

6 Phil. 662

[G.R. No. 2556. November 10, 1906]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. SOPIO OPINION,
DEFENDANT AND APPELLANT.**

D E C I S I O N

WILLARD, J.:

In a criminal prosecution pending in the Court of First Instance of Iloilo, Marciano Guanco was accused of falsifying public documents in issuing five credentials for carabaos and including in them false statements. The defendant in this case, Sofio Opini6n, was called as a witness for the Government in the case against Guanco, and he testified therein that he had procured these credentials from Guanco by the payment of 50 pesos, Guanco being at that time the municipal president of one of the pueblos of that province, and that the carabaos which were referred to in the credentials were not in the pueblo at the time the certificates were issued. It is very evident that this testimony was "given against the defendant. Before the trial of the case against Guanco was completed the stenographer's notes of the testimony given by the witness Opini6n, the defendant in this case, were lost or stolen, and for that reason Opini6n was recalled as a witness for the Government and testified a second time in that case. In his testimony then given he stated that his testimony given before was false and that he had paid nothing to Guanco. After giving his testimony a second time he was ordered into custody and the complaint in this action for perjury was filed against him. At the trial in this case, testifying in his own defense, he said that the evidence given when he testified the first time in the case against Guanco was false and his evidence when he testified the second time in that case was true. The court below convicted him of a violation of article 319 of the Penal Code, and sentenced him to one year and eight months' imprisonment (*prision correccional*) and a fine of 750 pesetas.

Article 319 refers to a person who in a criminal case gives false testimony in favor of the defendant. At the time the judgment was rendered in this case, the case against Guanco was

still pending and had not been decided. The important question in the case is this: Can a conviction be had for giving false testimony in a criminal case before the case in which the testimony is given is decided? Article 318 of the Penal Code relates to cases in which false testimony is given against the defendant, and the penalty which is imposed upon the perjurer is in every case determined by the penalty which is imposed upon the defendant in the case in which the witness testifies. It is very apparent that no judgment can be rendered against a witness for false testimony against the defendant until it is known what the judgment against that defendant is. Article 319, as has been stated before, relates to a case where false testimony is given in favor of the defendant and article 320 relates to a case where the false testimony neither prejudices nor favors the defendant. We do not see how it can be determined in any case whether the testimony favored or prejudiced the defendant until it is known what the decision in his case is. The record in that case must necessarily determine what the effect of the false testimony was—that is, whether it was immaterial, whether it was against the defendant, or whether it was in his favor.

We therefore hold that in a case for perjury committed in a criminal action no judgment can be entered against the perjurer until there has been a final judgment in the case in which he gave his testimony. The judgment of the court below is set aside and the case is remanded to the court below with instructions to proceed therewith in accordance with the law after a final judgment has been entered in the case against Guanco, with the costs of this instance de officio. So ordered.

Arellano, C. J., Torres, Mapa, Carson, and Tracey, JJ., concur.
