

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. TEOFILO B. BUSLON, ET AL., RESPONDENTS.*G.R. No. L-22778. November 29, 1965*

Ponente: REYES, J.B.L., J.

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Petition for certiorari to annul the proceedings conducted by respondent Judge Teofilo Buslon in Criminal Case No. 2260 of the Court of First Instance of Agusan, entitled *People vs. Rustico Alburo*, for murder, and to set aside the decision of acquittal rendered therein by respondent Judge.

By information filed by the Provincial Fiscal on 22 February 1961, respondent Rustico Alburo had been charged with the murder of one Julio Carlon in Criminal Case No. 2260 of the Court of First Instance of Agusan. The accused managed to stave off trial until 17 December 1963, when the evidence for the prosecution was heard by District Judge Montano Ortiz. When the prosecution rested its case on 3 March 1964, the defense moved to dismiss the case, and, upon its request, it was given 10 days from 5 March 1964 to submit its memorandum in support of the motion, while the prosecution was allowed an equal period to reply. Instead of filing the memorandum, the defense notified the clerk on 23 March 1964 that it was waiving its motion to dismiss, and requested that the case be set for April 3, 6, 7, and 8 to receive the evidence on the accused's behalf. Coincidentally, on 17 February 1964, the Department of Justice had assigned respondent Judge Teofilo Buslon, of Surigao del Norte, to hold Court in Agusan during April as vacation judge, the regular incumbent having gone on annual vacation leave.

On 31 March the Court clerk of Agusan received information that Judge Buslon would proceed thither (from Surigao del Norte) "to try the murder case on 7 and 8 April 1964", evidently referring to the case against respondent Alburo; and accordingly, the Clerk of the Court of First Instance of Agusan issued a notice of hearing, setting the trial of the case for 7 and 8 April. The notice was not served upon the Office of the Provincial Fiscal; but it was served on the office of the private prosecutor, Attorney Wenceslao Rosales, on 6 April, and received by the latter's clerk, who noted on the original that "attorney W. B. Rosales is in Manila for one (1) week", and would probably be back the week following.

No trial was held on Tuesday, 7 April, because respondent Judge Buslon was delayed, and he wired the Clerk of Court to "call calendar Wednesday". On the morning of 8 April 1964, Alburo's case was called, but neither the Provincial Fiscal nor the private prosecutor was present. Attorney Amado Bajarias, Special Counsel for the office of the Provincial Fiscal, vainly sought a continuance of the trial because of the absence of the Fiscal and the private prosecutor due to the Sack of notice and because he (Bajarias) could not act as the Fiscal handled this particular case personally. On insistence of the respondent Judge, who stated that he was staying only until 15 April, trial proceeded in the afternoon, and respondent heard the witnesses for the defense, who were cross-examined by special counsel Bajarias. Thereafter, the case was submitted, and on 15 April Judge Buslon promulgated his decision acquitting the accused.

It is contended that respondent Judge, as Vacation Judge, had no authority to hear the case, which had already been partly tried by District Judge Ortiz; that he abused his discretion in trying the case despite lack of notice to the Fiscal and the private prosecutor.

We find no merit in the first contention. As vacation judge, respondent was designated by the Department of Justice, conformably to section 66 of the Judiciary Act, to act in the Court of First Instance of Agusan "for the purpose of trying all kinds of cases and to enter judgments therein". While it is the customary for vacation judges to hear cases already begun and partly tried by the regular judges, the authority given by the Department was sufficiently broad to authorize the holding of the trial of the Alburo case by the respondent, if he was willing to do so, and to render a valid judgment therein.

There being jurisdiction to take cognizance of the case, and the charge being sufficient, the acquittal after trial bars a relitigation of the issue; otherwise, the accused would be placed twice in jeopardy of punishment for the same offense.

While there were irregularities committed by the respondent Judge Buslon (and they are the subject of the administrative charges against him now under investigation by this Court), none of them constitute illegality that would vitiate and annul the trial or amount to lack of jurisdiction, the absence of notice of trial to the prosecution was subsequently palliated by the cross examination conducted by special counsel Bajarias, and it does not appear that he made any reservation or offer of rebuttal evidence. As to the credence accorded to the witnesses for the defense, any error therein is no longer subject to review, since the accused was acquitted.

Wherefore, the writ of certiorari herein prayed for is denied. Without costs, and without prejudice to the administrative case.

Bengzon, C. J. Bautista Angelo, Concepcion, Dizon, Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

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