

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. AGUSTIN DRILON, DEFENDANT AND APPELLANT.

G.R. No. 12502. September 06, 1917

Ponente: STREET, J.

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STREET, J.:

Upon June 30, 1911, the accused, Agustin Drilon, sold a piece of land with pacto de retro

to Roque Debuque for the sum of P200. Drilon failed to repurchase the property within the stipulated period of two years, and Debuque's ownership was thereby consolidated and perfected. The accused, however, continued in possession of the land as lessee. While so in possession and claiming to be still the owner, he conveyed the same property for P450 to Gabriela Dinela, who bought in ignorance of the fact that the property had already been alienated. The instrument conveying the property to Gabriela Dinela was afterwards registered, and by this means the title of Roque Debuque was destroyed and the property lost to him.

The question which arises on these facts is whether Drilon is guilty of estafa under article 537 of the Penal Code, which provides for the punishment of anyone who, pretending to be the owner of any real property shall alienate, lease, encumber or hypothecate the same (la enajenare, arrendare, gravare, o empeñare).

The peculiarity of this case is that the deceit practiced by the accused, Agustin Drilon, was directed against Gabriela Dinela, the second purchaser, while the damage fell upon Roque Debuque, the first purchaser. It is accordingly insisted in behalf of the defendant that the crime contemplated in article 537 has not been committed. It appears, however, that this question has been determined by the Spanish supreme court contrary to the contention of the defendant, as will appear from the following passage from Viada:

"Question II.—A, by a public instrument, sold several properties to B and on the same day mortgaged them to C as security for a loan he received from the latter, and the deed of mortgage was recorded before the deed of sale in the property registry. Can A be held liable for the crime of estafa comprised in article 550 of the Code [537 of ours] ?

"* * * * *

"Under the proven facts set forth in the judgment appealed from, there is no doubt that Jose Gesti committed that crime by maliciously executing in behalf of Juan Sabater the instrument of loan whereby he mortgaged to Juan Figuerola as free of all encumbrance, the properties which a few hours before he had sold, because those acts so performed imply in themselves the conscious concealment of the contract by means of which he deceitfully pretended that the properties were absolutely free of encumbrance when legally they were not, and thereby certainly prejudiced the vendee by the depreciation of said properties by reason of the mortgage encumbrance placed on them. Those acts, therefore, constitute the crime of estafa." (Viada, Penal Code, 3 Sup., 410, 411.)

The Spanish supreme court has also held that in a case of this kind the second purchaser may be guilty as coauthor with the owner, if he knows of the existence of the first conveyance:

"Considering that said article of the Code is applicable not only to the person who makes the sale by pretending to be the owner of the property, but also to every other person who takes part in the commission of the punishable act." (Viada, Penal Code, vol. 3, p. 554.)

It would therefore appear that the court below committed no error in finding the defendant guilty of a violation of article 537. The punishment imposed by the trial court consisted of three months, arresto mayor and a fine of P540. We see no reason why the defendant should not also be required to indemnify Roque Debuque in the sum of P200, plus lawful interest from June 30, 1913, with subsidiary imprisonment in case of insolvency as provided by law. The judgment of the lower court should be modified accordingly. At the same time it seems not inequitable, in view of the additional burden thus imposed upon him, to reduce the amount of the fine to P200. With the modifications indicated, the judgment of the court below is affirmed with costs against the appellant. So ordered.

Arellano, C. J., Johnson, Carson, Araullo, and Malcolm, JJ., concur.

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