

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS.. VICTOR DULA, DEFENDANT AND APPELLANT.

G.R. No. 7368. September 03, 1912

Ponente: JOHNSON, J.

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JOHNSON, J.:

This defendant was charged with the crime of assassination, alleged to have been committed as follows:

"That in one of the months of the year 1898, in the municipality of Floridablanca, Province of Pampanga, said accused did willfully, unlawfully and criminally, in company with Isaac Gramonte, with wanton cruelty, treachery, premeditation, abuse of superior strength and in an uninhabited place kill Mariano Vicente: having tied him up by the hands and so taken him to the woods, they did at one and the same time slash him with the bolos they carried until they left him inanimate and lifeless; in violation of law."

After hearing the evidence, the Honorable Julio Llorente, judge, found the defendant guilty of the crime charged, with the aggravating circumstances of alevosia and premeditation -

"But considering that the affair happened at a time of disorder and the degree of education of the accused, to whom should be given the benefit of race of article 11 of the Penal Code, the penalty must be imposed in its medium degree - "

and sentenced the defendant to be imprisoned for the period of his natural life, with the accessory penalties of the law, to indemnify the heirs of the offended party in the sum of P1,000, and to pay the costs.

From that sentence the defendant appealed.

During the trial of the cause the defendant practically admitted that he had taken some indirect part in the killing of the said Mariano Vicente and claimed for himself the benefit of the Amnesty Proclamation of July 4, 1902.

The prosecution undertook to prove that the crime was committed some time in the year 1898.

The defendant attempted to prove by his witnesses that Mariano Vicente was a spy and was killed by the revolutionary soldiers in the year 1899. The lower court found that Vicente had been killed in 1898. There is no positive proof whatever in the record showing that Mariano Vicente was killed in the year 1898.

The first witness, Hermogenes Gramonte, testified that upon one occasion Mariano Vicente was at his house and that Victor Dula, the defendant, and Isaac Gramonte came there and manacled Vicente and carried him across an estero and that he never saw Vicente thereafter.

It will be noted, from an examination of the declarations of Hermogenes, that it is made to appear that the acts of the defendant, together with those of Isaac Gramonte, took place in the year 1898, but a careful reading of his declarations will show that every time the year 1898 is used the same is put into his mouth by the prosecuting attorney. Nowhere, in any part of his declaration, does he swear positively that Victor Dula and Isaac Gramonte came to his house and manacled Mariano Vicente and carried him away in the year 1898. The prosecuting

attorney of the Province of Pampanga was constantly putting into the mouth of the witness the year 1898. It would be difficult to find a case where the rule, that leading questions should not be permitted, was more frequently violated than in the present case, in the examination of the witnesses for the prosecution by the prosecuting attorney. For example, we find the following questions, presented by the fiscal, which demonstrate how the prosecuting attorney was constantly leading the witness with reference to the time when the crime was committed:

"Fiscal. Do you remember in one of the months of the year 1898 to have seen a certain Mariano Vicente?"

"Fiscal. At that time, that is, in the year 1898, do you know in what barrio Mariano Vicente lived?"

"Fiscal. Do you know where Mariano Vicente's house was in the year 1898?"

"Fiscal. In what way were you acquainted with Mariano. Vicente back there in the year 1898 when that affair happened?"

Nowhere, from one end of the declaration to the other of the witness Hermogenes Gramonte, does he state, except as the words are put into his mouth, that the crime was committed in the year 1898.

Another illustration showing how the prosecuting attorney violated the rule that leading questions are not permissible is as follows:

"Fiscal. What are the names of those two persons who went into your house at the time when Mariano Vicente also was there?"

Prior to this question there had been no intimation by question or answer or otherwise that two persons or any other number of persons had entered the house of Hermogenes Gramonte on the occasion when Mariano Vicente was manacled and carried away. The prosecuting attorney did not seem willing to allow the witnesses to relate the facts as they occurred, nor did he seem to have patience to wait until the witnesses could recall the facts and relate them as they occurred. He seemed to be anxious constantly to lead the witnesses and to place in their mouths the facts which he desired to have appear of record. As was said above, it would be difficult to find a case where the witness was more directly led into giving declarations such as the prosecuting attorney desired him to make than in the present case.

