44 Phil. 267

[G. R. No. 19238. December 29, 1922]

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. AMBROSIO DIZON, DEFENDANT AND APPELLANT.

D E C I S I O N

OSTRAND, J.:

The defendant is accused of the crime of homicide, the information alleging that "on or about the 27th of December, 1921, in the municipality of Cervantes, Province of Ilocos Sur, the said defendant voluntarily, maliciously and illegally attacked and assaulted Saturnino Ramirez with a pocket-knife, thus causing wounds which produced the death of the said Saturnino Ramirez." The trial court found the defendant guilty as charged in the information and sentenced him to suffer fourteen years, one month and one day of *reclusion temporal*, to indemnify the heirs of the deceased in the sum of P1,000, to suffer the accessory penalties prescribed by law and to pay the costs. From this sentence the defendant appeals.

The evidence shows conclusively that between eight and nine o'clock in the evening of the 27th of December, 1921, the defendant, in a "fit of rage, attacked Saturnino Ramirez in the manner stated in the information, apparently without provocation and without any known motive, inflicting upon the latter a wound from which death resulted the following day. On the same evening Ramirez was examined by the justice of the peace of Cervantes and in his declaration stated, among other things, that he had been stabbed by the defendant. The declaration was reduced to writing the following morning and at the trial of the case this writing was offered in evidence as Exhibit A. The statement of the deceased is corroborated by the testimony of Carlos Albister, an eyewitness; by Pedro Esteban to whom the defendant admitted that he had wounded somebody; and by the fact that one of the defendant's slippers (*chinelas*) was found at the place where the crime was committed.

The defendant maintains that at the time of the commission of the crime he was in his own house quarreling with his wife. The defendant presents six assignments of error of which

Nos. 2, 4, 5, and 6 raise merely questions of fact upon which we see no reason to disturb the findings of the court below and which require no further discussion.

Assignment of error No. 1 relates to the fact that the information was signed by the provincial fiscal of La Union who was designated by the Attorney-General to act as fiscal of Ilocos Sur in the absence of a regularly appointed fiscal for that province, and it is charged by the appellant that it does not appear that the action of the Attorney-General was approved by the head of the Department of Justice, according to the provisions of article 1680 of the Administrative Code. The presumption is, however, that the designation was legal and as the defense has presented no evidence to the contrary, this presumption must prevail. But, be this as it may, the officer in question was in possession of the office of fiscal and acting as such at the sessions of the court in Cervantes with the acquiescence of the court and of the public and was therefore, at least, a de facto officer.

Under the same assignment of error, the appellant also raises the point that an irregularity was committed in allowing a private prosecutor to participate in the trial and to direct the examination of the witnesses. There is nothing in this contention. In the case of United States vs. Despabiladeras and Laxamana (32 Phil., 442), this court held that there is nothing objectionable in the practice of allowing private prosecutors to employ counsel and to turn over to such counsel the active conduct of the trial, provided always that the fiscal retains control of the prosecution and assumes full responsibility therefor. There is nothing to show that the fiscal did not retain full control of the prosecution in the present case.

In the third assignment of error the appellant assails the admissibility of the dying declaration, Exhibit A, on the grounds (1) that the exhibit was not read to the deceased and was not approved or signed by him, and (2) that it has not been shown that the deceased made the declaration under the solemn conviction of approaching dissolution.

As far as the document itself is concerned the assignment is well taken upon the first ground stated. Undoubtedly the rule is that standing by itself alone a written dying declaration which is not read by the declarant or read to him by another and is not signed or in any way recognized by him after it is written, is not admissible in evidence. (*See* 21 Cyc., 980.)

But in this particular case the error is immaterial. The justice of the peace, before whom the declaration was made, testified as a witness in the case and there related the statements made to him by the deceased and these statements were clearly admissible as a dying

declaration; such declarations need not necessarily be in writing. That the declaration was made with full realization on the part of the deceased that he was in a dying condition can hardly be doubted; the extreme seriousness of his wound from which the intestines protruded to such an extent that he had to contain them with his hands; his statements that he was dying and that only the intervention of Providence could save him; and the fact that death supervened within a comparatively short time, all point unmistakably to his consciousness of impending dissolution.

The judgment appealed from is, in our opinion, fully in accordance with the law and with the facts and is hereby affirmed, with the costs against the appellant. So ordered.

Araullo, C. J., Malcolm, Avanceña, Villamor, Johns, and *Romualdez, JJ.,* concur.

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