PEOPLE v. JALANDONI: A MISAPPRECIATION OF 'FRAUD' IN THE LAW AGAINST ESTAFA

EDUARDO P. LIZARES*

In the case of *People v. Jalandoni*,[1] rendered on May 30, 1983, the Supreme Court has practically emasculated the law on estafa insofar as this is directed against swindlers engaged in the sophisticated game of check kiting.[2]

Although the accused-appellant was acquitted by the Supreme Court on what it believed to be the lack of evidence to prove guilt beyond reasonable doubt, the practical implication of the decision, considering the uncontroverted facts presented before the court, was to exonerate swindlers, who resort to check kiting as a means of deriving monetary benefit at the expense of others, from liability for estafa.

The People's version of the transactions leading to the accused-appellant's prosecution, and subsequent conviction by the Circuit Criminal Court—the veracity of which accused-appellant did not at all question—were as follows:

> On July 30, 1962, the spouses, H. M. Jalandoni and appellant Teresa Jalandoni, opened a joint current account with the Bank of the Philippine Islands (BPI, for short), Plaza Cervantes Branch and were assigned current account No. 2274-1.
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> On November 22, 1973, after the death of husband H. M. Jalandoni, Ma. Teresa Macapagal, daughter of appellant herein, replaced her father as co-owner with her mother, of current account No. 2274-1.
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> Appellant Teresa Jalandoni, likewise, opened a current account with the Rizal Commercial Banking Corporation (RCBC, for short), Greenhills Branch and was assigned current account No. 6-06061.
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> On September 8, 1976, appellant Teresa Jalandoni *drew three checks totalling ₱750,000.00*, all payable to cash, against her current account No. 6-06061 with the Rizal Commercial Banking Corporation and deposited same in her account, account No. 2274-1, with the Bank of the Philippine Islands, Plaza Cervantes Branch. Prior to, or simultaneously, with, said deposit, *she issued 25 checks in the total amount of ₱745,980.00 which the drawee bank (BPI) honored,* and paid, *on her assurance made to* the bank manager that the RCBC checks which *she had issued and*

* *Associate*, Sycip, Salazar, Feliciano & Hernandez Law Offices; former Member, Editorial Board, Philippine Law Journal.

[1] G.R. No. 57555, May 30, 1983, 122 SCRA 588 (1983).

[2] "A 'kite' is a check drawn against uncollected funds in a bank account (Meriam-Webster's 3rd Int. Dictionary). Kiting is commonly employed to denote a species of fraud or fraudulent practice consisting in the exchange of drafts or checks of approximately the same dates and amounts (51 C.J. S. 532)." Perez v. People, G.R. No. L-43548, June 29, 1981, 105 SCRA 183, 215.

deposited were funded. At the same time and upon appellant's request, the bank returned to her the other eleven checks which were also issued against her current account No. 2274-1.

On September 9, 1976, appellant *drew three checks* totalling ₱650,000.00, all payable to cash, against her current account No. 6-06061 with the RCBC, and deposited the same in her current account No. 2274-1, with the BPI, Cervantes Branch. Prior to, or simultaneous with, said deposit, appellant, likewise, issued 26 checks totalling ₱639,700.00, *which the drawee bank (BPI) honored and paid on the same date of deposit, on her assurance made to the bank manager that the RCBC checks which she had issued and deposited were funded.* Again, on the same date, and upon her request, the bank returned to her the other eleven checks which were also issued against her current account No. 2274-1.

On September 10, 1976, appellant *for the third time drew three checks,* totalling ₱750,000.00 all payable to cash against her current account No. 6-06061 with the RCBC, and deposited the same with her current account No. 2274-1 with the BPI, Cervantes Branch. Again, prior to, or simultaneously with, said deposit, she *issued 22 checks in the total amount of ₱656,100.00 which the drawee bank (BPI) honored and paid on the same date of deposit, on her assurance made to the bank manager that the RCBC checks which she had issued and deposited were funded.* At the same time, and upon her request, the bank manager returned to her the other six checks which she also issued against her current account No. 2274-1.

All of the above RCBC checks, except Check No. 2424530, in the amount of ₱200,000.00, when presented for payment *were dishonored for lack of sufficient funds.*

The appellant does not question the veracity of the transactions, but alleges as a defense that she had been previously granted an overdraft, and that it was not her intention to defraud the bank. (emphases supplied)[3]

Accused-appellant was prosecuted, upon a complaint filed by the Bank of the Philippine Islands (complainant), under Article 315, no. 2, par. a, of the Revised Penal Code which provides that:

Art. 315. *Swindling (estafa).*—Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

1st. The penalty of *prisión correccional* in its maximum period to *prisión mayor* in its maximum period, if the amount of the fraud is over 12,000 pesos, but does not exceed 22,000 pesos; and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prisión mayor* or *reclusión temporal,* as the case may be.

