

[G.R. No. 241. August 06, 1902]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. LUCIO BARBASA ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

TORRES, J.:

Appeal by the defendants Lucio Barbasa and Teodoro Luna from the judgment of the 24th of December, 1897, rendered in case No. 6614 by the Court of Intramuros (Manila), by which the defendants were convicted of falsification of cedula, and each one of them sentenced to four months and one day of *arresto mayor*, and a fine of 325 pesetas, with accessories. Lucio Barbasa, for each one of the two offenses of falsification of certificates, was convicted and condemned to two years and one day of *suspension* and a fine of 325 pesetas, and, in case of insolvency, to the corresponding subsidiary imprisonment, and Teodoro Luna, for each one of the two crimes, to the penalty of one month and one day of *arresto mayor*, with accessories, and each to the payment of one-sixth part of the costs, one-half of the provisional imprisonment suffered to be deducted from the term of imprisonment to which they were sentenced. Tomas Acosta and Ignacio Jacobo were acquitted of the charge of falsification of cedula and falsification of certificates, and the said Acosta and Jacobo and the said Lucio Barbasa and Teodoro Luna were acquitted of the charge of falsification of a certificate of baptism by reason of lack of evidence of their participation in the said crime, with the remainder of the costs *de officio*.

Julio Lagrimas del Rosario made certain arrangements with one Catalino Gaza by which the latter was to act as his substitute in the military service under the Spanish Government. Gaza received from Lagrimas a certain sum of money through the agency of Tomas Acosta, a sergeant of the engineer corps which the substitute was to join. Acosta undertook to prepare the necessary documents, consisting of the certificate of baptism of Julio Lagrimas, the cedula of the latter, and two certificates issued by Lucio Barbasa as *gobernadorcillo* of

Ermita, with two attesting witnesses, Miguel Abalos and Teodoro Luna. The result of the investigation shows that the certificate of baptism was altered by erasing the year of birth and by writing over this erasure "1864" in place of "1874," which was the year originally entered on the certificate; that the personal cedula of Julio Lagrimas, issued on July 4, 1894, by the said *gobernadorcillo*, Lucio Barbasa, and the *caheza de barangay*, Miguel Abalos, stated that Lagrimas was 30 years of age and was a resident of Ermita, the fact being that he was only 20 years, of age and was a resident of Santa Cruz; that in the certificate of July 10, 1894, by the said *gobernadorcillo*, Barbasa, and the attesting witnesses, Abalos and Luna, it was stated that Lagrimas, whose name was registered in the district under the charge of Abalos, was free from forced military service for that year, the fact being that he was included in the list of conscripts of the district of Santa Cruz; and that in another certificate of the same date, issued by the same *gobernadorcillo* and witnesses, it was recited that Eleuterio Lagrimas, the father of the substitute Julio, had given his consent to the enlistment of the latter, the certificate purporting to bear the signature of Eleuterio, who, in fact, was unable to write, and who denies having given such consent.

From the facts related it follows that the crime of falsification of a public document has been committed, inasmuch as a certificate of baptism is of a public or official character, this crime being defined and punished in article 301, in connection with article 300 of the Penal Code.

The facts also show the commission of another crime, consisting in the falsification of a personal cedula, punished by article 307 of the same Code, as well as the commission of two crimes of falsification of certificates, defined and punished by article 310 of the Code.

Tomas Acosta, the only person liable for the falsification of the certificate of baptism of Julio Lagrimas, being absent, it is not necessary for the court to deal with the question of his guilt in the commission of this crime.

For the same reason, owing to the absence of Miguel Abalos, the *cabeza de barangay* who issued the false personal cedula in favor of the said Julio Lagrimas, making it appear falsely that the latter was registered in his office, the question of his guilt is not before us. Nor can we hold that the *gobernadorcillo* of Ermita, Lucio Barbasa, participated in this falsification of cedula, inasmuch as his signature was simply appended for the purpose of attesting that the cedula was issued, as it was in fact, by the *cabeza de barangay*, upon whom alone rests the responsibility for the validity and the authenticity of the cedula issued.

With respect to the two crimes of falsification of certificates, and in view of the absence of Miguel Abalos, one of the attesting witnesses who signed them, the only persons who can now be held responsible for their participation in the commission of the crime are the *gobernadorcillo*, Lucio Barbasa, and the other attesting witness, Teodoro Luna, as, notwithstanding the exculpatory allegations of the *gobernadorcillo*, Barbasa, the fact is that he, acting in his capacity as a local authority, together with the attesting witnesses, issued and signed these certificates, under his name and official title. Hence, the attesting witness Teodoro Luna and the *gobernadorcillo* who signed the certificates are responsible for the falsification committed by the mere fact of having certified to the truth of statements therein contained, it being unquestionable that Barbasa performed these acts in the exercise of his official duties, the documents having been sealed with the seal of the municipal court of Ermita, and consequently having, under the administrative laws, an official character, the offense being specifically punished by article 310 of the Code. However, the responsibility of Teodoro Luna, as a mere attesting witness, and therefore a mere private individual, and not in the exercise of any public, permanent office, falls within the provisions of article 311 of Code.

It the commission of the two crimes above mentioned, we are of the opinion that the especial circumstance of article. 11 of the Code should be applied, in view of the character of the crimes prosecuted and the personal conditions of the accused, there being no aggravating circumstance to offset the effect of this article. Therefore, by virtue of section 50 of General Orders, No. 58, and without passing upon those parts of the judgment of the court below against which no appeal has been taken, we are of the opinion that for each one of the two crimes of falsification of certificates the former *gobernadorcillo* of Ermita, Lucio Barbasa, should be sentenced to two years and one day of *suspension* from public office, the right of suffrage, the exercise of any trade or profession, and to a fine of 700 pesetas, and, in case of insolvency, to the corresponding subsidiary imprisonment, and to the payment of one-sixth part of the costs in both instances, and Teodoro Luna to one month and fifteen days of *arresto mayor*, with the accessories of another sixth part of the costs in both instances; and that the said Barbasa and Luna be acquitted of the charge of falsification of cedula, with two-sixths parts of the costs *de oficio*, the judgment below to be affirmed in so far as it is in conformity with this opinion and reversed in so far as it is in conflict therewith.

Arellano, C.J., Cooper, Willard, and Ladd, JJ., concur.

Mapa, J., did not sit in this case.

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