

45 Phil. 372

[G.R. No. 20995. October 30, 1923]

**THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLANT, VS.
CHONG CHUY LIMGOBO AND LIM KAN, DEFENDANTS AND APPELLEES.**

D E C I S I O N

VILLAMOR, J.:

The provincial fiscal of Cebu filed with the court below the following information:

“The undersigned accuses Chong Chuy Limgobo and Lim Kan of the crime of fraud committed as follows: That in or about the month of February, 1922, in the municipality of Cebu, Province of Cebu, the accused Chong Chuy Limgobo, being the owner of a soap factory and a merchant by profession, with a commercial establishment at No. 114, Juan Luna Street, city of Cebu, Province of Cebu, P. I., did willfully, intentionally, maliciously, and feloniously abscond with all of his property, simulating a conveyance and transfer of all his business, including a shed and soap factory, in favor of one Lim Kan, who is a brother of the accused Chong Chuy Limgobo, for the sole purpose of defrauding his lawful creditors who, by reason of said simulation of sale, were prejudiced in their interests, because from the date of said fraudulent conveyance, it was, and would be, impossible for them to collect their respective credits against said Chong Chuy Limgobo, due to his absconding with all of his property and his actual condition of fictitious and meditated insolvency. That the accused Lim Kan has directly cooperated, as principal, in the commission of this crime by accepting the conveyance of the property and business of his brother and coaccused Chong Chuy Limgobo, with knowledge that the same was fictitious and

fraudulent and was made for the purpose of defrauding the latter's lawful creditors. Contrary to article 523 of the Penal Code."

To this information the attorney for the defendants interposed a demurrer, alleging that article 523 of the Penal Code, for which the defendants are prosecuted, has been repealed by section 71 of Act No. 1956 known as the Insolvency Law.

After a hearing upon the demurrer, the lower court, without deciding the question whether or not said article 523 of the Penal Code was in force, dismissed the information, holding that the facts alleged therein do not constitute the crime defined in article 523 of the Penal Code, on the ground that in order for said article to be applicable and for the said crime to exist as defined therein, it is necessary that the accused should depart and physically conceal his property, and that real property such as that mentioned in the information could not be the subject-matter of fraudulent concealment.

From this ruling of the court below the prosecuting attorney took this appeal and now submits to this court for consideration the following: (a) That the lower court erred in holding that the facts alleged in the information do not constitute the crime of concealment, defined in article 523 of the Penal Code, on the ground that in order for this article to be applicable and the concealment to exist, it is necessary that the accused should depart and physically conceal his personal, not real, property, such as that in question; and (b) that the lower court erred in sustaining the demurrer to the information filed by defendants' counsel and dismissing said information.

According to a decision of the supreme court of Spain of June 10, 1885, the crime of fraudulent concealment penalized by article 536 of the Code of Spain, which is in accord with article 523 of the Philippine Code, is committed by any means whereby any property of the debtor is made to disappear, for the purpose of evading the fulfillment of the obligations and liabilities contracted with one or more creditors to the damage of the latter, it not being an essential element of said crime that the debtor should depart or abscond in some way at the same time that he abstracts said property, because neither the meaning of

the word "concealment" authorizes such an interpretation, nor is it in line with the procedures provided in the compiled Spanish legislation. Neither is it necessary that the property concealed be personal property, so that it may be physically concealed, as was held by the supreme court of Spain in the decisions, among others, of October 29, 1886, April 6 1897, and February 28, 1906.

The Attorney-General maintains that there is no conflict between section 71 of the Insolvency Law and article 523 of the Penal Code. The former requires for its application that the criminal act should have been committed after the institution of insolvency proceedings; whereas, the latter contains no such requirement, nor makes it necessary that the defendant should have been adjudged bankrupt or insolvent, as was held by the supreme court of Spain in a decision of March 13, 1882, in which it is held that article 536 of the Code of Spain from which 523 of ours was taken, does not require that the concealment be attended by the circumstance of the accused being bankrupt or insolvent in order that he may be convicted and punished for this crime.

We agree with the Attorney-General that section 71 of the Insolvency Law and article 523 of the Penal Code are not incompatible, and this being the case, we are of the opinion that the facts alleged in the information constitute the crime defined in said article 523 of the Penal Code.

In view of all of the foregoing, the order appealed from is revoked, and the demurrer to the information overruled and it is ordered that the record be remanded to the court of origin for further proceedings in accordance with law. So ordered.

Johnson, Street, Malcolm, Avanceña, Johns, and Romualdez, JJ., concur.

