



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **December 10, 2019** which reads as follows:*

“G.R. No. 226478 – PEOPLE OF THE PHILIPPINES, plaintiff-appellee, versus MERLYNN ALCAIDE y BALMES, accused-appellant.

Before the Court is an appeal of the Decision¹ dated September 10, 2015 of the Court of Appeals (CA) in CA-G.R. CR. HC No. 05784, which affirmed the Decision² of the Regional Trial Court (RTC) holding Merlynn Alcaide y Balmes (accused-appellant) guilty of Estafa under Article (Art.) 315 paragraph (par.) (2)(d)³ of the Revised Penal Code (RPC).

Facts

The Information⁴ against accused-appellant reads:

The undersigned accuses MERLYNN BALMES ALCAIDE of the crime of ESTAFA under Article 315, par. 2(d) of the Revised Penal Code, committed as follows;

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¹ Rollo, pp. 2-11. Penned by Associate Justice Noel G. Tijam with Associate Justices Francisco P. Acosta and Eduardo B. Peralta, Jr., concurring.

² CA rollo, pp. 19-20. Penned by Assisting Judge Genie G. Gapas-Agbada.

³ ARTICLE 315. Swindling (Estafa) x x x
 x 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 x

(d) By post-dating a check, or issuing such check in payment of an obligation, the offender knowing that at the time he had no funds in the bank, or the funds deposited by him in the bank were not sufficient to cover the amount of the check, and without informing the payee of such circumstances. (Act No. 3815, December 8, 1930)

⁴ Records, pp. 1-2.

That on or about the 13th day of September 2004, in Quezon City, Philippines, the said accused, did, then and there wilfully, unlawfully and feloniously defraud SUSAN CHIU in the following manner, to wit; the said accused, well knowing that she did not have sufficient funds in the bank, and without informing the said SUSAN CHIU of such fact, drew, made out and issued to the latter the following CHINA BANK checks, to wit;

Check No.	Date	Amount
A0341835	November 14, 2004	₱300,000.00
A0341833	November 22, 2004	[₱]470,000.00

both payable to SUSAN CHIU, in the total amount of ₱770,000.00 Philippine Currency, simultaneously with the receipt of cash money from/the offended party, that upon presentation of the said checks to the bank for payment, the same were dishonored and payment thereof refused for the reason of "ACCOUNT CLOSED" and said accused, not with standing (*sic*) due notice to her by the said SUSAN CHIU of such dishonor of said checks, failed and refused and still fails and refuses to deposit the necessary amount to cover the amount of the said checks, to the damage and prejudice of the said offended party in the aforesaid amount of ₱770,000.00, Philippine Currency.

CONTARY TO LAW.⁵

Accused-appellant pleaded "not guilty" upon arraignment.⁶

The prosecution's and defense's contrasting version of events, as summarized by the RTC, are as follows:

THE EVIDENCE FOR THE PROSECUTION

The private complainant Susan Chiu and accused Merlynn Balmes Alcaide were both engaged in printing business. On several occasions, Alcaid[e] loaned money from Ch[iu] for her business needs. On September 13, 2004, at Chiu's residence at 76 De Jesus St., San Francisco Del Monte, Quezon City, Alcaide convinced Chiu to lend her P770,000.00. Alcaide showed Chiu several purchase orders and assured Ch[iu] that she would pay after the job orders were done. Convinced, Ch[iu] handed P770[,]000.00 cash to Alcaide. Simultaneously, Alcaide issued and delivered to Chiu two (2) postdated checks as payment, to wit: a) Chinabank Check No. A0341835 in the amount of P300,000.00 dated November 14, 2004, and b) Chinabank Check No. A0341833

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⁵ Id. at 1.

⁶ See RTC Order dated May 17, 2006, id. at 26.

in the amount of P470,000.00 dated November 22, 2004. At the back of each check, Alcaide wrote and signed the following notations:

"I simultaneously issued this check upon receipt of cash today 9/13/04.

(SGD.)

Merlynn Alcaide"

x x x x

When the checks matured, Chiu deposited the same to her account. The checks were dishonored for reason – "*Account Closed[.]*" Chiu immediately informed Alcaid[e] of the dishonor of the checks and demanded the payment therefor. Alcaid[e] promised to pay but failed to make good her promise. Chiu thus sent demand letter's (*sic*) to Alcaid[e] (Exhs. ["]B-4["] and ["]C-4;["] "B-5" to "B-6;["] "C-5" to "C-6;["] "E;["] "F;["] TSN, March 7, 2007, pp. 13-16).

