

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ENRIQUE JACA, DEFENDANT AND APPELLANT.

G.R. No. 8622. November 07, 1913

Ponente: CARSON, J.

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CARSON, J.:

This is an appeal by Enrique Jaca from a judgment of the Court of First Instance of Cebu, adjudging him to be guilty of contempt of court and sentencing him to thirty-five days' imprisonment and to pay a fine of P100. The charge of contempt is as follows:

"That on or about January 5, 1913, within the limits of the municipality of Moalboal, of this province and judicial district, the said Enrique Jaca, being the municipal president and special deputy of the provincial governor in said municipality, duly appointed and qualified, and as such special deputy an officer of the Court of First Instance of Cebu, having received a subpoena directed to Protasio Tramada, the complaining witness in criminal case No. 2297, *The United States vs. Nicolas Godinez*, did willfully, unlawfully, and criminally, with the deliberate purpose of impeding the administration of justice and preventing Protasio Tramada from appearing on the date fixed for obeying said summons, arrest and detain the said Protasio Tramada in the municipal jail of Moalboal; all in violation of the law."

The following summary of the evidence prepared by the Acting' Attorney-General is in substantial accord with the evidence of record in the proceedings had in the court below.

EVIDENCE FOR THE PROSECUTION.

Cirilo Perez, being duly sworn, testified substantially as follows: "On January 5, 1913, the defendant was the president of the municipality of Moalboal. I was sergeant of police on that date. The defendant is a friend of Nicolas Godinez. The defendant was also deputy sheriff, appointed by the governor, and as such received a subpoena for Protasio Tramada. On Sunday night, January 5, 1913, at about 10 o'clock, I saw Protasio Tramada in the jail and I asked him why he was there, and he said he was detained by the president. At about 10 o'clock next morning I went to the defendant, the municipal president, and asked him what the complaint was against Protasio and he said it was for not having a cedula. He asked me to write the complaint. I wrote it and presented it to the treasurer and president at 2 o'clock for their signatures, and afterwards presented Protasio to the justice of the peace. During all that time Protasio kept telling me that he had been subpoenaed by the Court of First Instance. Then he asked if I would go his bond, saying that he would pay the cost of the cedula on his return. I did so with the permission of the justice of the peace, and then took Protasio to my house, as he said he was hungry. He had eaten nothing since the evening before. The municipal president is the one who serves the subpoenas of the Court of First Instance in our town." (Pages 28 to 31.)

During the cross-examination the above witness in substance reaffirmed his testimony already given. He stated that he did not know if Protasio was intoxicated; that Protasio in fact had no cedula; that the complaint was drawn up on account of his delay in obtaining it; and that had he not signed Protasio's bond the latter would have

been imprisoned by the justice. It was admitted that Nicolas Godinez was a general in the revolution. The attorney for the defense tried to bring out that Godinez was also a prominent politician, but the witness declared that he knew nothing about it (pp. 31-35).

Vicente Villaflor, being duly sworn, testified substantially as follows: "I am 33 years old, married, a laborer, and a resident of Moalboal. Protasio is my partner. At 7 p. m. on the 5th I took him to the town hall to get his subpoena. After the president read the subpoena he asked Protasio, 'Are you the offended party in the case of Nicolas Godinez?' Protasio answered that he was. The president then said quickly: 'You must be put in jail.' I desired to go his bail, but President Jaca would not admit me without my giving him a ganta of cocoa, but I did not have any cocoa. The president then put Protasio in the jail and locked the door and ordered the guard to take charge of him. When he was liberated I started to take him here to Cebu, but he took sick from hunger at Carcar, and I came on without him. The defendant and Nicolas Godinez are political friends." (Pages 35-37.)

During the cross-examination the witness, in addition to repeating his former testimony, stated that he started to Cebu with Protasio on Thursday, January 9, and that it usually takes one day to go from Moalboal to Cebu on the train and much longer when walking (pp. 37-39).

Anastasio Vidal, deputy sheriff of Cebu, being duly sworn, identified Exhibits A, B, and C, which were admitted as evidence for the prosecution. They are documents showing the subpoenas issued and the return certificate of Enrique Jaca in the case of The United States vs. Nicolas Godinez (pp. 40-41).

