

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CIRIACO MANLIMOS, DEFENDANT AND APPELLANT.

G.R. No. 4687. October 31, 1908

Ponente: TRACEY, J.

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TRACEY, J.:

In the Court of First Instance of Leyte the accused was convicted of estafa and sentenced to one year and six months of prision correccional, to restore P100, with subsidiary imprisonment, suspension from public office, and the costs.

He was president of the municipality of Liloan, which was the owner of 24 beams of molave wood destined to its use. The accused was building a church in the municipality, and the theory of the prosecution is that he took these 24 beams from a pile of 29, used them in building the church, and replaced them with other beams, older and of less value. On the other hand, it is claimed by the defense that there were 30 beams belonging to the municipality, of which 8 were taken and were actually being sawed up to be used in the schoolhouse, the other 22 remaining in the public place; the beams used by the builder of the church having been taken from another pile.

At the last preceding municipal election, at which the accused was elected president, his opponent was one Jorge Kapili, who afterwards became the complainant in this prosecution, although he did not take the stand on the trial. We can not accept as the full equivalent of proof on oath the agreement of counsel that, if certain additional witnesses were produced and sworn on behalf of the prosecution as well as of the defense, they would testify as the actual witnesses had done as to the very substance of the issue. (U. S. vs. Donato, 9 Phil. Rep., 701.) It is not supposed to be within the knowledge or competence of counsel to predict what a proposed witness shall say when under the sanction of his oath and the test of cross-examination. A conviction for crime should not rest upon such mere conjecture. Nor is it possible for a trial court to weigh with exact nicety the contradictory declarations of witnesses not produced so as to be subjected to its observation and its judgment as to their credibility. This class of testimony was unfavorably commented upon in *United States vs. Pobre*,^[1] decided August 1, 1908. In the case of the *United States vs. Castaneda* (reported in memorandum, 10 Phil. Rep., 761), effect was given to a stipulation that uncalled witnesses for the defense would testify in a certain manner to the extent of holding, "we do, not think, under the circumstances, that a new trial should be granted for this irregularity in the procedure," on the ground that in that instance the agreement was entirely for the benefit of the defendant, his witnesses thereby escaping cross-examination. Therefore the error was one of which he had no reason to complain. In the present case the story of each side is sustained by two witnesses only, in addition to which we have the testimony of the accused himself. The two versions of fact appear rather evenly balanced and we should find it difficult under the circumstances to say that the proof overcame the presumption of innocence of the accused, were it necessary to finally pass upon that question.

In any event, it is clear that the offense, if one was committed, did not constitute estafa, inasmuch as the beams were not shown to have been in the especial custody of the accused or that, by reason of his office, he was charged with any duty in respect of them. If he took them, he did so as any other individual might have taken

them, and his crime does not come within the complaint laid against him. For this reason the complaint against him must be dismissed, and he is hereby absolved, with the costs of both instances de oficio. So ordered.

Arellano, C. J., Torres and Mapa, JJ., concur.

Carson and Willard, JJ., concur in the result.

[1] Page 51, supra.

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