

3 Phil. 128

[G.R. No. 1260. December 31, 1903]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. FRANCISCO DAVID ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

WILLARD, J.:

The appellant, David, has been convicted of the crime of assassination and sentenced to life imprisonment. The court below held that he was not entitled to the benefits of the amnesty of July 4, 1902. In this we think that there was error.

The evidence in the case as to the circumstances connected with the commission of the offense is very conflicting. Mamerto Anteojo, a defendant who was acquitted in the court below, testified twice during the trial. His two statements were inconsistent with each other, but it is probable that his second one is more nearly the truth than the statement of any other of the persons who claim to have been eyewitnesses. He said that when he and one Cofu were returning from the forests they met French. He was looking for another American who had been arrested by the revolutionists and taken to the commander of those forces, Daniel T. Sisson. They immediately seized French and were taking him to the same chief, when, on passing by the house of Eusebio Cenarro, they saw there Francisco Villabrille and other revolutionists. Villabrille gave French something to eat and soon departed, leaving him in the charge of David and directing the latter to take the prisoner to Sisson. At nightfall they started, and on the way David killed French with a bolo. The offense was committed in Surigao some time in 1900. No complaint was presented until February, 1903.

1. The appellant at the time in question was participating against the United States in the insurrection. The witnesses all agree that he and his companions were revolutionary soldiers. The appellant wore the uniform of a revolutionist.

2. It sufficiently appears that the crime was political in its character. The only reason for seizing French was that he was an American belonging to the country against which they were then fighting. The fact that they were taking him to the leader of the revolutionary forces shows almost conclusively that the detention was for causes connected with the insurrection. While a political prisoner and on his way to headquarters he was killed. There can be no doubt that the killing was due to the same cause as the arrest, namely, that he was an American and an enemy.

3. We think also that the evidence is sufficient to show that the appellant committed the act pursuant to orders of his superiors. Mamerto testified that David told him in the very act that he was ordered by Villabrille to kill the deceased. This testimony is something more than hearsay. It is a declaration made in the act itself and is a part of it, Mamerto also testified that when Villabrille charged David with the custody of the prisoner he said something more to him which the witness could not hear. The fact that French was not killed by his captors when they first seized him but only after the conference with Villabrille is also entitled to weight.

The first declaration of the appellant appears in the record as follows:

“The defendants having been examined in the presence of their defender, Don Daniel Toribio Sisson, Francisco David, 29 years of age, resident of Maynit, stated: ‘That he knows nothing of the crime of which he is accused and of which he received notice when in Maynit; that he had orders from his superiors not to kill any Americans, but to seize them and take them to their presence.’ ”

The statement as to the killing of prisoners was entirely irrelevant to the rest of the statement, and in view of the fact that it was given before his counsel, Avho was the superior officer mentioned in the testimony, we think it is not entitled to weight.

The rank which Villabrille had in the revolutionary army does not appear. But that it was superior to that of David is evident. They reported to him the capture. He assumed control of French while they were together and gave orders as to his disposition when he departed.

The appellant is entitled to the benefit of the amnesty above mentioned, and, on filing in this court the oath required by the proclamation, an order will be entered dismissing the

case.

Arellano, C. J., Torres, Cooper, Mapa, and McDonough, JJ., concur.

DISSENTING:

JOHNSON, J.,

Amnesty should not be granted to the defendant in the above cause for the reason that the proof does not show that he is included among the class of persons named or mentioned in the proclamation of amnesty of July 4, 1902, of the President of the United States. Neither does the proof show that the crime with which he is charged is included among those mentioned, in the same proclamation.

Date created: April 16, 2014