Republic of the Philippines
Supreme Court
Baguio City

THIRD DIVISION

LUCIA MANUEL *y* CADIZ,
Petitioner,

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

G.R. No. 213640

Present:

CAGUIOA, *J.*,
Chairperson,
INTING,
GAERLAN,
MARQUEZ,* and
SINGH, *JJ.*

Promulgated:

April 12, 2023

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D E C I S I O N

GAERLAN, *J.*:

For resolution before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Revised Rules of Court assailing the Decision[2] dated February 21, 2014 and the Resolution[3] dated July 23, 2014 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05737, which affirmed with modification the Decision[4] dated July 26, 2012 of the Regional Trial Court (RTC) of Malolos City, Bulacan, Branch 9, finding Lucia Manuel *y* Cadiz (petitioner) guilty of the crime of Estafa defined and penalized under Article 315, paragraph 2(d) of the Revised Penal Code (RPC) as amended by Republic Act (R.A.) No. 4885 and sentencing

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* Dimaampao, *J.*, no part due to prior action in the Court of Appeals: Marquez, *J.*, designated additional Member per Raffle dated November 29, 2021.

1 *Rollo*, pp. 22-64.

2 Id. at 8-17. Penned by Associate Justice Japar B. Dimaampao, (now a Member of this Court) with Associate Justices Elihu A. Ybañez and Melchor Q. C. Sadang, concurring.

3 Id. at 18-19.

4 Id. at 83-105. Penned by Presiding Judge Veronica A. Vicente-De Guzman.

petitioner to suffer an indeterminate penalty of twelve (12) years of *prision mayor*, as minimum, to thirty (30) years of *reclusion perpetua.*

The Antecedent Facts

The instant case stemmed from an Information dated July 27, 2007 filed with the RTC charging petitioner with the crime of Estafa defined and penalized under Article 315, paragraph 2(d) of the RPC, the accusatory portion of which states:

> That in or about the month of November, 2005, in the municipality of San Rafael, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent of gain [sic] and by means of false pretenses and fraudulent manifestations and pre-tending to have sufficient funds with the Philippine National Bank, Sta. Maria Branch, did then and there willfully, unlawfully and feloniously prepare, make and issue the following checks, to wit:
>
> | CHECK NO. | DATE | AMOUNT |
> |---|---|---|
> | 0107710 | December 3, 2005 | P80,860.00 |
> | 0107711 | December 4, 2005 | 103,480.00 |
> | 0107712 | December 6, 2005 | 93,610.00 |
> | 0107713 | December 7, 2005 | 72,780.00 |
> | 0107714 | December 8, 2005 | 76,290.00 |
> | 0107716 | December 10, 2005 | 105,643.20 |
> | 0107717 | December 11, 2005 | 88,909.00 |
> | 0107718 | December 13, 2005 | 97,566.60 |
> | 0107719 | December 14, 2005 | 105,667.20 |
> | 0107720 | December 17, 2005 | 64,800.00 |
>
> drawn against the Philippine National Bank, Sta. Maria Branch, in payment for her obligation, knowing fully well that at the time she issued the said checks she had no sufficient funds in the said bank, so much so that upon presentment of the said checks to the bank for payment, the same were dishonored and refused payment for the reason that it was "Account Closed", and inspite of repeated demands to the said accused to make good said checks the said accused repeatedly failed and refused to do so, to the damage and prejudice of the complainant Flordeliza Uy in the total amount of P809,606.00
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> Contrary to law.[5]

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5 Id. at 8-9.

Version of the Prosecution

During trial, the prosecution presented the following witnesses: (1) Nemesio Artates (Artates), booker of live chickens and an employee of Ebot's Farm; (2) Elizabeth De Leon, Farm Manager and checker of Ebot's Farm; and (3) Felicidad Bernardo (Bernardo), Branch Manager of the Philippine National Bank (PNB) – Poblacion, Sta. Maria, Bulacan Branch.[6]

According to the prosecution, private complainant Flordeliza Uy (Uy) was allegedly the owner of "Ebot's Farm," a farm engaged in the chicken grower business. On the other hand, petitioner is a long time customer of Ebot's Farm and would call in the morning to place her orders for live chickens with Artates, the booker for Ebot's farm. After that, she would instruct her husband, Rolando Manuel (Rolando), or nephew, Arnel Cadiz (Cadiz), to pick up the chickens in the evening, and deliver the corresponding check payments for the purchases made.[7]

