

## THE UNITED STATES, PLAINTIFF AND APPELLANT, VS. HONORIO NUEVACOBETA, DEFENDANT AND APPELLANT.

*G. R. No. 9454. September 23, 1914*

Ponente: CARSON, J.

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### CARSON, J.:

THE UNITED STATES, PLAINTIFF AND APPELLANT, VS. HONORIO NUEVACOBETA, DEFENDANT AND APPELLANT. body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; }The defendant was convicted of the crime of estafa in that he fraudulently converted to his own use the sum of P110 belonging to Leoncio Mordice. The only questions at issue have to do with the credibility of the various witnesses called at the trial.

The evidence for the prosecution is substantially as follows. Leoncio Mordice returned home one night in an intoxicated condition and became angry with his wife when he discovered that the evening meal was not ready. Terrified, she left the house and did not return for fifteen days. She went to the home of the lieutenant of the barrio, who took her to the home of the defendant, the latter being a councilman of the municipality. Nuevacobeta told her she should file a complaint against her husband for maltreatment, and on her refusal, he threatened to put her in jail unless she did so. The defendant talked to the justice of the peace about filing- a complaint against Mordice on five different occasions, once in the private residence of the Justice of the peace and twice at his office, unaccompanied by the woman, and twice accompanied by her. On his first visit in company with the woman, the Justice of the peace directed her to call her witnesses. On her second visit in company with the defendant she brought some witnesses with her and on this occasion, after examining into the facts, the justice refused to issue a warrant on the ground that no offense had been committed. The defendant, however, told Gabina Pajarito, an old woman who lived with Mordice and who went to see the defendant on behalf of the husband, that Mordice would be imprisoned for one year and seven months and have to pay a fine of P100, and costs, unless he could find P50 to be delivered to the :justice of the peace for dismissing the complaint. The old woman promised to try to secure the money. A few days later the defendant came to Mordice's house and there repeated what he had said to the old woman, whereupon Mordice agreed to sell his carabao in order to raise the money. The defendant took the registration certificate of the carabao away with him, saying that he himself would endeavor to find a purchaser for the carabao. On the evening of the next day the carabao was brought to the municipal building and sold to Daniel Murillo for P125. Murillo paid that amount, less P15, to the defendant on the upper floor of the municipal building in the presence of Mordice. The difference of P15 represented a loan or advance to the defendant made by the purchaser that morning. Murillo told the defendant to look after the balance himself. The defendant thereupon told Mordice that he should come down to his (the defendant's) house where they would settle the matter. When Mordice arrived at the defendant's house, the latter paid him P15 which Mordice accepted under protest, claiming that he should be given the balance, less P50, which he understood was to be paid to the Justice of the peace for dismissing the complaint against him. About a week later, accompanied

by Gregorio Era, Mordice came to the defendant's house and again asked him for the balance due, but on that occasion the defendant told him he would have to wait a while as he had already spent the money. Mordice replied that he would not leave until he had received it, and the defendant immediately left. Mordice and Era waited for him to come back until 4 o'clock in the afternoon, but as he did not return they then left.

As to the trouble between Mordice and his wife, the intervention of the defendant and his accompanying her to the justice of the peace to file a complaint against her husband; as to the sale of the carabao to Murillo for the sum of P125 and the advance made earlier in the day by Murillo to the defendant, and the fact that Murillo only paid P110 at the time the sale was completed in the municipal building; and as to the payment of P15 by the defendant to Mordice in the former's house a few hours later, the theory of the defense agrees with that of the prosecution. But the defendant denied that he had threatened the woman in order to make her file a complaint against her husband; or that he had threatened Mordice in order to secure from him P50 to have the alleged prosecution against him dismissed. He swore that he paid over to Mordice the sum of P110 in the municipal building immediately after it had been handed him by Murillo, although the latter was not present at that time. He also denied that Mordice protested a few hours later when he received the balance of paid at the defendant's house. And he asserted that the present case is the indirect outcome of a political quarrel between himself and one Clasio Tanjanlangit.

