

RAMON DOMINGO Y REYES, PETITIONER, VS. THE DIRECTOR OF PRISONS, RESPONDENT.*G.R. No. L-1229. February 28, 1947*

Ponente: MORAN, C.J.

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This is a petition for habeas corpus filed by Ramon Domingo y Reyes against the Director of Prisons. It is alleged therein that the petitioner was charged with murder before the Court of First Instance of Manila, Branch I, presided over by Judge Rafael Dinglasan, and that on August 20, 1946, he was arraigned and pleaded not guilty. However, on August 30, 1946, when the case was called for trial before the same court, counsel for the accused Atty. Celestino de Dios, made a statement to the effect that the accused would plead guilty to the crime not of murder but of homicide, to which the Fiscal answered that he had no evidence to prove murder and that he was therefore agreeable to a plea of guilty for homicide. The court without inquiring from the accused himself whether he was pleading guilty to a charge of homicide, sentenced him for such crime with the penalty of six (6) years and one (1) day of prision mayor to twelve (12) years and one (1) day of reclusion temporal, and to indemnify the offended party in the sum of P2,000, this sentence having been pronounced in open court. The accused failed to appeal and the period therefor has already expired, the judgment having been signed on August 31, 1946. The petition for habeas corpus dated December 10, 1946, was received in this Court on December 16, 1946.

The respondent, in his return, alleges that the petitioner is at present confined in the Iwahig Penal Colony of the Bureau of Prisons pursuant to a commitment order and judgment of the Court of First Instance of Manila dated August 31, 1946, issued in the exercise of its jurisdiction.

Section 13 of Rule 102 reads:

"When the return evidence, and when only a plea.—If it appears that the prisoner is in custody under a warrant of commitment in pursuance of law, the return shall be considered prima facie evidence of the cause of restraint; but if he is restrained of his liberty by any alleged private authority, the return shall be considered only as a plea of the facts therein set forth, and the party claiming the custody must prove such facts."

And section 4 of the same rule provides in part:

"When writ not allowed or discharge authorized.—If it appears that the person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or judge, or by virtue of a judgment or order of a court of record, and that the; court or judge had jurisdiction to issue the process, render the judgment, or make the order, the writ shall not be allowed; * * *."

These provisions are self-explanatory. The trial court had jurisdiction over the offense and of the person of the accused, and, therefore, it had jurisdiction to try the case and render judgment therein. The allegation, if true, that the judgment of conviction was rendered without a plea of guilty properly entered by the accused to the lesser offense of homicide, is merely a defect of procedure, not of jurisdiction, though it may have the effect of voiding the judgment. And this error of procedure cannot be reviewed in habeas corpus proceedings wherein the only

issue is whether or not the petitioner is entitled to release. And the petitioner is not entitled to release even if we have power to set aside the judgment upon the ground aforementioned, for, in such event, the proper procedure would be to reopen the criminal case and order the trial court to proceed further as if no judgment has ever been entered therein, that is, it must arraign the accused for the lesser offense of homicide after the information is duly amended, then try the case if the accused pleads not guilty, and the latter in the meantime should remain in confinement if he is not on bail. But this correction of procedure can be done only in an appeal or in an action for certiorari wherein the trial court is made respondent and is amenable to our orders.

It appears, upon the other hand, that there are in this case enough grounds for disbelieving petitioner's theory to the effect that he had not been duly arraigned for the lesser offense of homicide nor pleaded guilty thereto. The trial judge himself expressly states in his judgment that the accused "pleaded guilty to the crime of homicide," and the deputy clerk of court in her affidavit assures that she rearraigned the accused for the lesser offense on August 30, 1946, and that the accused pleaded guilty. All this is corroborated by the circumstance that the accused failed to protest in time against the judgment of conviction either by filing a motion for reconsideration or interposing an appeal. His petition for habeas corpus was filed three months and a half after notice of his conviction and this passive attitude is an indication of conformity with the proceedings and that the petition is but an afterthought.

Petitioner offered his mother's affidavit and that of Sinforoso Pilares to substantiate his theory that there had been no rearraignment nor plea of guilty. His mother does not know how to sign her name and it is doubtful whether she had enough understanding to distinguish in a court proceeding what is an arraignment and a plea of guilty. Pilares' affidavit seems to admit impliedly that there has been "rearraignment of Ramon Domingo y Reyes, in connection with the killing of Benito Espiritu alias Fidel" but that "Ramon Domingo y Reyes was not asked by the Judge to plead himself guilty to the crime of homicide nor did he utter any word during the proceedings."

