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FIRST DIVISION

[G.R. No. L-41176. January 17, 1985]

RODOLFO ECHAUS, *petitioner, vs.* THE HONORABLE COURT OF APPEALS and THE PEOPLE OF THE PHILIPPINES, *respondents.*

SYLLABUS

CRIMINAL LAW; ESTAFA; ELEMENT OF DECEIT; APPARENT WHERE CHECKS WERE ISSUED WITH KNOWLEDGE THAT SAME HAD NO SUFFICIENT FUNDS.- Prosecution witness Miguel Bicharra, sales manager of complainant corporation, testified that the articles purchased by accused-petitioner, as alleged agent of Sea Breeze Hotel in the amount of P6,760 was paid by checks, Exhibits "C" and "D", postdated November 30, 1962, and December 12, 1962, respectively. Said checks bounced when they fell due. This is a clear case of estafa considering that the two checks were issued in payment of an obligation contracted at the same time and without which the transaction would not have been consummated. Petitioner knew at the time that he did not have, nor will have, funds in the bank sufficient to cover the amount of the checks when they fall due, and that payee (complainant) had been defrauded. Certainly, respondent appellate court did not err in affirming the judgment of conviction rendered by the trial court. The fact that the postdated checks, Exhibits "C" and "D", were not covered by sufficient funds when they fell due, in the absence of any explanation or justification by petitioner, satisfied the element of deceit in the crime of estafa, as defined in paragraph 2 of Article 315 of the Revised Penal Code.

APPEARANCES OF COUNSEL

Rodolfo Echaus for himself.

Solicitor General for respondents.

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DECISION

RELOVA, *J.:*

Petitioner seeks reversal of the decision of the then Court of Appeals which sustained the judgment of the then Court of First Instance finding him guilty of the crime of estafa and sentencing him to an indeterminate penalty ranging from six (6) months of *arresto mayor,* as minimum, to one (1) year, eight (8) months and twenty-one (21) days of *prision correccional,* as maximum, to indemnify the complainant in the sum of six thousand seven hundred fifty pesos (P6,750.00) and to pay the costs.

Records show that petitioner Rodolfo Echaus was charged with the crime of estafa in Criminal Case No. 71522 of the then Court of First Instance of Manila. The information states -

"That on or about and during the period covered from November 8 to November 12, 1962, in the City of Manila, Philippines, the said accused did then and there wilfully, unlawfully and feloniously defraud the Philrem Electrial and Auto Supply, Inc. in the following manner, to wit: the said accused, by means of false manifestations which he made to the personnel of said Philrem Electrical and Auto Supply, Inc. to the effect that he was the duly authorized purchasing agent of the Sea Breeze Hotel, Bacolod City, owned and managed by his brother, and by means of other deceits of similar import, induced and succeeded in inducing said Philrem Electrical and Auto Supply, Inc. to sell and deliver to said accused 4 units of the GE water coolers (trapezoid type), model No. PEPII SR 70360-802; 10362-804; 703-801; and 703-808; 18 pieces, 6 inches Chromalox microtubes stove, element 1500 watts, 240 volts with ring and reflector; and 18 pieces 8 inches Chromalox microtubes stove, element 210 watts; with a total value of 6,760.00 the said accused well knowing that his manifestations and representations were all false and untrue and were made solely for the purpose of obtaining, as in fact he did obtain the above-mentioned articles for which he made payment in the form of 2 post-dated Equitable Banking Corporation checks Nos. PC 6236 and 6238 in the total amount of P6,760.00 dated December 17, 1962 and November 30, 1962; the said accused knowing fully well that he would not have funds in the bank on said dates and without informing the payee thereof of such circumstance with the result that upon presentation of said checks in said bank, the same were dishonored for 'refer to drawer.'

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to the damage and prejudice of the said Philrem Electrical and Auto Supply, Inc. in the aforesaid total amount of P6,760.00 Philippine currency.

"Contrary to law."
(pp. 1-3, Respondent's Brief)

After the prosecution had presented its evidence and rested its case, accused-petitioner filed a demurer to the evidence. The same was denied by the trial court. Notwithstanding the order of denial, petitioner waived presentation of evidence on his behalf. Whereupon, the trial court rendered judgment finding him guilty and imposing the corresponding penalty.

Respondent Court of Appeals affirmed the judgment of the trial court. Hence, the filing of this petition for review on certiorari.

