

ESTANISLAUA ARENAS ET AL., PLAINTIFFS AND APPELLEES, VS. FAUSTO O. RAYMUNDO, DEFENDANT AND APPELLANT.

G.R. No. 5741. March 13, 1911

Ponente: TORRES, J.

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TORRES, J.:

This is an appeal filed by the defendant from a judgment of conviction rendered by the Hon. Judge Araullo.

On the date of August 31, 1908, the attorneys for the plaintiffs, Estanislaua Arenas and Julian La O, brought suit against Fausto O. Raymundo, alleging, as a cause of action, that Estanislaua Arenas was the owner and proprietor of the jewelry described below with the respective value thereof:

Two gold tamborin rosaries, without bow or reliquary at P40 each.....

P80

One lady's comb for fastening the hair, made of gold and silver, adorned with pearls of ordinary size and many small pearls, one of which is missing.....

80

One gold ring set with a diamond of ordinary size.....

1,000

One gold bracelet with five small diamonds and eight brillantitos de almendras.....

700

One pair of gold picaporte earrings with two diamonds of ordinary size and two small ones.....

1,100

The plaintiffs alleged that the said jewelry, during the last part of April or the beginning of May, 1908, was delivered to Elena de Vega to sell on commission, and that the latter, in turn, delivered it to Concepcion Perello, likewise to sell on commission, but that Perello, instead of fulfilling her trust, pledged the jewelry in the defendant's pawnshop, situated at No. 33 Calle de Ilaya, Tondo, and appropriated to her own use the money thereby obtained; that on July 30, 1908, Concepcion Perello was prosecuted for estafa, convicted, and the judgment became final; that the said jewelry was then under the control and in the possession of the defendant, as a result of the pledge by Perello, and that the former refused to deliver it to the plaintiffs, the owners thereof, wherefore counsel for the plaintiffs asked that judgment be rendered sentencing the defendant to make restitution of the said jewelry and to pay the costs.

In the affidavit presented by the attorney for the plaintiffs, dated September 2, 1908, after a statement and

description of the jewelry mentioned, it is set forth that the defendant was retaining it for the reason given in the complaint, and that it was not sequestered for the purpose of satisfying any tax or fine or by reason of any attachment issued in compliance with any judgment rendered against the plaintiffs' property.

In discharge of the writ of seizure issued for the said jewelry on the 2d of September, 1908, aforementioned, the sheriff of this city made the return that he had, on the same date, delivered one copy of the bond and another of the said writ to the defendant personally and, on the petition and designation of the attorney for the plaintiffs, proceeded to seize the jewelry described in the writ, taking it out of the defendant's control, and held it in his possession during the five days prescribed by law.

On the 15th of the same month and year, five days having elapsed without the defendant's having given bond before the court, the sheriff made delivery of all the jewelry described in the said order to the attorney for the plaintiff, to the latter's entire satisfaction, who with the sheriff signed the return of the writ.

After the demurrer to the complaint had been overruled, the defendant answered, setting forth that he denied each and all of the allegations thereof which were not specifically admitted, explained, or qualified, and as a special defense alleged that the jewelry, the subject ^matter of the complaint, was pledged in his pawnshop by Concepcion Perello, the widow of Pazos, as security for a loan of P1,524, with the knowledge, consent, and mediation of Gabriel La O, a son of the plaintiffs, as their agent, and that, in consequence thereof, the said plaintiffs were estopped from disavowing the action of the said Perello; the defendant therefore prayed that the complaint be dismissed and that the jewelry seized at the instance of the plaintiffs, or the amount of the loan made thereon, together with the interest due, be returned to the defendant, with the costs of the suit against the plaintiffs.

The case came up for hearing on March 17, 1909, and, after the presentation of oral testimony by both parties, the court, on June 23 of the same year, rendered judgment sentencing the defendant to restore to the plaintiff spouses the jewelry described in the complaint, the right being reserved to the defendant to institute his action against the proper party. The counsel for the defendant excepted to this judgment, asked that the same be set aside, and a new trial granted. This motion was denied, exception was taken by the appellant, and the proper bill of exceptions was duly approved, certified to, and forwarded to the clerk of this court.

This is an action for the replevin of certain jewelry delivered by its owner for sale on commission, and pledged without his knowledge by Concepcion Perello in the pawnshop of the defendant, Fausto O. Raymundo, who refuses to deliver the said jewelry unless first redeemed.

