

4 Phil. 481

[ G.R. No. 1707. April 27, 1905 ]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. JUAN QUILATAN ET AL., DEFENDANTS AND APPELLANTS.**

**D E C I S I O N**

**JOHNSON, J.:**

These defendants were charged with the crime of homicide. They were tried by the judge of the Court of First Instance of the Province of Ambos Camarines and each sentenced to be imprisoned for the period of eight years and one day of *prision mayor* with the accessories provided for by law, and the costs of the suit. From this sentence the said defendants appealed to this court.

The record shows that Juan Quilatan died on the 16th of August, 1903. The cause against him is therefore dismissed.

The record does not contain any proof taken by the inferior court during the trial.

The appeal is brought to this court by means of a bill of exceptions in which the appellant alleges that the court below committed two errors:

- (1) In denying his motion for a new trial; and
- (2) That the sentence condemning the defendant to be imprisoned was not justified by the evidence taken during the trial.

The record does not contain any part of the evidence taken during the trial and, therefore, this court has nothing upon which to base its judgment whether or not the sentence was justified by the proof.

Section 32 of General Orders, No. 58, provides how the proof must be taken during the trials in criminal cases in Courts of First Instance. It provides among other things:

“In Courts of First Instance \* \* \* each witness must be duly sworn and his testimony reduced to writing as a deposition by the court or under its direction.

“\* \* \* The deposition must be read to the witness and made to conform to what he declares to be the truth. He must sign the same, or, if he refuses, his reason for such refusal must be stated. It must also be signed by the magistrate and certified by the clerk. In cases where an official stenographer is engaged, the testimony and proceedings may be taken by him in shorthand, and it will not then be necessary to read the testimony to the witness nor for the latter to sign the same.”

Section 45 of General Orders, No. 58, provides how an appeal may be perfected. It provides:

“An appeal shall be taken by filing with the clerk of the court in which the judgment or order was rendered, or with such court, a notice stating the appeal, and by serving a copy thereof upon the adverse party or his attorney.”

Section 48 provides how the cause is finally brought to this court. It provides:

“Upon an appeal being taken, the clerk or judge of the court with whom the notice of appeal shall have been filed must, within five days after the filing of the notice, transmit to the clerk of the court to which the appeal is taken the complete record in the case together with the notice of the appeal, etc.”

Several attempts were made by this court to have the clerk of the Court of First Instance send to this court the record containing the evidence in said cause. From a letter dated the 1st day of September, 1904, signed by the deputy clerk of the Court of First Instance of Ambos Camarines, it appears that the proof taken during the trial of said cause had not been taken in accordance with the provisions of section 32 of General Orders, No. 58, and the trial of said cause was not conducted in accordance with the provisions of General Orders, No. 58.

There is no provision of law for bringing criminal cases to this court by means of a bill of exceptions. When defendants appeal in criminal cases, the entire record, including all of the proof, must be sent to this court, in accordance with the provisions of section 48. Inasmuch,

therefore, as the proof of the different witnesses who were examined during the trial was not reduced to writing, this cause is hereby ordered to be returned to the clerk of the Court of First Instance of the Province of Ambos Camarines, with directions to the Court of First Instance of said province to proceed to a new trial against the defendant Pantaleon Simon for the crime with which he is accused. So ordered.

*Arellano, C. J., Torres, Mapa, and Willard, JJ., concur.*

*Carson, J., disqualified.*

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