45 Phil. 472

[G.R. No. 19914. November 27, 1923]

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. PEDRO ALVAREZ, DEFENDANT AND APPELLANT.

D E C I S I O N

AVANCEÑA, J.:

The accused was the owner of a two-passenger automobile of "Dodge Bros." manufacture. On the 27th of September, 1920, he mortgaged it to the Philippine Automobile Exchange, Inc. This mortgage being in force, the accused sold on January 8, 1921, the automobile to Mr. Anselmo Singian for the sum of P2,500, P700 having been paid in cash, the balance to be paid in thirteen monthly instalments of P125 each, the last instalment being of P175, with interest at 12 per centum per annum. To this end, Mr. Anselmo Singian delivered to the accused a promissory note for the balance of the price payable in the manner above stated. Upon this note Mr. Anselmo Singian has paid the sum of P390 which together with the P700 makes a total of P1,090. Subsequently, the Philippine Automobile Exchange, Inc., making use of the right granted it by the mortgage of the automobile, took the same from Mr. Singian, who thus lost both the automobile and the sum of P1,090 that he had paid to the accused on account of the price. Mr. Anselmo Singian bought this automobile in the belief that it was free from all liens and encumbrances, and the accused, on the other hand, did not tell Mr. Singian that the automobile was mortgaged.

In view of these facts the following information was filed against the accused:

> "That on or about the 8th day of January, 1921, in the City of Manila, Philippine Islands, the said Pedro Alvarez did then and there wilfully, unlawfully, and feloniously, through false representations made to one Anselmo

> Singian that he possessed as owner a *Dodge* roadster, bearing chassis No. 186139, motor No. 23833 with license No. 1356 for the year 1920, free from all liens and encumbrances and as such had the right to dispose thereof, when in truth and in fact, as said accused well knew, said automobile was then the property of the Philippine Automobile Exchange, Inc., and had no right to dispose of it, succeed in inducing the said Anselmo Singian to buy said automobile, as in fact said Singian bought it and paid Pedro Alvarez therefor the sum of two thousand five hundred pesos (P2,500), Philippine currency; thus defrauding the said Anselmo Singian in the manner above stated in the said sum of P2,500, equivalent to 12,500 *pesetas*."

Under this information and the facts above stated, the lower court found the accused guilty of the crime of *estafa* defined in paragraph 1 of article 535, in connection with paragraph 2 of article 534, of the Penal Code, and sentenced him to six months of *arresto mayor*, to indemnify the offended party, Anselmo Singian, in the sum of P1,090, with the corresponding subsidiary imprisonment in case of insolvency, and to pay the costs of the action. From this judgment the defendant appealed.

As the accused did not inform Mr, Singian, when he sold the automobile, that it was mortgaged, this omission constitutes a deliberate concealment of this fact, which led Mr. Singian to believe, as he did in fact believe, that the automobile was not mortgaged, for under the circumstances of this case and in the ordinary course of business, it is evident that had Mr. Singian known that the automobile was mortgaged, he would not have bought it for the price he agreed to pay. This being the fact, the case is one of sale of a thing as free when as a matter of fact it is subject to an encumbrance, which constitutes the crime of *estafa* defined in article 537, and not in article 535, paragraph 1, of the Penal Code, that was applied by the trial court.

It is alleged that article 537 of the Penal Code was repealed by section 10 of Act No. 1508 of the Philippine Legislature, which provides:

> "A mortgagor of personal property shall not sell or pledge such property, or any part thereof, mortgaged by him without the consent of the mortgagee in writing on the back of the mortgage and on the margin of the record thereof in

> the office where such mortgage is recorded."

This contention is groundless. Act No. 1508 does not expressly repeal article 537 of the Penal Code. On the other hand, neither can it be held to have repealed it impliedly, for both laws are not incompatible, nor do they exclude each other—they define distinct offenses, penalize different acts and can be applied independently. Article 537 of the Penal Code punishes him who sells a thing as free when in fact it is subject to an encumbrance; whereas Act No. 1508 punishes him who sells a mortgaged chattel, without the consent in writing of the mortgagee. An act may constitute the crime defined in article 537 of the Penal Code without being a violation of Act No. 1508 and, conversely, an act may constitute a violation of Act No. 1508 without falling within the provision of article 537 of the Penal Code.

