

FIDEL ABRIOL, PETITIONER AND APPELLANT, VS. VICENTE HOMERES, PROVINCIAL WARDEN OF LEYTE, RESPONDENT AND APPELLEE.

G.R. No. L-2754. August 31, 1949

Ponente: OZAETA, J.

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OZAETA, J.:

This is an appeal from a decision of the Court of First Instance of Leyte denying the appellant's petition for habeas corpus.

In criminal case No. 1472 of the Court of First Instance of Leyte the herein petitioner Fidel Abriol, together with six other persons, was accused of illegal possession of firearms and ammunition. After the prosecution had presented its evidence and rested its case, counsel for the defense moved to dismiss the case on the ground of insufficiency of the evidence to prove the guilt of the accused. After hearing the arguments for and against the motion for dismissal, the court held the proofs sufficient to convict and denied said motion, whereupon counsel for the defense offered to present evidence for the accused. The provincial fiscal opposed the presentation of evidence by the defense, contending that the present procedural practice and laws precluded the defense in criminal cases from presenting any evidence after it had presented a motion for dismissal with or without reservation and after said motion had been denied, and citing as authority the case of *United States vs. De la Cruz*, 28 Phil., 279. His Honor Judge S. C. Moscoso sustained the opposition of the provincial fiscal and, without allowing the accused to present evidence in their defense, convicted all of them and sentenced the herein petitioner to suffer seven years of imprisonment and to pay a fine of P2,000.

From that sentence the herein petitioner together with his coaccused appealed to the Court of Appeals. On June 7, 1948, the Court of Appeals, on its own motion and without notice to the appellants as required in section 8 of Rule 120 and in *Baradi vs. People*, G. R. No. L-2658, dismissed the appeal for failure of the appellants to file their brief within the extension of time granted them.

The present petition for habeas corpus was thereafter presented by Fidel Abriol against the provincial warden of Leyte, contending that the sentence entered against him in said criminal case No. 1472 was null and void because it had been rendered without due process of law. Judge Rodolfo Baltasar, who heard the petition for habeas corpus, denied it on the ground that, the Judgment of conviction against the petitioner having become final, "this court is entirely devoid of jurisdiction over and power to modify or in any way alter said decision." From that decision of Judge Baltasar the petitioner has appealed to this court.

- The refusal of Judge Moscoso to allow the accused petitioner to present proofs in his defense after the denial of his motion for dismissal was a palpable error which resulted in denying to the said accused, the due process of law guaranteed in the Bill of Rights embodied in the Constitution, it being provided in Article III, section 1 (17), of the Constitution that in all criminal prosecutions the accused shall enjoy the right to be heard by himself and counsel and to have compulsory process to secure the attendance of witnesses in his behalf. There is no law nor

"procedural practice" under which the accused may ever be denied the right to be heard before being sentenced.

Both the fiscal and Judge Moscoso have misunderstood the ruling of this court in the case of the United States vs. De la Cruz, 28 Phil. 279. In that case the accused-appellant assigned as error the denial by the trial court of the motion for dismissal presented by the defense after the evidence for the prosecution had been closed, although the court heard the evidence for the defense before rendering Judgment. In refutation of said assignment of error the Attorney General cited, the case of United States vs. Abaroa, 3 Phil., 116, wherein, the following, principle was laid down: "After the prosecution rests, the court should not dismiss the case on motion for insufficiency of proof but should require defendant to present evidence on his own behalf." In that connection the Court observed that the ruling in the Abaroa case was handed down in December, 1903, and before the decision in the Kepner case, when the Government was permitted to appeal from dismissals and final judgments in criminal cases. Said the Court:

"* * * It was then held that the practice of dismissing the case immediately after the evidence for the prosecution had been closed ought not to be followed, for when the order of dismissal was appealed from and this higher court sustained the conviction of the accused on that evidence of the prosecution he would have been convicted without having been heard in his own defense, which would work an injustice; and when to avoid this difficulty the order of dismissal was overruled and the case returned for rehearing, another difficulty would be encountered, which is that of subjecting the accused a second time to another trial without action on his part and without need, since all the evidence could and should have been taken at the trial already held, and with the additional risk of all the inconveniences of delay. In this state of affairs the Supreme Court of the United States rendered the decision in the case of Kepner vs. U. S. (195 U. S., 100; 11 Phil., 669), and since then the situation assumed and disposed of in United States vs. Abaroa cannot be considered, for the Government cannot now appeal from an order sustaining the motion to dismiss presented by the defense after the evidence for the prosecution has been closed, on the ground of insufficiency thereof.

