

SECOND DIVISION

[G.R. NO. 166873, April 27, 2007]

**GEMMA ILAGAN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,
RESPONDENT.**

[G.R. NO. 168069]

**ALBERT CORDERO SY, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

[G.R. NO. 168543]

**JAIME TAN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,
RESPONDENT.**

D E C I S I O N

CARPIO MORALES, J.:

Petitioners Gemma Ilagan, Albert Cordero Sy, and Jaime Tan, who have separately filed the subject petitions which have been consolidated, were charged, in an Information filed before the Regional Trial Court (RTC) of Manila on January 30, 2002, for Estafa under Art. 315, paragraph 2(d), alleged to have been committed as follows:

That on or about July 1, 2001, in the City of Manila, Philippines, the said accused, conspiring and confederating together and helping one another, the said accused, did then and there willfully, unlawfully and feloniously defraud ROSITA TAN in the following manner, to wit: the said accused, by means of false manifestations and fraudulent representations which they made to said ROSITA TAN to the effect that the following checks, to wit:

BANK/CHECK NO.	DATE	AMOUNT	REASON FOR DISHONOR	PAYABLE TO
RCBC A0514808	Sept. 30, 2000	P70,000.00	Account Closed	Jazshirt Trdg.
RCBC A0514816	Sept. 16, 2000	P88,350.00	Account Closed	Jazshirt Trdg.
RCBC A0514810	Oct. 31, 2000	P180,000.00	Account Closed	Jazshirt Trdg.
FEBTC P8069954	Aug. 15, 2000	P152,000.00	DAIF	Jazshirt Trdg.

issued by Gemma Ilagan, is a [sic] good checks covered by sufficient funds and would be honored by the drawee bank on its maturity date, and by means of other similar deceits, induced and succeeded in inducing Rosita Tan to accept said checks in exchange for cash in the amount of

P470,350.00; that however, when said checks were presented to the drawee bank for payment, the same were dishonored and payment thereof refused for the reason "ACCOUNT CLOSED and DRAWN AGAINST INSUFFICIENT FUNDS", and that said accused knew fully well that said manifestations and representations were made for the purpose of inducing the said ROSITA TAN to part with the said amount of P470,350.00, to the damage and prejudice of the said ROSITA TAN in the aforesaid amount of P470,350.00, Philippine Currency.

CONTRARY TO LAW.^[1] (Underscoring supplied)

Private complainant Rosita Tan (Rosita) gave her account^[2] of the circumstances that led her to encash the checks subject of the case as follows:

In the morning of July 1, 2000, the accused-petitioners Alberto Cordero Sy (Sy) and Jaime Tan (Tan) repaired to her residence/office address at Binondo for the purpose of encashing the subject four (4) post-dated checks which had a total amount of P490,350 issued by petitioner Gemma Ilagan (Gemma) payable to the order of Jazshirt Trading, of which petitioner Sy is the registered owner and petitioner Tan is the general manager.

Agreeing to accommodate petitioners because of their "promise that the checks will be good on due date and during that time they will have money" and they being her relatives, Rosita asked them to return. For the purpose of encashing the checks, she immediately borrowed money from her friend Juanito Tan after which she advised petitioner Tan to go back to her address.

Thus, in the early afternoon also of July 1, 2000, petitioners Sy and Tan repaired back to Rosita's address during which they "told [her] not to worry because during that time they will have that amount of money" hence, she changed the checks with cash in the amount of "around P480,000." She "was not sure of the exact amount," however, after P20,000^[3] was deducted representing "interest" for Juanito Tan from July 1, 2000 up to the dates of maturity of the checks.

On their respective dates of maturity, as the above-quoted Information shows, the first three checks were, on presentment, dishonored due to "Account Closed." The fourth check was dishonored due to "DAIF" or "Drawn Against Insufficiency of Funds."

Rosita thereupon advised petitioners of the dishonor of the checks but was told that "they still don't have the money to settle."

As despite several demands, petitioners failed to settle their obligation, Rosita filed the complaint-basis of the filing of the Information against them.

