

[G.R. No. 1014. May 09, 1903]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. MANUEL REPOLLO ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

COOPER, J.:

The defendants, Manuel Repollo, Candido Repollo, Bruno Dolor, and Florencio Nicolas, are charged with the murder of Basilio Limon, committed in the month of November, 1899.

They were convicted by the Court of First Instance of the Province of Pangasinan on the 24th day of May, 1902, and each sentenced to the penalty of death. From this sentence they have appealed.

On the 23d day of December, 1902, after the cause had been transferred to this court, the defendants presented a motion for a new trial, alleging that they were entitled to the benefits of the amnesty proclamation issued by the President of the United States on the 4th day of July, 1902, and in support of their application presented certain affidavits made by each of them.

The affidavit of Manuel Repollo states that on the date of the killing of the deceased he belonged to the Katipunan government and was a member of the town council of the barrio of San Juan; that the defendants Candido Bepollo (bis brother), Florencio Nicolas, and Bruno Dolor also belonged to the Katipunan government; that affiant has been sentenced to death for participating in the murder of Basilio Limon; that the death of the said Basilio Limon occurred in the following manner:

On a night in the month of November, 1899, on the arrival of the American soldiers at his town, one Francisco Cabe and Insiiong Prado, who belonged to the insurrecto army, came to his house and said to him: "Do you know there is a spy in the barrio?" He answered, "No."

They said that the spy lived near affiant's house, and that affiant should call his companions to seize him; that it was an order of his superior and for that reason he went to call the assistance of the defendants Candido Repollo, Bruno Dolor, and Florencio Nicolas; that Francisco Cabe and Insiong Prado remained at the house of affiant while they went to the house of the deceased Basilio Limon; that when they reached the house they caused the deceased to come downstairs and then manacled him and carried him off to where the said Francisco Cabe and Insiong Prado were awaiting them; that Francisco Cabe and Insiong Prado said, "Let us go behind your house;" that they went there, leading the deceased; that Francisco Cabe and Insiong Prado then commanded them to retire to their houses and notified them to be careful not to relate to anybody what had taken place; that Cabe and Prado then killed Basilio Limon; that there were four soldiers armed with guns and fifteen men armed with bolos who accompanied affiant to the house of Basilio Limon, the deceased, when he went to seize him; that the reason for the killing of Basilio Limon, as stated by Insiong Prado and Francisco Cabe, was because he was a spy of the Americans and was going to inform the Americans of the place where the insurrectos were stationed; that Insiong Prado was afterwards captured and hung by the Americans; that Francisco Cabe is also dead, he having died by the garrote vil.

The affidavits of the defendants Candido Repollo, Florencio Nicolas, and Bruno Dolor are substantially to the same effect, each of them stating that he was a member of the Katipunan society, and admitting their connection with the murder of the deceased and relating the circumstances of the killing of the deceased for the cause and in the manner mentioned by Manuel Repollo.

It was shown at the trial below that the defendants went to the house of the deceased, commanded him to come downstairs, and manacled and carried him off. The decapitated body of the deceased was found a short distance from his house, his head being about 300 feet from where his body lay. The defendants were neighbors of the deceased; had known him for a number of years, and no ill feeling was known to exist between them, nor does any motive appear for the killing of the deceased unless it can be inferred from the fact that after the killing the deceased's wife went to the house of the defendant Manuel Kepollo and there lived with him until the complaint was filed against them. Two of the defendants, Candido Repollo and Florencio Nicolas, were godfathers of the children of the deceased.

An investigation of the record in the case indicates a strong probability that the motive for the killing was of a political character, and resulted from internal political feuds or dissensions among the Filipinos during the insurrection. If so, the offense comes within the

provisions of the amnesty proclamation.

By the provisions of section 42 of General Orders, No. 58, the defendant may move, either in the court in which the trial was had or in this court, after the appeal here, for a reopening of the case upon the ground of newly discovered evidence material to his defense.

While this motion is not based strictly on newly discovered evidence, yet it is based upon the existence of testimony which was not material at the time of the trial in the court below, but which has become of vital importance to the defendants by reason of the amnesty proclamation of the President.

The proof, such as is contained in the affidavits, if made on the trial below, would have been no defense in the case. But if the trial had occurred subsequent to the issuance of the proclamation, the same proof, if believed, would have entitled the defendants to an acquittal.

Unless a new trial is granted, no opportunity will be given defendants to avail themselves of this defense, and the judgment must consequently be affirmed, notwithstanding they may have a valid defense if an opportunity is afforded them to make it.

We think that the application comes within the spirit of the provisions of section 42 of General Orders, No. 58, and that justice requires that a new trial should be granted.

The judgment will be set aside, and the* cause remanded to the Court of First Instance for a new trial.

Costs of this instance is adjudged *de officio*.

It is so ordered and directed.

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

McDonough, J., did not wit in this case.

DISSENTING

WILLARD, J., with whom concurs **ARELLANO, C.J.:**

I dissent. The motion for a new trial was made under section 42 of General Orders, No. 58, and solely on the ground of newly discovered evidence. Unless the evidence set out in the affidavits is newly discovered we have no power to grant a new trial.

At the trial below the defendants testified as witnesses, denied all participation in the act charged, and attempted to prove an alibi. In the affidavits now presented they say that they did take part in the act under the orders of their superiors. When they testified at the trial they must have known what the facts were. The present change¹ in their testimony can not possibly be newly discovered evidence.

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