

SECOND DIVISION

[G.R. No. 158312, November 14, 2008]

**JOHN DY, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND
THE HONORABLE COURT OF APPEALS, RESPONDENTS.**

DECISION

QUISUMBING, J.:

This appeal prays for the reversal of the Decision^[1] dated January 23, 2003 and the Resolution^[2] dated May 14, 2003 of the Court of Appeals in CA-G.R. CR No. 23802. The appellate court affirmed with modification the Decision^[3] dated November 17, 1999 of the Regional Trial Court (RTC), Branch 82 of Quezon City, which had convicted petitioner John Dy of two counts of *estafa* in Criminal Cases Nos. Q-93-46711 and Q-93-46713, and two counts of violation of *Batas Pambansa Bilang 22*^[4] (*B.P. Blg. 22*) in Criminal Cases Nos. Q-93-46712 and Q-93-46714.

The facts are undisputed:

Since 1990, John Dy has been the distributor of W.L. Food Products (W.L. Foods) in Naga City, Bicol, under the business name Dyna Marketing. Dy would pay W.L. Foods in either cash or check upon pick up of stocks of snack foods at the latter's branch or main office in Quezon City. At times, he would entrust the payment to one of his drivers.

On June 24, 1992, Dy's driver went to the branch office of W.L. Foods to pick up stocks of snack foods. He introduced himself to the checker, Mary Jane D. Maraca, who upon confirming Dy's credit with the main office, gave him merchandise worth P106,579.60. In return, the driver handed her a blank Far East Bank and Trust Company (FEBTC) Check with Check No. 553602 postdated July 22, 1992. The check was signed by Dy though it did not indicate a specific amount.

Yet again, on July 1, 1992, the same driver obtained snack foods from Maraca in the amount of P226,794.36 in exchange for a blank FEBTC Check with Check No. 553615 postdated July 31, 1992.

In both instances, the driver was issued an unsigned delivery receipt. The amounts for the purchases were filled in later by Evelyn Ong, accountant of W.L. Foods, based on the value of the goods delivered.

When presented for payment, FEBTC dishonored the checks for insufficiency of funds. Raul D. Gonzales, manager of FEBTC-Naga Branch, notified Atty. Rita Linda Jimeno, counsel of W.L. Foods, of the dishonor. Apparently, Dy only had an available balance of P2,000 as of July 22, 1992 and July 31, 1992.

Later, Gonzales sent Atty. Jimeno another letter^[5] advising her that FEBTC Check No. 553602 for P106,579.60 was returned to the drawee bank for the reasons stop payment order and drawn against uncollected deposit (DAUD), and not because it was drawn against insufficient funds as stated in the first letter. Dy's savings deposit account ledger reflected a balance of P160,659.39 as of July 22, 1992. This, however, included a regional clearing check for P55,000 which he deposited on July 20, 1992, and which took five (5) banking days to clear. Hence, the inward check was drawn against the yet uncollected deposit.

When William Lim, owner of W.L. Foods, phoned Dy about the matter, the latter explained that he could not pay since he had no funds yet. This prompted the former to send petitioner a demand letter, which the latter ignored.

On July 16, 1993, Lim charged Dy with two counts of *estafa* under Article 315, paragraph 2(d)^[6] of the Revised Penal Code in two Informations, which except for the dates and amounts involved, similarly read as follows:

That on or about the 24th day of June, 1992, in Quezon City, Philippines, the said accused, did then and there [willfully] and feloniously defraud W.L. PRODUCTS, a corporation duly organized and existing under the laws of the Republic of the Philippines with business address at No. 531 Gen. Luis St., Novaliches, this City, in the following manner, to wit: the said accused, by means of false manifestations and fraudulent representation which he made to complainant to the effect that Far East Bank and Trust Co. check No. 553602 dated July 22, 1992 in the amount of P106,579.60, payable to W.L. Products is a good check and will be honored by the bank on its maturity date, and by means of other deceit of similar import, induced and succeeded in inducing the said complainant to receive and accept the aforesaid check in payment of snack foods, the said accused knowing fully well that all his manifestations and representations were false and untrue and were made solely for the purpose of obtaining, as in fact he did obtain the aforesaid snack foods valued at P106,579.60 from said complainant as upon presentation of said check to the bank for payment, the same was dishonored and payment thereof refused for the reason stop payment and the said accused, once in possession of the aforesaid snack foods, with intent to defraud, [willfully], unlawfully and feloniously misapplied, misappropriated and converted the same or the value thereof to his own personal use and benefit, to the damage and prejudice of said W.L. Products, herein represented by RODOLFO BORJAL, in the aforementioned amount of P106,579.60, Philippine Currency.

