

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. NICASIO CAPULE, DEFENDANT AND APPELLANT.

G.R. No. 7447. January 02, 1913

Ponente: TORRES, J.

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TORRES, J.:

Appeal by the defendant from a judgment of conviction rendered in this case by the Honorable Vicente Jocson, judge.

On September 2, 1903, Nicasio Capule, for the purpose of appropriating to himself a tract of coconut land, situated in the town of San Pablo, Laguna, without the knowledge or consent of the owners thereof, the married couple Aniceto Maghirang and Isabel Pili, by agreement and cooperation with the notary public, Inocente Martinez, who later died, prepared and drew up a document setting forth the sale in his favor of the said land, pretending that it was made and executed by the said owners of the tract, stating in the document that they had made the declaration that they had sold said land for the sum of P550 pesos paid at the time of the sale to the vendors, and Jacinto Peñaflor and Jorge Tolentino appear in said document as witnesses of the execution thereof; and Eulogio Ortega and Doroteo Guia as the signers of the deed of sale, because the alleged vendors did not know how to do so. Recorded at the bottom of the document was their ratification of its contents in the presence of said notary, before whom the said married couple appeared. The defendant Capule exhibited said document later, although he had been assured that it was false, in a trial before the justice of the peace of that town in the attempt to sustain his alleged right to the said piece of land.

For this reason a complaint was filed on February 3, 1910, by the provincial fiscal in the Court of First Instance of Laguna, charging Nicasio Capule with the crimes of falsification of a public document and estafa. After due trial the judge rendered judgment therein on March 21, 1911, sentencing Nicasio Capule to the penalty of eight years of presidio mayor, to payment of a fine of 2,000 pesetas, the accessories, and the costs; from which judgment the defendant appealed.

The document whose falsification is here in question, Exhibit A, the original whereof appears at pages 17 and 148 of the file of exhibits and has been attached to the complaint, seems to have been executed on September 2, 1903, by Aniceto Maghirang y Espiritu and Isabel Pili y Emnaceno, of legal age, residents of San Pablo who declare therein that they have agreed with the accused Capule on the real and absolute sale of a piece of land planted with 42 fruit-bearing coconut trees and approximately 300 not bearing fruit, for the sum of P550, which the purchaser has paid them to their entire satisfaction, which land is located in the place called Quinayoan, barrio of Dolores of the said town, with its boundaries and situation stated; and further setting forth that the land is the property of Isabel Pili, who acquired it by inheritance from her deceased niece, Claudia Reyes, according to a certified copy of some affidavit proceedings; that the land described had not been sold, ceded or encumbered in favor of any person other than Nicasio Capule, to whom then and thenceforth they delivered the possession and usufruct of said land as its legitimate owner, with right to alienate it, they being responsible to Capule, his heirs and successors in interest for the ownership, and agreeing to defend him against any just claims that might be

presented; and Nicasio Capule y Capitulo, informed of the contents of the document by the vendor married couple, accepted it on his part; and as the vendors do not know how to sign Eulogio Ortega and Doroteo Guia do so at their request, as does also the purchaser, who signs the document in duplicate and to the same effect in the town hall of San Pablo, and there furthermore appear therein, the signatures of Jacinto Penaflor and Jorge Tolentino as witnesses. On the same date appears the certificate of the notary public, whose commission extended to January 1, 1905, wherein it is recorded that personally appeared before him the married couple Maghirang and Pili, whom he knew as the executors of the foregoing document and they ratified it as executed of their own free will, the husband, as well as the purchaser, exhibiting his cedula, but not the woman because she was exempt from payment thereof.

It likewise appears from the evidence adduced in this case that said married couple Maghirang and Pili were the owners of said land, which they possessed and had the usufruct of and for which they paid to the Government the corresponding land tax; that on January 31, 1904, said married couple sold a portion of said land with 150 coconut trees to Esteban Reyes and his wife Elisea Maghirang for 250 pesos, according to Exhibit B, and since then Reyes has possessed and had the usufruct of the portion of land he had bought, and made declaration before the land-tax board in May, 1906, as of land belonging to him, according to Exhibit E, which sale was ratified by the vendors in favor of Reyes before the notary Segundo Abrera on May 2, 1908, Exhibit C.

