

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PANTALEON ABANZADO ET AL., DEFENDANTS, PANTALEON ABANZADO, FAUSTINO PURACAN, ANIANO ABANZADO, MACARIO ABANZADO, CARMELO MEJOY, EUT...

G.R. No. 12887. February 15, 1918

Ponente: CARSON, J.

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CARSON, J.:

In the month of November, 1911, in the barrio of Hinlayagan, municipality of Talibon, Bohol Province, the seven defendants and appellants first above named killed a neighbor named Sixto Lota, together with his wife and three small children.

It appears that these men believed or suspected that Lota was a "bad man," a kind of a wizard, who kept in his possession a "barang," a mysterious and deadly insect which can be taught to seek out and kill or injure any one who has the ill-will of the owner. The leading spirit in the commission of the crime was Pantaleon Abanzado, who gave some of the others small sums of money, ranging from to P9 for their assistance, and although not present himself when the killing took place, worked out the plan in all its details which was followed by the others, acting under and in strict compliance with his instructions. The party assembled at his house where they were supplied with ropes. From there they went to the house of their victims, secured admission on the pretense that they had come to buy tobacco, seized and tied the man and his wife and their three children, the eldest of whom was not more than six or seven years of age, and dragged them by the ropes, tied about their necks, to a stream called Cambinoy, where they were hastily buried in accordance with the directions of Pantaleon Abanzado. On the way to the burial place the party came to a stream called Canlagbason, and finding that by that time every member of the family except one child was dead, one of the party held the still living child under the water until it was drowned.

The commission of this frightful crime remained unknown to the authorities until the (provincial governor, the Honorable Eutiquio Boyles, instituted an inquiry, a few years afterwards into the unexplained disappearance of Lota and his family, which resulted in a number of admissions and confession by different members of the party, corroborated by the discovery of the skeletons of Lota and his wife at the place where it appeared from these admissions and confessions they had been buried.

Two members of the party turned state's evidence and, on the witness stand, gave full, detailed accounts of all that occurred, which are so clear and convincing, that they leave no room for doubt as to the guilt of the men convicted as principals in the court below, when examined and reviewed together with the corroborated evidence, touching the disappearance of Lota and his family, the discovery of the skeletons at the place where they had been buried, and the admissions and confessions of the accused in the course of the extra judicial investigation made by Governor Boyles.

Counsel for the accused makes no serious attempt at this time to question the truth and accuracy of the testimony

of the witnesses for the prosecution, but contends that the testimony of the accomplices and the evidence as to extrajudicial admissions and confessions of some of the accused should not have been admitted in the court below, and that without this evidence there is no evidence in the record which sustains the judgment of conviction.

Counsel for the appellants asserts that it does not appear from the record that the alleged extrajudicial admissions and confessions were made freely and voluntarily. But it affirmatively appears from the testimony of Governor Boyles, cited in the Attorney-General's brief, that these admissions and confessions were made voluntarily, and were secured without the use of undue influence; and there is no evidence whatever in the record which even tends to put in doubt the truth of his statements or to raise any question as to his credibility as a witness for the prosecution. The accused themselves made no claim of this kind in the court below, and we agree with the Attorney-General that there is nothing in the record which sustains the contentions of counsel for the appellants in this regard.

The ground on which counsel alleges error in the admission of the testimony of the accomplices is the fact that the trial judge did not have in mind the provisions of Act No. 2709 when he discharged two of the defendants in order that they might be used as witnesses for the prosecution. It appears that this statute was enacted and became effective not long before the date of the trial in the court below; that no copy of the statute came to the hands of the trial judge until after the trial; that in the course of the proceedings he was informed by counsel, a member of the Legislature, that legislation relating to the discharge of accused persons to be used as Government witnesses had recently been enacted; but that not having any information as to the precise nature of this legislation, he discharged two of the defendants to be used as witnesses for the prosecution, in the exercise of the discretion conferred upon him under the provisions of section 34 of General Orders No. 58.

Counsel now insists that his action in this regard was illegal, and that the use of these persons as witnesses was not authorized by law, and constituted reversible error. We cannot agree with this contention.

The provisions of Act No. 2709 are set forth in four short sections as follows:

"SECTION 1. Every prosecution for a crime shall be in the name of the United States against all persons who appear to be responsible therefor, except in the cases determined in section two of this Act.