The facts of the case as found by the trial court and which are adopted by respondent Court of Appeals as well as the petitioner, are as follows:

"It appears from the evidence of the prosecution that sometime before November 8, 1962, the accused Rodolfo Echaus was introduced to the complaining witness Miguel Bicharra, sales manager of the Philrem Electrical and Auto Supply, Inc. by Jose Estregan who informed Bicharra that the accused was interested in the purchase of electrical items. The accused claimed that he was the representative of the Sea Breeze Hotel in Bacolod, Negros Occidental, and was authorized to purchase in behalf of the said hotel electrical units such as coolers and other items because the hotel was being renovated, and inquired if he (Bicharra) could supply the required electrical units and if he (Echaus) could pay with a personal check. Bicharra was hesitant but then the accused told him that he could ask his (accused) elder brother Romeo Echaus, president of the Cardinal Insurance Co. who could give information that he was the official representative and who could, besides guaranty him. Bicharra was apparantly convinced.

In the morning of November 8, 1962, the accused and Estregan went to the Office of Bicharra and asked for certain electrical appliances saying they were badly needed and wanted to have them shipped on a ship that was leaving that evening for Negros. In the afternoon of the same day, Bicharra delivered to the accused the water cooler described in the sales invoice Exhibit A. Bicharra then received the

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checks Exhibits C and D. At first he demanded cash payment, but the accused told Bicharra that he did not have sufficient funds but the hotel would send him the money in a few days. The accused offered instead to issue postdated checks which Bicharra accepted. The checks were dated respectively November 30 and December 17, 1962. The other items, described on the sales invoice Exhibit B, were delivered on November 12, 1962.

"The evidence further shows that when the checks were presented to the Equitable Bank on the respective dates of maturity, they were dishonored with the corresponding return slips with the notation therein 'refer to drawer' (See Exhibits C-1 and D-1). In view thereof, on December 20, 1962, a demand letter was addressed to the Sea Breeze Hotel (Exhibit E). In reply thereto, the hotel, through its counsel, wrote the letter Exhibit F advising the complainant that the hotel had not authorized anyone, not even Rodolfo Echaus to purchase on account for and in behalf of the Sea Breeze Hotel. Upon receipt of the letter, Bicharra, with the help of Estregan tried to locate the accused but failed. The present action was then instituted.

"The evidence further shows that on November 15, 1962, the accused made a deposit with the Equitable Bank in the amount of P1,330.00 but withdrew the amount on the same day; that on November 30, the accused had a balance in his favor in the sum of P28.69 and on December 17, 1962 his balance was only P23.69.

"On the evidence adduced, the prosecution rested its case. Thereafter, the defense filed a motion to dismiss on the ground that the prosecution failed to establish a case against the accused. The court denied the motion and ordered the case set for the reception of the evidence of the defense. The order of the court dated July 19, 1973 was served on counsel on July 20, 1973 and on the same day counsel filed a written manifestation waiving the right to present evidence and submitting the case for decision.

"There is no dispute as to the facts of the case. The accused, representing himself as the authorized representative of the Sea Breeze Hotel in Bacolod City, Negros Occidental and with authority to purchase electrical appliances for and on behalf of the said Hotel, took and received from the Philrem Electrical and Auto Supply, Inc. the electrical items described in the sales invoices Exhibits A and B. Likewise, it is not disputed that the accused further representing that he would receive in a few days the necessary amount from the Hotel, issued his

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personnal checks Exhibits C and D to cover the value of the merchandise purchased. The checks, however, when presented at the bank were all dishonored. The evidence also shows that the Sea Breeze Hotel had not authorized the accused to make any purchase for and on account of the hotel.' (pp. 1-5, Brief for the Accused)." (pp. 22-24, *Rollo*)

Petitioner claims that respondent appellate court erred (1) in finding him guilty of estafa under paragraph 2(a), Article 315 of the Revised Penal Code, despite its finding that Exhibit "F", the only evidence presented by the prosecution to prove misrepresentation to be hearsay; and, (2) in not reversing the decision of the trial court in the instant case.