. . . .

[3] *Id.,* at 592, 593.

> (2) By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud;
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> (a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; or by means of other similar deceits.
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> . . . .

To constitute estafa under the foregoing provision of the Penal Code, the following *elements* must therefore be present:

1. There must be a false pretense or fraudulent act of the accused;
2. Said false pretense or fraudulent act must be executed prior to or simultaneously with the commission of the fraud; and
3. The false pretense or fraudulent act may be in the form of falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions or by means of other similar deceits.

Accused-appellant's conviction was reversed by the Supreme Court primarily on the ground that she had been accorded overdraft (OD) or drawn against uncollected deposit (DAUD) privileges, not only for the nine (9) Rizal Commercial Banking Corporation (RCBC) checks subject of the criminal action, but for many other past transactions.

Not only does the great weight of evidence belie the accused-appellant's totally baseless claim that complainant bank had given her OD and DAUD privileges—a matter which, out of deference to the Supreme Court, will not be discussed here—but, as well, the invocation by accused-appellant of her OD and DAUD privileges—assuming for the sake of argument that said privileges did exist—to authorize her issuance of bouncing checks in the huge amounts in question, considering the much lesser magnitude of her prior dealings with complainant, is clearly *unbelievable.*

More importantly, however, the Supreme Court failed to answer a most crucial question squarely presented before it, upon which complainant was, in the first place, constrained to institute the criminal action. Prior to or simultaneously with the deposit of the above-described nine (9) bouncing checks in accused-appelant's current account No. 2274-1 with complainant, accused-appellant drew, at the same day the deposits were made, a total of seventy-three (73) checks in almost the same amount as the deposited bouncing checks. These checks (which were to subsequently bounce), complainant honored on accused-appellant's *assurance* to complainant's Plaza Cervantes branch manager that her said personal checks drawn against her current account with RCBC were good checks and would not be returned for insufficiency of funds.

If indeed accused-appellant had been given OD and DAUD privileges, why did she have to resort to this scheme of drawing against her alleged funds in an RCBC current account; depositing these RCBC checks, payable to cash, in her BPI current account; and then subsequently issuing various checks in favor of third parties against her BPI accounts? Why did she not simply avail of the OD and DAUD directly —if there was in fact any—rather than go through the tedious exercise that she resorted to? Why did she have to give her assurance to complainant's Plaza Cervantes branch manager that the checks drawn against her RCBC current account (the bouncing checks) would not be dishonored or returned?

The obvious deceit of accused-appellant, her evident bad faith, was clearly shown by her current account ledger in RCBC, against which she drew tthe checks which subsequently bounced, at the time material in the controversy. The ledger showed that:

> a.) on 8 September 1976 she had a starting credit balance ₱28,778.61 only and at the end of said day (8 September 1976) she already had an overdrawn balance of ₱281,746.39 (Exh. W), and yet, she still drew against said current account No. 6-06061 her personal checks Exhs. N, O and P totalling ₱750,000.00 and deposited them on 8 September 1976 in her current account No. 2274-1 in the Cervantes branch of complainant Bank;
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> b.) on 9 September 1976, when her personal checks, Exhs. N, O and P (which she had issued and deposited the day before, 8 September 1976, in the complainant Bank) and totalling ₱750,000.00 were presented to RCBC Greenhills branch for clearing and payment, accused had a credit balance in her RCBC amount of ₱371,253.61 only (Exh. W);
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> c.) on 10 September 1976, when her personal checks, Exhs. Q, R and RCBC No. 242530 (which she had issued and deposited the day before, 9 September 1976, in the complainant Bank) and totalling ₱650,000.00 were presented to RCBC Greenhills branch for clearing and payment, accused had deposited on said day (10 September 1976) additional amounts of ₱40,000.00 and ₱493,200.00 only in the form of certified checks (Exh. W-1);
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> d. on 13 September 1976, a Monday, when her personal checks, Exhs. S, T and U (which she had issued and deposited on 10 September 1976—a Friday—in the complainant Bank) and totalling ₱750,000.00 were presented to RCBC Greenhills branch for clearing and payment, accused had made NO deposit at all to meet and cover her said checks (Exh. W-1).[4]

In fact, whether or not accused-appellant had a right to overdraw against her account in BPI is really of no consequence, for, in the ultimate analysis, the situation boils down to the fact that the checks which

[4] Appellee's Brief, at 24-25.

the accused drew against her current account in BPI and asked BPI to pay on September 8, 9 and 10, 1976:

> a) were accompanied by deposits made by accused to her same current account of her personal checks paid to cash in amount sufficient to cover said drawn checks; and
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> b) were paid by complainant Bank on accused's assurance and representation that her check deposits on September 8, 9 and 10, 1976, even if uncleared at the time she drew against them, were good and funded.

