

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ISAAC WILLIAMS, DEFENDANT AND APPELLANT.

G.R. No. 5801. January 13, 1911

Ponente: MORELAND, J.

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MORELAND, J.:

The defendant in this case was tried and convicted of the crime presented in the following information:

"The undersigned accuses Isaac Williams of the crime of falsification of an official document committed as follows :

"On or about the month of July, 1909, in the pueblo of Lucena, Province of Tayabas, Philippine Islands, the said Isaac Williams, a public official, duly named and qualified as such, in' violation of his duties, falsified a public document in the following manner: Being the foreman charged with the work on the road from Lucena to Tayabas, he certified that the pay roll made out as the basis of the payment of the workmen who were working on said road during the month of July, 1909, was correct, and that the services had been performed as therein stated, when, in reality, the workman Emeterio Macatangay, who appears on the pay roll as having worked eleven days during said month of July, worked eight days for the accused and only three days for the Province of Tayabas.

"All in violation of law."

The Court of First Instance of the Province of Tayabas sentenced the accused to fourteen years eight months and one day of cadena temporal and to pay a fine of 1,250 pesetas, together with the accessory penalties incident thereto as provided in article 56 of the Penal Code in relation to articles 42, 31, and 43 thereof, and to pay the costs of the trial. From that judgment of conviction and the sentence imposed thereunder the defendant appealed to this court.

We refrain from discussing the effect upon this case of the decision of the Supreme Court of the United States in the case of *Weems vs. United States* [1] for the reason that we are of the opinion that, upon the merits, the defendant is not guilty of the crime charged, and we believe that, even though it be admitted that the *Weems* case is decisive of the case at bar, justice to him requires that we pronounce a judgment upon the merits.

It appears from the evidence in the record that the accused was, during the month of July mentioned in the information, the foreman in charge of the work being performed upon the highway running from Lucena to Tayabas, in the Province of Tayabas, with the technical designation of road and bridge foreman (capataz encargado) ; that the work being done upon the road was in progress during the entire length of the road, a distance of about 7 miles; that the accused was in charge, in a supervisory capacity, of the work progressing the entire length of the road; that, working under his orders and directions, were a number of capataces or inferior bosses, each in charge of a section of the road referred to, having under his direction and control a considerable number of workmen; that the work upon the road was in charge and under the general supervision of M. Cilley, assistant engineer, to whom the accused was subordinate and under whose orders he acted; that the pay roll, which

gives the names of the men working upon the road, the time they worked, and the amount of pay they were entitled to receive for their month's labor, was made up from time books kept by the various inferior bosses in charge of the separate districts into which the road was divided; that each capataz kept a book, called the time book, in which he entered the names of the men working under his charge and the number of hours they severally worked each day; that in making up the pay roll each capataz sent his time book to Mr. Cilley, the assistant engineer in charge of the road work, and the clerks in his office, from the data contained in said time books, made up the pay roll; that this was the manner in which the pay roll alleged to be falsified, Exhibit B, was made up; that the particular inferior boss or capataz who kept the time book, from which that portion of the pay roll involved in this case was made up, was one Canuto Manalo; that the accused Williams had nothing whatever to do with the pay roll until it was made up, when he certified it.

It appears also from the evidence that there were two classes of workmen engaged in the construction of this road. One class was composed of laborers who worked by the day for the Government, each one of whom received from the Government for each day's work the sum of 60 centavos and food. The other class was made up of cart drivers, who were apparently the owners of the carts and carabaos driven, respectively, who were working for the Government, not by the day, but were engaged in hauling sand and gravel upon the road at P1 per load. This latter class of laborers was not entitled to food from the Government. They compose the class presented in voucher Exhibit C, which contains a list of ten men who were driving carts on said road during the month of July, hauling gravel and sand at P1 per load. It is not charged in the complaint that the voucher containing the names of these men was falsified. The falsification charged by the information relates solely to Exhibit B, which contains a list of the men who were working for the Government by the day at 60 centavos a day, the Government furnishing them their food. The theory of the prosecution seems to be that Emeterio Macatangay was carried upon the time book and appears in the pay roll, Exhibit B, as being a day laborer of the Government, receiving 60 centavos a day and food, whereas he was, in reality, driving a cart and carabao belonging to the accused, and that the money which was paid for such services was drawn by the accused or his tool, Emeterio Macatangay, under the name of John McStay; that inasmuch as cart drivers were hauling by the load and not by the day, they received pay for their personal labor, as well as for their carts and carabaos, by means of the charge of P1 per load; and that if Emeterio Macatangay, for example, were driving a cart and carabao for the accused, his daily wage should be paid by the accused and not by the Government, as the payment of P1 per load by the Government included the services of driver, cart, and carabao; that the accused, by means of the crime charged, procured the payment to Emeterio Macatangay, by the Government, of P6.60, wages which ought to have been paid by him, and thereby profited to the extent of that sum.