Artates testified that petitioner on several dates in November 2005 placed various orders for live chickens. Rolando, the husband of petitioner, picked up the chickens from Ebot's Farm and delivered PNB checks as payment therefor. The checks issued by petitioner were in the name of Uy. Accordingly, petitioner, issued 10 PNB checks bearing different dates and amounts in connection with the orders she placed for live chickens,[8] *viz.*:

CHECK NO.	DATE	AMOUNT (₱)
107710	December 3, 2005	80,860.00
107711	December 4, 2005	103,480.00
107712	December 6, 2005	93,610.00
107713	December 7, 2005	72,780.00
107714	December 8, 2005	76,290.00
107716	December 10, 2005	105,643.20
107717	December 11, 2005	88,909.00
107718	December 13, 2005	97,566.60
107719	December 14, 2005	105,667.20
107720	December 17, 2005	64,800.00[9]

When the foregoing checks were presented for payment to the bank, the same were dishonored for the reason "Account Closed." Thus, several demand letters were sent to petitioner, which were left unheeded. The total value of the foregoing PNB checks amounted to ₱889,606.00.[10]

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6 Id. at 68.
7 Id. at 68-69.
8 Id. at 84-88.
9 Id. at 69.
10 Id. at 69-70. ₱887,606.00 in RTC Decision (id. at 105).

This prompted Uy to file a criminal complaint[11] against petitioner for violation of Batas Pambansa (B.P.) Blg. 22 and Article 315, paragraph 2(d) of the RPC. Resultantly, two sets of Information were filed, in particular: (1) an Information for Estafa under Article 315, paragraph 2(d) of the RPC docketed as Criminal Case No. 2450-M-0007, which is subject of the present petition; and (2) 10 Informations for each count of violation of B.P. Blg. 22 docketed as Criminal Case Nos. 2554-2563, which were filed with the Municipal Trial Court (MTC) of San Rafael, Bulacan.

During trial, the prosecution's witness, Bernardo, Branch Manager of the PNB – Poblacion, Sta. Maria, Bulacan Branch testified that the date and signature in the PNB checks were in the hand writing of petitioner. However, Bernardo noted that the writings for the name of the payee and the amount were not made by the hand of petitioner.[12]

Version of the Defense

The defense on the other hand presented the sole testimony of petitioner to deny the charges against her.[13]

According to petitioner, she was engaged in the trading of live chickens and as part of her business, she would purchase live chickens from different growers/farms. Among the farms where she would purchase the live chickens was Ebot's farm, which is where Artates works and whom petitioner was familiar with. However, petitioner argued that Ebot's farm was owned by a certain Alex Uson (Uson), and not Uy.[14]

Artates would usually call petitioner to book her orders of live chickens. Petitioner would then issue blank checks, filling out only the date and signature, and leaving out the name of the payee and amount.[15] Thereafter, Rolando or Cadiz would pick up the chicken and leave the blank checks as guarantee for their payment.[16]

Petitioner admitted that she received several live chickens from Ebot's farm which she ordered through Artates and for which she issued several blank PNB checks.[17] Petitioner admits that she wrote the date and signed

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11 Id. at 80-82.
12 Id. at 91-92.
13 Id. at 99-102.
14 Id. at 99.
15 Id.
16 Id. at 101.
17 Id. at 100.

them but left the name of the payee and amount blank. When confronted with the subject PNB checks, petitioner denied having entered the name of Uy as payee for the said checks. Petitioner did not know why Uy was made the payee of the check, but she never questioned them as she trusted Artates, with whom she was directly transacting with.[18]

Petitioner admitted that she was aware that the checks would not be funded on time, and thus, approached the owner of Ebot's farm, Uson, to ask him not to present the checks for encashment and to renegotiate the payment for her orders of live chicken.[19]

Petitioner further claimed that she did not defraud Uy, since she did not transact with the latter. Petitioner argued that the PNB check were issued in connection with her order of live chickens from Ebot's farm, which was owned by Uson.[20]

Moreover, petitioner repeatedly pointed out and complained the failure of the prosecution to present Uy during trial. In fact, petitioner highlighted that Uy never attended any hearing during the proceedings before the RTC.[21]

