

**THE PEOPLE OF OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MIGUEL M. MORENO, DEFENDANT-APPELLANT.***G. R. No. L-64. October 28, 1946*

Ponente: FERIA, J.

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This is an appeal by the defendant Miguel M. Moreno from the judgment of the Court of First Instance of Zamboanga, which found him guilty of the crime charged with the aggravating circumstances of premeditation and cruelty and without any mitigating circumstance, and sentenced the defendant to death and to indemnify the heirs of the deceased.

The appellant was at the outbreak of the war a prisoner serving sentence in the San Ramon Penal Colony Farm, situated in the City of Zamboanga. During the Japanese occupation, he befriended and gained the confidence of the Japanese naval Authorities, was released from prison, and appointed Captain of a semi-military organization known as Kaigun Jeutay, composed of Filipinos and sponsored by the Japanese Navy. On October 23, 1944, the defendant was appointed by the Japanese naval Authorities as section commander of the San Ramon Penal Colony with plenary powers of supervision and control over said colony and its environs.

On November 23, 1944, a group of defendant's soldiers went to the house of Paciano de los Santos, and took with them two single young daughters of said Paciano, and on the next day, when the deceased went to San Ramon penal Colony, he was confined in a cell by order of the defendant.

On the night of December 1, 1944, defendant gathered all the prison officials and employees of San Ramon Penal Colony in a meeting in the house of P. D. Dellosa then Assistant Superintendent of the institution, and in that gathering the accused arrogantly announced that he was not afraid to cut the head of anybody, ordered all those present to witness the execution of Paciano de los Santos the following day, and instructed Gregorio Magalit, a prisoner employee of said institution to prepare the grave for said Paciano and issue a formal memorandum to that effect. A photostatic copy of which was presented as Exhibit D during the trial.

And in the morning of December 2, 1944, Paciano de los Santos was taken to a place known as Fishery Division of the colony with both hands tied at the back, and there the defendant ordered the victim Paciano to kneel down with the head bent forward by the side of the grave, already prepared for him by order of the accused, and in that position the accused with a Japanese sabre held in the handle by his both hands, hacked the head of Paciano de los Santos, and immediately kicked the prostrate body of the victim into the grave.

The facts above stated were established beyond a peradventure of doubt by the testimony of the witnesses for the prosecution, and are substantially admitted by the defendant in his testimony during the trial. When the defendant was asked whether he killed Paciano de los Santos in the farm and manner described by the witness for the prosecution, he answered the following: "When I arrived at the place the deceased Paciano de los Santos was already in the place where I was to execute him, and was taken there by four Japanese and several guards of San Ramon, and on the way they have instructed me how should I kill him, I did kill him in the form and manner

testified to by the witnesses for the prosecution." (Pp. 49, 50, t.s.n.)

The attorney de oficio appointed by this Court for the defendant contends, in the four assignments of error assigned in his brief, that the court below erred (1) in trying the defendant in the same day in which he was arraigned and pleaded not guilty, and not granting him two days to prepare for trial as provided by law; (2) in trying and convicting the accused without a preliminary investigation by the municipal judge or Fiscal of Zamboanga City; (3) in not compelling, by process of subpoena, the attendance of witnesses in behalf of the defendant, and finding, despite this failure, that the latter's testimony was not corroborated by any witness; and (4) in finding the accused guilty of murder with two aggravating circumstances and imposing upon him the penalty of death.

(1) As to the first assigned error of the court below, it is true that, according to section 7, Rule 114, the defendant after arraignment is entitled to at least two days to prepare for trial, except when the case is on appeal from the justice of the peace. But this Court in several cases, among than, the ease of *People vs. Cruz* (54 Phil. 24, 28), has already construed said section and held that the said right may be waived either expressly, or impliedly by not asking for time to prepare for trial. In the present case, the defendant has waived his right to have at least two days to prepare for trial, by submitting himself and not objecting to the trial ordered by the court on the same day in which he was arraigned. The decision of this Court in the case of *People vs. Valte*, (43 Phil. 907), quoted by the attorney for the accused, does not support his contention, for in the said case the defendant did not waive but exercised his right by demanding that he be granted two days to prepare for trial.

