



Republic of the Philippines  
**Supreme Court**  
Manila

**THIRD DIVISION**

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated July 31, 2023, which reads as follows:*

**“G.R. No. 265908 (JENNIFER IBAY y BALIGOD, petitioner, versus PEOPLE OF THE PHILIPPINES, respondent).** – The Court resolves to **GRANT** petitioner’s motion for an extension of thirty (30) days from the expiration of the reglementary period within which to file a petition for review on *certiorari*.

This is a Petition for Review on *Certiorari* (**Petition**)<sup>1</sup> under Rule 45 of the Rules of Court. The petitioner Jennifer Ibay y Baligod (**Ibay**) filed the Petition assailing the Court of Appeals (**CA**) Decision (**CA Decision**),<sup>2</sup> dated March 17, 2022, and the Resolution (**CA Resolution**),<sup>3</sup> dated January 18, 2023, in CA-G.R. CR No. 44702, entitled *People of the Philippines v. Jennifer Ibay y Baligod*. The CA dismissed Ibay’s appeal of the Regional Trial Court, Tuguegarao City, Cagayan, Branch 1 (**RTC**) Judgment (**RTC Judgment**),<sup>4</sup> dated October 28, 2019. The RTC Judgment, in turn, convicted Ibay for the crime of Estafa under Article 315 (2) (d) of the Revised Penal Code (**RPC**).

***The Facts***

***The Version of the Prosecution***

Ibay is the caretaker or manager of Egg and Egg, a poultry farm owned by Atty. Emil Baligod (**Atty. Baligod**). In 2009, Atty. Baligod ordered Ibay to open a checking account with the Philippine National Bank (**PNB**).<sup>5</sup>

On November 12, 2012, Ibay issued to private complainant Eden L. Schwartz (**Schwartz**) PNB Check No. 0768654, which was postdated to

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<sup>1</sup> *Rollo*, pp. 9-25.

<sup>2</sup> *Id.* at 50-69. Penned by Associate Justice Rafael Antonio M. Santos and concurred in by Associate Justices Ramon M. Bato, Jr. and Lorenza Redulla Bordios.

<sup>3</sup> *Id.* at 44-49.

<sup>4</sup> *Id.* at 70-73.

<sup>5</sup> *Id.* at 54, CA Decision.

February 17, 2013, in the amount of ₱238,000.00 as payment for various farm and agricultural products which Ibay purchased from Schwartz for Egg and Egg. According to Schwartz, Ibay assured her that the post-dated check was sufficiently funded. This assurance induced her to part with her products and accept Ibay's check.<sup>6</sup>

Schwartz presented the check for encashment on February 25, 2013. However, it was dishonored because it was drawn against insufficient funds.<sup>7</sup> Thus, Schwartz sent to Ibay several notices of dishonor and demands for payment, which all went unheeded. Schwartz sent her final demand (**Final Demand**) on July 3, 2013, through registered mail.<sup>8</sup> This final demand was received by Rosita Lizardo (**Lizardo**). Despite this demand, Ibay still failed to make good on the check or pay his obligation to Schwartz.

### *The Version of the Defense*

Ibay is the caretaker of Atty. Baligod's poultry business. He claimed that in the past, he used to purchase feeds from Schwartz on cash basis. However, Atty. Baligod instructed him to open a checking account and to ask Schwartz if it would be possible for him to purchase her products through a sale on credit. Specifically, he will pay through post-dated checks upon the delivery of the product and he will not be allowed to request for further deliveries unless the prior post-dated check had already been encashed. Schwartz agreed to this arrangement.<sup>9</sup>

Atty. Baligod's poultry business suffered financial difficulties in 2013 because there was an oversupply of eggs in the market which drove down the prices. Because of this, the business went bankrupt.<sup>10</sup>

Ibay was not aware that the check was dishonored and received no notice of demand. He only learned that the check bounced when he received the subpoena from the prosecutor's office because Schwartz filed a complaint against him.<sup>11</sup>

### *The Ruling of the RTC*

An Information,<sup>12</sup> dated October 17, 2013, was filed against Ibay before the RTC charging him with the crime of Estafa under Article 315 (2) (d) of

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<sup>6</sup> Id.  
<sup>7</sup> Id.  
<sup>8</sup> Id.  
<sup>9</sup> Id. at 55.  
<sup>10</sup> Id.  
<sup>11</sup> Id.  
<sup>12</sup> Id. at 150.

the RPC. He pleaded not guilty during the arraignment.<sup>13</sup>

After the prosecution presented its evidence, Ibay filed a Motion to Dismiss Based on Demurrer to Evidence,<sup>14</sup> dated June 6, 2019. The RTC denied this motion in its Resolution,<sup>15</sup> dated July 5, 2019.

