

THIRD DIVISION

[G.R. No. 133028, July 10, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MEYNARD PANGANIBAN, ACCUSED-APPELLANT.**

D E C I S I O N

GONZAGA-REYES, J.:

Presented before us is an appeal from the decision of Branch 136, Regional Trial Court of Makati City^[1] convicting accused-appellant of estafa and sentencing him to *reclusion perpetua* based on the provisions of Article 315, paragraph 2(d) of the Revised Penal Code, as amended by Presidential Decree No. 818.

The Information under which accused-appellant was charged reads:

That on or about the 15th day of January, 1994 in the Municipality of Makati, Metro Manila, Philippines, the above-named accused, by means of false pretenses or fraudulent acts, executed prior to or simultaneously with the commission of fraud, did then and there willfully, unlawfully and feloniously make, draw and issue to complainant, La Perla Sugar Export Corporation, herein represented by Imelda Bernardino, PNB Check No. 009387 postdated January 18, 1994 in the amount of P3,425,000.00 in exchange for 5,000 bags of sugar which he purchased from complainant, knowing fully well that he had no sufficient funds or credit with the drawee bank to cover the value of the aforementioned checks, such that when said check was presented for payment with the drawee bank, the same was dishonored and returned for the reason "Stop Payment" or would have been dishonored for insufficiency of funds or credit had not the said accused, without any valid reason, ordered the drawee bank to stop payment thereof, and that despite demands made upon the accused to make good said check and/or to pay the cash equivalent thereof, said accused failed and refused and still fails and refuses to pay the amount, to the damage and prejudice of complainant.

CONTRARY TO LAW.^[2]

Accused-appellant entered a plea of "Not Guilty" during arraignment. On November 9, 1994, pre-trial was held during which the following facts were stipulated upon: (1) accused-appellant purchased from private complainant, La Perla Sugar Export Corporation (hereafter, "La Perla") 5,000 bags of refined sugar valued at P3,425,000.00; (2) to effect delivery of the purchased sugar to accused-appellant, La Perla through its employee Imelda Bernardino issued to accused-appellant Delivery Order No. 9247 dated January 15, 1994^[3] addressed to Batangas Sugar Refinery, Inc., Balayan, Batangas, directing the latter to deliver to bearer 5,000 bags of refined sugar in 50 kilo bags, chargeable against La Perla's sugar deposit with

said refinery; (3) in payment of the aforesaid 5,000 bags of refined sugar, accused-appellant issued to La Perla a Philippine National Bank ("PNB")-Balayan Branch Check No. 009387 dated January 18, 1994^[4] in the amount of P3,425,000.00; (4) the check was deposited by La Perla in its current account with Equitable Banking Corporation-Legaspi Village Branch in Makati City, but the same was dishonored by the drawee bank (PNB-Balayan Branch) for the reason "Payment Stopped"; (4) accused-appellant or his representative withdrew 5,000 bags of refined sugar from Batangas Sugar Refinery, Inc. pursuant to Delivery Order No. 9247; and (5) notwithstanding demands, accused-appellant was only able to make good on his obligation under the aforesaid check to the amount of P267,064.14.^[5]

Thereafter, trial on the merits ensued and the prosecution presented Imelda Bernardino, a marketing assistant of La Perla, as its first witness. Bernardino testified that she was the one who sold to accused-appellant 5,000 bags of refined sugar valued at P3,425,000.00; that she gave to accused-appellant Delivery Order No. 9247 dated January 15, 1994 and received by way of payment PNB Check No. 009387 dated January 15, 1994 from accused-appellant; that this transaction took place at the La Perla office at 115 Y.L. Holdings Building, Herrera corner Salcedo Streets, Legaspi Village, Makati City, in the presence of accused-appellant's wife Winifreda Garcia Panganiban and accused-appellant's secretary, Minda Anib. The receipt for Delivery Order No. 9247 was signed by Minda Anib upon the instruction of accused-appellant.

Bernardino described the transaction between accused-appellant and La Perla as a "sale on a cash basis" or a "cash sale", which means that the Delivery Order authorizing withdrawal of sugar from Batangas Sugar Refinery was handed over simultaneously with the delivery of the check in payment of the sugar^[6] --- the goods subject of said Delivery Order are then considered "out of sale", or considered already sold by La Perla.^[7] Thus, Bernardino maintained, the reason which compelled La Perla to part with its Delivery Order was accused-appellant's issuance of the check.^[8]

On January 19, 1994, La Perla deposited accused-appellant's check with its current account in Equitable Bank in Legaspi Village, Makati City. The stop-payment advice was received by the drawee bank, PNB-Balayan Branch, in the afternoon of January 21, 1994 and upon notice thereof, Bernardino called accused-appellant and the Batangas Sugar Refinery but failed to contact either. On January 22, 1994, she instructed someone from La Perla to go to the Batangas Sugar Refinery in order to stop the withdrawal of refined sugar pursuant to Delivery Order No. 9247, but all 5,000 bags have been withdrawn.

