

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MARTIN ESCONDO, DEFENDANT AND APPELLANT.

G.R. No. 8825. October 18, 1913

Ponente: MAPA, J.

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MAPA, J.:

The complaint in this case is for the crime of perjury, committed, as therein charged, in the following manner:

"On or about the 23d of November, 1912, in the pueblo of Atimonan, Province of Tayabas, Philippine Islands, the said Martin Escondo with the intent of evading the payment of his cedula, or personal registration certificate, for the year 1910, did take oath before the municipal treasurer of Atimonan, a deputy to the provincial treasurer of Tayabas and a public officer authorized to administer oaths, that he would give true testimony, and did, voluntarily and against his said oath, testify and subscribe to an important fact that he did not believe to be true, to wit: that he had paid for and acquired his personal registration certificate, for the year 1910, in the municipality of Magdalena, Laguna, and that he had lost the said certificate, when actually he had not obtained and paid for his certificate for the said year."

To prove the last fact charged in the above complaint, the prosecution presented as sole proof thereof an affidavit of the municipal treasurer of Magdalena, subscribed and sworn to before the justice of the peace of the same municipality, wherein the deponent states that the accused did not acquire his cedula or personal registration certificate for 1910, in the said municipality. Counsel for the accused objected to the presentation of the said proof, but the court admitted it and held that thereby it had been proved that the accused had not in fact obtained a cedula for 1910, and that, therefore, he perverted the truth by testifying to the contrary in the statement he made under oath before the municipal treasurer of Atimonan; wherefore, the court found the accused guilty of the crime of perjury and sentenced him to the penalty of one month and one day of imprisonment and to the other penalties specified in the judgment appealed from.

The defense had good reason for its objection to the admission of the said affidavit. The facts brought out in a criminal cause cannot be proved by means of affidavits and their admission as proof is, therefore, illegal. Affidavits are admissible only in certain specific cases relative to mere procedure and then only constitute prima facie evidence. (Sec. 348, Code of Civil Procedure.) This fact applies, moreover, to civil cases; and it is so much the more true in criminal prosecutions.

Section 15 of General Orders, No. 58, specifically provides, among other rights of the defendant in a criminal prosecution, that of being confronted at the trial by the witnesses against him and of cross-examining them. The right of the defendant to be confronted by the witnesses is, moreover, a provision of section 5 of the Philippine Bill, wherefore it is a constitutional right of which he may not in any case be deprived. It is obvious that the defendant would be deprived of it, were the contents of an affidavit admitted as evidence against him, since such a document is nothing more than an extrajudicial declaration made indeed under oath, yet behind the defendant's back and without previous summons to him, and consequently without affording him an opportunity to be present when it was made and to cross-examine the deponent.

As the prosecution presented no other evidence, besides the affidavit aforementioned of the municipal treasurer of Magdalena, to prove that the herein defendant had not actually acquired any cedula for the year 1910, as before stated, it cannot legally be held that such alleged fact has been proven, nor, consequently, that the crime of perjury prosecuted in the present case was committed.

The judgment appealed from is reversed and the defendant is hereby acquitted, with the costs of both instances de oficio.

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

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