Petitioner-appellant argues that the reply letter, Exhibit "F", written by Sea Breeze Hotel to the complainant corporation denying his authority to buy from said corporation electrical items in behalf of the hotel is hearsay as in fact the same was rejected on that ground by respondent Court of Appeals. Further, he contends that before receiving the merchandise, Bicharra already knew that he (petitioner) had no sufficient funds in the bank and that he was waiting for the Sea Breeze Hotel to send him the money in a few days; and that as his principal failed to send him the money it should not be interpreted as his having outwitted Bicharra. The mere fact, he claims, of issuing a postdated check without sufficient funds to cover the same when it falls due does not by itself constitute a crime of estafa because "deceit must be present at the time of the giving of the postdated check, and deceit consists in the knowledge on the part of the accused that he will not have funds in the bank sufficient to cover the amount of the check when it falls due and his concealing that fact from the complainant, and when the accused informs his vendor that he has no funds at the time of the purchase but would have some money forthcoming to him, he uses no deceit or does not have the intent to defraud the vendor which is an essential element of estafa." (p. 17, *Rollo*)

The contention is untenable. While it is true that respondent Court of Appeals considered the letter, Exhibit "F" as hearsay and ruled that the same should have been rejected as evidence (although it could have been admitted as part of the testimony of the prosecution witness), the appellate court aptly said:

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"x x x but this can not at all resolve this appeal; what can not be overlook is that appellant not having shown why people's witnesses should not be believed, — as trial Judge so believed them, — it must have to be held proved that indeed, appellant had convinced witness Bicharra that he was an authorized party of Sea Breeze to buy for it, and having been so led to believe that assurance, Bicharra the sales manager of Philrem Electrical, — sold unto appellant as representative and for the account of Sea Breeze, the articles shown in invoices, Exhs. A and B, — for which appellant paid his two postdated checks, Exhs. C and D which bounced; this can only mean that Philrem was left holding the bag, so to speak, suffering a damage of P6,760.00 worth of the goods, now whether appellant's actuations had amounted to estafa, what this Court must realize is that from the evidence.

1st. - It is clear that Philrem was not able to collect from Sea Breeze notwithstanding its demand, Exh. E;

2nd.- Philrem thru witness Bicharra had been made to believe by appellant that he had authority to buy for Sea Breeze;

3rd.- Appellant had paid for those articles with postdated checks, and since the first was postdated to 'November 30, 1962,' Exh. C but People's evidence is that on that precise date, the balance of appellant's account in the Equitable Banking Corporation, drawee Bank was only P28.69, see tsn. 45 when the check was for P5,418.00, — and since the second check was postdated to 'Dec. 17, 1962' Exh. D, but People's evidence is that on that precise date, the balance of his account in drawee bank was only P23.69, tsn, p. 46, — but the check for P1,350.00, — therefore, absent any explanation or justification by appellant,

all these can only mean that appellant had outwitted Bicharra into selling him those articles, representing that he was authorized by Sea Breeze, outwitting Bicharra into accepting his own personal checks, postdating them, securing delivery of the goods, but having no money in the Bank to answer when the checks were due; that was clear estafa under Art. 315, par. 2, Rev. Penal Code, if to this be added that as also proved by People, he had no money when he entered into the transaction, it was only on 15 November 1962 that appellant had made a deposit of P1,350.00 but he withdrew it on the same day, tsn. 46-47, that is to say, two (2) weeks before 30 November 1962, the deception becomes all the more convincing." (pp. 34-36, Rollo)

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Prosecution witness Miguel Bicharra, sales manager of complainant corporation, testified that the articles purchased by accused-petitioner, as alleged agent of Sea Breeze Hotel in the amount of P6,760 was paid by checks, Exhibits "C" and "D", postdated November 30, 1962 and December 12, 1962, respectively. Said checks bounced when they fell due. This is a clear case of estafa considering that the two checks were issued in payment of an obligation contracted at the same time and without which the transaction would not have been consummated. Petitioner knew at the time that he did not have, nor will have, funds in the bank sufficient to cover the amount of the checks when they fall due, and that payee (complainant) had been defrauded. Certainly, respondent appellate court did not err in affirming the judgment of conviction rendered by the trial court. The fact that the postdated checks, Exhibits "C" and "D", were not covered by sufficient funds when they fell due, in the absence of any explanation or justification by petitioner, satisfied the element of deceit in the crime of estafa, as defined in paragraph 2 of Article 315 of the Revised Penal Code.

ACCORDINGLY, the petition is hereby denied for lack of merit.

Melencio-Herrera, Plana, Gutierrez, Jr., and *de la Fuente, JJ.*, concur.

Teehankee, J. (Chairman), no part.

FIRST DIVISION

[G.R. No. L-42394. January 17, 1985]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **THE COURT OF TAX APPEALS and AVECILLA BUILDING CORPORATION,** *respondents.*