Ibay thereafter presented his evidence. After trial, the RTC found Ibay guilty beyond reasonable doubt for the crime of Estafa. The dispositive portion of the RTC Decision states:

WHEREFORE, the Court finds the accused JENNIFER IBAY y BALIGOD *GUILTY BEYOND REASONABLE DOUBT* of the CRIME OF ESTAFA defined and penalized under ARTICLE 315, (2) (d) of the Revised Penal Code as amended by RA 10951, and, applying the Indeterminate Sentence Law, hereby sentences him to suffer an indeterminate penalty of Six (6) Years and One (1) Day as Minimum to Eight (8) Years and One (1) Day as Maximum.

The accused is likewise ordered to pay the private complainant the amount of P238,000.00 representing the unpaid amount covering the value of the subject check plus 6% interest per annum from the time of judicial demand until fully paid.

SO DECIDED.<sup>16</sup>

### *The Ruling of the CA*

Ibay filed a Notice of Appeal,<sup>17</sup> dated November 10, 2019.

The CA denied Ibay's appeal. The CA found that all the elements of the crime of Estafa were established. According to the CA, Estafa under Article 315 (2) (d) of the RPC has the following elements: (1) the offender postdated or issued a check in payment of an obligation contracted at the time of the postdating or issuance; (2) at the time of post-dating or issuance of said check, the offender has no funds in the bank or the funds deposited were not sufficient to cover the amount of the check; (3) the payee has been defrauded.<sup>18</sup>

The CA ruled that the second element is not disputed. As to the first element, the CA concluded that Ibay's defense that the check was issued as a guaranty for a pre-existing obligation is not meritorious. Schwartz' testimony was clear that Ibay delivered the check simultaneously with the delivery of

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<sup>13</sup> Id. at 53.

<sup>14</sup> Id. at 107-110.

<sup>15</sup> Id. at 104-106.

<sup>16</sup> Id. at 102.

<sup>17</sup> Id. at 103.

<sup>18</sup> Id. at 56.

the products purchased as payment. Moreover, the CA noted that Ibay himself admitted this during his testimony.<sup>19</sup>

As regards the third element, the CA held that the record shows that the issuance of the post-dated check was the efficient cause of the defraudation because Schwartz would not have parted with the products if Ibay did not simultaneously issue the said check.<sup>20</sup>

The dispositive portion of the CA Decision affirmed the RTC's finding that Ibay is guilty of Estafa but modified the penalty. The dispositive portion of the CA Decision states:

**WHEREFORE**, the appeal is **DENIED** for lack of merit. The Judgment dated 28 October 2019 rendered by Branch 1 of the Regional Trial Court of Tuguegarao City, Cagayan is hereby **AFFIRMED** with **MODIFICATION** that accused-appellant Jennifer Ibay is liable to suffer the indeterminate penalty of imprisonment ranging from six (6) years and one (1) day of *prision mayor*, as minimum, to eight (8) years, eight (8) months and one (1) day of *prision mayor*, as maximum. Accused-appellant Jennifer Ibay is further ordered to pay private complainant Eden Schwarz the amount of P238,000.00, which shall earn legal interest at the rate of six percent (6%) *per annum* from the filing of the Information until full payment.

**SO ORDERED.**<sup>21</sup> (Emphasis in the original)

Ibay filed a Motion for Reconsideration,<sup>22</sup> where he reiterated his argument that there was no proof that he received the notice of dishonor.<sup>23</sup> He also argued that even assuming that he is guilty, the applicable penalty under Republic Act No. 10951 (**RA No. 10951**)<sup>24</sup> is *arresto mayor* in its maximum period to *prision correctional* in its minimum period.<sup>25</sup>

The CA denied the Motion for Reconsideration. In the CA Resolution, the CA explained that the drawer's receipt of the notice of dishonor is not an element of Estafa. Under Article 315 (2) (d) of the RPC, the drawer's failure to deposit the amount necessary to cover the check within three days from receipt of the notice of dishonor is *prima facie* evidence of deceit but does not preclude the prosecution from presenting evidence to prove deceit. In this case, the CA concluded that Ibay himself admitted that he received the notice

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<sup>19</sup> Id. at 59-62.