Another prosecution witness, Antonio Fernandez, who was a supervisor of the Batangas Sugar Refinery, declared that based on the records of the refinery the withdrawals were made under the name "Babylyn General Merchandise", to whom accused-appellant endorsed Delivery Order No. 9247. This, however, is denied by accused-appellant. The records of Batangas Sugar Refinery further show that the withdrawals were effected on three separate dates: January 19, 1994 in the amount of 1,500 bags; January 21, 1994, 2,800 bags; and January 22, 1994, 1,200 bags.^[9]

Enrique Orense, an assistant manager of PNB-Balayan Branch, testified that based

on the ledger accounts^[10] of the bank, the check subject of the case was deposited under accused-appellant's Current Account No. 315-810696-4 for clearing on January 20, 1994, but was dishonored for the reason "payment stopped". The balance in accused-appellant's current account as of January 20, 1994 was P2,241,957.43. Orense further testified that he was not the one who received the stop-payment order, which in practice is required by the bank to be in writing^[11], nor was he in possession of a copy thereof --- thus, he cannot attest as to when such order was received, and who made it.^[12]

Based on the bank records brought by Orense, as of January 15, 1994 (or the date of the issuance of the check to La Perla) accused-appellant had a balance of P9,423.19 in his account. This balance was maintained on the dates January 17 and 18, but on January 19, 1994 a deposit was made in the amount of P3,325,000.00. However, by the time Check No. 009387 issued to La Perla was deposited on the early morning of January 20, 1994 the remaining balance as earlier stated was P2,241,957.43.

Before the filing of the complaint for estafa in the lower court, partial payments were made by accused-appellant to La Perla by means of the following: checks in the total amount of P267,064.14, and a 10-wheeler Isuzu cargo truck with tanker valued at P400,000.00. Accused-appellant also delivered to La Perla a transfer certificate of title over a parcel of land in Tuy, Batangas.

Accused-appellant's version of the story, corroborated by his wife, is that he issued PNB Check No. 009387 in blank, then entrusted it to his secretary, Minda Anib, for delivery to La Perla. He and La Perla allegedly had a long-standing business relationship, which resulted in the establishment of mutual confidence and trust. Thus, save for his signature, it was "Mel" of La Perla who filled in the other entries in the check, including the amount of P3,425,000.00 and the date January 18, 1994.

As evidence of the fact that La Perla and her husband had been transacting business since 1989, whereby La Perla bought sugar *quedans* from her husband, Winifreda Panganiban presented several purchase vouchers with amounts ranging from P500,000.00 to P5,000,000.00. To show that accused-appellant had sufficient funds to cover payment of the check she also submitted a statement of account issued by PNB-Balayan Branch which declared that as of January 19, 1994 Current Account No. 315-810696-4 had a balance of P3,434,423.90.

On January 15, 1994, Winifreda allegedly overheard her husband ordering 5,000 bags of sugar by telephone. She claims that she does not know who he dealt with, or what the purchase price was. The next day, her husband sent a check to La Perla through Minda Anib. When Winifreda came to know that it was a blank check sent through Minda Anib, and when Anib did not come back to Batangas later that day, Winifreda grew apprehensive and called up PNB-Balayan Branch sometime "between January 17 to 20" to order the payment of the check to be stopped.^[13] When Anib came back on January 18, 1994, Winifreda asked her why she did not come back sooner and Anib replied that there was a death in her family.^[14]

In light of the foregoing testimonies, the trial court held that against the positive assertion of Imelda Bernardino that accused-appellant, together with his wife and Minda Anib, went to the La Perla office to deliver the check and receive the delivery

order, accused-appellant's contention that it was Minda Anib alone who went to the La Perla office to deliver a blank check is suspicious and inspires disbelief. Also, the defense's claim that it was Winifreda, not accused-appellant, who ordered that payment on the check be stopped was incredible and contrary to human experience considering that based on Winifreda's testimony she had no knowledge of her husband's transaction with La Perla, or to whom the blank check was issued and for what purpose. The lower court also noted that this is totally in contradiction with accused-appellant's claim in the trial of the B.P. 22 ("Bouncing Checks" Law) case which arose from the same incident that it was *he* who gave the stop-payment order.

