

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. SY GESIONG, DEFENDANT AND APPELLANT.

G. R. No. 38618. September 15, 1934

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Appellant was convicted by the Court of First Instance of Bohol of the crime of estafa for having concealed or otherwise disposed of certain personal property belonging to him for the purpose of defrauding his creditors, and sentenced to one year of presidio correccional, to indemnify Ignacio Molina and Vicente Gaviola in the sum of P2,997.76 with subsidiary imprisonment in case of insolvency, and to pay the costs. From this judgment the present appeal was taken.

Appellant has assigned five errors as having been committed by the trial court. The first error assigned raises the question of the sufficiency of the facts alleged in the information filed against the appellant. The pertinent part of the information reads as follows:

"Que en o hacia el mes de agosto de 1931, en el Municipio de Guinduhnan, Provincia de Bohol, Islas Filipinas, y dentro de la jurisdicci6n de este Juzgado el referido acusado Sy Gesiong voluntaria, ilegal y criminalmente con xntencidn de defraudar y con abuso de confianza de sus fiadores Ignacio Molina y Vicente Gaviola, se comprometi6 a dichos fiadores que el acusado responderia el reembolso de la cantidad de P3,792.76 a favor de la viuda Julia Raiieses de Juan CabeUo siendo administrador el acusado de la testamentaria de Juan Cabello, de conformidad con el fallo dictado por el Juzgado de Primera Instancia de Bohol contra dicho acusado Sy Gesiong el 31 de julio, 1931, dandole un plazo de 30 dias a contar de la citada fecha; pero el referido acusado antes de expirar el plazo concedido, fraudulentamente y sin consentimiento de sus fiadores despach6 y traslado para ocultar en otros sitios todos los efectos de valor embargables que estaban depositados en su bodega y tienda en Guindulman, Bohol, consistentes en 350 picos de copra, 350 picos de abaca y maguey y en otros efectos de su tienda, cuyo valor asciende proximately el total de P 3,000 equivalente a 15,000 pesetas."

The theory of the prosecution is that the facts alleged in the information constitute the crime of estafa defined in article 523 of the old Penal Code and in article 314 of. the Revised Penal Code. The two articles mentioned are couched practically in the same language. Article 314 of the Revised Penal Code reads:

"Any person who shall abscond with his property to the prejudice of his creditors, shall suffer the penalty of prision mayor, if he be a merchant, and the penalty of prision correccional in its maximum period to prision mayor in its medium period, if he be not a merchant."

It will be noticed that one of the essential elements of the crime thus defined is that the absconding of the property by the defendant must result in prejudice to his creditors. The information filed in this case contains no such allegation. It is true that it alleges that the defendant fraudulently concealed his property mentioned in the information, but such allegation is not sufficient to fulfill the requirement of the law. A person may fraudulently dispose of some of his property, and yet such act may not necessarily result in prejudice to his creditors; for he may have some other property with which to satisfy his obligations. It is too well-settled to require the citation of

authorities that to warrant conviction, every element of the crime must be alleged and proved.

The second assignment of error attacks the findings of fact of the trial court. On this point, the evidence for the prosecution shows that the goods alleged to have been concealed and otherwise disposed of by the appellant were shipped from Bohol to Cebu under suspicious circumstances. Appellant admitted having shipped the goods to Cebu, but claimed that he did so as a commission or purchasing agent for a firm in that city. Appellant further claimed that he had no knowledge of the order of the court of July 31, 1931, which was notified to him by his attorney only on August 15, 1931; and that, besides the goods alleged to have been fraudulently disposed of or concealed by him, he still had in his possession property valued at P4,600.

Upon a careful consideration of the facts and circumstances of the case, we believe that the guilt of the appellant has not been established beyond a reasonable doubt.

In view of the above conclusions, we do not deem it necessary to discuss the other errors assigned by the appellant.

The judgment appealed from is reversed, and the defendant acquitted with costs de oficio. So ordered.

Street, Malcolm, Vickers, and Butte, JJ., concur.

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