Contrary to law.^[7]

On even date, Lim also charged Dy with two counts of violation of *B.P. Blg. 22* in two Informations which likewise save for the dates and amounts involved similarly read as follows:

That on or about the 24th day of June, 1992, the said accused, did then and there [willfully], unlawfully and feloniously make or draw and issue to W.L. FOOD PRODUCTS to apply on account or for value a Far East Bank and Trust Co. Check no. 553602 dated July 22, 1992 payable to

W.L. FOOD PRODUCTS in the amount of P106,579.60 Philippine Currency, said accused knowing fully well that at the time of issue he/she/they did not have sufficient funds in or credit with the drawee bank for payment of such check in full upon its presentment, which check when presented 90 days from the date thereof was subsequently dishonored by the drawee bank for the reason "Payment stopped" but the same would have been dishonored for insufficient funds had not the accused without any valid reason, ordered the bank to stop payment, the said accused despite receipt of notice of such dishonor, failed to pay said W.L. Food Products the amount of said check or to make arrangement for payment in full of the same within five (5) banking days after receiving said notice.

CONTRARY TO LAW.^[8]

On November 23, 1994, Dy was arrested in Naga City. On arraignment, he pleaded not guilty to all charges. Thereafter, the cases against him were tried jointly.

On November 17, 1999 the RTC convicted Dy on two counts each of *estafa* and violation of *B.P. Blg. 22*. The trial court disposed of the case as follows:

WHEREFORE, accused JOHN JERRY DY ALDEN (JOHN DY) is hereby found GUILTY beyond reasonable doubt of swindling (ESTAFA) as charged in the Informations in Criminal Case No. 93-46711 and in Criminal Case No. Q-93-46713, respectively. Accordingly, after applying the provisions of the Indeterminate Sentence Law and P.D. No. 818, said accused is hereby sentenced to suffer the indeterminate penalty of ten (10) years and one (1) day to twelve (12) years of prision mayor, as minimum, to twenty (20) years of reclusion temporal, as maximum, in Criminal Case No. Q-93-46711 and of ten (10) years and one (1) day to twelve (12) years of prision mayor, as minimum, to thirty (30) years of reclusion perpetua, as maximum, in Criminal Case No. Q-93-46713.

Likewise, said accused is hereby found GUILTY beyond reasonable doubt of Violation of B.P. 22 as charged in the Informations in Criminal Case No. Q-93-46712 and in Criminal Case No. Q-93-46714 and is accordingly sentenced to imprisonment of one (1) year for each of the said offense and to pay a fine in the total amount of P333,373.96, with subsidiary imprisonment in case of insolvency.

FINALLY, judgment is hereby rendered in favor of private complainant, W. L. Food Products, herein represented by Rodolfo Borjal, and against herein accused JOHN JERRY DY ALDEN (JOHN DY), ordering the latter to pay to the former the total sum of P333,373.96 plus interest thereon at the rate of 12% per annum from September 28, 1992 until fully paid; and, (2) the costs of this suit.

SO ORDERED.^[9]

Dy brought the case to the Court of Appeals. In the assailed Decision of January 23, 2003, the appellate court affirmed the RTC. It, however, modified the sentence and deleted the payment of interests in this wise:

