

SECOND DIVISION**[G.R. No. 123567, June 05, 1998]****PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROBERTO TONGKO, ACCUSED-APPELLANT.****D E C I S I O N****PUNO, J.:**

This is an appeal by accused Roberto Tongko from the Decision of the RTC of Pasig City, Branch 156 finding him guilty of estafa under Article 315(2)(d) of the Revised Penal Code. He was sentenced to suffer twenty seven (27) years of reclusion perpetua and to indemnify Carmelita V. Santos by way of actual damages in the sum of P100,000.00 and to pay the cost of suit.

Accused was charged under the following Information:

"That on or about the 20th day of August, 1993, in the Municipality of Pasig, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of deceit and false pretenses committed prior to or simultaneously with the commission of the fraudulent acts, did then and there willfully, unlawfully and feloniously make or draw and issue to one, Carmelita Santos to apply on account or for value, the check described below:

BANK	CHECK NO.	DATE	AMOUNT
Phil. Amanah Bank	203729	12-20-93	P10,000.00
Phil. Amanah Bank	203730	12-20-93	P10,000.00
Phil. Amanah Bank	203731	12-20-93	P10,000.00
Phil. Amanah Bank	203732	12-20-93	P10,000.00
Phil. Amanah Bank	203733	12-20-93	P10,000.00
Phil. Amanah Bank	203737	12-20-93	P10,000.00
Phil. Amanah Bank	203738	12-20-93	P10,000.00
Phil. Amanah Bank	203739	12-20-93	P10,000.00
Phil. Amanah Bank	203740	12-20-93	P10,000.00
Phil. Amanah Bank	203741	12-20-93	P10,000.00

said accused well knowing at the time of issue he did not have sufficient funds in or credit with the drawee bank for the payment in full of the face amount of such check upon presentment which check when presented for payment within ninety (90) days from the date thereof was subsequently dishonored by the drawee bank for the reason "Account Closed" and despite the lapse of three (3) banking days from receipt of notice that said check has been dishonored, the accused failed to pay said payee the face amount of such check or to make arrangement for full payment thereof, to the damage and prejudice of said Carmelita Santos in the total amount of P100,000.00.

CONTRARY TO LAW."

Accused pled not guilty and underwent trial.

The evidence for the prosecution shows that on September 21, 1990, accused opened savings and current accounts with Amanah Bank.^[1] In the morning of August 20, 1993, Marites Bo-ot brought the accused to the office of Carmelita V. Santos at Room 504 Pacific Place, Pearl Drive, Ortigas Center, Pasig City to borrow money.^[2] The accused asked for P50,000.00 to be paid not later than December 1993.^[3] He assured Santos that his receivables would come in by November 1993. He persuaded Santos to give the loan by issuing five (5) checks, each in the sum of P10,000.00, postdated December 20, 1993 and by signing a promissory note.^[4] The promissory note was co-signed by Bo-ot. In the afternoon of the same date, the accused returned to Santos and borrowed an additional P50,000.00. Again, he issued five (5) checks, each worth P10,000.00 postdated December 20, 1993. He also signed a promissory note together with Bo-ot.^[5]

On September 14, 1993, Amanah Bank closed accused's current account for lack of funds. On October 19, 1993, accused himself requested for the closing of his savings account.^[6]

Santos did not present accused's checks to the drawee bank on their due date upon the request of accused himself.^[7] Instead, the checks were presented on March 1, 1994 but were dishonored as accused's accounts had been closed.^[8] Accused was informed that his checks had bounced. He promised to make good the checks. He failed to redeem his promise, hence, the case at bar.^[9]

The accused testified for himself. Nobody corroborated his testimony. He admitted the evidence of the prosecution but alleged that the postdated checks were issued a day or two after he signed the promissory notes.^[10] Obviously, he was relying on the defense that the checks were in payment of a pre-existing obligation.

As aforesaid, the trial court convicted the accused. He appealed to this Court and changed his counsel.^[11] He now contends:

"I

THE TRIAL COURT ERRED IN HOLDING THAT THE ISSUANCE OF THE TEN (10) POSTDATED CHECKS (EXHS. "C" TO "L") BY THE ACCUSED-APPELLANT CONSTITUTED FRAUD WHICH INDUCED THE PRIVATE COMPLAINANT TO EXTEND THE LOANS. IT IS RESPECTFULLY SUBMITTED THAT THE INDUCEMENT WAS THE EXECUTION OF THE TWO (2) PROMISSORY NOTES AS WELL AS THE CO-SIGNING THEREOF BY MA. THERESA DEL ROSARIO BO-OT (WHO INTRODUCED ACCUSED-APPELLANT TO PRIVATE COMPLAINANT), IN A JOINT AND SEVERAL CAPACITY.

II

THE TRIAL COURT ERRED IN NOT HOLDING THAT THE POST-DATED CHECKS WERE IN PAYMENT OF PRE-EXISTING OBLIGATIONS.

III