

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. BALBINO ADOLFO, DEFENDANT AND APPELLANT.

G.R. No. 4803. December 19, 1908

Ponente: CARSON, J.

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CARSON, J.:

The accused in this case is charged with the crime of falso testimonio (perjury) in that on the 12th day of February, 1907, while testifying as a witness in the case of the United States vs. Lorenzo Tupas (9 Phil. Rep., 506), who was charged with assassination, he swore positively that he did not see one Raymundo Muñoz, deceased, on the 13th of November, 1907, nor at any other time between that date and the 17th day of that month; the fact being that on the 13th of November, 1906 he was present and saw Lorenzo Tupas, the accused in the former case, assassinate the said Raymundo Muñoz.

The record in the case of The United States vs. Lorenzo Tupas, No. 1055, in the Court of First Instance of the Province of Leyte, was introduced at the trial, and from that record it clearly appears that one Balbino Adolfo, 31 years of age, a single man, by occupation a farmer, and a native and resident of the municipality of Abuyong, while testifying as a witness, swore that on the 13th of November, 1906, he was on an expedition of volunteers, in company with and under the command of one Lorenzo Tupas, from whom he was not separated at any time on the 13th day of November, 1906, or at any other time during the course of the expedition, which lasted from the 13th until the 19th of November; and that he did not see Raymundo Muñoz, deceased, who was well known to him, at any time or in any place during the course of the expedition.

At the trial of this case, it was conclusively proven that the accused Balbino Adolfo was a member of the expedition referred to in the above-cited testimony, and was present on the 13th day of November, 1906, at the time when Raymundo Muñoz was assaulted and assassinated by Lorenzo Tupas; that he was standing in line, in front of, facing, and within less than twenty feet of the place where the crime was committed; that there was nothing which impeded his view or could have prevented him from seeing the crime committed; and further that the accused was one of those who captured Muñoz a short time prior to his assassination; and that he took a bolo from Muñoz at the time when he was captured.

On this evidence the trial court found the accused guilty of falso testimonio (perjury) as defined and penalized in article 319 of the Penal Code, which prescribes that:

"He who in a criminal case gives false testimony in favor of the defendant will be punished with the penalty of arresto mayor in its maximum degree to prision correccional in its medium degree, and a fine of from 375 to 3,750 pesetas, if the offense charged was a felony (delito) and with the penalty of arresto mayor if the offense charged was a misdemeanor (falta)."

Counsel for the appellant contends that the judgment of conviction should be reversed because, as counsel alleges, the accused in this case is not sufficiently identified as the person who testified in the case of The United States vs. Lorenzo Tupas, under the name of Balbino Adolfo; and because it appears from the record of the former case"

that the accused in that case was convicted of the crime of assassination with which he was charged, so that the effect of the testimony of the witness can not be said to have been favorable to the accused in the former case.

It is true that no witness testified to having seen the defendant in this case upon the witness stand in the former case or to having heard his testimony in that case, the only evidence of what occurred at the former trial being the public record thereof introduced at the trial. But that record discloses that one Balbino Adolfo, a man 31 years of age, appeared as a witness and testified that he was with the party of volunteers of which it was proven at the trial in this case the accused was a member; and it also appears that the witness, Balbino Adolfo, testified that he was with the expedition at the same time, and occupied the same relative position therein as did the accused in this case; and the trial judge who saw the accused in this case was evidently of opinion that he was of about the same age as was the witness in the former case. The accused, when formally arraigned in this case, under the name of Balbino Adolfo, answered to the charge, thereby admitting his identity and name to be correctly set out in the information; and the witness in the case of *The United States vs. Tupas*, who, the prosecution contends, is none other than the accused in this case, testified under precisely the same Christian and family name. The accused offered no evidence tending to prove that he is not the same person as the witness, Balbino Adolfo, who testified in the former case; and indeed that fact was not even questioned at the trial of the case. We think that this evidence sustains a finding that the accused in this case is one and the same person as the witness, Balbino Adolfo, who testified in the former case.