On May 2, 1908, the married couple Aniceto Maghirang and Isabel Pili likewise sold the remaining portion of the said land with its coconut trees to Melecio Briñas for the sum of 650 pesos, before the notary public Segundo Abrera, according to Exhibit J, and since then Briñas has possessed and had the usufruct of the land purchased, although in the tax list the tract continues in the name of the vender, who had made declaration in May, 1906, Exhibit K, and had been paying the tax from 1903, Exhibit P, although Reyes, the owner of one part which he had bought in 1904, appears to have paid the tax up to 1910, Exhibit F.

Although Esteban Reyes was in lawful possession of a portion of the land he had purchased, on February 2, 1909, Nicasio Capule filed a complaint before the justice of the peace of San Pablo accusing him of the theft of coconuts from the land he possessed and of which Reyes was the owner; but the court dismissed the case for lack of evidence of the right alleged by the plaintiff, with the costs against him, Exhibit D, page 17 of the record.

On April 16, 1909, Nicasio Capule, claiming to be the owner of the coconut land situated in Dolores, the subject matter of an alleged sale, accused the married couple Maghirang and Pili and Eusebio Soriano of theft, and in spite of the fact that he exhibited the document marked "Exhibit A", setting forth the said sale made in his favor by that married couple, the justice of the peace acquitted the accused of the crime of theft, Exhibit 1, page 67; and on June 4, 1909, according to Exhibit I, page 107 of said record, Aniceto Maghirang and Guadalupe Javier were also acquitted of the crime of coercion with which they were accused.

On October 21, 1909, Nicasio Capule and his wife were accused by Nemesio Briñas of the crime of theft in the justice of the peace court of San Pablo and upon trial were sentenced to two months of arresto mayor and payment of P14.25 with the costs, from which judgment they appealed to the Court of First Instance, page 54 of the record, although at the request of the fiscal the case was dismissed, because the action exercised by the complainant had to be settled in a civil suit.

Although Capule presented, in some of the said hearings before the justice of the peace court of San Pablo, the deed of sale, Exhibit A, for the purpose of proving that he was the owner of the land in question, yet in the judgments rendered therein said instrument was held to be false and no probative value whatever was attached to it.

Aniceto Maghirang denies that he sold the said land to Nicasio Capule or that he executed in his favor any

document of sale, stating that he had conferred a power of attorney upon him so that he might represent himself and his wife, who later died, in a suit they had with Maximino Reyes, because of the absolute confidence they had in the defendant, just as it was the latter himself who drew up the document that was later signed in his stead by Eulogio Ortega, because he could not read or write; but he denied that he or his wife had ever been in the house of the notary Inocente Martinez to execute or ratify any document or that he and his wife Isabel Pili, when she was alive, had told the defendant Capule that they wished to sell the said land and that he had offered to buy it.

Nicasio Capule avers that the said document, Exhibit A, was drawn up in his own house in the presence of the married couple, Aniceto Maghirang and Isabel Pili, for whom he had to translate the contents of the document into Tagalog, and they then signified their agreement; and as they could not sign, Eulogio Ortega and Doroteo Guia did so in their stead, and at that time Jacinto Peñaflor and Jorge Tolentino also signed it as witnesses; and that on the afternoon of that day the married couple Maghirang and Pili appeared in the house of the notary Martinez and ratified before him the said document in the presence of the witness testifying; all of which Aniceto Maghirang denies, asserting that he did not execute said document, or ratify it before the notary Martinez, for he had never been in the latter's house nor had he ever seen the document, Exhibit A. His wife, Isabel Pili, did not testify, for she had died in the meantime.

Let us examine the statements of the persons who appear to have signed the document, impugned as false, in place of the married couple executing it, and of one of the witnesses to the execution of the said document, for it does not appear that the other, Jorge Tolentino, testified.

Upon making his statement and after having been informed of the contents of the document, Exhibit A, Doroteo Guia denied that he had been present in the drawing up and execution thereof, or that he had ever known that the married couple Aniceto Maghirang and Isabel Pili had sold any land to the defendant, Nicasio Capule, although he remembered that on a certain occasion said married couple had asked him to sign for them in the defendant Capule's house a document of power of attorney made out in Capule's favor, so that the latter might represent them in a suit they were prosecuting against Maximino Reyes, and believing that it was in fact a question of a power of attorney, as they had assured him, went to the defendant's house and without informing himself of the contents of the document that Capule spread out on a table, signed it, but he denies that Eulogio Ortega, Jacinto Peñaflor, and Jorge Tolentino, with whom he was acquainted, were present in that house.

