

THIRD DIVISION

[G.R. No. 136487, December 14, 2001]

**PIO TIMBAL, PETITIONER, VS. HON. COURT OF APPEALS AND
PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

DECISION

VITUG, J.:

A husband was held by the court *a quo* accountable for estafa through false pretense on account of a check issued by his wife.

Petitioner Pio Timbal and his wife Maritess Timbal were charged with the crime of estafa before the Regional Trial Court, Branch 216, of Quezon City. The accusatory Information under which the spouses were charged read:

"That on or about the 2nd day of February 1994, in Quezon City, Philippines, the said accused, conspiring together, confederating with and mutually helping each other, did, then and there, wilfully, unlawfully and feloniously defraud one JUDY I. BIGORNIA in the following manner, to wit: the said accused, pursuant to their conspiracy, well knowing that accused MARITESS TIMBAL did not have sufficient funds in the bank and without informing the said offended party of such fact, drew, made out and issued to the latter, a Capitol Bank Check No. 096700 postdated February 22, 1994 payable to the order of CASH in the amount of P80,716.00, Philippine Currency, simultaneously with the receipt of hog carcasses they purchased from the said offended party, that upon presentation of said check to the bank for payment, the same was dishonored and payment thereof refused for the reason "Account Closed" and said accused, notwithstanding due notice to said accused Maritess Timbal by the said offended party, Judy I. Bigornia, of such dishonor of said check, failed and refused and still fails and refuses to deposit the necessary amount to cover the amount of the check, to the damage and prejudice of the said offended party, Judy I. Bigornia, in the aforesaid amount of P80,716.00, Philippine currency."^[1]

After the corresponding warrants of arrest were issued against the couple, petitioner Pio Timbal posted a surety bond but Maritess Timbal remained at large.

The evidence for the prosecution would tend to establish that on 02 February 1994, Judy I. Bigornia delivered hog meat to the spouses Timbal at their stall located at the Farmer's Market, Cubao, Quezon City. In payment, Maritess Timbal issued in favor of Bigornia Capitol Bank Check No. 096700, dated 22 February 1994, in the amount of P80,716.00. Petitioner was present when the check was issued and handed over by his wife Maritess to Bigornia. When the latter presented the check to the bank for encashment, it was dishonored on the ground that, as early as 15 February 1994, the account against which the instrument was drawn had been

closed.

In his defense, petitioner contended that he had no active participation in the business of his wife and claimed that when the check was issued by his wife he was manning his own restaurant located at Fairview, Quezon City, and that, since 22 February 1994, he had not heard from her.

On 29 March 1996, after trial, the Regional Trial Court of Quezon City rendered judgment convicting petitioner of the crime charged; it concluded:

"WHEREFORE, in view of the foregoing, accused PIO TIMBAL is hereby found guilty beyond reasonable doubt of the crime of Estafa penalized under Article 315, par. 2(d) of the Revised Penal Code and he is hereby sentenced to suffer an indeterminate sentence of imprisonment of from 6 years and 1 day of Prison Mayor as minimum to 13 years of Reclusion Temporal as maximum.

"Further, he is hereby condemned to pay Mrs. Judy I. Bigornia the sum of P80,716.00, the unpaid value of the bouncing check issued by his co-accused, Maritess Timbal, with costs."^[2]

Aggrieved, petitioner appealed the decision of the trial court to the Court of Appeals. In its now assailed decision, the appellate court affirmed *in toto* the judgment of the trial court. The appellate court rejected petitioner's defense of denial and *alibi* and ruled that for this defense to prosper, it must be shown that the accused could not have been physically present at the crime scene at the time of the incident. It agreed with the trial court that there was conspiracy between petitioner and his wife to defraud Bigornia.

Hence, the instant petition.

Reiterating the defense he has raised before the courts below, petitioner maintains his innocence and argues that his mere presence at the time of the issuance by his wife of the dishonored check, even if true, would not be sufficient to establish the existence of conspiracy absent any piece of evidence that might indicate his having taken part, enticed or persuaded Bigornia to receive the check in payment for the goods delivered by her.

The petition has merit.

Article 315, paragraph 2(d), of the Revised Penal Code, as amended by Republic Act 4885, for which petitioner has been indicted and convicted, penalizes estafa when committed -

"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 x 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.