Another evidence presented by the accused is the silence of the transcript on his plea of guilty. That silence cannot, however, prevail over the positive assertion made to the contrary by the trial judge and the clerk of court. And, besides, the stenographer may take note of the plea of guilty entered by an accused, but he is not bound to do so, that proceeding being a proper subject matter for the minutes to be entered by the clerk of court.

For all the foregoing, petition is dismissed for lack of merits, without costs.

Feria, Bengzon, Briones, Padilla, and Tuason, JJ., concur.

DISIDENTE

PABLO, M.:

No estoy conforme con la decision de la mayoria. El acusado al ser informado de la querella en Agosto 20, 1946 por asesinato se declaro no culpable. Al reanudarse la vista en Agosto 30, hubo un acuerdo entre el fiscal y el defensor de que se enmendaria la querella; que se le acusaria del delito de homicidio en vez de asesinato y que el acusado se declararia culpable. El expediente demuestra que no se enmendo la querella por asesinato; no existe una querella enmendada por homicidio; no se le informo al acusado de la querella enmendada porque no existe tal cosa en el expediente, y el acusado no se declaro culpable. La mejor prueba de esta declaracion hubiera sido el acta del Escribano Delegado que asistio en la vista y no su affidavit que ha sido firmado, jurado y presentado despues ya de presentada la solicitud de habeas corpus ante este Tribunal. Ese affidavit es oficioso y su fin es evidente: subsanar el defecto sustancial de la actuacion. De todo lo dicho se vera que el acusado ha sido condenado sin el debido proceso de ley. "No se le hara responder de un acto punible a persona alguna sino mediante el debido proceso legal." (Titulo III, articulo 15, Constitucion de la Republica de Filipinas.)

En la causa de Jose contra Comandante de la Escuadra de los Estados Unidos en Filipinas (16 Jur. Fil., 64), este Tribunal dijo:

" 'En el asunto de *Twining vs. New Jersey*, 29 Supreme Court Reporter 14, 20, el Megistrado Moody dice acerca del "debido proceso de ley:"

" ' "Pocas frases de la ley son tan dificiles de exacta comprension como esta. Sin duda las dificultades de determinar su alcance han sido aumentadas por la jurisprudencia americana donde se ha incorporado en las constituciones y aplicado a nuevos usos como limitacion a las facultades legislativas. Este Tribunal ha rehusado siempre dar una definicion comprensiva de esta frase, y ha preferido que su verdadera significacion sea gradualmente determinada por el procedimiento de inclusion y exclusion, en el curso de la resolucion de casos, a medida que surgen. Hay ciertos principios generates bien reconocidos, sin embargo, que estrechan el campo de la discusion y pueden servir de ayuda para llegar a conclusiones exactas. Estos principios nacen de la proposicion universalmente aceptada por los tribunales americanos siguiendo la autoridad de Coke, de que las palabras 'debido proceso de ley' equivalen en su significacion a las palabras 'ley del territorio' contenidas en aquel capitulo de la Carta Magna que dispone que 'ningun hombre libre sera detenido, preso o privado de su existencia; ni le perseguiremos, ni le molestaremos, sino en virtud de sentencia legal dictada por sus peers, o de la ley del territorio.' (Den ex dem, *Murray vs. Hoboken Land & Improv. Co.*, 18 How., 272; 15 Law. ed., 372; *Davidson vs. New Orleans*, 96 U. S., 97, 24 Law. ed., 616; *Jones vs. Robbins*, 8 Gray, 329; *Cooley, Const. Lim.*, 7th ed., 500; *McGhee, Due Process of Law*, 16.)"

" 'En la causa de los Estados Unidos contra *Ling Su Fan*, 10 Jur. Fil., 104, 111, 112, se da el siguiente significado de la frase "debido proceso de ley:"

" ' "Debido proceso de ley' equivale a proceder con arreglo a la ley del pais. "Debido proceso de ley" no significa que la ley ha de acomodarse al deseo de todos los habitantes del pais, sino simplemente:

" ' "Primero. Que haya una ley prescrita en harmonia con los poderes generales del poder legislativo del Estado;

" ' "Segundo. Que esta ley sea razonable en sus efectos;

" ' "Tercero. Que se haga cumplir de conformidad con los metodos regulares de procedimiento prescritos al efecto; y

" ' "Cuarto. Que sea del mismo modo aplicable a todos los ciudadanos del Estado o a todos los de una misma clase." ' "

