437 Phil. 621

SECOND DIVISION

[G.R. No. 133645, September 17, 2002]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALEXANDER DINGLASAN, ACCUSED-APPELLANT.

D E C I S I O N

QUISUMBING, J.:

On appeal is the judgment[1] dated August 18, 1997 of the Regional Trial Court of Pasig City, Branch 164, in Criminal Case No. 107866. Its decretal portion reads:

> WHEREFORE, this Court finds accused ALEXANDER DINGLASAN guilty beyond reasonable doubt of Estafa defined and penalized under Article 315, (2) (d) of the Revised Penal Code, as amended, and applying the Indeterminate Sentence Law, hereby sentences him to an indeterminate penalty of Twenty (20) Years and One (1) Day of *reclusion perpetua* as minimum, to Twenty Eight (28) Years also of *reclusion perpetua* as maximum.
>
> Accused is likewise ordered to pay Charles Q. Sia the amount of One Hundred Four Thousand One Hundred Sixty (P104,160.00) Pesos, the total amount of the bouncing checks as actual damages.
> With costs against accused.
>
> SO ORDERED.[2]

The factual antecedents of this case are as follows:

Appellant Alexander Dinglasan was the owner and operator of Alexander Transport, a bus firm plying the Manila-Bicol route, while private complainant Charles Q. Sia is the owner of Schanika Enterprises, which is engaged in retailing nylon tires. Alexander Transport subsequently became bankrupt and ceased to operate during the pendency of Criminal Case No. 107866.[3]

On February 13, 1995, the Pasig City Prosecutor charged appellant with estafa allegedly committed as follows:

> That sometime in July 1994, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, with intent [to] defraud CHARLES Q. SIA and by means of deceit and false representations, did then and there willfully, unlawfully and feloniously and simultaneously issued and delivered (sic) three (3) postdated checks describe[d] as follows:
>
> | Check No. | Amount | Date |
> |---|---|---|
> | 029020 | P38,760.00 | July 24, 1994 |

029021	P26,400.00	July 25, 1994
029014	P39,000.00	July 30, 1994

in payment of his obligation[s] without informing Charles Q. Sia that at the time accused had no funds in the bank, so that when said checks were presented for payment to the drawee bank, the same were dishonored and refused payment due to "Drawn Against Insufficient Funds," and the said accused despite the lapse of three (3) days from receipt of notice of dishonor, failed and refused to make full payment thereof, to the damage and prejudice of Charles Q. Sia in the aforementioned amount of P104,160.00.

CONTRARY TO LAW.[4]

When arraigned, appellant pleaded not guilty. Trial on the merits then ensued.

The prosecution's evidence shows that on three occasions in July 1994, appellant purchased several sets of tires from Sia and issued three separate postdated checks in payment for said purchases. Thus, for the purchase of July 22, 1994, covered by Sales Invoice No. 856,[5] appellant issued Banco de Oro Check No. 029014 dated September 30, 1994.[6] As to the purchase of July 23, 1994, as manifested by Sales Invoice No. 861,[7] appellant issued Banco de Oro Check No. 029020 dated September 24, 1994.[8] With respect to the purchase of July 25, 1994 as shown by Sales Invoice No. 864,[9] appellant issued Banco de Oro Check No. 029021 dated September 25, 1994.[10]

When the checks fell due, Sia deposited them with his Metrobank account for clearance and payment, but the drawee bank, Banco de Oro, dishonored these for insufficiency of funds.[11] He then tried to call appellant several times, but his calls were unanswered. He sent one of his sales agents to see appellant but to no avail. Sia, with the assistance of a lawyer, then sent appellant a demand letter.[12] All he got were promises that appellant would pay the amounts due,[13] finally prompting him to hale appellant to court.

Appellant did not deny buying tires from Sia or issuing the checks in question. He also admitted that said checks bounced upon presentment for payment.[14] However, he vigorously denied any intent to deceive or defraud Sia. He vehemently insisted that his refusal to pay Sia was primarily due to the poor quality of the tires sold him by the latter. Appellant claimed that the tires he bought from Sia would burst, even when the buses were not moving, causing several severe disruptions in his operations and losses to his company.[15]

The trial court convicted appellant of the charges.

Hence, this appeal with appellant contending that the lower court erred:

I

… IN FAILING TO CONSIDER THAT THERE WAS NO DECEIT OR FRAUD IN THE ISSUANCE OF THE DISHONORED POSTDATED CHECKS.

II

… IN FAILING TO CONSIDER THAT THE GOODS SOLD TO ACCUSED-APPELLANT WERE OF VERY POOR QUALITY CAUSING THE BANKRUPTCY OF THE TRANSPORTATION BUSINESS OF THE ACCUSED-APPELLANT.[16]

For resolution, the issues are: (1) whether appellant's guilt has been proven with moral certainty; and (2) whether the penalty imposed is proper.

