

FIRST DIVISION

[G.R. Nos. 95796-97, May 02, 1997]

**ANTONIO NIEVA, JR., PETITIONER, VS. THE HONORABLE COURT
OF APPEALS AND THE PEOPLE OF THE PHILIPPINES,
RESPONDENTS.
D E C I S I O N**

HERMOSISIMA, JR., J.:

The herein petition seeks the review of the Decision^[1] of the Court of Appeals^[2] which affirmed the judgment of conviction^[3] of the petitioner Antonio Nieva, Jr. rendered by the Regional Trial Court of Pampanga^[4] in criminal cases involving Estafa and Violation of Batas Pambansa Blg. 22.

The following antecedent facts are not disputed:

Sometime in 1982, one Alberto Joven had his car repaired in an auto repair shop in Quezon City, which was owned by petitioner. Alberto had frequently visited said repair shop to avail himself of its services and so, he had become friendly with petitioner as owner of the shop. Alberto learned that, like his father, the late Atty. Ramon Joven, petitioner was engaged in the construction business. Alberto then informed petitioner that they had idle construction equipment in Bacolor, Pampanga, which were not being attended to because his father had become quite ill. Petitioner expressed interest in the equipment and requested Alberto to introduce him to his father.

During a meeting sometime in 1985 in Bacolor, Pampanga, petitioner offered to lease a Toyota Dump Truck, with Motor No. 2D-58961, with the intention to use it for some construction project in Quezon Province. Atty. Joven, now deceased, commented that he could not accept the offer unless the dump truck was first repaired. Petitioner thus offered to have the dump truck repaired at his expense, with the repair expenses to be deducted, however, from the rentals for the use of the truck. Atty. Joven agreed to such a proposal.

On April 30, 1985, Atty. Joven who was at that time confined at the Lung Center, signed an order to turn over the possession and custody of subject dump truck to petitioner. On May 14, 1985, a lease contract^[5] covering the above-described transaction was executed and entered into between the petitioner and Atty. Joven.

Petitioner, however, failed to fulfill his obligations under the said lease contract: he did not repair the subject dump truck nor did he pay any rentals. The dump truck was left idle in petitioner's auto repair shop on Mayon Street in Quezon City. Learning about petitioner's non-compliance with their lease agreement, Atty. Joven secured a pass from the Lung Center, confronted petitioner at petitioner's repair shop in Quezon City, and asked petitioner to return the dump truck. Petitioner countered by offering to buy the truck. When Atty. Joven manifested that the selling

price of the truck was P70,000.00, petitioner accepted the offer and agreed to the consideration thereof.

On June 10, 1985, an absolute deed of sale^[6] evidencing this most recent transaction between petitioner and Atty. Joven, was executed and entered into by said parties.

A week later, petitioner delivered to Atty. Joven a post-dated check^[7] drawn against the Commercial Bank of Manila in the amount of P70,000.00 as payment for the subject dump truck.

Said check was deposited in the Angeles City branch of the Bank of Philippine Islands. Thereafter, Atty. Joven was advised that the Commercial Bank of Manila returned the check for the following reason: "closed accounts"^[8]. Repeated verbal demands were made on petitioner for him to make good the returned check, but to no avail. Thus, Atty. Joven availed himself of the services of counsel who made a formal written demand^[9] upon petitioner to pay his obligations. Petitioner, however, ignored the written demand. Hence, the criminal cases for Estafa and Violation of B.P. Blg. 22, were filed against him.

For having issued a worthless check, petitioner was charged with Estafa under paragraph 2 (d), Article 315 of the Revised Penal Code and with Violation of B.P. Blg. 22 under two separate Informations filed by the Provincial Fiscal of San Fernando, Pampanga before, the Regional Trial Court of Pampanga, Branch 45. For ready reference, the two informations are reproduced below:

In Criminal Case No. 3228 for Estafa:

"That on or about the 31st day of July, 1985, in the municipality of Bacolor, Province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused ANTONIO M. NIEVA, JR., knowing fully well that he had insufficient funds in the bank, with intent to defraud, with grave abuse of confidence and by means of deceit, did then and there willfully, unlawfully, feloniously and maliciously issue, draw and deliver Commercial Bank of Manila Check No. KAM 015417 in the amount of SEVENTY THOUSAND (P70,000.00) PESOS, to and in favor of Atty. Ramon R. Joven in payment of the Toyota dump truck purchased by accused Antonio M. Nieva, Jr. from Atty. Ramon R. Joven, and when said check was presented for encashment, the same was dishonored and returned with the information that the same was drawn against an 'Account Closed', and in spite of repeated demands made upon the accused to redeem said check, he failed and refused and presently fails and refuses to redeem the same, to the damage and prejudice of said Atty. Ramon R. Joven in the total amount of P70,000.00, Philippine Currency."^[10]

In Criminal Case No. 3229 for Violation of B.P. Blg. 22:

"That on or about the 31st day of July, 1985, in the municipality of Bacolor, province of Pampanga, Philippines, and within the jurisdiction of

this Honorable Court, the above-named accused ANTONIO M. NIEVA, JR., knowing fully well that he had no sufficient funds in the bank, did then and there willfully, unlawfully, feloniously and maliciously draw, issue and deliver a Commercial Bank of Manila Check NO. KAM 015417 in the amount of SEVENTY THOUSAND (P70,000.00) PESOS, drawn against his checking/current account with the Commercial Bank of Manila, Kamuning Branch, Quezon City, to and in favor of Atty. Ramon R. Joven, and when said check was presented for payment to the drawee bank, the same was dishonored and refused payment for the reason that it was drawn against an 'Account Closed', and notwithstanding several and repeated demands made upon the accused to redeem said check, said accused failed and refused and presently fails and refuses to comply therewith, to the damage and prejudice of said Atty. Ramon R. Joven in the total amount of P70,000.00.”^[11]

At the arraignment, petitioner entered the plea of "not guilty" as to each of the aforesaid charges, after which trial was held on the merits.