Melchor Gonzalez, also a deputy sheriff of Cebu, being duly sworn, identified Exhibits D, E, and F, which were admitted as evidence for the prosecution. They are a copy of the appointment, the oath, and a letter returning the executed oath of Enrique Jaca, who was appointed deputy sheriff of Moalboal (pp. 41-42).

Protasio Tramada, being duly sworn, testified substantially as follows: "I am 21 years old, married, a laborer, and a resident of Moalboal, Cebu. I was the offended party in a case against Nicolas Godinez and was subpoenaed to appear in the Court of First Instance in Cebu on January 11, 1913. I did not report to the court as I was put in prison by the municipal president, the defendant in this case, and I took sick. On Sunday evening the president asked me to sign a receipt for the subpoena. After signing it he asked me if I was the complainant in the case against Godinez, and I told him that I was. The president then took me downstairs and put me in the jail, and I did not get out until 5.30 p. m. on Monday. I had nothing to eat from the time I was imprisoned until 7 o'clock Monday evening. I was released because Cirilo Perez bailed me out." (Pages 42-43.)

Cross-examination: "I was detained by order of the municipal president until Monday evening. The jail was locked and was guarded by policeman Salvador Luquinario. I know what tuba is, but I never drink it. I testified in the case against Godinez on January 23." (Pages 44-45.)

Melecio Lambo, being duly sworn, testified substantially as follows: "In January I was justice of the peace in Moalboal. I did not order the arrest of Protasio Tramada. A complaint was drawn up against him and signed by the treasurer and president charging him with failure to procure a personal cedula. He pleaded guilty and I sentenced him. Then he gave bond and obtained provisional liberty so he could appear as a witness in the Court of First Instance. The police sergeant and the presidents secretary signed the bond. The president did not sign it." (Pages 45-46.)

Cross-examination: "The president did not say anything about Protasio being intoxicated. When the complaint was presented to me I refused it and called the attention of the president to the fact that Protasio had been subpoenaed by the Court of First Instance, but he said; 'Receive the complaint because he was arrested; he can give bond.' He was allowed a special bond on account of having been subpoenaed; it was not an appeal bond."

(Pages 47-48.)

Mariano Villareal, being duly sworn, testified substantially as follows; "When I signed the complaint against Protasio Tramada on January 6, for delay in payment of his cedula tax, I did not know that he had been subpoenaed by this court. I was new in the town, having been transferred to that town on January 3, and was told by some person there that Protasio had not paid his cedula tax." (Pages 48-49.)

Cross-examination; "I do not know who it was who presented the complaint to me to sign, as I did not know any of these people, being a stranger in the town. I simply looked in the record and saw that the party had not yet paid his tax and I immediately signed the complaint." (Pages 49-50.)

EVIDENCE FOR THE DEFENSE.

Enrique Jaca, the defendant, being duly sworn, testified substantially as follows: "I am 43 years old, married, and president of the municipality of Moalboal, Cebu. I did not know Protasio Tramada until 9 p. m. January 5, 1913, when he came to my house with Vicente Villaflor. We went to the town hall and I served Protasio with his subpoena. He told me that he was tired and Vicente asked if they could not sleep in my house. I was afraid and told them they might sleep in the town hall without harm until the following day Protasio was intoxicated. I went home and left them upstairs in the town hall. The jail is downstairs. I did not deliver him to anyone, as we only had one policeman, who was then at the door of the town hall. On the following day the sergeant drew up the complaint against Protasio and presented it to me for approval. It was the sergeant who entered the complaint. When I signed it, it already bore the signature of the treasurer, Protasio was then sentenced, for he pleaded guilty. He was then permitted to go on bail so as to appear as a witness in this court. He was drunk Sunday night. I know he was at liberty Monday forenoon, as I saw him alone in the lower part of the town hall; in the afternoon he was in the public market. It was the sergeant's duty to feed the prisoners; he has the contract, and his wife is the one who serves them. It was on Tuesday after Protasio Tramada was there that the sergeant told me that his wife would not feed them because she had no money during that week. Protasio was in good condition when he left the town hall and went direct to the market. It would take from a day and a half to three days to walk from Moalboal to Cebu." (Pages 50-56.)