The RTC decision further stated ---

From the evidence on record the reason of the accused in ordering the drawee bank to stop the payment of the check in question was to give way for the encashment of the various checks he issued to different creditors. This is obvious from the movement of his account with the drawee bank, PNB Balayan branch showing that on the date of the transaction subject of this case on January 15, 1994, the accused's account with the PNB Balayan branch had a deposit of only P9,423.90 (Exhs. D, D-1 and D-2). This is the same balance in his account on January 17 and on January 18, 1994 (TSN, Sept. 19, 1995, p. 23).

As of January 19, 1994, accused had a deposit of P3,325,000.00 which obviously came from or represents the proceeds from the sale of 5,000 bags of refined sugar made by the accused to Babylyn General Merchandising, Inc., but on the same day, the account of the accused had only a reducing balance of P2,241,957.43 (TSN, Sept. 19, 1995, p. 23).

Consequently, on the following date, January 20, 1994, when the check in question reached the PNB Balayan branch for clearing, there was no sufficient funds in the account of the accused to cover the value of the aforesaid check, thus prompting the accused to stop the payment of the check issued to the La Perla Sugar Export Corporation. The accused knew this fact and admitted that on the aforesaid date, January 20, 1994, his deposit with the PNB Balayan branch was not sufficient to cover the value of the aforesaid check:

ATTY. LABRIAGA

Q: You mentioned earlier that this check was caused to be annotated with the words "stop payment", and that on January 20, 1994, were there still sufficient funds to cover the check?

WITNESS

A: As far as I know there was (sic) sufficient funds to cover the check, sir. Ang pagkakaalam ko, kulang na po yata. (TSN, July 9, 1996, p. 13).

[15]

Based on the foregoing, the trial court ruled that the fact that accused-appellant issued checks to other creditors, all of which were collectible on the same period as

La Perla's, was not a valid cause for him to order stoppage of payment of La Perla's check. Consequently, it held accused-appellant guilty beyond reasonable doubt of estafa, although the partial payments he earlier made reduced his civil liability to private complainant. Thus, the dispositive portion of the assailed decision declares:

WHEREFORE, and in consideration of all the foregoing, the Court finds the accused Meynard Panganiban guilty beyond reasonable doubt of the crime of Estafa, punishable under Article 315, par. 2(d) of the Revised Penal Code, as amended by Presidential Decree No. 818 and hereby sentences him to suffer the penalty of *reclusion perpetua*, and to pay the private complainant, by way of civil liability, the sum of P2,757,935.86 plus legal interest thereon from January 21, 1994, until the same is fully paid (after deducting payments made by the accused in the amount of P267,064.14 and the value of the truck in the amount of P400,000.00) plus costs.

It is so ordered.^[16]

In his Brief, accused-appellant assigns the following errors of the lower court: (1) the conviction is erroneous, the prosecution having failed to prove the elements of estafa as alleged in the information; (2) the evidence on record contradicts the allegations in the information; (3) the guilt of accused-appellant was not established beyond reasonable doubt; (4) there was no deceit in the acts of accused-appellant; and (5) the RTC decision was based on mere conjectures and suppositions.^[17]

Accused-appellant contends that his conviction should be reversed because the element of fraud or deceit was not proved. Adhering to his version of the incident, he argues that the "stop payment" order was justified and was for valid cause, for when Minda Anib did not return at the close of day on January 15, 1994 his wife grew concerned that the check could have been delivered to the wrong hands. He insists that the "stop payment" order was made in good faith, and was not meant to evade payment of the debt to La Perla.

He also dismisses as false the allegation in the information that "despite demands made upon the accused to make good said check and/or to pay the cash equivalent thereof, said accused failed and refused and still fails and refuses to pay the amount xxx". Accused-appellant points to the fact that he had made partial payments to La Perla in satisfaction of the obligation, including the sale of a cargo truck and the delivery of a title to prime land in Batangas, the value of which land is "substantial, and if sold freely, may even serve to wipe out the accused-appellant's entire obligation to the private complainant."^[18]

The crime of estafa under Article 315, paragraph 2(d) of the Revised Penal Code has the following elements: (1) postdating or issuance of a check in payment of an obligation contracted at the time the check was issued; (2) insufficiency of funds to cover the check; and (3) damage to the payee thereof.^[19] As with all other forms of estafa, the element of fraud or bad faith is indispensable.^[20]

In the instant case, the presence of the first element is not contested. There is no pre-existing obligation; rather, the obligation which gave rise to the issuance of the check was the purchase of 5,000 bags of refined sugar from La Perla. Clearly, La