

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JOSE LASERNA, DEFENDANT AND APPELLANT.

G.R. No. 6668. January 10, 1912

Ponente: TORRES, J.

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TORRES, J.:

The defendant in this case has appealed from the judgment of conviction rendered by the Honorable Judge Mariano Cui.

During the course of the prosecution of Fausto Briones and Estanislao Carrido, both of whom were tried separately in the Court of First Instance of Tayabas for the theft of a cow and before the hearing was had in either case, which hearing was set for November 15, 1910, at 9 o'clock in the morning, Jose Laserna, a protector of the defendant Carrido, went, at about 8:30 that morning, to the jail of the said province, called Fausto Briones up and gave him the sum of P10. At the same time he told him to assume the responsibility for the theft of the said animal, of which he, Briones, and Carrido were accused, and to testify before the court that although he had designated one Estanislao as the thief, nevertheless he did not know the latter party and that the said Estanislao was not Estanislao Carrido, his codefendant. The result of this interview was that, on the hearing of the case half an hour afterwards, Fausto Briones repeated the previous statements that he had made in the preliminary investigation and testified that the animal in question was delivered to him by his coaccused, Estanislao Carrido; adding that although he received the said ten pesos from Jose Laserna for the accomplishment of the purpose desired by the latter, he had not, however, promised Laserna that he would deny his, witness's, previous testimony against Carrido.

For these reasons, the provincial fiscal, on November 26 of that year, filed a complaint in the Court of First Instance of Tayabas, wherein he charged Jose Laserna with the crime of subornation of perjury. The cause being instituted, the court, in view of the evidence adduced, rendered judgment, on December 5 following, sentencing Jose Laserna to the penalty of three months' imprisonment and to the payment of a fine of P50, and, in case of insolvency, to twenty days' subsidiary imprisonment, to disqualification from holding public office for a period of two years and for an equal term, from giving testimony before the courts of these Islands, except in cases where the defendant should be one of the parties; the costs were assessed against him, and the P10 seized were ordered confiscated.

The charge which gave rise to the institution of these proceedings consists in that Jose Laserna specially advised and attempted to induce Fausto Briones, the codefendant of Estanislao Carrido, both coperpetrators of the crime of the theft of a cow, delivering to him the sum of P10, to assume the responsibility for the crime by testifying at the hearing of the case in the Court of First Instance of Tayabas that the party named Estanislao, of whom he had made mention in his testimony given in the preliminary investigation, was not Estanislao Carrido, his codefendant, and that he did not know the man Estanislao whom he had previously designated.

Laserna being interested in favor of Estanislao Carrido, who was a protege of his, and to secure the acquittal of

the latter of the charge of theft pending against him, and also against Fausto Briones, endeavored to have Briones abstain from incriminating Estanislao Carrido in the hearing of the case in the Court of First Instance, although Briones had testified in the preliminary investigation that Carrido did participate in the crime.

Notwithstanding Jose Laserna's proposal, advice, or inducement to Fausto Briones, together with the gift of P10, the latter corroborated his previous testimony wherein he affirmed that the animal that he was accused of stealing was delivered to him by his codefendant Estanislao Carrido. In the course of his testimony, he stated that, despite Laserna's proposal that he should bear false testimony in behalf of Carrido by retracting that which he had previously given in the preliminary investigation, and although he had received the said P10 from Laserna, he had not promised the latter to deny his previous testimony against Carrido, but that, on the contrary, he ratified the same, and he repeated it in the hearing of the case.

From all the foregoing facts, it is concluded that, if a proposal or an inducement was made by Laserna to persuade Briones to commit perjury, the former's purpose was not attained, inasmuch as Briones, corroborating his previous testimony, testified in the same manner as formerly, by averring that the stolen animal which he received had come from Estanislao Carrido, whom Laserna endeavored to save from conviction by means of the false testimony which Briones did not give, for the latter did not wish to testify falsely and to commit perjury.

