

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FRANK TUPASI MOLINA, DEFENDANT AND APPELLANT.

G.R. No. 9878. December 24, 1914

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 6th day of February, 1914, the prosecuting attorney of the Province of Ilocos Sur filed a complaint against the defendant charging him with the crime of perjury, alleged to have been committed as follows:

"The said Frank Tupasi Molina, the above-named defendant, did on September 10, 1912, in the municipality of Tayum of the Province of Ilocos Sur, P. I., for the purpose of gaining admission, as in fact he did, owing to the deceit he practiced, as will be hereinafter related, to the examinations for the municipal police service in the Province of Ilocos Sur, which were held in the municipality of Vigan, said province, on or about January 18, 1913, willfully, unlawfully, and criminally take a false oath by affirming and asserting in an oath that he knew to be false, in an examination application which he himself filled out and signed, that prior to the said date, to wit, September 10, 1912, he had never been indicted, tried, or sentenced for the violation of any law, ordinance, or regulation in any court, when he knew at the time he took that oath and signed his examination application, as he knows at the present time, that he had been twice indicted for disturbing the public peace, and for injurias graves, and sentenced to pay a fine and undergo imprisonment therefor, by the justice of the peace court of Tayum and the Court of First Instance of Ilocos Sur.

"The defendant made the false declaration previously mentioned after he had sworn before Lucas Magno, notary public, authorized by law to administer oaths, that he would state the truth; and said false declaration made under the oath taken by the defendant, as above stated, concerned a fact of such importance that without it he would not have been admitted to said examinations prescribed for the municipal police service. In violation of the law. (Sec. 3, Act No. 1697.)"

After hearing the evidence adduced during the trial of the cause, the Honorable Francisco Santamaria, judge, found the defendant guilty of the crime charged, and sentenced him to be imprisoned for a period of two months and to pay a fine of P100, in case of insolvency to suffer subsidiary imprisonment in accordance with the provisions of the law, and to pay the costs. The defendant was further sentenced to be disqualified from holding any public office or from giving testimony in any court in the Philippine Islands until such time as the sentence against him is reversed. From that sentence the defendant appealed to this court and made the following assignments of error:

"1. The trial court erred in holding section 3 of Act No. 1697 to be applicable in this case.

"2. The trial court manifestly erred in sentencing the appellant for violation of section 3 of Act No. 1697, when the prosecution did not present any evidence demonstrating that he had willfully and corruptly sworn or taken an oath.

"3. The trial court erred in not sustaining the defense set up by the appellant Tupasi with reference to the construction he placed upon the fifth question of Exhibit A of the prosecution.

"4. The trial court erred also in holding that the words 'which he does not believe to be true,' used in Act No.

1697, are equivalent to the term 'knowingly used in section 31 of Act No. 1761.

"5. The trial court erred in not acquitting the defendant." It appears from the record that on the 10th day of September, 1912, the defendant signed a petition to be permitted to take the examination for the position of municipal policeman. Said petition was signed by the defendant and sworn to by him before a notary public. Said petition contained a number of questions which the applicant was required to answer. Among other questions we find that No. 5 was as follows:

"Have you ever been indicted, tried, or sentenced in any court for violation of any law, ordinance, or regulations, or have you ever been tried or sentenced for violation of regulations of the Army, Navy, or the Constabulary, in any court martial of the Army or of the Constabulary, or in any other court?"

To said question the defendant answered: "No, sir; I cannot remember any."

During the trial of the cause the prosecuting attorney presented Exhibits B, C, and D.

Exhibit B shows that one Francisco Tupasi and others, on the 8th day of February, 1911, had been arrested by an order of the justice of the peace of the municipality of Tayum, Province of Ilocos Sur, and charged with disturbing the public peace, were found guilty, and sentenced, on the 20th day of February, 1911, to be imprisoned for a period of fifteen days, and each to pay a fine of 25 pesetas, and to pay the costs.

Exhibit C shows that Francisco Tupasi, on the 18th day of May, 1911, had been arrested and taken before the justice of the peace of the municipality of Tayum, Province of Ilocos Sur, charged with the crime of "injurias graves," and was sentenced on the 22d day of May, 1911, to be imprisoned for a period of fifteen days and to pay a fine of 75 pesetas and the costs.

Exhibit D is the certificate of the clerk of the Court of First Instance of the Province of Ilocos Sur and shows that the Honorable Dionisio Chanco, on the 26th day of April, 1911, in an appealed case for disturbing the public peace, sentenced the said Francisco Tupasi and others to pay a fine of 60 pesetas, in case of insolvency to suffer subsidiary imprisonment, and to pay the costs.

