28 Phil. 147

[G.R. No. 9791. October 03, 1914]

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. VICENTE F. SOTELO, DEFENDANT AND APPELLANT.

D E C I S I O N

JOHNSON, J.:

On the 5th day of January, 1914, the prosecuting attorney of the city of Manila presented a complaint against the said defendant, charging him with the crime of estafa. The complaint alleged: "That on or about January 2, 1914, in the city of Manila, Philippine Islands, the said Vicente F. Sotelo, having received from one Manuel Araneta for safe-keeping, on commission or for administration, a plain gold ring set with three diamonds, valued at P250, the property of the said Manuel Araneta, for the purpose of selling it and delivering the proceeds thereby derived to the said Manuel Araneta within a period of two hours or of returning the said ring to the latter in case he should be unable, to sell it, the said accused, Vicente F. Sotelo, did, then and there, willfully, unlawfully, and criminally misapply, misappropriate, and convert the said ring or its value in the sum of P250, Philippine currency, to his own benefit, to the damage and prejudice of the said Manuel Araneta in the sum of P250, equivalent to 1,250 *pesetas*; that the accused is a recidivist; all contrary to law."

Upon said complaint the defendant was duly arrested, arraigned, tried, found guilty, and sentenced, by the Honorable Richard Campbell, judge, to be imprisoned for a period of four months and one day of *arresto mayor,* and to pay the costs. From that sentence the defendant appealed to this court and made the following assignments of error;"First. The trial court erred in finding that Manuel Araneta or Alejandra Dormir testified that Manuel Araneta delivered the ring to the defendant, upon an agreement that the defendant should

sell the same for not less than P250, Second. The trial court erred in finding that the defendant was guilty, beyond a reasonable doubt."

With reference to the first assignment of error, the lower court said: "He [Manuel Araneta] states positively that he delivered the ring to the defendant, with the distinct understanding that the latter should sell it and return with the money to him, the agreement being that he should sell it for not less than P250."

An examination of the record, however, shows that Manuel Araneta testified with reference to the price for which the defendant was to sell the ring, as follows: "On the morning of the 2d day of January (1914) this year, I met Mr. Sotelo, the accused in this case. He asked me where I was going and I told him I was going to sell a diamond ring. I asked him if he could find a purchaser for me, because, I tojd him, the best offer I had received was P120. About 12:30 that same day Mr. Sotelo appeared at my house; at that time we were eating; my brother-in-law, my sister, and the owner of the ring (Alejandra Dormir) were there eating. He stated he had at last found a purchaser who was willing to pay P180 or P190, I do not remember exactly, for the ring; that at 1.30 he would return and bring with him the proceeds of the sale of the ring. Then I told the owner of the ring to turn it over to Mr. Sotelo for its sale, stating at the same time that I knew Mr. Sotelo. Then, as 2 and 3 o'clock passed without the defendant appearing in the house, and because I assumed the responsibility for the ring—because I had assured the owner of it of my confidence in Mr. Sotelo—I started to find Mr. Sotelo."

In answer to the question "Why did you [Manuel Araneta] tell Sotelo to find a purchaser for you?"—he said:

> "In order to find out whether there was some one who would offer more than P120 for the ring, because the owner wanted P180 or more."

The foregoing is all the testimony found in the record concerning the price at which the defendant was to sell the ring.

Alexandra Dormir, the owner of the ring, testified that she had paid P250 for

it, but there is nothing in the record which justifies the finding of the lower court that the defendant agreed to take the ring and to sell it for not less than P250. While the finding of the lower court as to the amount for which the defendant agreed to sell the ring is not in accordance with the evidence, it was not a finding which in any way exculpates the defendant, provided the record shows that he did receive from the owner the ring in question, under an *agreement to sell it at some price* and to return the money which he should receive to the owner.

With reference to the second assignment of error, the lower court said, in his summary of the proof: "The testimony of Manuel Araneta is to the effect that the ring in question is the property of one Alexandra Dormir, who delivered it to him (Manuel Araneta) to sell; that he in turn delivered it to the defendant herein, Vicente Sotelo, after some conversation in which Sotelo said he could find a customer for it, and an agreement was made whereby Sotelo should return during the day and deliver the proceeds of the sale to the said Manuel Araneta. This testimony is corroborated by the woman, Alexandra Dormir, the owner of the ring in question. She testified that being in need of money, she turned the ring in question over to Manuel Araneta, who was a friend of her family, in order that he might sell it and deliver the proceeds of the sale to her.

