

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. VICENTE ORENDAIN AND MARIA, OLARTE, DEFENDANTS AND APPELLANTS.

G. R. No. 36139. October 08, 1932

Ponente: BUTTE, J.

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BUTTE, J.:

This is an appeal from a judgment of the Court of First Instance of Zamboanga, sentencing each of the appellants, for the crime of estafa through falsification of a public document, to serve twelve years of prisidn mayor, with the accessory penalties, to pay a fine of 12,500 pesetas, and suffer perpetual disqualification from holding any public office.

The facts out of which this prosecution arose may be summarized as follows:

Raymunda Toribio, over 74 years of age, is the common law wife of Gualberto Saavedra. In the month of June 1930, she and Gualberto were living on a small tract of land in the barrio of Manicahan, municipality of Bolong, Province of Zamboanga, which embraced lots Nos. 648, 649, 682, 1041 and 1642. In the cadastral survey of 1923, lots Nos. 648 and 1642 were adjudged to Raymunda Toribio as widow; Nos. 649 and 682 were adjudged to Raymunda Toribio as the wife of Gualberto Saavedra, and lot No. 1041 was adjudged to the spouses Gualberto Saavedra and Raymunda Toribio.

In May 1930, the appellant Vicente Orendain was appointed notary public for the municipality of Bolong and since June 18, 1930, has been serving as such. On June 25, 1930, he prepared and took acknowledgments to three deeds of sale, signed by Raymunda Toribio and her husband, conveying to their only daughter, Maria Olarte, for a recited consideration of Pi and "for other considerations", said lots Nos. 649, 682 and 1041. On June 30, 1930, in similar manner and for the same considerations, Raymunda Toribio conveyed lots Nos. 648 and 1642 to her daughter, Maria Olarte.

Upon the representation of Raymunda Toribio that her daughter and the notary told her said conveyances were powers of attorney, the fiscal filed three informations (Nos. 3630, 3631 and 3678) against the appellants, charging estafa through falsification of a public document; No. 3630, the case on appeal, related to lots Nos. 648 and 1642 conveyed on June 30, 1930, as aforesaid; No. 3631 related to lot No. 1041 conveyed on June 25, 1930; and case No. 3678 related to lot No. 682 conveyed on June 25, 1930.

There was a private prosecutor in the three cases both before the justice of. the peace and the Court of First Instance. Case No. 3630, here on appeal, was tried in April, 1931, and the defendants were convicted; case No. 3631 was tried in July, 1931, and the defendants were acquitted; thereafter, case No. 3678 was dismissed on the motion of the fiscal for lack of evidence.

We find it difficult to reconcile the final results in these three cases which arose on practically the same set of facts. The deed involved in case No. 3630 in which the defendants were convicted, was executed at the same

place between the same parties, for the same consideration, under identically the same circumstances and in identically the same form as the deed involved in case No. 3631, in which the defendants, upon full trial, were acquitted. Nor can we reconcile the guilt of the defendant in the first case mentioned with the action of the fiscal in dismissing the complaint in case No. 3678 which involved a deed made on the same date between the same parties, for the same consideration and under identical circumstances and in the same form as the deed involved in the case in which the defendants were convicted.

It satisfactorily appears from the evidence that Raymunda Toribio, having had some misunderstanding with her common law husband, wished by some means to cut him out from any interest in her property upon her death, and said conveyances were part of her general plan. Before these defendants had any connection with the matter, she went to the register of deeds, taking her certificates of title with her, and asked him to eliminate therefrom the name of Gualberto Saavedra, and the register of deeds advised her to consult an attorney. It appears clearly that the old lady desired to place the said lots in the control of her only daughter, the defendant Maria Olate, and so informed the notary. He, doubtless, believed that the surest plan of accomplishing what the old lady desired was to make an outright gift of the said lots to her daughter for a nominal consideration; and that, doubtless, was a more effectual plan for carrying out her express purpose, than a mere power of attorney to manage her property which would terminate on her death. Had the defendant Maria Olate intended to swindle her mother, and had the notary suggested the fraudulent scheme of a sale, they would not have recited a consideration of P1, which is grossly inadequate on its face. As to at least one of the deeds, the evidence is uncontradicted that the same was read to Raymunda Toribio and her husband before their signatures. Raymunda Toribio testified that the defendants told "her the conveyances were "poderes" and the prosecution rests wholly, on the theory that the old lady believed she was signing "poderes" and not "ventas". But, if we disregard the technical legal terms, which doubtless Raymunda Toribio did not understand, the fact is that the conveyances accomplished what she desired to accomplish.

We doubt that any great weight should be given to the testimony of Raymunda Toribio in view of the fact that when she was asked if she had not been arrested, tried and convicted for murder in Iloilo, and she was required by the court to answer the question over the objection of the private prosecutor, she replied "No recuerdo" (I do not remember).

Upon the whole case we entertain such grave doubt, of the guilt of the defendants that the judgment below must be reversed, and the defendants acquitted, with costs to the appellants de oficio.

Avanceña, C. J., Street, Malcolm, Villamor, Ostrand, Villa-Real, Abad Santos, Hull, Vickers, and Imperial, JJ., concur.

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