

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. EUGENIO GACUTAN, DEFENDANT AND APPELLANT.

G.R. No. 9601. September 29, 1914

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of Cagayan convicting the accused of the crime of bribery, as defined in articles 385 and 389 of the Penal Code, and sentencing him to one year and one day of imprisonment, to pay a fine of P160, together with the costs of the proceeding, to suffer subsidiary imprisonment as prescribed by law, and to suffer temporary special disqualification for a period of six years and one day, and declaring the carabao forfeited to the Government of the Philippine Islands.

From the evidence in the case as introduced by the prosecution it appears that Domingo Pascua, about July 20, 1912, filed in appellant's court, he being the justice of the peace in and for the municipality of Solana in the Province of Cagayan, a complaint against one Elias Pagulayan, for the theft of a horse; that on or about July 31, 1912, and before said case was decided, Pascua, at the request of appellant made several weeks before the trial of said case, gave to appellant a female carabao worth about P80, in consideration of which appellant agreed to decide said action adversely to Pagulayan; that the carabao was delivered to appellant; and that thereafter, August 12, 1912, the accused decided the case against Pagulayan, convicting him of larceny and sentencing him to six months' imprisonment, to pay the costs of the trial, and to indemnify Pascua in the sum of P50.

On the other hand, the appellant claims to have proved by his witnesses and by Pascua's declarations that Pascua borrowed P20 from the appellant and promised, in case of his failure to repay the sum loaned, that he would give the appellant a carabao in settlement thereof, and that said carabao in question was delivered to appellant in pursuance of said agreement.

Having examined the record with care, we do not hesitate in concluding that from the evidence there remains no doubt of the guilt of the accused of the crime of bribery.

From the judgment of conviction and sentence this court is unable to say under what section of the Penal Code the accused was tried or convicted or what was the character of punishment imposed. We have held in the case of *United States vs. Mariano* (27 Phil. Rep., 132) that in every criminal case the court should not only make a statement of the facts upon which the judgment of conviction was founded, but should also refer to the section of the Penal Code or of the statute under which the accused was convicted and sentenced and the kind of punishment imposed. In other words, the sentence should specifically show whether the defendant was sentenced to presidio correccional or presidio mayor or arresto mayor and in what degree. A sentence for one year and one day is not a complete sentence according to the practice of the courts. It should be one year and one day of presidio correccional and should state whether it is the minimum, medium, or maximum degree thereof.

The Solicitor-General found himself in the difficulty to which we have just referred when he attempted to sustain the judgment and sentence of the trial court. He says:

"Having in mind the penalty imposed by the lower court upon the defendant and appellant, 'one year and one day of imprisonment, a fine of P160 or subsidiary imprisonment in case of insolvency, payment of the costs, and disqualification for a period of six years and one day under article 385 of the Penal Code, and confiscation of the carabao in accordance with article 389 of the same code,' it seems that the court convicted the accused under article 382 of the Penal Code."

This discloses the manner in which the Solicitor-General, as well as this court, has arrived at the article of the Penal Code on which the conviction is founded.

Counsel for the accused was also uncertain as to the article under which the accused was convicted, He says:

"The judgment appears to be based on articles 381 or 382 of the Penal Code."

We are of the opinion that the accused should have been convicted under article 382 of the Penal Code, which provides that:

"Any public officer who shall agree to commit any act of injustice not constituting a crime in connection with the exercise of the powers of his office, in consideration of any offer or promise or of any gift or present received by such officer, personally or through the mediation of another, shall, if the act of injustice be committed, suffer the penalty of presidio correccional in its medium and minimum degrees and pay a fine of not less than the value of the gift and not more than three times such value; if the act of injustice shall not have been committed, a penalty ranging from arresto mayor in its maximum degree to presidio correccional in its minimum degree and a fine of not less than the value of the gift and not more than double such value shall be imposed."

It certainly is an act of injustice to convict a person charged with a crime without regard to what the evidence in the case may be. The accused promised Pascua to convict Pagulayan regardless of the evidence in the case and apparently carried out his promise. In consideration thereof he was to receive and did receive a carabao worth P80. It is an act of injustice for a judicial officer to decide a case pending before him regardless of what the evidence may show. (U. S. vs. Alban, 4 Phil. Rep., 363.)

The act of injustice having been committed, the defendant should have been punished with presidio correccional in its medium and minimum degrees and sentenced to pay a fine of not less than the value of the gift and not more than three times its value. The gift itself should also have been confiscated, under article 389 of the Penal Code.

The case does not fall within article 381 of the Penal Code for the reason that, in order to be within that article, the act which the accused agrees to commit must be criminal. The act which he agreed to perform in the case before us was to convict the accused* This was not a criminal act. Nor does the act fall within the provisions of article 347 of the Penal Code, which provides that "any judge who shall knowingly render an unjust decision against the defendant, etc.," shall be punished as therein provided. We do not know whether the decision was a just one or an unjust one. There is nothing in the record to determine that fact. We may say, therefore, without determining what effect, if any, the decision "of the Supreme Court of the United States in the case of Alzua vs. Johnson (231 U. S., 106) has upon the provisions of Chapter I of Title VII of the Penal Code, that there is no evidence upon which we may determine that the judgment to be rendered was an unjust judgment.

There appearing in the case neither aggravating nor extenuating circumstances, the penalty should be, imposed in the medium degree. The court should have imposed a penalty of one year eight months and twenty-one days of prison correccional, a fine of P 160, confiscation of the carabao, the costs of the trial, and eight years and one day of temporary special disqualification.

As so amended, the judgment is affirmed, with costs against the appellant.

Arellano, C. J., Torres, Johnson, Carson, and Araullo, JJ., concur.

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