In the consideration of the evidence in this case it should be borne in mind that Exhibit C, introduced in evidence by the prosecution, which contains a list of those working on said road who were cart drivers during the month of July, 1909, the number of loads each hauled during said month, and the sum each was entitled to receive for his services for said month, stands wholly unimpeached as to its accuracy. While the learned trial court seems to assume that there is something wrong with, it, yet not a name, a word, or a figure which it contains has been proved to be incorrect or a fact which it contains to be false. While it may be urged that, if Emeterio Macatangay was in reality working as a cart driver on said road for the accused during said month, as the prosecution claims he was, and not as a day laborer, his name should appear on Exhibit C, we must note that, if the carabao and cart which the prosecution alleges that Emeterio Macatangay was driving belonged to the accused and was being driven for him by Emeterio Macatangay, as is claimed by the prosecution, then the name which should appear on Exhibit C is that of the accused and not Emeterio Macatangay, inasmuch as the person whom the Government should pay would be the accused and not Emeterio Macatangay, the latter being required to look to the accused for compensation. So that, if there is any inaccuracy in said exhibit, even under the evidence offered by the

prosecution, it consists in the absence of the name of the accused in the list of cart drivers working on said road or owners of carabaos and carts driven thereon. But, inasmuch as, if the accused actually had a cart and carabao in service on said road during said month, he has received, as shown by the proofs, absolutely no compensation therefor and that the Government has received such services free of charge, it is not an error of which the prosecution may complain, particularly when it is seen that such error in no positive way touches or is related to the alleged falsification of Exhibit B and can be used under the evidence in no possible way toward showing the guilt of the accused in committing such falsification. It would be little short of absurd to urge that a man who was so abandoned to cupidity and avarice as feloniously to falsify a public document (Exhibit B) in order to defraud the Government out of P6.60, would falsify another document (Exhibit C) in order to cheat himself out of ten times that sum; for if there is any error in Exhibit C, it consists, as we have said, in the absence of the name of the accused as the owner of a carabao and cart which rendered service on said road during July; but if the accused's driver, carabao, and cart worked during July, as the prosecution claims, then the absence of such fact on the pay roll demonstrates conclusively that the accused has received no pay therefor, as only those were paid whose names appear in the exhibit. John McStay received P71 for the month of July and he worked only nineteen days. Emeterio Macatangay received P6.60. If the accused's carabao and cart had worked, they could have earned at least as much as John McStay earned with his and paid the driver besides. The necessary conclusion is, from the standpoint of the prosecution, that by one falsification the accused gained P6.60, and by another he lost at least P66.60. This is absolutely the only result at which the evidence will permit us to arrive if we accept the theory of the prosecution and then test it by the proofs adduced.

It seems to us that, when a document is presented in evidence which is serviceable to the party introducing it only when the verity of the facts which it contains is impeached, and the party thus offering it fails utterly in his attempts to impugn its correctness, it is but just that he should be bound by every material fact which it contains. So, the prosecution in this case having offered in evidence Exhibit C for the purpose of later demonstrating that at least a portion of its contents had been falsified to the injury of someone interested, and having utterly failed to show such falsification, the prosecution should be bound by every material fact stated therein. There is not a scintilla of proof showing or tending to show that a single name among the ten appearing in Exhibit C is false or fictitious. There is no proof whatever showing or tending to show that any one of those names covered a dummy. There is not a particle of evidence which in the remotest way indicates that any man of the ten was not a living, breathing entity, working faithfully with his own hands, owning the carabao and cart which he drove, and receiving for his own benefit the sums which he earned. There is not a scrap of evidence connecting the accused or Emeterio Macatangay with John McStay. There is not a word in all the evidence of record even intimating that the accused was in any way connected with Exhibit C except that he was general overseer of the men named therein and certified to its correctness.

We are perfectly aware that it might be possible that John McStay or some other man on the list in Exhibit C was either a dummy or a fictitious name used to cover Emeterio Macatangay in order that, by such fraud, the accused might induce the Government to pay the wages of Emeterio Macatangay, when in reality he was working for the accused. We are perfectly able to see how this might happen. But the question presented to us is, "Did it happen?" For the determination of that question we are relegated to the proofs in the record; and they show, as we have before stated, that there is no foundation whatever for such a supposition. Even if we concede the most that the prosecution contends for, viz, that the accused owned the cart and carabao and that Emeterio Macatangay was driving it during the time alleged, what does it signify? It does not necessarily mean that Exhibit C is a false pay roll or that the accused is guilty of any crime. Such a state of fact is entirely consistent with his innocence. It is perfectly harmonious with the proofs and with reason to assume that, in such case, the Government had hired of him the carabao and cart to be used as its own and had employed Emeterio Macatangay to drive it. In that event

Emeterio Macatangay would have been listed as a day laborer of the Government, as it is admitted he was, and neither one of the exhibits, by their nature, would show, as neither does, the relation between the accused and the Government. It nowhere appears in the record that the accused ever drew a centavo out of the public treasury except for his personal services as road and bridge foreman; or that he ever received a centavo for the services of a carabao and cart, or for the labor of Emeterio Macatangay.

