

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ESTEBAN Y. VAZQUEZ, DEFENDANT AND APPELLANT.

G.R. No. 9096. December 29, 1913

Ponente: CARSON, J.

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CARSON, J.:

This is an appeal from a judgment of the Court of First Instance of Iloilo convicting the defendant and appellant of the crime of perjury, and sentencing him to three years' imprisonment and to pay a fine of P1,000, with subsidiary imprisonment as provided by law in case of insolvency.

The information charges: "That on or about November 15, 1912, in the municipality of Iloilo, Philippine Islands, and during the trial of civil case No. 1692, entitled Juan Abraham, jr., vs. Esteban Y. Vazquez, before the Court of First Instance of Iloilo, the said accused did willfully, unlawfully and criminally declare, swear and affirm to the court that Juan Abraham, jr., had signed and issued a receipt for the sum of P8,700, on account of the debt of the said accused, said declaration being entirely false, as the accused well knew, and material for decision of said civil case; in violation of law."

The crime of perjury charged in the information is alleged to have been committed during the trial of civil case No. 1692 in the Court of First Instance of Iloilo, wherein Juan Abraham, jr., sued the defendant Vazquez for some nine thousand and odd pesos, alleged to be a balance due on account. During the trial of the civil case the defendant produced an alleged receipt for P8,700 which he alleged had been signed and delivered to him by Juan Abraham, jr., on July 9, 1911, on which date he swore that he had paid Juan Abraham this amount of money on account.

If in fact the receipt offered in evidence in the civil case was not genuine, as claimed by Abraham, and if the defendant had not paid the P8,700 as he claimed, then his testimony given in the former case was false and being material to the issues in that case he was undoubtedly guilty of perjury.

The record shows that during the period covered by the account Abraham made advances of money and merchandise to Vazquez who was a farmer, at that time operating a large hacienda in Occidental Negros, and that Vazquez made deliveries of sugar and other farm products to Abraham, to be disposed of by the latter on commission. At the time the civil action was instituted Abraham claimed a balance on account in his favor of something more than P9,000. A transcript of the testimony which was taken in the civil case and made a part of the record in this case, discloses that Vazquez swore that on the date of the receipt he had paid the sum of P8,700, whereupon Abraham had executed the receipt offered in evidence; and the fact that the accused so testified in the former case was also affirmatively established by the testimony of Jose Arroyo, who was Abraham's attorney in the civil case, and by the testimony of Vazquez testifying in his own behalf in the case at bar. Abraham denied that he had received the P8,700 from Vazquez or from any person acting for Vazquez or that he had signed and delivered the receipt in question. The alleged receipt reads as follows:

He recibido del Sr. Esteban Y. Vazquez la cantidad de OCHO MIL SETECIENTOS PESOS FILIPINOS

(P8,700) endosado a C/.

Iloilo, 9 Julio, 1911.

J. ABRAHAM, Jr.

The body of the alleged receipt is typewritten on a small piece of ruled ledger paper with marginal perpendicular lines for figures. The evidence discloses that Abraham was accustomed to make invoices of his shipments of goods from time to time to Vazquez in Occidental Negros; that these invoices were usually made on ledger paper, such as that on which the alleged receipt appears; that it was his practice to have copies of these invoices made in his letter-press book; and that among other invoices so made, as shown by the letter-press book, was one made out in the following terms:

Factura de los efectos embarcados en la "La Viana" pa al Esteban Vazquez.

Por 32.27 piculs arroz 2.a Calumpit a f=6.15 pp en 19.1/2 sf.....

P198.46

Embarque.....

1.45

Al Debito de su cta.....

199.91

S. E. u O.

Iloilo, 15 Nov., 1910.

J. ABRAHAM, Jr.

The theory of the prosecution, and the conclusion reached by the trial judge is that Vazquez erased all the writing on this invoice except the signature, and inserted the body of the alleged receipt in typewriting over the genuine signature as it originally appeared on the invoice.

The original receipts and letter-press copy of the invoice were not made a part of the record in this case as they were filed as exhibits in the civil case which is now pending on appeal, but photographic copies of the originals were filed as exhibits with this record, and the court below observed that these photographic copies bring out many of the details even better than the originals.