Eulogio Ortega likewise denied that he signed any document of sale of land or that he had ever been informed that the married couple Maghirang and Pili had sold any land to the defendant Nicasio Capule, although he remembers that one day about seven years ago Nicasio Capule and Isabel Pili came to his house and the latter told him that as she did not know how to write she begged him to do the favor of signing in her stead a power of attorney, whereupon the defendant told him that as he did not know Spanish the contents of said document would be translated to him so that he might understand them, stating at the same time that a power of attorney was conferred upon him, Capule, by Aniceto Maghirang and Isabel Pili in the suit against Maximino Reyes, the attorney thus authorized responding for its result, without the necessity for the intervention of the married couple granting the power; and that after being informed of the contents of the document presented to him he signed it, and he asserts that said document is Exhibit A; that on that occasion Doroteo Guia, Jacinto Peñaflor, and Jorge Tolentino were not present; and that one Sunday, when he was passing a tienda with Jorge Tolentino and Domingo Capuno, the defendant Capule, who was there, called to him and after offering them wine told him that they should understand each other for that document which he, Capule, had said was a power of attorney was really a deed of sale executed in his favor by Aniceto Maghirang and in case of winning the suit Capule would give him P200.

Jacinto Peñaflor, who figures in said document as a witness, having the same before him, stated that the signature

which appears therein with his name and surname looks like his, but he could not assert definitely whether such signature was his or not, for he does not remember having signed such a document in the presence of the married couple Maghirang and Pili and the individuals Eulogio Ortega, Doroteo Guia, and Jorge Tolentino, setting forth the sale of a tract of land to Nicasio Capule, and that he did not recognize the signatures of Doroteo Guia and Eulogio Ortega.

From the result of taking these statements and the conduct of the accused together, it is logically inferred that after preparing the document, Exhibit A, he tried by all the means he thought expedient to assert his ownership of the land which, under an alleged title of acquisition, had come to be his property and to that end he tried to dispose of the products of the young trees that were on the tract, even daring to trample upon the legitimate rights of its original owners and of the new ones who had later acquired it, up to the point of accusing them as perpetrators of crimes directed against his pretended and false right of ownership, which he claimed to have acquired through the said false instrument.

Believing that with the document, Exhibit A, he could get the courts to override the true owners of the land, which he pretended its original owners had sold, in the various complaints he presented before the justice of the peace of San Pablo against the offended alleged owners and one of the new owners who acquired part of the land in question, as well as when he was accused of theft by the owner of the remaining part of the tract, the defendant dared to assert that he was the owner thereof and of the coconut trees growing thereon, even to the point of exhibiting said false instrument, but in spite of his allegations and his documentary evidence the persons accused by him were acquitted, while Capule himself was convicted of theft of coconuts on a complaint of one of the owners of the said land. The notary, Inocente Martinez, was not examined, for he had died in the meantime.

It therefore appears to be plainly proven that the crime of falsification of a document has been committed, and while it may not be public still it is of an official or notarial character, provided for and penalized in articles 300 and 301, because the defendant executed upon said notarial document of an official character acts constituting falsification, by counterfeiting therein the intervention of the married couple Aniceto Maghirang and Isabel Pili, to whom he ascribed statements different from what they had made to him and by perverting the truth in the narration of facts, getting two persons to sign in the name of said married couple through deceit, after giving them to understand that the document contained a commission or power of attorney, when in fact it was a deed of sale of a piece of land, the legitimate owners whereof had never intended or consented to its alienation.

None of the persons who appear to have signed said document and seem to have been present at its execution were informed of its true contents, because they all confided with the greatest good faith in the false and deceitful statements of the defendant, believing what he said to the effect that said instrument was a commission voluntarily conferred upon him by the couple executing it, who never intended, to execute any document of sale of their property to the defendant, who went to the extreme of getting a notary to certify to its ratification before him, made apparently by the alleged vendors in the contents of the said false document.

The fact that the married couple Maghirang and Pili did not know how to read and write certainly reveals great ignorance and lack of culture in them, but when they got to be landowners and acquired property of some value, they cannot be absolutely denied the ability to distinguish a deed of sale from a power of attorney, because they have demonstrated well enough that they understood their purpose to be that the defendant should represent them in a suit pending¹ in a court and that they had never intended or executed any act for the alienation of a tract of land belonging to them in favor of the defendant, and it is therefore unquestionable that he took advantage of the opportunity when he was to have executed a document or instrument of power of attorney, which the married couple desired, to draw up maliciously and deceitfully a deed of sale in his favor, deceiving the alleged vendors and the two persons who signed for them and making them believe, that the document executed was a power of

attorney or commission, when in fact it was a deed of sale and is the Exhibit A, wherein, if he did not forge the signatures of the two witnesses Peñaflor and Tolentino, he must have obtained them in an equally deceitful way.