The Ruling of the RTC

In its Decision[22] dated July 26, 2012, the RTC found petitioner guilty beyond reasonable doubt of the crime of Estafa defined and penalized under Article 315, paragraph 2(d) of the RPC and sentenced petitioner to suffer the penalty of thirty years (30) of *reclusion perpetua*:

> WHEREFORE, premises considered, the Court finds the accused LUCIA MANUEL y CADIZ guilty beyond reasonable doubt of the crime of ESTAFA defined and penalized under Art. 315, par. 2 (d) of the Revised Penal Code as amended by R.A. 4885 and accused is sentenced to suffer the penalty of thirty years of reclusion perpetua and to indemnify the private complainant, Flordeliza Uy in the amount of P887,606.00
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> SO ORDERED.[23]

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18 Id.
19 Id. at 101.
20 Id.
21 Id. at 99.
22 Id. at 83-105.
23 Id. at 105.

Thereafter, petitioner filed her Notice of Appeal,[24] which was given due course by the RTC in its Order[25] dated September 10, 2012.

The Ruling of the CA

In its Decision[26] dated February 21, 2014, the CA denied petitioner's appeal and affirmed the RTC Decision likewise finding her guilty of Estafa. However, the CA modified the penalty imposed and instead sentenced petitioner to suffer an indeterminate penalty of twelve (12) years of *prision mayor*, as minimum, to thirty (30) years of *reclusion perpetua*:

> **WHEREFORE**, the *Appeal* is hereby **DENIED**. The *Decision* dated 26 July 2012 of the Regional Trial Court, Third Judicial Region, Malolos City, Bulacan, Branch 9, in CRIM. CASE NO. 2450-M-2007, is **AFFIRMED** with the **MODIFICATION** in that appellant LUCIA MANUEL y CADIZ is sentenced to suffer an indeterminate penalty of twelve (12) years of *prision mayor*, as minimum, to thirty (30) years of *reclusion perpetua*.
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> SO ORDERED.[27] (Emphases in the original)

In affirming the RTC Decision, the CA, likewise, concluded that the prosecution was able to prove beyond reasonable doubt all the elements for Estafa under Article 315, paragraph 2(d) of the RPC.[28] In particular, despite the non-presentation of Uy as witness during trial, the CA nevertheless found that the prosecution was able to establish the element of damage or injury. The CA ratiocinated that the testimony of the prosecution's other witnesses who directly dealt with petitioner proved that the payee sustained damage. The relevant portions of the CA discussion are as follows:

> After a perspicacious review of the record, We are convinced that the prosecution demonstrably established the aforementioned elements.
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> *One*. In November 2005, appellant made several purchases of live chickens from the farm, and to serve as payment thereof, she issued the subject postdated checks. Obviously, without such, private complainant Flordeliza would not have parted with the live chickens since these were assurances of payment. x x x
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> x x x x

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24 Id. at 107-108.
25 Id. at 109.
26 Id. at 67-76.
27 Id. at 76.
28 Id. at 72.

Here, the avowals of both the prosecution and defense witnesses evince that the subject checks issued as payment of the chickens would only be completed upon learning the weight thereof and its corresponding price. It cannot, therefore, be gainsaid that appellant did receive the purchased chickens which she must validly pay.

Two. Prosecution witness Bernardo categorically professed that appellant's checking account was already closed when the subject checks were negotiated. In actual fact, she knew that she would not be able to pay the amounts corresponding thereof because she did not have sufficient funds. x x x

x x x x

Three. Private complainant Flordeliza was damaged to the extent of the value of the subject checks which represented the total value of the goods taken by appellant from her.

In a bid to exculpate herself from any liability, appellant maintains that the prosecution's failure to present as witness private complainant Flordeliza deprived her of the right to confront the former. Thence, such failure resulted in the prosecution's inability to prove the indispensable element of deceit.

x x x x

In a criminal case in which the offended party is the State, the interest of the private complainant or the private offended party is limited to the civil liability arising therefrom. From this principle, it can be gleaned that the private offended party may or may not appear as witness depending on the circumstances whether such testimony is essential to prove an offense in a given case. In this case, records reflect that the elements of the crime of estafa could very well be proven and in fact had been established by the other prosecution witnesses who dealt directly with appellant. The testimony of private complainant Flordeliza would only be corroborative and therefore her non-presentation as a witness is not fatal to the prosecution's case. This being so, appellant's lamentation that she was denied of the right to confront private complainant Flordeliza deserves scant consideration.