Exhibit A was the sworn petition presented by the defendant for permission to take the examination. Said petition was signed by Frank Tupasi y Molina. It was shown during the trial of the cause, by the admission of the defendant himself, that he was the same person accused and sentenced in Exhibits B, C, and D. It is argued that the defendant signed said application in the name of "Frank Tupasi y Molina" when he had theretofore been known as "Francisco Tupasi," for the purpose of avoiding identity. The defendant said that "Francisco" was the same as "Frank" and that he had adopted the name of "Frank" instead of "Francisco." The answers to the questions in said application were made in English.

With reference to the first assignment of error, that the lower court committed an error in applying section 3 of Act No. 1697 to the facts in the present case, it may be said that said article provides that:

"Any person who, having taken an oath before a competent tribunal, officer, or person", in any case in which a law of the Philippine Islands authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition or certificate by him subscribed is true, wilfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished, etc."

Act No. 2169 of the Philippine Legislature, which is an Act to provide for the reorganization, government, and inspection of municipal police of the municipalities or provinces and subprovinces organized under Act No. 83, provides for the reorganization of the municipal police of the municipalities or provinces and subprovinces organized under Act No. 83.

Said Act further provides that, subject to the approval of the Secretary of Commerce and Police, the Director of Constabulary shall prepare general regulations for the good government, discipline, and inspection of the municipal police, "compliance wherewith shall be obligatory for all members of the organization."

Said Act further provides for an examining board for the municipal police. It further provides that, subject to the approval of the Secretary of Commerce and Police, the Director of Constabulary shall prepare an/examination manual, prescribing, at the same time, suitable rules for the conduct of the examination.

Said Act (No. 2169) also provides for the time and place for holding said examinations.

Section 9 of said Act provides that: "To be eligible for examination, a candidate shall have the following requirements: * * * (6) Have no criminal record."

In accordance with the requirements of said law, the Director of Constabulary prepared an examination manual, prescribing at the same time rules for conducting examinations, which examination manual was approved by the Secretary of Commerce and Police, and thereby was given the force of law. Said manual prescribed a form in blank, known as (Municipal Form No. 11," which form each applicant was required to fill, in order to be permitted to take said examination. Said application required the applicant to swear to the facts stated therein. We have, therefore, a law which authorizes the administration of an oath in the present case.

Of course, the regulations adopted under legislative authority by a particular department must be in harmony with the provisions of the law, and for the sole purpose of carrying into effect its general provisions. By such regulations, of course, the law itself can not be extended. So long, however, as the regulations relate solely to carrying into effect the provisions of the law, they are valid. A violation of a regulation prescribed by an executive officer of the Government in conformity with and based upon a statute authorizing such regulation, constitutes an offense and renders the offender liable to punishment in accordance with the provisions of law. (United States vs. Bailey, 9 Pet., 238, 252, 254, 256; Caha vs. United States, 152 U. S., 211, 218; United States vs. Eaton, 144 U. S., 677.)

In the very nature of things in many cases it becomes impracticable for the legislative department of the Government to provide general regulations for the various and varying details for the management of a particular department of the Government. It therefore becomes convenient for the legislative department of the Government, by law, in a most general way, to provide for the conduct, control, and management of the work of the particular department of the Government; to authorize certain persons, in charge of the management, control, and direction of the particular department, to adopt certain rules and regulations providing for the detail of the management and control of such department. Such regulations have uniformly been held to have the force of law, whenever they are found to be in consonance and in harmony with the general purposes and objects of the law. Many illustrations might be given. For instance, the Civil Service Board is given authority to examine applicants for various positions within the Government service. The law generally provides the conditions in a most general way, authorizing the chief of such Bureau to provide rules and regulations for the management of the conduct of examinations, etc. The law provides that the Collector of Customs shall examine persons who become applicants to act as captains of ships for the coastwise trade, providing at the same time that the Collector of Customs shall establish rules and regulations for such examinations. Such regulations, once established and found to be in conformity with the general purposes of the law, are just as binding upon all of the parties, as if the regulations had been written in the original law itself. (United States vs. Grimaud, 220 U. S., 506; Williamson vs. United States, 207 U. S., 425; United States vs. United Verde Copper Co., 196U. S., 207.)

By reference to Exhibit A, the application made and sworn to by the defendant, we find that the oath was taken before a notary public, a person qualified to administer an oath, in accordance with the provisions of law.

The defendant, in support of his first assignment of error, argues that the purpose of Act No. 1697 was not intended to cover cases like the present. He argues that said Act was an Act only authorizing the appointment of commissioners, to make official investigations, fixing their powers, for the payment of witness fees, and for the punishment of perjury in official investigations. The same question was presented to this court in the case of "United States vs. Concepcion (13 Phil. Rep., 424). In that case the court decided against the contention of the defendant in the present case. It is true that the title of said Act (No. 1697) does not seem to indicate that said law contained a provision punishing the crime of perjury generally. Reading the title alone, it would seem to be a law punishing the crime of perjury in particular cases. The law (Act No. 1697) is a general law. It is not a private or local law. In the United States the constitutions in the different States generally provide that the title of a law shall indicate the general purpose of the law. There seems to be no provision in the Philippine Islands that the title of a general law shall contain a statement of the subject matter of the law. Section 5 of the Act of Congress of July 1, 1902, provides:

"That no private or local bill which may be enacted into law shall embrace more than one subject, and that subject shall be expressed in the title of the bill."