Upon receipt of private complainant's demand letter dated January 5, 2005, the accused wrote notations at the bottom of the receiving copy of said demand letter which reads:

"To Susan Chiu

Hindi ko tinatanggi ang mga cheke na issue ko sayo, tinatanggap ko (na) at inaamin ko an[g] pera ay nakuha ko sayo. Give me time to settle my obligations, til 1/31/05.

Very truly yours,
(SGD.)

Merlynn Alcaide
1/5/05"

(Exhs. "D-4" and "D-5;["] TSN, March 7, 2007, pp. 22-23[)]

Also, upon receipt of private complainant's demand letter dated January 25, 2005, the accused wrote notations at the bottom of the receiving copy of said demand letter, which reads:

"To Susan Chiu

Im (sic) willing to pay my obligations to you, but give me time. Can I pay you 20,000.00 a month? Hoping for your kind consideration. Thanks a lot.

Very truly yours
(SGD.)

Merlynn Alcaide
1/25/05"

x x x x

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Still, Alcaide failed to heed Chiu's demand. Hence, this case.

THE EVIDENCE FOR THE DEFENSE

Accused Merlynn Alcaide admits that she has been borrowing money from private complainant Susan Chiu since 1990. On October 30, 2004, when her indebtedness had accumulated to over 4 Million Pesos, Ch[iu] required her to issue 17 checks to cover her indebtedness. The checks subject of this case marked as Exhibits "B" and "C" were among the checks that she issued. She does not know the reason why Chiu required her to write and sign at the back of the checks the statement – "*I simultaneously issued this check upon receipt of cash today 9/13/04. (SGD.) Merlynn Alcaid[e]*" (TSN, May 25, 2009, pp. 5-14).

Alcaide also claims that she has not received a demand letter from Chiu and that her notations marked as Exhibits "D-4" and "E-3" on Chiu's demands letter were written on blank paper because Chiu had asked her to write her notation at the bottom of a blank paper (TSN, May 25, 2009, pp. 12-13).⁷

Ruling of the RTC

The RTC promulgated its Decision dated August 8, 2012, holding that the prosecution was able to establish all the elements of Estafa under Art. 315, par. (2)(d) of the RPC. The dispositive portion of the RTC Decision reads:

WHEREFORE, the Court finds the accused Merlynn Balmes Alcaide GUILTY beyond reasonable doubt of the crime of Estafa under Article 315, paragraph 2 (d) of the [RPC], as amended, and hereby sentences her to suffer the indeterminate prison term ranging from eight (8) years and one (1) day of *prision mayor*, as minimum, to thirty (30) years of *reclusion perpetua*, as maximum. She is further ordered to indemnify the private complainant, Susan Chiu, the amount of Seven Hundred Seventy Thousand Pesos (P770,000.00) with interest of twelve percent (12%) per annum until full payment is made.

SO ORDERED.⁸

Accused-appellant filed a Notice of Appeal⁹ dated August 29, 2012. In her Brief¹⁰ she argued mainly that she did not commit deceit or fraud as the checks were issued for a pre-existing obligation. Accused-appellant asserts that the issuance of the check should be the

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⁷ See RTC Decision, CA *rollo*, pp. 20-23.

⁸ Id. at 26.

⁹ Records, p. 166.

¹⁰ CA *rollo*, pp. 39-57.

means to obtain money or property from the payee. Hence, a check issued in payment of a pre-existing obligation does not constitute Estafa even if there is no fund in the bank to cover the amount of the check.¹¹

The CA Decision

The CA affirmed the RTC Decision. In arriving at its Decision, the CA ruled:

The above elements [of Estafa] were all proven in this case. Anent the first element, accused-appellant did not deny having issued 2 postdated checks to private complainant. The 2 checks were issued for payment of her obligations amounting to P300,000.00 and P470,000.00 respectively. x x x

x x x x

As regards the second element, *i.e. there are no funds sufficient to cover the check*, it was established and proved that there were no funds sufficient to cover the accused-appellant's checks. As the trial court ruled, the checks turned out to be bogus because when private complainant deposited them with the bank, they were dishonored due to closed account.

The third element, *i.e., the payee sustains damage thereby*, needs no further elucidation. Obviously, private complainant sustained damage as result (*sic*) of accused-appellant's issuance of dishonored checks.

x x x x

Under Article 315 (2) (d), failure of the drawer of the check to deposit an amount sufficient to cover the check within 3 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. In this case, even assuming for the sake of argument that the checks were dishonored without any fraudulent pretense or fraudulent act of accused-appellant, the latter's failure to cover the amount within 3 days after notice negates her claim that there is no fraud or deceit in this case.¹²

The CA also affirmed the penalty imposed on accused-appellant. Thus, accused-appellant filed a Notice of Appeal¹³ before

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¹¹ Id. at 46.

¹² *Rollo*, pp. 8-10.

