

TWENTIETH DIVISION

[CA-G.R. CR-HC NO. 01715, November 18, 2014]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DINA LAPECEROS, ACCUSED-APPELLANT.

D E C I S I O N

QUIJANO-PADILLA, J.:

This is an appeal on the Judgment^[1] of the Regional Trial Court (RTC), Branch 28, Mandaue City dated August 28, 2012 in Criminal Case No. DU-13821, finding accused-appellant Dina Lapeceros guilty beyond reasonable doubt of Estafa under Article 315, par. 2 (d) of the Revised Penal Code (RPC) and sentencing her to suffer 27 years and eight months of *reclusion perpetua*, as well as ordering her to pay private complainant the amount of P100,000.00 with 12% interest thereon computed from November 29, 2009 until fully paid and the cost of the proceedings.

The Antecedents

Accused-appellant Dina Lapeceros (Dina) was sued for Estafa under Article 315, paragraph 2 (d) of the Revised Penal Code. The criminal charge was upon the complaint of Delia Alveniz (Delia), who sued in behalf of Psalm Property Venture & Development (Psalm Property), the payee of the subject PENBank Check No. 0018683. The Information^[2] against Dina reads, viz.:

That sometime in August 2004, in the City of Mandaue, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with fraudulent intent and by means of deceit, misrepresentation, did then and there, willfully, unlawfully and feloniously issued PENBANK Check No. LLC-0018683, dated September 15, 2004, in the amount of One Hundred Thousand Pesos (P100,000.00), Philippine Currency, payable to Psalm Property Venture and Development, and delivered to Delia Alveniz, in exchange of cash, with full knowledge that there is no sufficient funds with the drawee bank to cover the said check and without informing the payee thereof, thus when said check was presented for payment upon maturity, the same was dishonored and refused payment for reason: "Closed Account", and that despite notice of dishonor and demands on both [sic] accused to make good said check, they [sic] failed and refused to pay the check and/or make good the same, to the damage and prejudice of said Delia Alveniz in the amount aforestated.

CONTRARY TO LAW.

When arraigned Dina pleaded not guilty.^[3] Subsequently, trial ensued.

Private complainant Delia was the lone prosecution witness. She testified on direct

examination that she was engaged in real estate business and the name of her establishment was Psalm Property. Sometime on August 13, 2004, Dina went to the office of Psalm Property and requested Delia's husband to re-discount her check. Relying on Dina's assurance that the check would be funded upon maturity, Delia and her husband acquiesced to Dina's request. Dina issued PENBank Check No. 0018683^[4] dated September 15, 2004 in the amount of P100,000.00. In exchange thereof, Delia and her husband gave Dina the full amount of the check. They did not deduct any advance interest as it was their way of helping her and also because Dina was a good agent of their real estate venture. Before the check matured, Dina called Delia and her husband to request for extension and the couple agreed not to deposit the check yet. Subsequently, Dina, however, kept asking for extension but she never paid. Hence, Delia ultimately deposited the check on October 27, 2004 but it bounced for the reason "account closed". Delia caused her lawyer to send two demand letters^[5] to Dina. The latter, however, never redeemed the check, thus, the suit.

On cross-examination, Delia confirmed that PENBank Check No. 0018683, the subject of the instant estafa case, was also the subject of another criminal case for violation of Batas Pambansa (BP) Blg. 22 before the Municipal Trial Court in Cities, Mandaue City (MTCC Mandaue City). Delia identified a Memorandum of Agreement which was part of the evidence in the BP 22 case before the MTCC Mandaue City. Delia also confirmed that Dina did not execute a written receipt for the P100,000.00 and that the latter had collectible commissions from their firm.

On the other hand, the defense dispensed with the presentation of Dina as witness after the parties stipulated on the following: (1) that Dina was acquitted by the MTCC Mandaue City in the charge for violation of BP 22, with qualification that the acquittal was based on the fact that there was no personal service of the notice of dishonor to her; (2) the Decision of RTC Branch 55, Mandaue City (RTC Branch 55) in the appeal from the the Decision of the MTCC Mandaue City absolved Dina of any civil liability for the subject check, with qualification that the said RTC Branch 55, Mandaue City decision was still being appealed to the Court of Appeals under CA-G.R. SP No. 04031; (3) that Dina offered as documentary exhibits before the MTCC Mandaue City the documents marked in the estafa case as Exhibits 1 to 8, consisting of memoranda of agreements, minutes of meeting, promissory notes, cash vouchers and the particulars; and (4) the existence of the transcript of stenographic notes of Delia's testimony during the trial for the BP 22 case before the MTCC Mandaue City.^[6]

Dina then formally offered her documentary exhibits^[7] consisting of: the transcript of stenographic notes of Delia's testimonies before the MTCC Mandaue City in the case for violation of BP 22; her (Dina's) own offer of documentary exhibits in the BP 22 case; the Decision of the RTC Branch 55 exonerating her from civil liability for the check that bounced; and the complaint for accounting and collection of sum of money which she filed against Delia's husband and one Ruel Arno which was pending before RTC Branch 27, Lapu-lapu City.