We hold, therefore, that the accuracy and truth of Exhibit C have not been impeached or impugned, and the facts therein stated must accordingly be taken as true.

After a careful reading of the testimony in the record, both oral and documentary, we are of the opinion that the judgment of conviction must be reversed. The evidence comes far short of showing the defendant guilty of the crime charged. The condition of the proofs leaves much to be assumed. From what has already been said, it is apparent that to find the accused guilty upon the theory of the prosecution, and that is the only theory presented to us by the briefs or by the record, it is necessary to make the following assumptions, which must be made in effect without proof:

- It involves the necessity of finding that Canuto Manalo was a *particeps criminis*.

As we have already noted, the time book from which was made up that portion of the pay roll (Exhibit B) alleged to be falsified was kept by Canuto Manalo. If Emeterio Macatangay was not working for the Government by the day but, instead, was employed by the accused as a driver of his carabao and cart, then Manalo falsified the time book and made a false report to the assistant engineer. He was also in charge of the gang of men who were drawing sand and gravel by the load and kept a record of the number of loads which each man drew. There were only ten men thus engaged, of whom he had charge and concerning whom the evidence speaks. If John McStay was a fictitious person or if he was the pay-roll name of Emeterio Macatangay or of the accused, then Manalo again falsified the record and misstated the fact when he said in Exhibit C that John McStay had drawn 71 loads of gravel during the month of July and was entitled to P71 from Government funds. It is impossible upon the record to find the accused guilty of the crime charged without finding Manalo equally guilty.

- It involves finding that Crispin Ribargoso, deputy provincial treasurer, was, in effect, also either a *particeps criminis* or was grossly negligent in the discharge of his duties. On the pay roll, Exhibit B, said deputy provincial treasurer certified that he, on the 8th and 9th of August, 1909, paid to Emeterio Macatangay the sum of P6.60 for work performed by him for the Government as a day laborer on the Lucena-Tayabas Road during said month of July, and that he made such payment in the presence of Salvador Lagdameo, who also certifies on the same pay roll that such payment was actually made in his presence. The said deputy provincial treasurer also certified on Exhibit C that on the 8th and 9th of August he paid John McStay the sum of P71, the same being for hauling 71 loads of gravel at P1 per load, and that such payment was made in the presence of Salvador Lagdameo, who also certifies in said exhibit that such payment was made in his presence. If John McStay was a fictitious name, and the person who was really driving said carabao and cart was Emeterio Macatangay, as the prosecution would have us believe, then the said deputy provincial treasurer was guilty of paying Emeterio Macatangay for working in two capacities at the same time. It appears from the exhibits that John McStay and Emeterio Macatangay both worked on the Lucena-Tayabas Road on the following days in July: On the 9th, 10th, 20th, 21st, 22d, 23d, 24th, 28th, 29th, and 30th. For those days John McStay received pay and Emeterio Macatangay received pay, the one as a cart driver and the other as a day laborer. It is thus evident that if McStay was the pay-roll name of Macatangay, then the deputy provincial treasurer paid Emeterio Macatangay for those days as a laborer and then immediately turned about and paid him for the very same days as a cart driver. In other words, if John McStay and Emeterio Macatangay were the same person, then the deputy provincial treasurer paid one man for doing two men's work, each one working at the same time in widely separated places. If McStay was a fictitious person, Who collected

