

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. JINTARO UEHARA, DEFENDANT AND APPELLANT.

G.R. No. 42605. October 11, 1935

Ponente: HULL, J.

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HULL, J.:

Appellant was convicted in the Court of First Instance of Davao for estafa. The complaint alleges that on the 18th of February, 1932, the accused committed estafa by selling a piece of real estate standing in his name, although on the 5th of August, 1930, he had sold the same piece of property to Antonio Pichon, and by virtue of the second sale he cheated and defrauded said Antonio Pichon out of the value of the property.

The land in question was known as lot No. 210 of the cadastral survey of Davao. The land in the cadastral proceedings was adjudicated to the defendant-appellant, and the order of the court to that effect was dated the 11th of June, 1930. On the 5th of August, 1930, appellant sold by a pacto de retro for the sum of P2,000 the same land, and this contract of sale was registered in the registry of deeds of Davao. The original certificate of title and duplicate thereof were issued in Manila on the 15th day of October, 1931, and were entered in the registration book in the Province of Davao on the 11th of November, 1931.

When the first pacto de retro fell due on the 4th of December, 1930, appellant went to the attorney of Pichon and asked that Pichon would accept a sum of money for an extension of the period of redemption, but these negotiations were not consummated.

Immediately thereafter, defendant brought suit in the Court of First Instance of Davao claiming that the pacto de retro given in August, 1930, was a false and fictitious document, not reciting the true intent of the parties, but was in effect a mortgage with usurious interest. That case was heard by the Court of First Instance on the 21st of December, 1931, and after proof by both parties was taken, the case was submitted for decision. While the case was so pending, on the 18th of February, 1932, defendant sold the same property by another pacto de retro to Bernarda Gatica for the sum of P2,000. On the 31st of March, 1932, the Court of First Instance decided against the contentions of defendant and held that the contract of the 5th of August, 1930, was a pacto de retro and not a loan. From that decision defendant appealed to this court.

While that appeal was pending, the period of redemption under the second pacto de retro expired, and redemption not having been made, title was consolidated in Bernarda Gatica, and a certificate of title was issued by the registry of deeds of Davao under the Land Registration Act.

On July 20, 1933, in G. R. No. 37486, this court promulgated its decision in the civil case of Jintaro Uehara versus Antonio Pichon, and affirmed the judgment of the Court of First Instance of Davao that the contract of the 5th of August, 1930, was a valid sale.[1]

The Solicitor-General contends that the accused is guilty of a violation of section 119 of the Land Registration Act (Act No. 496), which reads as follows:

"Sec. 119. Whoever, with intent to defraud, sells and conveys registered land, knowing that an undischarged attachment or any other incumbrance exists thereon which is not noted by memorandum on the duplicate certificate of the title, without informing the grantee of such attachment or other incumbrance before the consideration is paid, shall be punished by imprisonment not exceeding three years or by a fine not exceeding one thousand dollars, or by both, in the discretion of the court."

A careful reading of this section however, shows that the appellant did not violate this section. Primarily this section makes a crime the defrauding of an innocent purchaser by the use of a duplicate certificate of title which does not agree with the original certificate on file in the registry office. At the time of the second sale there was no variance between the original and the owner's certificate of title, nor was there an undischarged attachment or any other incumbrance as recognized by the Land Registration Act.

Article 316 and paragraph 1 thereof of the Revised Penal Code reads as follows:

"Art. 316. Other forms of swindling.—The penalty of *arresto mayor* in its minimum and medium period's, and a fine of not less than the value of the damage caused and not more than three times such value, shall be imposed upon:

"1. Any person who, pretending to be the owner of any real property, shall convey, sell, encumber or mortgage the same."

In the case of *United States vs. Drilon* (36 Phil., 834), a second sale of the same property was held to constitute *estafa* under this same article of the Penal Code then in force, which decision was based on similar decisions of the Supreme Court of Spain, based on identical language in the Spanish Penal Code.

