

[G.R. No. 1276. July 26, 1905]

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CANDELARIA DE LOS ANGELES ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

TORRES, J.:

In a written complaint filed on the 7th day of March, 1902, the defendants in this case, Candelaria de los Angeles, Norberto Cajucom, Cecilio Marquez, et al., were charged by the provincial fiscal of the Province of Nueva Ecija with the crime of falsification of a will, in that on or about the 4th day of March, 1901, in the town of Cabanatuan, Nueva Ecija, they drew up an open will purporting to have been executed by one Petra Mariano and signed by Norberto Cajucom at her request and by Mariano de Castro, Isaac Cunanan, Esteban Hilario, Pablo Mauricio, and Francisco de Guzman, as attesting witnesses. This will was presented to the Court of First Instance of the province, and, after all legal formalities had been complied with, it was admitted to probate. In order to obtain this the witnesses falsely swore that the said will was authentic and that the testatrix had died three days after its execution—that is to say, in the month of March, 1901—when, as a matter of fact, she died on the 28th of July, 1900; all contrary to the statute in such cases made and provided. The trial having been begun against the defendants, with the exception of Francisco de Guzman, as to whom a separate trial was had, the court after hearing the evidence adduced during the trial entered judgment convicting defendants Candelaria de los Angeles, Norberto Cajucom, Mariano Castro, Isaac Cunanan, Esteban Hilario, and Pablo Mauricio of the crime of falsifying a will to the prejudice of a third party, and sentenced each of them to one year's imprisonment at hard labor, and further convicted

the other defendant, Cecilio Marquez, of having knowingly presented a false will in a judicial proceeding, although he did not take part in the falsification thereof, and sentenced him to six months' imprisonment at hard labor. From this judgment and sentence the defendants Candelaria de los Angeles, Norberto Cajucom, and Cecilio Marquez appealed to this court, the provincial fiscal having withdrawn the appeal taken by him from the said judgment.

It appears from the evidence in this case that on the 27th of July, 1900, Petra Mariano, a resident of Cabanatuan, while ill in her house, executed a written will in Tagalog in the presence of Norberto Cajucom, Mariano Castro, Francisco de Guzman, Pablo Mauricio, Esteban Hilario, Estanislao Ferrer, Agustin Garcia, Bernabe de Guzman, and Domingo Cuevas, and being herself unable to sign, requested Carlos Fernandez to do so for her. It appears that the testatrix died on the 28th day of the same month and was buried on the following day.

On the 25th of May, 1901, Cecilio Marquez y Castro, a resident of the town of Cabanatuan, in behalf of his wife, Candelaria de los Angeles, presented to the Court of First Instance of Nueva Ecija a will claimed to have been executed by Petra Mariano on the 4th day of March, 1901, in the Tagalog dialect (the original of which appears on page 27 of the record and the translation thereof on page 29) for registration, and it was allowed by the court on the 4th day of November following (record, page 31), in view of the sworn statements of the witnesses who signed the will in question. In the petition presented to the court it was stated that the testatrix had died three days after the execution of the will, to wit, on the 7th day of March, 1901.

Of the seven defendants who were convicted and sentenced in the court below, Mariano Castro, Isaac Cunanan, Esteban Hilario, and Pablo Mauricio did not appeal. This decision, therefore, assuming that the crime was actually committed, will only deal with the question as to whether or not the appellants Candelaria de los Angeles, Norberto Cajucom, and Cecilio Marquez are guilty.

There is no doubt that the document now registered in the office of the clerk of the Court of

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notary public, and which purports to be the will of Petra Mariano, is absolutely false, it appearing therein that it was executed on the 4th day of March, 1901, when as a matter of fact the alleged testatrix had died some seven months before and had been buried in the cemetery of Cabanatuan on the 29th of July, 1900.

Mariano Castro, Esteban Hilario, Pablo Mauricio, Francisco de Guzman, and Isaac Cunanan, the alleged attesting witnesses to the said will, testified that they were present at the house of the testatrix on the 4th day of March and witnessed the execution of said will, which required a whole day, Norberto Cajucom having signed at the request of the testatrix. These witnesses identified the will shown to them at the time of the trial as well as the signatures appearing therein.

It is a fact, however, that on the 4th day of March, 1901, the alleged testatrix, Petra Mariano had been dead for more than seven months. It is evident therefore, that in this fictitious will the defendants made it appear that the person who for more than seven months had been dead and buried, had taken part therein, thereby reciting in the said instrument facts which had never occurred and which were absolutely false. (Articles 300 and 301, Penal Code.)

Norberto Cajucom, who appears as a witness in the alleged will, and who signed it at the request of the testatrix, pleaded "not guilty," and although he was not examined in the proceedings for the registration of the will, yet his participation in the crime in question is manifest, for the reason that he personally took part therein, thus assisting in giving this false will the appearance of authenticity. (Article 301 of the Penal Code.) The five attesting witnesses who testified in these proceedings unanimously stated that Cajucom signed at the bottom of the alleged will, with a note to the effect that he did so at the request of the testatrix and in the presence of the other witnesses, and as the deceased Petra Mariano could not have made any such request for the reason that she had been dead for several months prior thereto, it is clear that the defendant Cajucom is guilty of having made a false statement. In its judgment of

