

SECOND DIVISION

[G.R. NO. 154721, March 22, 2007]

**ALFONSO FIRAZA, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

CARPIO, J.:

The Case

Before the Court is a petition for review^[1] assailing the 30 July 2002 Decision^[2] of the Court of Appeals in CA-G.R. CR No. 22679. The Court of Appeals affirmed with modification the 25 November 1998 Decision of the Regional Trial Court of Legaspi^[3] City, Branch 7 (trial court), in Criminal Case No. 7063.

The Antecedent Facts

Henry Samar, Jr. (private complainant) was the owner of a parcel of land with an area of 15,066 square meters covered by Transfer Certificate of Title No. 90243 and located in Peñafrancia, Daraga, Albay. In an Agreement dated 13 May 1994, private complainant sold the land to Alfonso Firaza (petitioner) under the following terms of payment:^[4]

- 1) Down payment of P85,000.00 upon signing of [the] contract; and
- 2) Balance of P665,000.00 payable with postdated checks dated as follows:

- a) P15,000.00 dated May 30, 1994, PNB Check No. 3955-30
- b) P100,000.00 dated July 30, 1994, PNB Check No. 3955-31
- c) P100,000.00 dated August 30, 1994, PNB Check No. 3955-32^[5]**
- d) P450,000.00 dated Nov. 30, 1994, PNB Check No. 3955-33.

^[6]

(Emphasis in the original)

When private complainant presented PNB Check No. 395532-S for payment, the Philippine National Bank (PNB) dishonored the check by reason of "account closed." Meanwhile, petitioner subdivided the land, sold the subdivided lots, and retained the unsold lots.

Despite verbal and written demands for the payment of the value of the check, petitioner failed to pay the amount of the dishonored check. Thus, private complainant charged petitioner with estafa for violation of paragraph 2(d), Article 315 of the Revised Penal Code. The Information reads:

That sometime in May, 1994, in the City of Legazpi, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to defraud, by means of false pretenses or fraudulent acts executed prior to, or simultaneously with the commission of the fraud, did then and there wilfully, unlawfully and feloniously draw and issue a postdated PNB Check No. 395532-S dated August 30, 1994 in the amount of P100,000.00 in favor of one HENRY SAMAR, as payment of a parcel of land he purchased from the said HENRY SAMAR, knowing fully well that at the time he issued the check, he had no sufficient funds with the drawee bank to cover the amount called for therein and without informing the payee of such circumstances; that when said check was presented to the drawee bank for payment, the same was consequently dishonored and refused payment for the reason of "ACCOUNT CLOSED", that despite oral and written demands, accused had failed and refused and still fails and refused to pay the sum of P100,000.00, Philippine Currency, and/or make arrangement for the payment of said check, to the damage and prejudice of said HENRY SAMAR, in the aforementioned amount.

CONTRARY TO LAW.^[7]

Upon his arraignment, petitioner pleaded not guilty to the charge.

The prosecution presented private complainant and Jose Biton (Biton), a PNB employee who testified that at the time of the issuance of the check, petitioner's account balance was only P1,026.53. Biton further testified that petitioner closed his account on 27 May 1994, or about three months prior to the actual date of PNB Check No. 395532-S.

The defense presented petitioner and Eufemio Mediavillo (Mediavillo) as witnesses. The defense manifested that another witness would be presented but petitioner and his counsel did not appear at the scheduled hearing. The trial court deemed that petitioner had waived further presentation of evidence, and the case was submitted for resolution.

The Ruling of the Trial Court

In its Decision^[8] dated 25 November 1998, the trial court convicted petitioner, as follows:

PREMISES CONSIDERED, the court finds the accused to have violated beyond reasonable doubt Section 2, paragraph (d) of Article 315 of the Revised Penal Code. All the elements for its violation are present. He is, therefore, declared GUILTY of the offense charged. Pursuant to the provisions of P.D. 818 and applying the Indeterminate Sentence Law, accused is hereby sentenced to suffer the penalty of ten (10) years and one (1) day of prision mayor maximum, to seventeen (17) years, four (4) months and one (1) day of reclusion temporal maximum, considering that the amount involved is P100,000.00. Accused is likewise sentenced to suffer an additional penalty of seven (7) years of imprisonment, as an extra penalty for the P78,000.00 in excess of the P22,000.00 provided under the law, with all the accessory penalties provided therefor. Accused

also is ordered to reimburse Henry Samar, Jr. the amount of P100,000.00 corresponding to the value of the check, with interest thereon at the legal rate, from the time it was drawn, until fully paid; likewise the amount of P20,000.00 as damages for and as attorney's fees.