the P71? The deputy provincial treasurer paid said sum. There is no question about that. There is not a syllable of evidence in the case going to show that Emeterio Macatangay received the P71, or any part thereof, or that the accused received said sum, or any part thereof. Somebody received it, if the certificate of the deputy provincial treasurer is correct. Who was it? There is not a scrap of evidence showing that it was anyone except John McStay. While some of the witnesses for the prosecution testified that Emeterio Macatangay did not work on said road during the month of July except as a cart driver, yet, as we have already observed, the prosecution has introduced evidence in the shape of Exhibit C, a duly certified voucher containing the names of all the men who drove carts on that road during the month of July, the number of loads that each drew, and the amount of money to which each was entitled for such services, and in that exhibit the name of Emeterio Macatangay does not appear. Moreover, that exhibit carries upon its face proof that Emeterio Macatangay was not a cart driver during that period and that he was not working on that road under a fictitious or different name than his own, because that exhibit contains a certificate in which the deputy provincial treasurer states officially and directly that he paid ten different men for performing the labor referred to and that not one of them was Emeterio Macatangay. He certified in that exhibit that he paid Ananias Rago, not Emeterio Macatangay, P27; that he paid Pedro Ramirez, not Emeterio Macatangay, P13; that he paid Felix Marasigan, not Emeterio Macatangay, P6; that he paid John McStay, not Emeterio Macatangay, P71; that he paid Camilo Puresa, not Emeterio Macatangay, P6; that he paid Nicetas Danes, not Emeterio Macatangay, P2; that he paid Primo Sante, not Emeterio Macatangay, P1; that he paid Elisario Pabello, not Emeterio Macatangay, P1; that he paid Florencio Salamillas, not Emeterio Macatangay, P26; that he paid Valerio Enriquez, not Emeterio Macatangay, P3. There also appears on the face of said exhibit a receipt from each one of the persons to whom money was paid, signed by each person in his own handwriting or in the handwriting of someone who signed for him. Upon that pay roll is the name of John McStay apparently in his own handwriting, which handwriting is entirely different from that of any other name appearing on the roll. Moreover, Salvador Lagdameo certified in said exhibit that the payment to each one of the persons heretofore named for services rendered as cart driver was made in his presence. The payments made to the men for those services were made at substantially the same time and place as the payments made to the laborers who were working for the Government by the day; so that if Emeterio Macatangay was paid for services rendered as a day laborer for the Government, as the deputy provincial treasurer certifies, and then presented himself again to be paid as a cart driver, the services rendered as such having been performed upon many of the very days for which he had already received pay as a day laborer for the Government, it is almost impossible that the persons paying him would not have discovered the fraud. It thus appears that the evidence of the witnesses for the prosecution tending to show that Emeterio Macatangay was a cart driver in the month of July and not a day laborer is contradicted and destroyed by the documentary evidence introduced by the prosecution itself in the shape of Exhibit C. The accused had nothing whatever to do with the payment of the sums stated in said exhibit. The deputy provincial treasurer and the person in whose presence he made the payments are not charged with falsification or with misstating the facts which appear in that document. Both of them certified that they paid each of ten individuals, each one having a separate entry, not one of them being either Emeterio Macatangay or the accused in this case. It is perfectly evident that in order to find that Emeterio Macatangay was not a day laborer but was a cart driver, this court must find that the deputy provincial treasurer and Salvador Lagdameo were either falsifiers of a public document or were grossly negligent in the performance of their duties. This is necessary inasmuch as it appears, if the theory of the prosecution is correct, that said officials paid Emeterio Macatangay for services as a day laborer during the month of July and then turned about and paid him for services rendered as a cart driver for at least a considerable portion of the same time. Unless we hold that to have been done, the accused can not be charged with having used Emeterio Macatangay in a double capacity or with using John McStay or any other person as a dummy to draw money illegally from the Government treasury. The officials above named certified that the ten men heretofore enumerated were the only men who worked as cart drivers during the month

of July. Among those ten are not found either the defendant, Emeterio Macatangay, or a dummy. Each of those ten men, according to the unimpeached certificate of said officials, was a person, an entity who appeared before said officials, who received his pay, and who signed a receipt therefor. In the consideration of this case, then, we must discard either the oral testimony introduced by the prosecution for the purpose of proving that Emeterio Macatangay worked as a cart driver, not as a day laborer, during the month of July, or we must reject the documentary testimony offered by the prosecution in the shape of Exhibit C, in which it is proved by certificate of public officials that Emeterio Macatangay was not a cart driver during the month of July but was a day laborer and received pay as such. In this connection it must be remembered that Exhibit C is not the pay roll alleged to be falsified. The defendant is charged, according to the information and according to the brief of the attorney-general, with having falsified Exhibit B. It must be further noted, as we have already observed, that neither said document nor the truth of any of the facts stated therein has been impeached or impugned.

In addition, we may call attention to the fact that Emeterio Macatangay worked from the 6th to the 10th of July, inclusive, also from the 20th to the 24th, inclusive, and from the 28th to the 30th, inclusive, making 11 days in all, he working on some of those dates only half days. This is admitted by the prosecution. It is also admitted that John McStay, or someone impersonating him, worked July 9th to 10th, inclusive, 12th to 17th, inclusive, 20th to 24th, inclusive, and 26th to 31st, inclusive. It is the testimony of the prosecution, and this is entirely undisputed, that Emeterio Macatangay was sick for about two weeks during the month of July, possibly during the time intervening between the 10th and 20th of July, when the records show that he was not at work, although he alleges that he was taken sick the first day of July. It being admitted that he was sick for this period of time during the month of July, no matter what part, how could he have been working under the name of John McStay, when it appears from the records presented as proof that John McStay worked substantially the entire month of July, without a break in the continuity of his labor except now and then a day or two.