Un abogado no puede contestar a la querella en nombre del acusado. La contestacion de "culpable" debe hacerse por el acusado personalmente. (Regla 114, seccion 3.) Esta disposicion es mandatoria. Solamente cuando se trataba de una falta se permitia a un abogado contestar en lugar del acusado. (Orden General No. 58, seccion 16.) En el asunto de Estados Unidos contra *Gimenez* (34 Jur. Fil., 76), el acusado al ser informado de la querella por matrimonio ilegal, se declaro no culpable. Se celebro la vista. Despues de declarar tres testigos de cargo, se suspendio la vista hasta el dia siguiente. Al reanudarse, el defensor anuncio que despues de conferenciar con el acusado "este desea retirar su contestacion a la querella de 'no culpable' sustituyendola por la de 'culpable.' "

" 'El Juzgado. Hagase constar que el abogado de la defensa pide que sea retirada la contestacion de 'no culpable' dada por el acusado, sustituyendola por la de 'culpable.' "

"Inmediatamente el Juez dicto la siguiente sentencia:

" 'Habiendose confesado culpable *Gregorio Gimenez* del delito de matrimonio ilegal, previsto y penado en el articulo 471 delCodigo Penal, el Juzgado le condena a seis años y un dia de prision mayor, con las accesorias del articulo 61 y al pago de las costas procesales." (34 Jur. Fil., 77.)

Apelado el asunto, este Tribunal declaro que la sentencia era nula basada en la declaracion de culpable hecha por otra persona que no era el mismo acusado.

En delito tan grave como el de homicidio, no debe privarsele al acusado de su derecho esencial de contestar por si mismo a la querella. Se hace mas evidente la importancia de esta disposicion si se tiene en cuenta que muchos de los acusados no hablan el lenguaje oficial que se usa en la vista.

En el asunto de Villegas contra Roldan y Almario (76 Phil., 349), porque no se dio oportunidad a la demandada en la causa civil No. 7802 del Juzgado de Primera Instancia de Laguna a presentar su contestacion a la demanda y ser oida en juicio, este Tribunal declaro nula abinitio la decision dictada y que el Juez recurrido no abuso de su discrecion, ni obro sin jurisdiccion al revocar dicha decision aunque habia transcurrido con exceso el plazo de apelacion. No podia ella ser privada de sus bienes por una sentencia dictada sin debido proceso legal.

En el asunto de Monfort contra Aguinaldo (p. 67, Ante), este Tribunal revoco la segunda decision dictada por el Tribunal de Apelacion porque no se le dio oportunidad al demandante de presentar su contestacion a la motion de reconsideracion. Si en causas civiles se declara nula la sentencia dictada contra una parte que ha sido privada de su derecho de ser oida o tener "a day in court" con mayor razon en una causa criminal no se debe dictar ninguna sentencia condenatoria contra un individuo que no ha dado personalmente la contestacion de culpabilidad. Y en este caso particular, el acusado no ha sido informado debidamente de la presunta querella enmendada a menos que tal querella haya sido "oral", no escrita. Aun en los Juzgados de Paz—que no son tribunales de archivo—no se permite la practica de presentar querella "no escrita" contra un acusado. Toda la actuacion desde la componenda entre el fiscal y el defensor de que se presentaria una querella enmendada—que nunca se presento—hasta la encarcelacion del acusado para cumplir una sentencia nula y de ningun valor, es anticonstitucional.

Si el acusado no apelo apesar de haber transcurrido dos meses y medio no puede atribuirse la culpa mas que a su abogado y si el abogado no formulo la apelacion correspondiente sera porque temia que, revisado el expediente tal como esta hoy, la sentencia se hubiera revocado por nula y de ningun valor.

El recurrente, por tanto, no esta legalmente detenido. Sin debido proceso legal esta privado de su libertad. Debe ordenarse su inmediata liberacion.

DISSENTING

PERFECTO, J.:

On July 31, 1946, petitioner was charged with the crime of murder, allegedly committed on July 6, 1946.

On August 20, 1946, the accused was arraigned. His attorney made the statement that he advised the prosecution of the fact that provocation came from the victim, and that the information ought to be amended. The information without the amendment was read, and the accused entered a plea of not guilty.

The following is the transcript of the stenographic notes taken during the hearing on August 30, 1946:

"RESUMPTION OF THE PROCEEDINGS ON AUGUST 30, 1946,

IN THE MORNING

"Appearances:

"Assistant City Fiscal Guillermo Dacumos, for the prosecution; and,

"Attorney Celestino de Dios, for the defense.

