

SIXTH DIVISION

[CA-G.R. CR No. 35421, June 27, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V.
MERCEDITA DIMAL, ACCUSED-APPELLANT.**

D E C I S I O N

ABDULWAHID, J.:

This is an appeal from the *Decision*^[1] dated November 24, 2011 of the Regional Trial Court (RTC), Branch 58, Angeles City, in Criminal Case No. 02-346, finding accused-appellant Mercedita Dimal guilty beyond reasonable doubt of the crime of estafa as defined in Article 315, paragraph 2 (d) of the Revised Penal Code, as amended by Republic Act No. 4885, and sentencing her to an indeterminate penalty of ten (10) years and one (1) day of *prision mayor*, as minimum, to sixteen (16) years and one (1) day of *reclusion temporal*, as maximum. Accused-appellant was also ordered to indemnify Leonora P. Rivera the amount of Ninety Four Thousand Thirty One Pesos and Eighty Eight Centavos (Php94,031.88) as of November 2011, which amount shall earn six percent interest (6%), until it is fully paid.

On June 28, 2002, accused-appellant was charged with the crime of estafa. The accusatory portion of the Information reads, as follows:^[2]

That on or about the 25th day of January 2002, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, well knowing that she has no more sufficient funds with the Bank of Commerce Bank (sic), Balibago, Angeles City Branch, and without informing this fact to the complainant LEONORA P. RIVERA, did then and there willfully, unlawfully and feloniously, with intent to defraud, issue and make out Bank of Commerce Check bearing Check No. 0020508 dated/ postdated January 25, 2002 in the amount of P134,621.00 as payment for 100 boxes of chicken legs the accused purchased from the complainant; that upon presentment of the said check with the bank for payment, the same was dishonored and refused payment for the reason of "ACCOUNT CLOSED", and demands from accused MERCEDITA DIMAL notwithstanding and for more than three (3) days from notice of such dishonor, the accused failed and refused and still fails and refuses to redeem the said check, to the damage and prejudice of the complainant LEONORA P. RIVERA in the aforementioned amount of ONE HUNDRED THIRTY FOUR THOUSAND SIX HUNDRED TWENTY ONE PESOS (P134,621.00), Philippine Currency.

ALL CONTRARY TO LAW.

Upon arraignment on February 10, 2003, accused-appellant pleaded not guilty to the charges against her.^[3] Thereafter, trial on the merits ensued.

The evidence for the prosecution show that on January 24, 2002, accused-appellant purchased from Leonora P. Rivera five (5) boxes of cutting fats intended for *longaniza* processing. The merchandise amounted to Php7,048.74 and as payment thereof, accused-appellant issued to Rivera a postdated check paid to cash (Check No. 0020506) from the Bank of Commerce.^[4] Accused-appellant promised to replace the postdated check with cash on or before its due date on February 8, 2002.^[5]

After picking up her first order, accused-appellant then placed with Rivera a second order for one hundred (100) boxes of chicken leg quarters, which she promised to pay for in cash.^[6]

The following night, or on January 25, 2002, accused-appellant went to Rivera's house to pick up the 100 boxes of chicken leg quarters. After the boxes were loaded into accused-appellant's vehicle, she handed Rivera a postdated check (Check No. 0020508) for the amount of Php134,621.00 drawn from the Bank of Commerce.^[7] Rivera reminded accused-appellant of her promise to pay for the merchandise in cash, however, accused-appellant explained that she was unable to withdraw cash and will just replace the check with cash the next day. When Rivera asked about the promised cash as payment for the chicken legs the following day, accused-appellant requested that Rivera deposit the check instead.^[8]

On February 7, 2002, Rivera deposited the check for Php134,621.00 but it was returned by her bank for the reason of "Account Closed."^[9] The check for Php7,048.74 was also not honored by her bank and returned for the same reason of "Account Closed."^[10]

Accused-appellant for her part, did not deny obtaining five (5) boxes of cutting fats from Rivera for Php7,048.74, but insisted that they agreed on a payment term of thirty (30) days from receipt of the food items. Furthermore, accused-appellant maintained that Rivera offered 100 boxes of chicken leg quarters to accused-appellant for Php134,621.20, also with the same payment term of thirty (30) days from receipt, which accused-appellant accepted.^[11]

The following evening, when accused-appellant picked up the 100 boxes of chicken leg quarters from Rivera's house, she was surprised when Rivera directed her to issue two (2) postdated checks for the cutting fats and chicken leg quarters. Accused-appellant informed Rivera that she will just pay in cash when the term becomes due in thirty (30) days. However, Rivera insisted on the issuance of the postdated checks, even after finding out that accused-appellant had already closed her checking account.^[12]

Accused-appellant further testified that she attempted to return the boxes of chicken leg quarters to Rivera as she could not sell them, seeing that they were overpriced. However, Rivera refused to accept the same.^[13]

Defense witness Bernie Flores claimed to be accused-appellant's business partner and corroborated her testimony. He alleged that he was present when accused-appellant picked up the boxes of chicken leg quarters from Rivera's residence and that he heard accused-appellant inform Rivera that her checking account was already closed. However, despite this, Rivera insisted on the issuance of two (2) checks as collateral for the goods purchased by accused-appellant. Flores likewise

testified that he heard accused-appellant request Rivera not to encash the checks because of the closure of her checking account.^[14]

