

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MAXIMINO GONZALEZ ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 7040. March 22, 1912

Ponente: MAPA, J.

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MAPA, J.:

The herein defendants were convicted in the Court of First Instance of the crime of adultery and each sentenced to the penalty of three years six months and twenty-one days of prision correccional and to the payment of one-half of the costs of the case. From this judgment they appealed to this court. The principal question raised by the appellants in their brief refers to matters of fact which have, in our opinion, been correctly decided in the judgment appealed from. The evidence adduced conclusively supports the findings of fact contained in the said judgment, which, therefore, must be sustained.

The appellants invoke in their brief the presumption of law established in paragraph 5 of section 334 of the Code of Civil Procedure. This legal provision reads as follows:

"Disputable presumptions.—The following presumptions are satisfactory, if uncontradicted, but they are disputable and may be contradicted by other evidence:

* * * * *

"5. That evidence willfully suppressed would be adverse, if produced."

Furthermore, the appellants say in their brief with respect to the presumption aforementioned:

"All the witnesses, both for the prosecution and for the defense, all who testified in the case corroborated one another and were unanimous in their statements that among the persons who were present at the time the alleged crime was committed, was one Sotero Lagatic, a nephew or brother of the complaining witness, who was precisely one of the persons whom the latter went to look for in order that he might serve him as a witness in this case.

"Now then, this man Lagatic was not presented by the prosecution, which willfully suppressed his testimony, and dispensed with his testimony when it was so necessary. * * * This being so, the unavoidable presumption necessarily arises that had this omitted testimony been taken, it would have been adverse to the complaining witness."

As is seen, all the appellants' argument rests on the supposition expressed by them that the testimony of Sotero Lagatic was extremely necessary to the case. But this is not so. It is true that Sotero Lagatic was an eyewitness to the acts under prosecution, but he was not the only one. There were other witnesses who saw the same acts and they were presented by the prosecution. The testimony of Sotero Lagatic would merely have been corroborative of that of the latter whose testimony, by itself alone and entirely without that of the said Sotero, is amply sufficient to establish the crime charged. Therefore, the testimony of the man Sotero is by no means necessary to

prove the acts alleged against the defendants. When an act has been witnessed by several persons, the prosecution has no need, nor is it obliged, to present all such witnesses, but only those it deems necessary; it is enough that it employ such witnesses as in its opinion may be sufficient to prove the facts alleged in the complaint. The presumption above mentioned may not be invoked in defense because of the mere fact that the prosecution only presented one or a few of its witnesses and not all of them. In such a case, the, rule of presumption established in the legal provision cited is absolutely inapplicable.

The judgment appealed from is affirmed, with the costs of this instance against the appellants.

Torres, Carson, Moreland, and Trent, JJ., concur.

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