

JOSEFA VARELA, PLAINTIFF AND APPELLEE, VS. JOSEPHINE FINNICK, DEFENDANT AND APPELLANT,*G.R. No. 3890. January 02, 1908*

Ponente: TORRES, J.

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Some time during the months of November and December, 1905, Nicolasa Pascual received from Josefa Varela several jewels, whereof the quantity and description are stated in the judgment appealed from; some of the jewels were owned by Varela and others belonged to strangers; all, however, came from Varela and were delivered to Pascual to be sold on commission, with the express obligation on the part of the latter to pay to the former the proceeds of the sale of said jewels, or to return them if unsold.

Nicolasa Pascual, however, far from complying with her duty, pawned the said jewels at various dates during said months, as appears from the pawn tickets issued by the owner of H. J. Finnick's pawnshop, where the jewels had been pledged; that jewels were thus misappropriated, and the amount of the loan granted thereon embezzled, to the prejudice of Josefa Varela.

Upon the filing of a complaint, proceedings were instituted, under cause No. 2429, against Nicolasa Pascual for the crime of estafa, and the accused, being found guilty under articles 534 and 535, paragraph 5, of the Penal Code, was sentenced to the penalty of one year and eleven months of prison correccional, to make restitution of the jewels misappropriated or to pay the value; thereof, and, in case of insolvency, to suffer the corresponding subsidiary imprisonment; said judgment became final and the accused is now undergoing the penalty imposed upon her.

On the 22d of September, 1906, the representative of Josefa Varela claimed, in writing, the return of the jewels above referred to, which were the subject-matter of said prosecution, and separate proceedings having been instituted, the manager of the property of the late Finnick was made a party thereto. On the 17th of October, in answer to the complaint of Josefa Varela, the manager denied all that had been alleged by the latter, and, although admitting that the jewels had been pledged at the pawnshop of the late Finnick, further denied that they were the subject of estafa or any other crime committed by Nicolasa Pascual; she further stated that Finnick was provided with a license to engage in the loan business under the laws in force, and that he accepted the said jewels in good faith because Nicolasa Pascual was fully and duly authorized to pledge the same; therefore, the defendant was entitled to their possession, and she finally asked that the request of Josefa Varela be dismissed with costs.

Neither in the said cause nor in the present proceedings does it appear as proven that Josefa Varela authorized Nicolasa Pascual to pledge the jewels or to dispose of the pawn tickets issued by the pawnshop, and the mere affirmation of Nicolasa Pascual is insufficient when the same is contradicted and denied by Josefa Varela. If said affirmation had been substantiated, the crime of estafa could not have been proven, and the accused would not have been convicted in said cause.

Article 17 of the Penal Code provides that —

"Every person criminally liable for a crime or misdemeanor is also civilly liable."

In accordance with this provision the supreme court [of Spain] in its decision of the 3d of January, 1877, has established the following doctrine:

"In order that civil liability may be decreed in a prosecution it is necessary that it arise from or be the consequence of criminal liability; therefore, if the accused was acquitted of a crime, any court sentencing him by reason of the same to pay a certain indemnity does so in violation of this article."

Nicolasa Pascual was convicted of estafa of the jewels in question, and as the sentence became final, so much so that she is now undergoing her term of imprisonment, the balance of the judgment must be complied with—that is, the restitution of the jewels misappropriated, because they are at hand and have not disappeared. This restitution must be made even if the jewels are in the possession of a third party, such as a pawnshop, and notwithstanding the fact that they were lawfully acquired by it, its right to institute proceedings against whoever may be liable therefor being reserved as provided by article 120 of the Penal Code.

The exception contained in paragraph 3 of said article is not applicable to the present case because a pawnshop does not enjoy the privilege established by article 464 of the Civil Code. The owner of the loan office of Finnick Brothers, notwithstanding the fact that he acted in good faith, did not acquire the jewels at a public sale; it is not a question of public property, securities, or other such effects, the transfer, sale, or disposal of which is subject to the provisions of the Code of Commerce. Neither does a pawnshop enjoy the privilege granted to a Monte de Piedad; therefore, Josefa Varela, who lost said jewels and was deprived of the same in consequence of a crime, is entitled to the recovery thereof from the pawnshop of Finnick Brothers, where they were pledged; the latter can not lawfully refuse to comply with the provisions of article 120 of the Penal Code, as it is a question of jewels which have been misappropriated by the commission of the crime of estafa, and the execution of the sentence which orders the restitution of the jewels can not be avoided because of the good faith with which the owner of the pawnshop acquired them, inasmuch as they were delivered to the accused, who was not the owner nor authorized to dispose of the same.

Article 1857 of the Civil Code provides that —

"The following are essential requisites of the contracts of pledge and of mortgage:

"1. * * *

"2. That the thing pledged or mortgaged be owned by the person who pledges or mortgages it."

Nicolasa Pascual was not the owner of the jewels pledged at the pawnshop of Finnick.

Article 1859 of said code provides that—

"A creditor can not appropriate to himself the things given in pledge or under mortgage, nor dispose of them."

While actual possession of personal property is equivalent to a title thereto, so long as no proof is offered that the same was acquired in bad faith, yet from the time that the latter condition is proven, such as the loss of the thing, or that the owner was unlawfully deprived of it, the latter is entitled to the recovery thereof within the limits fixed by law, because the holder lacks the good faith indispensable to the protection of his possession.

Article 1955 of said code prescribes:

"The ownership of personal property prescribes by uninterrupted possession in good faith for a period of three years.

"The ownership of personal property also prescribes by uninterrupted possession for six years, without the

necessity of any other condition.

"The provisions of article 464 of this code shall be observed with regard to the rights of the owner to recover the personal property lost or of which he may have been illegally deprived, and also with regard to those acquired at an auction, on exchanges, at fairs or markets, or from a merchant legally established or customarily engaged in the traffic of similar objects."

In the present case not only has the ownership and the origin of the jewels misappropriated been unquestionably proven but also that the accused, acting fraudulently and in bad faith, disposed of them and pledged them contrary to agreement, with no right of ownership, and to the prejudice of the injured party, who was thereby illegally deprived of said jewels; therefore, in accordance with the provisions of article 464, the owner has an absolute right to recover the jewels from the possession of whosoever holds them, in accordance with the judgment entered in the aforesaid cause for estafa, wherein, the accused having been found guilty, the right of Josef a Varela to recover the jewels in question is expressly acknowledged.

Therefore, in view of the foregoing, and accepting the conclusions stated in the judgment appealed from, it is our opinion that the same should be affirmed, and it is so ordered.

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

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