

THIRD DIVISION

[G.R. No. 120957, August 22, 1996]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NITA V. DIZON, ACCUSED-APPELLANT.

DECISION

MELO, J.:

Unfolded by the record of the case under review is an incredible concatenation of cupidity, deception, and stratagem on one hand, and on the other, egregious naivete, credulity, and gullibility.

Accused-appellant was charged with estafa under two informations docketed as Criminal Cases No. 27151 and 27152 of the Regional Trial Court of the National Capital Judicial Region stationed in Makati, Metro Manila, and with violation of Batas Pambansa Blg. 22 in four informations docketed as Criminal Cases No. 27153-56 of the same court.

On January 16, 1991, the trial court rendered a decision of conviction, the dispositive portion of which reads:

WHEREFORE, in view of all the foregoing, the Court, finding the accused Nita Dizon guilty in all these criminal cases, hereby sentences her to suffer:

In Criminal Case No. 27151:

The penalty of eight (8) years and one (1) day of *prision mayor* as the minimum to fourteen (14) years and one (1) day of *reclusion temporal* as the maximum and to indemnify the complainant of the sum of P275,000.00 which is the total sum of the two checks involved in this case minus the amount of P22,000.00 which is the amount of incentive included in the two checks. With costs.

In Criminal Case No. 27152:

The penalty of eight (8) years and one (1) day of *prision mayor* as the minimum to fourteen (14) years and one (1) day of *reclusion temporal* as the maximum and to indemnify the complainant of the sum of P225,000.00 which is the total sum of the two checks involved in this case minus the amount of P15,000.00 which is the amount of incentive included in the two checks. With costs.

In Criminal Case No. 27153, 27154, 27155 and 27156

The penalty of one (1) year imprisonment in each of these cases.

SO ORDERED.

(pp. 48-49, Court of Appeals Rollo.)

The decision of the trial court was, upon elevation to the Court of Appeals, affirmed but with the penalties in Criminal Cases No. 27151 and 27152 increased to 30 years of *reclusion perpetua*. The decision of the Court of Appeals, promulgated on June 30, 1995, was, however, not entered pursuant to the second paragraph of Section 13 of Rule 124 of the 1985 Rules on Criminal Procedure and also the case of People vs. Cruz (203 SCRA 682 [1991]).

In her present appeal, accused-appellant submits that the trial court and the Court of Appeals committed the following alleged errors:

1. The lower court erred when it found that the Ayala transaction for the purchase of two (2) lots was allegedly a part of the alleged deception committed by the appellant on the complaining witness;
2. The lower court erred when it found that on February 14, 1986 the complaining witness allegedly delivered to the accused the alleged sum of P200,000.00. The only amount received by the appellant on February 14, 1986 is P50,000.00 as shown by the Manager's Check [Exhibit 2] which admittedly the complainant gave to the appellant;
3. The lower court erred when it found that on February 14, 1986 the accused allegedly gave the complainant two (2) checks in the total amount of P272,000.00 allegedly in exchange of the P200,000.00 allegedly paid in cash and P50,000.00 represented by the Manager's Check;
4. The lower court erred when it found that on February 18, 1986 the complaining witness allegedly delivered to the accused P180,000.00 in cash;
5. The lower court erred when it found that on February 18, 1986 the accused allegedly delivered two (2) checks in the total amount of P225,000.00 allegedly in exchange of the P180,000.00;
6. The Court of Appeals erred when it ruled that complaining witness Gomez had authority to write "whatever amount" on the blank checks delivered to her by the accused;
7. Assuming arguendo that the accused allegedly received on February 14 and 18, 1986 the total amount of P430,000.00, the lower court erred in convicting the accused of the alleged crimes of estafa and violation of B.P. Blg. 22 because the alleged transactions being usurious the accused is not under any legal obligation to make good the four (4) checks;
8. The Court of Appeals erred when it increased the penalties imposed upon the accused. P.D. 818 is not applicable in the present case.

(pp. 16-17, Appellant's Brief, ff. p. 22, Rollo.)

A close evaluation of the evidence shows that the following findings of fact of the trial court, as adopted by the Court of Appeals, are fully supported by the evidence:

Susan Sandejas Gomez, a duly accredited broker of the Ayala Corporation, was introduced to the accused Nita V. Dizon at the latter's business establishment known as LSK Commercial Center located at 312 EDSA, Pasay by the latter's brother Paul Vasay and his wife Tessie sometime in May 1985. Having known in the course of the introduction that Susan Gomez is a duly accredited broker of the Ayala Alabang subdivision, the spouses Ramon and Nita Dizon manifested to Susan Gomez their interest in buying a residential lot at Ayala Alabang. Shortly thereafter, the Dizon spouses, with the complainant, inspected the available lots aboard the Mercedes Benz of the Dizon spouses. In passing, the Dizon spouses also informed Susan Gomez that they also owned a residential lot comprising of 950 square meters in Greenhills and a brand new Nissan Stanza car. During the tour in Ayala, Alabang, the Dizon spouses manifested interest in two lots which had a combined area of 1,536 square meters at P650.00 per square meter.