The acts penalized by both laws are essentially different. While an act is common to both offenses—that the selling of a mortgaged property—yet it does not in itself constitute either one of these offenses. The concurrence of another additional act—different in each case, and which is what is punished—is necessary in order to commit the one, or the other, offense. To constitute the crime punished in article 537 of the Penal Code it is sufficient that the thing mortgaged be sold as free, even though the vendor may have obtained the consent of the mortgagee in writing, as it is sufficient, in order to constitute a violation of Act No. 1508, that the sale be made by the vendor without obtaining the consent in writing of the mortgagee, even if he should inform the purchaser that the thing sold is mortgaged. It may be said that the crime punished by Act No. 1508 is new because it was not punished before and is distinct from the one punished in article 537 of the Penal Code, because it is not included therein. One of these laws can be violated without violating the other. According to the theory of the defense to the effect that Act No. 1508 has repealed article 537 of the Penal Code, the act of selling as free a thing that is mortgaged would not now be a crime if the vendor obtains the consent of the mortgagee in writing to the sale. It is sufficient to enunciate this in order to understand that that cannot be the intention of the law. It is the mortgagee that is protected by Act No. 1508, while in article 537 of the Penal Code it is the purchaser in good faith, and we can see no reason why it should now be permitted to defraud the latter without any penal sanction, there being no law expressly providing to

that effect.

The accused sets up also the defense of jeopardy because he has already been convicted upon the same facts under Act No. 1508.

It must be noted, in connection with this allegation, that prior to the institution of this action a complaint was filed against the accused for a violation of Act No. 1508, which is as follows:

> "That on or about the 8th day of January, 1921, in the City of Manila, Philippine Islands, the said Pedro Alvarez being then the mortgagor of a personal property, to wit: a Dodge Roadster, bearing chassis No. 186139, motor No. 238133 and license No. 1356 (1920), did then and there wilfully, unlawfully and feloniously sell and transfer said automobile to Anselmo Singian, without the consent of the Philippine Automobile Exchange, Inc., in whose favor said automobile was mortgaged for the sum of P1,800 according to a chattel mortgage
> contract entered into between said Pedro Alvarez, as mortgagor, and the Philippine Automobile Exchange, Inc., as mortgagee, on September 23, 1920, and recorded in the office of the register of deeds of the City of Manila, expressed in writing on the back of said mortgage and on the margin of the record thereof in the office of the register of deeds, while said mortgage is in full force and effect."

In that case the accused was sentenced to twenty-five days' imprisonment, to indemnify Mr. Singian in the amount of P1,090 and to pay the costs.

As may be seen, in the complaint filed therein the appellant was charged with having sold the automobile without the written consent of the creditor, which is penalized by Act No. 1508, while in the instant case he is prosecuted for having sold the automobile to Mr. Singian as free when as a matter of fact it was mortgaged, which is what article 537 of the Penal Code penalizes.

From this it clearly appears that the former prosecution wherein the accused was charged with the crime of selling a mortgaged automobile without the written consent of the owner is no obstacle to this action in which he is charged with

estafa for having sold the same automobile as free. Nor can it be said in this case that the accused was placed twice in jeopardy, contrary to the provision of the Jones Law, in which it is prohibited that a person be put twice in jeopardy for the same offense.