The said Concepcion Perello, who appropriated to herself the money derived from the pledging of the jewels before mentioned, together with others, to the prejudice of their owner Estanislaua Arenas, was prosecuted in, the Court of First Instance of this city in cause No. 3955 and sentenced on July 30, 1908, to the penalty of one year eight months and twenty-one days of prision correccional, to restore to the offended party the jewelry specified in the complaint, or to pay the value thereof, amounting to P8,660, or, in case of insolvency, to suffer the corresponding subsidiary imprisonment, and to pay the costs. This judgment is attested by the certified copy attached under letter D to folio 26 of the record of the proceedings in the case of the same plaintiff against Antonio Matute - the pledgee of the other jewelry also appropriated by the said Concepcion Perello - which record forms a part of the evidence in this cause.

Perello having pledged the jewelry in question to the defendant Raymundo, and not having redeemed it by paying him the amount received, it follows that the convicted woman, now serving the sentence imposed upon her, could not restore the jewelry as ordered in that judgment, which has become final by the defendant's acquiescence.

Article 120 of the Penal Code prescribes:

"The restitution of the thing itself must be made, if possible, with payment for deterioration or diminution of value, to be appraised by the court.

"Restitution shall be made, even though the thing may be in the possession of a third person, who had acquired it in a legal manner, reserving, however, his action against the proper person.

"This provision is not applicable to a case in which the third person has acquired the thing in the manner and with the requisites established by law to make it unrecoverable."

The provisions contained in the first two paragraphs of the preinserted article are based on the uncontrovertible principle of justice that the party injured through a crime has, as against all others, a preferential right to be indemnified, or to have restored to him the thing of which he was unduly deprived by criminal means.

In view of the harmonious relation between the different codes in force in these Islands, it is natural and logical that the aforementioned provision of the Penal Code, based on the rule established in article 17 of the same, to wit, that every person criminally liable for a crime or misdemeanor is also civilly liable, should be in agreement and accordance with the provisions of article 464 of the Civil Code which prescribes:

"The possession of personal property, acquired in good faith, is equivalent to a title thereto. However, the person who has lost personal property or has been illegally deprived thereof may recover it from whoever possesses it.

"If the possessor of personal property, lost or stolen, has acquired it in good faith at a public sale, the owner can not recover it without reimbursing the price paid therefor.

"Neither can the owner of things pledged in pawnshops, established with the authorization of the Government, recover them, whosoever may be the person who pledged them, without previously refunding to the institution the amount of the pledge and the interest due.

"With regard to things acquired on exchange, or at fairs or markets or from a merchant legally established and usually employed in similar dealings, the provisions of the Code of Commerce shall be observed."

On January 2, 1908, this court had occasion to decide, among other cases, two which were entirely analogous to the present one. They were No. 3889, Varela vs. Matute, and No. 3890, Varela vs. Finnick (9 Phil. Rep., 479, 482).

In the decisions in both cases it appears that Nicolasa Pascual received various jewels from Josef a Varela to sell on commission and that, instead of fulfilling the trust or returning the jewels to their owner, she pledged some of them in the pawnshop of Antonio Matute and others in that of H. J. Finnick and appropriated to herself the amounts that she received, to the detriment of the owner of the jewelry.

Tried for estafa in cause No. 2429, the said Pascual was convicted and sentenced to the penalty of one year and eleven months of prisidn correctional, to restore to Varela. tjie jewelry appropriated, or to pay the value thereof, and, in case of insolvency, to subsidiary imprisonment; this judgment became final, whereupon the defendant began to serve her sentence. The case just cited is identical to that of Concepcion Perello.

Josefa Varela, in separate incidental proceedings, demanded the restitution or delivery of possession of the said jewelry; the pledgees, the pawnbrokers, refused to comply with her demand, alleging, among other reasons, that they were entitled to possession. The two cases were duly tried, and the Court of First Instance pronounced judgment, supporting the plaintiff's claims in each. Both cases were appealed by the defendants, Matute and Finnick, and this court affirmed the judgments on the same grounds, with costs, and the decisions on appeal established the following legal doctrines:

"1. Crimes against property; criminal and civil liability. - Where, in a proceeding instituted by reason of a crime committed against property, the criminal liability of the accused has been declared, it follows that he shall also be held civilly liable therefor, because every person who is criminally responsible on account of a crime or misdemeanor is also civilly liable.