With this discourse, We find that the court a quo erred not in convicting appellant of estafa under Paragraph 2 (d) Article 315 of the RPC. As it happened, the prosecution was able to rebut the presumption of innocence in favor of appellant thereby proving the latter's guilt beyond reasonable doubt. All the same, We deem it judicious to modify the penalty imposed.[29]

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[29] Id. at 72-74.

Thereafter, petitioner filed a Motion for Reconsideration[30] dated March 21, 2014, which was eventually denied by the CA in its Resolution[31] dated July 23, 2014.

The Instant Petition

Petitioner now comes before this Court questioning the Decision and the Resolution of the CA denying her appeal. Petitioner argues that the prosecution failed to prove beyond reasonable doubt all the elements of the crime charged, specifically the element of deceit and damage considering that Uy was never presented during trial.[32] In addition, petitioner argues that she never transacted with Uy and insists that the orders for live chickens she placed was with Ebot's Farm, owned by a certain Uson.[33]

On August 18, 2015, petitioner through counsel filed a Reply with Motion to Admit[34] dated August 14, 2015 praying that this Court grant their motion and admit into the records, among others, an Affidavit of Desistance[35] executed by Uy. Likewise attached to the Reply is a copy of the Order[36] dated July 29, 2015 issued by the MTC of San Rafael, Bulacan in Criminal Case Nos. 2554 to 2563-SRB-07 (for violation of B.P. Blg. 22), which dismissed the case against petitioner.

In the Order that dismissed the B.P. Blg. 22 cases, the MTC noted that during the hearing, in connection with the Affidavit of Desistance, it was the first time that Uy was called to the witness stand. The MTC, after propounding questions against Uy, was convinced that her affidavit and testimony categorically repudiated the material points and allegations in her Complaint-affidavit and the Information.[37]

In a Resolution[38] dated January 5, 2022, this Court directed the Office of the Solicitor General (OSG) to file a comment on the Reply with Motion to Admit. On March 30, 2022, the OSG filed its Comment arguing that the Affidavit of Desistance and the testimony of Uy in the B.P. Blg. 22 cases should not be admitted in the instant case considering that they were made and introduced in a different proceeding.

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30 Id. at 157-170.
31 Id. at 78-79.
32 Id. at 30-31.
33 Id. at 37-39.
34 Id. at 228-235.
35 Id. at 250-251.
36 Id. at 266-267.
37 Id. at 266.
38 Id. at 272.

The Ruling of the Court

As a general rule, only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court. Nevertheless, the foregoing rule admits of certain exceptions.[39] This Court is not precluded from reviewing the factual findings of the lower courts, or even arriving at a different conclusion, if it is not convinced that the findings are conformable to the evidence of record.[40] The lower court's actual findings will not bind this Court if facts that could affect the result of the case were overlooked and disregarded.[41]

After an assiduous review of the records and petitioner's Motion to Admit and its attachments, We are convinced that the totality of the evidence presented by the prosecution casts reasonable doubt as to the guilt of petitioner for the crime of Estafa under Article 315, paragraph 2(d) of the RPC. We, thus, find the petition to be meritorious.

Before proceeding with the merits of the case, We must first determine the admissibility and probative value of the Affidavit of Desistance executed by Uy.

Probative Value of Uy's Affidavit of Desistance

Generally, Courts view affidavits of desistance or recantation, if executed after conviction of the accused, with disfavor,[42] suspicion and reservation,[43] because these can easily be secured from poor and ignorant witnesses usually through intimidation or for monetary consideration.[44] The State has the sovereign right to prosecute criminal offenses under the full control of the fiscal and that the dismissal of criminal cases by the execution

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39 *Uy v. Villanueva*, 553 Phil. 69, 79 (2007):
In particular, the exceptions to the general rule that only questions of facts can be raised in a petition for review are the following: (1) when the findings are grounded entirely on speculations, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is a grave abuse of discretion; (4) when the judgment is based on misappreciation of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.

40 *People v. Macasinag*, 255 Phil. 279, 281 (1989).

41 *People v. Ortiz*, 334 Phil. 590, 601 (1997).

42 See *Firaza v. People*, 547 Phil. 572 (2007); *Molina v. People*, 328 Phil. 445 (1996).

43 *Victoriano v. People*, 538 Phil. 974, 984 (2006).

