

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. INOCENCIO LAT ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 4613. September 10, 1908

Ponente: CARSON, J.

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CARSON, J.:

Appellants in this case were charged with the crime of denuncia falsa (false accusation or denunciation), as defined and penalized in article 326 of the Penal Code, and found guilty as charged.

The following order directing the provincial fiscal to file an information charging appellants in this case with the crime of perjury was issued in the course of criminal proceedings in the case of the United States vs. Ciriaco Dimayuga et al., in the Court of First Instance Of the Province of Batangas, in which proceedings defendants were acquitted of the crime of theft with which they were charged:

"It being apparent to this court that Inocencio Lat and Miguel Zapatero, witnesses for the prosecution in the above-entitled case, have probably committed the crime of perjury, for the purpose of securing the conviction, for the crime of theft, of the defendants herein,

"It is, therefore, ordered that the sheriff of this court arrest and detain the said Inocencio Lat and Miguel Zapatero, pending the presentation by the fiscal of an information charging them with the crime of perjury.

"Upon the filing of the information by the fiscal, which shall be done forthwith, there shall be set in the court calendar a date for the preliminary trial and hearing of the case.

"Inocencio Lat and Miguel Zapatero will be served with a copy of this information at once, and the clerk of this court is hereby ordered to obtain from said Lat and Zapatero the names of the witnesses whom they wish to produce before the court, in order that said witnesses may be summoned to appear, together with the Government witnesses, in one of the January sessions of this court.

"It is hereby ordered-that the sheriff of this court require from Inocencio Lat and Miguel Zapatero, the filing of a bond for P500, with sufficient sureties, conditioned on their appearance in one of the next January sessions of this court, and in lieu thereof to detain them in the provincial jail, to answer the charge which the fiscal is hereby ordered to present against them.

"So ordered, December 20, 1907.

"J. S. POWELL,

"Judge Seventh Judicial District."

It appears that the provincial fiscal instead of complying with that order filed an information charging the defendants in this case with the crime of denuncia falsa. There is nothing in the record which discloses that authority so to do was given to the fiscal by a final sentence or order of the court which took cognizance of the original proceedings for theft out of which this proceeding for denuncia falsa arose.

Article 326 of the Penal Code; which defines and penalizes the crime of denuncia falsa (false accusation or denunciation) expressly provides "that the denouncer or accuser, however, shall not be proceeded against unless by virtue of a final sentence, or order, equally final, of the court which took cognizance of the crime imputed and which dismissed the complaint." No such order having been issued in this case, the trial court was without jurisdiction of the crime with which the appellants were charged. The information should, therefore, be dismissed, with the costs in both instances de oficio, but without prejudice to the filing of a new complaint for the crime of perjury, in accordance with the above-cited order. So ordered.

Arellano, C. J., Torres, Mapa, Willard, and Tracey, JJ.,

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