It is contended that article 316 as construed by the *Drilon* case is not applicable where the land has been bought within the provisions of the Land Registration Act. At first blush such a contention seemed to the writer to have merit, but it cannot be denied that the statute was enacted to prevent and punish swindles. It is immaterial under the wording of the statute whether under the Spanish system of transfer of property the second purchaser is swindled out of the purchase price of the land that he thought he was buying or whether under the Land Registration Act, the first purchaser loses his rights which he bought and paid for. It seems to us that the moral delinquency is of the same degree and within the authority of the Legislature to punish as a criminal act. Nor does the changed condition of the law relating to the transfer of real property change the crime denounced by this section. The Land Registration Act might make it more difficult to consummate the crime, but it does not change the nature of the act.

The sentence awarded by the trial court is authorized by law. The judgment appealed from is therefore affirmed. Costs against appellant. So ordered.

Avanceña, C.J., Malcolm, Villa-Real, Vickers, Goddard, Diaz, and Recto, JJ., concur.

[1] 58 Phil.,

DISSENTING

ABAD SANTOS, J.,

With all due respect I must dissent from the opinion of the court in this case, convinced as I am that, upon the facts disclosed by the record and the law applicable thereto, the appellant is entitled to a judgment of acquittal.

The majority of the court finds the appellant guilty under article 316, paragraph 1, of the Revised Penal Code,

which reads as follows:

"The penalty of *arresto mayor* in its minimum and medium periods and a fine of not less than the value of the damage caused and not more than three times such value, shall be imposed upon:

"1. Any person who, pretending to be the owner of any real property, shall convey, sell, encumber or mortgage the same."

Commenting on the corresponding article of the Spanish Penal Code of 1870, Groizard says:

"Por Jo demas, los factores del delito descrito en el parrafo primero de este articulo son faciles de apreciar. 1.º La cosa ha de ser inmueble. Si no lo fuese, no existiria el delito aqui previsto, aunque en la mayor parte de los casos habra otro que castigar, Por cosas inmuebles deberemos entender todas las que, segun nuestro derecho civil, tienen ese caracter. 2.º Que el que no es duefio de la cosa finja que lo es, lo cual constituye el dolo especial del presente delito. Si no finje aquella cualidad, sino que obra en la creencia mas o menos fundada de que es suya, aunque no lo sea, la responsabilidad criminal no surgira. 3.º Que la usurpaci6n del dominio tenga lugar mediante la ejecucidn de uno de los tres actos que el texto senala, enajenando, arrendando o empenando la cosa." (Groizard, *Codigo Penal*, vol. 7, p. 222.)

Viada also says:

"Por lo demos, tres condiciones son precisas para que exista el delito que se define en el primer parrafo del articulo : 1.º, que la cosa sobre que recae sea inmueble; si fuera mueble o semoviente, el hecho constituiria quizas el delito de hurto u otro cualquiera, mas no el de estafa aqui previsto; 2.º, que el que no es duefio de dicha cosa, finja, no obstante, que lo es; si creyere serlo en realidad, el hecho constituir£ un error, una ignorancia, mas nunca el delito de estafa, al que es siempre inherente la astucia o el engafio; y 3.º, es preciso que semejante duefio fingido de Ja cosa haya ejecutado algun acto de dominio, en perjuicio del verdadero dueno, por ejemplo, enajenandola, arrendandola, gravandola o hipotecandola." (Viada, *Codigo Penal Come7itado*, 5th ed., vol. 6, p. 533.)

(See also Albert, *Revised Penal Code Annotated*, p. 748; Guevara, *Commentaries on the Revised Penal Code*, pp. 683-584.)

It is thus of the very essence of the crime of which the appellant is convicted by the majority of the court, that the accused be not the owner of the real property conveyed, sold, encumbered, or mortgaged. What is more, according to the authorities, if the accused believed in good faith that he was the owner of the property, he would not be guilty of the crime of estafa, of which deceit or fraud is an essential element. It seems clear, therefore, that if the appellant was the owner of the property in question on February 18, 1932, when he sold the same to Bernarda Gatica, he can not be convicted of the crime of estafa as defined in said article 316, paragraph 1, of the Revised Penal Code. Now, then, under the law and the decisions of this court, the conclusion is inescapable that when the appellant executed the deed of sale in favor of Bernarda Gatica, he was the owner of the property thus sold. The record shows that not only was the land adjudicated to him in the cadastral proceedings, but a certificate of title was duly issued in his name on October 15, 1931. Nothing was noted on the certificate of any right or interest held by Antonio Pichon. Whatever right or interest Pichon had in the land became extinguished by reason of his negligence or failure to have the same noted on the certificate. (See section 39 of Act No. 496.)

