43 Phil. 120

[G. R. No. 17584. March 08, 1922]

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. GREGORIO SANTIAGO, DEFENDANT AND APPELLANT.

D E C I S I O N

ROMUALDEZ, J.:

Having caused the death of Porfirio Parondo, a boy 7 years old, by striking him with the automobile that he was driving, the herein appellant was prosecuted for the crime of homicide by reckless negligence and was sentenced to suffer one year and one day of *prision correccional*, and to pay the costs of the trial. Not agreeable with that sentence he now comes to this court alleging that the court below committed four errors, to wit:

> "1. The trial court erred in not taking judicial notice of the fact that the appellant was being prosecuted in conformity with Act No. 2886 of the Philippine Legislature and that the Act is unconstitutional and gave no jurisdiction in this case.
>
> "2. The lower court erred in not dismissing the complaint after the presentation of the evidence in the case, if not before, for the reason that said Act No. 2886 is unconstitutional and the proceedings had in the case under the provisions of the Act constitute a prosecution of appellant without due process of law.
>
> "3. The court *a quo* erred in not finding that it lacked jurisdiction over the person of the accused and over the subject-matter of the complaint.
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> "4. The trial court erred in finding the appellant guilty of the crime charged and in sentencing him to one year and one day of *prision correccional* and to the payment of costs."

With regard to the questions of fact, we have to say that we have examined the record and find that the conclusions of the trial judge, as contained in his well-written decision, are sufficiently sustained by the evidence submitted.

The accused was driving an automobile at the rate of 30 miles an hour on a highway 6 meters wide, notwithstanding the fact that he had to pass a narrow space between a wagon standing on one side of the road and a heap of stones on the other side where there were two young boys, the appellant did not take the precaution required by the circumstances by slowing his machine, and did not proceed with the vigilant care that under the circumstances an ordinary prudent man would take in order to avoid possible accidents that might occur, as unfortunately did occur, as his automobile ran over the boy Porfirio Parondo who was instantly killed as the result of the accident.

These facts are so well established in the record that there cannot be a shade of doubt about them.

Coming now to the other assignments of error, it will be seen that they deal with the fundamental question as to whether or not Act No. 2886, under which the complaint in the present case was filed, is valid and constitutional.

This Act is attacked on account of the amendments that it introduces in General Orders No. 58, the defense arguing that the Philippine Legislature was, and is, not authorized to amend General Orders No. 58, as it did by amending section 2 thereof because its provisions have the character of a constitutional law. Said section 2 provides as follows:

> "All prosecutions for public offenses shall be in the name of the United States against the persons charged with the offenses." (G. O. No. 58, sec. 2.)

Act No. 2886, which amends it, by virtue of which the People of the Philippine Islands is made the plaintiff in this information, contains the following provisions in section 1:

> "SECTION 1. Section two of General Orders, Numbered Fifty-eight, series of nineteen hundred, is hereby amended to read as follows: "
>
> "SEC. 2. All prosecutions for public offenses shall be in the name of the People of the Philippine Islands against the person charged with the offense.' "

Let us examine the question.

For practical reasons, the procedure in criminal matters is not incorporated in the Constitutions of the States, but is left in the hands of the legislatures, so that it falls within the realm of public statutory law. As has been said by Chief Justice Marshall: "A constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution, would partake of a prolixity of a legal code, and could scarcely be embraced by the human mind. It would probably never be understood by the public." (M'Culloch vs. Maryland [1819], 4 Wheat., 316, 407; 4 L. ed., 579.)

That is why, in pursuance of the Constitution of the United States, each State has the authority, under its police power, to define and punish crimes and to lay down the rules of criminal procedure.

> "The states, as a part of their police power, have a large measure of discretion in creating and defining criminal offenses. * * *
>
> "A statute relating to criminal procedure is void as a denial of the equal protection of the laws if it prescribes a different procedure in the case of persons in like situation. Subject to this limitation, however, the legislature has a large measure of discretion in prescribing the modes of criminal procedure. * * *" (12 C. J., 1185,1186. See Collins vs. Johnston, 237 U. S., 502; 35 S. Ct. Rep., 649; 59 L. ed., 1071; Shevlin-Carpenter Co. vs. Minnesota, 218 U. S., 57; 30 S. Ct. Rep., 663; 54 L, ed., 930; Lynn vs. Flanders, 141 Ga., 500; 81 S. E., 205.)

This power of the States of the North American Union was also granted to its territories such as the Philippines:

> "The plenary legislative power which Congress possesses over the territories and possessions of the United States may be exercised by that body itself, or, as is much more often the case, it may be delegated to a local agency, such as a legislature, the organization of which proceeds upon much the same lines as in the several States or in Congress, which is often taken as a model, and whose powers are limited by the Organic Act; but within the scope of such act it has complete authority to legislate, * * * and in general, to legislate upon all subjects

> within the police power of the territory." (38 Cyc., 205-207.)
>
> "The powers of the territorial legislatures are derived from Congress. By act of Congress their power extends 'to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States;' and this includes the power to define and punish crimes." (16 C. J., 62.)

