

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ANDRES PABLO, DEFENDANT AND APPELLANT.*G.R. No. 11676. October 17, 1916*

Ponente: TORRES, J.

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At about noon of the 21st of October, 1915, Andres Pablo, a policeman of the municipality of Balanga, went by order of his chief to the barrio of Tuyo to raid a jueteng game which, according to the information lodged, was being conducted in that place; but before the said officer arrived there the players, perhaps advised of his approach by a spy, left and ran away; however, on his arrival at a vacant lot the defendant there found Francisco Dato and, at a short distance away, a low table. After a search of the premises he also found thereon a tambiolo (receptacle) and 37 bolas (balls). Notwithstanding that the officer had seen the men Maximo Malicsi and Antonio Rodrigo leave the said lot, yet, as at first he had seen no material proof that the game was being played, he refrained from arresting them, and on leaving the place only arrested Francisco Dato, who had remained there.

In reporting to his chief what had occurred, the policeman presented a memorandum containing the following statement: "In the barrio of Tuyo I raided a jueteng na bilat game, seized a tambiolo and bolas, and saw the cabecillas Maximo Malicsi and Antonio Rodrigo and the gambler Francisco Dato. I saw the two cabecillas escape."

In consequence, chief of police Jose D. Reyes, on October 22, 1915, filed a complaint in the court of the justice of the peace charging the said Rodrigo, Malicsi, and Dato with having gambled at jueteng, in violation of municipal ordinance No. 5. As a result of this complaint the accused were arrested, but were afterwards admitted to bail.

At the hearing of the case Francisco Dato pleaded guilty. The other two accused, Maximo Malicsi and Antonio Rodrigo, pleaded not guilty; therefore, during the trial the chief of police presented the memorandum exhibited by the policeman Andres Pablo, who testified under oath that on the date mentioned he and Tomas de Leon went to the said barrio to raid a jueteng game, but that before they arrived there they saw from afar that some persons started to run toward the hills; that when witness and his companion arrived at a vacant lot they saw Francisco Dato and a low table there, and the table caused them to suspect that a jueteng game was being carried on; that in fact they did find on one side of the lot a tambiolo and 37 bolas, but that they did not see the accused Rodrigo and Malicsi on the said lot, nor did they see them run; and that only afterwards did the witness learn that these latter were the cabecillas or ringleaders in the jueteng game, from information given him by an unknown person. In view of this testimony by the police officer who made the arrest and of the other evidence adduced at the trial the court acquitted the defendants Antonio Rodrigo and Maximo Malicsi and sentenced only Francisco Dato, as a gambler.

Before the case came to trial in the justice of the peace court the policeman Andres Pablo had an interview and conference with the accused Malicsi and Rodrigo in the house of Valentin Sioson. On this occasion he was instructed not to testify against Malicsi and Rodrigo, and in fact received through Gregorio Ganzon the sum of P5.

By reason of the foregoing and after making a preliminary investigation the provincial fiscal, on December 1, 1915, filed an information in the Court of First Instance of Bataan charging Andres Pablo with the crime of perjury, under the provisions of section 3 of Act No. 1697. The following is an extract from the complaint:

"That on or about November 6, 1915, in the municipality of Balanga, Bataan, P. I., and within the jurisdiction of this court, the said accused, Andres Pablo, during the hearing in the justice of the peace court of Balanga of the criminal cause No. 787, entitled The United States vs. Antonio Rodrigo and Maximo Malicsi, for violation of Municipal Ordinance No. 5 of the municipality of Balanga, did, willfully, unlawfully and feloniously affirm and swear in legal form before the justice of the peace court as follows: 'We did not there overtake the accused Antonio Rodrigo and Maximo Malicsi, nor did we even see them run,' the said statement being utterly false, as the accused well knew that it was, and material to the decision of the said criminal cause No. 78y, United States vs. Antonio Rodrigo and Maximo Malicsi. An act committed with violation of law."

The case came to trial and on December 28, 1915, the court rendered judgment therein sentencing the defendant to the penalty of two years' imprisonment, to pay a fine of P100 and, in case of insolvency, to the corresponding subsidiary imprisonment, and to pay the costs. The defendant was also disqualified from thereafter holding any public office and from testifying in the courts of the Philippine Islands until the said disqualification should be removed, From this judgment he appealed.