Cross-examination: "I had no bad intention when I approved the complaint against Protasio, although I knew he was subpoenaed by this court. I only left him to sleep in the municipal building, and had no intention of keeping him a prisoner. I did not order his detention or turn him over to the police. I only told him he might stay in the building if he wished, because he was drunk. I did not notice who was on guard that night. Salvador Luquinario was custodian of the building." (Pages 56-58.)

Juan Buaya, being duly sworn, testified substantially as follows: "One Sunday night I went to the house of the defendant and found him and his wife at home. At 9 o'clock Vicente and Protasio came and asked the date of their case. The defendant said it would be on the 11th, and he told them they better sign the subpoena as the mail would leave the next day, so we went to the town hall. Vicente Villaflor was drunk and the other had taken a little. Vicente asked the president if they could sleep in his house. The president told them they better sleep in the town hall and see him again the following day. The president then left and I talked with Vicente and Protasio in the lower part of the building. When I left, Protasio was in the door where the guard was, and at 9 o'clock on the following day I saw Protasio at the market and asked him why he was there, and he said he was waiting for Vicente, who had gone to the mountains to get money for their expenses in Cebu. I saw Protasio again at 4 o'clock; and at 1 p. m. on Friday I saw him at Carcar." (Pages 59-62.)

Exequiel Tarongoy, being duly sworn, testified substantially as follows; "On January 5, 1913, I was arranging the lights in the municipal building. Vicente Villaflor, Juan Buaya, Protasio Tramada, and the president came to the

building to find out the date of the trial in the Court of First Instance. After having notified them of the date the president went out, and I left also, going to the market. All four of them were on the stairs when I left I did not return to the building that night. Protasio and Vicente appeared to have been drinking. At 6 the next morning I saw Protasio still in the building by the stairs. I don't know where he passed the night." (Pages 64-67.)

Anastasio Idesa, being duly sworn, testified that at 9 o'clock a. m. on Monday, January 6, 1913, he saw Protasio Tramada at the public market, and that at 6 p. m. he saw him going with Vicente (pp. 67-68).

REBUTTAL EVIDENCE.

Filomeno Rabosa, a policeman of Moalboal, being duly sworn, testified substantially as follows; "During the night of January 5 and the following day Protasio Tramada was locked in the jail and could not get out, and at 5 p. m. on Monday he told me that he was starving to death. Salvador Luquinario was on guard. Protasio was not drunk, because he does not drink. I saw the president personally put Protasio in the jail. Vicente asked the president to let Protasio out on bail, whereupon the president demanded a ganta of cocoa, which Vicente said he did not have, so Protasio was immediately locked up. I did not see Juan Buaya at the municipal building that night. Exequiel Tarongoy was there and unlocked the president's office and then went to the market immediately." (Pages 68-71.)

Cross-examination: "After Protasio was put in the jail by the president it was locked immediately with a key. There were three policemen there, Salvador Luquinario, Bibiano Lobira, and myself. It was about 7 o'clock when the president came there that night; Salvador was on guard when the president arrived, and after the president had locked Protasio in the jail he told Salvador to watch that prisoner and not let him escape. I was there all that night, and from 8 until 12 the next morning I was watching on the street. I was in the municipal building all that afternoon and Protasio was there until 5.30, when the sergeant took him to the justice of the peace." (Pages 71-73.)

Cirilo Perez was recalled by the court and testified substantially as follows: "The president ordered me to present the complaint against Protasio. I did not do it of my own accord. The president's testimony is not true. I went on the boy's bond because he said to me when I presented him to the justice: 'Sir, I am called as a witness by the Court of First Instance. If you will be my security I will pay the cedula tax when I return from Cebu.' So I signed his bond. The president was not there and I did not suggest it. I signed it because of the boy's request. The president had nothing to do with the releasing of Protasio; he did not even suggest it; neither did the justice of the peace. The boy was not a friend of mine, but I was sorry for him, as he was poor and had not eaten that day. He had been imprisoned during the entire day." (Pages 74-77.)