In *Manila Railroad Company vs. Rodriguez* (29 Phil., 336), this court held that Torrens title is superior to every title preceding it; that a title once registered under the Torrens system (Act No. 496) is good against everybody and cannot be attacked by any person claiming the same land under title anterior to the decree of registration; and that a title duly registered during the Spanish regime, under the system of registration then in vogue, must yield to a title to the same land duly registered under Act No. 496. In the course of its decision this court said:

"The appellant Jose Basa bases his appeal principally on errors which he alleges the trial court committed in deciding that the land in question belonged to Sugar instead of to him. It is clear from the evidence in this case that Sugar had a Torrens title to the land in dispute. This fact is apparently not disputed by the appellant iBasa and he bases his right to a reversal of the judgment on the proposition that he had a title registered in the registry of property under the Spanish system some thirty years prior to the time when Sugar obtained Torrens title to the same land, and that, therefore, his title, being older and having been registered under the system in vogue under the Spanish regime long before that of Sugar, it should take precedence over Sugar's title; and that, this being so, he should, accordingly, be declared the true owner of the land described in the conveyance.

"This contention is not sound. A Torrens title is superior to every other title preceding it. Under the provisions of Act No. 496 'every decree of registration shall bind the land, and quiet title thereto, subject only to the exceptions stated in the following section. It shall be conclusive upon and against all persons, including the Insular Government and all the branches thereof, whether mentioned by name in the application, notice, or citation, or included in the general description "To all whom it may concern." Such decree shall not be opened by reason of the absence, infancy, or other disability of any person affected thereby, nor by any proceeding in any court for reversing judgments or decrees. In the proceeding to register Sugar's title, it is to be presumed, and there is no question in regard to this, that all steps were taken necessary to give the Court of Land Registration jurisdiction of the case and to notify duly all persons who were necessary parties to the proceeding. The steps required by law having been duly taken and the title having been registered by proper decree, it was good, after it became final, as to everybody, and cannot be attacked by any person claiming the same land under title anterior to the decree of registration.'" (Id., Id., 340, 341.)

It is true that under section 38 of Act No. 496, Pichon had the right to file a petition for review of the decree of registration issued in favor of the appellant, for the purpose of having the same set aside on the ground of fraud. But he failed to exercise his right within the period prescribed by the law, which is one year from the date of entry of the decree. The result was, therefore, that the appellant's title to the property became indefeasible before the sale made by him in favor of Bernarda Gatica. (Cabanos vs. Register, of Deeds of Laguna and Obiiana, 40 Phil., 620; Reyes and Nadres vs. Borbon and Director of Lands, 50 Phil., 791.)

It is also true that even after the lapse of the period prescribed by law for the filing of a petition for review of the decree of registration, Pichon might have compelled the appellant by an appropriate action to convey to him the land covered by the certificate of title, so long as it remained registered in appellant's name, and no other person had acquired it in good faith and for a valuable consideration; but such an action would have been an action in personam and predicated precisely on the theory that he had been unduly deprived of his title to the property by the registration thereof in the appellant's name. (Palet vs. Tejedor, 55 Phil., 790; Severino vs. Severino, 44 Phil., 343; Cabanos vs. Register of Deeds of Laguna and Obinana, supra.) The decision of the majority relies on the case of United States vs. Drilon (36 Phil., 834). Neither the decision in the Drilon case nor any of the decisions of the Supreme Court of Spain therein cited, is apposite here. Those decisions dealt with legal situations quite different from the one obtaining in the present case. They were not concerned with land registered under a system of registration such as that prescribed by Act No. 496. They, however, implicitly recognized the principle that an accused can not be convicted of the crime of estafa defined by article 316, paragraph 1, of the Revised Penal Code, if at the time of the commission of the act complained of he was legally the owner of the property conveyed, sold, encumbered, or mortgaged.

The Solicitor-General contends that the instant case falls under the provisions of section 119 of Act No. 496. As to this it is sufficient to observe that the information filed herein specifically charged the appellant with a violation of article 316 of the Revised Penal Code. Under the information, the appellant can not, I think, be held liable under said section 119 of Act No. 496.

My conclusion, therefore, is that the judgment appealed from should be reversed and the appellant acquitted with

costs de oficio.

Judgment affirmed.

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