Besides, taking into consideration the fact that the defendant admitted having killed the victim in the form and Banner testified to by the witnesses for the prosecution, and the only defense he alleged is that he was ordered to do so by Japanese Naval authorities; that the defendant had in fact been given time to prepare for his defense, because before the trial had begun, the said attorney, after a conference with the defendant, asked the court to issue subpoena and subpoena duces tecum to Nicanor Punsalan and Timoteo Almonte, employees in San Ramon Penal Colony, and to Gregorio Magalit, a detainee in the stockade of Zamboanga, and the subpoenas were issued and served on the same date, August 6, upon them; and that after three of the witnesses for the prosecution has testified, the trial was adjourned and continued on August 7 and 8; it may be concluded that had there been any error such an error is not a reversible one, for it did not impair the substantial rights of the defendant.

(2) With respect to the second assignment of error, the record shows that the defendant has waived his right to a preliminary investigation in a communication called a motion of July 30, 1945, filed with the court, in which the said defendant states that "he respectfully waives his right to a preliminary investigation and request that this case be remanded to the Court of first Instance of Zamboanga for final decision."

Sections 1 and 7, Rule 108, of the Rules of Court use the words "preliminary investigation," but a cursory reading thereof would clearly show that the investigation mentioned therein is not the preliminary investigation proper in which the defendant has the right to present his evidence. That is the reason why said investigation made for the purpose of issuing the warrant of arrest of a defendant if it appears that his arrest is justified, is defined by section 1 as "a previous inquiry or examination made before the arrest of the defendant." Whether or not the warrant of arrest issued by the municipal judge of Zamboanga was issued without a probable cause, has nothing to do with the right of the defendant to a preliminary investigation, and cannot be raised for the first time on appeal from a judgment in which the defendant is found guilty of the offense charged beyond a reasonable doubt and sentenced to death.

The preliminary investigation proper to which the defendant is entitled as a part of the due process of law in those cases in which the statute provides for it, is that established by section 11, of same Rule 108, and consist in the

right of the defendant, after his arrest, to "be informed of the complaint or information filed against him * * * of the substance of the testimony and evidence presented against him," and to be allowed "to testify or to present witnesses or evidence in his favor." And the defendant has waived expressly his right to that preliminary investigation, as above stated.

(3) In his third assignment of error, the attorney for the defendant states that "the lower court erred in not compelling by process of subpoena the attendance of witnesses in behalf of the appellant as provided by the Philippine Constitutional finding, despite this failure, that the testimony of the appellant was corroborated by any witnesses."

This assignment of error is clearly without foundation; because the same attorney admits in his brief that, the would be witnesses for the defense Nicanor Punsalan, Timoteo Almonte and Gregorio Magalit were, upon petition of his attorney in the court below, served on August 6 with subpoena end subpoena duces tecum issued by the court. That "Nicanor Punsalan and Timoteo Almonte were not examined or presented as witnesses in behalf of the appellant," does not support the contention of defendant's attorney that they have not been compelled by subpoena to appear in court as witnesses. The presumption is that they had appeared in compliance with, the subpoena, there being nothing in the record to show the contrary, and that if they had not been presented as such by the attorney for the defendant, it was because their testimonies were not favorable to the latter; as evidenced by the testimony of said Magalit, the other witness subpoenaed for the defense, who was used by the prosecution as a rebuttal witness and testified against the accused.

(4) The fourth or last assignment of error, is also without merit. Because the defendant, testifying in his own behalf, admitted having killed Paciano de los Santos on the date and in the form and manner testified to by the witnesses for the prosecution, and the only defense that he executed or killed the deceased in obedience to an order given him by Japanese officers of the navy, by whom he was informed that the deceased was one of those who were encountered by the Japanese in a mountain and wounded a Japanese soldier, is not supported by any evidence in the record. And because assuming that there was such an order, it would not justify the crime committed by defendant and exempt him from criminal liability.

That there was no such order, oral or written, is clearly shown by the defendants own incredible, contradictory and unsupported testimony relating to his having been ordered by the Japanese Naval officer to kill the deceased, which reads as follows:

"P. Declarando aquí los testigos de la acusación todos dijeron de que la ejecución de aquél Paciano de los Santos era por orden de Vd., es cierto eso?—R. No, señor.