Francisco Dato, on-testifying as a witness, said that when the policemen Andres Pablo and Tomas de Leon arrived at the place where the jueteng was being played, they found the defendant gamblers, Malicsi and Rodrigo; that, prior to the hearing of the case in the justice of the peace court, Malicsi and Rodrigo ordered him to call Andres Pablo, who, together with witness, went to the house of Valentin Sioson, where they held a conference; that witness pleaded guilty in the justice of the peace court, in fulfilment of his part of an agreement made between himself and his two coaccused, Malicsi and Rodrigo, who promised him that they would support his family during the time he might be a prisoner in jail; that Andres Pablo did not know that they were gamblers, because he did not find them in the place where the game was in progress, but that when witness was being taken to the municipal building by the policemen he told them who the gamblers were who had run away and whom Andres Pablo could have seen.

Maximo Malicsi corroborated the foregoing testimony and further stated that, on the arrival of the policemen who made the arrest and while they were looking for the tambiolo, he succeeded in escaping; that Andres Pablo had known him for a long time and could have arrested him had he wished to do so; that prior to the hearing he and his codefendants, Rodrigo and Dato, did in fact meet in the house of Valentin Sioson, on which occasion they agreed that they would give the policeman Andres Pablo P20, provided witness and Rodrigo were excluded from the charge; and that only P15 was delivered to the said Pablo, through Gregorio Ganson. This statement was corroborated by the latter, though he said nothing about what amount of money he delivered to the policeman Pablo.

The defendant Andres Pablo testified under oath that, on his being asked by the justice of the peace how he could have seen Maximo Malicsi and Antonio Rodrigo, he replied that he did not see them at the place where the game was being conducted nor did he see them run away from there, for he only found the table, the tambiolo, the bolas, and Francisco Dato; that he did not surprise the game because the players ran away before he arrived on the lot where, after fifteen minutes' search, he found only the tambiolo and the bolas; that on arriving at the place where the game was played, they found only Francisco Dato and some women in the street, and as Dato had already gone away, witness' companion, the policeman Tomas de Leon, got on his bicycle and went after him; and that he found the tambiolo at a distance of about 6 meters from a low table standing on the lot.

From the facts above related, it is concluded that the defendant Andres Pablo, who pleaded not guilty, falsely

testified under oath in the justice of the peace court of Balanga, Bataan, in saying that he had not seen the alleged gamblers Maximo Malicsi and Antonio Rodrigo in the place where, according to the complaint filed, the game of jueteng was being played and where the defendant and his companion, the policeman Tomas de Leon, had found a table, tamboliolo and bolas, used in the game of jueteng, while it was proved at the trial that he did see them and did overtake them while they were still in the place where the game was being played. But notwithstanding his having seen them there, upon testifying in the cause prosecuted against these men and another for gambling, he stated that he had not seen them there, knowing that he was not telling the truth and was false to the oath he had taken, and he did so willfully and deliberately on account of his agreement with the men, Malicsi and Rodrigo, and in consideration of a bribe of P15 which he had received in payment for his false testimony he afterwards gave.

Francisco Dato and Gregorio Ganzon corroborated the assertion that the policeman Andres Pablo undertook to exclude the gamblers, Malicsi and Rodrigo, from the charge and from his testimony in consideration for P15 which he received through Gregorio Ganzon.

Andres Pablo was charged with the crime of perjury and was afterwards convicted under Act No. 1697, which (according to the principle laid down by this court in various decisions that are already well-settled rules of law) repealed the provisions contained in articles 318 to 324 of the Penal Code relative to false testimony.

By the second paragraph of the final section of the last article of the Administrative Code, or Act No. 2657, there was repealed, among the other statutes therein mentioned, the said Act No. 1697 relating to perjury, and the repealing clause of the said Administrative Code does not say under what other penal law in force the crime of false testimony, at least, if not that of perjury, shall be punished.

Under these circumstances, may the crime of perjury or of false testimony go unpunished, and is there no penal sanction whatever in this country for this crime? May the truth be freely perverted in testimony given under oath and which, for the very reason that it may save a guilty person from punishment, may also result in the conviction and punishment of an innocent person? If all this is not possible and is not right before the law and good morals in a society of even mediocre culture, it must be acknowledged that it is imperatively necessary to punish the crime of perjury or of false testimony—a crime which can produce incalculable and far-reaching harm to society and cause infinite disturbance of social order.