> "The accused does not deny that the ring was delivered to him, nor that he pawned the ring in the pawnshop of one Guillermo Ruiz, at 1810 Calle Azcarraga. He states, however, that it was pawned with the knowledge and consent of Manuel
> Araneta, who told him (the accused) that he was in need of P20, and asked him if he would not take the ring and pawn it for him and bring the money; that, later, after he had pawned the ring for 1*20, and had given the money to Manuel Araneta, the latter asked him to obtain for him P50 additional on the ring, which the accused did, delivering to Araneta the second time the sum of P49.40, 60 centavos being deducted by the pawnbroker as interest; whereupon, says the accused, Manuel Araneta gave him the sum of P4.40 as his commission on the transaction.
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> "The court is of the opinion that the evidence demonstrates the guilt of the accused, beyond a reasonable doubt. He has a bad reputation, having been

> convicted of theft in 1902, and sentenced to three years six months and twenty-one days. *Moreover, it is the opinion of the court that the declaration of the accused, with respect to the consent of Araneta in the pawning of the ring is false and, therefore, can not be taken into consideration as a defense in this case.*"

With reference to the .second assignment of error, the guilt or innocence of the accused depends wholly upon the proof—a question of fact only. The prosecution alleged and tried to prove that the accused was given the ring for the purpose of selling it at a price not less than P180 or P190, and to return the money or purchase price to the owner within a period of about one hour. The accused admits that he received the ring at the time and place when and where the owner alleges that he gave it to him. He denies, however, that he received the ring for the purpose of selling it on commission. He alleges that he received it for the purpose of pawning it. He admits that he pawned it, at first for P20, but took no pawn ticket at that time, and that the P20 were delivered to the owner (or Manuel Araneta) and that later he returned to the same pawnbroker and received the further sum of P50 (P49.40), which was also delivered to the owner (or Manuel Araneta). He alleges that when he received the P50 (P49.40) he took a pawnbroker's ticket for the same.

We have, then, the only difference between the prosecution and the accused a question of fact, whether or not the ring was delivered to the accused to be sold or to be pawned. If it was delivered to the accused to be pawned, and he did pawn it, in accordance with his instructions, and did return the money to the owner, then, in that case, there is no breach of trust and he is not guilty of the crime charged. If, upon the other hand, the ring was delivered to the accused to be sold, and he neither sold the ring nor returned it to its owner, then he is guilty as charged in the complaint. The lower court, after a careful analysis of the proof adduced during the trial of the cause, reached the conclusion that the evidence showed, beyond a reasonable doubt, that *the ring was delivered to the accused to be sold and that he neither returned the ring nor its purchase price to the owner.*

There were but four witnesses examined during the trial of the cause, two for the prosecution and two for the defense. The first witness for the prosecution

was Manuel Araneta. He testified that he had known the defendant for about two years; that at the request of Alexandra Dormir he delivered the ring in question to the defendant to be sold; that he told the defendant that he had received an offer of P120 for the ring; that the defendant represented that he had a purchaser who was willing to pay P180 or P190 for the ring; that the ring was given to the accused to be sold at that price (P180 or P190); that the defendant promised to return with the purchase price within about an hour; that the ring was given to the defendant at about 12.30 noon, and he promised to return with the purchaseprice at 1.30 p. m.; that he (Manuel Araneta) waited until between 3 and 4 o'clock p. m. for the return of the defendant; that the defendant did not return up to that time nor at any other time, with the ring; that between 3 and 4 o'clock he (Manuel Araneta) went to the office of the prosecuting attorney of the city of Manila, and made a complaint against the said defendant.

He further testified that the ring had been pawned several times and that the owner had redeemed it from a pawnbroker, on the morning of the day (January 2, 1914) on which it had been delivered to the defendant.

Alejandra Dormir, the other witness presented for the prosecution, testified that she was the owner of the ring; that she had paid P250 for it; that the ring had been pawned; that she had redeemed it on the same day that it was delivered to the defendant, because she wanted to sell it; that she went to the house of Mr. Araneta and told him that she wanted to sell the ring and asked him whether or not he could sell it; that Mr. Araneta told her that he knew a man who wanted to buy a ring; that the defendant arrived at the house where she was in company with Mr. Araneta and others, while they were eating; that the ring was upon her finger at that time; that the ring was taken off of her finger and delivered to the defendant; that she did not authorize the defendant to pawn the ring.

