

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. AKMAD, DEFENDANT AND APPELLANT.

G.R. No. 30449. July 29, 1929

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 15th day of March, 1928, the prosecuting attorney of the Province of Cotabato filed an information in the court of the justice of the peace of the municipality of Cotabato, charging the above-named defendant with the crime of subornation of perjury. Upon said information the defendant was arrested and brought before the justice of the peace for a preliminary investigation. He waived, however, his right to the preliminary investigation, and the cause was forwarded to the Court of First Instance for further proceedings.

On the 17th day of March, 1928, the prosecuting attorney of the Province of Cotabato filed an information in the Court of First Instance of said province, charging the defendant with the crime of subornation of perjury, in that said defendant did willfully, unlawfully and maliciously cause one Moro Palao to testify and declare falsely in criminal cause No. 1213 of said Court of First Instance (People vs, Ugalingan), as in fact said Moro Palao did falsely so declare and testify in said cause. The information reads as follows:

"Que en o hacia el dia 11 de marzo de 1928, en el Municipio de Cotabato, Provincia de Cotabato, I. F., y dentro de la jurisdiction de este Juzgado, el referido acusado, procurando o haciendo que el moro Palao cometa perjurio, voluntaria, intencional, maiciosa, ilegal y criminalmente, indujo & dicho moro Palao a declarar o testificar con falsedad lo que sabe sobre el suceso ocurrido entre Mamolintao y Ugalingan, por asesinato, faltando asi a la verdad sobre hechos importantes de dicha causa No. 1213, como en efecto el moro Palao declaro el 12 de marzo de 1928, en la vista de la mencionada causa en el Juzgado de Primera Instancia de Cotabato, diciendo poco mas o menos que no pudo ver a Ugalingan en aquella noche del suceso (17 de septiembre de 1927) por que estaba obscura la noche y no habia estrellas, siendo esto un hecho falso, en lugar de decir que le habia visto porque estaba clara la noche y habia estrellas, siendo esto un hecho verdadero declarado tanto en el Juzgado de Paz de Pikit-Pagalungan como en la Oficina del Fiscal Provincial, y si declaro asi, fue porque le habia enseriado Akmad, habiendo este atemorizado ademas a Palao en el sentido de que si este declarara que estaba clara la noche y que pudo ver a Ugalingan venir del sitio donde estaba tendido Mamolintao, el (Palao) seria procesado y que Ugalingan saldria libre; que el acusado, sabiendo que lo que habia enseriado a Palao era falso y esencial a la cuestion planteada en la referida causa No. 1213, porque este hecho determinaria la condena o absolucion del acusado Ugalingan, y lo que declaro en el Juzgado de Paz de Pikit-Pagalungan y en la Oficina del Fiscal Provincial de Cotabato era verdadero, dicho acusado Akmad, voluntaria, intencional y maliciosamente, indujo a Palao para que hiciera una declaracion falsa o jurar en falso en el Juzgado de Primera Instancia de Cotabato sobre un extremo importante y esencial relacionado con el asesinato objeto de la mencionada causa No. 1213, como en efecto Palao asi lo hizo, consiguiendo de este modo el acusado su proposito criminal y el objeto de su induccion, siendo falsa dicha declaracion y distinta de la que habia hecho anteriormente en el Juzgado de Paz de Pikit-Pagalungan y ante el Fiscal Provincial de Cotabato, constituyendo dicha declaracion una anrmacion voluntaria y maliciosa de una falsedad bajo juramento prestado ante autoridad competente, y que por este cambio de declaracion de Palao, testigo de la

acusacion en la mencionada causa No. 1213, el Gobierno ha perdido una prueba importante y esencial para la conviccion y condena del acusado Ugalingan en la tantasi veces mencionada causa No. 1,213, y por este motivo la acusacion se vio obligada a pedir el sobreseimiento de la misma por insuficiencia de pruebas.

"Hecho cometido con infraccion del articulo 4 de la Ley No. 1697."

