

FIRST DIVISION

[G.R. No. 156541, February 23, 2009]

LUZ CAJIGAS AND LARRY CAJIGAS, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES AND COURT OF APPEALS, RESPONDENTS.

DECISION

CARPIO, J.:

The Case

This petition for review^[1] assails the 24 July 2002 Decision^[2] and 23 December 2002 Resolution^[3] promulgated by the Court of Appeals in CA-G.R. CR No. 21278. The Court of Appeals affirmed with modification the 30 April 1997 Decision^[4] of the Regional Trial Court of Ozamiz City, Branch 35, in Criminal Case Nos. RTC-1411 and RTC-1412 finding petitioners spouses Larry and Luz Cajigas guilty beyond reasonable doubt of two counts each of estafa under Article 315, paragraph 2(d) of the Revised Penal Code (RPC), as amended by Presidential Decree No. 818 (PD 818).

The Facts

Petitioners were charged with two counts each of estafa under Article 315, paragraph 2(d) of the RPC, as amended by PD 818. The Amended Informations in Criminal Case Nos. RTC-1411 and RTC-1412 read as follows:

Criminal Case No. RTC-1411 (Amended Information)

That on or about October 14, 1989, in the City of Ozamiz, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused spouses, conspiring and confederating together and/or mutually helping one another, with intent to gain, did then and there willfully, unlawfully and feloniously defraud Daisy Fuentes by means of false and fraudulent representations constituting deceit, well knowing that they have no sufficient funds deposited in the bank, and such fact was not disclosed to private offended party, draw, issue and negotiate FEBTC Check No. P 9019, dated November 14, 1989, covering the amount of P5,407.76; FEBTC Check No. P 9311, dated November 20, 1989, covering the amount of P6,558.00; FEBTC Check No. P 9313, dated November 25, 1989, covering the amount of P10,000.00; UCPB Check No. H 82285, dated November 30, 1989, covering the amount of P9,079.45 and UCPB Check No. H 82289, dated December 20, 1989, covering the amount of P2,713.00, and by means of said false pretenses or assurances and other similar deceits by active participation of accused Larry Cajigas induced private offended party to exchange aforesaid checks with assorted jewelries in the amount of P33,758.21 for which the

same did give and deliver to the above-named accused who fully well know that their manifestations and representation made to private offended party were false and untrue and upon presentation of FEBTC Checks Nos. P 9019, P 9311, P 9313, UCPB Checks Nos. H 82285 and H 82289 to the bank for payment the same were dishonored and unpaid for reason that the account of accused was closed and despite notice and demands made to them by private offended party that the aforestated checks were dishonored, the same failed and refused to make good said checks to the damage and prejudice of Daisy Fuentes in the amount of P33,758.21.^[5]

Criminal Case No. RTC-1412 (Amended Information).

That on or about September 2, 1989, in the city of Ozamiz, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused spouses, conspiring and confederating together and/or mutually helping one another, with intent to gain, did then and there willfully, unlawfully and feloniously defraud Daisy Fuentes by means of false and fraudulent representations constituting deceit, well knowing that they have no sufficient funds deposited in the bank, and such fact was not disclosed to private offended party, draw, issue and negotiate ABC Check No. PA 660524012 F, dated October 2, 1989, covering the amount of P30,000.00 and ABC Check No. PA 660524014 F, dated October 5, 1989, covering the amount of P25,000.00 and by means of said false pretenses or assurances and other similar deceits by active participation of accused Larry Cajigas induced private offended party to exchange aforestated checks with assorted jewelries in the amount of P55,000.00 for which the same did give and deliver to the above-named accused who fully well know that their manifestations and representations made to private offended party were false and untrue and upon presentation of ABC Check No. PA 660524012 F and ABC Check No. PA 660524014 F to the bank for payment the same was dishonored and unpaid for reason that the account of accused was closed and despite notice and demands made to them by private offended party that the aforestated checks were dishonored, the same failed and refused to make good said checks to the damage and prejudice of Daisy Fuentes in the amount of P55,000.00.^[6]

On arraignment, petitioners pleaded not guilty. Thereafter, trial ensued.

