

QUINTINA REYES, PETITIONER AND APPELLEE, VS. GUILLERMO F. RUIZ ET AL., OPPONENTS AND APPELLANTS.*G.R. No. 9536. July 24, 1914*

Ponente: TORRES, J.

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An appeal by the defendants from the order directing delivery of pawned jewels. A complaint was presented by the prosecuting attorney charging Marcelina Bantog with having defrauded Quintina Reyes of various jewels, described in said complaint, and which the accused received to sell on commission for P400, the value thereof, obligating herself to return them to their owner in case they should not be sold, or in case of their sale to deliver the price thereof. Instead of carrying out the contract Bantog fraudulently disposed of said jewels for her own profit and advantage and to the prejudice of the aggrieved party by pawning them in the pawnshops of Antonio Matute & Co., Geronimo Sanchez, Guillermo F. Ruiz, and Fausto O. Raymundo, as appears from the pawn tickets Nos. 49427 and 49297 of Matute's pawnshop; No. 28402 of Raymundo's; No. 12497 of Ruiz'; and No. 5128 of that of Geronimo A. Sanchez.

Upon arraignment the accused pleaded guilty and the court upon the merits of the case sentenced her to the penalty of four months and one day of arresto mayor, to pay an indemnity of P400 to the injured party, and in case of insolvency to the corresponding subsidiary imprisonment, provided that the latter should not exceed a third of the principal penalty, and the payment of the costs. The accused did not appeal and on November 19, 1913, began to serve her sentence.

By a written motion of November 20, of the same year, counsel for the injured party, the owner of the said jewels, petitioned that, in accordance with the provisions of article 120 of the Penal Code, the owners of the four pawnshops mentioned be directed to restore the jewels described in the petition without any indemnity on the part of the petitioner.

The said pawnbrokers, Antonio Matute, Geronimo Sanchez, Guillermo F. Ruiz, and Fausto O. Raymundo, were notified and summoned to appear at the hearing of the motion at 8 o'clock a. m. on November 26, 1913, and, as none of them appeared, the court by order of the same date directed that they deliver to Quintina Reyes, without indemnity on her part, the jewels specified in said order. When the pawn-brokers had been informed of this decision, Geronimo Sanchez, according to the statement of counsel for the offended party, returned to her the jewels referred to in pawn ticket No. 5128, but counsel for Guillermo F. Ruiz, Fausto O. Raymundo, and Antonio Matute appealed to this court and in their brief asked that the said order be set aside with the costs against the appellee, alleging that the lower court erred in ordering restitution of the jewels in question without due indemnification; that it also erred in accepting as a fact that said jewels were pawned in their shops, without the corresponding pawn tickets having been exhibited as proof; and, finally, that it erred in ordering restitution of the jewels without due process of law.

It is beyond dispute that the jewels referred to in the pawn tickets issued by the pawnshops of Guillermo F. Ruiz,

Fausto O. Raymundo, and Antonio Matute, which were the subject matter of the estafa committed by the accused and convicted party, Marcelina Bantog, were the property of Quintina Reyes, who delivered them to Bantog for sale, with the obligation of returning them if they were not sold; but the latter, acting in bad faith, converted and disposed of said jewels by pawning them with the appellants, without the knowledge of their lawful owner and to her prejudice; and, moreover, the perpetrator of the estafa kept the money received from pawning the jewels.

Among the civil responsibilities incurred by a person committing estafa there appears in the first place, according to article 119 of the Penal Code, that of restoring the thing taken.

Article 120 of the same Code says:

"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."

According to the text of the foregoing article the jewels were not acquired by the appellants in the manner and with the legal requisites that would make them unrecoverable under the provisions of article 464 of the Civil Code. The jewels were pawned without the consent of their owner, to her fraud and prejudice, and must be restored by the appellants even though they acquired them under a legal contract and notwithstanding the fact that they are third parties with respect to the agreement between the owner of the jewels and the accused, for they are under a definite obligation to restore them to their owner without any obligation on her part to make good the amount for which they were pawned, and for which the three appellants can make demand upon the accused who appropriated them to her own benefit.

The provision of law is positive and there is no sound reason for failure on the part of the appellants to obey it, and it has always been thus observed in various similar cases decided by this court, as may be seen in the decisions in the cases of Varela vs. Matute (9 Phil. Rep., 479) and Varela vs. Finnick (9 Phil. Rep., 482).

It is to be noted that when the appellants were summoned in due form to the hearing upon the motion presented by the appellee, who was entering claim for the jewels, not only did they not allege any reason against the claim of the owner of the jewels, but they did not even appear in the court when the hearing took place.

The indemnity ordered in the judgment is understood in the case that restitution of the jewels would be impossible, as the order established for making effective the responsibility under article 119 of the Code is: first, restitution; second, reparation for the injury; and third, indemnity.

For the foregoing reasons, whereby the errors assigned to the order appealed from are deemed to have been refuted, it is proper to affirm the order, as we hereby do, with the costs in equal parts against the appellants.

Arellano, C. J., Johnson, Carson, Moreland, and Araullo, JJ., concur.

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