The oral testimony introduced by the prosecution shows that the carabao and cart which, it is alleged by the witnesses of the prosecution, Emeterio Macatangay was driving during the month of July were a cart and carabao bought by the accused from one Felix Marasigan. Serapio Sarto, a witness for the accusation, testified that:

"One Sunday, about nine o'clock in the morning in the month of July, I do not remember the date, I heard the defendant ask Felix if he had any carabaos for sale. Felix answered the defendant 'If you wish to buy my cart and carabao, I will sell them to you.' Isaac asked Felix how much he wanted for this cart and carabao. Then Felix asked him P250 for both cart and carabao. Isaac offered him P230 but they did not come to an agreement and they separated. I saw the defendant on the evening of that Sunday in Felix's house. I saw Felix and the defendant take the cart and carabao to the defendant's house."

Felix Marasigan, another witness for the prosecution, testified:

"On the morning of one Sunday, he, the accused, talked to me about buying this carabao, but we did not come to an agreement until four o'clock in the afternoon and at that time I took the carabao to his house. It was in the month of July of this year. If it was not on the 9th it was on the 10th. It was Sunday. At the time when Mr. Isaac bought this carabao of me he asked me if I knew Emeterio Macatangay. I told him, yes I knew him. He asked me if he was a good man and I said, yes, a good man. He told me, I am going to see this man to take care of my carabao and use him as my driver. I told him, yes, that is good, because he is an old cart driver. I carried sand and gravel on the road to Tayabas during three days. Only one day elapsed after these three days before I sold the carabao to Mr. Isaac. I arrived here Friday evening and Sunday next I sold the carabao to Mr. Isaac."

In connection with this testimony, it should be noticed that neither the 9th or 10th of July, 1909, was Sunday. The 11th was Sunday. It is, therefore evident that if the accused bought the carabao of Felix Marasigan, he did not buy it or obtain possession of it until 4 o'clock, Sunday afternoon, the 11th of July. This being so, it becomes very important to notice that, at the time when he obtained possession of the carabao Emeterio Macatangay had been

working five days, namely, the 6th, 7th, 8th, 9th and 10th of July. It being conceded by the prosecution that the only carabao which Emeterio Macatangay is alleged to have driven in the month of July is the one which Marasigan is alleged to have sold to the accused, it is impossible that Emeterio Macatangay could have been driving the defendant's carabao during those five days, for the simple and obvious reason that the accused did not at that time own the carabao in question or have it in his possession. In this connection, it should be noted that, according to the evidence of the prosecution, the eight days of carabao driving were the first eight days which Emeterio Macatangay worked during the month of July, The three days of road work for the Government by the day, making eleven days in all, were the last three days which he worked during that month. All this is shown by the evidence of the prosecution. It should also be noted with great care that, at the time the accused became the owner of the carabao in question, John McStay had been working two days, namely, the 9th and 10th of July. It is, therefore, impossible that he could have been driving the carabao which the accused is alleged to have bought from Marasigan. The charge then that Emeterio Macatangay was driving the carabao belonging to the accused during eight out of the eleven days on which he worked during the month of July is necessarily untrue under the people's own testimony

So far we have considered only the testimony introduced by the prosecution. From the observations already made, it is evident that the prosecution failed to make out a case against the accused and that the action should have been dismissed and the accused acquitted at the close of the people's case, in conformity with the motion made by counsel for the defendant.

When we come to examine the proofs introduced by the defendant, we find the case in his favor still stronger. Morgan Cilley, the assistant engineer in charge of the construction of the road in question, testified that the pay roll alleged to have been falsified by the accused was made up by clerks in his office from data furnished by the inferior bosses or capataces who were working under the supervision of the accused. He testified that:

"Williams had nothing to do with the making out of the time book or pay roll or anything in connection with this pay roll except to sign his name. The capataz makes out the time book, with the name and days' labor which the man has performed, and that is brought into my office and approved there and certified by Isaac Williams. I sign the pay roll and certify to it the same that Williams did in the pay roll. I do not know who is responsible to the Government for any wrongdoing, if there is any. The capataz is responsible for the correct keeping of the time book and he is responsible to Isaac Williams."

The court put the following question to this witness:

"Q. I want to know who is responsible to you for this time book and the correctness of it, Isaac Williams or the capataz direct. - A. The man that made out the time book is. He is directly responsible to him."

