

JOSEFA VARELA, PLAINTIFF AND APPELLEE, VS. ANTONIO MATUTE, DEFENDANT AND APPELLANT.*G.R. No. 3889. January 02, 1908*

Ponente: TORRES, J.

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Some time in November, 1905, Nicolasa Pascual received for sale on commission several jewels described in the judgment appealed from, owned by Josefa Varela, upon condition that she would turn over to the latter the proceeds thereof when sold, or to return them to her if they could not be disposed of. Nicolasa Pascual, however, instead of complying with the agreement, and acting fraudulently and in bad faith, pledged the said jewels at the pawnshop of Antonio Matute, according to the pawn ticket issued by him on the 27th of the said month and year, stating that for a certain consideration, which the said Pascual had received from the pawnbroker, she delivered in pledge the aforesaid jewelry.

Proceedings having been instituted, under case No. 2429, for the crime of estafa by virtue of the complaint duly presented, the court, in view of the evidence adduced at the trial, found the accused guilty, and on the 6th of October, 1906, rendered judgment in accordance with the provisions of articles 534 and 535, paragraph 5, of the Penal Code, and sentenced her to the penalty of one year and eleven months of prision correccional, to make restitution of the stolen jewels to Josefa Varela, or otherwise to pay the value thereof, and, in case of insolvency, to suffer the corresponding subsidiary imprisonment.

By a petition dated September 25, 1906, counsel for Josefa Varela moved that separate proceedings be instituted, and, upon the defendant being previously summoned, that he be ordered to return the aforementioned jewels to the plaintiff, and that the latter be granted any further remedy which might be considered proper and equitable. This claim having been referred to the defendant, Matute, his lawyers, by a written instrument of October 17, of the same year, denied all and every one of the allegations contained in the complaint and not admitted in the answer; as a matter of fact, they admitted that he had in his possession the jewels itemized in paragraph 2 of their writing, the same being now on deposit by order of the court notwithstanding his objection and protest. They further alleged that the aforementioned Nicolasa Pascual was properly authorized to pawn the jewels for the sum of 100 at the pawnshop of the defendant, which was established in accordance with the law; that up to the present time they had not been redeemed, and denied that they were the subject of estafa or of any other crime, and finally asked that the return to the defendant of the aforementioned jewels be ordered by the court.

In order to avoid repetition, a matter similar to this, instituted at the instance of the same plaintiff, having been decided by this court on this date, the conclusions of law set forth in the decision rendered in the matter of Josefa Varela vs. Josephine Finnick[1] (No. 3890) are to be considered as reproduced herein; therefore,

In view of the considerations set forth in the decision above cited, and accepting the conclusions of the court below, it is our opinion that the judgment appealed from should be affirmed with costs against the appellant. So ordered.

Arellano, C. J., Mapa, Carson, Willard, and Tracey, JJ., concur.

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