

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ISIDRO CARA, DEFENDANT AND APPELLANT.*G. R. No. 12632. September 13, 1917*

Ponente: ARAULLO, J.

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The defendant has appealed from the judgment rendered in this case by the Court of First Instance of Nueva Ecija, on October 19, 1916, in which he was found guilty, as principal by direct participation of the crime of estafa, defined in paragraph 1 of article 535 and punished in paragraph 2 of article 534 of the Penal Code. No modifying circumstance being present he was sentenced to suffer four months and one day of arresto mayor, with the accessory penalties of article 61 of the same code, to return to the aggrieved party Juana Juan P327 and 60 cavanos of rice (palay), that is, the sum of P477, or, in case of insolvency, to suffer the corresponding subsidiary imprisonment, not to exceed one-third of the principal penalty, and to pay the costs.

The complaint set forth that, on May 7, 1912, in the municipality of Santo Domingo of the Province of Nueva Ecija, the defendant fraudulently and by means of the pretense, statement, and representation that he was the owner of, and possessed, a certain tract of rice land, situated in said municipality, of 10 hectares in area, the metes and bounds of which are mentioned in the complaint, did induce one Juana Juan to believe in said false pretense, statement, and representation, for in fact he knew that he was not the owner of, and did not possess said land, and to buy from him, as in fact she did, said land for the sum of P327, Philippine currency, and 60 cavanos of rice (palay) which were paid by the said Juana Juan to the defendant, who received the said sum and appropriated it to himself to the injury and prejudice of said Juana Juan.

At the trial, the following facts were proven beyond all doubt: (1) On May 7, 1912, in the municipality of Santo Domingo of the Province of Nueva Ecija, the defendant sold to Juana Juan for the sum of P327 and 60 cavanos of rice (palay), and with right to repurchase within the term of nine months and seven days, which was to expire on the last day of the month of March of the following year, 1913, a tract of rice land of which he claimed to be the owner on account of his having acquired it by occupation, clearing, and cultivation. He stated that this land had been in his possession for about seventeen years and was situated in the sitio called Malayantoc, of the barrio of Santo Rosario of said municipality, that it had an area of about 10 hectares and was bounded on the north by the property of Severo Manuel, on the east by that of Bonifacio Cara, on the south by that of Juan Corpus, and on the west by a creek. For the purposes of this sale on the same date of the sale, the vendor executed the proper deed Exhibit A and ratified it before a notary public of said municipality, Feliciano Roque. In this instrument the vendor himself set forth that the P327, Philippine currency, and the 60 cavanos of rice, aforementioned, the price of said sale, had been paid to him by the vendee, Juana Juan. (2) When the vendee endeavored to enter into possession of said land, demands were made upon the defendant vendor, some-times by the vendee herself and at other times by a brother of hers, and by other persons, among them the secretary of the municipality, to designate said land and to accompany them for the purpose of locating it, but their demands proved fruitless and ineffective, the defendant having even stated to said municipal secretary that there was no such land. (3) Said land was

unknown to Severo Manuel and Juan Corpus, who were mentioned in the deed referred to as being adjacent owners of the property on the north and south of the land, and, contrary to the statement made in said deed, Bonifacio Cara was not an adjacent owner on the east. When the provincial sheriff, in compliance with an order of the court, went to the place where the land should have been found, according to its description given in the deed, in order to make an ocular inspection of the same, said Bonifacio Cara, a son of the defendant, told the sheriff that he (Cara) had no land in that place. (4) The ocular inspection was made by the sheriff, accompanied by Severo Manuel, who was one of the persons mentioned in the deed as being an adjacent owner on the north, by the vendee Juana Juan and a brother of hers, and by Bonifacio Cara, the defendant's son. The defendant did not take part in the view, notwithstanding that he was ordered so to do by the court. During the course of this inspection said Bonifacio Cara indicated, as the tract of land sought to be located, one that was bounded on one side by property belonging to Severo Manuel, but it was found out that said land was not in the sitio of Malayantoc, as stated in the deed, but in the sitio of Baloc, and that it belonged to Pedro Carmen, was cultivated by Andres San-tiago, and was not bounded by any property belonging either to Bonifacio Cara or to Isidro Cara, neither of whom ever cultivated any property whatever adjacent to the land in question or lived in that place. (5) Neither do the boundaries which the defendant's son and Bernardo Hipolito, a witness for the defense, designated as being those of the defendant's land in the said barrio of Santo Rosario and sitio of Malayantoc, coincide with the boundaries of the land sold by the defendant to Juana Juan, according to the deed of May 7, 1912, for, as the defendant and the said Hipolito testified, these boundaries were: on the east, the sitio of Malayantoc; on the west, the sitio of Pajo; on the north, the property of Juan Simpliciano; and on the south, Government lands; nor was this land located either by the defendant or by said witnesses. The conclusion, is that, contrary to the statements made in said deed, the defendant had no land whatever either in the sitio of Malayantoc and barrio of Santo Rosario, or in the sitio of Baloc of the same barrio.