"P. También declararon aquí de que Vd. había ordenado a un tal Magalit, su assistant para que notificara al jefe y a los empleados de la Colonia de San Ramon para que estuviera presente en el día y hora de ejecución de Paciano de los Santos, es cierto esto?—R. Eso era el diciembre l.[o].

"P. Si?—R. Cuando el Capitán Susuki y el Commander Tanigawa se fueron a mi oficina me ordenó para que ejecutara a Paciano de los Santos.

"P. Y cual era el objeto de Vd. al notifiar a los oficiales y empleados de la Colonia Penal de San Ramon para que estuviera presente al tiempo de la ejecución de Paciano de los Santos?—R. Para que durante la mañana cuando me estaban dando ordenes de que yo ejecute esa orden de matar a Paciano de los Santos que ellos estén presentes, porque yo estuve discutiendo con el Capitán Susuki, yo les dije que no podía hacerlo.

"P. Por qué?—R. Por que ellos insistían, y yo les dije que realmente no podía, hacerlo, pero entonces ellos me dijeron, "Tienes que obedecer porque esa orden de Major Susuki tienes que cumplir, de lo contrario tienes que venir con nosotros."

"P. Que más?—R. Así pues, era la orden de Major Sasaki.

"P. Que mas?—R. Y como yo no podia esquivarme de la orden que ellos me daban, yo les pedí que si voy a hacer la ejecución ellos tienen que presenciar también para que ellos vean que yo lo hago contra mi propia voluntad. Entonces, el Capitán Susuki me dijo que ellos no podían estar presentes porque tenían que volver aquel mismo día a Zamboanga. (Pp. 48, 49, t. s. n.)

"JUZGADO: P. Aquel supuesto orden que recibí Vd. de los oficiales del Navy para la ejecución de Paciano de los Santos dada a Vd. por escrito o verbalmente?—R. Una carta del Commander Tanigawa llevada allí a mi oficina y la orden fue firmada por el Major Sasaki.

"P. Aquella carta estaba dirigida a Vd.?—R. Sí, señor.

"P. Y tiene Vd. en su poder esa carta?—R. Tenía todo eso en el record allí en San Ramón pero no sé ahora no se puede encontrar.

"FISCAL ATILANO. Q. You had office in San Ramon, as you say?—A. Yes, sir.

"Q. You had also a record clerk who kept all your papers?—A. Yes, sir.

"Q. And this particular order you said that was given to you by Major Sasaki was also delivered to your record clerk Mr. Magalit?—A. Sí, señor, yo le he dado para que ponga al file de cartas recibidas. " (Pp. 58, 59 t. s. n.)

The above quoted appellant's testimony is unsupported. And it is not only unsupported, but contradicted by the witness for the prosecution whose testimony about the order of the appellant to witness the beheading of the victim we have already stated above, and by Gregorio Magalit who testified that he had not received or seen the alleged written order of Major Sasaki.

It is also incredible and contradictory as a cursory reading of the above would show. The appellant testified that he ordered them to witness the execution of Paciano de los Santos, so that "during the morning when they will give me orders to execute the mandate to kill Paciano de los Santos, they be present" (*italics supplied*); but in the same breath he added: "as I could not refuse to comply with their order, I asked that if I had to execute it, they should also be present so that they would see that I do against my will. The Captain Susuki told me that they could not be present because they had return that same day to Zamboanga. " (P. 49, t.s.n.) Upon being pressed to explain how could the mere act of his beheading Paciano de los Santos inform those present that he (the defendant) had acted against the order of the Japanese authorities, he tried to give an explanation that does not explain by saying that, on the night previous to the execution, he informed the officers and employees of San Ramon Penal Colony, gathered by his order in the house of Mr. Dellosa, "that he had been ordered by Major Sasaki to kill Paciano de los Santos, and asked their opinion about it." This explanation does not explain, because, aside from being contradicted by the witnesses for the prosecution (p. 68, t.s.n.), if it were true that he had already informed them about it, why did he still require them to be present at the execution of Paciano de los Santos, specially when, according to his own testimony, the Japanese officers who gave him the order could not be present because they had to return the same day to Zamboanga?

But assuming that such an order was really given by Major Sasaki, it could not exempt the defendant from criminal liability, either under subsection 6, article 11, or subsections 5 and 6, article 12, of the Revised Penal Code.