Upon said information the defendant was arraigned, pleaded not guilty, was tried, found guilty of a violation of section 4 in relation with section 3 of Act No. 1697, as readopted by Act No. 2718, and sentenced to pay a fine of P1,000 and to suffer two years of imprisonment, with subsidiary imprisonment in case of insolvency, and disqualification from holding public office and from testifying in any court of the Philippine Islands, and to pay the costs. The dispositive part of the decision reads as follows:

"En su virtud, el Juzgado le declara al acusado Akmad (moro) convicto de haber infringido el articulo 4, en relacion con el articulo 3 de la Ley No. 1697, tal como esta reformado por la Ley No. 2718 de la Legislatura Filipina, y le condena a mil pesos (P1,000) de multa y dos aios de prision, suf riendo en caso de insolvencia de la multa la prision subsidiaria correspondiente a razon de 12 pesetas y media por dia que dejare de satisfacer, sin que exceda de la tercera parte de la pena principal impuesta, quedando en lo sucesivo inhabilitado para desempenar cargo publico y para declarar en los tribunales de justicia de las Islas Filipinas, y a pagar las costas del presente juicio."

From that sentence the defendant appealed, and now makes the following assignments of error:

"1. The lower court erred in basing its sentence on facts not proved during the trial.

"2. The lower court erred in holding that the facts established during the trial constitute the crime of subornation of perjury.

"3. The lower court erred in finding the defendant guilty of a violation of Act No. 1697 as amended by Act No. 2718.

"4. The lower court erred in sentencing the defendant."

A careful examination of the record shows that the only evidence against the defendant is the testimony of Moro Palao, the alleged suborned witness, who declared that in a former case for murder (People vs. Ugalingan, criminal cause No. 1213) he testified falsely and contrary to facts known to him and in contradiction to his declaration before the justice of the peace and the provincial fiscal; and that he so testified by direction and induction of the accused Akmad. The testimony of Aurelio Reondon, a provincial guard, relative to some statements made by the defendant while confined in jail, is irrelevant and immaterial. It has not been shown that in said statements the defendant was referring to the crime with which he was charged.

The prosecution also presented Exhibits A and B, which are, respectively, the motion to dismiss and the order of dismissal in said criminal cause No. 1213.

We agree with the Attorney-General that the evidence is not sufficient to warrant conviction. The prosecution failed to present the best evidence, to prove the alleged false testimony given by Palao in criminal cause No. 1213. A certified copy of said testimony should have been presented, in conformity with the best evidence rule as prescribed in section 59 of General Orders No. 58, which provides:

"SEC. 59. In all criminal prosecutions the evidence admitted must be relevant to the fact at issue, the burden of proof of guilt shall be upon the prosecution, and the best evidence must be produced of which the case is susceptible. * * *"

Furthermore, the record does not affirmatively show that the alleged false testimony of Palao, by induction, was

given under oath. In the case of *United States vs. Ballena* (18 Phil., 382) this court held that every essential element of the crime of subornation of perjury must be established by competent evidence. False testimony given under oath is an essential element of this crime and must be established by competent evidence. In said case (*U. S. vs. Ballena*, 18 Phil, 382) this court said:

"There are certain well-defined and indispensable requisites which must be established in every case of alleged subornation of perjury before an accused person, charged with the commission of this crime, can be convicted. Every essential element constituting the crime of perjury must be established by competent testimony. The prosecution must show the nature of the proceedings in which the alleged perjury was committed, the court, or officer, in which, or before whom, the false oath was taken; that the witness was duly sworn; that the testimony was material, and false; that the defendant knowingly and willfully procured another to swear falsely, and that the witness suborned did testify under circumstances rendering him guilty of perjury."

For all of the foregoing, we are of the opinion that the evidence is not sufficient to warrant the conviction of the appellant, and in harmony with the recommendation of the Attorney-General the sentence appealed from should be and is hereby reversed, the information is dismissed, and the defendant is hereby ordered released from the custody of the law, with costs de oficio. It is so ordered.

Avanceña, C. J., Street, Villamor, Johns, Romualdez and Villa-Real, JJ., concur.

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