The defendant, however, endeavored to prove by the testimony of his son Bonifacio that the land referred to in said deed of sale had been given to him by this son in exchange for another tract of land that had belonged to the defendant. The latter presented in evidence a land tax receipt, Exhibit 1, which he testified pertained to the land in question; but this receipt bears the date of May, 1911, and refers to a payment for the year 1908; furthermore, it is drawn in favor of Bonifacio Cara, and not the defendant; the land to which it refers is not described therein and its boundaries, which, according to Bonifacio Cara, are those stated by himself and Bernardo Hipolito in their declaration or statement mentioned in the preceding paragraph of this decision, do not coincide with the boundaries recorded in the deed of sale.

The defendant also stated that, since 1908, he owed Juana Juan P70; that this debt was increased by the addition of interest until, at the time he made the settlement with her, it amounted to P327; and that in 1912 the deed Exhibit A was executed in which it was set forth that he sold the land therein mentioned to Juana Juan, as a pledge (pledge is the word witness used). But these statements by the defendant do not appear in any manner to have been corroborated at the trial; on the contrary, they are contradicted by the very language of the deed. In this instrument no mention whatever was made of the debt referred to by the defendant, nor of the alleged fact that the P327 and the 60 cavanos of rice were the value of any loan or any debt, nor, finally, that the sale of the land under right of repurchase, as stated in that document, had been made by the defendant to Juana Juan as the result of any settlement had between them and in order to secure (which is what the defendant must have meant by the phrase in pledge) the payment of the amount claimed to be a debt. Furthermore, although the defendant also said that when he was directed to sign the instrument, he was not acquainted with its contents (which cannot be believed solely upon his affirmation), at the trial he admitted the authenticity of his signature at the foot of said document, and the fact that the deed was executed on account of that sale. He added, however, that the execution was a result of the pledge; but neither does the deed make any mention of this supposed fact.

The defense maintains that the court below erred: (1) In sentencing the defendant to suffer the penalty of *arresto mayor* in case of his inability to pay his creditor Juana Juan the amount of the debt of P327 and 60 *cavanes* of rice, thereby violating the constitutional provision which forbids the imprisonment of any person for debt; (2) in holding that the defendant and appellant committed the crime of *estafa* because his creditor was unable to enter into possession of the land which he offered as security for the payment of his debt; and (3), in not acquitting the defendant.

It was not proven at the trial that the defendant owed Juana Juan P327 and 60 *cavanes* of rice, mentioned in the instrument Exhibit A, or that this document was executed to guarantee or secure the payment of such a debt, or any loan whatsoever. On the contrary, it was proven that the defendant, pretending to be the owner and possessor of the land mentioned in said instrument, when in fact he was not, and the land did not exist, and availing himself of said deceit, sold said land to Juana Juan, thus defrauding her and obtaining an unlawful gain consisting of the sum of money and the number of *cavanes* of rice mentioned, to the prejudice of the said Juana Juan. Therefore, the penalty of *arresto mayor* imposed upon the defendant in the judgment appealed from, was not imposed upon him because he owed any sum to Juana Juan, but because he defrauded her in the manner above-mentioned, and such fraud constitutes the crime of *estafa* defined in paragraph 1 of article 535 and punished in paragraph 2 of article 534 of the Penal Code, as was held in the judgment of the court below.

It is true that as a result of the criminal liability incurred by the defendant, he was ordered to return to Juana Juan the amount which she suffered by reason of the *estafa*, or, in case of his insolvency, to suffer the corresponding sub-sidiary imprisonment, under the provisions of article 50 of said code; but it cannot be maintained that the trial court thereby violated the constitutional provision invoked by the defense, which prescribes that no person shall be imprisoned for debt.

"The authorities almost unanimously hold that the debt intended to be covered by the constitutional provisions must be a debt arising exclusively from actions *ex contractu*, and was never meant to include damages arising in actions *ex delicto*, or fines, penalties, and other impositions imposed by the courts in criminal proceedings as punishments for crimes committed against the common or statute law." (Ruling Case Law, Vol. X, p. 1384, par. 175.)

"Notwithstanding the prohibitions against imprisonment for debt, where a person incurs civil liability by a wrongful act such prohibitions generally have no application and he may be imprisoned because of such act. Thus, it is held that an arrest may be authorized in an action for libel, or in an action of *trover* for conversion. So also it is held not a violation of the constitutional provision against imprisonment for debt to authorize the arrest of a defendant in an action for seduction, trespass, or assault and battery, etc." (Ruling Case Law, *supra*, par. 176 and decisions therein cited.)

"The constitutional provision prohibiting imprisonment for debt, applies to actions on contracts, express or implied. As to the debts thereby intended, there must be the relation of debtor and creditor. The prohibition does not extend to actions for torts, nor to fines or penalties arising from a violation of the penal laws of the State." (Kennedy vs. People, 122 111., 649.)