The defendant testified in his own behalf and said that at about 8 o'clock or 8.30 on the morning of January 2, 1914, he was driving in a carromata from his house in Rizal Avenue; that as he was passing near the house of Mr, Araneta he saw him and bade him good morning; that Mr. Araneta asked him whether he knew any person who wanted to buy a ring and he showed him the ring on his finger; that he told Mr. Araneta that he was not devoting himself to such small things, but that, notwithstanding that fact, he knew a person, *one Vicenta Zialcita, who was engaged in the business of selling and buying jewelry; that Mr. Araneta*

asked him to accompany him to this woman's house; that he refused, saying that he was very busy, but would come back about twelve o'clock that same day to accompany him; that he did return to the house of Mr. Araneta at about 12 o'clock that same day; that when he came to the house of Mr. Araneta he saw that the people of the house were eating their meal; that Mr. Araneta invited him into the house; *that once inside of the house, I asked him whether he was really to go to the house of Vicenta Zialcita, but he said no;* Mr. Araneta then asked me if I had P20, because he was in need of the money; that Mr. Araneta then asked him if he could not pawn the ring, and I told him that I would see what I could do and he then gave the ring to me; that he went to the house of Juan Bebing, who was the appraiser of the pawnshop of Guillermo Ruiz; that he told Juan Bebing that he wanted to pawn the ring for P20, because a friend of his was in need of that money; that he was going to redeem it tomorrow because it was going to be sold; that he received the P20; that no pawn ticket was issued for it; that he returned to Rizal Avenue and left the carromata at the corner and from there walked to the house of Mr. Araneta and delivered the money to him; that Mr. Araneta asked him if he could not get P50 more on the ring; that he said he was not sure; that it was then 12 o'clock and that he was hungry; that, notwithstanding that, he told him (Araneta) that he would come back between 2 and 3 o'clock; that after giving Mr. Araneta the P20 he returned at about 2.30 in company with Hipolito Cruz; that he again returned to the pawnshop and saw Mr. Bebing and his (Mr. Bebing's) wife needed P20 for market purposes, and he (Bebing) had pawned the ring for the same amount; that he told him (Bebing) that the owner of the ring wanted another F50; that he (Bebing) said that it was all right; that we could fix it up by putting on the ticket P70, with 3 per cent interest on the P20; that Bebing made out a ticket for P70, deducting sixty centavos, and that he (Bebing)gave him P49.40; that he also saw in the report which is sent by the pawnshops to the police where his name appeared as Vicente Sotelo and that he changed the name with his own hands and made it Vicente F. Sotelo; that later he took Mr. Cruz to the house of Manuel Araneta and delivered the P49.40 to Manuel Araneta; that Manuel Araneta gave him P4.40 as his commission.

The said Hipolito Cruz testified and in part confirmed the declarations of the accused. His testimony is of little value, however, upon the particular question presented, for the reason that he was not present at either of the

times the accused alleges that he received the two sums of money from the pawnbroker and neither was he present at the time the accused alleges he delivered the money to Manuel Araneta.

An examination of the declaration of the accused shows that he admitted that he took the ring and that he knew a person, Vicenta Zialcita, who was engaged in the business of selling and buying jewelry. He does not, however, at any time in his declaration, attempt- to show that he took the ring to the said Vicenta Ziajcita, for the purpose of attempting to sell it to her. Another peculiar fact also appears in his declaration. It is the fact that the said Juan Eebing, who was supposed to have been the appraiser of the pawnshop of Guillermo Ruiz, die not place the ring with Ruiz, but pawned it himself, whether to some other pawnbroker or not, does not appear. Bebing was not called as a witness. His declaration might have thrown some light upon the conduct of the defendant. The prosecution alleges that the ring was delivered to the defendant to be sold by him. The defendant admits, while alleging that it was given to him to pawn, that he told the owner that he knew a person (Vicenta Zialcita) who wanted to buy a ring. The defendant says that he offered to accompany the owner to said person (Vicenta Zialcita). If the ring was given to him to pawn, why did he offer to take the owner to a person who desired to buy it? That fact seems to contradict his statement that he received the ring only for the purpose of pawning it.

We think the proof shows, beyond a reasonable doubt, not only by the witnesses for the prosecution but also by the admissions of the defendant, the following facts:

That on the 2d day of January, 1914, at about 12.30 p. m., the owner of the ring delivered it to the defendant, to be sold by him, at a price not less than P180 or P190, under the obligation to return the same, or the purchase price, within about one hour thereafter; that the defendant did not return either the ring or the purchase price within said time nor at any other time; that his failure to return either the ring or the purchase price has resulted in great prejudice and damage to the owner.