Not under subsection 6 of article 11, because, in killing the deceased, the defendant has not acted in obedience to an order issued by a superior for some lawful purpose. The alleged order was not for lawful purpose, because the deceased was to be killed without any previous trial or hearing, and Commander Sasaki has no authority to give or issue such an order. This Court, in the case of *United States vs. Garcia*, (5 Phil. 58), held that it is not a defense to

a charge of homicide that it was committed under an illegal order of an officer of the United States Army.

And not under subsections 5 and 6, article 12, of the same Revised Penal Code, which exempt from criminal liability any person "who acts under the compulsion of an irresistible force," or "who acts under the impulse of an uncontrollable fear of an equal or greater injury." Because it is plain that there was no compulsion of an irresistible force that compelled the defendant to kill the victim against his will; nor was there any threat of such a serious character and imminence as to create in the mind of the defendant an uncontrollable fear that an equal or greater evil or injury would be inflicted upon him if he did not comply with the alleged order to kill the deceased. The only part of the defendants testimony relating to a sort of a threat is the following: "As they insisted and I informed them that I could not do it, then Captain Susuki told me: You have to comply with, that order of Major Susuki; otherwise you have to come along with us." It is evident that the mere alleged statement of said Susuki that if the accused did not comply with the order, he had to come along with them, is not such a threat as contemplated by said provision of the Revised Penal Code; specially, taking into consideration that the defendant himself declared that the Captain told him "that they could not be present (at the execution of the deceased) because they had to return that same day to Zamboanga." (P. 49, t. s. n.)

At the oral argument, the appellant's attorney incited the attention of this Court to a letter received by him from the defendant Moreno, where it is stated, among other things, that his attorney de oficio in the court below, Atty. Timoteo de los Santos, was a relative (kamaganak) of the deceased Paciano de los Santos, and this Court ordered that said letter be attached to the record. Later on, the Solicitor General presented to this Court the affidavits of Timoteo de los Santos and Maximo de los Santos, Attorney in the lower court and brother respectively, of the deceased Paciano de los Santos, in which the affiants declare that the victim was not related at all to said Timoteo de los Santos.

Although the attorney for the appellant in this Court did not impugn in his brief the manner of conducting the defense by the attorney de oficio for the defendant in the court below, in his memorandum, of authorities submitted after the oral argument he states that the letter above referred to corroborates in part the statement of Attorney De los Santos appearing in the stenographic transcript when he said, among other things "Por encima de mi circunstancia personal y de mi opinión personal entre el acusado, me veo ahora obligado a aceptar el nombramiento y defender al acusado." In view of the fact that the appellant is charged with, a capital offense and the penalty imposed upon him by the court below is death, we suggested, during and after the hearing of the case on appeal, that the appellant's attorney file a formal motion for a new trial accompanied by evidence or affidavit of merits of witnesses who could support the appellant's defense of having acted in obedience to a lawful order, so as to have some legal ground to grant a new trial and thus give the appellant additional opportunity to substantiate his defense.

We can not find a legal way of remanding this case to the lower court for a new trial. In the first place, because from the fact that about eight months having already elapsed since the oral argument or hearing of this case, and no formal motion for a new trial has been filed as suggested, it may be inferred that the appellant has no other evidence to support his defense; and because after examining carefully the conduct of the proceedings in the trial court by the attorney de oficio for defendant, we have come to the conclusion that, though said attorney was somewhat reluctant at first to act as attorney de oficio for the defendant, he accepted the appointment although his personal opinion is against the defendant, and performed faithfully his duties as such. Atty. Timoteo de los Santos did not cross-examine the rebuttal witness Magalit, whose testimony was limited to deny having received or seen any order by Major Sasaki commanding the appellant to execute Paciano de los Santos, for it would have been useless to cross-examine him on that point. He did not cross-examine the witness Carmona because he merely denied the testimony of the defendant that, during the meeting in the house of Dellosa, he told the officials and

employees of the San Ramon Penal Colony gathered there that he did not like to execute Paciano de los Santos. And he did not cross-examine the other witnesses, Faustino Triplett, Rosa Orquijo and Pedro Herrera, who testified that in the arrest of civilians by the defendant the latter was not being accompanied by a Japanese, for whether or not he was accompanied by a Japanese was not material to the present case.

In view of all the foregoing, we hold that the judgment of the lower court that finds the defendant guilty of the crime of murder with the aggravating circumstances of premeditation and cruelty and sentences him to death, is in conformity with the facts and law, and should therefore be affirmed with costs against the appellant. But in view of the fact that one of the Justices dissents from this decision, the appellant should, according to section 133 of Commonwealth Act No. 3, as amended by Executive Order No. 86 of the President of the Philippines dated January 7, 1946, suffer the penalty of *reclusión perpetua* instead of death.

So ordered.

Moran, C.J., Parás, Pablo, Bengzon, Briones, Padilia, and Tuason, JJ., concur.

MORAN, C. J.,

I certify that Mr. Justice Hilado concurred in this decision.

PERFECTO, M., tutol:

Buhay at katnatayan ang siyang natataya sa usaping ito. Ang mahalagang suliranin na kailaňgang lutasin ay kung nararapt igawad namin ang kakilakilabot na hatol upang kitilin ang buhay ng isang salarin. Dakila ang sagutin. Upang mabagayan ang saguting iyan, sagutin na matutularan lamang ng kadakilaan ng mga sandaling ang tao ay humaharap sa kay Bathala upang hukuman, may tumpak, malaki at mahigpit na tungkulin na kailaňgang tuparin upang kami huwag maging taksil sa aming sariling budhi at mga sinumpaan sa pagtanggap ng isang luklukan sa Kataastaasang Hukuman.

Ang kapalaran ng nasasakdal ay nasa aming mga kamay. Ang timbaňgan ng kataruňgan ay aming hawak sa mga sandaling ito. Ang kasalanan ng humahabol ay napatunayan kaya sa ibabaw ng lahat ng matuwid na alinlaňgan? Upang ang kasalanang iyan ay mapatunayan, kailaňgang gamitin ang mga paraang itinakda ng Saligang Batas at iba pang mga batas upang ang walang sala ay hindi mapagkamalan, at maparusahan laniang siyang tunay na may sala.

Ano mang higpit ng pagsusuri ng record na ngayo's nasa aming narap, hindi makapagbibigay ng kapanatagang loob ukol sa pagtupad ng mga paraan na iniutos ng batas at mga palatuntunan upang ang kasalanan ng isang nasasakdal ay tumpak na mapatunayan sangayon sa mga simulaln ng katuwira't katutuhanan, ng karaňgala't kataruňgan.

Sa hinahaba-habang panahon ng pakikipagbaka ng mga dakilang diwa tipang maiwasan ng sino mang walang sala ang maparusahan, isa na sa mga kailan man ay hindi maitatakwil na kalasag na ang isang nasasakdal ay kailan man ay hindi mapagkakailaan ng tulong ng isang manananggol. Kahit sino iyang taong iyang nasasakdal, kahit siya ay pinakaaba at mangmang, kahit siya ang pinaka susuklamang salarin, kagaya nina Yamashita at Homma at ng mga salaring Nazi na hinukuman sa Nuremberg, kailaňgan siya ay magkaruon ng tulong ng isang manananggol, upang kanyang mapakinabaňgan ang lahat ng mga sandata at paraan na ipinagkakaloob ng batas upang sa paghuhukom ay walang ibang umiral kungdi ang katutuhana't kataruugan lamang.

Sangayon sa rekord, ang nasasakdal ay hinuli at piniit Simula pa nuong Hulyo 26, 1945, araw din nang igawad ang warrant ng Hukóm Martin A. Paulati ng hukumang munisipal, at nuong araw ding yaon itinala ang pañgunang paglilitis na gaganapin sa Hulyo 30, 1945. Sangayon sa rekord, sa araw ding iyon si Moreno ay binasahan ng sakdal laban sa kaniya at sumagot ng hindi pagamin. Pagkatapus ay nagrenunsa siya ng kanyang karapatan sa pañgunang paglilitis at Hiniñgi niya na ang usapin ay ilipat sa Hukumang Unang Dulugan ng Zamboanga. Ang Hukóm Paulati naman ay ginauva ang paglilipat.

Kasing liwanag ng sikat ng araw na makikita sa rekord na, sa lahat ng mga hakbang na ginawa sapul sa pagkahuli ng nasasakdal hanggang ang mga papel ng usapin ay mailipat sa hukumang unang dulugan, kahit sa alin mang sandali ay ang nasasakdal ay hindi nagkamit ng kahit kaunting tulong ng isang manananggol. Itong kakulañgang ito ay isang maliwanag na paglabag sa Saligang Batás. Sangayon sa rekord, iginawad ng Hukom Paulati ang warrant sa pagdakup kay Moreno dahil sa ito magsimula pa ng Hulyo 26, 1945, ay nasasakdal na sa kasalanang asesinato sa usaping bilang 157, na nasasaad sa isang sakdal na iniharep ng Fiscal Jose T. Atilano nuon ding Hulyo 26, bagatnan sa itaas ng sakdal ay mayruong nasusulat na "filed July 31-45, 2:50 p.m." Maliwanag na itong notang ito'y hindî nababatay sa katutuhanan, at ang sakdal ay iniharap nuong Julyo 26 pa, at kung hindi ay walang katwirang sabihin ng Hukóm Paulati sa warrant na si Moreno ay nasasakdal sa kasalanang asesinato.

Ang karapatan ng isang nasasakdal na ipagtanggol ng isang manananggol ay dapat kamtan sa lahat at bawat't isa sa mga hakbang ng paglilitis, sapul sa siya'y basahan ng sakdal (sec. 1, Rule 111). Sangayon sa mga palatuntunan ng mga hukuman, sa sandaling pagharap ng nasasakdal sa pagbasa ng sakdal, pag ang nasasakdal ay humarap na walang kasamang manananggol, tungkuling mahigpit ng hukuman ng tantuñgin ang nasakdal kung nais niyang siya'y tulungan ng isang manananggol, at pag ang nasasakdal ay walang kayang kumuha ng sariling manananggol, tungkulin ng hukuman ang humirang ng isang manananggol de oficio (section 3, Rule 112). Sa nasa ng Kataastaasang Hukuman na ang karapatan na ating pinaguusapan ay huwag matawaran kahit sa anong paraan, iniuutos tuloy na pagkalooban ang isang nasasakdal ng isang manananggol kahit hindi titulado sa mga pook na walang maapuhap na kahit isa ang may titulo, huwag lamang mangyari na ang isang nasasakdal ay mawalang mahusay na katulong sa sakunang kaniyang hinaharap. (section 4, Rule 112.) Sangayon sa mga inihahayag ng rekord, ang mga nabanggit na mga tungkulin ng hukuman ay hindî tinupad samantalang ang usapin ay hindî pa nalilipat sa huktimang unang dulugan.

Sang susuriin ang rekord ng mga nangyari sa hukumang unang dulugan, bagaman tila ang nasasakdal ay pinagkaloobang sunod-sunod ng tatlong manananggo de oficio, ikinalulungkot na aminin na sa buong paglilitis hanggang sa ang nasasakdal ay hinatulan ay katulad din sa walang sinumang manananggol ang nakialam upang ipagmatuwid ang lahat niyang mga karapatan.

Ang sakdal sa hukumang unang dulugan ay iniharap nuong ika 31 ng Hulyo, 1945. Nuong araw ding iyon ay ipinakalat ang mga babala sa nasasakdal at sa mga saksi ng pamahalaan na itinakda sa Agosto 3, 1945, ang tuluyang paglilitis ng sakdal. Nuong Agosto 2, 1945, bispera ng araw ng paglilitis, ang Teniente J. D. Villanueva, nangangasiwa ng kinapipiitan ni Moreno, ay nagpahayag ng ito'y walang manananggol. At nuon ding araw na iyon ang Hukóm Florentino Sagin ay hinirang si Ramon V. Villaflor na maging manananggol de oficio, ng nasasakdal.

Sa araw na itinakda, Agosto 3, 1945, humarap si Villaflor upang ningin sa hukuman na pahintulutan siyang huwag magpatuloy sa paglilingkod sa nasasakdal sa dalawang dahilan: una, sapagkat siya at ang nasasakdal ay hindi magkasundo sa mga paraan ukol sa pagtatanggol; at pañgalawa, sapagkat naia niyang pumaruon sa Kabasalan, upang iligtas niya ang kaniyang mga kasangkapan dahil duon ay mayruon pang mga Hapones. Ang kahiliñgan ay pinaunlakan ng hukuman at hinirang natnan nito si Jaime O'Hara, bilang manananggol de oficio, na kanalili, at ipinaliban ang paglilitis para sa Lunes, Agosto 6, 1945.

Nuong Agosto 4, 1945, si Jaime O'Hara ay tumanggi rin tipang maging manananggol de oficio ng nasasakdal, sa ñgañgatuwirang siya'y isang kagawad ng pamahalaan at ang palatuntunan ng servisyo sivil ay naguutos na iukol niya ang kaniyang buong panahon sa kaniyang mga tungkulin, bukod pa sa pangyayari na siya ay kumpadre at matalik na kaibigan ng mga sinasabing viktima ni Moreno at inaakala niya na dahil dito ay siya ay walang ganap na kalayaan upang kaniyang mapaglingkuran ng buong tapat ang mga pakay ng katanmngan.

Nuong Agosto 6, 1945, araw din ng paglilitis, ay iginawad ng Hukom Sagin ang isang kautusan na pinapayagan ang kahiliñgan ni Jaime O'Hara, at sabay na hinirang na kahalili ang manananggol T. de los Santos.

Sangayon sa rekord, nuon ding araw na iyon ay binasahan si Moreno ng sakdal laban sa kaniya at kaniyang sinagot ng hindi pagamin ng kasalanan.

Sangayon sa mga palatuntunan ng mga hukuman, pagkatapus na sagutin a as sakdal, ang nasasakdal ay mayruong karapatang pagkalooban ng panahong hindi bababa sa dalawang araw upang makapag handa sa paglilitis (section 7, Rule 114). Gayon pa man, itong mahigpit na kautusan rig tuntunin ay sadyang nilabag, at pagkaraan ng mga ilang minuto lamang na mabasa ang sakdal, sinimulan agad ang paglilitis sa ika siyam ng umaga ding iyon. Ang manananggol Timoteo de los Santos ay nagsimula ng magpahayag na katatanggap pa lamang niya ng kaniyang pagkahirang na manananggol de oficio na "kung ako lamang ang masusunod, sa tapatang pahayag, ay hindi ko tatanggapin ang usaping ito," at sapilitan lamang siyang tumutupad sa kautusan ng hukuman, "sa ibabaw ng aking kalagayang sarile at ng aking paniniwalang lgban sa nasasakdal." (T. 1, 2.)

Sa bandang tanghali ng araw ding iyon ang hukuman na rin ang nagpahayag ng smusunod: "Mr. De los Santos informed the court this morning that he was not ready for trial but because the court requested him to cooperate in disposing of the testimony of some of the witnesses, he willingly accommodated us." (T. 25.) Ang rekord ay pipi kung bakit ang manananggol ay nagpaunlak agad sa labag-batas na mungkahi ng hukuman at kinapus ng tibay-loob upang ipaglaban ang karapatan ng nasasakdal na bigyan ng panahon sa paghahanda bago humarap sa paglilitis.

Sa makatuwid, maliwanag sa mga pangyayari na pinilit ng hukuman na ang nasasakdal ay pumasok sa paglilitis ng hindi nakahanda, ng ang kaniyang manananggol ay hindi rin handa, ng niyurakan ang karapatan ng nasasakdal na pagkalooban ng hindi bababa sa dalawang araw upang makapaghanda, ng ang kaniyang sariling manananggol ay mayruong paniniwalang laban sa ipagtatanggol. Ang kalagayan ng nasasakdal, sangayon sa mga inihahayag ng rekord, ay higit ang sama kay sa walang manananggol de oficio na humarap, sapagkat ang kaniyang inaasanang magtatanggol sa kaniya ay kaniya palang kalaban sa paniniwala.

Ang maraming mga pagkukulang ng ginawa ng nabanggit na manananggol de oficio ay napakasagwa na hindi akalaing gagawin ng kahit pinaka baguhang manananggol. Ang pagkukularg na iyan ay nangyari lamang dahil sa ang nabanggit na manananggol ay magsimula pa sa simula ay mayraon ng matibay na paniniwalang laban sa kaniyang ipinagtatanggol. Hindi na paniniwalaan na ang naging sanhi ay ang kaniyang kamangmañgan ukol sa batas, sapagkat wala namang tianatawad sa kaniyang kaalaman at kab ihasnan.

