

FIRST DIVISION

[G.R. No. 166810, June 26, 2008]

**JUDE JOBY LOPEZ, PETITIONER, V.S. PEOPLE OF THE
PHILIPPINES RESPONDENT.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

This is a petition for review on certiorari filed by JUDE JOBY LOPEZ from the decision^[1] dated January 12, 2005 of the Court of Appeals (CA), Ninth Division, in CA-G.R. CR No. 27057, affirming an earlier decision^[2] of the Regional Trial Court (RTC), Branch 53, Sorsogon, Sorsogon, which found petitioner guilty beyond reasonable doubt of the crime of Estafa as defined under Article 315, par. 2(d) of the Revised Penal Code, as amended by Republic Act (R.A.) No. 4885 and sentenced him to suffer an indeterminate penalty of six (6) years and one (1) day of *prision mayor*, as minimum, to twelve (12) years and one (1) day of *reclusion temporal*, as maximum, and to indemnify the private complainant in the amount of Twenty Thousand Pesos (P20,000.00) plus costs.

On October 6, 1998, in the RTC of Sorsogon, an Information for estafa was filed against herein petitioner Jude Joby G. Lopez which was docketed in as Criminal Case No. 98-4690. The said Information alleged:

That on or about March 23, 1998, in the municipality of Sorsogon, province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to defraud, did then and there, willfully, unlawfully and feloniously, make, draw, and issue to apply on account and/or for value received a DBP Check No. 0859279 payable to EFREN R. ABLES in the amount of TWENTY THOUSAND PESOS (P20,000.00), Philippine Currency, knowing fully well that at the time of issue, accused did not have sufficient fund and/or his account is already closed with the drawee bank and that upon presentment of the check for payment on May 27, 1998, the same was dishonored and/or refused payment by the drawee bank for the reason that the account of the said accused is already closed and/or without sufficient fund and despite repeated demands after receipt of notice of said dishonor and thereafter made by Efren R. Ables, accused refused and still refuses to pay the latter, to his damage and prejudice in the aforementioned amount of P20,000.00, Philippine Currency.

Contrary to law. ^[3]

When arraigned on April 13, 1999, petitioner pleaded "Not Guilty" ^[4] to the offense charged. During the trial on the merits, the prosecution presented the testimonies of private complainant Efren R. Ables and Valentin Luzuriaga, a bank teller of the

Development Bank of the Philippines (DBP). The prosecution presented Exhibits "A" to "E" with submarkings consisting of the check issued by the petitioner, the demand letter sent by private complainant to petitioner and bank records to show that the said check was dishonored as the account was closed even before the said check was issued. All of the aforesaid exhibits were admitted by the trial court in its Order dated August 27, 2001. On the other hand, petitioner did not present any witness but only offered his documentary evidence, consisting of: Exh. 1- the said demand letter of the private complainant; Exh. 1-A - stamp "Return to Sender" on the envelope of Exh. 1; Exh. 2 - the Transcript of Stenographic Notes (TSN of the Hearing on December 20, 1999); Exh. 2-a, page 9 of the said TSN; and Exh. 2-b, the No. 5 question and answer in Exh. 2.

The trial court convicted the accused (herein petitioner) of the crime of estafa penalized by Article 315, par. 2(d) of the Revised Penal Code as amended by R.A. No. 4885 in its decision dated June 17, 2002. The dispositive portion of the decision reads:

WHEREFORE, the Court finds the accused Jude Joby G. Lopez guilty beyond reasonable doubt of the crime of ESTAFA defined and penalized under Art. 315, par. 2 (d) of the Revised Penal Code as amended by R.A. 4885 and taking into consideration the Indeterminate Sentence Law, the Court hereby sentences him to suffer an imprisonment of Six (6) years and One (1) day of *prision mayor* as minimum to Twelve (12) years and One (1) day of *reclusion temporal* as maximum and to indemnify the private complainant, Efren Ables in the amount of P20,000.00 Philippine currency and to pay the costs.

SO ORDERED.^[5]

In his Motion for Reconsideration, petitioner, citing the case of *Pacheco v. Court of Appeals* (G.R. No. 126670, December 2, 1999, 319 SCRA 595), argued that Ables knew at the time of the issuance of the check that accused had no funds in the bank and therefore, the element of deceit was absent. The said Motion for Reconsideration was denied by the trial court.

Petitioner appealed to the CA, reiterating his argument that the element of deceit was not proven and that the lower court imposed excessive penalty. The CA rendered its Decision on January 12, 2005 in *CA-G.R. CR No. 27057* affirming *in toto* the decision of the trial court in this case.

Hence, the petitioner interposed this appeal, contending that the CA erred -

1. In affirming the decision of the lower court convicting the accused of the crime of estafa.
2. In not applying the provisions of the negotiable instruments law.
3. In not ruling on the excessive penalty imposed by the trial court.

We find no merit in the instant appeal.

Article 315, paragraph 2(d), of the Revised Penal Code, as amended by R.A. 4885 penalizes estafa when committed as follows:

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

xxx

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 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.

By settled jurisprudence, the elements of the crime of estafa, as defined in the above quoted provision of law, are as follows: (1) the offender has postdated or issued a check in payment of an obligation contracted at the time of the postdating or issuance; (2) at the time of postdating or issuance of said check, the offender has no funds in the bank or the funds deposited are not sufficient to cover the amount of the check; and (3) the payee has been defrauded. Damage and deceit are essential elements of the offense and must be established with satisfactory proof to warrant conviction, while the false pretense or fraudulent act must be committed prior to, or simultaneous with, the issuance of the bad check. 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.^[6]

Further it is settled that it is criminal fraud or deceit in the issuance of a check which is made punishable under the Revised Penal Code, and not the nonpayment of a debt. Deceit is 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. Concealment which the law denotes as fraudulent implies a purpose or design to hide facts which the other party ought to have. The postdating or issuing of a check in payment of an obligation when the offender had no funds in the bank or his funds deposited therein are not sufficient to cover the amount of the check is a false pretense or a fraudulent act.^[7]

The trial court and the CA found these elements of the crime charged present in this case. There is no dispute as to the findings of fact of the CA that respondent gave the sum of P20,000.00 to the accused in exchange for a postdated check in the same amount issued by petitioner and that the said check was dishonored by the bank. We quote the appellate court's factual findings, which sustained the trial court's decision as follows:

Indisputably, on March 23, 1998, appellant issued and postdated a check with a value equivalent to the sum of P20,000.00 which he obtained from Efren. He accomplished deceit when he led Efren to believe that, prior to, or simultaneous with, their arrangement, the subject check is good upon its maturity on April 30, 1998. However, the check turned out to be worthless because, when Efren deposited it with the Legaspi Savings Bank, the same was dishonored due to "Account Closed". Evidently, Efren was prejudiced and damaged by appellant's fraudulent ploy.^[8]