Canuto Manalo testified as follows:

"This is the time book in which we kept the list of all the workmen on the construction of the road for the Government. I wrote the names in this time book. The name of Emeterio Macatangay appears in this book. He worked on the 6th, 7th, 8th, 9th, 10th, 20th half a day, on the 21st a whole day, 22d whole day, 23d half a day, 24th whole day, 28th half a day, 29th half a day, also the 30th all day. I know he worked on these dates because I am the capataz and he was under my direction. The kind of work he did during these days is as follows: One day he worked scattering gravel along the road. As he did not know this work I told him to discontinue it. Then I put him to work on the ground to get sand. On these days which I have marked he worked three days driving a bull cart. He drove a carabao cart three days from the 1st of July and then he stopped. He drove the bull cart on the 1st, 2d, and 3d of July. I did not put that down in the time book because Mr. Isaac paid him for that work. He did not work for the Government at that time; he worked for a private man. I am absolutely sure that the days I marked in that book were days worked by Macatangay on the road and in the gravel pit. I would not have entered his name there if he had not worked for the Government."

Later when asked on cross-examination who paid Emeterio Macatangay for those three days, he said, "I do not know who paid him."

The witness Fructuoso Marto testified in part as follows:

"During the month of July I was working on the road near a distillery in Tayabas. Canuto Manalo was my capataz, Emeterio Macatangay was working on the sand pit. I know he was working on the sand pit because every evening we gathered together in the sand pit to get our rice. We slept during the night at that place. All the loads of sand were dumped on the road near the distillery. I generally unloaded all the carts that arrived loaded with sand. I do not know whether or not Emeterio Macatangay unloaded his cart in any other place but in my place, no. I worked during the whole month of July without missing a day. Emeterio Macatangay did not work the whole month but worked only eleven days. He worked with me. During the 11 days he worked there in the sand pit."

The learned trial court seems to lay much stress upon the claim that it was the duty of the accused to know with certainty each one of the men who was working on the road, each day they worked, and the number of hours each one worked per day, and that he should be held responsible criminally if he certified a pay roll which was not absolutely correct. This contention has value only when we concede that there was a mistake in the pay roll as certified by the accused. This fact has not in any way been proved, but it may be interesting to note that, even if there had been a mistake in the pay roll as certified to by the accused, still he is not necessarily guilty of & falsification. His guilt would depend upon the circumstances. It must be remembered in this connection that there were nearly 200 men working on the road in question, as appears from the exhibits introduced in evidence. The duty of the accused appears to have been of a supervisory character, seeing to it that the road was constructed according to the plans and specifications made by Morgan Cilley, the assistant engineer. With these duties laid upon him, it would be going a long way to say that he ought to be held criminally responsible for not knowing every one of the nearly 200 men working on the road at the time, whether or not each one of them was working each day and how many hours each worked per day. If he were required to know all this in such complete detail, he would have little time to perform his other duties. It is apparent from the proofs presented that it was the duty of the various inferior bosses working under the direction and control of the accused to make a record of the names of the men who were working, and the number of days or hours that they worked. It was essential to have some one take at least a portion of that work off of the shoulders of the accused, or it is quite probable that the other duties which were imposed upon him by virtue of his position would have gone unattended. It is, therefore, very questionable indeed whether the accused, even if there were an error in the pay roll as certified, would, under the circumstances, be guilty of a crime unless it was shown that he certified the roll knowing its falsity.

The learned trial court says in his opinion:

"Defendant does not or did not deny that he was road and bridge foreman, whose duty as such foreman was to be in charge of the laborers; keep the time and certify it for payment; and offered no evidence to show that he was not responsible."

It was shown upon proofs of the prosecution, as well as those of the accused, that it was not primarily the duty of the latter to keep the time. That was the duty of the capataz. As to his not having offered any evidence to show that he was not responsible, the proofs of the prosecution, as well as those of the defense, show what the duties of the accused were. From such proofs it appears that the most that can be said of the responsibility of the accused in this connection is that he was responsible only in a general way. It does not appear in evidence that it was the duty of the accused to hire or discharge laborers. It does not appear that he hired Macatangay or John McStay. If he was not responsible for these men being engaged upon Government work, it is difficult to see how he could have manipulated Emeterio Macatangay and John McStay in the manner in which he is alleged to have manipulated

them.

The learned trial court further says in his opinion:

"The defendant did not see fit to go upon the stand and give an explanation of the charges and damaging testimony against him, but allowed it to be proven, not only by the witnesses for the prosecution, but by the two witnesses he did produce in his behalf, that he was hauling sand and gravel at so much a load to the road he was building with his private teams as well as with teams belonging to the province."

We are unable to find evidence to support this finding of the learned trial court. As we have already seen from the testimony of Canuto Manalo and Fructuoso Marto above quoted, the exact contrary appears. Both of these men testified that Emeterio Macatangay did not work driving a carabao during the 11 days mentioned in Exhibit B, but that he worked as a day laborer for the Government in the sand pit.