If it were true that the vendors had really alienated their coconut land to the defendant, their continuing to pay the land tax is unexplained. In January, 1904, a part of said land with its coconut trees was sold to Esteban Reyes and in May, 1908, the rest of the tract was sold to Melecio Briñas. Persons so simple, even ignorant and of little culture, as the offended parties, would not have dared to sell successively to two of their neighbors in two portions the said land, if it had been in fact already sold to the defendant Capule; while the latter, by profession a clerk and acting as such for the notary Martinez, who made sworn statements before the assessment board and paid the land tax for the year 1906, never complied with these obligations of landowner in connection with the land which, according to Exhibit A, he had acquired on September 2, 1903, yet on the other hand it does not appear why he did not enter in possession of the tract if he had really bought it in September of that year, which indicates that although he dared to draw up a false document with the connivance of the notary, his boldness did not prevail to the extent of depriving in a frank and open manner its legitimate owners of the possession of the land by appealing to the courts to assert his right, provided he was sure that it was legitimate.

Although under article 535 of the Penal Code those who commit fraud by causing another to subscribe a document by the use of deceit, as the defendant has done, incur, according to paragraph 7 thereof, the penalties set forth in the preceding article; still when as in the present case the crime of falsification was committed for the purpose of getting a piece of real property, which is the profit its perpetrator sought to obtain, he is regarded as duly punished as guilty of falsification of a notarial document, in which crime fraud or estafa is held to be included, with the penalties indicated in said article 301 of the Code.

The defendant pleaded not guilty and alleged that the married couple Maghirang and Pili had positively sold him the land to which Exhibit A refers for the sum of P500 which he forthwith delivered to them, Eulogio Ortega and Doroteo Guia and two other eyewitnesses to the execution of the document, having signed the instrument which he drew up in his house in the presence of all of them, and that it was he who drew up the certificate of ratification authorized by the notary and interpreted the contents of the document with its ratification before the notary to the vendors, who really did not know or understand Spanish, on the afternoon of the same date on which said instrument was drawn up; further stating that immediately afterwards he took possession, in the same month of September, 1903, of the land he had bought and from that time on picked the fruit the coconut trees produced, although he was disturbed in his possession by the vendors themselves and the neighbors Esteban Reyes and Melecio Briñas; that it was true that he had not in 1906 made any declaration of ownership of said land, as is ordered for the purposes of assessment, but he paid the land tax for that time by delivering the money to Isabel Pili, although he did not know whether the receipts had been made out in her name. The defendant, who is a person of more education and knowledge than the offended parties, even alleged other defenses which were in like manner as those stated completely unsupported.

He tried to prove that in January, 1906, he sold said land under pacto de retro for two years to Andres Borja, who possessed it during those two years, although the alleged purchaser Borja said that only a private document was made out for the sale nor did he require of the defendant any previous document of ownership to evidence the defendant's right to the land sold, which private document was not exhibited in the case and no proof was adduced to show Borja's possession of the land sold to him; and what is stranger still is that in the declaration of ownership of the land, Exhibit K, page 116, presented by the offended party Aniceto Maghirang in May of the same year, 1906, the alleged Andres Borja appears to have signed as a witness, attesting that the land was Aniceto Maghirang's and thus Andres Borja signs at page 87 of his statement, in spite of the alleged previous purchase, nor does it appear that the defendant redeemed the tract.

An attempt was also made to prove that in November, 1908, the defendant Capule sold the same land absolutely to Marcelino Capirina with another tract, which is set forth in the document, Exhibit B, ratified before a notary, for the sum of P2,500, and the purchaser forthwith took possession of the lands sold. If this absolute sale is true it is incomprehensible why the purchaser Capirina did not ever attempt to enter into possession of the land in question sold to him in November, 1908, on which date the original owners, Maghirang and Pili, had already got rid of said land, having sold a part thereof to Esteban Reyes on January 31, 1904, and the remainder on May 2, 1908, to Melecio Briñas. These new owners took possession from that time on of the respective portions of the land they had acquired, nor does it at all appear in the case that the purchaser Capiriña asked the alleged vendor to make delivery of the land sold to him, or that he ever appealed in any way to the courts. Moreover, in presenting his complaints years later against the married couple Maghirang and Pili and others, the defendant Capule did so in the capacity of owner of that very land, so it is not true that he had previously sold it to the said Capiriña.

