

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. RICARDO GEMORA, DEFENDANT AND APPELLANT.br>*G.R. No. 46700. October 30, 1939*

Ponente: CONCEPCION, J.

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But one legal question is before this court in this appeal.

Upon motion by the provincial fiscal of Negros Occidental in the Court of First Instance of said province, asking for the dismissal of the complaint filed against Ricardo Gemora for the crime of attempted homicide, on the ground that after an investigation of the merits of the case he found that the Government had no cause of action, the court granted the motion on February 10, 1936. Unsatisfied, Attorneys Abeto, Seva and Gullas who seem to represent the offended party Miguel Trebol, filed a petition with the court asking that the case be reinstated and that they be designated special fiscals to file the information and to go forward with the case against the accused. The court so ordered on January 19, 1937. On February 15th of the same year, the aforesaid special fiscals filed the information charging the appellant with the crime of attempted homicide. On the 24th of the same month, the Court issued an order admitting the information and fixing the bond for the temporary release of the accused at P2,000. After trial, it rendered judgment on August 5, 1938, finding the accused guilty of threats and sentencing him to pay a fine of P50, plus the costs. The accused appealed, assigning as error the fact that the court appointed three special fiscals to file the information and proceed with the prosecution of the accused.

Section 1679 of the Revised Administrative Code, as amended by section 2 of Commonwealth Act No. 144, approved on November 7, 1936, provides:

"Sec. 1679. When Secretary of Justice shall appoint acting provincial fiscal.—When a provincial fiscal shall be disqualified by personal interest to act in a particular case or when for any reason he shall be unable, or shall fail, to discharge any of the duties of his position, the Secretary of Justice shall appoint an acting provincial fiscal, who shall discharge all the duties of the regular provincial fiscal which the latter shall fail or be unable to perform. Such officer shall, for the days actually employed, be paid out of the provincial treasury the same compensation per day as that provided by law for the regular provincial fiscal. The person so appointed shall be either a practicing attorney or some competent officer of the Department of Justice or office of any provincial fiscal. This may also be done in case of vacancy, pending the appointment of a permanent fiscal."

Under the foregoing legal provision, when the court, on January 19, 1937, appointed Attorneys Abeto, Seva and Gullas Special fiscals in the present case, it had no authority to make such appointment, because according to the law it was in the Secretary of Justice to appoint an acting fiscal when the provincial fiscal shall be disqualified by personal interest to act in a particular case or when for any reason he shall be unable, or shall fail, to discharge any of the duties of his position. Consequently, the appointment made in favor of Messrs. Abeto, Seva and Gullas is null and void.

Moreover, neither of said attorneys duly qualified by taking the corresponding oath of office. Wherefore, they

were without legal personality to lodge the information and prosecute the accused, nor has the court acquired jurisdiction over this case.

Neither can the said attorneys be considered fiscals de facto, because there was at the time of their appointment a fiscal de jure who was discharging the functions of his office. In the case of *Garchitorena vs. Crescini* (37 Phil., 675) this court held that there can be no judge de facto when there is a judge de jure discharging his office. This doctrine is on all fours with the case at bar.

All the proceedings being null and void, as well as the judgment rendered by the trial court, the latter is reversed, with the costs. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Diaz, Laurel, and Moran, JJ., concur.

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