

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. FELIPE AGASANG ET AL., DEFENDANTS AND APPELLANTS.

G. R. No. 40976.. May 23, 1934

Ponente: BUTTE, J.

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BUTTE, J.:

This is an appeal from a judgment of the Court of First Instance of Samar convicting the defendants-appellants of the crime of homicide upon the following information:

"Que en o hacia el 17 de mayo, 1933, en el Municipio de Lavezares, Provincia de Samar, Islas Filipinas, y dentro de la jurisdiccion de este Juzgado, los acusados arriba mencionados obrando juntos y ayudandose mutuamente, voluntaria, ilegal y criminalmente, agredieron y acometieron con un bolo a un tal Dionisio Empleo, infiriendole varias heridas graves en diferentes partes del cuerpo que ocasionaron la muerte de dicho Dionisio Empleo."

Included in the information as defendants were Felipe Agasang and Pedro Aganan. On September 5, 1933, the fiscal filed a motion for dismissal of the information against Felipe Agasang on the ground that the evidence in the hands of the Government showed that this accused had no part in the crime. The defendant Pedro Aganan was acquitted by the trial court.

On this appeal the appellants assign the following errors:

"1. The lower court erred in giving greater weight to the testimonies of the witnesses of the prosecution than those of the defense, the former being biased, incredible, and can not be the basis of conviction.

"2. The lower court erred in not believing the testimonies of the witnesses of the defense and in not declaring that in the light of the attending circumstance, the crime charged by the prosecution is incredible and contrary to the ordinary course of human nature.

"3. The lower court erred in dismissing the case against Felipe Agasang and used him as a state witness when the attending circumstance does not warrant his dismissal."

In support of his third assignment of error, the appellant cites the case of United States vs. Enriquez (40 Phil., 603). In that case the information was filed against Rosauro Enriquez alone. Two of the witnesses for the prosecution, Quirino Reyes and Marcelo Santiago, testified that they assisted Rosauro Enriquez in the betting which was done in the game of jueteng for which the defendant was being prosecuted. Although no information was filed against them and it appeared that they were accomplices, they were permitted to testify over the objection of the defendant and this court sustained the judgment of conviction.

There is a marked distinction between that case and the case before us. The defendants-appellants, after pleading not guilty, stated in their exception to the admission of the testimony of Felipe Agasang (t. s. n., page 2) "que contamos con pruebas suficientes en contra de el (Felipe Agasang) por la muerte del occiso Dionisio Empleo."

The testimony of both Ambrosio Valenzuela and Adriano F. Besa, the appellants, directly charge Felipe Agasang with having inflicted the wounds which resulted in the death of Dionisio Empleo while they, the appellants, without any confabulation with Felipe Agasang, were holding Dionisio Empleo to prevent the latter doing violence to anybody. In other words, the theory of the defense is not that Felipe Agasang was an accomplice with his codefendants but that Felipe Agasang was exclusively responsible for the crime. In the case of *United States vs. Enriquez*, the fiscal used admitted accomplices as witnesses and we sustained the court in admitting that testimony. In the present case the fiscal used the testimony of a witness against whom he stated the Government had no evidence of guilt. Act No. 2709, section 2, is applicable when two or more persons are charged with the commission of a crime and the information is dismissed against one of them "that he may be a witness for the Government" and if it appears "that said accused does not appear to be the most guilty." In the present instance the fiscal was convinced that he had no evidence against Felipe Agasang. He moved for the dismissal on that ground and not on the ground that he may be a witness for the Government there being some evidence of his guilt. Section 2 of Act No. 2709 is, therefore, inapplicable and the third assignment of error is not well founded. The fiscal acts within his legal authority in dismissing an information against a person when the proofs in his hand convince him that the information is erroneous and cannot be sustained.

The evidence of the defendants to the effect that it was Felipe Agasang who administered the fatal injuries which caused the death of Dionisio Empleo consists of the testimony of the appellants. A circumstance which lends support to their testimony is the fact that Dionisio Empleo had slightly 'wounded Felipe Agasang shortly before he himself was wounded. Agasang was in the same room at the time and the appellants urge upon us the view that it is a fair inference from the circumstances and the relationship of the parties that it was Agasang and not the appellants who assaulted Dionisio Empleo. However, as against this inference and the testimony of the defendants-appellants, we have the testimony of eyewitnesses which cannot be explained away on the theory that they were mistaken or perjured.

Giving to the findings of fact of the trial court the weight which, under familiar rules, they must receive in this court, we have come to the conclusion that the judgment must be affirmed with the following modifications: In view of the aggravating circumstance of treachery, the maximum imprisonment period to be imposed upon the appellants is hereby fixed at seventeen years, four months and one day of reclusion temporal and the minimum imprisonment period under the Indeterminate Sentence Law (Act No. 4103) is hereby fixed at ten years of prison mayor. As thus modified, the judgment is affirmed with costs de oficio.

Abad Santos, Imperial, Goddard, and Diaz, JJ., concur.

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