Upon the evidence presented by the parties, the trial court found Dina guilty beyond reasonable doubt of the crime charged. The dispositive portion of its Judgment reads, viz:

WHEREFORE, in view of the foregoing premises, judgment is rendered finding accused, DINA LAPECEROS, **GUILTY** beyond reasonable doubt of ESTAFA under Article 315, par. 2(a) [sic] of the Revised Penal Code and sentence her to the penalty of imprisonment of **TWENTY-SEVEN 8/12 YEARS of reclusion perpetua.**

Accused is further ordered to pay private complainant, **Dina M. Laperos** [sic] the amount of **ONE HUNDRED THOUSAND (PHP. 100,000.00) PESOS with twelve percent (12%) interest thereon computed from 29 November 2004 until fully paid.**

Accused is finally ordered to pay the costs of these proceedings.

SO ORDERED.^[8]

Aggrieved by the decision, Delia brought this appeal^[9] citing the following assignment of errors, thus:

I.

WITH ALL DUE RESPECT, THE COURT A QUO COMMITTED GRAVE REVERSIBLE ERROR WHEN IT CONVICTED THE ACCUSED-APPELLANT FOR ESTAFA, DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HER GUILT BEYOND REASONABLE DOUBT, IN THAT:

- A) THE SUBJECT POSTDATED CHECK WAS ISSUED WITHOUT CONSIDERATION AS THE ACCUSED-APPELLANT DID NOT OBTAIN ANY LOAN FROM THE PRIVATE COMPLAINANT. THE AMOUNT COVERED BY THE SUBJECT CHECK REPRESENTS ACCUSED-APPELLANT'S ADVANCE SHARE IN THE INCOME DERIVED FROM A PARTNERSHIP BUSINESS OF WHICH ACCUSED-APPELLANT HERSELF WAS ONE OF THE PARTNERS.
- B) THE ELEMENT OF "DAMAGE" IS ABSOLUTELY ABSENT IN THIS CASE, CONSIDERING THAT THE PRIVATE COMPLAINANT NEVER PARTED WITH HER MONEY OR ANY PROPERTY TO THE ACCUSED-APPELLANT AND THE AMOUNT COVERED BY THE SUBJECT POSTDATED CHECK REPRESENTS ACCUSED-APPELLANT'S ADVANCE SHARE IN THE INCOME DERIVED FROM A PARTNERSHIP BUSINESS OF WHICH SHE WAS ONE OF THE PARTNERS.
- C) THE ELEMENT OF "DECEIT" IS ABSOLUTELY ABSENT IN THIS CASE CONSIDERING THAT THE ACCUSED-APPELLANT NEVER INDUCED THE PRIVATE COMPLAINANT TO PART WITH HER MONEY OR PROPERTY IN EXCHANGE FOR THE SUBJECT POSTDATED CHECK.;

II.

THE DECISION RENDERED IN THE RELATED CRIMINAL CASE FOR VIOLATION OF BATAS PABANSA BLG. 22 BY THE REGIONAL TRIAL COURT, BRANCH 55 OF MANDAUE CITY, AS AFFIRMED BY THE HONORABLE COURT OF APPEALS, WHICH MADE A DEFINITIVE FACTUAL FINDING THAT THE PRIVATE COMPLAINANT "IS NOT THE OWNER OF THE MONEY BORROWED BY ACCUSED-APPELLANT" AND THAT PRIVATE COMPLAINANT "IS NOT AN INDISPENSABLE PARTY WITH RESPECT TO THE CIVIL ASPECT OF THE CASE" HAS ALREADY BECOME FINAL AND EXECUTORY. AS THIS DECISION INVOLVES THE CIVIL ASPECT OF THE VERY SAME POSTDATED CHECK SUBJECT OF THE INSTANT CASE, THE SAME IS CONCLUSIVE UPON THE PARTIES AND CANNOT ANYMORE BE RE-LITIGATED IN THE INSTANT CASE, UNDER THE PRINCIPLE OF *RES JUDICATA*, TO AVOID A LUDICROUS SPECTACLE WHERE TWO (2) COURTS RENDER TWO (2) DIAMETRICALLY OPPOSED DECISION ON ONE AND THE SAME ISSUE.

This Court's Ruling

The appeal is meritorious.

Dina's assignment of errors boil down to the question of whether or not her conviction was proper.

After perusing the records, We rule that it was not.

The records show that Dina was sued for violation of BP 22 for issuing PENBank Check No. 0018683, which was the same check subject of this estafa case. In the BP 22 case, Delia was also the private complainant. She filed the suit in behalf of her husband, the owner of Psalm Property. In that suit, Delia's allegations regarding the circumstances of the issuance of PENBank Check No. 0018683 were the same as what she claimed in the herein estafa case, specifically, that Dina requested such check to be re-discounted in exchange for cash.

On the other hand, for her defense in the BP 22 case, Dina had a different version of the circumstance surrounding the issuance of PENBank Check No. 0018683. She claimed that she, Delia's husband Avelino Alveniz, and one Ruel Arno were partners in real estate business. During their partnership meeting on August 12, 2004, it was agreed that each of the partners would borrow money from the Monilar account, an account maintained by the partners for their real estate ventures. Their loans would be secured with postdated checks which would be made payable to Psalm Property. In accordance with the agreement, Dina issued PENBank Check No. 0018683.

When the MTCC Mandaue City decided the BP 22 case, it gave weight to Dina's version that the check was issued to secure her loan from the Monilar account. The MTCC held that the amount of P100,000.00 that was exchanged for PENBank Check No. 0018683 was from the Monilar account, thus: