, to 30 years of *reclusion perpetua*, as maximum.

Antecedents

Wagas was charged with *estafa* under the information that reads:

That on or about the 30th day of April, 1997, and for sometime prior and subsequent thereto, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, with intent to gain and by means of false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud, to wit: knowing that he did not have sufficient funds deposited with the Bank of Philippine Islands, and without informing Alberto Ligaray of that circumstance, with intent to defraud the latter, did then and there issue Bank of the Philippine Islands Check No. 0011003, dated May 08, 1997 in the amount of P200,000.00, which check was issued in payment of an obligation, but which check when presented for encashment with the bank, was dishonored for the reason "drawn against insufficient funds" and inspite of notice and several demands made upon said accused to make good said check or replace the same with cash, he had failed and refused and up to the present time still fails and refuses to do so, to the damage and prejudice of Alberto Ligaray in the amount aforestated.

CONTRARY TO LAW.^[1]

After Wagas entered a plea of *not guilty*,^[2] the pre-trial was held, during which the Defense admitted that the check alleged in the information had been dishonored due to insufficient funds.^[3] On its part, the Prosecution made no admission.^[4]

At the trial, the Prosecution presented complainant Alberto Ligaray as its lone witness. Ligaray testified that on April 30, 1997, Wagas placed an order for 200 bags of rice over the telephone; that he and his wife would not agree at first to the proposed payment of the order by postdated check, but because of Wagas' assurance that he would not disappoint them and that he had the means to pay them because he had a lending business and money in the bank, they relented and accepted the order; that he released the goods to Wagas on April 30, 1997 and at the same time received Bank of the Philippine Islands (BPI) Check No. 0011003 for P200,000.00 payable to cash and postdated May 8, 1997; that he later deposited the check with Solid Bank, his depository bank, but the check was dishonored due to insufficiency of funds;^[5] that he called Wagas about the matter, and the latter told him that he would pay upon his return to Cebu; and that despite repeated demands, Wagas did not pay him.^[6]

On cross-examination, Ligaray admitted that he did not personally meet Wagas because they transacted through telephone only; that he released the 200 bags of rice directly to Robert Cañada, the brother-in-law of Wagas, who signed the delivery receipt upon receiving the rice.^[7]

After Ligaray testified, the Prosecution formally offered the following: (a) BPI Check No. 0011003 in the amount of P200,000.00 payable to "cash;" (b) the return slip dated May 13, 1997 issued by Solid Bank; (c) Ligaray's affidavit; and (d) the delivery receipt signed by Cañada. After the RTC admitted the exhibits, the Prosecution then rested its case.^[8]

In his defense, Wagas himself testified. He admitted having issued BPI Check No. 0011003 to Cañada, his brother-in-law, not to Ligaray. He denied having any telephone conversation or any dealings with Ligaray. He explained that the check was intended as payment for a portion of Cañada's property that he wanted to buy, but when the sale did not push through, he did not anymore fund the check.^[9]

On cross-examination, the Prosecution confronted Wagas with a letter dated July 3, 1997 apparently signed by him and addressed to Ligaray's counsel, wherein he admitted owing Ligaray P200,000.00 for goods received, to wit:

This is to acknowledge receipt of your letter dated June 23, 1997 which is self-explanatory. It is worthy also to discuss with you the environmental facts of the case for your consideration, to wit:

1. It is true that I obtained goods from your client worth P200,000.00 and I promised to settle the same last May 10, 1997, but to no avail. On this point, let me inform you that I sold my real property to a buyer in Manila, and promised to pay the consideration on the same date as I promised with your client. Unfortunately, said buyer

likewise failed to make good with such obligation. Hence, I failed to fulfill my promise resultant thereof. (sic)

2. Again, I made another promise to settle said obligation on or before June 15, 1997, but still to no avail attributable to the same reason as aforementioned. (sic)
3. To arrest this problem, we decided to source some funds using the subject property as collateral. This other means is resorted to for the purpose of settling the herein obligation. And as to its status, said funds will be rele[a]sed within thirty (30) days from today.

In view of the foregoing, it is my sincere request and promise to settle said obligation on or before August 15, 1997.

Lastly, I would like to manifest that it is not my intention to shy away from any financial obligation.

x x x x

Respectfully yours,

(SGD.)

