

4 Phil. 613

[G.R. No. 2249. July 26, 1905]

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. YU-TO CHAY, DEFENDANT AND APPELLANT.

D E C I S I O N

WILLARD, J.:

The appellant, Yu-To Chay, a Chinaman, was charged with giving to his codefendant, Ruperto Evaristo, a detective, 70 pesos and a bicycle, as a bribe for wrongfully arresting upon an unfounded charge Aquilino Cueco.

Evidence was produced tending to show that there had been trouble between the appellant and Cueco; that a woman who had been living with the appellant left him and went to live with Cueco. But the case, so far as the payment of the money and the delivery of the bicycle are concerned, rests entirely upon the testimony of two detectives, Marcelo Magsalin and Isaias Susana. These two men took part with Evaristo in the unlawful arrest, and may be considered as accomplices in the crime. Notwithstanding this fact, we should not hesitate to convict the appellant if these witnesses were otherwise above suspicion, and their testimony was probable upon its face. The only evidence as to the gift of the bicycle was that of Susana, but on cross examination he admitted that all he knew about the matter was that he was in the store when the appellant and Evaristo were there, and that Evaristo went away with the bicycle, but he did not hear what was said between them. He claimed also, that he went to the appellant's house and received 10 pesos, which he paid to Evaristo.

At a former trial his testimony differed materially from his

testimony at this trial, and he explained the difference by saying that he testified falsely at the first trial through fear of being beaten by Evaristo if he testified to the truth. He was in the employ of the Government as a detective, but received no pay. At the time of the trial he was serving in Bilibid a sentence imposed upon him for the crime of theft, committed, apparently, while he was a detective. The court below gave no credit to his testimony, and did not base the conviction upon it. We, too, think that it is not worthy of belief.

Eliminating this witness the conviction rests entirely upon the testimony of the other detective, Magsalin. He testified that he went to the Chinaman's house on two occasions. On the first the Chinaman gave him 50 pesos, and on the second he gave him 10 pesos, which the witness gave to Evaristo. He carried no written order of any kind from Evaristo to the Chinaman, and it is apparent from the evidence that the Chinaman could not have known who he was. On the first occasion he says that Evaristo went with him to the street in front of the house where the Chinaman lived, and pointed the place out to the witness. It is not apparent why Evaristo himself did not go into the House and get the money instead of sending the witness.

It appeared that this witness also had been a detective in the service of the Government, and at the time of the trial was serving in Bilibid a sentence imposed upon him for the crime of theft or robbery, committed while he was a detective. He testified that he had arrested a man whom he claimed was a thief, and the fact was entirely different, and they said that he himself was the thief, and for that reason he was in Bilibid.

We are not willing to convict the appellant on this testimony, and the judgment of the court below is accordingly reversed and the appellant acquitted, with the costs of both instances *de officio*. So ordered.

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

