

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. BENITA DOMINGO ET AL., DEFENDANTS. BENITA DOMINGO, APPELLANT.

G. R. No 24086. March 25, 1926

Ponente: OSTRAND, J.

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OSTRAND, J.:

Benita Domingo, Zacarias Modesto, Mary Doe (alias Hilaria de Leon), and Jane Doe (alias Josefa de Leon) were accused of the crime of estafa through falsification of a public document upon the following information:

"That on or about August 22, 1924, in the City of Manila, Philippine Islands, the above named defendants conspiring together and acting under a common agreement, did willfully, unlawfully, and criminally defraud one Moises Buzon in the sum of P5,000, Philippine currency, equivalent to 25,000 pesetas, through falsification of public document as follows:

"That on or about July 8, 1924, the defendant Benita Domingo, having learned that one Estanislao Sanchez, executor and judicial administrator of the testate estate of Josefa de Leon, was desiring to alienate, sell, or mortgage a fishery situated in the municipality of Bocaue, Province of Bulacan, Philippine Islands, pertaining to said estate, for the purpose of paying the debts and lawful expenses of the administration, presented herself to said administrator as real estate broker, and through false and fraudulent representations to the effect that she, that is, the aforesaid Benita Domingo, had found a person who had stated his desire to purchase said fishery, and wanted to examine first the title deed and other documents relating to said property, succeeded in obtaining possession of Torrens certificate of title No. 340 of the office of the register of deeds of the Province of Bulacan, issued in the name of Josefa de Leon and her sister Hilaria de Leon relative to said fishery; and once in possession of said certificate of title, she did willfully, unlawfully, and criminally for the purpose of defrauding and injuring said Moises Buzon, have an understanding with her codefendants Zacarias Modesto, Mary Doe, and Jane Doe and among them they devised a plan and then presented themselves to said Moises Buzon, Mary Doe, as Hilaria de Leon, and her codefendant Jane as Josefa de Leon, and offered to sell him said fishery for P5,000 upon the condition that he could repurchase the same within the period of one year, and Moises Buzon having agreed upon the price and the thing, they did willfully, unlawfully, and criminally, directly induced by their codefendants Zacarias Modesto and Benita Domingo, said defendants Mary Doe and Jane Doe representing themselves the first as Hilaria de Leon and the second as Josefa de Leon, appear on August 22, 1924, before Domingo Sandoval, notary public for the City of Manila, and under the names of Hilaria de Leon and Josefa de Leon and representing themselves to be the owners of said fishery, the defendants Mary Doe and Jane Doe did then and there willfully, unlawfully, and criminally execute, subscribe, and ratify before said notary public, Domingo Sandoval, a deed of sale with right of repurchase of the aforesaid fishery in favor of Moises Buzon in consideration of the sum of P5,000 which the latter did then and there pay to said defendants, the defendant Zacarias Modesto having taken part in the execution and ratification of said deed of sale by assuring and guaranteeing the identity of each of said defendants, thereby causing it to appear that said defendants Hilaria de Leon and Josefa de Leon intervened, when in fact they did not, in the execution and ratification of said deed, wherein said defendants falsified the truth in the narration of the facts in stating therein that they were absolute owners of said fishery, the defendants Benita Domingo, Zacarias Modesto,

Mary Doe, and Jane Doe having made use of said falsification and misrepresentations to injure and defraud, as they in fact did willfully, unlawfully, and criminally defraud and injure Moises Buzon in the sum of P5,000, Philippine currency, which said defendants appropriated, converted, and applied to their own use, to the damage and prejudice of Moises Buzon in the aforesaid sum equivalent to 25,000 pesetas."

The case was tried with respect to the accused Benita Domingo and Zacarias Modesto only, the other two accused with assumed names not having been found. The court below acquitted Zacarias Modesto but found Benita Domingo guilty as charged in the information and sentenced her to imprisonment for four years, two months, and one day of prison correccional, to indemnify Moises Buzon in the sum of P5,000, with subsidiary imprisonment in case of insolvency, and to pay a proportionate part of the costs. Upon appeal to this court the appellant Benita Domingo presents only one assignment of error, namely, that the court below erred in not absolving her from the complaint for insufficiency of proof.