It has been frequently though not uniformly held that a presumption of the defendant's identity arises in a criminal case from the identity of names (*Bishop's New Criminal Procedure*, Vol. 1, p. 668, and cases cited; *Am. & Eng. Ency. of Law*, 2d edit., Vol. 15, p. 920), and the apparent conflict in the reported cases would appear to be due in large part to the varying circumstances in each case, the general doctrine as laid down by *Greenleaf* being as follows:

"In regard to the supposed presumption of identity of person from identity of name, three things are to be said: (1) 'A concordance in name alone is always some evidence of identity, and it is not correct to say with the books that, besides proof of the facts in relation to the persons named, their identity must be shown, implying that the agreement of name goes for nothing; whereas it is always a considerable step toward that conclusion.' (2) In the greater number of cases the ruling is merely that identity of name, with or without other evidence, is or is not sufficient evidence to go to the jury or sufficient to support a verdict, on the principle of § 14 w. ante (which treats of the general theory of presumptions and burden of proof). The oddness of the name, the size of the district and length of the time within which the persons are shown to have coexisted, and other circumstances, affect this result differently in different cases. (3) Often a genuine presumption is enforced by the courts, in the sense that the duty of producing evidence to the contrary is thrown upon the opponent. But these rulings can not be said to attach a presumption to a definite and constant set of facts; they apply the presumption upon the circumstances of the particular case.

"It is thus necessary, in ascertaining the state of the law in a given jurisdiction, to examine the facts in each case. There is, moreover, some difference in the strictness with which the evidence of identity is treated for different sorts of documents or persons. There is perhaps a greater strictness shown in dealing with the identity of a person named as the signer of an answer or affidavit in chancery, or as the object of a conviction of crime, or even as a party to a negotiable instrument; but where an identity of names is found in deeds or the like, in tracing title from ancestors and grantors, the courts are more frequently found enforcing a genuine presumption. Beyond this, no general tendencies seem traceable. (*Greenleaf on Evidence*, 16th edit., Vol. I, p. 142.)"

Paragraph 23, section 334, of the Code of Civil Procedure, provides that identity of person may be presumed from identity of name when that fact is uncontradicted, but that such presumption is disputable, and may be contradicted by other evidence; and we are of opinion, from a review of the reported cases and from an

examination of the grounds upon which this presumption rests, that the rule is applicable in criminal as well as civil cases, modified, however, by the presumption of innocence which always arises in favor of one charged with a crime, the presumption of innocence being sufficient or insufficient to rebut the presumption of identity in accordance with the varying circumstances of each case. If, as in the case at bar, there is no ground upon which to base a reasonable, not a mere whimsical or fanciful doubt as to the identity of person indicated by the identity of name, the mere presumption of innocence is not sufficient in itself to rebut the presumption of identity, though it might be otherwise in cases such as those suggested by *Greenleaf*, where the size of the district or the length of time within which the persons are alleged to have coexisted or other similar circumstances indicate a reasonable possibility that, notwithstanding the identity of names, the persons known by such names are not one and the same.

But, while we are convinced that the accused in this case gave false testimony in the former case, we agree with counsel for the appellant that this testimony was not favorable to the accused in the sense in which that word is used in article 319 of the Penal Code. Articles 318, 319, and 320 of the Penal Code prescribe penalties to be imposed upon witnesses who testify falsely in a criminal case, article 318 prescribing severe penalties in cases where false testimony is given "against the defendant," article 319 prescribing less severe penalties where it is given "in favor of the defendant" and article 320, prescribing a comparatively light penalty (arresto mayor in its minimum and medium grades) where the false testimony "neither prejudices nor favors" the accused.

These articles are as follows:

"ART. 318. He who in a criminal cause shall give false testimony against the accused shall be punished:

"1. With the penalty of cadena temporal in its maximum degree to cadena perpetua, and if the accused should have been in such cause sentenced to the penalty of death and it should have been carried out.

"2. With the penalty of cadena temporal, if the accused should have been condemned in the cause to cadena perpetua and should have begun to undergo said penalty.

"3. With the penalty of presidio mayor if the accused should have been condemned in the cause to cadena perpetua, and should not have begun to undergo the same.