On June 18, 2007, in an attempt to settle the civil aspect of the case, accused-appellant tendered to Rivera One Hundred Thousand Pesos (Php100,000.00) as partial payment of the accrued interest and principal obligation, which the parties agreed to peg at Two Hundred Fifty Thousand Pesos (Php250,000.00). Accused-appellant also issued five (5) postdated checks in the amount of Thirty Thousand Pesos (Php30,000.00) each, representing the balance of One Hundred Fifty Thousand Pesos (Php150,000.00).^[15] However, all five (5) of the postdated checks bounced, prompting Rivera to pursue her case against accused-appellant.^[16]

On November 24, 2011, the RTC rendered the assailed *Decision*, the dispositive portion of which reads, as follows:^[17]

WHEREFORE, the Court hereby adjudges accused MERCEDITA DIMAL **GUILTY** of the crime of ESTAFA under Article 315 paragraph 2(d) of the Revised Penal Code as amended by Republic Act 4885 and sentences the said accused an indeterminate penalty of **TEN (10) YEARS and ONE (1) DAY of prision mayor, as minimum, SIXTEEN (16) YEARS and ONE (1) DAY of reclusion temporal**, as maximum, to indemnify Leonora P. Rivera in the amount of P134,621.00 with interest at 6% per annum deducting therefrom the amount partially made on June 18, 2007 (P8,077.26 per annum or P673.10 per month) from July 2, 2002, (59 months x P673.10 = P39,712.90 or a total of P174,333.90 less P100,000.00 made on June 18, 2007 = P74,333.90 which shall interest at 6% per annum = P4,460.03 or P371.66 per month from July 2007 to November 2011 x 53 months = P19,697.98 as interest) or a total civil obligation in the amount of **NINETY FOUR THOUSAND THIRTY ONE PESOS and 88 CENTAVOS** (P94,031.88) as of November 2011 which amount shall earn interest at 6% per annum, until the same is fully paid.

Let a Warrant of Arrest be issued against accused MERCEDITA DIMAL for the execution of this Judgment.

Furnish the accused and her counsel of this Decision and the Office of the City Prosecutor of Angeles.

SO ORDERED.

On September 17, 2012, accused-appellant filed a *Notice of Appeal*,^[18] to which the RTC gave due course in its Order^[19] dated September 28, 2012.

The sole issue raised by accused-appellant for the consideration of this Court reads, as follows:^[20]

WHETHER OR NOT THE PROSECUTION FAILED TO ESTABLISH THE GUILT OF ACCUSED-APPELLANT FOR THE CRIME OF ESTAFA BEYOND REASONABLE DOUBT. (Emphasis supplied)

In resolving the issue, it is necessary to determine whether all the elements of estafa have been proven. More importantly, there is a need to determine if there was consideration for the issuance of the subject bouncing check.

Article 315 (2)(d)^[21] of the Revised Penal Code penalizes any person who shall defraud another by postdating a check or issuing a check in payment of an obligation when the offender has no funds in the bank or his funds deposited therein are not sufficient to cover the amount of check. The elements therefore of this form of estafa are: (1) postdating or issuing a check in payment of an obligation contracted at the time the check was issued; (2) lack or insufficiency of funds to cover the check; and (3) damage to the payee thereof. Damage and deceit are essential elements of the offense and must be established with satisfactory proof to warrant conviction. The false pretense or fraudulent act must be committed prior to or simultaneously with the issuance of the bad check.^[22]

In the case at bar, accused-appellant asserts that the checks issued were merely used to guarantee her obligation with Rivera, a fact which Rivera herself confirms.^[23]

After a close study of the evidence on record in this case, we are convinced that the RTC did not err in finding that accused-appellant's checks were issued for consideration. This is a clear case of estafa, considering that the unfunded postdated checks were issued in payment of an obligation contracted at the same time and without which the transactions would not have been consummated,^[24] to wit:^[25]

ATTY. YABUT:

Q: And the subject of this case, you filed this case for estafa because accused also purchased 100 boxes of commodities for business, is that correct?

A: Yes sir.

Q: And Madam Witness, also your agreement with the accused is that she would pay you in cash?

A: Yes sir.

Q: And during that day of January 25, 2002, she has no cash in hand, is that correct?

A: Yes sir.

COURT (TO THE WITNESS)

That is why, she paid you in check, is that correct?

A: Yes sir.

ATTY. YABUT:

Q: And that check would be used as a guaranty of her indebtedness in the amount of P134,621.00?

A: Yes sir.

Q: And she would just pay you the total cash the following day?

A: Yes sir.

COURT (TO THE WITNESS):

Q: Did she (sic) able to pay you the following day?

A: No sir.

ATTY. YABUT:

Q: So the purpose of issuing the checks, just to guaranty, is that correct?

A: Yes sir.

Q: And you accepted that?

A: Yes sir.

ATTY. YABUT:

I think that will be all for cross Your Honor.

COURT:

The Court will make some clarification.

(TO THE WITNESS)

Q: You said earlier that afterwards, the accused was not able to pay you as agreed upon?

A: Yes, Your Honor.

Q: But she did not pay?

A: Yes sir.

Q: What did you do when she was not able to pay you the following day?

A: I called her sir.

Q: And then what else?

A: I was trying to contact her but she never replied. (Emphasis supplied)

Nieva vs. Court of Appeals^[26] is clear that to constitute estafa, the **act of postdating or issuing a check in payment of an obligation must be the efficient cause of fraud** and, as such, it should be either prior to or simultaneous with the act of fraud. **The offender must be able to obtain money or property from the offended party because of the issuance of the check or that the person to whom the check was delivered would not have parted with his money or property had there been no check issued to him.** Stated