After trial, the trial court rendered a judgment of conviction^[12] in both Informations, the decretal portion of which decision reads:

"WHEREFORE, the Court hereby renders judgment finding accused ANTONIO NIEVA, JR. guilty beyond reasonable doubt as PRINCIPAL 1) of the crime of ESTAFA defined and penalized under Par. 2 (d) of Art. 315, Revised Penal Code as amended by P.D. 818 and of the offense of violation of Batas Pambansa Blg. 22 x x x and sentencing the said accused as follows:

a) For Crim. Case No. 3228

a.1. To suffer an indeterminate sentence of imprisonment of SIX (6) years and ONE (1) day of PRISION MAYOR as MINIMUM to SEVENTEEN (17) years FOUR (4) months and ONE (1) day of RECLUSION TEMPORAL as MAXIMUM;

a.2. To suffer the accessory penalties provided by law;

a.3. To pay the cost; and

a.4. To indemnify the complainant, heirs of Atty. RAMON JOVEN the sum of P70,000.00; and

b) For Crim. Case No. 3229

a.1. To suffer imprisonment of TWO (2) months; and,

a.2. Pay a fine of P70,000.00.

SO ORDERED.”^[13]

Petitioner appealed his conviction to the respondent appellate court which, however, affirmed the same.^[14] Hence, this petition.

Petitioner asks us to set aside the herein assailed decision rendered by respondent Court of Appeals, upon the following grounds:

- "1. The elements of Estafa as re-defined in Sales vs. Court of Appeals were not present and were not duly proved, because:
 - a. The post-dated check was not issued in payment of an obligation contracted at the time the check was issued;
 - b. There is no sufficient and competent evidence to show that there is lack or insufficient funds to cover the check; and,
 - c. There was no damage to the payee thereof.
2. The conviction of petitioner was based on the sole and only uncorroborated testimony of prosecution witness, Alberto Joven, whose testimony is bias [sic], incredible and hearsay.
3. The trial court has no jurisdiction to try the cases charged against petitioner, as none of the essential elements of the offenses charged was ever committed in Pampanga."

The instant petition is meritorious insofar as it appeals petitioner's conviction for estafa.

Petitioner was convicted for estafa under paragraph 2 (d), Article 315 of the Revised Penal Code basically upon the finding that petitioner issued the postdated check in question as consideration for the dump truck subject of the contract of sale between petitioner and Atty. Ramon Joven and that when said check was deposited with the Angeles City Branch of the Bank of the Philippine Islands, the same was dishonored and returned per Check Return slip^[15] for the following reason: "Account Closed."

In this appeal, petitioner does not dispute the fact that he did issue the postdated check in payment of the dump truck as in fact he made an annotation at the back thereof which reads: "for payment Toyota dump truck." However, he contends that the postdated check was not issued at the time the contract of sale involving the dump truck was entered into by and between petitioner and Atty. Ramon Joven, said transaction being evidenced by a deed of absolute sale dated June 10, 1985, the fact being that he issued and delivered the said check to Atty. Joven a week thereafter.

Evidently, there is a need to resolve in this case the question of whether the postdated check was issued at the time the obligation of the petitioner to pay the consideration for the dump truck was contracted or thereafter.

It is significant to note that the trial court did not make any finding or any categorical statement on the matter, it having concluded simply that petitioner issued a worthless check in payment of the dump truck. Neither did the Court of Appeals make such finding in affirming petitioner's conviction, it having also simply stated that:

" x x x x x x x x. What motivated the accused to issue the postdated check was the sale of the vehicle to him. Had there been no contract of sale in the first place, he would not have issued the check."^[16]

The testimony of the sole prosecution witness Alberto Joven is also not enlightening. A perusal of said testimony would readily show that no categorical statement was made either relative to the date in issue. Alberto Joven testified on direct examination that:

"x x x x x x x x

Q: And when Mr. Nieva offered to buy the dump truck instead of just bringing it back to Bacolor, because it was repaired and rentals were not paid, what did your father say?

A: My father quoted his price for the truck, sir.

Q: And after quoting the price, what happened?

A: They both agreed and the accused gave him a postdated check."^[17]

and on cross-examination, that:

"x x x x x x x x

Q: You were present when the negotiation for the purchase of the motor vehicle was made by your father and the accused?

A: Yes, sir.

Q: Can you tell the date?

A: I cannot remember the date, sir.

Q: But it was in 1985?

A: Yes, sir.

Q: And that sale was consummated I presume?

A: Yes, sir.

Q: Can you tell when it was consummated?

A: I cannot remember, sir.

Q: But it is in 1985?

A: Yes, sir.^[18]

x x x x x x x x

Q: On August 2, 1985, did you know where your father was the whole day of August 2, 1985?

A: I cannot remember.

Q: You cannot remember either whether your father received a check from the accused for this, did you?

A: I can remember he received the check but not the date, sir.