44 *People v. Lamsen*, 721 Phil. 256, 259 (2013).

of an affidavit of desistance by the complainant is not looked upon with favor.[45] Thus, it has been held that an affidavit of desistance is merely an additional ground to buttress the accused's defenses, not the sole consideration that can result in acquittal.[46]

However, under special and exceptional circumstances, an affidavit of desistance coupled with an express repudiation of the material points alleged in the Information,[47] may engender doubts as to the truth of the testimony given by the witnesses at the trial and accepted by the judge.[48]

In *Gomez v. Intermediate Appellate Court*,[49] this Court, citing *People v. Pimentel*[50] and *People v. Manigbas*,[51] held that an affidavit of desistance coupled with other circumstances may create serious doubts as to the liability of the accused:

> We agree with the petitioner. It is conceded that the State has the sovereign right to prosecute criminal offenses under the full control of the fiscal and that the dismissal of criminal cases by the execution of an affidavit of desistance by the complainant is not looked upon with favor. However, it is also true that an affidavit of desistance may create serious doubts as to the liability of the accused. At the very least, it calls for a second hard look at the records of the case and the basis for the judgment of conviction. Jurisprudence on the effect of desistance notwithstanding, the affidavit should not be peremptorily dismissed as a useless scrap of paper. In *People v. Pimentel* (118 SCRA 695), we held that:
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> > Undeniably, affidavits of desistance are generally frowned upon by our courts for they make a mockery of our judicial system. Thus, in *People versus Manigbas* (109 Phil. 469), where a new trial was sought on the basis of a retraction, We ruled that –
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> > Unless there be special circumstances, which, coupled with a retraction of the witness, really raise doubts as to the truth of the testimony given by him at trial and accepted by the trial judge, and only if such testimony is essential to the judgment of conviction, so much so that its elimination would lead the trial judge to a different conclusion, a new trial based on such retraction would not be justified. Otherwise, there would never be an end to criminal litigation.
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> > Such special circumstances exist in the case at bar. And, as already discussed, they engender serious doubts as to the appellant's

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45 *Gomez v. Intermediate Appellate Court*, 220 Phil. 295, 306 (1985).
46 *Adlawan v. People*, 830 Phil. 88, 106 (2018).
47 See *Marcelo v. Bungubung*, 575 Phil. 538 (2008) and *People v. Ballabare*, 332 Phil. 384 (1996).
48 *Adlawan v. People*, supra note 46 at 106
49 Supra note 45 at 306.
50 204 Phil. 327 (1982).
51 109 Phil. 469 (1960).

> guilt. Accordingly, due consideration must be afforded the complainant's affidavit of desistance.[52]

In the instant case, We cannot simply ignore the effects and Uy's Affidavit of Desistance, considering that if coupled with her testimony during the hearing for the affidavit's admission, her non-presentation during trial, and her express repudiation of the material points in the Information, engender serious doubts as to petitioner's liability. Although the Affidavit of Desistance was submitted for approval in the B.P. Blg. 22 cases, it nevertheless finds application in the instant case considering that it involves identical facts and subject PNB checks.

In her Affidavit of Desistance, Uy attests that there exists no legal and factual basis for the institution of the criminal charges, given that the obligation of petitioner arising from the subject PNB checks is no longer demandable as a liability or debt:[53]

> 3. After a thorough evaluation and careful examination of the attendant facts and underlying circumstances relative to and surrounding the transaction subject matter of the criminal cases at bar, I have come to the conclusion and do herevy expressly declare that the filing of the criminal cases against the above-named accused was/were borne out of pure misunderstanding and mistake and that in truth, there exist no legal and factual basis for the institution of the criminal charges against Lucia Manuel, it being admitted by me that the obligation of the accused arising from the said checks is no longer demandable as a liability or debt and that as far as I am concerned, I have no basis to file the criminal action against her.[54]

Clear from Uy's Affidavit of Desistance is an express repudiation of the existence of any demandable obligation in relation to the subject PNB checks which petitioner issued. Uy's desistance was evidently not borne out merely by loss of interest or lack of intent to pursue the criminal charges against petitioner but an admission of the lack of legal and factual basis to institute the criminal charges.

Moreover, during the scheduled hearing in the B.P. Blg. 22 Cases on the Motion to Approve Affidavit of Desistance, Uy admitted that she had no transactions with petitioner, and that she was likewise unaware why the subject PNB checks were issued in her name as the payee:

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52 *Gomez v. Intermediate Appellate Court*, supra note 45 at 306.
53 *Rollo*, p. 250.
54 Id.