¹³ Id. at 12-15.

the CA on October 5, 2015, which was given due course by the CA in its Resolution¹⁴ dated October 12, 2015. Accused-appellant filed a Manifestation¹⁵ dated March 15, 2017 before the Court stating that she would no longer be filing a supplemental brief. The Office of the Solicitor General filed a similar Manifestation¹⁶ dated March 22, 2017.

Issue

Whether the guilt of accused-appellant was proven beyond reasonable doubt.

The Court's Ruling

The appeal has no merit.

Estafa by means of deceit is defined and penalized under Art. 315 of the RPC, which provides:

ARTICLE 315. Swindling (Estafa) - Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished x x x provided that x x x the fraud be committed by any of the following means:

x x x x

“SEC. 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 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.”¹⁷

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¹⁴ CA rollo, p. 124.

¹⁵ Rollo, pp. 21-25.

¹⁶ Id. at 26-31.

¹⁷ AN ACT TO AMEND SECTION TWO, PARAGRAPH (D), ARTICLE THREE HUNDRED FIFTEEN OF ACT NUMBERED THIRTY-EIGHT HUNDRED AND FIFTEEN, AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE (RE: ISSUANCE OF CHECKS), Republic Act No. 4885 (1967).

The elements of Estafa under said provision are as follows:

- (1) the 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.¹⁸

The Court affirms the uniform findings of the CA and RTC that all the elements of Estafa through the issuance of bouncing checks are present in this case.

First, it was established that the Checks Nos. A0341835¹⁹ and A0341833²⁰ were issued by accused-appellant in favor of the complainant, Susan Chiu (Chiu) for an obligation contracted at the time of their issuance.²¹ Chiu testified that accused-appellant borrowed a total of ₱770,000.00 and issued two post-dated checks in exchange.

In an attempt to evade liability, accused-appellant contends that the checks were issued for a pre-existing loan obligation. However, aside from this bare allegation, accused-appellant failed to present any hard evidence to prove the existence of a previous loan transaction between her and Chiu. Accused-appellant even wrote the following entry on back of the two checks: "*I simultaneously issued this check upon receipt of cash today 9/13/04.*" She did not deny writing the entry voluntarily or contend that she was merely forced to write the same.

Second, when the checks were presented for encashment, they were dishonored because the account which they were drawn against had been closed. Furthermore, accused-appellant was unable to make good the checks within three days from her receipt of the first Notice of Dishonor/Demand Letter sent by Chiu on December 18, 2004. Chiu sent two more similarly-worded letters to accused-appellant on January 5, 2005²² and January 25, 2005 but the latter still failed to pay. All the letters have accused-appellant's signature with note "Received."

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¹⁸ *Cajigas v. People*, 599 Phil. 207, 216 (2009).

¹⁹ Records, p. 6.

²⁰ Id. at 7.

²¹ See CA Decision, *rollo*, p. 8.

²² Records, p. 8.

Accused-appellant's testimony that she did not receive the letters and that she was only made to write on a blank paper by Chiu cannot be believed by the Court. It is highly incredible for accused-appellant, a businesswoman, to affix her signature and write notations acknowledging indebtedness and indicate therein future dates as well, on blank pieces of paper. As held by the Court in *People v. Montaner*:²³ "Evidence, to be believed, must not only proceed from the mouth of a credible witness, but it must be credible in itself — such as the common experience and observation of mankind can approve as probable under the circumstances."²⁴

Lastly, it is undeniable that accused-appellant's actions caused damage to Chiu as the debt remains unpaid. All told, the prosecution was able to prove all the elements of Estafa under Article 315 par. (2)(d) of the RPC.

The Court sees no reason to deviate from the factual findings of the RTC, as affirmed by the CA. Findings of fact of the RTC, especially when affirmed by the CA, are binding and conclusive upon the Court and the Court will not normally disturb these factual findings unless they are palpably unsupported by the evidence on record or unless the judgment itself is based on a misapprehension of facts which, as stated, is not the case here.²⁵

However, the Court deems it necessary to modify the penalty imposed by the RTC and affirmed by the CA, which was eight (8) years and one (1) day of *prision mayor*, as minimum, to 30 years of *reclusion perpetua*, as maximum, in view of Republic Act No. (RA) 10951²⁶ enacted on August 29, 2017, which adjusted the penalties of certain crimes in the RPC.

Section 100 of RA 10951 provides that it shall have retroactive effect to the extent favorable to the accused. Accordingly, the modification of the penalty imposed upon accused-appellant is proper.

The new penalty for Estafa under Article 315 par. (2)(d) is provided under Section 85 of RA 10951:

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²³ 672 Phil. 254 (2011).

²⁴ Id. at 262-263.