Juanito Tan corroborated Rosita's testimony relative to her borrowing money for the purpose of changing the checks to cash.^[4]

The accused-petitioners, denying the charge, gave their respective versions as follows:

Petitioner Sy, who is the nephew of Rosita, denied knowledge about the transaction. He surmised that Rosita, the sister of his father, implicated him in the case following an altercation in his presence, which occurred in their house, between Rosita, his mother, and his sister in which he sided with his mother. Despite his apology and request for Rosita to drop him from the case, as after all he was no longer involved in Jazshirt Trading, the payee of the checks, she denied his request, she telling him to force his herein co-petitioner uncle Tan, whose wife is also a sister of Rosita, to pay her.^[5]

For his part, petitioner Tan denied having gone to Rosita's house on July 1, 2000. He admitted having indorsed the post-dated checks to her, however, by just calling her up by telephone,^[6] without any intention of defrauding her, he having had several similar transactions of "rediscounting" with her in the past. When the checks were dishonored, he called her up and asked her "to give us some time because our business is not doing well and the interest is going up thus we cannot afford [to pay]."^[7] He had in fact already sent her a check for P75,321 in partial settlement of the dishonored checks.^[8]

During his direct examination, petitioner Tan, when asked to enlighten what he meant by "re-discounting," declared:

x x x x

- A. If we received postdated checks, we find persons who are interested to change the check if there are people who would like to change the same we show it to that person and if he agree he will compute the check depending upon the date and amount of checks and interest and we would deduct the interest, ma'am.

x x x x^[9] (Underscoring supplied)

As for petitioner Gemma, she admitted issuing the post-dated checks payable to Jazshirt Trading where she works as secretary and accounting clerk, which checks represented payment for goods she obtained from Jazshirt Trading. She was unable to "re-sell" the goods; however, hence, she returned them to Jazshirt Trading, hoping to recover the checks. Petitioner Tan later informed her that he had indorsed the checks to Rosita, and that he would settle the amounts of the checks so that Rosita would return them and he (petitioner Tan) would in turn return them to her (Gemma) upon which she would reimburse him the P75,300 he had paid to Rosita. The arrangement did not materialize, however, Rosita having allegedly mingled the checks with other checks which had been on different occasions indorsed to her by Jazshirt Trading.^[10]

Branch 21 of the Manila RTC, by Decision^[11] of February 18, 2003, convicted petitioners. It ratiocinated:

x x x Even if the checks in question were issued by accused Gemma Ilagan, it was [the] accused Jaime Tan and Albert Cordero Sy being the manager and registered owners of Jazshirt Trading who directly and personally benefited from the postdated checks exchanged into cash by Rosita. Negotiating directly and personally the postdated checks issued by Gemma Ilagan and obtaining their cash value from Rosita Tan through

deceit and misrepresentation that the checks would be funded upon maturity when in fact they were not, may be construed as the **efficient cause** which constitutes the crime of estafa as defined and penalized under par. 2(d) of Art. 315 of the Revised Penal Code. Rosita was deprived of disposing of the amount covered by the check. There was disturbance of property rights sufficient to cause damage satisfying the element of estafa. While admittedly Jaime Tan and Albert Cordero Sy did not issue the postdated checks, the act of negotiating and receiving the cash equivalent indicate the presence of conspiracy as charged in the information filed against them.

As early as 1935, this issue has already been resolved by the Court in *People v. Isleta and Nueno* (61 Phil. 33^[2]) cited in *Zagado v. CA* (^[1]78 SCRA 146) when it held:

It is true that the testimony of Isleta should be carefully scrutinized as there is no reason to believe that he was not such an innocent drawer as he pretends to be, but we are of the opinion that, apart from the weight which may be given to said testimony, the bad faith of appellant [Nueno] has been clearly demonstrated. Whether a conspiracy existed between appellant and Isleta, we do not need here to decide. The fact remains — and this is sufficient to support the conviction of appellant — that the latter had guilty knowledge of the fact that Isleta had no funds in the bank when he negotiated the check in question.

Assessing the evidence on record, the Court is convinced that accused are guilty of the crime charged. Accused therefore must be held liable not only criminally but likewise civilly for the damages they have caused private complainant as persons criminally liable are also civilly liable (Art. 100, Revised Penal Code).^[12] (Emphasis and underscoring supplied)

Thus the trial court disposed:

WHEREFORE, premises considered, the Court finds accused JAIME TAN, ALBERT CORDERO SY, and GEMMA ILAGAN GUILTY beyond reasonable doubt as principals of the crime charged and are hereby sentenced to suffer the penalty of SIX (6) YEARS and ONE (1) day of prision correccional to EIGHT (8) YEARS and ONE (1) DAY of prision mayor and to indemnify jointly and severally the complainant Rosita Tan, the amount of P470,350.00 **with legal interest from the finality of the decision** until fully satisfied without subsidiary imprisonment in case of insolvency and to pay the costs.

Accordingly, the bond posted for provisional liberty is CANCELLED.^[13] (Emphasis and underscoring supplied)

On appeal, the Court of Appeals **affirmed** the trial court's decision. It discredited the claim of the defense that Rosita was engaged in the business of rediscounting "in the absence of evidence establishing this claim." It quoted with approval the trial court's above-quoted *ratio decidendi* in affirming the decision of the trial court. It modified the penalty and civil liability imposed by the trial court, however. The

dispositive portion of the Court of Appeals Decision^[14] dated September 22, 2004, reads:

WHEREFORE, premises considered, the Court hereby AFFIRMS the decision of the trial court in Criminal Case No. 02-199044 WITH MODIFICATION with respect to the penalty imposed. Thus, this Court finds the accused Jaime Tan, Albert Cordero Sy, and Gemma Ilagan guilty beyond reasonable doubt of ESTAFA, defined and penalized under Article 315, paragraph 2(d) of the Revised Penal Code, and hereby sentences each of them to suffer an indeterminate penalty of ten (10) years of prision mayor, as minimum, to thirty (30) years of reclusion perpetua, as maximum, and to **indemnify the private complainant in the amount of P470,350.00.**^[15] (Underscoring supplied)

Petitioners Sy and Tan's motions for reconsiderations were denied on the merits,^[16] while that of petitioner Gemma was denied for having been filed out of time.^[17]

Hence, the separate petitions for review of petitioners.

Petitioner Gemma assigns the following errors to the appellate court:

- I. . . . DENYING ACCUSED-PETITIONERS' ½ MOTION FOR RECONSIDERATION TO THE DECISION DATED SEPTEMBER 22, 2004 ON A MERE TECHNICAL GROUND.
- II. . . . MISAPPREHEND[ING] THE ESTABLISHED FACTS OF THE CASE THAT CLEARLY INDICATE THE ABSENCE OF ANY CRIMINAL INTENT ON THE PART OF ACCUSED-PETITIONER TO COMMIT THE CRIME CHARGED.
- III. . . . RULING THAT ACCUSED-PETITIONER CONSPIRED WITH CO-ACCUSED JAIME TAN AND ALBERT CORDERO SY TO DEFRAUD PRIVATE COMPLAINANT ROSITA TAN.^[18] (Underscoring supplied)

Petitioner Sy ascribes the following errors to the appellate court:

- I. . . . HOLDING THAT PETITIONER IS LIABLE FOR ESTAFA UNDER ART. 315, PAR. 2[d], REVISED PENAL CODE, ALTHOUGH HE WAS NOT THE DRAWER/ISSUER OF THE CHECKS IN QUESTION AND DID NOT KNOW OR COULD NOT HAVE KNOWN OF THE INSUFFICIENCY OF FUNDS TO COVER THE CHECKS.
- II. . . . HOLDING THAT PETITIONER COMMITTED FRAUD BY INDUCING THE PRIVATE COMPLAINANT TO ENCASH THE CHECKS BY GUARANTEEING THAT SAID CHECKS WOULD BE HONORED UPON MATURITY.
- III. . . . HOLDING THAT THERE WAS AN IMPLIED CONSPIRACY AMONG THE THREE ACCUSED TO COMMIT THE OFFENSE.
- IV. . . . NOT HOLDING THAT THE PETITIONER'S CONSTITUTIONAL PRESUMPTION OF INNOCENCE WAS NOT OVERCOME BY PROOF