We held in the case of United States vs. Concepcion, supra, that said Act of Congress did not apply to general laws, and that said section 3 was a provision punishing the crime of perjury generally. (U. S. vs. De Chaves, 14 Phil. Rep., 565; U. S. vs. Estraiia, 16 Phil. Rep., 520; U. S. vs. Fonseca, 20 Phil. Rep., 191.)

In the case of United States vs. Dumlao (R. G., No. 8721, not reported) this court held the defendant guilty of the crime of perjury, under facts exactly analogous to those in this case, under the provisions of section 3 of Act No. 1697. We find no reason, either in law or in the argument of the appellant in the present case, to modify or reverse our conclusions in that case (No. 8721).

With reference to the second assignment of error, the appellant alleged that the lower court committed an error in finding that he had committed the crime of perjury voluntarily and corruptly. There is nothing in the record which shows that he did not present to the proper authorities Exhibit A voluntarily. It is difficult to understand, in view of the fact that the defendant had theretofore been convicted of two different offenses and in one of them by two courts, how he could, within a few months thereafter, make a sworn statement that he "did not have a criminal record," unless he answered said question No. 5 in the manner indicated in said application for the express purpose of deceiving the authority to which said application was presented.

With reference to the third assignment of error, it may be said that the language of question No. 5 seems to be perfectly clear. The defendant admitted that he could read and understand Spanish. It is to be noted also that at the very beginning of said application there are three paragraphs devoted to instructions to the applicant, which he should have read and no doubt did. Said instructions were sufficient to indicate to the defendant that if there were any questions which he did not fully understand, he should have acquired a full understanding of the same before answering them. If there was any fault in understanding said question No. 5, it was wholly due to his own negligence.

With reference to the fourth assignment of error, the appellant contends that the lower court committed an error in holding that the phrase "which he does not believe to be true," found in section 3 of Act No. 1697, is equivalent to the word "knowingly," used in other laws. The lower court cited the case of U. S. vs. Tin Masa (17 Phil. Rep., 463) in support of his conclusion. Said section 3, in effect, provides that any person who takes an oath before a competent tribunal, officer or person, in any case in which a law of the Philippine Islands authorizes an oath, that he will testify, etc., or that any written testimony, declaration, etc., by him subscribed is true, and thereafter willfully and contrary to such oath states or subscribes any material matter, "which he does not believe to be true," is guilty of perjury. Under said section, three things are necessary, in order to constitute the crime of perjury:

1. The person must have taken an oath, in a case where the law authorizes an oath, before a competent person, or a person authorized to administer an oath;
2. That the person, who has taken the oath will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition or certificate by him subscribed is true;
3. That he willfully and contrary to such oath states or subscribes any material matter, "which he does not believe to be true."

It is difficult to understand how a person can state, under oath, that a fact is true or subscribe a document, asserting that the same is true, which he does not believe to be true. If, under his oath, he declares that said facts are true, we must conclude that he believed that they were true. If, as a matter of fact, they were not true, and he had full knowledge of the fact that they were not true, then his declaration that they were true would certainly be a sworn statement that a certain fact was true which he did not believe to be true and, therefore, he must have made a false statement knowingly. Without attempting to show or assert that the phrase "which he does not believe to be true" is equivalent to the word "knowingly," as the lower court held, we are of the opinion that whoever makes a statement or subscribes a document, under the circumstances mentioned in said section 3, which is false and which he, at the time he makes the same does not believe to be true, is guilty of the crime of perjury. In other words, under the circumstances mentioned in said section, if one swears positively that a fact is true, which he does not believe to be true, and it turns out that it is false, he is guilty of the crime of perjury. No one should swear positively that a fact is true or subscribe a document asserting that the facts stated therein are true, unless he at least believes that they are true at the time he takes such oath or subscribes such document. It can scarcely be believed that the defendant in the present case believed that the answer to said question No. 5 was true. He must have signed or answered said question not only believing that it was not true, but, as a matter of fact, signed the same knowing that the answer was false.

With reference to the fifth assignment of error, we are of the opinion that the evidence adduced during the trial of the cause clearly shows that the defendant is guilty of the crime charged and therefore the sentence of the lower court should be and is hereby affirmed with costs.

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

DISSENTING

MORELAND, J.

I dissent. The case of *United States vs. George* (228 U. S., 14), is decisive of this, holding that an indictment for perjury can not be based on an affidavit not authorized or required by any law of the United States. There is no law of the Philippine Islands which authorizes or requires the affidavit which is the basis of the charge of perjury in this case. (*U. S. vs. Panlilio*, 28 Phil. Rep., 608.)

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