<sup>20</sup> Id. at 66-67.

<sup>21</sup> Id. at 68.

<sup>22</sup> Id. at 30-35.

<sup>23</sup> Id. at 45.

<sup>24</sup> ENTITLED "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, AMENDING FOR THE PURPOSE ACT NO. 3815, OTHERWISE KNOWN AS 'THE REVISED PENAL CODE,' AS AMENDED," approved on August 29, 2017.

<sup>25</sup> *Rollo*, p. 48.

of dishonor when he stipulated during the pre-trial that Lizardo, who resides in the same address as he does, received the notice of dishonor.<sup>26</sup>

Ibay filed this Petition seeking the reversal of the CA Decision and Resolution. Ibay essentially argues that the prosecution failed to establish all the elements of the crime of Estafa under Article 315 (2) (d) of the RPC. He raises the following arguments:

First, the prosecution failed to prove that the post-dated check was issued as payment for an obligation contracted at the time of the postdating of the check. Ibay asserts that Schwartz admitted during her testimony that the check was issued as a guaranty to ensure the payment of a pre-existing obligation.<sup>27</sup>

Second, the prosecution did not present proof that Ibay received a notice of dishonor. Ibay points to the prosecution's evidence showing that Schwartz's Final Demand was received by Lizardo and not by Ibay himself.<sup>28</sup>

Finally, Ibay argues that even assuming that he is guilty, the CA imposed an incorrect penalty. He alleges that under RA No. 10951, the imposable penalty is *arresto mayor* in its maximum period to *prision correccional* in its minimum period. As there are no mitigating and aggravating circumstances, the maximum penalty should be one year and nine days of *prision correccional*. Moreover, applying the Indeterminate Sentence Law, the minimum term of the indeterminate sentence should be *arresto mayor* in its minimum and medium periods or the range of one month and one day to four months. Thus, Ibay asserts that the indeterminate penalty should be a prison term of two months and one day of *arresto mayor* as minimum and one year and one day of *prision correccional* as maximum.<sup>29</sup>

### ***The Issue***

Did the CA correctly affirm the RTC Judgment convicting Ibay of Estafa under Article 315 (2) (d) of the RPC?

### ***The Ruling of the Court***

The Court grants the petition.

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<sup>26</sup> Id. at 45-48.

<sup>27</sup> Id. at 19.

<sup>28</sup> Id. at 22.

<sup>29</sup> Id. at 24.

Article 315 (2) (d) of the RPC states:

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

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 a check in payment of an obligation when the offender 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 of insufficiency of funds shall be *prima facie* evidence of deceit constituting false pretense or fraudulent act.

The elements of this crime are as follows: “(1) the offender has postdated or issued a check in payment of an obligation contracted at the time of the postdating or issuance; (2) at the time of postdating or issuance of said check, the offender has no funds in the bank or the funds deposited are not sufficient to cover the amount of the check; and (3) the payee has been defrauded.”<sup>30</sup>

In this kind of Estafa, what the law penalizes is not the mere failure to pay a debt. What is penalized is the criminal fraud or deceit in the issuance of a check.<sup>31</sup>

Significantly, Article 315 (2) (d) of the RPC provides that the drawer’s failure to deposit the amount necessary to cover the check within three days from receipt of notice is *prima facie* evidence of deceit.

In *People v. Ojeda*,<sup>32</sup> the Court said:

[N]otice of dishonor is required under both par. 2(d) Art. 315 of the R[evised] P[enal] C[ode] and Sec. 2 of BP 22. While the RPC prescribes that the drawer of the check must deposit the amount needed to cover his check within three days from receipt of notice of dishonor, BP 22, on the other hand, requires the maker or drawer to pay the amount of the check within five days from receipt of notice of dishonor. **Under both laws, notice of dishonor is necessary for prosecution (for estafa and violation of BP 22). Without proof of notice of dishonor, knowledge of**

<sup>30</sup> *Batac v. People*, 832 Phil. 279, 287 (2018), citing *Lopez v. People*, 578 Phil. 486, 491-492 (2008).

