

[G.R. No. 1292. May 05, 1903]

**MARCELINO DE LA CRUZ, PETITIONER AND APPELLEE, VS. GEO. N. WOLFE,
WARDEN OF BILIBID PRISON, RESPONDENT AND APPELLANT.**

D E C I S I O N

MCDONOUGH, J.:

The petitioner, Marcelino de la Cruz, alleges that he is deprived of his liberty and illegally detained in Bilibid Prison.

It appears from the petition in this proceeding, the return of the warden of the prison, the undisputed statement of facts at the hearing, and the records of this court, that on or about February 14, 1900, a band of ladrones landed on the north beach of San Roque, Province of Cavite, and were joined by one other at that place, and that the petitioner, Marcelino de la Cruz, was one of the party. They proceeded with force and arms to rob the houses of several persons, and while engaged in the commission of these crimes four boys, the oldest 16 years, who were returning from fishing, passed the gang, and, recognizing one of them, one of the boys asked what they were doing. The answer was a blow which felled the boy to the ground almost senseless. Subsequently, seeing that they were recognized the ladrones caught three of the boys and bound their arms; they also seized and bound one Pedro Valerio, and then marched their four prisoners to the beach, and, placing them in a banca, all embarked save two of the ladrones, one of whom was the petitioner, Marcelino de la Cruz (also called Maximo de la Cruz), and the banca was pulled out into the bay. When at a point seemingly half way between Manila and Cavite, the ladrones threw their prisoners overboard and the three boys were drowned, Pedro Valerio saving himself by swimming, having succeeded in working his arms out of the rattan that bound them.

On the 27th of February, the commanding officer of the district reported that he had arrested Maximo de la Cruz (the petitioner herein), one of the supposed authors of the crime, whereupon it was ordered by the adjutant-general of the department of the Pacific

and Eighth Army Corps that the matter be referred to the Court of First Instance of Cavite, with delivery of the prisoner, in order that he might be criminally prosecuted, the military authorities in the meantime to guard the prisoner. The Court of First Instance of Cavite took cognizance of the case March 13, 1900, and on the 16th of March, after declaring the accused, in conformity with the old procedure, charged with the crime of robbery and triple murder, ordered, on the same date, that he be remanded and notified of the charges against him.

The cause being continued, on the 18th of May, 1900, judgment was rendered adjudging the accused, Marcelino de la Cruz, guilty of gang robbery and triple murder, and he was sentenced to imprisonment for life, and notified of such sentence on June 2, 1900. As there was no suitable and safe place of imprisonment in Cavite, authority was given by Major-General Bates, commander of the department, to send the prisoner to Bilibid Prison for the imprisonment for which he was sentenced by the court, and the prisoner, Marcelino de la Cruz, was confined in said prison July 24, 1900, pursuant to said judgment of conviction and said order, and has ever since remained in said prison.

The case was taken to the Supreme Court *en consulta*, and on the hearing the fiscal asked that the sentence of the court below be declared void for reason of the insufficiency of proof, and requested that the case be sent back to the Court of First Instance. The criminal department of the Supreme Court, on the 27th of June, 1900, entered a decree declaring the sentence of the lower court of no effect and directing that a certified copy of the order, together with the opinion of the ministerio fiscal, be returned to the lower court in order that the judge should comply with the views of the fiscal, and proceed in conformity, as much as possible, with the new law of procedure, section 110,, General Orders, No. 58.

In compliance with the directions of the Supreme Court, the case was again taken up by the lower court, and two complaints were made against the prisoner, one for the crime of robbery and the other for the crime of triple murder, in accordance with the requirements of section 110, General Orders, No. 58, but without the accused being informed of said complaints.

In March, 1901, the Court of First Instance of Cavite decided that it had no jurisdiction to hear and determine the charges made in the said complaints, holding that they came within the jurisdiction of the military authorities, and ordered that the entire proceedings be sent to the commanding general of the district, after previously notifying the secretary of the criminal department of the Supreme Court of such action.

The commander of the Department of Luzon having received the complaints, etc., forwarded the same to the secretary to the military governor of the Islands, in order that he should give his opinion as to the most expeditious manner of proceeding therein. The secretary in turn, by indorsement of May 8, 1901, forwarded the causes to the President of the Supreme Court for such action as should be deemed best, calling his attention to the fact that although there was no doubt of the incompetency of the Court of First Instance in the charges of robbery, with respect to the charge of murder pending against the prisoner, it should be prosecuted in said court as there was no law prohibiting it from exercising jurisdiction in such a case.

The original papers are in the records of the Supreme Court, but doubtless due to the reorganization of the court, no action was taken on the question submitted by the secretary to the military governor, and the petitioner remains in Bilibid Prison, freed from the judgment of imprisonment for life, but still under the two charges of robbery and murder, and is properly held in custody to answer to said charges, the prosecution or disposal of which should be made without further delay.

In view of these facts the judgment of the lower court should be reversed and the petitioner, Marcelino de la Cruz, remanded to the custody of the Warden of Bilibid. Judgment will be entered accordingly.

Torres, Cooper, Willard, Mapa, and Ladd, JJ., concur,

Arellano, C. J., did not sit in this case.