It appears in evidence that Hilaria de Leon and Josefa de Leon died on January 20, 1913, and November 22, 1923, respectively, leaving, among other things, a Torrens registered fishpond in the municipality of Bocaue, Bulacan.

One Estanislao Sanchez was appointed administrator of the estate of Josefa de Leon. Having learned that Sanchez wanted to sell or mortgage the fishpond in question for the payment of debts of the estate, the accused Benita Domingo went to his house in the City of Manila on July 4, 1924, and, representing herself to be a real estate broker, offered to look for a purchaser for which purpose she requested that she be given temporary possession of the plan of the property. As Sanchez was in need of funds with which to pay certain debts of the estate, he gave her the plan, fixing the price of the property at P22,000. A few days afterwards, Benita returned to Sanchez house and stated that she had received an offer in the amount of P20,000 for the fishpond and that the prospective purchaser desired to see the certificate of title to the property. Sanchez handed her the certificate on condition that she should return it in the afternoon of the following day. She failed to return the document as promised by her, and when seen by Sanchez in her house in Malabon, Rizal, told him that it was then in the possession of the prospective purchaser, but that at 4 o'clock in the afternoon of that day she would return it to him at his house in Manila. Again she failed to fulfill her promise to return the certificate, and though Sanchez made diligent search he was thereafter unable to find her.

Shortly afterwards Estanislao Sanchez was informed by one Pedro del Rosario that the accused Zacarias Modesto was trying to mortgage the fishpond. He, therefore, went to see Zacarias Modesto at the latter's house on Antipolo street, Manila, but was told by Zacarias that he did not have the certificate of title to the property. On or about August 3, 1924, Zacarias, accompanied by one Simplicio de los Santos, called on Moises Buzon and offered to sell him the same fishpond, which, after some negotiations, Buzon finally agreed to purchase under pacto de retro for P5,000. Zacarias then left the aforementioned certificate of title with Moises in order that the deed might be prepared and the sale registered. The deed was signed at the office of Attorney Domingo Sandoval on August 22, 1924, by two women who were represented by Zacarias Modesto as the owners of the fishpond, Buzon paying the women the sum of p5,000 as the price of the property. Before the parties left the office of Attorney Sandoval, the supposed vendors gave a certain amount of money to the accused Zacarias Modesto, presumably as commission. The sale with pacto de retro was afterwards entered by way of memorandum on the back of the original certificate of title.

The testimony of the accused Benita Domingo is to the effect that she did not know her co-accused Zacarias Modesto; that she never had the certificate of title in her possession and had never seen it before the trial; and that while she had received the plan of the property from Estanislao Sanchez, the same was subsequently returned to him because she could find no purchaser for the fishpond.

The crime charged in the information and conclusively established by the evidence falls under article 301, as

amended by Act No. 2712, in relation to articles 537 and 89 of the Penal Code. That it could not have been committed if its perpetrators had not been in possession of the certificate of title is obvious and it has been proven beyond a shadow of doubt that the appellant was the person who obtained the certificate from Sanchez. It is true that there is no direct evidence that she delivered it to the two women who signed the deed, but in view of the fact that she offered no explanation as to what she did with the certificate and even denied that she received it, there is no escape from the inference that she placed the certificate in the hands of her confederates. If she had not been a co-conspirator, she would have revealed the name of the party to whom the certificate was delivered. Her position is analogous to that of a person who immediately after a larceny has been committed is found in possession of the stolen goods and offers no explanation.

"Those who cooperate in the commission of the act by another act without which it would not have been accomplished" are guilty as principals (paragraph 3, article 13 of the Penal Code). As we have already stated, the certificate of title was one of the indispensable means in the commission of the crime and the appellant is therefore guilty as principal and the appropriate penalty is from five years, four months, and twenty-one days to six years of prision correccional.

The judgment appealed from is accordingly hereby modified by increasing the term of imprisonment to five years, four months, and twenty-one days, and by imposing a fine of P200. In all other respects the judgment appealed from is affirmed with the costs against the appellant. So ordered.

Avanceña, C. J., Malcolm, Villamor, Johns, Romualdez, and Villa-Real, JJ., concur.

DISSENTING

STREET, J.,

I dissent on the ground that the proof is insufficient to show the connection of the accused with the crime of which she is convicted.

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