

THE PEOPLE OF THE PHILIPPINE ISLANDS, PETITIONER, VS. PEDRO CONCEPCION, JUDGE OF FIRST INSTANCE OF MANILA, AND JOSE TANDIANA ET AL., RESPONDENTS.

G.R. No. 34539, December 20, 1930

Ponente: VILLA-REAL J.

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VILLA-REAL J.:

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These proceedings are entitled certiorari, but by their nature are mandamus, instituted by the Attorney-General in behalf of the People of the Philippine Islands against Pedro Concepcion, Judge of the Court of First Instance of Manila, Jose Tandiana, Juan Hilario, Severino Alas, Antonio Ruiz, Primitivo Siwa, Manuel Catpandan, Lauro Alcalde, and Jose Mijares, praying that the order issued by the respondent judge on October 20, 1930, in criminal case No. 39901 of the Court of First Instance of Manila, be declared null and void because said judge exceeded his jurisdiction, and that any other just and equitable remedy be granted.

The respondents, answered, admitting the allegations contained in paragraphs I, II, III, IV, V, VI, VII, IX, XII, XIII, XV, XVII, XVIII, and XX, and denying those contained in paragraphs, VIII, X, XI, XIV, XVI, XIX, and XXI, of the complaint, and by way of special defense alleged that the petitioner has no personality to institute those proceedings and that the facts alleged constitute no cause of action.

The relevant facts necessary for the solution of the questions raised in these proceedings are, briefly, the following:

On December 7, 1929, Jose Tandiana et al., were accused before the municipal court of Manila of having violated the Gambling Law, in criminal case No. F-7854, entitled the People of the Philippine Islands vs. Jose Tandiana et al., (Exhibit A). Jose Tandiana et al, were tried separately from their coaccused, and upon the strength of the testimony furnished in the open court by Cornelio Dungao, a constabulary agent, who was the principal and only eyewitness for the prosecution, were found guilty as charged, and some of them were sentenced to pay fine, and the others to imprisonment and fine (Exhibit B). Jose Tandiana et al., appealed from the decision of the municipal court to the Court of First Instance of Manila, the appeal being docketed as criminal case No. 39901.

In the meanwhile, on June 11,1930, Cornelio Dungao was, at the instance of Jose Tandiana et al., charged before said Court of First Instance with the crime of perjury, committed according to the information, as follows:

"The undersigned accuses Cornelio Dungao y Yamzon of the crime of perjury, committed as follows:

"That on or about the 15th day of July, 1929, in the City of Manila, Philippine Islands, the said accused, for the purpose of securing a marriage license as required by Act No. 3412 in order that he could contract marriage

with one Carmen de Mesa, a girl then residing at Muntinglupa, Rizal, Philippine Islands, did then and there willfully, unlawfully, feloniously and falsely subscribe and swear to an application before Isidro L. Vejunco, a notary public in and for the City of Manila, duly appointed, qualified and acting as such, in which application the said accused affirmed and swore to, among other things, a fact known to him to be untrue, that is, that he, the said accused, was single, one of the essential and material requisites provided by law for the issuance of a marriage license, when in truth and in fact, as the said accused very well knew, he was then legally married to one Aurora Liwanag, with whom he has been living up to the present time in Caloocan, Rizal, his marriage with said Aurora Liwanag being in full force and effect and not having been previously dissolved; and that once provided with the sworn application above-mentioned, the said accused presented the same to the municipal secretary of Bigaa, Bulacan, the said accused thereby succeeding in obtaining a marriage license from the said municipal secretary of Bigaa, and in contracting marriage with the above-named Carmen de Mesa before the priest of the Roman Catholic Church of Muntinglupa, Rizal.

"Contrary to law."

On July 10, 1930, Cornelio Dungao was charged with the crime of illegal marriage before the Court of First Instance of Rizal, committed, according to the information, as follows:

"The undersigned fiscal hereby accuses Cornelio Dungao of the crime of illegal marriage, committed as follows:

"That on or about the 14th day of December, 1929, in the municipality of Muntinglupa, Province of Rizal, Philippine Islands, and within the jurisdiction of this court, the aforementioned defendant, Cornelio Dungao, being united to one Aurora Liwanag by a legal and valid marriage, did willfully, unlawfully, and feloniously contract a second and later marriage with Carmen de Mesa, while the first marriage with Aurora Liwanag had not been legally dissolved.

"Contrary to law."

On July 14, 1930, when criminal case No. 39201 for gambling came up for trial, on appeal from the municipal court of Manila, the prosecution proceeded with the presentation of its evidence, placing Cornelio Dungao on the witness stand, and after he had taken the prescribed oath, began to testify in support of the facts alleged in the information. After the direct examination was concluded, the fiscal invited counsel for the defense to begin the cross-examination, but the latter, instead, moved the court to grant a continuance of the hearing until after judgment was rendered in the perjury case; and this petition was granted by the trial court, presided over at the time by Pedro Ma. Sison, judge.

On September 3, 1930, Mariano Albert, judge, rendered judgment (Exhibit E), in criminal case No. 40151 for perjury, the dispositive part of which reads as follows:

"For the reasons already stated, the present case is dismissed, as prayed, with costs de oficio, and the cancellation of the bond given by the accused for his temporary release, So ordered."