The record shows that during the progress of the trial the tissue sheet of the letter-press book on which the copy of the invoice appeared was superimposed on the alleged receipt and that the signature of "J. Abraham, jr.," on the alleged receipt was an exact facsimile of the signature on the letter-press copy of the invoice, a fact which is readily apparent from an examination of the photographic copies attached as exhibits to the record before us.

Furthermore, superimposing the letter-press copy of the invoice upon the alleged receipt certain words and figures faintly outlined on the alleged receipt correspond exactly in appearance and in relative position with the same words or figures as found on the letter-press copy of the invoice. These outlines are not plainly visible at first sight, but they are readily discovered upon a detailed examination of the document. A dim yet distinct outline of the first six letters of the word "embarque" appears on the alleged receipt at exactly the same point by relation to

the signature at which that word is found on the letter-press copy of the invoice, and in like manner the figures and letters "19.½ sf" and the capital letter O from the Spanish abbreviation "S. E. u O." as they appear on the letter-press copy of the invoice are distinctly outlined in the alleged receipt.

The trial judge in his opinion observed that the alleged receipt appears to have been macerated in such a way as to indicate that erasures had been made upon it, and he was of opinion that the signature to the alleged receipt had that dull and colorless appearance which would naturally result from its passage through a copy-press book.

We are of opinion that the evidence conclusively establishes the contentions of the prosecution that this alleged receipt is a forgery, and that the amount of the payment which it purports to evidence was not paid by the defendant as claimed by him in his testimony in the former case.

Counsel for appellant contends that under the provisions of section 3 of Act No. 1697 a conviction of the crime of perjury as there defined cannot be sustained unless the record establishes that: First, the defendant took an oath before a competent tribunal, officer or person; second, that the oath was that he would testify truly; and third, that the alleged false testimony was material to the issue of the case wherein it was given. And counsel insists that even granting that the evidence sustains a finding that the alleged receipt was a forgery, nevertheless the judgment of conviction cannot be sustained in this case because, as counsel contends, the prosecution failed to establish the three essential facts above set forth.

It is urged that the transcript of the testimony taken in the civil case was improperly admitted over the objection of the plaintiff's attorney. The only objections offered by counsel below to the admission of this transcript was that the facts established by it had already been established by oral proof, and that its introduction was therefore unnecessary. The objection now urged against its admission is that the transcript does not appear to be sufficiently authenticated as a true copy. It appears however that the clerk of the court testified that the signature of the stenographer attached to the transcript was the genuine signature of the court stenographer who acted in that case. The civil case having been tried in the same court wherein the criminal proceedings were had, we think there can be no doubt that in the absence of proof of its inaccuracy this evidence constituted a sufficient authentication of the transcript as a true copy of the record of the testimony taken in the former case. This transcript affirmatively discloses that at the trial of a civil case before the Honorable J. S. Powell, judge of the Court of First Instance of Iloilo, "Mr. Esteban Y. Vazquez being duly sworn, states, etc." We are of opinion and so hold that the transcript of the record, whereby it is shown that the defendant was duly sworn, sufficiently meets the requirements of the law.

" 'Duly sworn' means a swearing according to law, hence where a record shows that the jury were duly sworn, it must be held to be a swearing according to the form of the statute." (Wilson vs. Pugh, 32 Miss., 196.)

But independently of the transcript of the testimony taken in the civil case, we are of opinion as we have already indicated, that the oral testimony introduced at the trial in the criminal case sufficiently establishes the fact that the accused falsely testified in violation of the provisions of section 3 of Act No. 1697 to a material fact after having taken an oath before a competent tribunal that he would testify truly.

Jose Arroyo testified that he was present when the defendant testified at the civil case, and that the defendant testified under "oath." The record showing as it does in this case that the defendant testified under oath in the former case, the legal presumption in the absence of proof to the contrary is that he was duly sworn and that he took an oath to testify truly before a competent tribunal.

The judgment of the lower court should be and is hereby affirmed, with the costs of this instance against the appellant.

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

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