

FIRST DIVISION

[G. R. No. 112985, April 21, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARTIN L. ROMERO AND ERNESTO C. RODRIGUEZ, ACCUSED-
APPELLANTS.**

D E C I S I O N

PARDO, J.:

The case before the Court is an appeal of accused Martin L. Romero and Ernesto C. Rodriguez from the Joint Judgment^[1] of the Regional Trial Court, Branch 2, Butuan City, convicting each of them of estafa under Article 315, par. 2 (d) of the Revised Penal Code, in relation to Presidential Decree No. 1689, for widescale swindling, and sentencing each of them to suffer the penalty of *life imprisonment* and to jointly and severally pay Ernesto A. Ruiz the amount of one hundred fifty thousand pesos (P150,000.00), with interest at the rate of twelve percent (12%) per annum, starting September 14, 1989, until fully paid, and to pay ten thousand pesos (P10,000.00), as moral damages.

On October 25, 1989, Butuan City acting fiscal Ernesto M. Brocoy filed with the Regional Trial Court, Butuan City, an Information against the two (2) accused for estafa,^[2] as follows:

"That on or about September 14, 1989, at Butuan City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused being the General Manager and Operation Manager which solicit funds from the general public for investment, conspiring, confederating together and mutually helping one another, by means of deceit and false pretense, did then and there willfully, unlawfully and feloniously deliberately defraud one Ernesto A. Ruiz by convincing the latter to invest his money in the amount of P150,000.00 with a promise return of 800% profit within 21 days and in the process caused the issuance of Butuan City Rural Rural [sic] Bank Check No. 158181 postdated to October 5, 1989 in the amount of One Million Two Hundred Thousand Pesos (P1,200,000.00) Philippine Currency, that upon presentation of said check to the drawee bank for payment the same was dishonored and that notwithstanding repeated demands made on said accused to pay and/or change the check to cash, they consistently failed and refused and still fail and refuse to pay or redeem the check, to the damage and prejudice of the complainant in the aforestated amount of P1,200,000.00."^[3]

On the same day, the city fiscal filed with the same court another information against the two (2) accused for violation of Batas Pambansa Bilang 22, arising from the issuance of the same check.^[4]

On January 11, 1990, both accused were arraigned before the Regional Trial Court, Branch 5,^[5] Butuan City, where they pleaded not guilty to both informations.

The prosecution presented its evidence on January 10, 1991, with complainant, Ernesto A. Ruiz, and Daphne Parrocho, the usher/collector of the corporation being managed by accused, testifying for the prosecution.

On August 12, 1991, the defense presented its only witness, accused Martin L. Romero.

On November 13, 1992, the parties submitted a joint stipulation of facts, signed only by their respective counsels. Thereafter, the case was submitted for decision.

On March 30, 1993, the trial court promulgated a Joint Judgment dated March 25, 1993. The trial court acquitted the accused in Criminal Case No. 3806^[6] based on reasonable doubt, but convicted them in Criminal Case No. 3808^[7] and accordingly sentenced each of them, as follows:

"IN VIEW OF THE FOREGOING, the Court hereby renders judgment, finding or declaring -

"(a) Accused Martin L. Romero and Ernesto C. Rodriguez innocent on reasonable doubt in Criminal Case No. 3806, for violation of Batas Pambansa Bilang 22;

"(b) Accused Martin L. Romero and Ernesto C. Rodriguez guilty beyond reasonable doubt in Criminal Case No. 3808 for estafa under P.D. 1689 for wide scale [sic] swindling and accordingly sentences them to suffer life imprisonment (Section 1 P.D. 1689) and ordered jointly and severally to return to Ernesto A. Ruiz the amount of One Hundred Fifty Thousand Pesos (P150,000.00) with interest thereon at the rate of Twelve percent (12%) per annum starting from September 14, 1989 until fully paid and to pay the amount of Ten Thousand Pesos (P10,000.00) as moral damages.

"In the service of their sentence, the accused pursuant to R.A. 6127, shall be credited for the preventive imprisonment they have undergone (PP vs. Ortencio, 38 Phil 941; PP vs. Gabriel, No. L-13756, October 30, 1959, cited in Gregorio's "Fundamentals of Criminal Law Review", P. 178, Seventh Edition, 1985)."^[8]

On March 31, 1993, accused filed their notice of appeal, which the trial court gave due course on April 5, 1993. On March 16, 1994, this Court ordered the accused to file their appellants' brief.

Accused-appellants filed their brief on October 30, 1995, while the Solicitor General filed the appellee's brief on March 8, 1996.