And in the exercise of such powers the military government of the army of occupation, functioning as a territorial legislature, thought it convenient to establish new rules of procedure in criminal matters, by the issuance of General Orders No. 58, the preamble of which reads:

> "In the interests of justice, and to safeguard the civil liberties of the inhabitants of these Islands, *the criminal code of procedure now in force therein is hereby amended in certain of its important provisions*, as indicated in the following enumerated sections." (Italics ours.)

Its main purpose is, therefore, limited to criminal procedure and its intention is to give to its provisions the effect of law in *criminal matters*. For that reason it provides in section 1 that:

> "The following provisions shall have the force and effect of law in criminal matters in the Philippine Islands from and after the 15th day of May, 1900, but existing laws on the same subjects shall remain valid except in so far as hereinafter modified or repealed expressly or by necessary implication."

From what has been said it clearly follows that the provisions of this General Order do not have the nature of constitutional law either by reason of its character or by reason of the authority that enacted it into law.

It cannot be said that it has acquired this character because this order was made its own by the Congress of the United States for, as a matter of fact, this body never adopted it as a law of its own creation either before the promulgation of Act No. 2886, herein discussed, or, to our knowledge, to this date.

Since the provisions of this General Order have the character of statutory law, the power of

the Legislature to amend it is self-evident, even if the question is considered only on principle. Our present Legislature, which has enacted Act No. 2886, the subject of our inquiry, is the legal successor to the Military Government as a legislative body.

Since the advent of the American sovereignty in the Philippines the legislative branch of our government has undergone transformations and has developed itself until it attained its present form. Firstly, it was the Military Government of the army of occupation which, in accordance with international law and practice, was vested with legislative functions and in fact did legislate; afterwards, complying with the instructions of President McKinley which later were ratified by Congress (sec. 1 of the Act of July 1,1902) the legislative powers of the Military Government were transferred to the Philippine Commission; then, under the provisions of section 7 of the Act of Congress of July 1,1902, the Philippine Assembly was created and it functioned as a colegislative body with the Philippine Commission. Finally, by virtue of the provisions of section 12 of the Act of Congress of August 29, 1916, known as the Jones Law, the Philippine Commission gave way to the Philippine Senate, the Philippine Assembly became the House of Representatives, and thus was formed the present Legislature composed of two Houses which has enacted the aforesaid Act No. 2886.

As a matter of fact, Act No. 2886 is not the first law that amends General Orders No. 58. The Philippine, Commission, at various times, had amended it by the enactment of laws among which we may cite Act No. 194, regarding preliminary investigations, Act No; 440 relating to counsels *de oficio* and Act No. 590 about preliminary investigations by justices of the peace of provincial capitals. Later on, and before the enactment of Act No. 2886, herein controverted, the Legislature had also amended this General Orders No. 68 by the enactment of Act No. 2677 regarding appeals to the Supreme Court of causes originating in the justice of the peace courts and by Act No, 2709 which deals with the exclusion of accused persons from the information in order to be utilized as state’s witnesses.

These amendments repeatedly made by the Philippine Commission as well as by our present Legislature are perfectly within the scope of the powers of the said legislative bodies as the successors of the Military Government that promulgated General Orders No. 58.

No proof is required to demonstrate that the present Legislature had, and has, the power to enact and amend laws. (U. S. vs. Bull, 15 Phil., 7.) That it has the power to legislate on criminal matters is very evident from the wording of section 7 of the Jones Law which says:

> “That the legislative authority herein provided shall have power, when not

> inconsistent with this Act, by due enactment to amend, alter, modify, or repeal any law, civil or criminal, continued in force by this Act as it may from time to time see fit."

It is urged that the right to prosecute and punish crimes is an attribute of sovereignty. This assertion is right; but it is also true that by reason of the principle of territoriality as applied in the suppression of crimes, such power is delegated to subordinate government subdivisions such as territories. As we have seen in the beginning, the territorial legislatures have the power to define and punish crimes, a power also possessed by the Philippine Legislature by virtue of the provisions of section 7, already quoted, of the Jones Law. These territorial governments are local agencies of the Federal Government, wherein sovereignty resides; and when the territorial government of the Philippines prosecutes and punishes public crimes it does so by virtue of the authority delegated to it by the supreme power of the Nation.

This delegation may be made either expressly as in the case of the several States of the Union and incorporated territories like Porto Rico and Hawaii, or tacitly as is the case with the Philippines, which is an organized territory though not incorporated with the Union. (Malcolm, Philippine Constitutional Law, 181-205.)

This tacit delegation to our Government needs no demonstration. As a matter of fact, the crimes committed within our territory, even before section 2 of General Orders No. 58 was amended, were prosecuted and punished in this jurisdiction as is done at present; but then as now the repression of crimes was done, and is still done, under the sovereign authority of the United States, whose name appears as the heading in all pleadings in criminal causes and in other judicial papers and notarial acts.