Version of the Prosecution

Private complainant Daisy Fuentes (Daisy) testified that she is a businesswoman engaged in the selling of ready-to-wear clothes (RTW) and jewelries. On 2 September 1989, petitioners went to Daisy's house in Lam-an, Ozamiz City and bought jewelries from her totaling P55,000. Petitioners paid for the jewelries by issuing two postdated Allied Bank Checks dated 2 and 5 October 1989, respectively. Daisy alleged that petitioners assured her that the checks were sufficiently funded. These checks, however, were dishonored by the drawee bank for the reason "Account Closed."

On 14 October 1989, Daisy claimed that petitioners went again to her house and purchased jewelries worth P33,000. As payment for the jewelries, petitioners issued

five postdated checks, two United Coconut Planters Bank (UCPB) checks dated 30 November and 20 December 1989 and three Far East Bank and Trust Company (FEBTC) checks dated 14, 20, and 25 November 1989. Petitioners again assured Daisy that the checks were funded. However, the checks, except UCPB Check No. 82289 dated 20 December 1989 in the amount of P2,713.00, bounced for the reason "Account Closed." Daisy no longer presented UCPB Check No. 82289 for payment because she already knew that Luz's UCPB account had been closed when Daisy presented the other UCPB check. As early as 10 August 1989, Luz's UCPB account was already closed.^[7]

Daisy further claimed that she went twice to the house of petitioners to demand payment. On her first visit, petitioners allegedly evaded Daisy and on the second time, Daisy discovered that petitioners were no longer residing there. Daisy searched for petitioners in Zamboanga and Cagayan de Oro City until the latter were located sometime in 1994 in Sucat, Parañaque, where they were finally arrested.

On rebuttal, Daisy explained the circumstances surrounding the issuance of the receipt allegedly replacing the bounced postdated checks involved in this case. Daisy stated that she had a transaction with Luz involving pawn papers and purchased whichever pawned items she liked.^[8] Daisy explained that she signed the receipt with only the following written on it: "I received eleven (11) pieces of pawn papers from Luz Cajigas."^[9] Daisy denied that she signed the receipt as replacement for all the checks issued by Luz.^[10] Daisy also stated that Larry had previously transacted with her involving purchase orders of RTWs in Geegee Shopping Center.

The prosecution likewise presented Santiago Parojinog, a UCPB Senior Teller, who testified that Luz opened a current account with UCPB on 9 July 1989 and closed it on 10 August 1989.^[11] Emmanuelito M. Enao (Enao), a Current and Savings Account Bookkeeper of FEBTC in Ozamiz City, testified that Luz opened a current account with FEBTC in September 1989 and closed it on 16 November 1989, and he showed photocopies of a ledger containing Luz's account.^[12] Alex Donor, a Current and Savings Accounts Bookkeeper of Allied Bank, testified that Luz opened a current account with Allied Bank which was closed before October 1989.^[13]

Version of the Defense

Larry denied the charges against him. Larry testified that he knew Daisy and her husband, Atty. Fuentes, but he never went to Daisy's house. He also stated that he had not seen the checks issued by his wife and co-accused Luz; that he and his wife did not have any joint bank account; and that he did not make any assurance that the checks subject of the criminal cases were sufficiently funded. On cross-examination, Larry testified that he was not aware of the transactions between his wife, Luz, and Daisy.

Luz, on the other hand, testified that she had been transacting with Daisy from 1986 to 1989 involving jewelries and purchase orders.^[14] Luz admitted issuing the checks subject of these cases.^[15] As their usual practice, Luz would purchase items from Daisy payable in five months and Luz would issue postdated checks before getting the items. If the amount involved was small, Daisy would wait for it to accumulate, then Luz would issue a check.^[16] Luz would then redeem the checks.