Certainly, no more appropriate example of the crime of estafa under Art. 315(2) (a) of the Revised Penal Code could be had than that presented herein.

The ruling of the Supreme Court in this case is certainly anathema to the banking industry. Although it is true that the evils presented by the facts under consideration have to a large extent been remedied by the practice now resorted to by banks of refusing to credit any check for deposit until collection has been made, it is not uncommon for banks to exempt certain customers from this practice. Is it therefore the implication of the Supreme Court decision in this case that these customers are clothed with relative immunity from estafa if they resort to what accused-appellant in this case had done?

Although the Supreme Court apparently decided the case on the lack of evidence to prove accused-appellant's guilt beyond reasonable doubt, it seems clear that it has removed from the Revised Penal Code the kind of estafa committed herein—for the simple reason that no stronger proof, no clearer case, no more perfect example, of estafa under Article 315(2) (b) can be shown than that committed by accused-appellant.

The factual milieu in this case is not entirely new to the Supreme Court. In the case of *People v. Lilius*[5] the Supreme Court laid down the rule that: "the mere fact of issuance of a check amounts to a *positive averment* that [the maker] has funds for the payment thereof . . . Such *presumption* is *reasonable and jutified* by the nature of the transaction"[6] (emphasis supplied). Thus, one who issues a bouncing check, can be held liable for estafa under Article 315 (2) (a): (i) if the issuance of the check was utilized to gain a present benefit, (ii) if the offended party, who suffered the damage, relied thereon. This is so because the issuance of the bouncing check already amounts to the fake pretense of possession of "property" and/or "credit" referred to in Article 315(2) (a).

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[5] 59 Phil. 339 (1933).
[6] *Id.* at 340-341.

In *People v. Lilius,* the accused was prosecuted and found guilty of estafa by the trial court for the issuance, among others, of a bouncing check for hotel accommodations. The Supreme Court acquitted the accused however on the ground that accused clearly warned complainant of the possibility that he may not have sufficient funds. The Supreme Court observed that at the time the accused issued the check he was asked by the hotel cashier whether he had sufficient funds, "to which he relied that *he was not sure,* but that he believed he had and that, at any rate, if he did not have, he would cable New York to have sufficient funds placed to his credit." (emphasis supplied).[7]

The Supreme Court also observed that accused had sufficient funds in the bank to cover the check at the time it was issued—although funds were insufficient at the time of presentment for payment.

The Supreme Court, upon a satisfactory showing of the warning voiced by accused at the time he issued the check that he may not have funds did not, therefore apply the presumption—which the lower court applied in finding accused guilty—that the mere issuance of a check amounts to a positive averment that the accused had funds to support it and that, if in fact the maker of the check did not have any, he would be—upon a further showing of derivation of present benefit and reliance on the misrepresentation by the injured party—guilty of estafa. The Supreme Court stated:

> In the case at bar, *this presumption* is modified by reason of the statements of appellant from which it may be *clearly inferred* that there was a possibility of his not having funds at the bank at the time he issued the check. If the appellant made such statement to the cashier of the offended party upon issuing the check . . . and, in spite of such statement, the said cashier accepted the check . . . he did so fully aware of the risk he was running thereby. If it proved later that the appellant neither had sufficient funds on the date he issued the check and at the time it was presented for payment, *such risk was foreseen at the time of the acceptance thereof. In this sense, it may be said that appellant had not acted fraudulently*[8] (emphasis supplied).

Clearly then, following the ruling of the Supreme Court in *People v. Lilius,* it may be clearly inferred that had accused therein simply *remained silent* (knowing that he *may* not have sufficient funds), the presumption would apply and a finding of fraud would follow *i.e.* the offense of estafa would then have been committed. With more reason, therefore, would a finding of *fraud*—and thus of the offense of estafa under Article 315(2)(a)—be warranted where, as in the case of *People vs. Jalandoni,* here under review, the accused actively and repeatedly misrepresented that she had enough funds to cover her checks, when in fact she knew very well she *did not, and never did, have any such funds.*

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[7] *Id.* at 340.
[8] *Id.* at 341.

It is therefore unfortunate that the Supreme Court in *People v. Jalandoni* removed whatever safeguards it had adopted in its earlier evaluation of the crime of estafa by means of deceit. The *People v. Jalandoni* ruling, in effect, seems to have deleted Article 315(2) (a) from the penal code. Worse, it makes "fraud" almost impossible to find in cases involving the issuance of bouncing checks. Since the crime of estafa cannot exist without a finding of "fraud," the sophisticated game of check kiting, such as that resorted to by the accused in the case under review, will have been sanctioned despite its obvious proscription by the Revised Penal Code.