The accused was adjudged guilty of contempt of court as defined and penalized in sections 232 and 236 of the Code of Civil Procedure, and was sentenced to imprisonment for the period of thirty-five days and to pay a fine of P100, with subsidiary imprisonment in case of insolvency.

In the case *In re Gomez* (6 Phil. Rep., 647, 652) this court held that: "Any person who is guilty of any improper conduct which tends directly or indirectly to impede or defeat the administration of justice is in contempt and may be punished by the courts."

In the case at bar the appellant, an officer of the court below, was charged with misconduct which directly tended to impede the administration of justice therein. The only questions raised by appellant have to do with the sufficiency of the proof and the correctness of the findings of fact by the trial judge. After a careful review of all the evidence of record we are unable to say that the trial judge, who saw and heard the witnesses testify, erred in accepting as true the statements of the witnesses called in support of the charge, and in refusing to credit the

excuses and explanations offered by the accused.

We agree with the trial judge that the evidence sustains a finding that the appellant procured the arrest and detention of a witness cited to appear in the trial court on the petty charge that he was not furnished with a cedula; that the purpose of the appellant in procuring the arrest and detention of this witness at the particular time when he did so was to prevent the witness from appearing in the Court of First Instance in compliance with the subpoena which appellant well knew had been issued to secure his attendance as a witness; that whether the arrest of the witness was technically legal or not, the appellant did not procure the arrest in good faith, in the performance of any duty which he felt incumbent upon him, either as a public official or as a private citizen; that without regard to the question whether the witness finally appeared to testify in the cause in which he was subpoenaed, he was in fact prevented by the misconduct of the appellant from appearing at the time set in the subpoena; and that the appellant was guilty of a contempt in that his misconduct both directly and indirectly tended to impede the administration of justice.

It is hardly necessary for us to add that our ruling in this case should not be construed as sustaining the proposition that witnesses subpoenaed in the courts are not liable to arrest for offenses with which they may be charged. The ground upon which we base our ruling in this case is that, accepting the findings of fact by the trial judge, the evidence clearly discloses that the appellant procured the arrest of the witness in bad faith; that his real object in having the witness arrested and detained at that time was to prevent the attendance of the witness at the trial of appellant's friend and political ally; and that the making of the arrest at that time, and without awaiting the termination of his duties as a witness, was not necessary in the due administration of justice in his case, nor required in the interest of the public.

It is the undoubted right of every tribunal entrusted with the determination of questions of fact to compel the attendance of witnesses and to hold and control them until the purposes of their attendance are fully accomplished. This power is absolutely indispensable to the proper discharge of their functions. The privilege of parties to judicial proceedings as well as others required to attend upon them of going to places where they are held, and remaining so long as is necessary, and returning wholly free from the restraint of process in other civil proceedings, has been generally recognized and favorably enforced in the United States. This privilege does not ordinarily extend to criminal cases so as to render a witness immune from arrest on a criminal charge. But the principle on which it rests sustains the proposition that one who procures the arrest of a witness in attendance upon a court of justice upon a frivolous, fictitious, or false charge, with the object and for the purpose of preventing his attendance upon court, or one who for a like purpose procures the arrest and detention of a witness under circumstances which clearly disclose that the making of the arrest while the witness was in attendance on court and without awaiting the termination of his duties as a witness was not necessary in the due administration of justice nor required in the interests of the public, is undoubtedly guilty of a contempt, in that such misconduct tends to impede the administration of justice. If, under such circumstances, the courts cannot protect those who appear before them to testify, their power is not adequate to the full discharge of the duties with which they are charged. (See reporter's note to the case of *In re Healey*, 53 Vt, 694; 38 Am. Rep., 717.)

The judgment of conviction and the sentence imposed by the trial court should be and are hereby affirmed, with the costs of this instance against the appellant.

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

MORELAND, J., concurring:

I base my concurrence on the fact, sufficiently established, that the arrest of the witness was without probable cause, in bad faith, and with the intent and purpose, clearly preponderant in inducing the arrest, to prevent his

attendance at the trial to which the subpoena summoned him.

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