In December 1985, the Dizon spouses contacted Susan Gomez and informed the latter they finally decided to buy the Ayala Alabang lots, requesting the latter to request Ayala to hold the lots for them as they wanted the Christmas holidays to pass. After the holidays, Nita Dizon went to the office of the complainant and issued a check for P40,000.00 payable to the Ayala Corporation in payment of the reservation fees of the two lots at P20,000.00 each. Subsequently, the Dizon spouses asked Susan Gomez to accompany them to a contractor, the Interhouse Corporation, to get an estimate of the house they intended to build. At the Interhouse Corporation, the Dizon spouses represented that they have a budget of P3.5 million and asked for a building plan in accordance with their available budget.

On February 11, 1986, Nita Dizon called up Susan Gomez by phone, informing the latter that prices of auto spare parts were going up and needed cash badly to buy these spare parts before the prices actually go up. Nita Dizon asked for a loan of about P700,000.00 to P800,000.00 on a very short term basis. Susan Gomez refused, saying she "is not in the business of lending money. The next day, February 12, 1986, Nita Dizon again called up and frantically pleaded to Susan Gomez that she really need cash. Again Susan Gomez refused but Nita Dizon was persistent, making more calls that day. Finally, Nita Dizon told Susan Gomez that she and her husband had decided to issue in favor of the complainant a postdated check due in just a week's time to cover up the amount of money requested. On that day, they (the Dizon spouses and the complainant) went to the office of the Ayala Corporation to get the official lot plan. They then pleaded to Susan Gomez, showing to her a house plan drawn by one Architect Mana supposedly to be constructed sometime in March 1986.

Obviously swayed by the maneuvers of the Dizon spouses, Susan Gomez persuaded her sisters Regina Filart and Teresa Sandeja to part with some of their cash, telling them of the attractive incentives offered by Nita Dizon consisting of substantial interest in a very short time. So on February 14, 1986 the Dizon spouses and Susan Gomez met at the car park of the Manila Bank where Susan Gomez handed to Nita Dizon the amount of P200,000.00 which came from her said sisters plus a P50,000.00 cashier's check from Susan Gomez. In turn, the Dizon spouses gave her two checks signed by Nita Dizon (Exhibits A and B) in the amount of P122,000.00 and P150,000.00 respectively. Except for Nita's signature the checks were in blanks the rest of the figures including the amount with Susan's portable typewriter which she carries in her car. The difference of P22,000.00 between the amount given by Susan and the total amount of the checks was agreed upon to be the incentive for the amount given. The Dizon spouses assured Susan not to worry because they are in business and they know how to honor commitment.

On February 16, 1986, Ramon Dizon called up Susan Gomez and asked for some more cash as what they needed was something "between P700,000.00 to P800,000.00. Again Susan Gomez went to her sisters who promised to come up with something. On the next day, Susan Gomez gave Nita Dizon P30,000.00 in cashier's check. They met at the Manila Bank where Nita Dizon immediately encashed the check. They agreed to meet at the Family Bank & Trust Company, Paseo de Roxas the next day. They met thereat but Susan Gomez did not have the money and instead told Nita Dizon to go with her at the office of her (Susan) sister, Ms. Regina Filart at the Salcedo Village where the latter was working as General Manager of the Online Advance Computer Systems. Ramon Dizon was also with them, but he followed in another car. At the office of Ms. Filart, the latter told them she didn't have cash so she just gave Susan two (2) checks with a total value of P175,000.00 (Exhibits E and F). Instead of cashing the two checks herself, Nita Dizon requested Susan Gomez to encash the checks which the latter did. Nita Dizon in turn gave Susan two checks, signed by the latter and again the rest where in blank. So they had to fill up with Nita telling Susan the amounts and the dates to type on the blanks. One check was for P150,000.00 (Exhibit C) and the other for P75,000.00 (Exhibit D).

Thereafter, they proceeded to the Family Bank at Paseo de Roxas where Susan Gomez gave Nita Dizon a total of P180,000.00 in cash in exchange for the two (2) checks having a total amount of P225,000.00 (Exhibits C and D). Adding the P30,000.00 in cash given by Susan to Nita the previous day, the extra P51,000.00 is the incentive promised by the Dizon spouses to Susan.

On February 20, 1986, the due date of the first check issued by Nita to Susan (Exhibit A), the latter got an early morning call from Nita who asked that the check (Exhibit A) and the check (Exhibit B) due the next day be not encashed as their supposed collection did not materialize. Nita asked for a deferment of one (1) week. On February 22, 1986, the EDSA Revolution broke out. February 23, 1986 was a Sunday. On February 24