

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. AGUSTIN CONCEPCION ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 4911. March 31, 1909

Ponente: WILLARD, J.

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WILLARD, J.:

The accused herein were inspectors of the election board of the first precinct of the municipality of Calibo, Province of Capiz, P. I., in the election for Delegates held on the 30th day of July, 1907.

The said inspectors were accused, in case No. 618 of the Court of First Instance of Capiz, of violation of the Election Law, in which cause they were convicted, and they appealed to this court from the judgment of conviction, the latter having been affirmed on February 20, 1909. In said case, No. 4817 of this court,[1] the accused were charged with having refused to inscribe the name of one Esteban Leocario, without just cause.

It was a point in controversy in said case whether or not Esteban Leocario appeared before the inspectors' board composed of the accused, in order to have his name registered in the electoral list. The defendants in the said appealed case, who are the same as those in the present case, testified in their own behalf, and swore that Esteban Leocario did not appear before them, on the day alleged, to have his name registered as an elector. This negative allegation was considered by the prosecution as false and the present proceedings were instituted against the defendants for perjury.

Therefore, the fact in controversy in both cases is only one, namely, the appearance or nonappearance of Esteban Leocario before the election inspectors.

In affirming the judgment in case No. 4817, we necessarily held that the testimony given by these defendants was beyond a reasonable doubt untrue. Substantially the same witnesses were produced in this case as in that case, and it necessarily follows that in our Opinion the evidence in this case shows, beyond a reasonable doubt, that the defendants did not testify to the truth when they stated that Esteban Leocario did not appear before them. There can be no question that, when they so stated, they stated something that they knew to be untrue. They are accordingly guilty of the crime of perjury.

The important question in the case, however, is whether this offense is to be punished by the provisions of the Penal Code, articles 318 and following, or whether these articles have been impliedly repealed by section 3 of Act No. 1697. If the case falls within the provisions of the Penal Code and those provisions are still in force, the judgment must be reversed, because this case for perjury was tried and decided in the court below before the termination of the case in which the false testimony was given. (U. S. vs. Opinion, 6 Phil. Rep., 662; U. S. vs. Adolfo,[1] 7 Off. Gaz., 41.)

Section 3 of Act No. 1697 is as follows:

"Any person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the Philippine Islands authorizes an oath to be administered, that he will testify, declare, depose, or

certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, 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 of not more than two thousand pesos and by imprisonment for not more than five years; and shall, moreover, thereafter be incapable of holding any public office or of giving testimony in any court of the Philippine Islands until such time as the judgment against him is reversed."

This section in terms covers this case and any other case of perjury committed in court, and, if it stood by itself, there could be no question but that it would be inconsistent with the provisions of the Penal Code and would impliedly repeal them.

The claim of the appellant is, however, that the section must be limited in its operation by reason of the other provisions of the Act in which it is found and by the title of that Act.

That title is as follows:

"An Act authorizing the appointment of commissioners to make official investigations and fixing their powers, for the payment of witness fees, and for the punishment of perjury in official investigations."

Section 1 of the Act is as follows:

"Whenever, in the discretion of the Governor-General, it is necessary for the good of the public service to investigate any action or conduct of any person or persons in the Insular, provincial, or municipal service, he may by order designate a suitable person to make such investigation and to take the testimony of any person or persons which, in his judgment, may be relevant thereto, and may detail or authorize the said person designated to procure stenographers and interpreters to assist in the same. Such person so designated shall have such full power to subpoena witnesses and require the production of documentary evidence and to administer oaths to witnesses as is possessed by

Courts of First Instance in criminal actions and may invoke the summary process of such courts for the punishment of contempts in failure to appear or to produce evidence or to give testimony. All interpreters acting in any such proceeding shall be first duly sworn well and truly to interpret between the counsel, the witnesses, and the person so designated, and the stenographers shall be sworn to make a true transcript of the testimony given on such proceeding."

It is said in the first place by the appellants that the Act would be void if construed so as to be applicable to perjury committed in ordinary actions in court, and, in support of that claim, section 5 of the Act of Congress of July 1, 1902, is cited, wherein it is said:

"That no private or local bill which may be enacted into law shall embrace more than one subject, and that subject shall be expressed in the title of the bill."

It is very apparent that the general subject of perjury is not expressed in the title to this Act, and, if this provision of the law is applicable to the Act in question, the contention of the appellant must be sustained. But the provision is not applicable, for it relates only to private or local bills. This Act is in no sense either private or local. The official translation of this section into Spanish may throw some doubt on its proper construction, but the English text is plain.

It is further said that section 3, if it is construed as claimed by the Attorney-General, would be void as being in violation of section 1 of Act No. 6 of the Laws of the Commission, which was approved on the 26th of September, 1900, and which prescribed the order of procedure of the Commission in the enactment of laws. That section provides as follows :

"(b) All Acts shall, before the enacting clause, be prefaced by a title stating the purpose and scope of the Act."

This provision being found only in an Act of the Commission, it was entirely within the power of the Commission to repeal it entirely or to disregard it in any particular ease. It, therefore, is important only as a means for determining what the real intention of the Commission was in the enactment of said section 3. Did it intend to limit its operation to false swearing before such a commissioner as is named in section 1, or did it intend to make the prohibition general and extend it to all cases of perjury? We have no doubt that the latter was the real intention. If it had been the intention of the legislative body to limit the section to official investigations, it would have been expressed in entirely different language. The section would have read, in such case, as follows:

"Any person who, having taken an oath before such commissioner that he will testify truly, and willfully and contrary to such oath states any material matter which he does not believe to be true, is guilty of perjury."

If such had been the intention of the Commission, there would have been no provision for cases arising before a competent tribunal. There would have been no provision in regard to depositions or certificates, because the commissioner appointed in accordance with the provisions of section 1 has no power to receive certificates or depositions or affidavits, but only to examine witnesses and receive documentary evidence.

Sections 3 and 4 of Act No. 1697 are copied, with the necessary changes only, from sections 5392 and 5393 of the Revised Statutes of the United States. These sections constitute the general law relating to perjury in the United States, considered as a Government separate from that of the States.

There is another reason which is entitled to weight, and that is that the provisions of the Penal Code relating to perjury covered cases only which arose in court and in some contentious proceeding. (U. S. vs. Gutierrez,[1] 7 Off. Gaz., 322.) There was no legal provision in force in these Islands prior to the enactment of Act No. 1697 which declared that the making of a false affidavit should constitute the crime of perjury, and it may safely be said that it was the intention of the legislature to supply this deficiency in the law.

Our conclusion is that the articles of the Penal Code relating to perjury have been repealed, and that that crime is now defined and punished by section 3 of Act No. 1697. By the provisions of this section it is not necessary that the proceeding in which the perjury was committed should have been terminated before a prosecution for that crime is commenced.

The judgment of the court below is affirmed, with the costs of this instance against the appellants.

Torres, Johnson, and Carson, JJ., concur.

Arellano, C. J., dissents.

[1] Not reported.

[(1)] 12 Phil. Rep., 206.

[1] 12 Phil. Rep., 529.

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