

SECOND DIVISION

[G.R. No. 165275, September 23, 2008]

**GORETTI ONG, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,
RESPONDENT.**

DECISION

CARPIO MORALES, J.:

Goretti Ong (petitioner) was, by Information dated August 10, 1995, charged before the Regional Trial Court (RTC) of Manila for Estafa, without specification under what mode in Article 315 of the Revised Penal Code the offense was allegedly committed. The Information alleged as follows:

That on or about December 12, 1994, in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully and feloniously **defraud ROSA CABUSO** in the following manner, to wit: the said accused, **well knowing that [s]he did not have sufficient funds** in the bank, and **without informing the said Rosa Cabuso of such fact,** drew, made out and **issued** to the latter the following **checks**, to wit:

Allied Bank Check No. 76000242 dated January 13, 1995 in the amount of P76,654.00;

Banco de Oro Check No. 026265 dated January 15, 1995 in the amount of P76,654.00;

PS Bank Check No. 000928 dated January 18, 1995 in the amount of P100,000.00;

Banco de Oro Check No. 026270 dated January 15, 1995 in the amount of P100,000.00;

Banco de Oro Check No. 026266 dated January 20, 1995 in the amount of P76,654.00;

Banco de Oro Check No. 026267 dated January 25, 1995 in the amount of P96,494.00;

PS Bank Check No. 000927 dated January 31, 1995 in the amount of P96,494.00;

Banco de Oro Check No. 026271 dated January 31, 1995, in the amount of P100,000.00;

Banco de Oro Check No. 26268 dated January 31, 1995 in the amount of P76,654.00; and

PS Bank Check No. 000950 dated January 31, 1995 in the amount of P144,000.00.

all in the total amount of P923,110.00, in payment of assorted pieces of jewelry which the said accused ordered, purchased and received from the said complainant on the same day; that upon presentment of the said checks to the bank for payment, the same were dishonored and payment thereof refused for the reason "ACCOUNT CLOSED" and said accused, **notwithstanding due notice to her by said complainant of such dishonor of the said checks, failed and refused and still fail[s] and refuse[s] to deposit the necessary amount** to cover the amount of the checks, to the **damage and prejudice of the said Rosa Cabuso** in the aforesaid amount of P923,110.00, Philippine [c]urrency.^[1] (Emphasis and underscoring supplied)

Petitioner had for years been buying jewelry from Gold Asia which is owned and operated by the family of Rosa Cabuso (the private complainant). While she normally bought jewelry on cash basis, she was allowed to issue postdated checks to cover the jewelry she bought in December 1994 up to February 1995, upon her assurance that the checks would be funded on their due dates. When, on maturity, the checks were deposited, they were returned with the stamp "Account Closed."

Hence, petitioner was indicted for Estafa. She was likewise indicted for 10 counts of violation of B.P. 22 before the RTC of Manila, docketed as Criminal Case Nos. 213645-CR to 213654-CR.

The evidence presented by the prosecution in the Estafa case consisted of, *inter alia*, the 10 dishonored checks and the transcript of stenographic notes^[2] taken during the trial of the B.P. 22 cases, which transcripts included those of the testimonies of representatives of the drawee banks Allied Bank, PSBank and Banco de Oro.

Petitioner, denying having intended to defraud the private complainant, gave her side of the case as follows:

On December 12, 1994, all the personal checks she had issued matured at the same time, but as her business was faring poorly, she was not able to fund those which she issued to the private complainant. On her request, however, the private complainant allowed her to pay on installment the amounts covered by the checks and she had in fact paid a total of P338,250, a fact admitted by the prosecution.

By Decision^[3] of March 31, 2003, Branch 8 of the Manila RTC convicted petitioner of Estafa under Article 315, paragraph 2(a) of the Revised Penal Code in this wise:

While the parties are of the impression that the accused is charged with and is being tried for the crime of estafa committed by means of the issuance of bouncing checks [Art. 315, 2(d) of the Revised Penal Code], this Court is of the opinion that **the Information sufficiently charges estafa through false pretenses under Paragraph 2(a)** of the same article which provides:

"Art. 315. Swindling (estafa). - Any person who shall defraud another . . .

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:

a) By using a fictitious name or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; or by means of similar deceits."^[4] (Emphasis and underscoring supplied)

Thus the trial court disposed:

WHEREFORE, the Court hereby renders judgment finding accused Goretti Ong GUILTY BEYOND REASONABLE DOUBT of the crime of Estafa defined and penalized under Article 315, paragraph 2(a) of the Revised Penal Code and hereby imposes on said accused the penalty of TWELVE (12) YEARS imprisonment and to pay private complainant Rosa Cabuso the amount of FIVE HUNDRED EIGHTY FOUR THOUSAND EIGHT HUNDRED SIXTY (P584,860.00) PESOS and cost of suit. ^[5] (Underscoring supplied)

Petitioner challenged the trial court's decision before the Court of Appeals, raising the issue of whether she could be convicted of Estafa under Article 315, paragraph 2(a) of the Revised Penal Code when she was, in the Information, charged of Estafa under Article 315, paragraph 2(d) of the same Code. She additionally raised the following issues:

x x x x

2. Whether or not the decision of the trial court is valid even if it failed to comply with the provisions of the indeterminate sentence law;
3. Whether or not the accused-appellant can be convicted of the crime of estafa despite the failure of the prosecution to prove her guilt beyond reasonable doubt["]."^[6] (Underscoring supplied)

The Court of Appeals affirmed the conviction on appeal but modified the penalty and the amount of indemnity,^[7] disposing as follows:

WHEREFORE, premises considered, the present appeal is hereby DISMISSED for lack of merit. The appealed decision dated March 31, 2003 of the trial court in Criminal Case No. 95-144421 is hereby AFFIRMED with MODIFICATION in that the accused-appellant is hereby instead sentenced to suffer an indeterminate prison term of four (4) years and two (2) months of *prision correccional*, as minimum, to twenty (20) years of *reclusion temporal* as maximum, and to indemnify the complaining witness in the amount of P585,514.00.

With costs against the accused-appellant.^[8]