

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. TAN DIONG (ALIAS TANGO), PASTORA PADLA, AND EUSTAQUIO BARANDA, DEFENDANTS AND APPELLANTS.*G. R. No. 39177. February 21, 1934*

Ponente: STREET, J.

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This appeal has been brought to reverse a judgment of the Court of First Instance of Misamis Oriental, finding the three appellants, Tan Diong (alias Tango), Pastora Padla, and Eustaquio Baranda, guilty of the offense of making way with property in fraud of creditors, in violation of article 523 of the old Penal Code (article 314, R. P. C), and sentencing them as follows: Tan Diong to imprisonment for six years and one day, presidio mayor, and Pastora Padla and Eustaquio Baranda to imprisonment for four years, two months and one day, presidio correccional, and requiring them to pay proportional costs.

Prior to the acts with which we are here concerned the appellant Tan Diong was a merchant in good standing in the municipality of Kinoguitan, Misamis Oriental. Pastora Padla is his wife and Eustaquio Baranda is the husband of the latter's niece. Prior to June, 1931, Tan Diong had become indebted to various merchants of Cebu, and a judgment against him had been rendered in favor of Lim Tian Ting & Co. for more than five thousand pesos. Upon this judgment an execution had been issued, but it realized only the sum of P198.23 from certain personal property levied upon in Tan Diong store. Tan Diong and his wife had previously owned various parcels of real property in the municipality, but investigation showed that prior to the events mentioned they had transferred all to their codefendant Eustaquio Baranda.

The proof amply shows that these conveyances were made for the purpose of putting the property beyond the reach of Tan Diong's creditors, and that the consideration mentioned in the deeds of conveyance from Tan Diong and wife to Baranda was fictitious¹. No error, in our opinion, was committed in finding the appellant Tan Diong guilty of the offense charged.

As to Eustaquio Baranda, we note that the conveyances by which these properties were conveyed to him were of a unilateral character. Baranda did not participate in the conveyances, and his alleged participation in the fraud consisted only of the fact that he has asserted ownership in the property conveyed. In our opinion, this does not justify his conviction as a participant in the fraud. His resolution to accept the benefit of the fraudulent conveyances may have been formed only after the act. His guilt as a coconspirator in the fraud is therefore not proved.

As to Pastora Padla, it appears that she joined in the conveyances, but the creditors who were defrauded were not her creditors, but the creditors of her husband, the merchant Tan Diong. Her mere participation as wife in the making of the documents of conveyance does not prove her complicity in the fraud which is intended to be punished in the penal provisions to which reference has been made.

The judgment appealed from is therefore reversed as to Pastora Padla and Eustaquio Baranda, without prejudice

to the right of the creditors, or any creditor, of Tan Diong to bring a civil action against Baranda. So ordered, with costs de oficio against said appellants. As to Tan Diong, the judgment appealed from is modified by sentencing him to an indeterminate period of from one year, prision correccional, to eight years and one day, prision mayor; and, as thus modified, the judgment as to him is affirmed, with costs.

So ordered.

Abad Santos, Butte, Goddard, and Diaz, JJ., concur.

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