As to the evidence of the prosecution that the defendant appeared at Mordice's house and informed him that he would be punished with imprisonment and a fine unless he secured P50 to be paid the justice of the peace, we have the testimony of Mordice, the old woman, Gabina Pajarito, and Gregorio Era. Mordice gathered tuba for Era and the latter was at Mordice's house at that time on business. There were no witnesses to the alleged transfer in the municipal building of the P110 by the defendant to Mordice immediately after Murillo left them, so that we have only the conflicting testimony of the defendant and Mordice on this point. Teodoro Naragdad, conceded by both sides to have witnessed the delivery of the P15 to Mordice at the defendant's house, testified that Mordice did protest that there was more due him. This directly contradicts the defendant on this point. It is to be noted also that Naragdad was called as a witness by the defense. The old woman Gabina Pajarito testified that Mordice returned home that evening with only P15. The evidence of these two witnesses tends at least to show that the defendant did not turn over the P110 to Mordice in the municipal building.

The purchaser of the carabao, Daniel Murillo, testified that he left Mordice and the defendant in the municipal building, and went down-stairs to the municipal stables to get the carabao where he met Gregorio Era, whom he told to take the carabao to the home of his new owner. As he returned from the stables he met Mordice with the P110 in his hands and Mordice asked for the remaining P15, which Murillo refused to give him. Gregorio favorito also testified that he witnessed the conversation between Mordice and Murillo and saw a roll of paper money in Mordice's hand, which the latter said amounted to P110. It is clear that if this testimony be true, the defendant should be acquitted. But we are of opinion that the lower court was justified in refusing to believe either of these witnesses. As to Murillo, an affidavit signed by him was introduced in evidence in which he details the facts related above as to the purchase of the carabao through the intervention of the defendant and his advance to the latter on the morning of the sale of P15, and his delivery of the remaining P110 to the defendant in the municipal building that afternoon, but no mention is made in this affidavit of the conversation had between him and Mordice a few minutes later, during which Murillo claims to have seen the P110 in Mordice's hands. This affidavit was prepared after Mordice had complained to the authorities regarding the withholding by the defendant of the sum claimed to be still due him from the sale of the carabao. Clasio Tanjanlangit testified that Mordice complained to him against the defendant and that he thereupon called Murillo to his house and, after questioning him, the two went to the justice of the peace where Murillo made the affidavit in question. Murillo testified that Tanjanlangit called him to his house by means of a note which read, "Dear Ani: I will be glad if you can come around to my

house any time today because we have to talk about one good thing." Upon coming to Tanjanlangit's house the latter told Him he would have to testify for Mordice or he would be complained against. He first said that Tanjanlangit merely told him to tell the truth, but later said that Tanjanlangit told him to testify in favor of Mordice. If this were true it would explain how the fact of the conversation outside the municipal building between him and Mordice, during which he saw P110 in the latter's hands came to be omitted from the affidavit. But upon being questioned at the trial as to why this was left out of the affidavit, his only reply was that it was because the justice of the peace had not asked him what occurred outside the municipal building. If the affidavit spoke the truth, it is certain that no such conversation occurred, for the reason that at the time of its making the affiant was fully informed of the fact that Mordice was complaining because the money had not been turned over to him. If it did not speak the truth and the alleged conversation outside the municipal building did take place, there was no reason for the affiant saying at the trial, that the reason it was omitted from the affidavit was because the Justice of the peace had not asked him about it, when the real reason was that it had been suppressed through the influence of Tanjanlangit. As to the testimony of Gregorio Favorito regarding this alleged conversation, it is worthy of note that Murillo, who was called first, made no mention of his being present when it occurred. Furthermore the two disagreed as to the substance of what was said during this alleged meeting, and from a more general view of the whole matter it seems improbable, at least, that immediately after consenting to go to the defendant's house to get the remaining P15, as testified by the defendant, Mordice should rush out of the municipal building and demand that amount of Murillo.

As to the political animosity between Tanjanlangit and this defendant, the latter testified that it arose from the fact that he had objected to Tanjanlangit's using the municipal typewriter for private purposes without paying the rate of 10 centavos per hundred words which was established by a town ordinance. It may be true that this matter rankled in Tanjanlangit's breast and that when Mordice came to him and exposed the defendant's duplicity, he was glad to assist in pressing the prosecution against him. But the facts against the accused are marshalled in too orderly and convincing a manner and come from too many independent witnesses, and his defense is too self-contradictory and improbable for us to believe that the charge against him has no foundation in fact, and was concocted out of the whole cloth by a political adversary.

After a careful review of the entire record, we have no hesitancy in arriving at the conclusion that the findings of fact by the lower court should not be disturbed. We find no error in the proceedings prejudicial to the rights of the accused. The Judgment entered in the lower court convicting and sentencing him should, therefore, be affirmed, with the costs of this instance against the appellant.

It is so ordered.

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