

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PASCUAL MORANDARTE, DEFENDANT AND APPELLANT.*G.R. No. 7006. November 05, 1912*

Ponente: TORRES, J.

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This is an appeal by the defendant from the judgment rendered in this case on February 9, 1911, by the Honorable Herbert D. Gale, judge, who sentenced him to the penalty of two years' imprisonment, to the payment of a fine of P500, and, in case of insolvency, to the corresponding subsidiary imprisonment, and to pay the costs. Defendant was also perpetually disqualified from holding any public office and testifying: as a witness before any court in these Islands.

After the death of their father, the girl Catalina Siguenza, who was the about 12 years of age, and the boy Santiago Siguenza, about 14 years old, were taken in charge by Pascual Morandarte, with the knowledge of their mother, Angela Mealean, in order that they might serve as house servants in payment of a certain debt which their father left unpaid at death. On one of the first days of the month of July, 1909, the children disappeared from Morandarte's house and, upon making an investigation to ascertain their whereabouts, he discovered that they had taken advantage of an occasion when he was absent from home and had gone away with their brother Eladio Siguenza, who was temporarily residing at the of Tecla Benavente. As, coincident with the disappearance of the children, Morandarte missed some jewelry and money he had in his house, he suspected that Eladio, in complicity with Hilario, the latter's brother stolen the same. He therefore filed a complaint with the justice of the of the pueblo of Buhi, charging Eladio Siguenza with the crime of theft and, in the preliminary investigation made, presented as witnesses Victoriano San Antonio and Atanasia Mapa who then stated under oath, before the justice of the peace, that they had one day seen Eladio Siguenza carrying bundle containing money; but, upon the institution of a new investigation they retracted all their previous testimony and swore that it was false and that, although they saw Eladio Siguenza on that day, he was not in fact carrying money, but rice and chickens.

Upon the foregoing facts, San Antonio and Mapa were prosecuted for perjury and the Court of First Instance, in view of the proof of their sentenced them, on January 10, 1911 (case No. 1175), to the penalty of three months' imprisonment each, to disqualification from holding any public office and testifying as witnesses, and to the payment of the costs.

It having developed, during the prosecution of the aforesaid cause, that Pascual Morandarte induced the said Victoriano San Antonio and Atanasia Mapa to bear false testimony in the proceedings had against Hilario and Eladio Siguenza, according to the testimony given by Juan Carrascoso, Atanasia Mapa, Sotero Buquiron, Victoriano San Antonio, Silvina Morandarte and Rosendo Alcantara, a complaint was filed by the provincial fiscal, January 14, 1911, after a preliminary investigation had been held as the result of an accusation made by the said Rosendo Alcantara before the justice of the peace of Buhi, charging Pascual Morandarte with the crime of subornation of perjury, and, this case having been instituted, the judgment aforementioned was rendered therein.

This case concerns the crime of subornation of perjury, provided for and punished by Act No. 1697, sections 3 and 4 of which read as follows:

"Sec. 3. 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, de depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and con such oath states or subscribes any material matter which he does not be to be true, is guilty of perjury, and shall be punished by a fine of more than two thousand pesos and by imprisonment for not more than five years; and shall, moreover, thereafter be incapable of holding any publ office or of giving testimony in any court of the Philippine Islands un time as the judgment against him is reversed.

"Sec. 4. Any person who causes or procures another person to commit perjury as defined in the preceding section is guilty of subornation of and shall be punished as in said section prescribed."

It is undeniable that, in the preliminary investigation made by the jus the peace of the pueblo of Buhi, by virtue of the accusation presented b Pascual Morandarte charging Eladio, Hilario and Santiago Siguenza with having stolen from him money and jewelry which he had in his house, Victoriano San Antonio and Atanasia Mapa testified as witnesses in support of the said accusation and in their testimony swore that they had seen Eladio carry away money and jewelry in a bundle on the date the theft was alleged to have been committed; in their subsequent testimony, they retracted their former sworn statements, asserting that they had previously testified falsely, through the inducement of Pascual Morandarte, in that their first false testimony might be presented against the accused surnamed Siguenza.

