

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JULIANA TORRES, DEFENDANT.—RAMONA R. EVANGELISTA, JOSE TEJUCO, AND MAGDALENA DE CASTRO, APPELLANTS.

G.R. No. 4109. March 21, 1908

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

This accused was sentenced for the crime of estafa by the Court of First Instance of the city of Manila to six months imprisonment with hard labor in Bilibid Prison and to pay the costs, from which judgment she did not appeal.

With respect to the civil responsibility dealt with in the record, the court below rendered judgment as to the jewels sold or pledged by the accused to third persons, and as a consequence of such judgment, three appeals have been presented to this court. Two of them were by third persons ordered to return some jewels in their hands to the aggrieved party who lost the possession thereof through the estafa committed by the accused, and another appeal was on behalf of the offended party to whom the restitution of another jewel in the hands of another third party was denied.

It is a proven fact, and was so found by the trial judge, that on December 18, 1905, Ramona E. Evangelista delivered certain jewels to Juliana Torres "under the obligation—the complaint states—on the part of Juliana Torres, to sell them at the price fixed for each jewel, or, in case she could not sell the same, to return them on the said date, December 18, 1906."

The accused, however, did not do so.

She sold to Jose Tejuco, for P300, a ring priced at P600.

To the same Jose Tejuco she gave two rings valued at P80 each, as a pledge for a loan of P25.

And she sold to Magdalena de Castro, for P100, a pair of earrings priced at P200.

The court rendered the following judgment: "The rings and jewels delivered, as above stated, by the accused to Jose Tejuco and Magdalena de Castro, are still the property of the said Ramona II. Evangelista, inasmuch as the prices received by the accused on account of the same were considerably lower than those authorized by said Ramona II. Evangelista. These rings and jewels should, therefore, be delivered immediately by the clerk of this court to the offended person, Ramona R. Evangelista."

From this decision Jose Tejuco and Magdalena de Castro appealed, the former citing article 1724 of the Civil Code, and the latter, articles 256 and 253 of the Code of Commerce, as having been violated.

This court considers that the two cases are similar in the circumstance that an agent or commissioner sold the goods received in commission for sale, for a price lower U that fixed by the principal; but they differ in the that Jose Tejuco received from the agent, as a pledge, a thing that the latter was authorized to sell but not to pledge.

This question of giving as a pledge a thing that has been received only to be sold on commission, undoubtedly constitutes the crime of estafa, it being an act of misappropriation for private purposes of a thing received on commission, which produces the obligation to return the thing. (Art. 535, No. 5, Penal Code.) And it has been so held in various decisions of this court.

According to article 120 of the same code, as an effect of the crime of estafa, the thing misappropriated should be returned, although it be in the hands of a third person who received it in good faith.

Consequently, the decision of the trial judge ordering Jose Tejuco to return to the offended party, Ramona E. Evangelista, the two rings valued at P80 each, which were given him illegally as pledge for a loan of P25, is, according to the above mentioned articles of the Penal Code, quite in accordance with the law.

With reference to the jewels which Juliana Torres was authorized to sell for P600 and P200, respectively, and which she sold for the half of the amounts fixed in the commission of sale, it is asked: Does the act of a commission agent in selling the goods received for less than the price fixed constitute the crime of estafa? Or, does the act of the commission agent in misappropriating the amount realized by the sale, whether it is the price fixed or a lower one, constitute the crime of estafa?

If the act of selling the goods received on commission, at a price lower than the one fixed, constitutes the crime of estafa, then the owner of the thing sold has not lost its legal possession and it should be restored to him either by the guilty person or by the third person who, in an illegal manner, obtained the possession of the thing illegally sold; and in that case the articles of the Penal Code above-cited are applicable, and the thing misappropriated should be returned either by the guilty person or by the third person who unlawfully retains it in his possession as the object of an estafa committed by the one who sold it to him.