The use of such a heading is prescribed for civil cases in form 1 of section 784 of the Code of Civil Procedure; in criminal causes the constant practice followed in this jurisdiction established its use; and in notarial matters its use is provided by section 127 of Act No. 496. This long continued practice in criminal matters and the legal provision relating to civil cases and notarial acts have not been amended by any law, much less by Act No. 2886, the subject of the present inquiry.

There is not a single constitutional provision applicable to the Philippines prescribing the name to be used as party plaintiff in criminal cases.

The fact that the political status of this country is as yet undetermined and in a transitory stage, is, in our opinion, responsible for the fact that there is no positive provision in our constitutional law regarding the use of the name of the People of the Philippine Islands, as party plaintiff, in criminal prosecutions, as is otherwise the case in the respective constitutional charters of the States of the Union and incorporated territories—a situation which must not be understood as depriving the Government of the Philippines of its power, however delegated, to prosecute public crimes. The fact is undeniable that the present government of the Philippines, created by the Congress of the United States, is autonomous.

This autonomy of the Government of the Philippines reaches all judicial actions, the case at bar being one of them; as an example of such autonomy, this Government, the same as that of Hawaii and Porto Rico (People of Porto Rico vs. Rosaly y Castillo [1918], 227 U. S., 270; 57 L. ed., 507; 33 Sup. Ct. Rep., 352) cannot be sued without its consent. (Merritt vs. Government of the Philippine Islands, 34 Phil., 311; L. S, Moon & Co. vs. Harrison, p. 27, *ante*.) The doctrine, laid down in these cases, acknowledges the prerogative of personality in the Government of the Philippines, which, if it is sufficient to shield it from any responsibility in court in its own name unless it consents thereto, it should be also, as sufficiently authoritative in law, to give that government the right to prosecute in court in its own name whomsoever violates within its territory the penal laws in force therein.

However, limiting ourselves to the question relative to the form of the complaint in criminal matters, it is within the power of the Legislature to prescribe the form of the criminal complaint as long as the constitutional provision of the accused to be informed of the nature of the accusation is not violated.

> "Under the Constitution of the United States and by like provisions in the constitutions of the various states, the accused is entitled to be informed of the nature and cause of the accusation against him * * *
>
> "It is within the power of the legislatures under such a constitutional provision to prescribe the form of the indictment or information, and such form may omit averments regarded as necessary at common law." (22 Cyc.,285.)

All these considerations a *priori* are strengthened *a posteriori* by the important reason disclosed by the following fact—that the Congress has tacitly approved Act No. 2886. Both the Act of Congress of July 1, 1902, section 86, and the Jones Law, last paragraph of section

19, provide that all the laws enacted by the Government of the Philippines or its Legislature shall be forwarded to the Congress of the United States, which body reserves the right and power to annul them. And presuming, as legally we must, that the provisions of these laws have been complied with, it is undisputed that the Congress of the United States did not annul any of those acts already adverted to—Nos. 194, 440, 590 (of the Philippine Commission), and 2677, 2709 and the one now in question No. 2886 (of the present Legislature)—all of which were amendatory of General Orders No. 58. The Act now under discussion (No. 2886) took effect on February 24, 1920, and the criminal complaint in this case was filed on May 10, 1920. The silence of Congress regarding those laws amendatory of the said General Order must be considered as an act of approval.

> "If Congress fails to notice or take action on any territorial legislation the reasonable inference is that it approves such act." (26 R. C. L., 679; *vide* Clinton vs. Englebrecht, 13 Wall., 434; 20 [L. ed.], 659; Tiaco vs. Forbes, 228 U. S., 549; 33 S. Ct. Rep., 585; 57 [L. ed.], 960; Nixon vs. Reid, 8 S. D., 507; 67 N. W., 57; 32 L. R. A., 315.)

Furthermore, supposing for the sake of argument, that the mention of the People of the Philippine Islands as plaintiff in the title of the information constitutes a vice or defect, the same is not fatal when, as in the present case, it was not objected to in the court below.

> "An indictment must, in many states under express statutory or constitutional provision, show by its title or by proper recitals in the caption or elsewhere that the prosecution is in the name and by the authority of the state, the commonwealth, or the people of the state, according to the practice in the particular jurisdictions; but omissions or defects in this respect may be supplied or cured by other parts of the record, and the omissions of such a recital or defects therein, even when required by the constitution or by statute, is a defect of form within a statute requiring exceptions for defect of form to be made before trial." (22 Cyc., 237, 238.)

We hold that the provisions of section 2 of General Orders No. 58, as amended by Act No. 2886, do not partake of the same character as the provisions of a constitution; that the said Act No. 2886 is valid and is not violative of any constitutional provision and that the court *a*

quo did not commit any of the errors assigned.

The sentence appealed from is hereby affirmed, the appellant being furthermore sentenced to the accessory penalties prescribed in article 61 of the Penal Code, and to indemnify the heirs of the deceased in the sum of P1,000 and to the payment of the costs of both instances. So ordered.

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

Ostrand and *Johns, JJ.,* concur in the result.

Date created: June 05, 2014