"2. Id.; Recovery of property unlawfully in possession. - Whoever may have been deprived of his property in consequence of a crime is entitled to the recovery thereof, even if such property is in the possession of a third party who acquired it by legal means other than those expressly stated in article 464 of the Civil Code.

"3. Personal property; title by possession. - In order that the possession of personal property may be considered as a title thereto it is indispensable that the same shall have been acquired in good faith.

"4. Id.; Ownership; prescription. - The ownership of personal property prescribes in the manner and within the time fixed by articles 1955 and 1962, in connection with article 464, of the Civil Code."

In the cause prosecuted against Perello, as also in the present suit, it was not proven that Estanislaua Arenas authorized the former to pawn the jewelry given to her by Arenas to sell on commission. Because of the mere fact of Perello's having been convicted and sentenced for estafa, and for the very reason that she is now serving her sentence, the rest of the dispositive part of the said sentence must be complied with, that is, the jewelry misappropriated must be restored to its owner, inasmuch as it exists and has not disappeared this restitution must be made, although the jewelry is found in the pawnshop of Fausto O, Raymundo and the latter had acquired it by legal means. Raymundo however retains his right to collect the amounts delivered upon the pledge, by bringing action against the proper party. This finding is in accord with the provisions of the above article 120 of the Penal Code and the first paragraph of article 464 of the Civil Code.

The aforementioned decision, No. 3890, Varela vs. Finnick, recites, among other considerations, the following:

"The exception contained in paragraph 3 of said article is not applicable to the present case because a pawnshop does not enjoy the privilege established by article 464 of the Civil Code. The owner of the loan office of Finnick Brothers, notwithstanding the fact that he acted in good faith, did not acquire the jewels at a public sale; it is not a question of public property, securities, or other such effects, the transfer, sale, or disposal of which is subject to the provisions of the Code of Commerce. Neither does a pawnshop enjoy the privilege granted to a monte de piedad; therefore, Josefa Varela, who lost said jewels and was deprived of the same in consequence of a crime, is entitled to the recovery thereof from the pawnshop of Finnick Brothers, where they were pledged; the latter can not lawfully refuse to comply with the provisions of article 120 of the Penal Code, as it is a question of jewels which have been misappropriated by the commission of the crime of estafa, and the execution of the sentence which orders the restitution of the jewels can not be avoided because of the good faith with which the owner of the pawnshop acquired them, inasmuch as they were delivered to the accused, who was not the owner nor authorized to dispose of the same."

Even supposing that the defendant Raymundo had acted in good faith in accepting the pledge of the jewelry in litigation, even then he would not be entitled to retain it until the owner thereof reimburse him for the amount loaned to the embezzler, since the said owner of the jewelry, the plaintiff, did not make any contract with the pledgee, that would obligate him to pay the amount loaned to Perello, and the trial record does not disclose any evidence, even circumstantial, that the plaintiff Arenas consented to or had knowledge of the pledging of her jewelry in the pawnshop of the defendant.

For this reason, and because Concepcion Perello was not the legitimate owner of the jewelry which she pledged to the defendant Raymundo, for a certain sum that she received from the latter as a loan, the contract of pledge entered into by both is, of course, null and void, and, consequently the jewelry so pawned can not serve as security for the payment of the sum loaned, nor can the latter be collected out of the value of the said jewelry.

Article 1857 of the Civil Code prescribes as one of the essential requisites of the contracts of pledge and of mortgage, that the thing pledged or mortgaged must belong to the person who pledges or mortgages it. This essential requisite for the contract of pledge between Perello and the defendant being absent as the former was not the owner of the jewelry given in pledge, the contract is as devoid of value and force as if it had not been made, and as it was executed with marked violation of an express provision of the law, it can not confer upon the defendant any rights in the pledged jewelry, nor impose any obligation toward him on the part of the owner thereof, since the latter was deprived of her possession by means of the illegal pledging of the said jewelry, a criminal act.

Between the supposed good faith of the defendant Raymundo and the undisputed good faith of the plaintiff Arenas, the owner of the jewelry, neither law nor justice permit that the latter, after being the victim of embezzlement, should have to choose one of the two extremes of a dilemma, both of which, without legal ground or reason, are injurious and prejudicial to her interests and rights, that is, she must either lose her jewelry or pay a large sum received by the embezzler as a loan from the defendant, when the plaintiff Arenas is not related to the latter by any legal or contractual bond out of which legal obligations arise.

Is it true that the plaintiffs' son, attorney Gabriel La O, intervened and gave his consent when Concepcion Perello pawned the jewelry in litigation with Fausto Raymundo for P1,524? In view of the evidence offered by the trial record, the answer is, of course, in the negative.