"SEC. 2. When two or more persons are charged with the commission of a certain crime, the competent court, at any time before they have entered upon their defense, may direct any of them to be discharged, that he may be a witness for the Government when in the judgment of the court:

"(a) There is absolute necessity for the testimony of the accused whose discharge is requested;

"(b) There is no other direct evidence available for the proper prosecution of the crime committed, except the testimony of said accused;

"(c) The testimony of said accused can be substantially corroborated in its material points;

"(d) Said accused does not appear to be the most guilty, and

"(e) Said accused has not at any time been convicted of the crime of perjury or false testimony or of any other crime involving moral turpitude.

"SEC. 3. All Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed.

"Sec. 4. This Act shall take effect on its approval."

The law in force on this subject prior to the enactment of Act No. 2709 is found in sections 34 and 36 of General

Orders No. 58, which are as follows:

"Sec. 34. When two or more persons shall be included in the same charge, the court, at any time before the defendants have entered upon their defense or upon the application of the counsel of the Government, may direct any defendant to be discharged, that he may be a witness for the United States."

"Sec. 36. The order indicated in sections thirty-four and thirty-five shall amount to an acquittal of the defendant discharged, and shall be a bar to future prosecution for the same offense."

Examining the terms of these statutory enactments, it is clear that it was not the intention of the legislator, by the enactment of Act No. 2709, to deprive the prosecution and the state of the right to make use of accomplices and informers as witnesses, but merely to regulate the exercise of that right by establishing the conditions under which it may properly be exercised. It is clear, furthermore, that the legislator intended to rest the manner of the enforcement of these conditions in the sound judicial discretion of the courts. This discretion, in the very nature of the thing must, as a general rule, be exercised prior to the trial, and in all cases before the accused have entered upon their defense. Under the circumstances, it may well be expected that the court will err at times in its exercise. A trial judge cannot be expected or required to inform himself with absolute certainty at the very outset of the trial as to everything which may be developed in the course of the trial in regard to the guilty participation of the accused in the commission of the crime charged in the complaint. If that were practicable or possible there would be little need for the formality of a trial. He must rely in large part upon the suggestions and the information furnished by the prosecuting officer in coming to his conclusions as to the "necessity for the testimony of the accused whose discharge is requested;" as to the availability or nonavailability of other direct or corroborative evidence; as to which of the accused is "most guilty," and the like. If he errs in the exercise of his discretion and discharges a guilty person who should not have been set at liberty, the error, as a general rule, cannot be cured any more than any other error can be cured which results in an acquittal of a guilty defendant in a criminal action (*U. S. vs. De Guzman*, 30 Phil. Rep., 416); but no sound reason has been suggested in support of a ruling that the commission of such an error of discretion should have the effect of discharging from criminal liability the accused persons who were not discharged that they might be used as witnesses; and there is nothing in the law which indicates that it was the intention of the legislator to provide for their discharge under such circumstances.

Section 1 of the statute prescribes that every prosecution for a crime shall be against all persons who appear to be responsible therefor, except in the cases determined in section 2 of the Act. But this does not require the prosecuting officer to do the impossible, and to include the names of unknown participants in an information filed by him. Nor does it relieve him of the duty, when he institutes criminal proceedings on an "information" in the absence of a commitment by a magistrate, not to force to trial any person whose guilt he has no sufficient reason to believe he will be able to establish by the production of competent evidence. (*U. S. vs. Barredo*, 32 Phil. Rep., 444.) It is very clear, then, that the statute does not relieve the prosecuting officer of the duty to exercise his sound discretion in determining what persons "appear" to be responsible for the commission of crimes in such cases, though it imposes upon him the duty to include the names of all persons in his "information" who "appear" to have been guilty participants in the crime charged therein, either as a result of the exercise of his discretion upon the facts of which he is apprised, or because they have been held for trial by order of a committing magistrate. (*U. S. vs. Barredo*, supra.) But no one would contend that if for lack of knowledge of the facts, by mistake, or for any other reason, the prosecuting officer fails to include the names of one or more persons in an information filed by him, who were in fact guilty participants in the commission of the crime charged therein, such persons will be relieved of criminal liability; or that those accused who have been charged with the offense, brought to trial, and found guilty will be permitted to escape punishment merely because it develops in the course of the trial, or after

the trial, that there were other guilty participants in the crime. This would be to enlarge rather than to restrict the power of the fiscal, contrary to the manifest spirit and intention of the act.

