

44 Phil. 591

[G.R. No. 18242. March 06, 1923]

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. SIMPLICIO MARCELLANA ET AL., DEFENDANTS. AGATON PAÑGANIBAN, APPELLANT.

D E C I S I O N

STATEMENT

The defendant Agaton Pañganiban was charged with others in the Court of First Instance of Batangas with the crime of murder alleged to have been committed as follows:

“That the said Simplicio Marcellana and the other four, who are the accused above named, on or about the night of the 12th day of December, 1920, in the municipality of Taal, Province of Batangas, Philippine Islands, with previous agreement between themselves, with premeditation and treachery and in an uninhabited place, did wilfully, unlawfully, and feloniously assault Jose Par with their respective steel arms and clubs, inflicting several wounds in the different parts of the body, which caused the almost instantaneous death of the aforesaid Jose Par.

“Act committed within the jurisdiction of this Court and in violation of article 403 of the Penal Code.”

Before the trial commenced the fiscal moved that the defendant Eleuterio Poco be discharged, so that he could be used as a witness for the Government. The motion was granted over the objection of the attorney for the defendant. At the conclusion of the evidence on behalf of the prosecution and of the defendants

Agaton Pañganiban, Simplicio Marcellana and Candido Villanueva, the defendant Victorino Catapang offered to withdraw his plea of not guilty and enter a plea of guilty, if the fiscal would amend his information so as to charge the crime of homicide instead of murder. The court granted the motion. At the conclusion of the trial, the court found the defendants Simplicio Marcellana, Victorino Catapang, and Agaton Pañganiban guilty as principals and Candido Villanueva as an accomplice of the crime of homicide, and sentenced the first three to twelve years and one day of *reclusion temporal*, and the last to six years and one day of *prision mayor*, and all of them to jointly and severally indemnify the heirs of the deceased in the sum of P1,000, to the accessories of the law, and each of them to pay one-fifth of the costs. From the judgment the defendant Agaton Pañganiban alone appeals to this court, contending, first, that the trial court erred in granting the petition of the fiscal to discharge Eleuterio Poco, so that he could be used as a witness for the Government, and that the evidence was not sufficient to convict this defendant of the crime of homicide beyond a reasonable doubt.

JOHNS, J.:

It is first contended that under the provisions of Act No. 2709, the trial court erred in discharging Eleuterio Poco to use him as a witness for the prosecution. There is nothing in the record which tends to show that at the time the order was made the court knew or had reason to believe that Poco had been previously convicted of an illegal marriage. That fact was developed on his cross-examination after the order was made, a fact of which the defendant could not then take advantage.

Act No. 2709 was largely enacted for the use and guidance of the trial court.

We have no right to assume that the court had knowledge of the fact that Poco had previously been convicted of the crime at the time the order was made. If that fact had been called to the attention of the court before the order was made, another and different question would be presented, and one of which the defendant might have a right to complain.

The trial court who heard and saw the witnesses testify found as a fact that

the defendant was one of the principals in the commission of the crime.

The evidence is conclusive that, through a concerted action on the part of all of them, that two of the defendants at night went to the home of the deceased where they found him lying in bed, and induced him to go with them to the adjoining cemetery, for the ostensible purpose of stealing some goats. That after going there and without any cause or provocation, he was treacherously attacked by Victorino Catapang and the appellant with *bolos* and clubs, who inflicted upon him twenty-one wounds, three of which were mortal. Upon that point the testimony is conclusive. The defense is an *alibi*, but it is not sufficient to overcome the direct and positive proof of the prosecution.

We agree with the fiscal that upon the facts shown the defendant is guilty of the crime of murder, the penalty for which in this case would be seventeen years, four months and one day of *cadena temporal*, but it appears from the record that during the trial the fiscal agreed in open court that the crime charged in the information should be reduced to homicide, and that at least two of the defendants who are equally guilty with the appellant were sentenced by the lower court to twelve years and one day of *reclusion temporal*, and they have not appealed.

All things considered, the judgment of the lower court is affirmed, with costs. So ordered.

Araullo, C.J., Street, Malcolm, Avanceña, Ostrand,
and *Romualdez, JJ.*, concur.