

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. FLORENTINO SORIANO, DEFENDANT AND APPELLANT.

G. R. No. 26538. September 27, 1927

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PER CURIAM:

A motion presented within the fifteen-day period following promulgation of judgment by the attorney for the accused and appellant, Florentino Soriano, prays the court " (a) To suspend temporarily the execution of the sentence rendered in this case, until this Tribunal meets again this coming July and the present motion is decided; and (b) to grant him a new trial in order that the parties may argue orally the points at issue and the Chief Justice Avanceña may take part in the consideration and decision of this case." Subsequently in an order made-by the Associate Justice Acting in Vacation the execution of the sentence was suspended as requested in the petition (a). The court, therefore, has now before it the considerations relating to the basis of the motion as disclosed in the petition (b).

The record discloses that the case, The People of the Philippine Islands, plaintiff and appellee, vs. Florentino Soriano, defendant and appellant, No. 26538, was submitted to the court in the February calendar of 1927. Sometime thereafter, the case was given the serious consideration which it deserved by all the members, with the exception of the Chief Justice who was absent on vacation. A judgment was promulgated on March 30, 1927, in a decision headed "Per Curiam" and signed by Associate Justices E. Finley Johnson, Thos. A. Street, Geo. A. Malcolm, Ignacio Villamor, James A. Ostrand, Charles A. Johns, Norberto Romualdez, and Antonio Villa-Real, with the note appended "Chief Justice Avancena was absent on vacation and did not take part in the consideration or decision of this case." [1] The judgment rendered affirmed that of the trial court sentencing the accused to the death penalty. It is now argued by counsel that error was committed inasmuch as the Chief Justice ended his vacation on March 24, 1927, prior to the promulgation of the judgment; that he was not legally disqualified; that he was a dissenting Justice in one of the cases cited in the decision; and that "consequently the fact that Chief Justice Avanceña has not signed the judgment imposing death penalty to the accused-appellant, he not being legally disqualified to do so, is a clear violation of Act No. 3104, and, therefore, such judgment is null and void." We find no merit in this argument.

Act No. 3104, which is relied upon, was once before given attention on the petition for habeas corpus filed by the same attorney who represents the accused and appellant at bar, in the case of Fuentes vs. Director of Prisons ([1924], 46 Phil., 22). It was there held by this court, speaking through Mr. Justice Ostrand, that the provisions of subsection 2 of section 1 of Act No. 3104 to the effect that a sentence imposing the death penalty shall be signed by all of the members of the court, must be construed to mean all of the members of the court at the time the case is heard and decided. The body of the decision is even clearer for there it is said: "In order to give validity to the provision in question we must therefore presume that in speaking of the Supreme Court the Legislature means the court as actually constituted at the time of the consideration of each particular case to which subsection 2, supra, may apply." Here it must be admitted, for such is the fact, that the Chief Justice was not present for duty at the

time of the consideration of this case and at the time it was decided by the court, and that he merely happened to return to duty after the decision had been agreed upon but before the date when the judgment was formally rendered. Inasmuch as an unsuccessful attempt was made to secure a writ of certiorari from the United States Supreme Court to review our decision in *Fuentes vs. Director of Prisons*, supra, the rule there announced must now be considered as authoritative and as such, when given application here, discloses an entirely valid judgment.

Notwithstanding what has been said, so as to do complete justice to the appellant who is under sentence to the capital penalty, we have deemed it desirable to hold his motion until all nine members of the court, including the Chief Justice, were present to consider it. The latter has read the motion, the briefs, and the record, and as a result has announced his vote as in favor of a denial of the motion and of an affirmance of the judgment rendered in the trial court.

For all the foregoing, the motion presented on behalf of the accused-appellant, Florentino Soriano, in this case is denied, and fifteen days after the publication of this supplemental decision, the record will be returned to the Court of First Instance of Pampanga for the execution of the sentence on a date to be determined by the Judge of the Court of First Instance of that province. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Ostrand, Johns, Romualdez, and Villa-Real, JJ.

Motion denied.

[1] P. 203, ante.

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