

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JULIO AUTIZ ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 4255. February 27, 1908

Ponente: WILLARD, J.

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WILLARD, J.:

The defendants Anacleto Quilisadio and Benito Laurente were convicted of the crime of brigandage in the Court of First Instance of the Province of Leyte and sentenced to death. The case comes here en consulta.

The sentence of death is based upon the fact that the defendants, in an assault made by a band of pulajaness upon the barrio of Donghol in the municipality of Ormoc, killed one Marcelo Jomauas. The evidence shows that these defendants attacked the deceased with bolos and wounded him, but the witnesses both of the Government and of the defendants, testified to a gunshot wound inflicted by another person. Whether the gunshot wound or the wounds inflicted by the bolos of the accused were the cause of the death may admit of doubt. In view of this fact, and other circumstances which appear in the case, we think that the judgment should be modified, imposing upon the defendants the penalty of life imprisonment instead of the penalty of death.

It is claimed by the defendants in their brief in this court that the judge who tried the case in the Province of Leyte was at the time judgment was rendered not the judge of that court, and that the judgment is, therefore, void. Judge Norris was not a judge at large, as is stated in the brief, but was the duly appointed judge of the Court of First Instance of Leyte. On the 6th of August the following telegram was sent to him by the Governor General:

"You have been appointed judge Ninth Judicial District, vice Judge Bates, resigned. Desire transfer made as soon as possible. Advise by wire."

On August 11 Judge Norris received another telegram from the Governor-General, which is as follows:

"Please proceed to Iloilo as soon as practicable. Judge Ross will try remaining pulajaness cases."

The complaint in this case was filed on the 10th of August, the trial was had on the 12th of August, and judgment was rendered by Judge Norris on the 14th of August. The Attorney-General is of the same opinion as the counsel for the defendants, and thinks that the judgment is void because Judge Norris was not at the time it was rendered the judge of the Court of First Instance of Leyte, and cites in support of his view the case of the United States vs. Soler and Melliza (6 Phil. Rep., 321). We can not agree with the Attorney-General and the counsel for the defense. In the case of Melliza, as appears from the decision (p. 322), it was admitted that when the judgment was signed the judge who signed it was not the judge of the district court in which the action was pending. Whether the facts appearing in that case did or did not amount to a transfer from one court to another was not discussed or decided.

There is nothing in this case to show that Judge Norris had accepted the appointment as judge of the court at Iloilo. It is apparent that he had not vacated his office as judge of the court of Leyte. There is nothing to show that Judge Ross, who was appointed as Judge Norris's successor, had assumed the duties of his office or had taken

possession thereof. Even if the telegram of the Governor- General of the 10th of August could be considered as adding anything to the appointment of Judge Norris as judge of the court of Iloilo, it is very apparent that it was not intended to at once terminate all the proceedings of Judge Norris in the Province of Leyte. By its terms Judge Norris was directed to' proceed to Iloilo as soon as practicable. When it would be practicable was left to the decision of Judge Norris himself. Not leaving until after the 14th of August, it is evident that in his opinion it was not practicable to leave before. It can not be held that it was the intention of the Governor-General that immediately upon the receipt of this telegram, Judge Norris should stop all work in Leyte although he might not be able to leave Tacloban for days thereafter. We hold that there is nothing in the case to show that he had ceased to be the duly appointed judge of that court on the 14th day of August, when he signed the decision in this case.

The judgment of the court below is modified by changing the penalty from that of death to that of life imprisonment. In all other respects it is affirmed. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, Carson, and Tracey, JJ., concur.

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