However, in the present criminal cases, Daisy did not return the checks after several demands to do so. Luz denied going to Daisy's house but she claimed that she transacted in Daisy's beauty parlor. Luz stated that she owed P3,500 only as remaining balance to be paid by pawn tickets.^[17] Luz further claimed that she issued a replacement receipt for all the checks she issued, including the checks subject of these cases.^[18]

After the trial, the Regional Trial Court of Ozamiz City, Branch 35, found petitioners guilty as charged, thus:

WHEREFORE, finding accused spouses Larry and Luz Cajigas guilty beyond reasonable doubt of estafa punishable under Art. 315, par. 2(d) of the Revised Penal Code, as amended by PD 818 without modifying circumstances, this Court renders judgment sentencing them to two indeterminate penalties of six (6) years and one (1) day of prision mayor to seventeen (17) years, four (4) months and one (1) day of reclusion temporal and to indemnify the complainant P55,000.00 in Crim Case No. 1412 and P33,758.21 in Crim. Case No. 1411. This Court, however, finds that the strict enforcement of the provisions of Art. 315 as amended by PD 818 results in the imposition of a clearly excessive penalty, taking into account the degree of malice and injury caused by the offense. It therefore, recommends to the Chief Executive, through the Secretary of Justice, that the penalties imposed herein be commuted. With costs.

SO ORDERED.^[19]

The Ruling of the Court of Appeals

The Court of Appeals affirmed the conviction of the petitioners for two counts each of estafa under Article 315, paragraph 2(d) of the RPC, as amended by PD 818.

Contrary to petitioners' view, the Court of Appeals held that there were no inconsistencies between Daisy's testimonies during the cross-examination and rebuttal. Daisy simply explained the purpose and the circumstances that led her to sign the replacement receipt. The appellate court also stated that the discrepancies between the statements in Daisy's affidavit and testimony did not impair her credibility as affidavits are taken *ex parte* and are often incomplete or inaccurate.

The appellate court also found that Daisy was justified in filing the criminal cases only after four years from the date of the commission of the crime because she still had to determine the whereabouts of petitioners.

On Larry's culpability, the Court of Appeals agreed with the trial court that although Larry did not sign and issue the checks, he was still liable as a co-conspirator because he had known Daisy for a longer time.

The Court of Appeals further ruled that petitioners' failure to timely object to the admission of the photocopies of the ledger presented by the prosecution witness, Enao, constitutes a waiver of the right to object. Besides, objection to the admission of evidence for being hearsay cannot be raised for the first time on appeal.

In increasing the penalty imposed on petitioners, the Court of Appeals cited the case of *People v. Flores*.^[20] Thus, the Court of Appeals disposed of the case, as follows:

WHEREFORE, premises considered, with the modification that they should be, as they hereby are, sentenced each to serve an indeterminate penalty of twelve (12) years of prision mayor as minimum to twenty one (21) years of reclusion perpetua as maximum, in Criminal Case No. RTC-1411, and twelve (12) years of prision mayor as minimum to twenty three (23) years of reclusion perpetua as maximum, in Criminal Case No. RTC-1412, the judgment rendered by the trial court against accused-appellants Luz Cajigas and Larry Cajigas is AFFIRMED in all other respects. No pronouncement as to costs.

SO ORDERED.^[21]

Hence, this petition.

The Issue

The main issue in this case is whether petitioners are guilty beyond reasonable doubt of two counts of estafa under Article 315, paragraph 2(d) of the RPC, as amended by PD 818.

The Ruling of the Court

The petition is partly meritorious.

Luz is guilty of two counts of estafa under Article 315, 2(d) of the RPC

Paragraph 2(d), Article 315 of the RPC provides:

ART. 315. *Swindling (estafa)*. - any person who shall defraud another by any of the means mentioned hereinbelow x x x

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

x x x

(d) By postdating a check, or issuing a check in payment of an obligation when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check. The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack or insufficiency of funds shall be *prima facie* evidence of deceit constituting false pretense or fraudulent act.

The elements of estafa under paragraph 2(d), Article 315 of the RPC are (1) the postdating or issuance of a check in payment of an obligation contracted at the time the check was issued; (2) lack of sufficiency of funds to cover the check; and (3)