The learned trial court further says:

"Such a thing may be carried on perfectly fair and honestly and in itself may not be wrong, certainly not criminal if done with the knowledge and consent of his department; but when it is remembered that this defendant keeps the time of laborers for the province and counts his loads of sand and gravel and pays his own laborers, or uses the laborers paid by the province as he is charged, it seems that said defendant would wish to explain for himself and department, etc."

Throughout the whole record we have been unable to find any proof which shows or tends to show that "defendant keeps the time of laborers for the province and counts his loads of sand and gravel, and pays his own laborers." As we have already indicated, from the evidence of Cilley, of Capataz Manalo and of witness Marto, the contrary seems to have been proved.

The learned trial court further says:

"He had at least one cart and cartman at work on the road, for all the witnesses, including his own, one of whom said he kept the time and knew Macatangay worked three days driving defendant's cart, but presumed defendant paid him for it. It is true that although defendant had a team hauling gravel his name does not appear on the pay roll made out to his department and approved by Mr. Cilley."

So far as we have been able to ascertain from a careful reading of the record, it nowhere appears that "defendant had a team hauling gravel." It is true that two of the people's witnesses testified that Emeterio Macatangay drove a carabao and cart but it also appears from the prosecution's own testimony that Emeterio Macatangay was not one of them, neither was the accused one of them, and neither was there anybody working for the accused or on his behalf upon said road driving a carabao and cart.

The learned trial court further says:

"The evidence of Macatangay is not only not disputed in some particulars but corroborated by the two witnesses for the defendant."

Macatangay testified that in the month of July he drove a carabao cart eight days out of the eleven for which he received pay. The witness Canuto Manalo testified positively that Macatangay did not drive a carabao cart during even one of said eleven days but instead worked in the sand pit as a day laborer for the Government. The other witness for the defendant, Marto, testified that during the eleven days of July Emeterio Macatangay was working with him in the sand pit as a day laborer for the Government and that they worked together by day and slept together at night, and that they both drew their rations from the Government as day laborers. From this testimony we are unable to see how the evidence of Macatangay is not disputed but is corroborated by the witnesses for the defendant.

The trial court further says:

"Macatangay and three witnesses for the prosecution swore that Macatangay drove the carabao and cart bought by defendant from Marasigan, hauling sand and gravel in July last for eight days."

We have already shown that, according to the testimony of the witnesses for the prosecution themselves, the accused did not obtain possession of the carabao and cart which Macatangay is alleged to have driven until 4 o'clock on the afternoon of the 11th of July; and it appears that, at that time, Macatangay had been working five days on the road and these five days are five of the days in which the witnesses for the prosecution allege that Emeterio Macatangay was driving the carabao and cart belonging to the accused. It is impossible for this testimony to be true because Emeterio Macatangay could not have been driving the carabao and cart belonging to the accused when the accused had not yet obtained either ownership or possession of the carabao and cart in question.

The learned trial court further says:

"Capataz Canuto Manalo said on the first days of July last, viz, 1st, 2d and 3d, Macatangay drove defendant's cart, but that he did not put these days on Macatangay's daily time record because he presumed defendant paid him, as Macatangay was working for him."

It nowhere appears in the record or in the testimony of Canuto Manalo that Macatangay drove accused's carabao the 1st, 2d, and 3d of July. He simply says that Emeterio Macatangay drove a carabao for a private person on those days and that someone, he don't know who, paid him for it. Emeterio Macatangay himself testified that he fell sick on the 1st day of July and was sick "perhaps two weeks, more or less." AH of the other witnesses, both of the prosecution and of the defendant, who have touched that subject, testified that Emeterio Macatangay worked only eleven days in July, beginning with the 6th and ending with the 30th. Moreover, as the evidence does not show that the accused ever owned more than one carabao and cart, the one he is alleged to have purchased from Marasigan, and inasmuch as he possessed that carabao for the first time on the afternoon of the 11th day of July, it is impossible that Emeterio Macatangay could have driven his carabao and cart on the 1st, 2d, and 3d of July. This being so, we can not see how it can be true that he drove a carabao and cart belonging to the accused on the 1st, 2d and 3d of July.

The trial court further says:

"There can not be the slightest doubt or even a question about this defendant owning a carabao and cart that was driven by Macatangay hauling gravel and sand for the Lucena-Tayabas Road, for every witness, including both witnesses for defendant, swore this."