Q: So Madam Witness, **what transaction did you have with the accused**?
A: Actually Fiscal, **none**.

Q: So, how about the checks subject matter of these cases?
A: It was already settled that is why I filed an Affidavit of Desistance, I am no longer interested on that case, sir.

Q: What led to the issuance of the subject checks, Madam Witness?
A: *Kasi po nag-ano siya sa kaibigan niyang Malou, silang dalawa ang may transaksyon Fiscal, sa manok.*

Q: If that is the case, **why is it the checks are issued in your name**?
A: **I do not know to the accused why it was named to me sir**, that is why I made an Affidavit of Desistance, I am not interested in that case, sir.[55] (Emphases supplied)

The foregoing testimony of Uy is an explicit and unequivocal admission that she had no transactions with petitioner, which is a complete contradiction with the testimony of the prosecution's witness. It, thus, raises the question as to what contracted obligation were the subject PNB checks issued for and how Uy would have been defrauded if she had no transactions with petitioner to begin with.

In addition, Uy admits that she is not familiar with Ebot's farm – the farm which the prosecution alleged to be owned by Uy and from which petitioner Lucia ordered the live chickens:

Court:
May I borrow the records, please.

Q: Are you familiar with Ebot's farm?
A: No, sir.

Q: Earlier, you were confronted with the signature affixed on an Affidavit-complaint executed by one Flordeliza Uy, and you mentioned that that is your signature?
A: Yes, sir.

Q: Did you understand the contents of this Affidavit-complaint you were confronted earlier?
A: "*Judge pasensiya na po kayo kasi matagal na po yan, hindi ko na po natatandaan.*"

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55 Id. at 260-261.

Q: Okay, I will show it to you again, read it and tell us if you can recall or if you can understand the contents of that Affidavit-Complaint?
A: *Wala pong Ebot's farm, Zenith farm po.*

Q: So, who in the first place initiated the filing, of the complaint if what you are effectively saying is that the contents of that Affidavit-complaint is not entirely accurate? *Sino ba nagsampa talaga nitong kaso na ito. Ikaw ba o sino*? Or could it be that you initiated the filing of the complaint but later on changed your mind after the accused settled her indebtedness or obligation to you?
A: Yes, sir.[56]

The prosecution's witness testified that the subject PNB checks were issued by petitioner in connection with her orders of live chickens with Ebot's farm. According to the prosecution, Ebot's farm was owned by Uy, thus the subject PNB checks were issued in her name. However, the foregoing testimony of Uy is a manifest and complete contradiction of the evidence presented by the prosecution, which now casts doubt as to the truthfulness and veracity of the testimony of the prosecution's witness.

Finally, it bears stressing, that during trial for the instant case, as well as the related B.P. Blg. 22 cases, Uy was never presented as a witness for the prosecution. In fact, it was only during the hearing in the B.P. Blg. 22 case for the Motion to Admit the Affidavit of Desistance that Uy took the witness stand. Notably, during trial, the prosecution in order to establish the elements of the crime, in particular that of defraudation and damage to the payee, presented the employees of Ebot's farm, instead of Uy herself. In fact, petitioner had repeatedly raised the failure of the prosecution to present Uy as a witness and pointed out that she was never present in any of the hearings before the RTC.

Indeed, the prosecution is imbued with the discretion to choose who to present as witnesses.[57] However, considering that petitioner during trial denied having issued the checks in the name of Uy and given that prosecution's witness testified that the name of the payee and the amount of the subject PNB checks appear to have been entered by a different person, it was thus, incumbent upon the prosecution to present countervailing evidence.

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56 Id. at 262-263.
57 *People v. Gomez*, 388 Phil. 462, 471 (2000).

The prosecution could have easily presented Uy to prove that petitioner defrauded her and which resultantly caused damage or injury to her as the payee of the subject PNB checks. This, the prosecution failed to do.

Taking the foregoing circumstances altogether, coupled with the Affidavit of Desistance executed by Uy, there exists serious and reasonable doubt as to the liability of petitioner.

Reasonable Doubt

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

> Article 315. *Swindling (estafa).* – Any person who shall defraud another by any of the means mentioned hereinbelow x x x
>
> x x x x
>
> 2. By means 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.