Appellant does not deny issuing the dishonored checks. Nonetheless, he insists that he did not employ any deceit or fraud against private complainant. Appellant contends that his failure to make good on the checks was due to the losses sustained by his business as a result of the poor quality of the tires supplied by Sia. Appellant, in praying for acquittal, relies heavily on our ruling in *People vs. Singson*, [17] where we held that:

> Although in the case of bouncing check under BP Blg. 22, failure of the drawer to deposit the amount necessary to cover his checks within three days from notice of dishonor shall be *prima facie* evidence of fraud or deceit, under Article 315 of the Revised Penal Code, mere failure to make such deposit cannot be the basis for conviction if the surrounding circumstances tend to show the absence of bad faith or deceit. In the present case, We find the evidence not sufficient to establish the existence of fraud or deceit on the part of the accused.[18]

For the State, the Office of the Solicitor General (OSG) counters that deceit and fraud were present when appellant issued the checks in question. The OSG stresses that were it not for the subject checks, complainant would not have sold appellant the tires. The OSG further points out that appellant failed to rebut the *prima facie* presumption of fraud and deceit due to his failure to make the necessary deposit to cover the checks he issued. Finally, the OSG submits that appellant's reliance on *People vs. Singson* is misplaced, as the facts in said case are not on all fours with the factual circumstances in the present case.

At the outset, we find that two of the dates alleged in the information during which appellant supposedly committed estafa are at variance materially with the prosecution's evidence: (1) With respect to Check No. 029014, the date of the transaction was alleged in the information as July 30, 1994. Yet, the prosecution's evidence shows that it was issued for the purchase of six sets of tires on July 22, 1994. (2) Check No. 029020 was issued for the purchase of July 23, 1994, and not July 24, 1994, as alleged in the charge sheet. In these two instances, the checks were postdated September 30, 1994 and September 24, 1994. Obviously, the charge in regard to these two checks is fatally flawed, for the alleged dates of the corresponding transactions in the charge are false, or better said inexistent, as hereafter discussed. It is only with respect to Check No. 029021, postdated September 25, 1994, which was issued in payment of the purchase made on July 25, 1994 that the correct date of the corresponding transaction is alleged in the information and supported by the prosecution's evidence.

Section 11, Rule 110 of the 2000 Revised Rules of Criminal Procedure[19] lays down two rules with respect to the averment of the date the offense was committed in the complaint or information: (1) where time is not a material ingredient of the offense, it is sufficient that the information alleges that the act constitutive of the offense was committed at a time as near to the actual date when the same was carried out;

[20] but (2) where time is a material ingredient of the offense, it must be correctly alleged in the information.[21]

Appellant was charged and convicted of estafa under Article 315 (2) (d) of the Revised Penal Code.[22] The elements of the offense are: (1) postdating or issuing a check in payment of an obligation contracted at the time the check was issued; (2) lack of sufficient funds to cover the check; (3) knowledge on the part of the offender of such circumstances; and (4) damage to the complainant. The first element of the offense requires that the dishonored check must have been postdated or issued *at the time the obligation was contracted*. In other words, the date the obligation was entered into, being the very date the check was issued or postdated, is a material ingredient of the offense. Hence, not only must said date be specifically and particularly alleged in the information, it must be proved as alleged.[23]

In the present case, the prosecution's evidence clearly and categorically shows that there was no transaction between the parties on July 30, 1994, for which Check No. 029014 was issued. In other words, no obligation was contracted on July 30, 1994, for which Check No. 029014 was allegedly postdated by appellant. The situation obtains similarly regarding Check No. 029020. Again, there was no obligation contracted by the parties on July 24, 1994 for which appellant allegedly postdated another check. Evidently, the first element of the offense was neither correctly alleged nor proven by the prosecution. Hence, appellant cannot be charged much less found guilty of estafa with respect to Checks Nos. 029014 and 029020.

The situation, however, is different with respect to Check No. 029021. Here, the prosecution correctly alleged that an obligation was entered into on July 25, 1994, for which appellant issued Check No. 029021 but postdated September 25, 1994. The material date was not only correctly alleged, it was amply proved by the prosecution's evidence. We find, moreover, that appellant admitted his failure to cover the amount of said check within three days from receipt of notice from the bank and/or payee or holder that said check had been dishonored. In his defense, appellant insists that his failure to make good the check did not constitute deceit, because he suffered business losses on account of the inferior tires furnished by private complainant. We find no merit in appellant's contention. Under Article 315 (2) (d), failure of the drawer of the check to deposit an amount sufficient to cover the check within three days from receipt of notice from the bank and/or 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.[24] The record clearly shows that appellant, with his admission, failed to rebut this *prima facie* presumption.

Nor could appellant rely on *People vs. Singson*[25] to aid his cause. As correctly pointed out by the Solicitor General, accused was acquitted in Singson because the circumstances of her case negated the existence of bad faith on her part. These circumstances therein were: (a) her prompt action in offering to replace the dishonored checks; (b) partial payments made by her; and (c) the fact that complainant knew that she had insufficient funds at the time she issued the checks. None of these circumstances obtains in the present case. Instead, appellant's actions are to the contrary. Thus, he avoided and delayed meeting with complainant and the latter's representatives when asked about the dishonored check. He never advised complainant about the insufficiency of funds in his bank account. After the checks were dishonored, appellant made no effort to settle, even partially, his