The right of prosecution and punishment for a crime is one of the attributes that by a natural law belongs to the sovereign power instinctively charged by the common will of the members of society to look after, guard and defend the interests of the community, the individual and social rights and the liberties of every citizen and the guaranty of the exercise of his rights.

The power to punish evildoers has never been attacked or challenged, as the necessity for its existence has been recognized even by the most backward peoples. At times the criticism has been made that certain penalties are cruel, barbarous, and atrocious; at others, that they are light and inadequate to the nature and gravity of the offense, but the imposition of punishment is admitted to be just by the whole human race, guided by their natural perception of right and wrong, and even barbarians and savages themselves, who are ignorant of all civilization, are no exception.

Notwithstanding that the said Act No. 1697 (which, as interpreted by this court in its decisions, was deemed to have repealed the aforementioned article of the Penal Code relating to false testimony, comprised within the term of perjury) did not expressly repeal the said articles of the Penal Code; and as the said final article of the Administrative Code, in totally repealing Act No. 1697, does not explicitly provide that the mentioned articles of the Penal Code are also repealed, the will of the legislator not being expressly and clearly stated with respect to the complete or partial repeal of the said articles of the Penal Code, in the manner that it has totally repealed the

said Act No. 1697 relating to perjury; and, furthermore, as it is imperative that society punish those of its members who are guilty of perjury or false testimony, and it cannot be conceived that these crimes should go unpunished or be freely committed without punishment of any kind, it must be conceded that there must be in this country some prior, preexistent law that punishes perjury or false testimony.

There certainly are laws which deal with perjury or false testimony, like Law 7 et seq. of Title 2, third Partida.

However, since the Penal Code went into force, the crime of false testimony has been punished under the said articles of the said Code, which as we have already said, have not been specifically repealed by the said Act No. 1697, but, since its enactment, have not been applied, by the mere interpretation given to them by this court in its decisions; yet, from the moment that Act was repealed by the Administrative Code, the needs of society have made it necessary that the said articles 318 to 324 should be deemed to be in force, inasmuch as the Administrative Code, in repealing the said Act relating to perjury, has not explicitly provided that the said articles of the Penal Code have likewise been repealed.

This manner of understanding and construing the statutes applicable to the crime of false testimony or perjury is in harmony with the provision of Law 11, Title 2, Book 3, of the Novisima Recopilacion which says:

"All the laws of the kingdom, not expressly repealed by other subsequent laws, must be literally obeyed and the excuse that they are not in use cannot avail; for the Catholic kings and their successors so ordered in numerous laws, and so also have I ordered on different occasions, and even though they were repealed, it is seen that they have been revived by the decree which I issued in conformity with them although they were not expressly designated. The council will be informed thereof and will take account of the importance of the matter."

It is, then, assumed that the said articles of the Penal Code are in force and are properly applicable to crimes of false testimony. Therefore, in consideration of the fact that in the case at bar the evidence shows it to have been duly proven that the defendant, Andres Pablo, in testifying in the cause prosecuted for gambling at jueteng, perverted the truth, for the purpose of favoring the alleged gamblers, Maximo Malicsi and Antonio Rodrigo, with the aggravating circumstance of the crime being committed through bribery, for it was also proved that the defendant Pablo received P15 in order that he should make no mention of the said two alleged gamblers in his sworn testimony, whereby he knowingly perverted the truth, we hold that, in the commission of the crime of false testimony, there concurred the aggravating circumstance of price or reward, No. 3 of article 10 of the Code, with no mitigating circumstance to offset the effects of the said aggravating one; wherefore the defendant has incurred the maximum period of the penalty of arresto mayor in its maximum degree to prision correccional in its medium degree, and a fine.

For the foregoing reasons, we hereby reverse the judgment appealed from and sentence Andres Pablo to the penalty of two years four months and one day of prision correccional, to pay a fine of 1,000 pesetas, and, in case of insolvency, to suffer the corresponding subsidiary imprisonment, which shall not exceed one-third of the principal penalty. He shall also pay the costs of both instances.

So ordered.

Johnson, Carson, Trent, and Araullo, JJ., concur.

Moreland, J., concurs in the result.

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