Finally, the Supreme Court of the United States, in a case analogous to the present one, to wit, *United States vs. Freeman* (9 Phil., 168) for *estafa*, which case was decided by us and appealed to that high tribunal, and in which the defendant's counsel alleged that the Supreme Court of the Philippines had violated said constitutional provision which prohibits imprisonment for debt, held in its decision (*Freeman vs. United States*, U. S. Reports, 217, page 539)[1] as follows:

"It is a general interpretation that the laws which prohibit imprisonment for debt relate to the imprisonment of debtors for liability incurred in the fulfillment of contracts and to the provision against imprisonment for debt,

con-tained in the Philippine Bill of Rights, such as it is found in paragraph 5 of the Act of July 1, 1902 (Chap. 1369, 32 Stat., 691), but not to the cases seeking the enforcement of penal statutes that provide for the payment of money as a penalty for the commission of a crime."

And in the body of the decision, specifically referring to the issue submitted by the appeal, it said:

"It is the contention of the plaintiff in error that the judgment of the supreme court of the Philippine Islands should be reversed for two reasons: first, because the judgment was, in substance and effect, an imprisonment for debt * * *.

"As to the first contention, that the judgment and sentence amounted to imprisonment for debt: The Act of July 1, 1902, providing for the administration of the affairs of the civil government of the Philippine Islands (32 Stat. at L., 691, chap. 1369), provides, among other things, in article 5 thereof, 'that no person shall be imprisoned for debt.' This provision was carried to the Philippine Islands in the statute quoted with a well-known meaning, as understood when thus adopted into the Bill of Rights for the government of the Philippines, and must be so interpreted and enforced. (Kepner vs. United States, 195 U. S., 100, 124.)

"Statutes relieving from imprisonment for debt were not intended to take away the right to enforce criminal statutes and punish wrongful embezzlements or conversions of money. It was not the purpose of this class of legislation to interfere with the enforcement of such penal statutes, although it provides for the payment of money as a penalty for the commission of an offense. Such laws are rather intended to prevent the commitment of debtors to prison for liabilities arising upon their contracts. (Mc-Cool vs. State, 23 Ind., 129; Musser vs. Stewart, 21 Ohio St., 353; Ex parte Cottrell, 13 Neb., 193, 13 N. W., 174; Re Ebenhack, 17 Kan., 618, 622.)

"This general principle does not seem to be controverted by the learned counsel for the plaintiff in error, and the argument is, that inasmuch as the money adjudged is to go to the creditor, and not into the public treasury, imprisonment for the non-payment of such sum is an imprisonment for debt. But we think that an examination of the statutes of the Philippines and the judgment of the supreme court shows that the imposition of the money penalty was by way of punishment for the offense committed, and not a requirement to satisfy a debt contractual in its nature, or be imprisoned in default of payment.

"As a further means of punishing the act done in violation of the statute, he may, under the Philippine Code, be made to suffer a subsidiary imprisonment for a term not to exceed one-third of the principal penalty in lieu of the restoration of the sum found to be embezzled. The sentence of the supreme court of the Philippine Islands, including the imprisonment in lieu of the payment of the sum found due, was because of the conviction for the violation of this statute (art. 535, par. 5, Penal Code); in other words, the money payment was part of the punishment, and was not imposed as an imprisonment for non-payment of the debt, regardless of the criminal offense committed. The sentence and each part of it was imposed because of the conviction of the defendant of the criminal offense charged.

"This situation is not changed because the sentence provides for a release from the subsidiary imprisonment upon payment of the money wrongfully converted. The sentence imposed, nevertheless includes the requirement to pay money because of the conviction of the offense. The requirement that there shall be no imprisonment for debt was intended to prevent the resort to that remedy for the collection of contract debts, and not to prevent the State from imposing a sentence for crime which should require the restoration of the sum of money wrongfully converted in violation of a criminal statute. The non-payment of the money is a condition upon which the punishment is imposed. (State vs. Nicholson, 67 Md., 1; 8 Atl., 817.)

"We do not think that the sentence and judgment violated the statute providing that no person shall be imprisoned for debt."

In the judgment appealed from the defendant was found guilty of the crime of estafa, not because Juana Juan could not get possession of the land that he had offered as security for the payment of his debt—as incorrectly

stated in the second assignment of error by the defense, for, as already stated, there was no such debt or any security for it—but because, according to the facts proven at the trial, the defendant pretended to be the owner and possessor of the land described in the deed Exhibit A, when in fact such land did not exist, deceived said Juana Juan in order to obtain from her the P327 and the 60 cavanos of rice which were delivered to him by her, and to her prejudice, appropriated to himself said money and rice. These acts defined in paragraph 1 of article 535 of the Penal Code, and punished in paragraph 2 of article 534 of the same code, constitute the crime of estafa, as the court below so held. The latter, therefore, did not err in not acquitting the defendant and, in imposing upon him, instead, the penalty corresponding to said crime, in the medium degree, since it was not found that its commission was attended by any circumstance modifying criminal liability.

For the foregoing reasons we affirm the judgment ap-pealed from, with the costs of this instance against the ap-pellant. So ordered.

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

[1] See also 40 Phil., 1039.

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