

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. PASTOR SUPNAD, ET AT., ACCUSED AND APPELLEE.*G.R. No. L-18747. March 30, 1963*

Ponente: PAREDES, J.

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This was originally an appeal interposed by the State, from the decision of the Court of First Instance of Manila, dismissing the above-entitled case, which the Court of Appeals certified to this Court, because the issues raised are purely legal.

On June 5, 1959, the Office of the City Fiscal filed an Information charging Pastor L Supnad and Brigida M. Ungos of Violation of Par. 2, of Article 316, of the Revised Penal Code, worded as follows—

. "That on or about the 2nd day of December 1958 and for some time prior and subsequent thereto, in the City of Manila, Philippines, the said accused, conspiring and confederating together and helping each other, did then and there willfully, unlawfully and feloniously defraud Teresa Bautista in the following manner, to wit: tooth said accused, well knowing that the 2-story residential house of strong materials owned by them located on Block No. Sec. 1, Barrio Fugoso, at 958 Wagas St., corner of Callejon Hinahon, Barrio Fugoso, in said City, has been mortgaged by them to said Teresa Bautista for P2,500.00 and well knowing that the same cannot be encumbered, alienated or disposed of during the existence of said mortgage without the prior written consent of said Teresa Bautista, willfully, unlawfully and feloniously and knowingly sold, transferred and conveyed the same house by way of absolute sale to one Daraian Vasquez for ₱7,000.00 by making it appear to the latter that the same is free from all liens and encumbrances of whatever nature, thereby defrauding the said Teresa Bautista in the aforesaid sum of P2,500.00 Philippine currency."

After the arraignment, to which both pleaded not guilty, the accused, in a manifestation, dated March 28, 1960, raised the issue of prejudicial question. The trial court ordered the parties to submit memoranda on such issue. In the memorandum filed by counsel for the accused on April 7, 1960, he contended, among others, that the court should indefinitely suspend the case, because in Civil Case No. 39224, entitled Teresa Bautista and Eduardo Dava, plaintiffs vs. Pastor Supnad, Brigida Ungos and Damian Vasquez, defendants" which was decided by the CFI of Manila, said Court made the following observations.

"* * *The fact remains, however, that when Damian Vasquez bought the house, he knew of the existence of the mortgage in favor of Teresa Bautista and it is just and fair that he should pay the amount of the indebtedness because he bought said property, fully knowing that Pastor L. Supnad had obtained a loan in the sum of P2,500.00 from Teresa Bautista with the said house as security. It is true that Damian Vasquez, on the witness stand, denied having met Teresa Bautista, as alleged by her, but the Court nevertheless, gives full credit to her testimony."

Accused further argued that the above findings, which are now the issues raised in the appeal to the Court of Appeals, in the civil case, constitute a prejudicial question affecting the criminal case. On May 7, 1960, the trial court rendered judgment, the pertinent portions of which read—

"There is no allegation that any fraud or misrepresentation' was perpetrated on the buyer Damian Vasquez or' that the latter suffered any damage.

The Court of Appeals has held that for the class of estafa under Article, 316, paragraph 2, of the Revised Penal Code to exist, it is, essential that the fraud or deceit he practiced on the vendee at the time of the sale. The penal provision in question does not comprehend a supposed misrepresentation on the mortgagee of the property. It was reasoned out that if the mortgage is recorded, the party who would be deceived and would suffer damage, would be the vendee and not the mortgagee or encumbrancer. If, on the other hand, the mortgage is not recorded, damage to the mortgagee may or may not arise. In case there is no damage, there is no crime of estafa as the element of damage is lacking. If there is damage, the liability of the vendor only arises if he committed fraud or practiced deceit upon the mortgagee (People vs. Mariano, CA-50 Off. Gaz., Supp. 4, p. 21), The misrepresentation or fraud must consist in making the complainant believe that the property was free from encumbrance when such is not the case, (People vs. Fabricante, CA-53 Off. Gaz., 3&10). There is nothing in the above quoted information which charges the accused with, having exercised such a misrepresentation or fraud, upon the offended party, Teresa Bautista. Indeed, as the mortgagee, it may not be said that she was unaware of the existence of such encumbrance.

Wherefore, finding that the facts alleged in the information do

In the Court of Appeals, the People submitted only one issue, i.e., whether the facts alleged in the information constitute or not an offense.

Considering that the mortgage is not registered, the mortgagee' Teresa Bautista. is damaged. The Revised Penal Code provides— .

"Art., 316. Other forms of estafa.—The penalty of arresto. mayor in its minimum and medium periods and a fine of not less than the value of the damage caused and not more than three times such value, shall be imposed.

* * *

2. Any person who, knowing that real property is encumbered, shall dispose of the same, although such encumbrance be not recorded"

The instant case falls within the purview of the above provision of law cited, under which the appellees were prosecuted. Appellees sold the property in question to Damian Vasquez knowing that the same, was mortgaged to Teresa Bautista, although such encumbrance be not recorded. The mortgagee who was prejudiced, had come to the court to vindicate her right as an offended party. The ground for dismissal of the case is that the facts alleged in the information do not constitute an offense. This being the case, the sufficiency of the information must have, to be determined solely upon such facts as alleged therein. The facts as found by the court in the civil case which, by the way, is not final, because it is pending appeal in the Court of Appeals, can not be considered as a prejudicial question. At most, they would merely constitute as a defense in the criminal case, which must be substantiated during the trial. A cursory reading of the information, heretofore quoted, shows that sufficient allegations have been set forth, to render appellees' acts, a violation of par. 2, section 316 of the Revised Penal Code.

The appellees rely upon the case of People vs. Mariano, CA-40 Off. Gaz., Supp. 4, p. 91, cited by the trial court in its decision, portion of which has heretofore been reproduced. We have gone over the case and we find the same not to be an authority for the appellees, but rather an authority in support of the People's contention. For in said decision (Mariano case), the Court of Appeals stated—

"If no damage should result from the sale, no crime of estafa would be committed by the vendor as the element

of damage would then be lacking. If, as a result of the sale, the party who has a lien upon the property or for whose benefit an encumbrance was created or constituted should suffer damages, the vendor should be criminally liable should he have misrepresented, committed fraud or practiced fraud upon such party."

In the instant case, the party who has a lien upon the property in question or for whose benefit the mortgage was credited or constituted is the mortgagee (Teresa Bautista), and the expression "such party" refers to the mortgagee herself. While the appellees as the vendors, had not made misrepresentations to the mortgagee, because the mortgagee knew of the encumbrance made in her favor, still the vendors-appellees committed or practiced fraud upon her, because appellees sold to the vendee the property which they had previously mortgaged to the mortgagee (herein offended party), without her knowledge and consent. So that, "if it can be proven as charged and which is in fact charged in the information that the mortgagee suffered damages in the amount of P2,500.00; by the act of the vendors in misrepresenting to the vendee that the real property in question (house) was unencumbered, well knowing that it was encumbered in favor of the mortgagee, then, the vendee could be held liable.

In view hereof, We hold that the trial court erred in having dismissed the information on the ground that the facts alleged therein do not constitute an offense.

The decision appealed from is set aside, and the case is remanded to the court of origin for further and appropriate proceedings. "Without pronouncement as to costs.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Dizon., Regala, and Makalintal JJ., concur.

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