<sup>31</sup> *Id.*

<sup>32</sup> 474 Phil. 491 (2004).

**insufficiency of funds cannot be presumed and no crime (whether estafa or violation of BP 22) can be deemed to exist.<sup>33</sup> (Emphasis supplied; citations omitted)**

Moreover, in *Lopez v. People (Lopez)*,<sup>34</sup> the Court explained that the drawer's receipt of the notice of dishonor establishes a presumption that the issuance of the check was attended with deceit. However, this presumption does not preclude the presentation of other evidence to prove deceit. Thus, in *Lopez*, the Court ruled that, notwithstanding the absence of proof as to the accused's receipt of the written notice of dishonor, the prosecution's evidence nevertheless showed that the accused had actual notice of the dishonor of the check.

In this case, it is crucial, therefore, to ascertain if Ibay indeed received a notice of dishonor. Moreover, assuming that no such written notice was received, the point of inquiry is whether the prosecution presented adequate evidence to prove the presence of deceit.

The foregoing issues require a review of the CA and the RTC's appreciation of the evidence and their findings of fact. As a rule, the Court is not a trier of facts and will not resolve factual issues in a Rule 45 petition.<sup>35</sup> This, however, admits of exceptions, including where the inference made by the lower courts is manifestly mistaken.<sup>36</sup> This exception is present in this case.

Ibay categorically denies receipt of the Final Demand. The RTC (as affirmed by the CA) disagreed. The evidence constituting proof of Ibay's alleged receipt of the Final Demand are the following: (a) Schwartz' testimony to the effect that the Final Demand was sent through registered mail to Ibay;<sup>37</sup> (b) the registry return receipt;<sup>38</sup> (c) the Certification issued by Marlou Talosig (**Talosig**), the Post Master of the Post Office of Tuao, stating that the registered mail addressed to Ibay was received by a certain Rosita Lizardo;<sup>39</sup> and (d) Talosig's testimony that the Final Demand was delivered by letter carrier Rafael Tuppil to Lizardo, Ibay's aunt who lived in the same address as Ibay.<sup>40</sup> Further, during the pre-trial, the parties stipulated that the demand letter was received by Lizardo.<sup>41</sup>

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<sup>33</sup> Id. at 508.

<sup>34</sup> Supra note 30.

<sup>35</sup> *Sps. Miano, Jr. v. Manila Electric Company*, 800 Phil. 118, 122 (2016).

<sup>36</sup> Id. at 123.

<sup>37</sup> *Rollo*, p. 119.

<sup>38</sup> Id.

<sup>39</sup> Id. at 126.

<sup>40</sup> Id. at 147.

<sup>41</sup> Id. at 47.

The importance of the service and receipt of a notice of dishonor cannot be discounted. Because the law establishes a presumption against a drawer of a check upon failure to deposit the amount within three days from receipt of notice, any allegation asserting that such notice was served should be established clearly and definitively.

The Court rules that the prosecution failed to establish that Ibay received a notice of dishonor. There is no evidence here that Ibay received Schwartz's Final Demand. The prosecution admits, and the parties stipulated during the pre-trial, that the Final Demand was received by Lizardo. While Talosig's testimony (as stipulated upon by the parties) is to the effect that Lizardo is allegedly Ibay's aunt and lives in the same address as Ibay, there is no testimony, or any other kind of evidence, convincingly establishing the relationship between Lizardo and Ibay, much less proof that Lizardo actually gave the Final Demand to Ibay or even that Lizardo is Ibay's authorized representative to receive the same. Considering that this is a criminal case, these pieces of evidence simply cannot suffice to prove that Ibay actually received the notice.

Given this, the presumption that Ibay issued the check with deceit did not arise. Thus, the next line of inquiry is whether the prosecution presented evidence, sufficient to establish proof beyond reasonable doubt, that Ibay acted with deceit. The Court rules that it did not.

To reiterate, the gravamen of the crime of Estafa under Article 315 (2) (d) of the RPC is the criminal fraud or deceit in the issuance of the check.