Ang pagwawalang bahala at pagwawalang malasakit ng manananggol de oficio ay mapatutiinayan, bukod sa mga nasabi na sa una, sa pangyayari na pito sa mga saksi ng pamahalaan ang hindi niya pinaraan sa baso at lagangan ng kanit isang subling tanong, at kung mayruon man siyang mga itinanong sa ilan sa mga saksi ay kakaunti at walang halaga ang kaniyang tanong na ginawa, sa paraang walang naidulot at naidudulot na anomang kabutihan sa pagtatanggol ng nasasakdal.

Bukod sa mga pagkukulang na nabanggit, ang manananggol de oficio ay gumawa ng isang kamaliang hindi maaaring patawarin. Alam niya na ang saging si Gregorio Magalit ng pamahalaan ay labang-laban sa nasasakdal.

(Abogado De los Santos: "Queremos hacer constar que el testigo está muy hostil a la defensa." T. 43.) Gayon pa man, kahit hindi kailaagan, ginawa niya ang nabanggit na tao na maging saksi din ng nasa sakdal, bagaman ang mga bagay na kaniyang itinanong sa bagong hiram na saksi ay maaari ding usisain sa pamamagitan ng pagpapatuloy ng kaniyang mga subling tanong. Tila sinadyang gawing saksi ng defensa si Magalit, ang pinaka mahigpit na saksi ng pamahalaan, upang mapaanyaya at dikdikin ang kapalaran ng nasasakdal.

Kung ating maalaala ang mahusay na alegato ng manananggol de oficio na hinirang ng Kataastaasang Hukuman, ang kaniyang pagsusumikap at pagmamalasakit up ang ihayag ang lahat na matuwid sa ikabubuti ng humahabol na nasasakdal, ay lalung-lalo ng mahahalata ang mga pagkukulang at mga pagkakamali ng manananggol de oficio na humawak ng usapin sa hukumang unang dulugan.

Danil sa mga pangyayaring nasasaad sa itaas, ay aming ipinalalagay na ang nasasakdal na si Moreno ay pinagkaitan ng kaniyang karapatan na bigyan ng panahong hindi bababa sa dalawang araw upang makapaghanda sa paglilitis at ng kaniyang karapatang nasasalig sa Saligang Batas na magkaruon ng tulong ng isang manananggol, at ito'y laban sa mga subseksion 15 at 17 ng seksion 1, artikulo III, ng Saligang Batas.

"(15) No person shall be held to answer for a criminal offense without due process of law."

"(17) In all criminal prosecution the accused shall be presumed to be innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses in his behalf."

Hindi namin masasangayunan ang isang hatol na maguutos na putihin ang buhay ng isang tao sa ilalim ng mga nabanggit na paglalabag sa batas. Tiyak na alam naming na sa aming palagay na ito ay aming inililigtas ang buhay ng isang tao na marahil ay wala ng karapatan kahit kaunti upang magpatuloy lasunin ng kaniyang hiniñga ang simoy na dapat kamtan lamang ng mga taong hindi nagkakautang ng buhay ng kapuwa; subali't bago ang isang hukom o mahistrado ay pahintulutang ang kaniyang kamay ay matigmak ng dugo ng kapuwa tao ay dapat niyang tiyakin ng walang ano mang alinlañgan, na sa mga mahigpit na kantusan ng batas at na ganyak ng sariling budhi ay wala ng ibang paraan, at ang tungkulin ay hindi maiiwasan, matataliwasan at matatalikuran. Sa usaping ito ay kami ay hindi nasisiyahan upang sangayunan ang pasiya ng amin tnga kapatid sa Kataastaasang Hukuman.

Ipinapasiya namin na pawalang bisa ang hatol ng hukumang unang dulugan at ibalik ang usapin sa nabanggit na hukuman upang litisin ng panibago pagkatapus na pagkalooban ang nasasakdal ng isang manananggol de oficio, na tunay na makapagsasanggalang sa kaniya at igalang ng hukuman ang lahat niyang mga karapatan sa buong paglilitis hanggang igawad ang panibagong hatol.

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