GILBERT R. WAGAS^[10]

Wagas admitted the letter, but insisted that it was Cañada who had transacted with Ligaray, and that he had signed the letter only because his sister and her husband (Cañada) had begged him to assume the responsibility.^[11] On redirect examination, Wagas declared that Cañada, a seafarer, was then out of the country; that he signed the letter only to accommodate the pleas of his sister and Cañada, and to avoid jeopardizing Cañada's application for overseas employment.^[12] The Prosecution subsequently offered and the RTC admitted the letter as rebuttal evidence.^[13]

Decision of the RTC

As stated, the RTC convicted Wagas of *estafa* on July 11, 2002, viz:

WHEREFORE, premises considered, the Court finds the accused GUILTY beyond reasonable doubt as charged and he is hereby sentenced as follows:

1. To suffer an indeterminate penalty of from twelve (12) years of pris[i]on mayor, as minimum, to thirty (30) years of *reclusion perpetua* as maximum;
2. To indemnify the complainant, Albert[o] Ligaray in the sum of P200,000.00;
3. To pay said complainant the sum of P30,000.00 by way of attorney's fees; and

4. the costs of suit.

SO ORDERED.^[14]

The RTC held that the Prosecution had proved beyond reasonable doubt all the elements constituting the crime of *estafa*, namely: (a) that Wagas issued the postdated check as payment for an obligation contracted at the time the check was issued; (b) that he failed to deposit an amount sufficient to cover the check despite having been informed that the check had been dishonored; and (c) that Ligaray released the goods upon receipt of the postdated check and upon Wagas' assurance that the check would be funded on its date.

Wagas filed a motion for new trial and/or reconsideration,^[15] arguing that the Prosecution did not establish that it was he who had transacted with Ligaray and who had negotiated the check to the latter; that the records showed that Ligaray did not meet him at any time; and that Ligaray's testimony on their alleged telephone conversation was not reliable because it was not shown that Ligaray had been familiar with his voice. Wagas also sought the reopening of the case based on newly discovered evidence, specifically: (a) the testimony of Cañada who could not testify during the trial because he was then out of the country, and (b) Ligaray's testimony given against Wagas in another criminal case for violation of *Batas Pambansa Blg. 22*.

On October 21, 2002, the RTC denied the motion for new trial and/or reconsideration, opining that the evidence Wagas desired to present at a new trial did not qualify as newly discovered, and that there was no compelling ground to reverse its decision.^[16]

Wagas appealed directly to this Court by notice of appeal.^[17]

Prior to the elevation of the records to the Court, Wagas filed a petition for admission to bail pending appeal. The RTC granted the petition and fixed Wagas' bond at P40,000.00.^[18] Wagas then posted bail for his provisional liberty pending appeal.^[19]

The resolution of this appeal was delayed by incidents bearing on the grant of Wagas' application for bail. On November 17, 2003, the Court required the RTC Judge to explain why Wagas was out on bail.^[20] On January 15, 2004, the RTC Judge submitted to the Court a so-called *manifestation and compliance* which the Court referred to the Office of the Court Administrator (OCA) for evaluation, report, and recommendation.^[21] On July 5, 2005, the Court, upon the OCA's recommendation, directed the filing of an administrative complaint for simple ignorance of the law against the RTC Judge.^[22] On September 12, 2006, the Court directed the OCA to comply with its July 5, 2005 directive, and to cause the filing of the administrative complaint against the RTC Judge. The Court also directed Wagas to explain why his bail should not be cancelled for having been erroneously granted.^[23] Finally, in its memorandum dated September 27, 2006, the OCA manifested to the Court that it had meanwhile filed the administrative complaint against the RTC Judge.^[24]

Issues

In this appeal, Wagas insists that he and Ligaray were neither friends nor personally known to one other; that it was highly incredible that Ligaray, a businessman, would have entered into a transaction with him involving a huge amount of money only over the telephone; that on the contrary, the evidence pointed to Cañada as the person with whom Ligaray had transacted, considering that the delivery receipt, which had been signed by Cañada, indicated that the goods had been "Ordered by ROBERT CAÑADA," that the goods had been received by Cañada in good order and condition, and that there was no showing that Cañada had been acting on behalf of Wagas; that he had issued the check to Cañada upon a different transaction; that Cañada had negotiated the check to Ligaray; and that the element of deceit had not been established because it had not been proved with certainty that it was him who had transacted with Ligaray over the telephone.

The circumstances beg the question: did the Prosecution establish beyond reasonable doubt the existence of all the elements of the crime of *estafa* as charged, as well as the identity of the perpetrator of the crime?

Ruling

The appeal is meritorious.

Article 315, paragraph 2(d) of the *Revised Penal Code*, as amended, provides:

Article 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.

In order to constitute *estafa* under this statutory provision, the act of postdating or issuing a check in payment of an obligation must be the efficient cause of the defraudation. This means that the offender must be able to obtain money or property from the offended party by reason of the issuance of the check, whether dated or postdated. In other words, the Prosecution must show 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 offender.^[25]