

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. TOMAS UMALI, DEFENDANT AND APPELLANT.

G.R. No. 5283. January 15, 1910

Ponente: CARSON, J.

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CARSON, J.:

Except that in our opinion the amount of money obtained under false pretenses by the accused was P101, as alleged in the complaint, and not P87.40, as found by the trial court, the material findings of fact by the trial court are fully sustained by the evidence adduced at the trial, and these findings of fact leave no room for doubt as to the guilt of the accused of the crime of estafa of which he was convicted.

When the case was pending on appeal, appellant filed in this court the following affidavit in support of a motion for a new trial for the purpose of taking the testimony of the persons mentioned therein:

"The undersigned, defendant and appellant in this case, stated the following, after having been duly sworn:

"1. That in the trial of the present case in the first instance and during the period allowed to the defense for producing evidence, the said accused had summoned, the witness Joaquin Garcia Lopez, who was ready to testify that the undersigned had placed at his disposal P50 for each hectare of the lands sold, belonging to the witnesses for the prosecution, Venancio Rodriguez, Ignacio de Gala, and other owners, immediately after the respective sales of the different parcels of land entrusted to the witness by several inhabitants of Sariaya, Tayabas.

"2. That Mr. Pastor Espinosa, municipal president of Sariaya, was also Summoned, and was ready to testify on the same occasion; that the undersigned asked Messrs. Venancio Rodriguez, Ignacio de Gala, and others, in the presence of the said president, if they consented to sell their lands to the railroad company at 50 each hectare, and that said owners agreed to it before signing the declaration of their respective property.

"3. That if both witnesses were not produced it was due to the advice of his attorneys, who assured him (the defendant) that the evidence adduced by the prosecution was of no effect against the undersigned; and, therefore, it was unnecessary to strengthen his testimony by that of the above witnesses.

"4. That the exponent, although he is a lawyer, was not able to understand what was the most necessary for his defense, on account of his condition at the time and owing to the natural disturbance of his mind, and that, for this reason, he was surprised by the advice and the opinion of his attorneys."

This motion must be denied.

In criminal as well as in civil cases, it has frequently been held that the fact that blunders and mistakes may have been made in the conduct of the proceedings in the trial court, as a result of the ignorance, inexperience, or incompetence of counsel, does not furnish a ground for a new trial. (14 Enc. Pl. & Pr., 733, "New Trial" and cases there cited.)

"If such grounds were to be admitted as reasons for re-opening cases, there would never be an end to a suit s"o

long as new counsel could be employed who could allege and show that prior counsel had not been sufficiently diligent, or experienced, or learned." (De Florez vs. Raynolds, 16 Blatchf. (U. S.), 397.)

So it has been held that mistakes of attorneys as to the competency of a witness, the sufficiency, relevancy, materiality, or immateriality of certain evidence, the proper defense, or the burden of proof are not proper grounds for a new trial; and in general the client is bound by the action of his counsel in the conduct of his case, and can not be heard to complain that the result of the litigation might have been different had counsel proceeded differently.

The following citation from *Darbey vs. State* (3 S. E. Rep. (Ga.), 666), with which compare *State vs. Elliott* (16 Mo. App., 552), sets out the doctrine in all its rigor:

"Another ground was that Mr. Jemison, who was counsel for the accused, was unwell at the time of the trial, and neglected to put in some evidence in the case, and that on account of his ill health and irritability he would not allow associate counsel to control the case, and that in a few days after the trial he died. The court certified that Mr. Jemison's mind was perfectly clear, and that he was himself. We can not relieve the accused under circumstances of this kind. He selected Mr. Jemison as a lawyer; he was his leading counsel. He relied upon him, and the court says his mind was perfectly clear; and whether he was a man of as great ability as other counsel might have been can not avail the defendant here, if he employed counsel who conducted his case in such manner as to lead to his conviction. That is his misfortune, for which he alone must be responsible."

It must be admitted, however, that courts of last resort have occasionally relaxed the strict application of this rule in criminal cases, where the defendants, having otherwise a good case, were able to satisfy the court that acquittal would in all probability have followed the introduction of certain testimony, which was not submitted at the trial under improper or injudicious advice of incompetent counsel. (*State vs. Williams*, 27 Vt., 724; *State vs. Jones*, 12 Mo. App., 93, criticised and disapproved in a later decision by the same court in *State vs. Dreher*, 137 Mo., 11.) But such cases are extremely rare, and while this court, to prevent a manifest miscarriage of justice in a jurisdiction wherein a wholly new system of judicial procedure is being implanted, might in an exceptional case relax the rigor of the rule, this, would be done only under very exceptional circumstances, and in cases where a review of the whole record taken together with the evidence improvidently omitted would clearly justify the conclusion that the omission had resulted in the conviction of one innocent of the crime charged.

In the case at bar, defendant himself is an attorney and his counsel appear to have made a vigorous and capable defense on behalf of their client. It is admitted that the testimony which was not offered at the trial was available and might have been introduced at the trial below. And we are satisfied that the desirability of putting the witnesses on the stand, whose testimony is now sought to be introduced into the record, was maturely considered; and that their exclusion from the witness stand was not the result of surprise, accident, or the confusion of the trial. This seems clear from the fact that a continuance on motion of counsel for the defense was granted in the court below, based in part upon the absence of Lopez and the alleged importance of his testimony to the defense. We are disposed rather to believe that the reason for the failure to call these witnesses to the stand was that their testimony under strict cross-examination might not have sustained the testimony of the accused in all the details as to the facts concerning which they were able to testify; and however this may be, accused and his counsel, having deliberately elected not to call on these witnesses at the trial, for reasons best known to themselves, the case should not now be opened after conviction to give them an opportunity to put these witnesses on the stand. To do so would be to put a premium on the willful and intentional commission of errors by accused persons and their counsel, with a view to securing new trials in the event of conviction on the trial wherein the errors and mistakes were committed.

Furthermore, we do not think that the introduction into the record of the testimony which the affidavit alleges

these witnesses would give on a new trial would or should affect the result.

We do not doubt that Rodriguez agreed to sell his land at the rate of 50 pesos per hectare, and indeed the sale could not have been made and the crime of estafa could not have been committed by the accused had he not done so. The vital question in the court below was the conduct of the accused in inducing him to give his consent and in concealing from him the fact that the purchaser was paying a much higher price than he was receiving.

Nor do we think that the testimony of Lopez, as set out in the affidavit, would materially strengthen the case for the defense. So far as it would tend to prove that the funds were paid over to Lopez immediately after the sale was made it appears to be in direct conflict with other credible evidence in the record, including the statements of the accused himself as set out in Exhibits A and B of the prosecution ; and even if this fact were admitted as true, it would tend merely to disclose that the estafa committed by the accused was committed for the purpose of benefiting a third party rather than himself, a fact which would in no wise relieve him of criminal responsibility.

Modified by substituting P101 instead of P87.40 as the amount of money obtained under false pretenses, and to be returned to the offended party, the judgment of conviction and the sentence of the trial court should be and are hereby affirmed with costs against the appellant. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, and Moreland, J.J., concur.

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