These two alleged, sales to Borja and Capiriña were ways and means chosen by the defendant to see if he could effectually deprive the married couple Maghirang and Pili of their right to the land in question, since at that time he did not yet dare to exhibit the false instrument he had maliciously and fraudulently drawn up and he did not secure from said document the results he expected and intended to become the owner of the land by means of a false instrument.

Likewise the alleged transaction that he says Eulogio Ortega proposed to him to allow rescission of the alleged sale in the document, Exhibit A, through return of the price by the vendors, a transaction proposed, according to the accused and his witness. Silvestre Capiriña, one day in the month of July, 1909, is in every way unlikely to have been made in the name of Aniceto Maghirang, because the land had already been sold some years before to Esteban Reyes and Melecio Briñas, and therefore the offended party could not get Ortega to talk with the defendant to propose said transaction for the return of a piece of land that had never been sold to him but to the said Reyes and Briñas in 1904 and 1908, and in 1909 he no longer had any interest or right in the land in question, aside from the fact that he has not proved that the offended party Maghirang ever intrusted such a commission to Eulogio Ortega or authorized him to make the proposition. Eulogio Ortega denied having interviewed the defendant Capule on behalf of Aniceto Maghirang. Such allegations are nothing more than ingenious quibbles and tricks invented by the defendant's counsel to save him from the punishment he deserves as the proven perpetrator of the crime of falsification.

Starting from the hypothesis that the defendant really obtained in a fraudulent and deceitful manner the consent of the married couple Maghirang and Pili to the execution of said false instrument, his counsel argues that still he was not guilty of the crime of falsification of a public document, in accordance with the finding of this court in the decision of the case against Geronimo Milla (4 Phil. Rep., 391), wherein the following principle was laid down:

"The fact that one's consent to a contract may be obtained by mistake, violence, intimidation, or fraud does not make the contract a false contract, and therefore a person who has obtained such contract by those means, whatever be the crime he may be guilty of, is not guilty of the crime of falsification either of a public or of a private document."

This was the question of a contract wherein the offended parties gave their consent to the execution of the document that was later impugned as false, although this consent was obtained through intimidation which the defendants in that case, Juan Cardona and Geronimo Milla, had used upon them, and for this reason the court, in view of the fact that the contracting parties consented to the terms of the instrument, could not find that there was falsification in the statement of the facts, according to article 300 of the Penal Code, merely because the consent had been secured through intimidation.

As has been seen, there was no contract in the present case, nor any consent to the contract pretended to have been

stipulated in the instrument, Exhibit A, wherein the defendant entered statements ascribed to the alleged vendors, who proposed and intended to execute an instrument of commission or power of attorney in favor of the defendant, but not a deed of sale, as in bad faith and with evident perverseness the defendant did, perverting the truth in the statement of the facts and ascribing to the offended parties statements different from those they made to him in the counterfeited document, since the statements set forth therein were not characteristic and constitutive of an instrument of power of attorney in his favor in order that he might represent them in a suit against Maximino Reyes.

Finally, the decision of the Supreme Court of the United States in the case of *Weems vs. U. S.* (217 U. S., 349) is vainly invoked, for Nicasio Capule is not a public officer and, moreover, as he is accused of the crime of falsification of a notarial document of official character equivalent to a public document the principle laid down in said decision is totally inapplicable in his favor. The defendant Capule does not come within the purview of article 300 of the Penal Code, but of 301, which fixes the penalty, not of *cadena temporal* but of *presidio mayor*; further keeping in mind that the act of falsification of a public document in itself constitutes a crime, morally and legally punishable, even though to date the penal law with respect to falsification of a public document committed by public officers, in lieu of said article 300 of the code, has not yet been promulgated; but article 301, applicable to the present case, has not been repealed and subsists in all its force.

The concurrence of neither extenuating nor aggravating circumstances can be found in the commission of the crime, and therefore the penalty fixed in said article 301 of the code must be imposed in its medium degree.

For these reasons, whereby the errors assigned to the judgment appealed from are found to be refuted, we hold that it should be affirmed; provided, however, that Nicasio Capule be sentenced to the penalty of eight years and one day of *presidio mayor*, to the accessories fixed in article 57 of the code, to the payment of a fine of 5,000 pesetas, without subsidiary imprisonment in case of insolvency, according to article 51; and to the costs in the case. So ordered.

Arellano, C. J., Mapa, Johnson, and Carson, JJ., concur.

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