

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. TEODORA DESPABILADERAS AND JULIAN S. LAXAMANA, DEFENDANT AND APPELLANTS.

G.R. No. 10639, December 06, 1915

Ponente: CARSON, J.

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CARSON, J.:

The evidence of record conclusively establishes the guilt of the defendants and appellants of the crime of adultery of which they were convicted in the court below, and we find no errors in the proceedings prejudicial to the substantial rights of the accused.

Counsel for appellants insist that the judgment of conviction should be reversed, because, as he asserts, the record does not disclose that the prosecution was conducted by the provincial fiscal. It affirmatively appears, however, that the record of the preliminary investigation before a justice of the peace was forwarded to the clerk of the Court of First Instance on the 26th of March, 1914, and that on the same day it was turned over to the fiscal for such action as he might deem proper; and further that the provincial fiscal was present, as counsel for the Government, when the accused were arraigned in the Court of First Instance. In the absence of any showing to the contrary, we are of opinion that it must be presumed that the proceedings in the court below were legal and regular in this regard and that the fiscal performed his duty in relation to the prosecution of this case. (U. S. vs. Fernandez, 1 Phil. Rep., 539; U. S. vs. Labial and Abuso, 27 Phil., Rep., 82.)

It is true that the record affirmatively discloses that counsel for the private prosecutor actively conducted the proceedings in the court below and that there is no record of any further intervention in the trial on the part of the provincial fiscal after the accused had been arraigned. But there is nothing in the rules of practice and procedure in criminal cases which denies the right of the fiscal, in the exercise of a sound discretion, to turn over the active conduct of the trial to a competent assistant or to counsel for a private prosecutor, with the understanding, of course, that he does not thereby relieve himself of responsibility for the prosecution, and that he retains the right to control the prosecution at every stage of the proceedings to the end, and to intervene at any time he sees fit. In the absence of any showing to the contrary, we assume that this is what was done in the case at bar. It is every day practice in this jurisdiction, as well as in the United States generally, for the prosecuting attorney to turn over the active conduct of criminal cases (especially those in which the offenses charged are of the nature of those known as private offenses under the Spanish Penal Code) to counsel employed by private prosecutors; and we see nothing objectionable in this practice, provided always that the fiscal retains control of the prosecution, and assumes full responsibility therefor.

The judgment entered in the court below should be affirmed with the costs of this instance against the appellant. So ordered.

Arellano, C.J., Torres, Johnson, Moreland, Trent, and Araullo JJ., concur.

Judgment affirmed.

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