The issue raised is as to whether the punishable act of subornation of perjury may be deemed to have been performed, even though the crime of perjury was not committed; that is, as to whether the instigation or persuasion, with which one impels another to commit some crime, is in itself a punishable act entirely apart from the accomplishment of the crime that is the subject of the instigation or inducement.

Act No. 1697, section 3, provides:

"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."

Section 4 of the same Act prescribes:

"Any person who causes or procures another person to commit perjury as defined in the preceding section is guilty of subornation of perjury and shall be punished as in said section prescribed."

The defendant in this case availed himself of all the means that were calculated to accomplish his criminal purpose. He endeavored, by the payment of P10, to cause or procure Fausto Briones to retract his previous sworn statements at the preliminary investigation and to give other different testimony, for the purpose of favoring his coaccused, Estanislao Carrido; but, notwithstanding that Briones received the sum delivered to him by the suborner, he did not accommodate Laserna, but ratified his previous testimony and sustained the charge or incrimination that he had previously made against Carrido.

So Laserna's criminal purpose to induce Fausto Briones to commit perjury was frustrated, as the latter testified to the truth by sustaining his previous testimony.

In accordance with the provisions of the Penal Code, only acts performed which directly tend to the commission of a crime are punishable. The proposal made to a person to commit a criminal act is no more than a criminal

proposition to the person who is to carry it out, and, according to the system adopted in the said code, a proposal, as a general rule, is not punishable except in such cases where the law specially penalizes it.

In accordance with article 13 of the said code, principals are deemed to be, among others, those who directly force or induce others to commit a crime. The inducement is sometimes made by command or express mandate; at others, by agreement or covenant; and at times by any other act that constitutes a real excitation or instigation efficaciously and purposely made to secure the commission of a crime. The suborner is punishable in the same manner as the person who is induced to actually commit the crime, in case the crime is perpetrated. In the Act aforesaid, the person who procures or causes another to commit perjury is punished by the same penalty as that provided for the perjurer.

However, if the perjury was not committed, if the party prevailed upon did not venture to commit it, it is in consonance with sound logic to hold that the suborner has not incurred any penalty, for the reason that the mere inducement to commit perjury does not constitute in itself a crime, if the party so persuaded did not carry into execution the criminal act, the sole object of the inducement, inasmuch as, from the terms and sense of the preinserted section 4 of Act No. 1697, it is inferred that it is necessary that, through inducement, the actual commission of the perjury should have been effected, for, according to the English text of the section cited, the words causes or procures must be understood to mean that the criminal purpose of the suborner to commit perjury was attained, secured or accomplished by the person so induced having testified falsely, contrary to his oath. Such is the interpretation given to the text of section 4 of Act No. 1121, which contains the same word³, in the case of *U. S. vs. Oruga* (6 Phil. Rep., 351).

It is, then, indispensable for the punishment of the suborner that the person suborned should have testified falsely and committed the crime of perjury, and this was set up as a legal principle in the case of *U. S. vs. Ballena* (18 Phil. Rep., 382); and in view of the fact that Fausto Briones did not testify falsely and contrary to his previous testimony, notwithstanding the subornation and the efforts exerted by Jose Laserna to cause him to do so, for the purpose of favoring Laserna's protegee, Estanislao Carrido, the law affords no means whereby such party, accused of subornation of perjury, may be punished, for, the crime of perjury not having been committed, the subornation can not be understood as consummated and punishable.

Such a construction of Act No. 1697 is correct and just and is in harmony with the provisions of the Penal Code, article 4 of which prescribes that "a conspiracy and proposition to commit a crime are punishable only in the cases in which the law specially makes them so," and perjury does not figure among such cases. An inducement to commit a crime is a reprehensible act from the viewpoint of social ethics; it may be a sin, but it does not constitute an act penalized by law if the crime which was the principal and sole object of the inducement was not committed.

For the foregoing reasons, it is proper, in our opinion, with a reversal of the judgment appealed from, to absolve and we hereby absolve Jose Laserna from the charge of subornation of perjury. The costs of both instances shall be de oficio.

Arellano, C. J., Mapa, Johnson, Carson, Moreland, and Trent, JJ., concur.

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