It will be noted also that the errors committed by the use of leading and direct questions on the part of the prosecuting attorney were but little corrected on behalf of the attorney for the defense. He seems to have fallen into exactly the same error. It will be impossible for the courts to arrive at the real facts in any case and to be able to do justice if leading questions such as were permitted in the present case shall be tolerated.

We find in the declaration of Esteban de los Santos, the second witness called for the prosecution, that practically the same errors were committed. The prosecuting attorney here again is constantly placing in the mouth of the witness the fact that the crime was committed in the year 1898, without giving the witness, who claims to have been an eyewitness of the acts complained of, an opportunity to relate the facts as he saw them and as he remembered them. The prosecuting attorney did not give this witness (Esteban de los Santos) an opportunity to relate what he saw and give the place and time of the occurrence of what he saw, but insisted upon putting into the witness's mouth the year 1898. We have the following questions which illustrate this fact:

"Fiscal. Do you remember in what barrio you were living in the year 1898?"

"Fiscal. Do you remember in that year 1898, in one of the months thereof, to have seen a certain Mariano Vicente in some part of that barrio Malabu?"

In no part of the declaration of this witness does he declare that Mariano Vicente was killed in the year 1898,

except as that year is placed in his mouth by leading questions. Finally and after the witness had stated positively that Mariano Vicente had been killed by the defendants and others in the year 1898, by reason of the prosecuting attorney having placed in his mouth the year 1898, the said prosecuting attorney asked him the question directly if he remembered the year in which occurred the facts which he had referred to and the witness said: "I've forgotten because a long time has now elapsed." (Record, p. 42.) Which answer clearly indicates that he was unconsciously swearing to the fact that the crime was committed in the year 1898. Moreover, except for the admissions of the defendant and his witnesses, we find no proof in the record showing that Mariano Vicente was killed at all. The only proof adduced by the prosecuting attorney relating to the charges contained in the complaint in effect is the fact that some time the defendant, Victor Dula, and Isaac Gramonte came to the house of Hermogenes Gramonte where Mariano Vicente was and manacled him and carried him away and that thereafter Vicente had never been seen.

The defendant himself and his witnesses admit that Mariano Vicente was manacled and carried away and killed; they attempt to prove that the murder took place in the year 1899; they attempt to show that Mariano Vicente was a spy; that he was constantly reporting, to the enemies of the revolutionists, facts which they claimed to be to their prejudice and that the chief of the insurrectos ordered that Mariano Vicente be killed for the reason that he was a spy.

We believe that no one can read the record in the present case without being convinced beyond a reasonable doubt that whether or not Mariano Vicente was a spy, he was killed by the defendant and others for the reason that the latter believed that he was a spy. Hermogenes Gramonte, the leading witness for the prosecution, admitted that Mariano Vicente had no profession; that he did not know where Mariano Vicente lived; that he was found at different times in different parts of the province, without apparently any means of support whatever during the time of the revolution. The witness Esteban de los Santos also testified that while he knew Mariano Vicente, he did not know what his occupation was at that time.

It seems clear, from a careful examination of the record, that Mariano Vicente was killed as the result of an internal political feud or dissension existing among the Filipino people themselves, growing out of an insurrection which existed in the Philippine Islands during the years 1898 and 1899, and that, therefore, the defendant is entitled to the benefit of the Amnesty Proclamation issued by Theodore Roosevelt, then President of the United States, on the 4th of July, 1902.

The sentence of the lower court is therefore hereby reversed, the complaint against the defendant is hereby ordered dismissed and the defendant is hereby discharged from the custody of the law, with costs de oficio. So ordered.

Mapa, Carson and Trent, JJ., concur.

Arellano, C. J., dissents.

Judgment reversed; defendant entitled to amnesty.

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