During the pendency of the appeal, on November 12, 1997, accused Ernesto Rodriguez died.^[9] As a consequence of his death before final judgment, his criminal and civil liability *ex delicto*, were extinguished.^[10]

Complainant Ernesto A. Ruiz was a radio commentator of Radio DXRB, Butuan City. In August, 1989, he came to know the business of Surigao San Andres Industrial Development Corporation (SAIDECOR), when he interviewed accused Martin Romero and Ernesto Rodriguez regarding the corporation's investment operations in Butuan City and Agusan del Norte. Romero was the president and general manager of SAIDECOR, while Rodriguez was the operations manager.

SAIDECOR started its operation on August 24, 1989 as a marketing business. Later, it engaged in soliciting funds and investments from the public. The corporation guaranteed an 800% return on investment within fifteen (15) or twenty one (21) days. Investors were given coupons containing the capital and the return on the capital collectible on the date agreed upon. It stopped operations in September, 1989.

On September 14, 1989, complainant Ernesto A. Ruiz went to SAIDECOR office in Butuan City to make an investment, accompanied by his friend Jimmy Acebu, and SAIDECOR collection agent Daphne Parrocho. After handing over the amount of one hundred fifty thousand pesos (P150,000.00) to Ernesto Rodriguez, complainant received a postdated Butuan City Rural Bank check instead of the usual redeemable coupon. The check indicated P1,000,200.00 as the amount in words, but the amount in figures was for P1,200,000.00, as the return on the investment. Complainant did not notice the discrepancy.

When the check was presented to the bank for payment on October 5, 1989, it was dishonored for insufficiency of funds, as evidenced by the check return slip issued by the bank.^[11] Both accused could not be located and demand for payment was made only sometime in November 1989 during the preliminary investigation of this case. Accused responded that they had no money.

Daphne Parrocho,^[12] testified that on September 14, 1989, complainant, with his friend Jimmy Acebu, approached her to invest the amount of P150,000.00 at SAIDECOR. As she has reached her quota, and therefore, no longer authorized to receive the amount, she accompanied them to the office of SAIDECOR at Ong Yiu District, Butuan City. Accused Ernesto Rodriguez accepted the investment and issued the check signed by him and Martin Romero.

For their defense, accused Martin Romero^[13] testified that on September 14, 1989, he issued a check in the amount of P1,200,000.00 corresponding to the total of the P150,000.00 investment and the 800% return thereon. He claimed that the corporation had a deposit of fourteen million pesos (P14,000,000.00) at the time of the issuance of the check and four million pesos (P4,000,000.00) at the time SAIDECOR stopped operations. Romero knew these things because he used to monitor the funds of the corporation with the bank. He was not aware that the check he issued was dishonored because he never had the occasion to meet the complainant again after the September 14, 1989 transaction. He only came to know about this when the case was already filed in court sometime in the second or third week of January 1990.^[14]

In this appeal, both accused did not deny that complainant made an investment with SAIDECOR in the amount of P150,000.00. However, they denied that deceit

was employed in the transaction. They assigned as errors: (1) their conviction under P.D. 1689 due to the prosecution's failure to establish their guilt beyond reasonable doubt; and (2) the trial court's failure to consider the joint stipulation of facts in their favor.^[15] There is no merit in this appeal. We sustain accused-appellant's conviction.

Under paragraph 2 (d) of Article 315, as amended by R.A. 4885,^[16] the elements of estafa are: (1) a check was postdated or issued in payment of an obligation contracted at the time it was issued; (2) lack or insufficiency of funds to cover the check; (3) damage to the payee thereof.^[17] The prosecution has satisfactorily established all these elements.

Fraud, in its general sense, is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust, or confidences justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another.^[18] It is a generic term embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated.^[19]

Deceit is a specie of fraud. It is actual fraud, and consists in any false representation or contrivance whereby one person overreaches and misleads another, to his hurt. Deceit excludes the idea of mistake.^[20] There is deceit when one is misled, either by guide or trickery or by other means, to believe to be true what is really false.^[21] In this case, there was deception when accused fraudulently represented to complainant that his investment with the corporation would have an 800% return in 15 or 21 days.

Upon receipt of the money, accused-appellant Martin Romero issued a postdated check. Although accused-appellant contends that sufficient funds were deposited in the bank when the check was issued, he presented no officer of the bank to substantiate the contention. The check was dishonored when presented for payment, and the check return slip submitted in evidence indicated that it was dishonored due to insufficiency of funds.

Even assuming for the sake of argument that the check was dishonored without any fraudulent pretense or fraudulent act of the drawer, the latter's failure to cover the amount within three days after notice creates a rebuttable presumption of fraud.^[22]

Admittedly (1) the check was dishonored for insufficiency of funds as evidenced by the check return slip; (2) complainant notified accused of the dishonor; and (3) accused failed to make good the check within three days. Presumption of deceit remained since accused failed to prove otherwise. Complainant sustained damage in the amount of P150,000.00.

Accused-appellant also contends that had the trial court admitted the Admission and Stipulation of Facts of November 9, 1992, it would prove that SAIDECOR had sufficient funds in the bank.