The doctrine applicable to this case was enunciated by the Supreme Court of the United States in the case of Garcia Gavieres *vs*. United States (220 U. S., 338; 55 L. ed., 489), appealed from the Philippine Islands to that court, which holding is conclusive upon this court. In that case the accused was prosecuted for having insulted a public officer in violation of article 257 of our Penal Code. The defense therein set up was that he had previously been convicted of having conducted himself in an indecent manner in a public place in violation of a municipal ordinance. It appeared that the acts for which the accused was prosecuted in both cases were essentially the same. Although the matter could have been held to present two legal aspects, the Supreme Court of the United States regarded the case as one exclusively relating to the provision of the Philippine Organic Law above cited, and it was expressly held by that court that the two offenses there under consideration were not identical, and that the conviction in the first case was no obstacle to. the second.

That case appears now in the Philippine Reports (41 Phil., 961), and upon examination thereof it clearly shows that the test for determining whether or not a prosecution for one crime constitutes an obstacle to a subsequent action for another distinct crime upon the same facts, is to inquire whether the facts alleged in the second information, if proven, would have been sufficient to support the former information, of which the accused may have been acquitted or convicted. The gist of the question is whether or not the same evidence supports the two actions.

Stated in another way, the doctrine of the Gavieres case is that where two different laws define two crimes, the conviction of one of them is no obstacle to that of the other, although both offenses arise from the same facts, if each crime involves some important act which is not an essential element of the other.

The Supreme Court of the United States having so broadly and clearly given its view about such a constitutional point arising from the Organic Law of these

Islands, it is unnecessary for this court to go upon a lengthy discussion of the matter; but we may say that the author of the article on criminal law contained in the Corpus Juris, after saying a word of censure against the so-called "Proof of same fact," which seems to have been adopted by some courts, expounds the general doctrine as follows:

> "* * * The safest general rule is that the two offenses must be in substance precisely the same or of the same nature or of the same species, so that the evidence which proves the one would prove the other; or if this is not the case, then the one crime must be an ingredient of the other." (16 C. J., 264, sec. 444.)

In this connection we may also cite the words found in Ruling Case Law, giving in synthesis the law on this matter, to wit:

> "A single act may be an offense against two statutes, and, if each statute requires proof of an additional act which the other does not, an acquittal or conviction under either statute does not exempt the defendant from prosecution and punishment under the other. And there is no doubt that it is within the power of the legislature to create two or more offenses which may be committed by a single act, each of which is punishable by itself. A conviction or acquittal in such case under either statute would be no bar to. a conviction under the other, for the accused would not be twice in jeopardy for one offense, but only once in jeopardy for each offense." (8 R. C. L., 149, sec. 135.)

Under these authorities, it is evident that the constitutional question raised by the appellant is devoid of any importance. It is not necessary to say that our previous decisions contain nothing in conflict with this conclusion, they being rather in accord with it. (U. S. *vs*. Chan-Cun-Chay, 5 Phil., 385; U. S. *vs*. Garcia Gavieres, 10 Phil., 694.)

As to the indemnity to Mr. Singian in the sum of P1,090 which the accused was sentenced to pay in this case, we believe that it is unjustified inasmuch as the accused was already sentenced in the other case to the payment of the same

indemnity.

The judgment appealed from is modified in so. far as the indemnity in the sum of P1,090 ordered paid to Mr. Anselmo Singian must be eliminated, and the accused is sentenced, under article 537, paragraph 2 of the Penal Code, to two months and one day of *arresto mayor* and to pay a fine of P1,090, with subsidiary imprisonment in case of insolvency, with the costs. So ordered.

Araullo, C.J., Johnson, Street, and *Romualdez, JJ.,* concur.

DISSENTING

MALCOLM, J., with whom concur **VILLAMOR** and **JOHNS, JJ.:**

I am of the opinion that the information in this case should be dismissed and the defendant and appellant acquitted for the reason that, applying the rule of Criminal Law sometimes called the “same transaction test,” since the accused has already been convicted of a violation of the Chattel Mortgage Law, he should not on the same facts be convicted of the crime of *estafa*.

The information in the case charging the accused with the violation of section 10 of the Chattel Mortgage Law (Act No. 1508) is set out in the opinion of the majority and, in brief, alleges that the accused had wilfully, unlawfully, and feloniously sold and transferred an automobile of which the accused was the mortgagor to Anselmo Singian, without the consent of the mortgagee. On this information he was found guilty and was sentenced to twenty-five days’ imprisonment and to indemnify Mr. Singian in the sum of P1,090.