SO ORDERED.^[9]

The trial court ruled that petitioner knew that at the time of the issuance of PNB Check No. 395532-S, the check was not funded. The trial court did not accept petitioner's defense that private complainant knew that PNB Check No. 395532-S was not funded and that the check was issued only as a guaranty for the payment of the balance of the purchase price of the land.

Petitioner appealed the trial court's decision.

The Ruling of the Court of Appeals

The Court of Appeals affirmed the trial court's decision with modification, thus:

WHEREFORE, the appealed decision is hereby AFFIRMED with the MODIFICATION that the accused-appellant is hereby sentenced to suffer the indeterminate penalty of 4 years and 2 months of Prison Correccional, medium, to 20 years of Reclusion Temporal. Costs against accused-appellant.

SO ORDERED.^[10]

The Court of Appeals ruled that petitioner defrauded private complainant because he issued PNB Check No. 395532-S to induce private complainant to execute the Deed of Sale in his favor. The Court of Appeals ruled that private complainant would not have parted with the title of the land had petitioner not issued several postdated checks, including PNB Check No. 395532-S. The Court of Appeals cited private complainant's testimony that he was informed that petitioner's account was in good standing and there was sufficient fund for the postdated checks issued by petitioner.

Petitioner filed a petition for review before this Court to assail the Decision of the Court of Appeals.

The Issue

The sole issue in this case is whether petitioner is guilty of estafa under paragraph 2(d), Article 315 of the Revised Penal Code.

The Ruling of this Court

The petition has no merit.

Elements of Estafa under paragraph 2(d), Article 315 of the Revised Penal Code

Paragraph 2(d), Article 315 of the Revised Penal Code provides:

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

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 Revised Penal Code are the following:

1. 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. damage to the payee.^[11]

All the elements are present in this case. Petitioner issued PNB Check No. 395532-S to obtain the title of the land from private complainant. As found by the Court of Appeals, petitioner issued the check to induce private complainant to execute a deed of sale in his favor. Mediavillo, a defense witness, confirmed that the Deed of Absolute Sale was signed after petitioner gave the checks to private complainant. Thus:

Q. And you will agree with the fact that after the issuance and delivery of the check to Mrs. Samar and her subsequent acceptance thereof, the Deed of Sale, as you said, was in turn delivered to Mr. Firaza, did I get you correctly?

A. Yes, sir.

Q. In other words, we are clear of the fact that the reason why the Deed of Absolute Sale was signed already by the son of Mrs. Samar, the complainant herein, Henry Samar, is because Mr. Firaza already delivered several checks which constitute part of the balance of the consideration of this transaction of sale, is that correct?

A. Yes, sir.

Q. Putting it another way, this Deed of Absolute Sale could not have been

signed or delivered to Mr. Firaza had Mr. Firaza not issued those checks which you mentioned?

A. They went together and I was with them when they went to the notary public.

Atty. Berches:

Q. But the point is, they agreed to the signing and subsequent notarization of this document only after Firaza had delivered the checks corresponding to the balance of the consideration.

A. Yes, sir.^[12]

Petitioner did not dispute that at the time of the issuance of PNB Check No. 395532-S, petitioner's account balance was only P1,026.53. It was also established that petitioner closed his account on 27 May 1994, three months before the date indicated in PNB Check No. 395532-S.

Petitioner argues that if he had sufficient funds to pay the balance of the purchase price, he would not have issued the checks. Hence, even without informing private complainant, private complainant could already have discerned that the checks had no funds. Thus, there was no deceit committed by petitioner.

The Court finds the argument untenable. Petitioner's claim that private complainant knew that the checks did not have sufficient funds was denied by private complainant who testified that he was informed that petitioner's account was in good standing and that there were sufficient funds for the postdated checks issued.^[13] It was established that private complainant would not have parted with his property if he knew that the checks were not funded.

The damage suffered by private complainant had also been established. Private complainant had already transferred the title to the property to petitioner who subsequently subdivided the land and started selling the subdivided portions of the land. Yet, despite several demands, petitioner failed to pay the value of the dishonored check. These factual findings of the trial court, adopted and confirmed by the Court of Appeals, are final and conclusive and may not be reviewed on appeal to this Court.^[14]

***Subsequent Desistance of Private Complainant
Will Not Absolve Petitioner***

Petitioner filed before this Court a Motion dated 24 June 2005 praying for the reversal of his conviction. Petitioner alleges that he had fully settled his obligation and that private complainant did not suffer any damage as a consequence of the issuance of the check. The motion states:

MOTION

ACCUSED-APPELLANT, unto this Honorable Court, most respectfully set forth: