

## FIRST DIVISION

[ G.R. No. 157039, October 01, 2004 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JOSEFINA M. DIMALANTA, APPELLANT.**

### DECISION

**YNARES-SATIAGO, J.:**

This is an appeal from the decision of the Regional Trial Court of Caloocan City, Branch 121, in Criminal Case No. C-58083 (99), which disposed of the case thus:

WHEREFORE, premises considered, this Court finds accused JOSEFINA M. DIMALANTA GUILTY beyond reasonable doubt of the crime of ESTAFA and sentences her to suffer the penalty of imprisonment of 30 years of RECLUSION PERPETUA and to pay the private complainant Elvira D. Abarca the sum of P383,826.00.

With costs.

SO ORDERED.<sup>[1]</sup>

On November 10, 1999, appellant was charged with Estafa under Article 315, paragraph 2 (d) of the Revised Penal Code, as amended by Presidential Decree No. 818, in an Information which reads:

That sometime during the month of October, 1998 in Caloocan City, MM. and within the jurisdiction of this Honorable Court, the above-named accused, after misrepresentation that she has more than enough fund, defrauded and deceived one, ELVIRA D. ABARCA in the following manner, to wit: said accused purchased and received assorted jewelries from herein complainant in the total amount of P408,826.00 and in payment thereof, accused simultaneously issued the following Panasaid [should read: Panasia] Banking, Inc. checks, to wit:

Check No.	Date	Amount
0002598	Nov. 30, 1998	P 37,166.00
0020952	Dec. 15, 1998	37, 166.00
0020953	Dec. 31, 1998	37, 166.00
0020954	Jan. 15, 1999	37, 166.00
0020956	Jan. 31, 1999	37, 166.00
0020957	Feb. 15, 1999	37, 166.00
0020958	Feb. 28, 1999	37, 166.00
0020959	Mar. 15, 1999	37, 166.00
0020960	Mar. 31, 1999	37, 166.00
0020961	Apr. 15, 1999	37, 166.00
0020962	Apr. 30, 1999	37, 166.00

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when said accused knew fully well that at the time the said checks were not covered with sufficient funds in said bank and would not have such fund even on the date stated on the faces thereof, and when the said checks were presented to the drawee bank for encashment, the same were dishonored for the reason "ACCOUNT CLOSED" and despite due notice as required by Republic Act 4885 and further amended by PD 818 and despite repeated demands, did then and there willfully, unlawfully and feloniously refuse and fail to make good her checks and still refused and fails to do so, to the damage and prejudice of herein complainant ELVIRA D. ABARCA in the aforestated amount of P408,826.00.

Contrary to law.<sup>[2]</sup>

On January 24, 2000, appellant, assisted by counsel *de officio*, was arraigned. She entered a plea of "not guilty."<sup>[3]</sup> Trial on the merits followed in due course.

The evidence for the prosecution disclosed that in the first week of October 1998, appellant, who was then employed at the Caloocan City Engineer's Office, called up complainant Elvira D. Abarca on the telephone to express her desire to purchase jewelry. Complainant went to appellant's house, located at No. 89 P. Jacinto Street, Caloocan City, where the latter purchased twelve pairs of jewelry. In payment thereof, appellant issued twelve postdated checks with the representation that the same will be sufficiently funded on their respective maturity dates.<sup>[4]</sup>

The first check issued by appellant was honored and paid by the drawee bank. However, the eleven checks, which are enumerated in the Information, were all returned unpaid by the drawee bank for the reason that appellant's account was closed.<sup>[5]</sup> Thus, on May 28, 1999, complainant's counsel wrote a letter to appellant informing her of the dishonor of the eleven checks and demanding payment of the value of the checks within five banking days from receipt thereof.<sup>[6]</sup> The letter was sent to appellant by registered mail on June 7, 1999.<sup>[7]</sup>

Appellant failed to pay the value of the checks despite the lapse of the five-day period contained in the demand letter. On June 21, 1999, appellant filed with the Prosecutor's Office a complaint charging appellant with the crimes of Estafa and Violation of *Batas Pambansa Blg. 22*.<sup>[8]</sup>