The elements of Estafa under the foregoing provision, 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 were not sufficient to cover the amount of the check; and (3) the payee has been defrauded.[58]

In *Juaquico v. People*,[59] the Court reiterated that in the crime of Estafa by postdating or issuing a bad check, deceit and damage are essential elements of the offense and have to be established with satisfactory proof to warrant conviction, while the false pretense or fraudulent act must be

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58 *People v. Holzer*, 391 Phil. 196, 203 (2000).

59 827 Phil. 145 (2018).

committed prior to, or simultaneous with, the issuance of the bad check.[60] To constitute Estafa, deceit must be the efficient cause of the defraudation, such that the issuance of the check should be the means to obtain money or property from the payer resulting to the latter's damage. In other words, the issuance of the check must have been the inducement for the surrender by the party deceived of his money or property.[61] Thus, in this form of Estafa, it is not the non-payment of a debt which is made punishable, but the criminal fraud or deceit in the issuance of a check.[62]

In the instant case, We find that the prosecution failed to prove the elements of deceit and damage.

As admitted by Uy, she had no existing transactions with petitioner, and there was no contracted obligation for which the subject PNB checks would be applied as payment. According to the prosecution the subject PNB checks were issued as payment for the live chickens ordered by petitioner from Ebot's farm. The prosecution's witness, Artates, an employee of Ebot's farm, testified that the farm was owned by Uy. This however, was evidently refuted when Uy herself admitted that she is not familiar with Ebot's farm. The conflicting testimony of the prosecution witness and the statements made by Uy herself renders the existence of the underlying transaction highly dubious and suspect.

Accordingly, in the absence of proof beyond reasonable doubt that an obligation was contracted for which the PNB checks were issued, the elements of deceit and damage could not be established.

In failing to prove the elements of deceit and damage, the prosecution failed to prove beyond reasonable doubt that petitioner is guilty of Estafa under Article 315, paragraph 2(d) of the RPC.

As a final note, We find it necessary to clarify that petitioner's acquittal includes the extinguishment of her civil liability.

As a general rule, the acquittal of the accused does not automatically preclude a judgment against him on the civil aspect of the case. [63] The extinction of the penal action does not carry with it the extinction of the civil liability where: *(a)* the acquittal is based on reasonable doubt as

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60 *People v. Juliano*, 489 Phil. 340, 348 (2005).
61 *Abalos v. People*, G.R. No. 221836, August 14, 2019.
62 *Cabral v. Bracamonte*, G.R. No. 233174, January 23, 2019.
63 *Rimando v. Spouses Aldaba*, 745 Phil. 358-365 (2014) citing *Dayap v. Sendiong*, 597 Phil. 127, 141 (2009).

only preponderance of evidence is required; *(b)* the court declares that the liability of the accused is only civil; and *(c)* the civil liability of the accused does not arise from or is not based upon the crime of which the accused is acquitted.[64]

However, the civil action based on delict may be deemed extinguished if there is a finding on the final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist or where the accused did not commit the acts or omission imputed to him.[65]

In the present case, private complainant Uy herself testified during the clarificatory hearing on her affidavit of desistance that she had no existing transactions with petitioner. Thus, from the very admission of private complainant Uy, the alleged obligation contracted for which the PNB checks were issued did not exist. Accordingly, petitioner's *civil liability ex delicto* is deemed extinguished.

WHEREFORE, the Petition for Review on *Certiorari* dated September 18, 2014 filed by petitioner Lucia Manuel *y* Cadiz is **GRANTED**. The Decision dated February 21, 2014 and the Resolution dated July 23, 2014 of the Court of Appeals in CA-G.R. CR-HC No. 05737 convicting petitioner are hereby **REVERSED** and **SET ASIDE**. Petitioner is **ACQUITTED** of the crime of Estafa defined and penalized under Article 315, paragraph 2(d) of the Revised Penal Code on the ground of reasonable doubt.

SO ORDERED.

SAMUEL H. GAERLAN
Associate Justice

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64 *Dayap v. Sendiong*, 597 Phil. 127, 141 (2009).

65 Rule 111 Section 2 of the Rules of Court. See also *Dy v. People*, 792 Phil. 672-697 (2016) *Dayap v. Sendiong*, 597 Phil. 127, 141 (2009).

WE CONCUR:

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

MARIA FILOMENA D. SINGH
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice