

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE. FILOMENA CONCEPCION, OFFENDED PARTY AND APPELLANT, VS. JUAN ALEJANO Y DE LA CRUZ (ALIAS JUAN GATA), DEFENDANT AND A...

G.R. No. 33667. October 04, 1930

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The Attorney-General prays for the dismissal of this appeal, but the appellant objects.

The parties to the case are: The People of the Philippine Islands, plaintiff, and Juan Alejano y de la Cruz (alms Juan Gata), defendant, charged with the crime of qualified theft. The appellant herein, which is the estate of Filomena Concepcion, intervened only after the defendant had been acquitted by the trial court on a reasonable doubt of his guilt. The intervention filed by the estate of Filomena Concepcion sought the reconsideration of that part of the decision ordering the return of said ring to the owner, Pedro Razal.

The court having denied said reconsideration, the estate of Filomena Concepcion appealed and filed a brief in this court.

Before filing his brief, the Attorney-General moved for the dismissal of the appeal on the ground that the right to appeal is purely statutory; that the law only allows the parties to appeal from a final judgment or from an order made thereafter, affecting the substantial rights of the appellant, but not a third party even if the judgment apparently affects his interests. He adds that assuming the appellant has a legal right to appeal in this case, any judgment which may be rendered thereon would be nugatory, for the ring has already been returned to its lawful owner, and the latter cannot now be ordered to return it to the appellant, inasmuch as it would be disturbing the owner's peaceful possession and enjoyment of his property without due process of law and an opportunity to be heard.

Counsel for the estate of Filomena Concepcion invokes section 107, General Orders, No. 58, contending that the theft in question has injured not only Pedro Razal, the alleged owner of the ring, but also the appellant.

In ordering the return of the ring in question to the owner, the trial court acted in accordance with the provisions of second paragraph of article 120 of the Penal Code. The rule is applicable to the case at bar even though the defendant has been acquitted, for it has been proved that the ring in question belonged to, and was in possession of, Pedro Razal, and that it was stolen from him; in other words, the offense has been proved, but not the identity of the offender. The Penal Code rule certainly applies to the instant case. *Res obicunque sit pro domino suo clamat.*

Now then, in *Varela vs. Finnick* (9 Phil., 482), this court held that any person unlawfully deprived of his property may recover it, although it be in the possession of another who has acquired it by lawful means, saving those mentioned in article 464 of the Civil Code. This doctrine had already been announced in *Del Rosario vs. Lucena*

(8 Phil., 535) and Varela vs. Matute (9 Phil., 479), and reiterated by this court in United States vs. Soriano and Villalobos (12 Phil., 512); Arenas vs. Raymundo (19 Phil, 46); Reyes vs. Ruiz (27 Phil., 458); and United States vs. Sotelo (28 Phil., 147).

The appellant contends that since the defendant has been acquitted, there was no reason for ordering the return of the ring to its alleged owner, citing cases of the Supreme Court of Spain, and that of Almeida Ghantangco and Lete vs. Abaroa (40 Phil., 1056). But it must not be lost sight of that the defendant was not sentenced to pay any indemnity, nor was anything adverse to him ordered. The defendant did not claim any right to the ring, having ignored it entirely by denying that he had taken it and pawned it in the pawnshop mentioned.

The return of the ring to its owner, Pedro Razal, did not injure the defendant or anybody else, except the appellant, who, however, until shown to be one of the "pawnshops established under authority of the Government" mentioned in the third paragraph of article 464, Civil Code, has no right to reimbursement of the amount for which the ring in question was pledged.

As to the procedural phase of this appeal, it must be observed that neither the Government nor the People of the Philippine Islands, the plaintiff herein, is interested in the ring in question, and hence, should not be made a party to the instant appeal, and the Attorney-General cannot be required to file a brief in the premises, although it must be acknowledged that his intervention in filing a motion for the dismissal of the appeal, drawing the court's attention to the character and condition of the proceedings in hand, was most timely.

The parties really interested in the matter of the ring are the appellant herein on the one hand, and Pedro Razal on the other, who has not been impleaded. His absence prevents the final determination of the controversy, for he is a necessary party. And since it would not be in accord with the law to include him as a party at this stage of the proceedings, this appeal must be dismissed at once.

Wherefore, the appeal is hereby dismissed without express pronouncement as to costs, and without prejudice to whatever right the appellant may have to the reimbursement of the amount for which the ring in question was pledged. So ordered.

Avancena, C. J., Street, Malcolm, Villamor, Ostrand, Johns and Villa-Real, JJ., concur.

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