"4. With the penalty of presidio correccional in its maximum degree to presidio mayor in its medium degree, if the accused should have been condemned in the cause to suffer any other corporal punishment, and should have begun to undergo the same.

"5. With the penalty of presidio correccional in its medium degree to presidio mayor in its minimum degree, if the accused should have been condemned in the cause to any other corporal penalty, and should not have begun to undergo, the same.

"6. With the penalties of presidio correccional in its medium and maximum degrees and a fine of from 625 to 6,250 pesetas if the accused should have been sentenced in the cause to a correctional penalty and should have begun to undergo the same.

"7. With the penalties of presidio correccional in its minimum and medium degrees and a fine of from 375 to 3,750 pesetas if the accused should have been sentenced in the cause to a correctional penalty and should not have begun to undergo the same,

"8. With the penalties of arresto mayor in its maximum degree to presidio correccional in its minimum degree and a fine of from 325 to 3,250 pesetas if the accused should have been condemned to a light penalty and should, have begun to undergo the same.

"9. With the penalties of arresto mayor and a fine of from 325 to 3,250 pesetas if the accused should have been

condemned to suffer a light penalty and should not have begun to undergo the same."

"ART. 319. He who in a criminal cause shall give false testimony in favor of the accused shall be punished with the penalties of *arresto mayor* in its maximum degree to *prision correccional* in its medium degree and a fine of from 375 to 3,750 pesetas if the cause were for a crime and with that of *arresto mayor* if it were for a misdemeanor.

"ART. 320. The penalty of *arresto mayor* in its minimum and medium degrees shall be imposed on the person who in a criminal cause for a crime shall give false testimony that neither prejudices nor favors the accused."

The trial court was of opinion that the question whether the false testimony in a particular case favored or prejudiced the accused is to be determined by considering whether upon a review of the whole record, it tended to favor or prejudice the accused, and that it matters not whether the judgment pronounced conclusively establishes that it did not produce the effect it was intended to produce and that the false testimony was wholly disregarded by the court, the true question being whether the false testimony, if believed, would have had an effect prejudicial or favorable to the accused.

That this is not a correct construction of the language of the code becomes manifest on examination of the provisions of article 318, which prescribe the penalties to be imposed where one gives false testimony against the defendant. All the penalties prescribed in that article are made dependent on the penalties imposed in the principal case, no penalty being prescribed unless the defendant against whom the testimony is given is convicted and sentenced. So that we must look to article 320 which prescribes the penalty to be imposed where the false testimony is neither prejudicial nor favorable to the accused, in order to find the penalty which should be imposed on one who gives false testimony intended to have a prejudicial effect, but which fails of its purpose, as demonstrated by the fact that the court acquits the defendant. It needs no argument to show that the language of article 319 must be construed in a similar manner, and that the penalty prescribed in article 320 is the penalty which should be prescribed in a case where one gives false testimony which is intended to favor the defendant, and which, if believed by the court, would in fact favor the defendant, but which fails of its intended effect as shown by the judgment of the court convicting the defendant of the crime with which he was charged. (Decision of the supreme court of Spain of December 15, 1880, rectifying its decision of May 3, 1876, wherein a similar doctrine to that laid down by the trial court in this case was accepted and approved. See also U. S. vs. Opinion, 6 Phil. Rep., 662.)

In the case at bar the false testimony given by the defendant was manifestly intended to favor the accused in the former case, and would undoubtedly have had that effect if the court had accepted it as true, but, since the accused in the former case was convicted of the crime with which he was charged, the false testimony can not be said to have favored him in the sense in which that word is used in articles 319 and 320 of the code. We, therefore, reverse the judgment of conviction and the sentence imposed by the trial court, and find the defendant guilty of the crime of false testimony as defined and penalized in article 320 of the code, and impose upon him the penalty of three months of *arresto mayor*, together with the costs of the proceeding in the Court of First Instance, the costs of this instance to be *de oficio*. So ordered.

Torres, Willard, and Tracey, JJ., concur.

Arellano, C. J., dissents.

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