"Sr. De Dios:

"El Agosto 26 yo he presentado una carta al Fiscal diciendo que la acusacion tenia entremanos * * * diciendo que con las pruebas no es de asesinato sino homicidio, y considerando la declaracion espontanea de culpabilidad y la falta de instruccion del acusado y sumision a las autoridades con estas circunstancias el acusado se declara culpable del delito de homicidio.

"Fiscal:

"I read over this case and I have no evidence to sustain the murder charge and we are willing to agree to the plea of guilty of the accused, that is homicide.

"Court:

"With the mitigating circumstance of plea of guilty and voluntary surrender * * * ¿Como se entrego?

"Sr. De Dios:

"Cuando fueron a su casa se entrego voluntariamente.

"Court:

"Six years and one day of prision mayor to twelve years and one day of reclusion temporal, to indemnify the offended party in the sum of two thousand pesos. The accused is credited with one-half of his preventive imprisonment.

"The foregoing is true to the best of my understanding and belief.

(Sgd.) "VALENTIN C. GUTIERREZ

"(Stenographer)"

The above is a conclusive evidence that, without the petitioner pleading guilty, but only upon his attorney's statement of petitioner's willingness to plead guilty, the lower court sentenced him forthwith from six (6) years and one (1) day of prision mayor to twelve (12) years and one (1) day of reclusion temporal and to indemnify the offended party in the sum of P2,000, crediting the accused with one-half of his preventive imprisonment.

Section 3 of Rule 114 provides: "A plea of guilty can be put in only by the defendant himself in open court."

Speaking of identical provision in section 25 of General Orders, No. 58, this Court stated that "stronger and clearer language could not have been used." "Only," as thus used, is clearly restrictive and excludes, as clearly as language can, the idea that someone else can enter the plea of guilty for an accused person charged with a felony. "Only," coupled with the words "the defendant himself," has the effect of absolutely prohibiting any other person from entering such a plea. "If a plea of guilty be entered by another person, where the charge is that of a felony, although such person may be the counsel for the accused, it is a nullity and no conviction can rest thereon." (United States vs. Gimenez, 34 Phil., 74.) "A plea of his attorney for him is a nullity" (McWillars vs. State, 98 Am. Dec., 791). And from the book of one of the authors of the Rules of Court we quote:

"Under section 3, a plea of guilty can be put only by the defendant himself in open court. Such a plea entered by any other person, as by counsel, is a nullity and no conviction can rest thereon." (Comments on the Rules of Court, Moran, Volume II, page 685.)

If conviction cannot rest on any other plea of guilty but only the one entered personally by the defendant himself, the judgment convicting him becomes illegal and a nullity. A person committed to imprisonment under such a

judgment may be released on habeas corpus (29 C. J., 17; Andres vs. Wolfe, 5 Phil., 60; Ex parte Lange, 21 U. S. [Law ed.], 872; State vs. Bailey, 106 Minn., 138; Collins vs. Johnston, 237 U. S., 502).

The violation of the law in petitioner's case is justified by the following statement in the majority opinion:

"The allegation, if true, that the judgment of conviction was rendered without a plea of guilty properly entered by the accused to the lesser offense of homicide, is merely a defect of procedure, not of jurisdiction, though it may have the effect of voiding the Judgment. And this error of procedure cannot be reviewed in habeas corpus proceedings wherein the only issue is whether or not the petitioner is entitled to release. And the petitioner is not entitled to release even if we have power to set aside the judgment upon the ground aforementioned, for, in such event, the proper procedure would be to reopen the criminal, case and order the trial court to proceed further as if no judgment has ever been entered therein, that is, it must arraign the accused for the lesser offense of homicide after the information is duly amended, then try the case if the accused pleads not guilty, and the latter in the meantime should remain in confinement if he is not on bail."

Defect of procedure are words that express a very wide range of ideas, which include the most insubstantial and harmless and those which encroach into the fundamental rights of an accused. Generalities are often resorted to for the purpose of avoiding hard or disagreeable problems. Excess of jurisdiction is also a defect of procedure, and the majority in stating both ideas,—the one contradicting the other,—are laboring under the wrong premise of eliminating a particular idea from the general which comprises it. From a wrong premise we cannot expect a correct conclusion.