In her defense, appellant denied that she purchased jewelry from complainant, saying that she could not afford them. She alleged that it was complainant who approached her asking for help in selling jewelry. In turn, appellant asked her friend, Levinia Maranan, to look for buyers for the jewelry. Appellant and complainant agreed that Maranan will sell the jewelry and, upon the latter's confirmation that the items had been sold, appellant shall deliver to complainant the postdated checks in payment therefor. They further agreed that the unsold pieces of jewelry shall be returned to complainant.<sup>[9]</sup>

In the middle of September 1998, complainant delivered to appellant the pieces of jewelry to be sold, which were then picked up by Maranan. After one week, appellant issued to complainant postdated checks representing the purchase price of

the sold jewelry, with the understanding that Maranan will fund the same. Maranan was able to remit to appellant money to cover the first check, hence it was honored by the drawee bank.<sup>[10]</sup>

Maranan failed to fund the second check. In order to cover its amount, appellant gave complainant P25,000.00 out of her own money as partial satisfaction. Subsequently, Maranan, who had apparently encountered financial problems, went into hiding. As a consequence, the rest of appellant's checks were dishonored.<sup>[11]</sup>

On October 16, 2002, the trial court rendered the appealed decision convicting appellant of Estafa.

In the instant appeal, appellant alleged that the Regional Trial Court committed reversible errors:

I

IN FINDING APPELLANT JOSEFINA M. DIMALANTA GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF ESTAFA;

II

IN SENTENCING HER TO SUFFER THE PENALTY OF IMPRISONMENT OF 30 YEARS OF *RECLUSION PERPETUA*; AND

III

IN ORDERING HER TO PAY COMPLAINANT ABARCA THE SUM OF P383,826.00.<sup>[12]</sup>

The Office of the Solicitor General thereafter filed a Manifestation and Motion in Lieu of Appellee's Brief, recommending that a judgment of acquittal be rendered in Criminal Case No. C-58083 (99) without prejudice to appellant's civil liability as found by the trial court.<sup>[13]</sup>

The appeal has merit.

Appellant was charged with and convicted of Estafa under Article 315, paragraph 2 (d) of the Revised Penal Code, as amended by Republic Act No. 4885, defined as follows:

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

xxx xxx 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

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.

XXX XXX XXX.

Presidential Decree No. 818 amended Article 315 of the Revised Penal Code insofar as the penalties for felonies under paragraph 2 (d) are concerned, *viz*:

SECTION 1. Any person who shall defraud another by means of false pretenses or fraudulent acts as defined in paragraph 2(d) of Article 315 of the Revised Penal Code, as amended by Republic Act No. 4885, shall be punished by:

*1st.* The penalty of *reclusión temporal* if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos but the total penalty which may be imposed shall in no case exceed thirty years. In such cases, and in connection with the accessory penalties which may be imposed under the Revised Penal Code, the penalty shall be termed *reclusión perpetua*;

*2nd.* The penalty of *prisión mayor* in its maximum period, if the amount of the fraud is over 6,000 pesos but does not exceed 12,000 pesos;

*3rd.* The penalty of *prisión mayor* in its medium period, if such amount is over 200 pesos but does not exceed 6,000 pesos; and

*4th.* By *prisión mayor* in its minimum period, if such amount does not exceed 200 pesos.

The elements of this form of Estafa 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>[14]</sup>

Damage and deceit are essential elements of the offense and must be established with satisfactory proof to warrant conviction. The false pretense or fraudulent act must be committed prior to or simultaneously with the issuance of the bad check.

<sup>[15]</sup> Thus, 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.<sup>[16]</sup>

In the case at bar, the prosecution failed to establish beyond a shadow of a doubt that appellant employed deceit. Its evidence was overcome by the defense's proof that the pieces of jewelry were not purchased by appellant for her own use; rather the same were merely given to her for resale. This much is admitted by complainant, to wit:

ATTY. QUIROZ:

Q. Is it not a fact, Madam Witness, that it was your agreement