

JUAN CASTILLO (ALIAS JUAN DE CASTILLO), PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES, RESPONDENT.*G.R. No. 47804. November 27, 1941*

Ponente: ABAD SANTOS, J.

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The petitioner Juan Castillo was convicted by the Court of First Instance of Nueva Ecija of the crime of estafa under article 316, par. 6, of the Revised Penal Code, and sentenced to 2 months and 1 day of arresto mayor. This judgment of conviction was affirmed by the Court of Appeals.

The question presented is whether, upon the facts found by the Court of Appeals, the petitioner was guilty of the crime charged against him.

It appears that in the intestate proceedings of the deceased Juan Castillo, civil case No. 6463 of the Court of First Instance of Nueva Ecija, the petitioner executed a bond in the sum of P1,000.00 as one of the sureties for the administrator appointed by the court. In order to qualify as such surety, he exhibited Transfer Certificate of Title No. 9683 issued in his name and covering a parcel of land. Before the cancellation of said bond and without judicial authority, he sold the land to Felipe V. Estrella for the sum of P450.00.

Petitioner now contends (1) that as the property sold by him was not specifically pledged in the bond which he signed as surety, he could not rightly be convicted under article 136, par. 6, of the Revised Penal Code, which penalizes the sale by a surety of "real property or properties with which he guaranteed the fulfilment" of his obligation; and (2) that as there was no finding of actual damage, his conviction for the crime of estafa cannot stand.

1. The first contention is without merit. It was to prove his solvency and thus qualify as a surety that petitioner exhibited Transfer Certificate of Title No. 9683. By such act, he in effect guaranteed with the land described in the certificate of title his obligation as surety, for it was upon the strength of his ownership of such land that the bond executed by him was approved. Good faith on his part, therefore, requires that he should not dispose of the land before the cancellation of the bond, without the permission of the court. A contrary view would render the penal sanction of the law ineffective.

2. There is no express finding in the judgment under review that the sale made by the petitioner resulted in any actual damage to the estate of the deceased Juan Castillo, as alleged in the information. Indeed, the damage, if any, is merely potential and speculative. Apart from the circumstance that the petitioner might have other properties with which to satisfy any obligation that could attach to him under the bond, there was the probability that the other surety would make good whatever damage for which the administrator might be held liable. It is well settled that damage is an essential element of estafa. (U. S. vs. Mendezona, 2 Phil. 353; U.S. vs. Berry, 5 Phil. 370; U.S. vs. Leaño, 6 Phil. 368; U. S. vs. Rivera, 23 Phil. 383.) With particular reference to article 316 of the Revised Penal Code, under which the petitioner was prosecuted, it is noteworthy that the penalty prescribed is 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; and such fine is not merely an alternative penalty. It seems clear that the article contemplates the existence of damage as an element of the offense therein penalized. The case of *U.S. vs. Goyenechea*, 8 Phil. 117, and *U.S. vs. Malong*, 36 Phil. 821, cited by the prosecution in support of the theory that the disturbance of property rights of the complainant constitutes real and actual damage, are not in point. The properties involved in those cases belonged to the offended parties, while in the present case there could be no disturbance of the property rights belonging to the estate of the deceased Juan Castillo, because the land sold by the petitioner was his own, and not of the estate.

The judgment under review is reversed, and the petitioner acquitted, with costs de oficio. So ordered.

Avanceña, C.J., Diaz, Moran, and Horrilleno, JJ., concur.

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