Of course, the issue in this case is whether petitioner is entitled to be released or not, a question which necessarily involves the question whether he is illegally deprived of his liberty. As we have shown, the judgment convicting petitioner, by virtue of which he is confined in prison, is a nullity. The majority makes the lukewarm admission that the fact that petitioner did not personally enter a plea of guilty "may have the effect of voiding the judgment." This dubitative and nubilous statement is not clarified in any part of the majority opinion. If the judgment under the authority of which petitioner is deprived of his liberty, is null and void, then his confinement should be declared illegal for lack of a legal basis to support it.

The majority evade facing the full consequences of the illegality of the confinement by resorting to a technicality. Without good grounds or any ground at all in support of their position, they opine that habeas corpus is not the proper procedure but a reopening of the criminal case in which the illegal and void judgment has been rendered. The position has the evident purpose of depriving petitioner of legal remedy to the illegality of which he is a victim, by denying him the remedy of habeas corpus, to which recourse he has resorted on time, and offering him instead a remedy the time for whose usefulness had already elapsed, that is the remedy of an appeal months after it could be resorted to. It is true that certiorari proceedings is also suggested. But if there is a substantial meaning in their suggestion, we do not see any reason why the present petition for habeas corpus cannot be considered also as an action for certiorari, although, if necessary, it be amended to follow the majority's suggestion that the trial court be made a respondent.

Petitioner's allegation that he did not enter a plea of guilty is disbelieved by the majority because the trial judge states in his judgment that the accused "pleaded guilty to the crime of homicide and the deputy clerk of court signed an affidavit that she re-arraigned the accused for the lesser offense on August 30, 1946, and that the accused pleaded guilty."

The two evidences pointed out by the majority appear without firm ground to stand on. The trial court's sentence appears to contain an unquestionable misstatement of fact. The sentence is dated "August 31, 1946." It narrates the proceedings under which the accused is alleged to have pleaded guilty to the crime of homicide as having taken place "this morning." But the affidavit of the deputy clerk of court states that the re-arraignment and plea of

guilty entered by the accused took place on "August 30, 1946." The contradiction between the statement of the trial court and that of the deputy clerk of court has not been explained, and there is no way of knowing which should be accepted as the correct narration of the facts. The trial judge states that the plea of guilty was entered in the "morning" of August 31, 1946, while the deputy clerk of court states that it took place on August 30, 1946. The majority appear to accept both as correct. We prefer to accept the transcript of the stenographic notes as the better and logical one, because there it appears that, although the accused was present in court on August 30, 1946, he was not then arraigned nor did he enter a plea of guilty. With respect to the affidavit of the deputy clerk of court, it is surprising that such affidavit has been presented, while the original notes which she must have taken during the proceedings and the minutes of the session she must have entered and kept, were not offered in evidence.

That the accused, instead of appealing against the sentence, filed the petition three-and-a-half months after notice of his conviction, is no evidence at all that he pleaded guilty. The majority assert that "this passive attitude is an indication of conformity with the proceedings," but such conformity does not establish the fact that he pleaded guilty when he did not, and it is elemental that such conformity does not make legal an illegal judicial actuation. Such alleged conformity, at most, may be construed as petitioner, a 20-year-old-youngster, took for granted as well done the illegal proceedings in which his own attorney and the trial judge, both trained and experienced in law, took part as the principal actors, inducing petitioner to believe that they were acting in conformity with the law.

The majority tried to weaken the force of the transcript of the stenographic notes by stating that "the stenographer may take note of the plea of guilty entered by an accused, but he is not bound to do so, that proceeding being a proper subject matter for the minutes to be entered by the clerk of court." But as we have already asserted, no minutes entered by the deputy clerk of court was offered as evidence in this case. Besides, it is a legal heresy to assert that the stenographer "is not bound to take note of the plea of guilty entered by an accused." The court stenographer is duty bound to take note of all the proceedings of the court sessions attended by him. Precisely, because formerly some judges used to order the court stenographer not to take note of some proceedings, there is a law which guarantees the litigants and their attorneys the right to have inserted in the record and be noted by the court stenographer all actuations and proceedings in their cases in a court session. And there is no proceeding more important in a criminal case than the arraignment of the accused and his entering a plea of guilty or not guilty. There is absolutely no valid reason why a court stenographer should be relieved from the duty of noting down the plea entered by an accused at his arraignment. We refuse to countenance such absurdity.

We vote to order the release of petitioner, it appearing that he is illegally confined by virtue and under the authority of a judgment which is null and void ab initio.

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