

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ANASTASIO BRAGAT AND VISITACION ESMERO, DEFENDANTS AND APPELLANTS.

G.R. No. 9016. September 28, 1914

Ponente: CARSON, J.

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CARSON, J.:

In our decision filed March 30, 1914,[1] we affirmed the judgment of the trial court convicting and sentencing the appellants in this case. In that decision we held that all the substantial contentions of counsel for appellants had been decided adversely in the case of the United States vs. Hernandez (14 Phil. Rep., 638) and the cases therein cited.

The record is now before us upon a motion for rehearing, wherein counsel insists that we erred in affirming the judgment of the court below because it appears from the record that the fiscal failed to call certain witnesses, waiving his right to do so, although they had been duly cited by him to appear and testify at the trial. In support of his contention counsel relies on our ruling in the case of the United States vs. Tacubanza (18 Phil. Rep., 436). In that case, wherein the accused were charged with rape, we held that:

"When the prosecution has at its disposal two disinterested witnesses to the alleged crime and fails to produce them at the trial, such failure, although not fatal, seriously weakens the case against the accused and, in the absence of the testimony of such witnesses, the other evidence, being interested and prejudiced, is not sufficient to establish guilt and the accused must be discharged."

In the case at bar, however, the facts in question were conclusively established by the witnesses called at the trial, as we observed in the opinion already entered, and the failure to call additional witnesses to testify as to facts already established beyond a reasonable doubt does not and cannot sustain the contentions of counsel in support of their assignment of error.

The question as to the number of witnesses to be called to testify for the prosecution is one which, in the very nature of things, must be left largely to the sound discretion of the prosecuting officer conducting the proceedings. It is, of course, his duty to call all the available witnesses as to material facts who may be necessary to establish such facts beyond a reasonable doubt. But when he is satisfied that he has done so he is not required to waste the time and attention of the court by calling other witnesses whose testimony will be merely cumulative, or, from the very nature of the case, cannot add anything to the conclusiveness of the proof as to the existence or nonexistence of the fact he is seeking to prove. Cases may and do arise in which scores or hundreds of persons might be called upon to testify as to certain disputed facts, such as the location of a street, the distance between certain places, and the like. In such cases it is the duty of the fiscal to call to the witness stand only such witnesses as may be necessary to establish the disputed fact beyond a reasonable doubt. Having done so, the facts thus proven will not be put in doubt by the omission to call additional witnesses to the facts thus indisputably established. It is only in cases such as that of the United States vs. Tacubanza (*supra*), wherein the evidence actually offered is not, for

some reason, wholly satisfactory, that the failure to call other disinterested and available witnesses is to be taken into consideration as weakening the case for the prosecution.

It will be observed that in the former case (*U. S. vs. Tacubanza, supra*), we were careful to say that the failure to call available disinterested witnesses is not necessarily "fatal." Where, as in that case, the evidence relied upon by the prosecution was "interested and prejudiced," and the very nature of the case is such that to avoid possibility of error, all available witnesses should be called in support of the facts relied upon by either party, the unexplained failure to call such witnesses naturally raises a question as to the motives of the party who is, responsible for the omission. But such questions do not necessarily arise where the facts are not seriously in dispute, or where they are conclusively established by unimpeachable testimony or by such a decisive preponderance of the evidence as to leave no reasonable ground for doubt in the mind of the court.

In the case at bar the evidence of record conclusively establishes the material facts upon which the judgment of conviction was pronounced by the court below.

This motion should therefore be, and is hereby, denied.

Arellano, C. J., Torres, Johnson, Moreland, and Araullo, JJ., concur.

[1] Not reported

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