

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PROTESTATO MALUNDA, DEFENDANT AND APPELLANT.

G. R. NO. 9547. September 11, 1914

Ponente: CARSON, J.

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CARSON, J.:

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PROTESTATO MALUNDA, 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; }This is an appeal from a judgment of the Court of First Instance convicting the defendant and appellant of the crime of estafa. The commission of the crime is charged in the information as follows:

" Que en o hacia el mes de Agosto del presente ano 1913, en el municipio de Balasan, provincia de Iloilo, Islas Filipinas, el referido acusado voluntaria, ilegal y criminalmente y mediante fraude y engaño recibio y obtuvo de Gil Bilaran la suma de noventa pesos (P90.00) con la expresa obligacion de pagar con dicha suma los derechos de pesqueria llamado 'sapiao', que estaba en deber dicho Gil Bilaran, y el citado acusado en lugar de ingresar en la tesoreria municipal la mencionada cantidad, como se habia obligado hacerlo, se apropió los noventa pesos para sus usos propios y lucro personal en perjuicio del referido Gil Bilaran, hecho cometido con infraccion de la Ley. "

From the evidence adduced by the prosecution it appears that on August 17, 1913, one Gil Bilaran, a fisherman from the barrio of Pantalan, municipality of Balasan, Iloilo Province, stopped at the barrio of Estancia while en route to Balasan for the purpose of paying his fishing license tax, and that upon learning that the municipal treasurer was in the barrio he called at the house of councilman Venancio Cudilla to see the treasurer; that he there met Cudilla and the defendant the municipal president, and was informed that the treasurer had left; that the defendant then undertook to accomodate him by taking the money and turning it over to the treasurer; that Bilaran then gave the defendant P90 in the presence of Cudilla, which amount was to be turned over to the treasurer in payment of Bilaran's fishing license; that the defendant did not turn the money over to the treasurer nor return it to Bilaran, and allowed the tax to become delinquent.

The defendant admitted that he met Gil Bilaran at the House of Venancio Cudilla and was told by him that he desired to pay his fishing license, but defendant swore that the municipal treasurer was there at that time and that the money was given to the treasurer. The defendant's testimony in this regard was corroborated by that of one Fausto Alfuentes, the chief of the municipal police, who claimed that he also was at the house of Cudilla at the time when Bilaran called, and that he witnessed the payment of the money to the municipal treasurer.

The trial court accepted as true the testimony of the complaining witness and declined to believe the story told by the defendant and his witnesses, and convicted the defendant of the crime with which he was charged in the information, sentencing him at the same time to six months of arresto mayor, to the indemnification of the

complaining witness in the sum of P90, with subsidiary imprisonment in case of insolvency, and to the payment of the costs.

The only real questions raised on this appeal are questions of fact which turn largely on the degree of credit which should be accorded the various witnesses called for the prosecution and the defense. Nearly 150 pages of typewritten testimony was taken in the court below, and there is a decisive conflict in the account of what occurred at the time that Bilaran called at the house of Cudilla, as given by Bilaran, Cudilla and other witnesses called for the prosecution and that given by the defendant and his witness the chief of police. In the very nature of things the testimony of either one group of witnesses or the other is false. The trial judge accepted the account of these incidents as given by the witnesses for the prosecution, and refused to believe the testimony of the accused and his witnesses. We find nothing in the record which would justify us in disturbing his findings in this regard.

Counsel for appellant submits an exhaustive brief in which he undertakes to analyze the testimony of the various witnesses called at the trial, and insists that certain apparent inconsistencies and contradictions in the testimony of the various witnesses called for the prosecution are such as to raise a reasonable doubt as to the truth of their evidence.

Upon a careful review of the whole record we find nothing which would justify us in disturbing the findings of fact by the trial judge. The typewritten transcript of the testimony clearly discloses that all these witnesses were subjected to a close and searching cross-examination, and the questions propounded by the trial judge himself clearly indicate that he was fully alert to the possibility that the defendant might be the victim of a conspiracy. He appears to have carefully examined and considered the alleged contradictions and inconsistencies between the testimony of the various witnesses, and to have given them due weight in making his findings. Nevertheless he had no hesitation in finding that the testimony of the accused and of his principal witness, the chief of police, was unworthy of credence, and in accepting as true in all substantial and material matters the testimony of the witnesses for the prosecution.

In discussing the testimony of these witnesses the trial judge said:

" These witnesses were cross-examined by counsel for the defense and by the court also, trying in every way to find out if they were telling the truth. Cudilla was a man of more than the average intelligence. His manner of testifying would impress anybody that he was telling the truth absolutely, so far as I can see or find out, without any interest whatever in the result of this trial. Gil Bilaran was a man of average intelligence. He told a little different story about the manner in which he gave the money to the presidente, this defendant, from that told by Cudilla but it was not anything that made one suspicious of the truth of their statements. The treasurer said that he went to Cudilla's house and stayed only a few minutes and that he went out to a cocoanut grove to see about the taxes on tuba and that he did not see Gil Bilaran at all. Yet the presidente and his policeman swore that none of them left the house from 12 o'clock until half past 3 when they sailed for Binonan. Cudilla said himself that the treasurer only stayed in his house a few minutes and was not there at any time after Gil Bilaran came. To authorize the acquittal of this defendant it could only be done by imputing perjury to Cudilla, to the treasurer, to the traveling deputy, and to Bilaran and believing him and this policeman in preference.

" This chief of police, his manner on the stand, his hesitation, and embarrassment at every question all indicated that he was not telling the truth. He swore that Cudilla had cases dismissed and was confronted with his own request to the justice of the peace to dismiss the very men that he said Cudilla had the cases dismissed against. He then said that the presidente directed him to do it and the presidente intimated that he had made some enemies for favors not shown to them and that he was doing this to curry favor when asked about it. So far as I am able to apply the rules in giving weight to evidence; so far as I can tell by any knowledge I might have of human nature and experience in listening to witnesses, there isn't any doubt in my mind that the chief of police swore a malicious lie when he said that this treasurer collected that P90 instead of the presidente. He did not

deliver his statement in such a way that made it reasonable or easily believed. He was embarrassed throughout; refused to answer some questions until pressed very hard or directed by the court to answer, and in every way showed that he was not telling the truth. When this case was first set for trial and continued at this defendant's request he did not at that time accuse the treasurer of stealing the money; did not intimate such a thing, and it seems that the whole defense of accusing this treasurer of stealing the P90 instead of himself was made up after he was told what the chief of police's testimony would amount to, it being simply negative testimony."

We have no doubt that the trial judge's conclusions in this regard were well founded, and we find no error in the proceedings prejudicial to the substantial rights of the accused

The judgment entered in the court below convicting and sentencing the defendant and appellant should therefore be affirmed, with the costs of this instance against the appellant.

It is so ordered.

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