²⁵ See generally *Baylen v. People*, G.R. No. 230150, July 19, 2017, p.4 (Unsigned Resolution).

²⁶ AN ACT ADJUSTING THE AMOUNT OR THE VALUE OF PROPERTY AND DAMAGE ON WHICH A PENALTY IS BASED, AND THE FINES IMPOSED UNDER THE REVISED PENAL CODE, Republic Act No. 10951 (2017).

“ART. 315. *Swindling (estafa)* - Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished x x x [p]rovided, [t]hat x x x the fraud be committed by any of the following means:

x 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 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.

“Any person who shall defraud another by means of false pretenses or fraudulent acts as defined in paragraph 2(d) hereof shall be punished by:

“1st. The penalty of *reclusion temporal* in its maximum period, if the amount of fraud is over Four million four hundred thousand pesos (P4,400,000) but does not exceed Eight million eight hundred thousand pesos (P8,800,000). If the amount exceeds the latter, the penalty shall be *reclusion perpetua*.

“2nd. The penalty of *reclusion temporal* in its minimum and medium periods, if the amount of the fraud is over Two million four hundred thousand pesos (P2,400,000) but does not exceed Four million four hundred thousand pesos (P4,400,000).

“3rd. The penalty of *prisión mayor* in its maximum period, if the amount of the fraud is over One million two hundred thousand pesos (P1,200,000) but does not exceed Two million four hundred thousand pesos (P2,400,000).

“4th. The penalty of *prisión mayor* in its medium period, if such amount is over Forty thousand pesos (P40,000) but does not exceed One million two hundred thousand pesos (P1,200,000).

“5th. By *prisión mayor* in its minimum period, if such amount does not exceed Forty thousand pesos (P40,000). [”]
(Emphasis supplied)

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The period of *prision mayor* is six (6) years and one (1) day to twelve (12) years.²⁷ *Prision mayor* in its medium period is eight (8) years and one (1) day to ten (10) years. As the penalty prescribed in RA 10951 is composed of only one period, Article 65 of the RPC requires the division of the time included in the penalty into three equal portions. Thus, *prision mayor* in its medium period further divided into 3 portions will be:

Maximum: 9 years, 4 months and 1 day to 10 years

Medium: 8 years, 8 months and 1 day to 9 years and 4 months

Minimum: 8 years and 1 day to 8 years and 8 months.²⁸

There being no modifying circumstance, the maximum penalty should be anywhere within the medium period while the minimum penalty should be one degree lower from the prescribed penalty of *prision mayor* in its medium period, which is *prision mayor* in its minimum period.

Thus, the minimum term of the indeterminate sentence should be *prision mayor* in its minimum period of six (6) years and one (1) day to eight (8) years. Under RA 10951 therefore, the accused-appellant is liable to suffer the indeterminate penalty of imprisonment ranging from six (6) years and one (1) day of *prision mayor*, as minimum, to nine (9) years of *prision mayor*, as maximum.

Finally, the Court modifies the amount of interest in accordance with the Court's ruling in *Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.*²⁹ The amount of the checks of ₱770,000.00 shall earn legal interest at the rate of twelve percent (12%) per annum from the filing of the Information until June 30, 2013 and six percent (6%) per annum from July 1, 2013 until full payment.³⁰

WHEREFORE, the Appeal is **DISMISSED**. The Decision dated September 10, 2015 of the Court of Appeals in CA-G.R. CR. HC No. 05784 holding accused-appellant Merlynn Alcaide y Balmes **GUILTY** beyond reasonable doubt of ESTAFA as penalized under Article 315, paragraph 2(d) of the Revised Penal Code, is **AFFIRMED WITH MODIFICATION**.

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²⁷ REVISED PENAL CODE, Art. 76.

²⁸ *Hisoler v. People*, G.R. No. 237337, June 6, 2018, p. 8 (Unsigned Resolution).


²⁹ G.R. No. 225433, August 28, 2019, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65527>>.

³⁰ *People v. Aquino*, G.R. No. 234818, November 5, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64853>>.

In view of the enactment of Republic Act No. 10951, accused-appellant is hereby sentenced to suffer the indeterminate penalty of imprisonment ranging from six (6) years and one (1) day of *prision mayor*, as minimum, to nine (9) years of *prision mayor*, as maximum. Accused-appellant is further ordered to pay complainant Susan Chiu the sum of ₱770,000.00 which shall earn legal interest at the rate of twelve percent (12%) per annum from the filing of the Information until June 30, 2013, and six percent (6%) per annum from July 1, 2013 until full payment.

SO ORDERED.”

Very truly yours,


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Manila
(CA-G.R. CR HC No. 05784)

The Hon. Presiding Judge
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(Crim. Case No. Q-05-138223)

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