

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FRANCISCO JURADO, DEFENDANT AND APPELLANT.

G. R. No. 10719. September 24, 1915

Ponente: TORRES, J.

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TORRES, J.:

This cause was initiated by a complaint filed with the Court of First Instance of Cebu by the provincial fiscal on March 23, 1914, charging Francisco Jurado with the crime of perjury. On March 9, 1915, judgment therein was rendered whereby the defendant was sentenced to the penalty of two years' imprisonment and the payment of the costs of the trial. From this judgment he appealed.

On July 9, 1913, the acting provincial fiscal of Cebu, Dionisio Jacosalem, proceeded to investigate the matter of the robbery of some tins of opium, committed in the house of Francisco Jurado by Alejandro Albao, a municipal policeman, through threats and intimidation and by availing himself of his office. This opium belonged to Vicente Lizarraga who had taken it to the said house to sell it to some residents of the town. Lizarraga, the owner of the drug, stated that Francisco Jurado was present, among others, at the time of the robbery; but when Jurado was called to testify as an eyewitness to the crime he denied that he was at home on the night of the robbery, as he was then in a cinematograph with his family. He further testified that he did not know either Vicente Lizarraga or Alejandro Albao. Such was his testimony given under oath before the provincial fiscal Jacosalem, but in the proceedings brought against Ciriaco Singson for robbery, commenced on September 24, 1913, Jurado, testifying as a witness for the defense, stated under oath that he had known Vicente Lizarraga since the month of June, 1913, and that he was already acquainted with Alejandro Albao on the date of the crime.

The defendant, Francisco Jurado, denied that he was at home on the night the robbery was committed by Albao. With the exception of Lizarraga's testimony the record shows no evidence to offset defendant's denial. The latter also denied under oath in the investigation made by the provincial fiscal that he knew Lizarraga and Albao on the date of the robbery committed one night in June, 1913; although in testifying, likewise under oath, several months afterwards in the said cause against Ciriaco Singson he stated the contrary to wit, that he did know these men.

In order that a witness, in testifying under oath before a public official authorized to administer same commit the crime of perjury and incur the penalty prescribed by section 3 of Act No. 1697, it is necessary and indispensable that he testify to and declare under oath with regard to some material matter which he does not believe to be true, or that such false testimony tend to establish something which conflicts with the truth of an essential or important fact which has been proven by the evidence; because, if the false testimony of the witness is not important, essential, or material to the principal matter under investigation, it can not properly be held that the crime of perjury has been committed.

The principal object of the investigation held by the provincial fiscal of Cebu was to find out whether Alejandro Albao had actually been in Jurado's house where Lizarraga was that night with several tins of opium for sale, and whether on that occasion Albao, availing himself of his office of municipal policeman, by intimidation with a

revolver, succeeded in compelling Lizarraga to deliver to him the tins of opium which Lizarraga was carrying and which Albao seized, took away with him and appropriated to himself, and which have not yet been recovered.

The defendant, the owner of the house where the robbery was committed, testified that he learned from Isabelo Alburo that Lizarraga had in fact been in the house with tins of opium for sale, but that witness did not see them because he was that night in the cinematograph with his family. This testimony is not contradicted by any evidence in the record. For lack of sufficient proof of the falsity of that statement by the owner of the house, the defendant Jurado, for it was not proven that it was false and, as he certainly was in his own house on the said night of the robbery, it cannot be held that, in testifying as he did, he perjured himself.

The witness Jacosalem testified that, in his capacity of fiscal, he made the said investigation and that the defendant's testimony in connection with that of the other witnesses of the prosecution in the cause for robbery was material and important for the purpose of proving this crime; but, as the testimony of these witnesses does not appear in the record of the case at bar, it is impossible to determine whether or not the defendant's testimony, alleged to be false, was material and important in its bearings on the said testimony of the other witnesses given in connection with the said crime of robbery. If this cause had been instituted after the final adjudication of the said cause for robbery, as it should have been, perhaps another result would have been obtained.

In a criminal cause the accused is presumed to be innocent until his guilt is conclusively proven, for even in a case of reasonable doubt, and when his guilt does not appear to be satisfactorily established, as occurs in the case "at bar, he is entitled to acquittal.

For the foregoing reasons the judgment appealed from should be and is hereby reversed and the defendant, Francisco Jurado, is hereby acquitted with the costs of both instances de oficio. So ordered.

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

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