This court has held in numerous cases that such facts show clearly that the defendant is guilty of the crime of estafa and should be punished under paragraph 5 of article 535, in relation with paragraph 2 of article 534 of the

Penal Code. (U. S. *vs.* De Guzman, 1 Phil. Rep., 138; U. S. *vs.*. Zamora, 2 Phil. Rep., 582; U. S. *vs.* Anacleto, 3 Phil. Rep., 172; U. S. *vs.* Singuimuto, 3 Phil. Rep., 176; U. S. *vs.* Ner, 4 Phil. Rep., 131; U. S. *vs.* Ongtengco, 4 Phil. Rep,, 144; U. S. *vs.* Aquino, 4 Phil. Rep., 402; U. S. *vs.* Berry, 5 Phil. Rep., 370; U. S. *vs.* Leano, 6 Phil. Rep., 368; U. S. *vs.* Solis, 7 Phil. Rep., 195; U. S. *vs.* Goyenechea, 8 Phil. Rep., 117; U. S. *vs.* Celis, 8 Phil. Rep., 378; U. S. *vs.* Rodriguez, 9 Phil. Rep., 153; U. S. *vs.* Da Silva, 10 Phil. Rep., 39; U. S. *vs.* Leyva, 10 Phil. Rep., 43; U. S. *vs.* Mefiez, 11 Phil. Rep., 430; U. S. *vs.* Alabanza, 11 Phil. Rep., 475; U. S. *vs.* Perello, R. G. No. 5133[1]; U. S. *vs.* Melad, 27 Phil. Rep., 488.)

In the crime of estafa, as well as that of larceny, the punishment depends upon the amount or the value of the article misappropriated or stolen. In the present case the owner asserted that she paid P250 for the ring. There is no proof to the contrary. She offered to sell it, in the present case, for P180 or P190. The ring may have been worth P250 at the time she purchased it. The value which she placed upon it at the time she gave it to the defendant, we think should be considered its value at that time, in the absence of other evidence, for the purpose of fixing the punishment.

The appellant makes an effort to show, inasmuch as Mr. Araneta, who gave the ring to him, was not its owner, that he was not guilty of the crime of estafa, even though he misappropriated it. The crime of estafa is committed, although the victim was not the owner of the property, but the holder or broker simply, when it appears that the real owner was prejudiced by the disappearance of the property. That fact is more particularly true when the person committing the illegal act knew that the property did not belong to the holder but to some other person. (U. S. *vs.* Almazan, 20 Phil. Rep., 225.) In the present case the proof shows that while the ring was delivered to him by Manuel Araneta, he knew that the real owner was Alejandra Dormir.

The record does not show whether or not the ring was returned to its owner, in accordance with the provisions of article 120 of the Penal Code. It is a general principle that no man can be divested of his property without his own

consent or voluntary act. In the case of Varela *vs.* Finnick (9 Phil. Rep., 482) this court said, speaking through Mr. Justice Torres: "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."

The only exception made by article 464 of the Civil Code seems to be where the property has been pledged in a "monte de piedad" established under authority of the government. In such a case the owner cannot recover the property without previously refunding to said institution the amount of the pledge and the interest due. (Varela *vs.* Matute, 9 Phil. Rep., 479; U. S. *vs.* Menez, 11 Phil. Rep., 430; U. S. *vs.* Perello, R. G. No. 5133; Arenas *vs.* Raymundo, 19 Phil. Rep., 46; Reyes *vs.* Ruiz, 27 Phil. Rep., 458.)

Whoever claims to have acquired title to property, real or personal, through some agent or person not the real owner, must be prepared to show that the person of whom he purchased such property had authority to transfer the same. (Manning *vs.* Keenan, 73 N. Y., 45; Meiggs *vs.* Meiggs, 15 Hun, N. Y,, 453; McGoldrick *vs.* Willits, 52 N. Y., 612; Succession of Boisblanc, 32 La. Ann., 109; Loomis *vs.* Barker, 69 111., 360; Bertholf *vs.* Quinlan, 68 111., 297; Thompson *vs.* Barnum, 49 Iowa, 392; Bercich *vs.* Marye, 9 Nevada, 312; Voss *vs.* Robertson, 46 Ala., 483; Wheeler & Wilson *vs.* Givan, 65 Mo., 89; Switzer *vs.* Wilvers, 24 Kansas, 384; 36 Am. Rep., 259.)

To the foregoing general rule, that no man can be divested of his property without his own consent or voluntary act, there seem to be two apparent exceptions, as follows:

First. Where the owner has entrusted or delivered to an agent, money or negotiable promissory notes, and where the money or negotiable promissory notes have, been delivered or transferred to some third innocent party.

This exception is apparently based upon the exigencies of commerce and trade.

