

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. FRANCISCO ABAYA, DEFENDANT AND APPELLEE.*G.R. No. 47710. December 28, 1942*

Ponente: PARAS, J.

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In civil case No. 6190 of the Court of First Instance of Laguna, Zosimo Fernandez obtained on January 10, 1933, a judgment against the herein defendant, Francisco Abaya, for the sum of P4,000, with interest at the rate of 10 per cent. To satisfy this judgment, the provincial sheriff sold at public auction the defendant's undivided half interest in certain parcels of land to Zosimo Fernandez for the sum of P4,382.99. On March 28, 1934, the sheriff executed the corresponding certificate of absolute sale. Thereafter, Felicita Abaya, sister of the defendant and owner of the other undivided half of the aforesaid land, instituted in the Court of First Instance of Laguna an action against Zosimo Fernandez to recover the interest which the latter bought at the public auction, on the ground that, prior to said sale, the defendant had conveyed the latter's interest to Felicita Abaya. On January 28, 1936, judgment was rendered in favor of Zosimo Fernandez, which judgment was affirmed by the Court of Appeals on December 9, 1937. Subsequently, or on February 28, 1938, the defendant filed a petition for voluntary insolvency in the Court of First Instance of Laguna. In the schedule of debts accompanying the petition, the defendant included the item of 4,000 as a debt to Zosimo Fernandez; and in the inventory of properties, he listed his undivided half in the land above referred to as being among the properties "registered in his name in the Registry of Property of the Province of Laguna." Both the schedule and the inventory were under oath.

On May 4, 1940, the defendant was charged in the Court of First Instance of Laguna with a violation of article 183 of the Revised Penal Code, in that he—so the information alleged—wilfully, maliciously and feloniously stated under oath in his insolvency case that the undivided half of the land therein mentioned was his, when he fully knew that the same no longer belonged to him, as it was and still is owned by Zosimo Fernandez. The lower court, sustaining the defendant's motion to, quash, dismissed the information on the ground that the acts charged therein do not constitute false testimony as defined in article 183 of the Revised Penal Code. Hence this appeal by the Government.

The appealed judgment is correct. The record fails to show that the defendant maliciously committed the acts imputed to him. They could not be malicious because, at the time the petition for insolvency was filed, the land in fact was still registered in the name of the defendant; and it might have been included in the inventory for fear that he might be accused of concealing property standing in his name in the registry of property, in violation of the Insolvency Law. In other words, the defendant—who could not be expected to determine the propriety, from a legal point of view, of the inclusion—merely stated a fact in said inventory. The acts charged could not be malicious as against the defendant's creditors because, instead of concealing assets, he listed property which should not be included in the inventory. They could not be malicious as against Zosimo Fernandez because the Torrens titles covering the land and specified in the inventory, bore annotations of the writ of execution issued in civil case No. 6190 and of the auction sales in favor of Zosimo Fernandez, which of course duly protected the

letter's rights; and the defendant has not made any allegation either in the petition for insolvency or in the inventory which could militate against or defeat said rights. On the contrary, the defendant made particular reference in the inventory to civil case No. 6190 and to the auction sales. He included his indebtedness to Zosimo Fernandez in the schedule, probably in his very desire to be consistent with the inclusion of the land in the inventory and to safeguard the rights of Zosimo Fernandez.

The appealed order is hereby affirmed, with costs de oficio.

Yulo, C. J., Moran, Bocobo, and Imperial, JJ., concur.

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