Had it not been for that retraction by the witnesses San Antonio and Mapa, perhaps the crime imputed to the accused would have been deemed true and been proved; wherefore it is unquestionable that the false testimony of the said two witnesses presented by the accuser, was conducive to proving important and essential facts which, duly proved, would have determined the conviction and sentencing of the accused for the crime of theft, for these witnesses stated that the latter, Siguenza, was seen, on the occasion in question, carrying a bundle containing money and jewelry.

When the two said witnesses retracted their former declarations, alleging that what they had stated therein was false, they added that they had knowingly violated their oath, being induced so to do by the said Morandarte. It is, therefore, unquestionable that the defendant incurred responsibility and was guilty of the crime of subornation of perjury, inasmuch as being well aware that the two witnesses, Atanasia Mapa and Victorino San Antonio, knew nothing of the act charged against the Siguenza brothers and did not see one of the latter, Eladio, carrying bundle containing money and jewelry; nevertheless he induced, procured influenced the said witnesses to testify to an act imagined by him, which they did to accommodate him, although afterwards, impelled by the dictates of conscience, they retracted their former false declaration told the truth before the judge who for this purpose had put them under oath. It is evident, therefore, that the defendant is guilty of the subornation of perjury and, consequently, has incurred the penalty specified in section 3 of the Act aforecited.

The defendant denied the charge and pleaded not guilty; but, notwithstanding his exculpatory allegations, the record furnishes conclusive proof of his guilt as the proved perpetrator, beyond all doubt, of the crime of subornation of perjury under prosecution, for the contents of judgment, certified to this court and rendered by the judge of the Court of First Instance in the case prosecuted against the perjured witnesses Atanasia Mapa and Victoriano San Antonio, constitute due proof of the criminal act and the responsibility of the accused.

Even though it be established, as was done by the trial court in its judgment, that, in accordance with the sense and spirit of the law, the witnesses Atanasia Mapa and Victoriano San Antonio, convicted of the crime of perjury, are incompetent, and are disqualified from testifying case, nevertheless the act of subornation of perjury and the

guilt of defendant, Pascual Morandarte, the sole person responsible therefor, has been proven by the testimony of the justice of the peace, Juan Carrascoso, before whom the said two witnesses, convicted as perjurers, made their respective false declarations and, before the same justice, retracted them during the preliminary investigation conducted with ref to a crime of theft in which the defendant, Morandarte, was the complainant.

The said act of subornation of perjury, committed by Morandarte, is also proved by the testimony of the witness Sotero Buquiron, who was present and heard the defendant induce and oblige the witness, Atanasia Mapa, to testify in the said investigation in accordance with the instruction her. Silvina Morandarte, a sister of the defendant and wife of the other perjured witness, Victoriano San Antonio and Rosendo Alcantara, with contradiction, between themselves, testified to the certainty of the defendant's having suborned the said San Antonio to commit perjury, and that in so doing Morandarte gave the latter specific instruction regard to what was to be his testimony in that investigation, and a paper containing a memorandum of the same. Therefore, even taking no account of the testimony of the said perjured witnesses, because of the disqualification, the defendant's guilt is well proved, because it is unquestionably shown that he did commit the crime charged by inducing those two witnesses to testify in corroboration of the facts alleged in accusation, although they afterwards retracted their testimony and told truth, wherefore, an action for perjury having been instituted against them they were sentenced in accordance with the law.

With respect to the error assigned to the trial judge, for not having stricken out of the record the testimony of the witness, the justice of peace Juan Carrascoso, inasmuch as the best proof, as averred by the defense, relative to the statements made by the witnesses Mapa and San Antonio, who subsequently retracted the same, is the written memorandum made by the said justice of the peace and containing a brief statement of their testimony, it suffices to say that, in accordance with the provisions of section 13 of Act No. 1627, which is amendatory of Act 194, it is not necessary for the testimony of a witness in a preliminary investigation to be set down in writing; when it is essential that the testimony given by a witness before a justice of the peace appear on record in a cause, the latter must state under oath all that the witness testified, as he did do in the present case, it is not necessary that memorandum made by him of such testimony be exhibited and attached to the record, as this is not required by law.

For the foregoing reasons, whereby the errors assigned to the judgment appealed from have been refuted, and holding that the latter is in accordance with the law and the merits of the case, it is our opinion that the same should be and it is hereby affirmed, with the costs of this instance against the appellant. So ordered.

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

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