In like manner, the discharge of a defendant in a criminal action by the court, though it has the effect, as a general rule, of relieving the person thus discharge of criminal liability, in no wise affects the status of his codefendants—and this whether the court has acted wisely or unwisely, correctly or erroneously, with regard to the discharged defendant. It is the duty of the trial judge to exercise a sound discretion in conformity with the provisions of the statute. But if he fails in the performance of his duty, or errs in the exercise of his discretion in this regard, such error does not relieve from criminal responsibility the guilty participants who are not discharged to be used as witnesses, any more than a like error in weighing the evidence submitted at the trial which results in the acquittal of one of several coaccused, who was in truth and in fact a guilty participant in the crime charged against them, will afford a ground for a claim of exemption from criminal liability by the other accused who were properly convicted.

However much it is to be regretted that the use of *participes criminis* as witnesses under the provisions of this Act results in setting some guilty persons at liberty, and in some instances, at least, makes the state a party to the setting of a premium upon treachery and to the grant of a reward for conduct from which every honorable man instinctively recoils with horror and disgust; nevertheless, the practical experience of the ages seems to have demonstrated the necessity for the retention of the practice, under proper restrictions and regulations, in any system of criminal procedure which sacredly conserves the rights of all accused persons not to be required to give evidence against themselves. Thus we find the practice recognized in the English and the Federal courts, and incorporated into the various systems of criminal procedure in use in the different States of the Union. (Cf. discussion of the doctrine in *U. S. vs. Barredo*, *supra*.) The admission of the testimony of accomplices in our courts would seem to be the price, or a part of the price that must be paid, in order to escape the supposedly greater evils incident to what is sometimes called the inquisitorial system of criminal procedure. And however this may be, it is very certain that under the English and American systems, numberless crimes would go unpunished, and insolent and contumacious criminals would oftentimes defy the law with impunity, if the rules of criminal procedure were so construed or applied as to seal hermetically the mouths of accomplices, informers and *participes criminis* in general. (*U. S. vs. De Guzman*, 30 Phil. Rep., 416.)

In enacting the statute now under consideration, the Philippine Legislature clearly recognized the need for the use of the testimony of accomplices in certain cases, and undertook merely to establish conditions under which the court, and not the prosecuting officer, may authorize the practice in a particular case.

An examination of the minutes of the proceedings in the Philippine Senate when the statute was under consideration, discloses that these conditions were expressly borrowed from the language of some of the courts in the United States, in setting forth the conditions under which the courts, in the absence of such a statute, should exercise their discretion in authorizing the use of accomplices as witnesses. (Speech of Senator Sison, Chairman of the Judicial Committee, citing *Ray vs. State*, 48 Am. Dec. 379—supreme court of Iowa.) And speaking generally, it would seem that these statutory provisions are merely an express declaration of the conditions which the courts were bound to have in mind in the exercise of a sound discretion under the terms of sections 34 and 36 of General Orders No. 58.

We find no real or substantial conflict, then, between the provisions of section 2 of Act No. 2709 and the provisions of General Orders No. 58 on the same subject.

Both recognize the judicial discretion of the courts in the premises; and the express conditions set forth in the later statute are in substance and effect identical with those implied in the grant of discretion in the earlier law, for the

provisions of General Orders No. 58 should not be presumed to have amounted to a grant of an arbitrary discretion to the trial courts, but rather a sound judicial discretion, to be exercised with due regard to the correct administration of justice.

In the case at bar, the trial judge, although not consciously controlled by the provisions of the later statute in the exercise of the discretion with which he was clothed, did in fact exercise his discretion in conformity with the express and implied conditions contained in both statutes— and as we have already indicated, an error in the exercise of that discretion, even if it appeared that there was such error, would not justify or necessitate the reversal of the judgment of conviction of the defendants not included in his order of dismissal.

There is nothing in the statute which prescribes that after one of several accused persons have been discharged by the trial judge in the exercise of the discretion conferred upon him by law, such discharged person may not be used as a witness against his coaccused, even if it should develop that the trial judge had erred in the exercise of his discretion through inadvertence, or for any other reason. And certainly the testimony of one of several accused persons, who is discharged by the trial judge in the exercise of the discretion with which he is clothed by law, in strict accord with the provisions of section 2 of Act No. 2709, should not be held incompetent merely because the trial judge did not have those provisions consciously in mind when he entered the order of discharge.

