

THE PEOPLE OP THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. MAXIMINO PLAZA, DEFENDANT AND APPELLEE.

G.R. No. L-18819. March 30, 1963

Ponente: DIZON, J.

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DIZON, J.:

Appeal by the State from an order of the Municipal Court of Butuan City dismissing the information filed in Criminal Case No. 2721, as against Maximino Plaza, on fihe ground that the facts alleged therein do not constitute a criminal offense.

The aforesaid information charged Esperanza Abo de Lambayog with estafa, alleging:

"That on or about'the 6th day of October, 1954, in the .city of Butuan, Philippines; and within the jurisdiction of this Honorable , Court, the said accused conspiring, cooperating together and helping one another with accused Esperanza Ato de Lamibbyog and her husband Gapistrano Lamboyog pretending and misrepresenting them selves to be the sole and absolute owners of a real estate situated at Barrio Ba-an, Butuan City, covered by Tax Declaration No. 3824 (9949 located at Doot, Barrio Ba-an, Butuan City) more particularly described as follows, to wit:

'A parcel of agricultural land bounded on the North by Jose Ato, on the East by Ba-an. River, on the South by Pedro Plaza and oh the West By the Agusan River, containing an area of 7413 square meters, more or less,'

When in fact and in truth the above-named accused knew that the said land above described was already sold in a pacto de retro sale dated July 21, 1953, and later on converted the same sale into an absolute' sale on September 3, 19B8 in favor' of Felipe F. Paular, did then and there willfully, unlawfully and-feloniously with intent to defraud said Felipe F, Paular knowing that said property has been. previously sold to the said Felipe F. Paular in the amount of P400.00, both accused entered into agreement whereby the said property above-described was sold by the accused. Ssperanza Ato de Lamboyog and her aforementioned husband, to his co-accused Maximino Plaza and falsely represented the same property to be free from encumbrance, to the damage and prejudice of said Felipe F. Paular in the amount,of P400.00 excluding the improvements thereon.

CONTRARY TO LAW: (Art. 316 of the Revised Penal Code)."

Defendant Plaza filed a motion to quash the information on ,the grounds that (1) the facts charged do. not constitute an offense insofar as he was concerned; (2) that the information charged more than one offense; and (3) that the criminal liability had been extinguished by prescription of the crime. The court found the first ground to be well taken and dismissed the information as against him. . Hence this appeal.

A perusal of the information discloses that it charges the three, defendants with "conspiring, cooperating together and helping one another etc." to commit.the pf-fense charged, while at the same time another portion thereof would seem to imply that the Lamboyog spouses falsely represented to their co-defendant, Maximino Plaza, that the property they were selling to him was free from encumbrance allegation justifying the, inference that Plaza did

not know that the property he was buying had been previously sold to the offended party, Felipe F. Paular. In view of this, we are of the opinion that the real defect of the information is not that the facts alleged therein do not constitute a punishable offense but that, its allegations, as to Plaza's, participation and possible guilty are vague:

But even assuming that the lower court was right in holding that the facts, alleged in the information do not constitute a punishable offense, as far as defendant Plaza was concerned, the case should not have been dismissed with respect to him. Instead, pursuant to the provisions of Section 7, Rule 113 of the Rules of Court, the lower court should have given the prosecution an opportunity to amend the information. That under the provisions of said rule the trial court may order the filing of another information or simply the amendment of the one already filed is clearly in accordance with the settled rule in this jurisdiction (U.S. vs. Muyo 2 Phil. 177; People vs. Tan, 48 Phil. 877, 880).

Wherefore, the order of dismissal appealed from is hereby set aside and the case is ordered remanded to the court of origin for further proceedings in accordance with this decision.

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

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