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[G.R. No. 1165. November 21, 1905]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. RUFINO FELIPE,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

On the 1st of December, 1902, Rufino Felipe was accused by the provincial fiscal of Isabela with having committed the crime of perjury, in that the said accused testified under oath, in the presence of two witnesses on the 10th of June previous, that a little before the 28th of May he visited an American soldier deserter, Maurice Sibley, in the barrio of Lacap, pueblo of Echague, the soldier living in a camarín of Bernardo Villamil, who supplied him there with food, making the same statements also before the person who signed the complaint; but in the case against Villamil for treason, tried in the Court of First Instance, he testified on the 25th of November of the same year, under oath, that he knew nothing of the said facts, which testimony favored the accused Villamil—;an act committed in violation of the law.

The trial having commenced upon the said complaint, the judge, as a result of the evidence, rendered judgment on the 16th of December of said year, and sentenced Rufino Felipe to the penalty of one year and one day imprisonment (*prision correccional*) and to pay a fine of 2,625 pesetas, with the accessories, with an allowance of the time that he was imprisoned awaiting trial, and to suffer, in case of insolvency, the corresponding subsidiary imprisonment, not to exceed the third part of the principal penalty imposed, and to pay the costs in the case.

Article 319 of the Penal Code says:

“He who, in a criminal case, shall give false testimony in favor of the accused shall be punished with the penalties of *arresto mayor* in its maximum degree to *prision correccional* in its medium degree, and a fine of from three hundred and seventy-five to three thousand seven hundred and fifty pesetas, if the cause were for a crime, and with that of *arresto mayor* if it were for a misdemeanor.”

The case does not present sufficient proof that Felipe, in testifying that he did not know Villamil, had succored or had given shelter and food to the deserter Maurice Sibley, contradicting the previous statement made before the justice of the peace of Echague and confirmed before the provincial fiscal, had the intention of favoring Bernardo Villamil in the case against him for treason.

It was proved that the accused Felipe had been arrested and that before testifying in the justice’s court he had been maltreated and threatened by a sergeant of Constabulary, Domingo Danoy. The latter, while present in court, exercised coercion with respect to the witness, telling Felipe, while testifying, that he must answer the questions as he had been instructed—that is, against the accused in that proceeding, Bernardo Villamil. This statement, given against his will, was confirmed before the provincial fiscal, but in court he contradicted it, alleging that he had been subjected to maltreatment, threats, and coercion, which fact was proved by the testimony of witnesses present at the time.

It is undeniable that the first statements of the accused are inadmissible and illegal, and that he told the truth when testifying before the Court of First Instance in the cause for treason, where he insisted on stating as final in that case, that Villamil was not guilty. Therefore we are forced to believe that accused, as a witness in the said cause, told the truth in his final statement before the judge of the Court of First Instance.

If the accused told the truth in declaring that he knew nothing of the acts imputed to Villamil, it is not possible to find that he was guilty of perjury in making that statement, for the reason that he did not contradict his testimony before the justice of the peace. In order to convict one for false testimony given to favor the accused it is necessary that he should have given the testimony intentionally, swearing to that which is not true.

The qualification of the testimony of a witness depends upon the terms of his declaration, the purpose and the wrongful intention in making the false statement, without reference to the importance of his testimony in favor of the accused. (Decisions of the Supreme Court of Spain of January 4 and February 14, 1877, relative to the application of the article of the Penal Code above quoted.)

For the foregoing reasons, and in conformity with the recommendation of the Solicitor-General, we declare that the sentence appealed from should be reversed, and the accused acquitted with the costs *de officio*. Let the case be remanded to the court from which it came with a certified copy of this decision and of the judgment to be entered in accordance herewith. So ordered.

Arellano, C.J., Mapa, Johnson, Carson, and Willard, JJ., concur.