We are unable to find the evidence upon which this statement rests. As we have repeatedly stated, the two witnesses for the defendant assert that during not one of the eleven days on which Macatangay worked on the Lucena-Tayabas Road was he driving a carabao and cart; but they assert, on the contrary, that he was working on each and every one of these eleven days as a day laborer for the Government in the gravel pit. Moreover, as we have repeatedly observed, the officials who certified Exhibit C state in such certificate that Emeterio Macatangay was not a driver of a cart and carabao on said road during any one of the days of July. It is true that it might be assumed from the evidence that the accused bought a carabao and cart from Felix Marasigan, but in this connection it must not be forgotten that he acquired that carabao and cart on the afternoon of the 11th day of July. At that time Macatangay had been working on five of the eight days on which it is alleged that he drove a carabao and cart for the accused. How is it possible that Macatangay could have driven a cart and carabao belonging to the accused on the 6th, 7th, 8th, 9th, and 10th of July when the accused did not own the carabao or have it in his possession until the 11th of July, according to the prosecution's own evidence?

But, as we have before observed, even if it be conceded that the accused owned the cart and carabao and that Emeterio Macatangay was driving it during the eight days as alleged by the prosecution, what does it signify? It nowhere appears in the evidence that the accused ever drew a dollar out of the public treasury for any services rendered by anybody except himself as road and bridge foreman. It does not appear that he recterio Macatangay. Even if he were the owner of the cart and carabao, as stated, and Emeterio Macatangay drove it for eight days, as alleged, it is perfectly harmonious with reason and the evidence to say that the Government may have hired of the accused the cart and carabao and that the Government had employed Macatangay to drive it. There is absolutely no evidence in the case inconsistent with that theory. If that were the case, Macatangay would have been listed as a day laborer for the Government, and it is probable that neither one of the exhibits in the case would have shown the relation existing between the accused and the Government arising from this arrangement.

The learned trial court further says:

"Macatangay swore he only worked eleven days in July and was paid only by the Government for these eleven days, and the pay roll shows this payment. Defendant paid him nothing. He says he worked eight days driving a carabao and cart and three days at something else on the road, and was paid by the Government for all eleven days, and that he drew the daily ration of rice furnished by the Government and thought he was working for the Government until he was questioned some time later. None of this is denied by the capataz, Canuto Manalo, in toto, but nearly all he says corroborates Macatangay."

As we have before stated, we have been unable to find evidence in the record to support the allegation made in the last sentence of the above quotation. A reference to the testimony of Canuto Manalo heretofore quoted in this opinion shows that he denied, directly and absolutely, the testimony of Macatangay.

In the same paragraph the trial court further says:

"Capataz Manalo said that Macatangay worked eleven days for the Government, which he put on the pay roll and says that he did work three days driving a carabao and cart for defendant, on the 1st, 2d, and 3d days of July, for which he presumed defendant paid Macatangay."

As we have heretofore stated, Capataz Manalo did not testify that Mscatangay drove a carabao and cart belonging to the defendant on the 1st, 2d, and 3d days of July. He testified simply that Macatangay "drove a carabao and cart three days from the 1st of July. Then he stopped. These three days were the 1st, 2d, and 3d of July. I did not put that time down. He did not work for the Government at the time. He worked for a private man." It is true that Manalo first testified that the accused paid Macatangay for services rendered during said three days, but being later asked by the attorney for the prosecution who paid Macatangay for the work thus performed on the three days referred to, the witness replied, "I do not know who paid him."

There is no evidence whatever that the carabao which Macatangay is alleged to have driven on the 1st, 2d and 3d days of July belonged to the accused, and there is no positive evidence that the accused paid him for such services. All there is in the record concerning this subject appears from the testimony quoted. Macatangay himself expressly denies that he worked for the accused or anyone else during the first three days of July or that he drove a carabao and cart on the said days. He testified that he fell sick on the 1st day of July and was sick perhaps two weeks, more or less. Here are some questions directed to Macatangay and his answers thereto.

"Q. When did you fall sick in the month of July? - A. I think the first day of July.

"Q. How long were you sick? - A. Perhaps two weeks, more or less.

"Q. When you were sick during these first two weeks in July, were you sick in bed or able to work? - A. I was unable to work the first two weeks in July."

How then could he have worked on the 1st, 2d, and 3d of July?

Moreover, as we have repeatedly shown heretofore, the accused under the evidence of record, did not own a carabao and cart until 4 o'clock of the afternoon of Sunday, July 11. At the risk of repetition we again say that it is utterly impossible that Macatangay could have driven a carabao and cart belonging to the accused on the 1st, 2d, and 3d days of July when the accused, under the facts of record, did not own a carabao and cart at that time.

We have given this case careful consideration. We do not believe the facts proved warrant the conviction. The judgment of conviction is, therefore, reversed, the accused acquitted, and his immediate discharge from custody ordered. The sureties on his bail bond are released from responsibility thereunder, with costs de oficio.

Arellano, C. J., Johnson and Trent, JJ., concur.

[1] 217 U. S., 349.

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