Money bears no earmarks of peculiar ownership. Its primary purpose is to pass from hand to hand as a medium of exchange, without other evidence of its title. Negotiable promissory notes, so far as it is possible, are intended to represent money, and, like it, to be a means of commercial intercourse, unfettered by any qualifications or conditions not appearing on its face. (Banco Espanol-Filipino *vs.* Tan-Tongco, 13 Phil. Rep., 628; Daniel on Negotiable Instruments, sections 769, 862;,McMahon *vs.* Sloan, 12 Pa. St., 229; 51 Am. Dec, 601.)

It is a fundamental principle of our law of personal property that no man can be divested of it without his own consent; consequently, even an honest purchaser, under a defective title, cannot resist the claim of the true owner. The maxim that "No man can transfer to another a better title than he has himself" obtains in the civil as well as the common law. (Pothier, Traite du Contrat de Vente, 1, N., 7; Ersk. Inst., 418.) And hence it is now recognized everywhere in the United States, as well as in civilized Europe, that a sale "ex vi termini" imports nothing more than that a bona fide purchaser succeeds only to the rights of the vendor. (2 Kent's Commentaries, 324; Saltus *vs.* Everett, 20 Wend., N. Y., 267; 32 Am. Dec, 541; Gibson *vs.* Miller, 29 Mich., 355; Lancaster" National Bank *vs.* Taylor, 100 Mass., 18; 97 Am. Dec, 70.)

Second. Another exception to the general rule is based upon the doctrine of estoppel. An illustration of this second exception would be where a man voluntarily placed property in the possession of one whose ordinary business it is to sell similar property as an agent for the owners. In such a case it is warrantable inference, in tne absence of anything to indicate a contrary intent, that he intends the property to be sold. For example, where the owner sends his goods to an auction room, where goods of a like kind are constantly being sold, he would be estopped from recovering them in case they were actually sold. (Pickering *vs.* Busk, 15 East., 38.) In all such cases, however, under this exception, there must be some act or conduct on the part of the real owner, whereby the party selling is clothed with the apparent ownership or authority to sell, which the real owner will not be heard to deny or question, to the prejudice of an innocent third party, dealing on the faith of such appearance. If the rule were otherwise, people would not be secure in sending their watches or jewelry to a jewelry establishment to be repaired, or clothing to a clothing

establishment to be made into garments. (Wilkinson *vs.* King, 2 Campbell, 335; Pickering *vs.* Busk, 15 East., 38; Levi *vs.* Booth, 58 Md., 305; 42 Am. Rep., 332.)

During the trial proof was presented to show that the defendant, in the year 1902, had been sentenced to be imprisoned for a period of three years six months and twenty-one days, for the crime of larceny, and that he had been conditionally pardoned by the then Governor-General, Mr. Taft, on the 27th day of July, 1903. That proof was presented for the purpose of fixing the penalty to be imposed upon the defendant. In view of the pardon, may the fact that the defendant was sentenced be considered as a circumstance, for the purpose of increasing the penalty, in accordance with the provisions of paragraph 17 of article 10, of the Penal Code? Article 130 of the Penal Code provides that criminal liability is extinguished in several different ways: "(*a*) By the death of the offender; (*b*) by service of the sentence; (*c*) by amnesty; (*d*) by pardon; (*e*) by pardon of the offended party (repealed by section 2 of Act No. 1773) ; (*f*) by prescription of the crime; (*g*) by prescription of the penalty."

In reading said article 130, we find in paragraph 3 that the liability which is extinguished by amnesty, *completely extinguishes the penalty and all its effects,* while extinguishment by pardon, during the period which the sentence would have lasted, except for the pardon, does not altogether extinguish the penalty. There is a condition imposed by law, to the effect that the pardoned person shall not live in the place of residence of the offended party, without the latter's consent, and that a violation of that provision would work a revocation of the pardon. While we have been unable to find any decisions of the supreme court of Spain upon the question which we are discussing, we find that Viada (vol. 1, p. 315) says: "A pardon should not be an impediment to the consideration of recidivation as an aggravating circumstance, for, according to article 130, paragraph 4, of the code, a pardon only produces the extinction of the penalty, but not of its effects."

After due consideration of the provisions of article 130, together with the views of Viada, we are inclined to the view that the pardon does not operate to defeat the consideration of the former conviction as an aggravating circumstance.

The lower court imposed the penalty in the medium degree. Considering the aggravating circumstance of recidivation, the penalty should be imposed in the maximum degree. Therefore, the sentence of the lower court is hereby modified, and the defendant is hereby sentenced to be imprisoned for a period of six months and one day of *prision correccional* and to pay the costs.

Arellano, C. J., Torres and *Araullo, JJ.,* concur.

Carson and *Moreland, JJ.,* dissent.

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[1] Not reported

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