WHEREFORE, in view of the foregoing, the decision appealed from is hereby **AFFIRMED with MODIFICATION**. In **Criminal Case No. Q-93-46711 (for estafa)**, the accused-appellant JOHN JERRY DY ALDEN (JOHN DY) is hereby sentenced to suffer an indeterminate penalty of imprisonment ranging from six (6) years and one (1) day of *prision mayor* as minimum to twenty (20) years of *reclusion temporal* as maximum plus eight (8) years in excess of [P]22,000.00. In **Criminal Case No. Q-93-46712 (for violation of BP 22)**, accused-appellant is sentenced to suffer an imprisonment of one (1) year and to indemnify W.L. Food Products, represented by Rodolfo Borjal, the amount of ONE HUNDRED SIX THOUSAND FIVE HUNDRED SEVENTY NINE PESOS and 60/100 ([P]106,579.60). In **Criminal Case No. Q-93-46713 (for estafa)**, accused-appellant is hereby sentenced to suffer an indeterminate penalty of imprisonment ranging from eight (8) years and one (1) day of *prision mayor* as minimum to thirty (30) years as maximum. Finally, in **Criminal Case No. Q-93-46714 (for violation of BP 22)**, accused-appellant is sentenced to suffer an imprisonment of one (1) year and to indemnify W.L. Food Products, represented by Rodolfo Borjal, the amount of TWO HUNDRED TWENTY SIX THOUSAND SEVEN HUNDRED NINETY FOUR PESOS AND 36/100 ([P]226,794.36).

SO ORDERED.^[10]

Dy moved for reconsideration, but his motion was denied in the Resolution dated May 14, 2003.

Hence, this petition which raises the following issues:

I.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT THE PROSECUTION HAS PROVEN THE GUILT OF ACCUSED BEYOND REASONABLE DOUBT OF ESTAFA ON TWO (2) COUNTS?

II.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT THE PROSECUTION HAS PROVEN THE GUILT OF ACCUSED BEYOND REASONABLE DOUBT OF VIOLATION OF BP 22 ON TWO (2) COUNTS?

III.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN AWARDING DAMAGES TO PRIVATE COMPLAINANT, W.L. FOOD PRODUCTS, THE TOTAL SUM OF [P]333,373.96?^[11]

Essentially, the issue is whether John Dy is liable for *estafa* and for violation of *B.P. Blg. 22*.

First, is petitioner guilty of *estafa*?

Mainly, petitioner contends that the checks were ineffectively issued. He stresses that not only were the checks blank, but also that W.L. Foods' accountant had no authority to fill the amounts. Dy also claims failure of consideration to negate any obligation to W.L. Foods. Ultimately, petitioner denies having deceived Lim inasmuch as only the two checks bounced since he began dealing with him. He maintains that it was his long established business relationship with Lim that enabled him to obtain the goods, and not the checks issued in payment for them. Petitioner renounces personal liability on the checks since he was absent when the goods were delivered.

The Office of the Solicitor General (OSG), for the State, avers that the delivery of the checks by Dy's driver to Maraca, constituted valid issuance. The OSG sustains Ong's *prima facie* authority to fill the checks based on the value of goods taken. It observes that nothing in the records showed that W.L. Foods' accountant filled up the checks in violation of Dy's instructions or their previous agreement. Finally, the OSG challenges the present petition as an inappropriate remedy to review the factual findings of the trial court.

We find that the petition is partly meritorious.

Before an accused can be held liable for *estafa* under Article 315, paragraph 2(d) of the Revised Penal Code, as amended by Republic Act No. 4885,^[12] the following elements must concur: (1) postdating or issuance of a check in payment of an obligation contracted at the time the check was issued; (2) insufficiency of funds to cover the check; and (3) damage to the payee thereof.^[13] These elements are present in the instant case.

Section 191 of the Negotiable Instruments Law^[14] defines "issue" as the first delivery of an instrument, complete in form, to a person who takes it as a holder. Significantly, delivery is the final act essential to the negotiability of an instrument. Delivery denotes physical transfer of the instrument by the maker or drawer coupled with an intention to convey title to the payee and recognize him as a holder.^[15] It means more than handing over to another; it imports such transfer of the instrument to another as to enable the latter to hold it for himself.^[16]

In this case, even if the checks were given to W.L. Foods in blank, this alone did not make its issuance invalid. When the checks were delivered to Lim, through his employee, he became a holder with *prima facie* authority to fill the blanks. This was, in fact, accomplished by Lim's accountant.

The pertinent provisions of Section 14 of the Negotiable Instruments Law are instructive:

SEC. 14. *Blanks; when may be filled.*-Where the instrument is wanting in any material particular, **the person in possession thereof has a *prima facie* authority to complete it by filling up the blanks** therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a *prima facie* authority to fill it up as such for any amount. (Emphasis supplied.)