

**MANUEL MONTILLA, AS PROVINCIAL FISCAL OF ILOCOS SUR, AND
FAUSTINO S. TOBIA, PETITIONERS, VS. HON. ZOILO HILAMO, AS
DISTRICT JUDGE OF THE COURT OF FIRST INSTANCE OF ILOCOS
SUR, A...**

G. R. No. L-4922. September 24, 1951

Ponente: TUASON, J.

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TUASON, J.:

Section 17, Article VI, of the Constitution bars Senators and Members of the House of Representatives from, among other inhibitions, appearing as counsel before any court "in any criminal case wherein an officer or employee of the government is accused of an offense committed in relation to his office."

This case comes before us on a writ of certiorari to the Court of First Instance of Ilocos Sur, and involves the consideration of the scope of the aforementioned constitutional provision. The provincial fiscal and the private counsel for the complainants seek to have set aside an order of Judge Zoilo Hilario of that court overruling their objection to Congressman Floro Crisologo's intervention as defense counsel in Criminal Case No. 129 "for murder with (and) frustrated murder" against the municipal mayor and three members of the police force of Santa Catalina, Ilocos Sur.

The information charges that the defendants, "taking advantage of their respective public positions, conspiring together * * *, did then and there * * * assault, attack and shoot with their firearms" several persons "with the intent to kill" and did kill one Claudio Ragasa and inflict physical injuries on three others.

From the allegations of the information it does not appear that the official positions of the accused were connected with the offenses charged. In fact, the attorneys for the prosecution stated that the motives for the crimes were "personal with political character." It does not even appear, nor is there assertion, that the crimes were committed by the defendants in line of duty or in the performance of their official functions.

Judged by the context of section 17 of Article VI, *supra*, and the proceedings of the Constitutional Convention, the relation between the crime and the office contemplated by the Constitution is, in our opinion, direct and not accidental. To fall into the intent of the Constitution, the relation has to be such that, in the legal sense, the offense can not exist without the office. In other words, the office must be a constituent element of the crime as denned in the statute, such as, for instance, the crimes defined and punished in Chapter Two to Six, Title Seven, of the Revised Penal Code.

Public office is not of the essence of murder. The taking of human life is either murder or homicide whether done by a private citizen or public servant, and the penalty is the same except when the perpetrator, being a public functionary, took advantage of his office, as alleged in this case, in which event the penalty is increased.

But the use or abuse of office does not adhere to the crime as an element; and even as an aggravating circumstance, its materiality arises, not from the allegations but on the proof, not from the fact that the criminals

are public officials but from the manner of the commission of the crime.

Incidentally, this might serve as a warning against disqualifying a lawyer-legislator on the basis of what is alleged and not on the nature, of the offense itself. Were the petitioners' proposition, sustained, the result would be that in every case in which the accused is a public officer or employee, the prosecution could at will keep a member of Congress from entering an appearance as attorney for the defense. The prosecutor could do this by the simple expedient of making the necessary averments, even though, as a matter of fact, there was no evidence that the office held by the defendant had anything to do with the offense.

By the same token, the fact that, as alleged, the defendants made use of firearms which they were authorized to carry or possess by reason of their positions, could not supply the required connection between the office and the crime. Firearms however and wherever obtained are not an ingredient of murder or homicide. The crime in question, for example, could have been committed by the defendants in the same or like manner and with the same ease if they had been private individuals and fired with unlicensed weapons. Murders or homicides by private persons with guns, licensed or unlicensed are the general rule and by public officers the exception.

Tested by its consequences, the petitioners contention on this point is, like the contention discussed in the preceding paragraphs, untenable. Little reflection will show that by this contention the right of legislators to appear as counsel would depend on whether the weapons used were the offenders' property or part of their official equipment; and since this matter is extraneous to the definition of the crime of murder, the attorneys' qualification or disqualification would lie at the mercy of the prosecuting officer. Surely, it could not have been the intention of the framers of the Constitution to make the operation of the provision in question hang on a factual consideration so slender and uncertain; on a contingency that could only be determined after the trial was over, when the attorneys' services were no longer needed.

The petition is denied without costs:

Paras, C. J., Feria, Pablo, Bengzon, Padilla, Reyes, Jugo, and Bautista Angelo, JJ., concur.

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