

THE UNITED STATES, PLAINTIFF AND APPELLANT, VS. FELISA BBONDIAL ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 4401. September 29, 1908*

Ponente: TORRES, J.

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On the 21st of August, 1907, the provincial fiscal of Albay, after a preliminary investigation, filed a written complaint with the Court of First Instance of said province, charging Felisa Brondial and Juliana Selizar with the crime of perjury. He alleged that the said crime was committed in the open Court of First Instance, on or about the 25th of February, 1907, during the trial of the civil case No. 090 of the said court, in which Agustin Zamora was plaintiff and the said Felisa Brondial defendant; that the said proceedings were instituted to secure the return of a watch, or the payment of P285, the value thereof; that Felisa Brondial declared under oath, knowingly, willfully, and maliciously, that she was 20 years of age, while her mother, Juliana Selizar, said that her daughter was only 18; both the accused were aware that Felisa was fully 25 years old, and in this manner they made a false declaration with the manifest intent to evade the civil liability arising from an obligation, whose fulfillment was demanded in said action, all contrary to law.

In agreement with the counsel for the accused, the provincial fiscal requested the temporary dismissal of the charge with regard to Juliana Selizar, reserving the right to file a separate complaint against her. This was granted by the judge below, who authorized the filing of an amended complaint against Felisa Brondial, which was done by the fiscal on the 11th of September following.

On the same date counsel for the accused interposed a demurrer, alleging that the facts set forth in the complaint did not constitute the crime of perjury committed in a civil cause, for the reason, as set forth therein, that the supposed perjury had been perpetrated and committed in a civil suit between Agustin Zamora and the accused Felisa Brondial, who was therefore one of the parties to the suit, and according to the opinion of Viada, a distinguished commentator on the Penal Code, the said crime can not be committed in a civil cause by a person who is a party thereto. For these reasons he moved for the dismissal of the case.

After hearing the provincial fiscal, the court below, on the same date, sustained the demurrer interposed by the counsel for the accused and ordered the case dismissed; from said decision the provincial fiscal appealed, and for the said reason the proceedings were forwarded to this court.

As has been shown, the matter at issue is that of a party to a civil action to secure the return of a watch or the payment of its value, who, according to the complaint, perverted the truth, thereby committing the crime of giving false testimony as defined and punished by article 321 of the Penal Code.

In case No. 2461, proceeding from the Court of First Instance of Ambos Camarines, and brought by The United States against Martin Sarte[1] for false testimony, this court in its decision therein stated, among other things, that (pp. 739-741):

"The question now arises whether under the provisions of General Orders, No. 58, and those of the Code of Civil Procedure now in force, a party to an action who gives false testimony as a witness in his own case can be convicted of the crime of 'false testimony.'

"Under the laws now in force the answer to the above question must be in the affirmative and against the contention of the Attorney-General, who bases his opinion upon the legislation existing in these Islands prior to the promulgation of General Orders, No. 58, and the Code of , Civil Procedure. If under our present system a court can take into consideration the sworn statement of a party to an action together with, the other evidence introduced during the trial and decide the case against the adverse party, it would seem just that, if it be shown that his testimony was false, he should be punished in accordance with the provisions of article 321 [of the Penal Code] not as a party litigant but as a perjured witness.

"It is true that a person could not be hanged or sent to a penitentiary for giving false testimony in a civil suit, but it is none the less true that through his perjured testimony a family may lose its home and be reduced to misery and poverty and be even deprived of all means of subsistence.

"Section 382 of the Code of Civil Procedure provides in part as follows: All persons, etc., may be witnesses. Neither the parties nor other persons who have an interest in the event of an action or proceeding shall be excluded.

"Section 15, No. 3, of General Orders, No. 58, provides that in all criminal prosecutions the defendant shall be entitled to testify as a witness in his own behalf, and section 55 says that all persons, without exception, etc., may be witnesses. So that neither the parties nor other persons who have an interest in the event of an action shall be excluded, etc.

"If a party to an action gives false testimony he shall be held criminally liable and shall be punished in accordance with the provisions of the said article of the Penal Code, not as a party to the action but as a false witness in a civil suit.

"It would certainly be unjust to punish a witness who has merely perjured himself to please one of the litigants, and to allow the litigant himself, the only one really interested in the successful result of the suit, to benefit by his own criminal act, when he testifies falsely.

"The supreme court of Spain in an opinion rendered November 8, 1877, said that the main ground upon which the appeal by the prosecution rested was the error committed by the trial court in holding that the false testimony by a litigant or injured party was not covered by the provisions of the Penal Code relating to false testimony,' etc., which only referred to the testimony of witnesses and experts. In fact, such holding on the part of the trial court was notoriously erroneous. The party aggrieved by the commission of a crime can only testify as a witness. His testimony has considerable bearing upon the case. If he fails to state the truth, his false testimony becomes a crime.

"This same doctrine was followed in a decision rendered June 9, 1882. It was therein held that the fact that the witness had been injured by the commission of a crime did not take away from him his relation as a witness, and that he was therefore liable as such under the law.

"The doctrine thus laid down in a criminal case carried to the Supreme Court by writ of error is likewise applicable to the false testimony committed by a litigant as a witness in his own case. If, under the present laws, one of the parties to an action may obtain a favorable judgment on the strength of his testimony, it would seem just, for the protection of his fellow-citizens and the moral interests of the community, that he should be punished if he testifies falsely."

In view of the foregoing, it can not be said that the responsibility of the accused has been prejudged, any more than that the liability of a person is to be considered as proven by the mere fact that criminal proceedings have

been instituted against him; the conviction or the acquittal of the accused is to be adjudged in due course, according to the weight of the evidence and the merits of the case.

Therefore, the demurrer interposed by the counsel for the accused is inadmissible, and the case must be proceeded with until, by a final judgment, it be determined whether the crime imputed to the accused was committed, and whether her guilt is duly proven in the proceedings. Therefore the order appealed from dated the 11th of September, 1907, is hereby reversed, and the case is remanded to the trial court for action in accordance with the law and the principals herein set forth. So ordered.

Arellano, C. J., Mapa, Carson-, Willard, and Tracey, JJ., concur.

[1] 8 Phil. Rep., 737.

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