The statute prescribes merely the conditions which should control the court in the exercise of its discretion in discharging accused persons in order that they may be used as witnesses against their coaccused; and we must look elsewhere to find the rules touching the competency, admissibility, relevancy and probative value of the testimony of these witnesses when it is offered in evidence, after they have been discharged by the court in order that they might be called as witnesses for the prosecution.

We conclude that it was not error in the court below to admit the testimony of the accomplices who were discharged in order that they might be called as witnesses for the prosecution, and that the judgment of conviction of each and all of the appellants except Juan Abanzado must be sustained.

The trial court convicted Juan Abanzado not as a principal, but as an accessory after the fact, it appearing that some time after the crime was committed, he accompanied some of the other accused to the place where the bodies were concealed on the night of the murder, and helped them to remove and bury these bodies at another and more remote spot. It affirmatively appears, however, that Juan Abanzado is a brother of Pantaleon and Aniano Abanzado, an uncle of Macario Abanzado and a cousin of Lota's wife, and should therefore have been exempted from criminal responsibility as an accessory after the fact, under the express provisions of article 16 of the Penal Code.

The only question which remains for consideration is the penalty which should have been imposed on the convicts. Manifestly, sentence of death was properly and lawfully imposed by the trial judge upon each and all of them, unless it be held that they should be given the benefit of the provisions of article 11 of the Penal Code, as amended, so as to reduce the penalty from death to life imprisonment.

Despite the fact that Pantaleon Abanzado, the leading spirit in the commission of this dastardly crime, appears to have been an extremely ignorant and superstitious man, we would have no little hesitation in applying the provisions of the article in his case were it now before us. The record discloses, however, that he died in prison pending this appeal, and the information has, therefore, been dismissed as to him.

As to the others, with some hesitation, but giving them the benefit of every reasonable doubt, we apply the provisions of the article so as to reduce the penalty to life-imprisonment. It is true that Pantaleon Abanzado gave some of them small sums of money to induce them to join with the others in the murder, but the record discloses

that the real motive actuating these lamentably ignorant and superstitious men was the firm belief that their victims were members of a family whose head was a wizard, clothed with occult powers which made him and all the members of his family a menace to the safety and welfare of the remote community in which they lived. Most of the murderers were related by ties of blood or marriage to their victims, and it is clear from the record that in committing this abominable crime, they acted under the influence of some ancient tribal belief in witch-craft or some local but deep-rooted superstition handed down to them by their ignorant and uncivilized forebears, which led them to believe that in no other way could they secure the lives and safety of their families, their neighbors and themselves from threatened and unknown dangers. (Cf. U. S. vs. Pado and Garfin, 19 Phil. Rep., 111; U. S. vs. Maqui, 27 Phil. Rep., 97; U. S. vs. Flores, 28 Phil. Rep., 29.)

Article 11 of the Penal Code as amended by Act No. 2142 is as follows:

"The degree of instruction and education of the offender shall be taken into consideration by the courts for the purpose of mitigating or aggravating the penalties, according to the nature of the offense and the circumstances attending its commission."

We conclude that the judgment convicting and sentencing the defendants Faustino Puracan, Aniano Abanzado, Macario Abanzado, Carmelo Mejoy, Eutiquio Puracan and Santiago Baay should be modified by substituting the penalty of life imprisonment together with the accessory penalties prescribed by law, for so much as imposes the death penalty, and that thus modified the judgment in so far as they are affected thereby should be affirmed, with his proportionate share of the costs in this instance against each of them; and that the judgment convicting and sentencing Juan Abanzado as an accessory after the fact should be reversed, and this accused acquitted of the crime of which he is charged and set at liberty forthwith, with his proportionate share of the costs in both instances de officio. So ordered.

Arellano, C. J., Torres, Johnson, Araullo, and Street, JJ., concur.

Avanceña, and Fisher, JJ., did not take part.

CONCURRING OPINION

MALCOLM, J., concurring:

I concur in the result. I reserve my opinion relative to an interpretation of Act No. 2709. My reasons are these: The law never sanctions impossibilities. The trial court sitting in the Province of Bohol, on March 9, 1917, when the question arose, had no authentic information of the substance of Act No. 2709, effective on March 11, 1917. The court was therefore under the duty of following the law of which it had knowledge, the pertinent parts of the Code of Criminal Procedure. Having complied with the provisions of the Code of Criminal Procedure, the court committed no error, and any discussion of Act No. 2709 is now unnecessary.

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