But, if the act in question does not constitute estafa, since the act of transferring a thing sold to a third party in such a manner, as it were between principal and agent, is not punished by any statute, although illegal on the part of the latter, yet after all it was not illegal as between the seller and the purchaser, and it is sufficient that it was not illegal (it not proceeding from a crime) in order that the acquisition be legal and the possession be just and lawful. The unlawful conduct of the seller in exceeding the powers of his commission does not affect the purchaser in good faith, who was not proven to have been aware of the illegality of such conduct.

In deciding this question, we hold: that the fact of an agent selling the thing received on commission for a lower price than the one fixed, does not constitute the crime of estafa, it not being penalized as such in the Penal Code; but the act of the commission agent in misappropriating the price obtained by the sale, whatever it may be, constitutes estafa, because it constitutes an appropriation for his private purposes of the money received on commission, or realized by the commission which he undertook.

The defendant being guilty of estafa for the money misappropriated, she must return the amount misappropriated, not the article from which the money was obtained.

Although the sale was improper, the thing sold passes to the purchaser, who thereby acquires as valid and transferable title thereto as though it were made by the owner or his duly authorized agent, reserving, however, rights of civil action, if any there be, as for example, that of quanti minoris. The restitution of the article can not be demanded on the grounds that the act constituted a crime which did not affect a transfer of ownership.

The crime did not consist in the sale of the thing, since the owner thereof delivered it to the seller for that purpose; but it consisted in the seller's misappropriating the Proceeds of the sale, which he had collected not for himself, but for his principal, and the former was not able to make such proceeds his property by any title sufficient to

transfer to him the dominion over that money. The commission, which was the only title that assisted him, obliged him to return the thing or to deliver the price thereof, which takes the place of the thing after its sale; the commission was for one or the other of these two objects.

It follows that the accused, in the two cases of sale of jewels to Jose Tejuco and Magdalena de Castro, was properly convicted as guilty of estafa for the misappropriation of the proceeds of the sale, and this amount she must either return, or indemnify the plaintiff therefor, the jewels themselves not being subject to restitution or indemnification, inasmuch as the sale thereof for a lower price than that fixed in the commission was not illegal nor did it constitute the crime of estafa.

The accused also sold another ring to Teodora Tejuco. With reference to this, the conclusion of the judgment is as follows: "The court decides and holds that the ring sold by the accused to Teodora Tejuco was sold at the price fixed for the same between the accused and the offended party, and that Teodora Tejuco has therefore acquired a legal title thereto, and the said ring should be immediately delivered to her by the clerk of this court." Ramona R. Evangelista appealed from this judgment, and this is the third appeal presented to this court.

The judgment appealed from is quite in accordance with the law. Teodora Tejuco's title is certainly a valid and efficient one, namely, by an undeniable sale effected by an agent in accordance with the terms of her commission. And if the ring was lawfully transferred to the possession of the purchaser by a valid and efficient title, it can not be subject to restitution.

There is no defect in the title that would compel the purchaser to make restitution. If she legally acquired the article, she possesses it legally. And what is properly acquired is not subject to restoration.

The appellant says that it should be returned because it is the consequence of a crime; but there is an ambiguity or mistake in this. The possession is not the consequent of a crime; it is the effect of a valid and efficient contract. The crime was effected after the contract was executed, after the possession was lawfully and legitimately consummated, when the agent misappropriated the price obtained in the sale.

This price obtained, which was the object of the unlawful appropriation, was the subject matter of the crime of estafa in accordance with article 535, No. 5, of the Penal Code; but not so the fact of having obtained such price from a legally executed sale.

Based on the grounds respectively set forth, we reverse the findings of the judgment appealed from by Jose Tejuco and Magdalena de Castro, in so far as they declare that the rings and jewels sold to said persons by Juliana Torres should not be returned [to the purchasers], and affirm the finding from which the offended party, Ramona R. Evangelista, has appealed. Without costs in this instance. So ordered.

Torres, Johnson, Carson, and Tracey, JJ., concur.

DISSENTING

WILLARD, J.,

In my opinion, the judgment should be affirmed in its totality.

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