The information charging the accused with the crime of *estafa* is likewise set out in the opinion of the majority, and discloses that the accused was charged with having defrauded Anselmo Singian in the sum of P2,500 (P1,090).

As stated by the Attorney-General "the fact proved by the prosecution consists in the accused having sold to Mr. Singian the automobile in question as free from all incumbrances when he knew that it was subject to a lien."

Previous decisions of this court have uniformly held that the unauthorized removal or sale of mortgaged property is penalized under the provision of the Chattel Mortgage Law, with the implied inference that this should constitute the sole penalty to be imposed in this class of cases. (U. S. *vs*. Kilayko [1915], 32 Phil., 619; U. S. *vs*. Iguidez [1917], 36 Phil., 860; U. S. *vs*. Razon and Tayag [1918], 37 Phil., 856.) In the case first cited it was said with telling effect, "that the object of the penal provisions of the Chattel Mortgage Law is not merely to protect the mortgagee in particular cases in which criminal actions are instituted, and to secure the payment of the mortgage indebtedness in such cases (although they may, and should have that effect in many instances), but also to. give the necessary sanction to the provision of the statute in the interest of the public at large, so that in all cases wherein loans are made and secured under the term of the statute, the mortgage debtors may be deterred from the violation of its provisions and the mortgage creditors may be protected against loss or inconvenience resulting from the wrongful removal or sale of the mortgaged property."

I am of course not unmindful of the proposition, oft stated, to the effect, that if two offenses grow out of the same transaction and such offenses are severable and distinct, a prosecution for one will not bar a prosecution for the other. But the corollary to the rule should not be forgotten, *viz.:* If the prosecution under the second information involves the same transaction which was referred to in the former information and it was or properly might have been the subject of investigation under that information, an acquittal or a conviction under the former information would be a bar to a prosecution under the last information. (Pierson *vs*. State, 159 Ala., 6; Gunter *vs*. State, 111 Ala., 23; Gully *vs*. State, 116 Ga., 527; Bell *vs*. State, 103 Ga., 397; State *vs*. Gapen, 17 Ind. A., 524; Hughes *vs*. Com., 131 Ky., 502; State *vs*. Cooper, 13 N. J. L., 361; People *vs*. Grzesczak, 77 Misc., 202; 137 N. Y. Supp., 538; People *vs*. Furlong, 127 N. Y. Supp., 422; People *vs*. Purcell, 16 N. Y. Supp., 199; State *vs*. Lawson and Cheatham, 123 N. C., 740; State *vs*. Howe, 27 Or., 138; State *vs*. Smith, 43 Vt., 324.)

I invite particular attention to the decision of this court in the case of United States *vs*. Gustilo ([1911], 19 Phil., 208), wherein is found the following well-considered doctrine:

> "We are confident that that portion of the Philippine Bill embodying the principle that no person shall be twice put in jeopardy of punishment for the same offense should, in accordance with its letter and spirit, be made to cover as nearly as possible every result which flows from a single criminal act impelled by a single criminal intent. The fact should not be lost sight of that it is the injury to the public which a criminal action seeks to redress, and by such redress to prevent its repetition, and not the injury to individuals. In so far as a single criminal act, impelled by a single criminal intent, in other words, one volition, is divided into separate crimes and punished accordingly, just so far are the spirit of the Philippine Bill and the provisions of article 89 of the Penal Code violated."

The interests of the offended party have been protected by the prosecution of the accused for a violation of the Chattel Mortgage Law. The interests of the public have likewise been protected by his conviction in that case. Further prosecutions of the accused for crimes, which the ingenuity of man finds falling under these same facts changes a prosecution to a persecution. To punish a man twice for the same offense shocks one's sense of justice. Accordingly, I insist with all sincerity that the defendant and appellant should be acquitted.

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