

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. CANUTO TUZON, DEFENDANT AND APPELLANT.

G.R. No. 35763. March 18, 1932

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The information charges the appellant with the crime of homicide, and the Court of First Instance of Tayabas that tried the case, after due hearing, found the defendant guilty of the crime charged and sentenced him to fourteen years, eight months, and one day of reclusion temporal, the accessory penalties, P1,000 indemnity, and the costs.

The above judgment is now assailed upon the ground that the trial court erred in giving credit to the sole testimony of Eulalio Rutaquio, and in not concluding that the case for the prosecution was weakened by the failure of the prosecuting attorney to present the witnesses listed in the information, which failure gives rise to a presumption adverse to the prosecution. It is also contended that the accused should have been given the benefit of a reasonable doubt.

We have examined the record and find nothing to justify a holding that the trial court erred in its findings of fact. The defense of alibi has not been established, for the evidence adduced to that end is insufficient and lacking in weight to overcome the convincing testimony of witness Eulalio Rutaquio.

With reference to the witnesses listed in the information, some of whom were not presented, there is nothing to show, or from which to infer that their testimony was absolutely necessary to establish the crime, inasmuch as the only eyewitness, besides the defendant and the deceased, has been produced and testified. Even if the omitted witnesses were eyewitnesses, which by no means appears, failure to bring them in to testify shall not of necessity give rise to the presumption as provided in section 334, No. 5, of the Code of Civil Procedure. (U. S. vs. Gonzalez, 22 Phil., 325.) At any rate the testimony of the omitted witnesses would be simply corroborative evidence, and the presumption referred to does not apply to the suppression of merely corroborative evidence. (U. S. vs. Dinola, 37 Phil., 797.)

As the crime and the defendant's guilt have been sufficiently proved, and there being no merit in the assignments of error made by the defense, the judgment appealed from is hereby affirmed, with costs against the appellant. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Ostrand, Villa-Real, and Imperial, JJ., concur.

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