The parents of the attorney Gabriel La O being surprised by the disagreeable news of the disappearance of various jewels, amounting in value to more than P8,600, delivered to Elena Vega for sale on commission and misappropriated by Concepcion Perello, who received them from Vega for the same purpose, it is natural that the said attorney, acting in representation of his parents and as an interested party, should have (proceeded to ascertain the whereabouts of the embezzled jewelry and to enter into negotiations with the pawnshop of Fausto O. Raymundo, in whose possession he had finally learned were to be found a part of the embezzled jewels, as he had been informed by the said Perello herself; and although, at first, at the commencement of his investigations, he met with opposition on the part of the pledgee Raymundo, who objected to showing him the jewels that he desired to see in order to ascertain whether they were those embezzled and belonging to his mother, the plaintiff Arenas, thanks to the intervention of attorney Chicote and to the fact that they succeeded in obtaining from the embezzler, among other papers, the pawn ticket issued by Raymundo's pawnshop, Exhibit E, of the date of May 4, 1908, folio 19 of the record in the case against Matute, Gabriel La O succeeded in getting the defendant to show him the jewelry described in the said ticket together with other jewels that did not belong to La O's mother, that had been given the defendant by Ambrosia Capistrano, Perello's agent, in pledge or security for a loan of P170.

Gabriel La O, continuing the search for the other missing jewelry belonging to his mother, found that Fausto O. Raymundo was in possession of it and had received it from the same embezzler as security for a debt, although the defendant Raymundo would not exhibit it until he issued the pawn tickets corresponding to such jewels; therefore, at Raymundo's request, Perello, by means of the document Exhibit C, signed by herself and bearing date of June 10, 1908, folio 28 of the record, authorized her son Ramon to get from the defendant, in her name, the pawn tickets of the said other jewelry, for which such tickets had not yet been issued; Raymundo then wrote out the tickets - Exhibits L, LL, and M, all dated June 22, 1908, and found on folios 20, 21, and 22 of the record of the aforesaid proceedings against Matute - in the presence of the attorney Gabriel La O, who kept the said three pawn tickets, after he had made sure that the jewels described therein and which Raymundo, taking them out of his cabinet, exhibited to him at the time, were among those embezzled from his mother.

So that, when the three aforementioned pawn tickets, Exhibits L, LL, and M, from the pawnshop of the defendant, were made out, the latter already, and for some time previous, had had in his possession as a pledge the jewelry

described in them, and the plaintiffs' son, naturally desiring to recover his parents' jewelry, was satisfied for the time being with keeping the three pawn tickets certifying that such jewelry was pawned to the defendant.

Moreover, the record discloses no proof that the attorney Gabriel La O consented to or took any part in the delivery of the jewelry in question to the defendant as a pledge, and both the said defendant, Raymundo, and the embezzler Perello, averred in their respective testimony that the said attorney La O had no knowledge of and took no part in the pledging of the jewelry, and Perello further stated that she had received all the money loaned to her by the defendant Raymundo. (Folios 13 to 14, and 76 to 80 of the record in the case against Matute.)

The business of pawnshops, in exchange for the high and onerous interest which constitutes its enormous profits, is always exposed to the contingency of receiving in pledge or security for the loans, jewels and other articles that have been robbed, stolen, or embezzled from their legitimate owners; and as the owner of the pawnshop accepts the pledging of jewelry from the first bearer who offers the same and asks for money on it, without assuring himself whether such bearer is or is not the owner thereof, he can not, by such procedure, expect from the law better and more preferential protection than the owner of the jewels or other articles who was deprived thereof by means of a crime and is entitled to be excused by the courts.

Antonio Matute, the owner of another pawnshop, being convinced that he was wrong, refrained from appealing from the judgment wherein he was sentenced to return, without redemption, to the plaintiffs, another jewel of great value which had been pledged to him by the same Perello. He undoubtedly had in mind some of the previous decisions of this court, one of which was against himself.

For the foregoing reasons, whereby the errors attributed to the judgment of the Court of First Instance have been discussed and decided upon, and the said judgment being in harmony with the law, the evidence and the merits of the case, it is proper, in our opinion, to affirm the same, as we hereby do, with the costs against the appellant. So ordered.

Arellano, C. J., and Mapa, J., concur.

Carson, Moreland, and Trent, JJ., concur in the result.

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