In *Batac v. People (Batac)*,<sup>42</sup> the Court ruled that deceit was established because the accused convinced the private complainant to rediscount her checks by representing that she had enough funds to cover them. This misrepresentation was further facilitated when the accused claimed that she was a schoolteacher which presumably proved her good reputation. Moreover, the Court found in *Batac* that the accused knew at the time she issued the checks that she had no sufficient funds.

Further, in *Lopez*,<sup>43</sup> the Court held that the prosecution proved the existence of deceit despite the absence of proof of receipt of the notice of dishonor because the accused's bank account was already closed almost two months before the check was presented for encashment. The Court also found that the accused was verbally notified of the dishonor of the check.

In the foregoing cases, despite the absence of proof of the accused's actual receipt of the notice of dishonor, the existence of deceit was palpably

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<sup>42</sup> Supra note 30.

<sup>43</sup> *Lopez v. People*, supra note 30.



shown through other evidence, *i.e.*, knowledge of the accused that they had no funds to cover the amount of the check or that their bank account had already been closed. What is clear is that the accused in these cases were not convicted merely because they could not pay the amount due to the private complainant.

Here, the prosecution's theory is that Ibay acted with deceit when he did not deposit the amount covered by the check even after he received notice that it was dishonored. As the Court has already explained, the fact of Ibay's receipt of the notice of dishonor was not duly established here. Apart from the foregoing unsubstantiated allegation, there is no adequate evidence that Ibay, in issuing the check, knew that it was not funded at the time of its issuance or that he intended to not fund the check at the time of its presentment for encashment.

In this regard, the Court deems it relevant to note that the parties admitted that Ibay ordered the products from Schwartz in his capacity as a manager or caretaker of Egg and Egg poultry farm, a business owned by Atty. Baligod.<sup>44</sup> The prosecution also did not dispute Ibay's claim that it was Atty. Baligod who instructed him to open a checking account and that Ibay has had no issues with the purchase of and payment for Schwartz's products in their previous transactions.<sup>45</sup> These circumstances, to the mind of the Court, do not establish the existence of deceit in this case. The elements of the crime therefore were not established and, as such, the prosecution failed to prove that the crime was committed. It was not convincingly proved that Ibay deceitfully issued the check knowing that it was not funded or that it would not be covered by sufficient funds at the time of presentment because it was Atty. Baligod's business and funding the account is his responsibility. Nor was it satisfactorily established that Ibay fraudulently refused to fund the check despite notice. In fact, the foregoing admissions by the parties suggest that it was Atty. Baligod, as the owner of the poultry business, which had access to the funds necessary to cover the checks.

It is fundamental in criminal cases that the guilt must be proved beyond reasonable doubt. The prosecution simply did not meet this evidentiary standard. A conviction for the crime of Estafa under Article 315 (2) (d) of the RPC requires more than proof that a person failed to pay an obligation. What is penalized by the law is criminal fraud and not the mere incapacity to pay. To convict Ibay here would amount to sending a person in jail for his inability to pay a debt. That runs counter to the Constitution and the law.

In connection with this, as Ibay did not commit the crime charged, the Court rules that he should not be held liable for any civil liability arising from

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<sup>44</sup> *Rollo*, p. 54, CA Decision.

<sup>45</sup> *Id.*

the crime.<sup>46</sup> Finally, as to the obligation to pay the purchase price of the products purchased from Schwartz, the Court reiterates that, Ibay asserts, and the prosecution admits, that he bought these products for Atty. Baligod's business, in his capacity as the manager. Given this, the Court rules that Ibay should not be held liable for the payment of the purchase price.

**WHEREFORE**, the Petition for Review on *Certiorari* is **GRANTED**. The Decision dated March 17, 2022, and the Resolution dated January 18, 2023 of the Court of Appeals in CA-G.R. CR No. 44702 are **REVERSED**. Jennifer Ibay y Baligod is **ACQUITTED** of the crime charged in Criminal Case No. 15727 of Branch 1, Regional Trial Court, Tuguegarao City, Cagayan. Jennifer Ibay y Baligod is also absolved of any civil liability *ex delicto*.

Let entry of judgment be issued immediately.

**SO ORDERED.**

By authority of the Court:

*Misael C. Batt*  
**MISAELO DOMINGO C. BATTUNG III**  
*Division Clerk of Court* *Jam 9/29/2023*

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<sup>46</sup> *Dy v. People*, 792 Phil. 672 (2016).