the 7th of February, 1887, the supreme court of Spain, in applying certain articles of the Penal Code to the crime of falsification, held upon appeal that the fact that a judge of the Court of First Instance had duly authorized the execution of a will alleged to have been left by the deceased was the execution of a public instrument, in which said execution the parties who appeared before him cooperated either as witnesses or as instigators or as accomplices, and in thus participating in the execution of such public instrument they misrepresented the facts by claiming that the deceased had taken part in an act as to which they certified, when, as a matter of fact, the deceased never did, and they further perverted the truth in the narration of the facts. This would bring their case within the provisions of article 315 of the Penal Code (article 301, Philippine Code) and not within article 318, which corresponds with article 304 of the Philippine Code, as claimed by the appellant, for the reason that had they not intervened this public instrument would never have existed. In another judgment of the 18th of June, of the same year, also applicable to the case at bar, it was held that witnesses who make false statements in order to have same recorded in a public instrument, a verbal will, or a will evidenced by a private document, before a competent authority, are guilty of the crime defined in article 315 in connection with article 314 of the Spanish Penal Code, which corresponds with articles 300 and 301 of the Penal Code of the Philippine Islands.

Without the material assistance of the defendant, Norberto Cajucom, who pretended to have signed the alleged will, this document never would have been converted into a public document as a result of its registration, under and by virtue of a judicial order.

There is no evidence in this case to show that the defendant Cecilio Marquez took part in the commission of the crime as a principal; he did not take any active part in the preparation of the will, nor did he cooperate therein nor induce the other defendants to do so, but merely presented this fictitious will to the Court of First Instance in behalf of one Candelaria de los Angeles, but had no more interest in the registration of the document than his wife did. He is therefore guilty

as an accessory after the fact under article 302 of the Penal Code, he having presented the said will to the Court of First Instance for registration with the intention of gain and knowing that the document presented by him was a fictitious one. He knew the date on which the alleged testatrix died, and he should have known that it was impossible for her to have executed the same on the 4th of March, 1901, for the reason that she had been dead for more than seven months previous to that date.

As to Candelaria de los Angeles, although she appears to be the only heir in the two wills marked Exhibits "A" and "B," there is not satisfactory evidence to sustain the conviction as to her; there being reasonable doubt as to her guilt, she has a presumption of innocence in her favor and is therefore entitled to acquittal since it has been shown that she took no part in the execution of the crime nor that she had induced other defendants to commit the same. The mere fact that the defendant was the only one who had a greater interest in the estate of her deceased aunt is not sufficient to convict her, and it does not appear from the record that she participated in any way in the commission of this crime.

The defendant Candelaria de los Angeles is an ignorant woman of very limited education; she had in her possession a will which could have been probated under the law; she sought, in good faith, the assistance of others whom she believed competent to take the necessary steps and protect her rights under the law.

If the persons whose assistance she secured were ignorant people, or committed a crime in attempting to have the said will (marked Exhibit "A") prepared and registered, she can not be held personally for the crime committed by friends without her knowledge or consent. The only person injured on account of the falsification in question was the said Candelaria de los Angeles, and we can hardly understand how, there being in existence an authentic will, which could be properly probated, they should draw up another of the same tenor with a different date, thus committing a crime to her prejudice.

If, under the first authentic will, as well as under the fictitious will, this defendant appears to be the only heir, the testatrix having explained in the first will why she did not appoint her brother Juan, the complaining witness in this case, as her heir, but merely left a legacy to him, it is difficult to understand why they did not present the first will for probate, but prepared instead a fictitious one, which, by the way, was, not any more favorable to her.

The explanation for this may perhaps be found in the petitions presented by the appellants, but the facts therein stated have not been investigated and there is no proof of their correctness.

There should be taken into consideration two extenuating circumstances, without any aggravating circumstance. The defendants Norberto Cajucom and Cecilio Marquez, being natives of little education, ignorant of the laws of procedure and judicial proceedings, these facts should be considered in their favor under the provisions of article 11 of the Penal Code.

As to the other extenuating circumstance, it will be noticed that these defendants having been informed of the contents of the first will of the deceased, Petra Mariano, and of the appointment of the sole heir and the four legatees, the defendant Cajucom signed the second will under the impression that it was merely a copy of the original will and that no one would be prejudiced thereby. The defendant, Marquez, presented the will to the court and asked that it be admitted to probate, acting under the same impression without being fully aware of the nature and consequences of his acts.

The false impression that induced these defendants, Cajucom to subscribe, and Marquez to present the literal copy of the original will, notwithstanding the difference in the dates of execution, could be considered as one of the general extenuating circumstances, authorized by the Penal Code as being of the same nature as that provided for in paragraph 3, article 9 of the Penal Code. These two circumstances should be taken into consideration in order to apply the penalty immediately inferior to that provided for the crime in article

81, paragraph 5 of the Penal Code.

For the reasons heretofore stated, we are of the opinion that the defendant Norberto Cajucom should be sentenced to six months and one day *presidio correccional*, and pay a fine of 500 pesetas, and in case of insolvency, subsidiary imprisonment in accordance with law; and that the defendant Cecilio Marquez be sentenced to pay a fine of 1,000 pesetas, and in case of insolvency, to suffer the corresponding subsidiary imprisonment, which shall not exceed one month, with one-seventh part of the costs of first instance and one third of the costs of this appeal; and the defendant Candelaria de los Angeles is hereby acquitted, with her share of the costs *de oficio*.

Thus modified, the judgment of the court below is affirmed with regard to the three appellants.

Let the cause be returned to the court below with a certified copy of this decision and of the judgment to be entered in accordance herewith for its execution. So ordered.

Arellano, C. J., Mapa, Johnson, and Carson, JJ., concur.
Willard, J., did not sit in this case.