

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ESTANISLAO EUSEBIO, DEFENDANT AND APPELLANT.

G.R. No. 3672. September 23, 1907

Ponente: JOHNSON, J.

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JOHNSON, J.:

This defendant was accused of the crime of homicide, in the Court of First Instance of the Province of Capiz, was found guilty of said crime by said court, and sentenced to be imprisoned for a period of seventeen years of reclusion temporal, with the accessory penalties of article 59 of the Penal Code, and to indemnify the heirs or parents of the deceased in the sum of P500, Philippine currency, and to pay the costs. From this decision the defendant appealed to this court and made the following assignment of errors:

"1. That the court erred in not having duly notified the accused of the character and cause of the accusation in the form and manner prescribed by law.

"2. The court committed an error in taking into account the amended complaint interposed after the fiscal had dismissed the first complaint, thus condemning the defendant without due process of law.

"3. That the court erred in deciding that the accused was the author of the said crime charged in the said complaint."

With reference to the first assignment of error, to wit, that the accused had not been duly notified of the character and motive of the accusation, the record discloses that the defendant was brought into open court, the complaint was read to him in his own dialect, and he was duly questioned whether he was guilty or not guilty of the crime charged, to which he answered that he was not guilty. Therefore we hold that the defendant was duly notified in writing of the nature and character of the charges preferred against him. The defendant, at the time of his arraignment, was also represented by his attorney, who was present in court.

From an examination of the record brought to this court, it appears that on or about the 16th day of October, 1903, the fiscal of the Province of Capiz filed a complaint in the Court of First Instance of said province, accusing the defendant of the crime of homicide; that on the 16th day of October, of the same year, the judge of the Court of First Instance issued an order of arrest for the defendant.

On the 29th of January, 1906, for the reason that the defendant had not up to that time been arrested, the fiscal of the province presented a motion in the said court asking a provisional dismissal of the cause against the defendant, but without prejudice to the continuance of the procedure as soon as the defendant should be arrested; which motion was allowed by the court upon the 31st day of January, 1906.

The record discloses that on the 8th day of February, 1906, in a communication by the sheriff of the said province to the clerk of the said court, the defendant had been arrested and was then in the cárcel in the capital of the province.

On the 8th day of May, 1906, the fiscal presented an amended complaint against the defendant. On some day in

the month of July, 1906, the defendant was duly arraigned upon the complaint and pleaded "not guilty" of the crime charged therein, without making any objection whatever to the form or substance of the complaint.

This court has repeatedly decided that it would not consider objections to the form or substance of a complaint filed in the lower court, made for the first time in this court on appeal. (The United States vs. Sarabia, 4 Phil. Rep., 566; Mortiga vs. Serra and Obleno, 5 Phil. Rep., 34; The United States vs. Paraiso, 5 Phil. Rep., 149; The United States vs. Aldos, 6 Phil. Rep., 381; The United States vs. Baltazar,[1]5 Off. Gaz., 670.)

Moreover, the defendant by reason of the conditional dismissal, without prejudice to the filing of a new complaint, not having yet been arrested, was not prejudiced in any manner. The fiscal might have filed any number of complaints and have dismissed each one of them.

With reference to the third assignment of error, an examination of the evidence brought to this court convinces us, beyond peradventure of doubt, that the defendant was guilty of the crime charged in the manner and form set out in said complaint, and therefore, the lower court not having committed any error in the trial of said cause, the judgment of the same is hereby affirmed, with costs. So ordered.

Arellano, C. J., Torres, Willard, and Tracey., JJ., concur.

[1]Page 592, post.

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