

2 Phil. 17

[ G.R. No. 1042. March 09, 1903 ]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. EXEQUIEL CASTILLO ET AL., DEFENDANTS AND APPELLANTS.**

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

**COOPER, J.:**

The defendants Exequiel Castillo and Catalino Circa were charged in the Court of First Instance of the Province of Nueva Ecija with the crime of robbery and murder, committed as follows:

That on a night in the month of January, 1900, in the pueblo of Carranglan, Province of Nueva Ecija, Dona Joaquina de Castro, being asleep in her house, where the defendant, (her nephew) Exequiel Castillo lived with her, the defendant, moved by the iniquitous desire of appropriating the property of the deceased, struck her a blow on the head with a piece of wood, which caused her instantaneous death; that he requested Catalino Circa to proceed to the burial of the body, and the latter dug a grave near the house of the deceased and buried her. The defendant Exequiel Castillo paid Catalino Circa the sum of \$10 for lending his assistance.

The defendant Exequiel Castillo was convicted and sentenced to the penalty of death as the author of the crime, and the defendant Catalino Circa was sentenced to ten years of *presidio mayor* as an accessory after the fact.

The defendant Exequiel Castillo has appealed to this court.

Catalino Circa does not appeal from the judgment.

The proof offered by the Government at the trial against Exequiel Castillo consists of confessions made by Catalino Circa to various persons, and of the latter's statements made on the preliminary investigation before the provincial fiscal. It will be unnecessary to review

this testimony.

On the trial of the case the defendant Catalino Circa testified in behalf of defendants and contradicted the truth of these statements, claiming that he was induced to make them by Agustin Castro, a brother of the deceased, and denying all knowledge whatever of the commission of the offense.

The judge of the Court of First Instance took into consideration these confessions and the testimony given on the preliminary investigation, and found the defendants guilty under this proof.

Section 15 of General Orders, No. 58, provides that in all criminal prosecutions the defendant shall be entitled to be confronted at the trial by and to cross-examine the witnesses against him.

This right has been denied the defendant Exequiei Castillo.

Neither the confessions of Catalino Circa nor his testimony given on the preliminary hearing, can be received against Exequiei Castillo, and the Court of First Instance erred in admitting them.

“Where the testimony of a witness for the prosecution has previously been taken down by question and answer in the presence of the accused or his counsel, the defense having had an opportunity to cross-examine the witness, the deposition of the latter may be read, upon satisfactory proof to the court that he is dead or insane, or can not with due diligence be found in the Islands.” (Sec. 15, General Orders, No. 58.) In no other cases than those specified in this section can the testimony introduced at the preliminary examination be received at the trial. We have heretofore decided, and have directed the attention of judges of the Courts of First Instance to the fact, that the testimony taken on a preliminary investigation can not be received at the trial of the cause unless falling within one of these exceptions. The preliminary proof has no place in the record sent to this court.

The proof stands upon a different ground with reference to Catalino Circa. His confessions made to witnesses may be admissible against him. But they are not admissible against his codefendant. It is unnecessary to consider the sufficiency of these confessions as against

Catalino Circa. He has not appealed from the judgment.

The judgment of the Court of First Instance convicting and sentencing the defendant Exequiei Castillo to the death penalty is reversed and defendant Castillo is acquitted and directed to be discharged, without prejudice to that part of the judgment convicting “and sentencing the defendant Catalino Circa to the penalty in which lie is condemned. It is so ordered.

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

*Torres, J., did not sit in this case.*

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Date created: April 14, 2014