In the body of the said decision, Judge Mariano Albert made the following remarks:

"The only question presented in this case is one of law, to wit: Is the defendant guilty of the crime of perjury charged in the information filed in this case on June 11, 1930 ? For the purpose of this decision, it may be concluded that the defendant herein, willfully and contrary to the oath administered to him by the notary public, Mr; Vejunco, that his written application is true, subscribed a material matter which the said defendant does not believe to be true. This admission on this written application under oath, containing false statement upon a material matter altho constituting the crime of perjury as defined in section 1 of Act No. 1697, yet it cannot be prosecuted in this court for two reasons: First, because the false statement contained in the said application as to the civil status of the defendant herein is a necessary means availed of by the said defendant

in committing the crime of bigamy, and it may be said to be inherent in the said defense (People vs. Yusay, 50 Phil., 598), and, second, because the said defendant did not make use of the said application in Manila. The making of the application in Manila does not constitute the crime of perjury, but the intentional filing of the said application before the municipal secretary of Bigaa, Bulacan, being known to the defendant to be false and being intended by him to mislead the said official, is the gist of the offense. In conclusion, the court is of the opinion that the perjury committed by the defendant herein should not be punished as a separate offense from that of bigamy for which he now stands charged before the Court of First Instance of Rizal, and if the offense should be the object of a separate information, the crime of perjury was not committed within this jurisdiction."

On September 25, 1930, after due trial, the Court of First Instance of Rizal rendered judgment in the criminal case of illegal marriage, finding Cornelio Dungao guilty of the crime charged in the information, and sentencing him to the proper penalty (Exhibit L). The defendant appealed to this court, and the appeal, docketed as G. R. No. 34330, is at present pending decision.

On October 6, 1930, the case for gambling was called for trial so that the prosecution might proceed with the presentation of the evidence, and counsel for Jose Tandiana et al. presented a motion asking that the testimony of Cornelio Dungao given at the trial on July 14, 1930, be stricken from the record because said witness had been held a perjurer in the aforementioned criminal case No. 40151. On October 20, 1930, Judge Pedro Concepcion, one of the respondents herein, granted the motion over the fiscal's objection, and ordered the testimony to be stricken from the record (Exhibit F).

The principal question to decide in these proceedings is whether the mere statement made in a criminal case, wherein a witness is charged with perjury, by the trial judge and in which he holds that he has no jurisdiction to hear the case on account of wrong venue of action and dismisses the case, renders said witness disqualified to testify in another criminal case.

The pertinent part of section 3 of Act No. 1697, defining and penalizing the crime of perjury and disqualifying a person from testifying as witness, provides as follows:

"Sec. 3. Any person who, having taken an oath * * * willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine * * * and by imprisonment * * *; and shall, moreover, thereafter be incapable * * * of giving testimony in any court of the Philippine Islands until such time as the judgment against him is reversed."

This penal provision disqualifies a person to testify as a witness after having been convicted and sentenced for the crime of perjury.

While it is true that Judge Mariano Albert, in dismissing the case of perjury against Cornelio Dungao, incidentally stated that the defendant had committed the crime with which he was charged, such a statement of guilt lacks the legal effect because said judge declared that he had no jurisdiction over the case on account of the venue of action; and inasmuch as every defendant is presumed innocent until convicted by a competent court after due process of law of the crime with which he is charged, Cornelio Dungao is still innocent in the eyes of the law, notwithstanding the filing of the information against him for the aforesaid crime.

There being no legal conviction of perjury against Cornelio Dungao, nor any other cause to disqualify him to testify as a witness, and as it is the fiscal's duty under section 31, paragraph 1, of General Order No. 58, to present evidence in support of the prosecution in criminal case No. 39901 for violation of the Gambling Law, the respondent judge who tried the case was under obligation by reason of his office to permit said Cornelio Dungao to testify as a witness for the prosecution in said case, and in refusing to do so and ordering that the testimony already given by said witness be stricken from the record, he failed to perform his judicial duty.

The respondents' contention that the Attorney-General has no personality to institute the instant proceeding, is untenable, for, as representative of the People of the Philippine Islands, he is duty bound to prosecute those who violate the law, and the present recourse is intended to remove an obstacle which prevents him from performing his duty.

Wherefore, we are of opinion and so hold that a person charged with the crime of perjury upon an information, but neither convicted nor sentenced by a competent judge, is not disqualified to testify as a witness, and the court or judge refusing to permit him to so testify during a trial may be compelled to do so through the writ of mandamus (*Dayrit vs. San Agustin and Valdez*, 40 Phil., 782; 38 C. J., 628).

We have indicated at the beginning, that these proceedings should be for mandamus and not for certiorari, and we have so regarded them, in view of the general prayer contained in the complaint and of the facts elucidated, in accordance with the doctrine laid down by this court in *Guzman vs. Lichauco* (42 Phil., 291).

By virtue whereof, the order issued by the respondent judge in criminal case No. 39901, and dated October 20, 1930, is hereby reversed, and it is ordered that said judge reinstate the testimony of witness Cornelio Dungao in said criminal case, and permit him to continue testifying as a witness therein, with costs against the respondents, except the respondent judge. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Ostrand, Johns and Romualdez, JJ., concur.

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