"Even now, after the Kepner case, it is no ground for error that the Court of First Instance denied the motion for dismissal presented immediately after the evidence for the prosecution had been closed because the defense believed it to be insufficient; for the reason that, as in this case, the court did not hold it to be insufficient—it was under no obligation so to hold it—and it could continue the trial and take the evidence for the defense in order to reach the conclusion induced in its opinion by the allegations and the evidence, or as it did conclude in this case by sentencing the defendant on the evidence for the prosecution, which it held to be sufficient." (28 Phil., 282-283.)

Now that the Government cannot appeal in criminal cases if the defendant would be placed thereby in double jeopardy (sec. 2, Rule 118), the dismissal of the case for insufficiency of the evidence after the prosecution has rested terminates the case then and there. But if the motion for dismissal is denied, the court should proceed to hear the evidence for the defense before entering judgment, regardless of whether or not the defense had reserved its right to present evidence in the event its motion for dismissal be denied. The reason is that it is the constitutional right of the accused to be heard in his defense before sentence is pronounced on him. Of course if the accused has no evidence to present or expressly waives the right to present it, the court has no alternative but to decide the case upon the evidence presented by the prosecution alone.

In the case of People vs. Moro Mamacol (46 Off. Gaz. [Supp. to No. 1], 341[1]) the accused, without reserving the right to present evidence, moved for the dismissal of the case after the prosecution had rested. The court denied the motion and, without allowing the accused to present his evidence, sentenced him to suffer life imprisonment for the crime of murder of which he was accused. On appeal this court, although finding that the evidence for the prosecution was sufficient for conviction, set aside the judgment and ordered the case remanded to the lower court to allow the accused to present his proofs.

In civil cases, where either or both of the parties can appeal, the ruling is different from that in criminal cases. If the defendant moves for dismissal on the ground of insufficiency of the evidence after the plaintiff has rested and the court grants the motion, and if on appeal by the plaintiff the judgment is reversed, the case is terminated then and there; that is to say, it is not remanded, to the court of origin for the purpose of allowing the defendant to produce evidence in his defense. "The defendant in offering a motion to dismiss in effect elects to stand on the insufficiency of the plaintiff's case." (Moody, Aronson & Co. vs. Hotel Bilbao, 50 Phil., 198; Demeterio vs. Lopez, 50 Phil., 45; Arroyo vs. Andrea Azur, 43 Off. Gaz., 54.) However, if the court denies the motion to dismiss, it is not precluded from receiving evidence for the defendant, and the plaintiff cannot by mandamus compel it to render judgment without hearing the evidence for the defense. (Cotaoco vs. Dinglasan, G. R. No. L-2004, May 24, 1949.)

- The main question to decide is whether the writ of habeas corpus lies in a case like the present. The general rule is that the function of a writ of habeas corpus in permitting the petitioner to challenge by collateral attack the jurisdiction under which the process or judgment by which he is deprived of his liberty was issued or rendered cannot be distorted by extending the inquiry to mere errors of trial courts acting within their jurisdiction. (25 Am. Jur., Habeas Corpus, sec. 13, p. 152.) This principle, however, has been qualified in the sense that it "is not to be so applied as to destroy constitutional safeguards of human life and liberty." (Johnson vs. Zerbst, 304 U. S., 458; 82 Law. ed., 1461.)

Appellant relies upon the case of Schields vs. McMicking, 23 Phil., 526. That case, however, was reversed in McMicking vs. Schields, 238 U.S., 99; 59 Law, ed., 1220; 41 Phil., 971. The petitioner Schields was accused of theft in the municipal court of Manila on December 1, 1910. There he was duly arraigned, tried, convicted, and sentenced. He appealed to the Court of First Instance of Manila on December 21, 1910. On December 23 he received notice that the case would be heard at ten o'clock a.m. on the 24th. Tnttien he was arraigned on the last-mentioned date he asked for time in which to answer the complaint, which request was denied by the court, who ordered the clerk to enter on the record that the petitioner pleaded not guilty to the complaint. Thereupon the petitioner's attorney also asked for time in which to prepare a defense, which petition was also denied by the same court. The petitioner's attorney excepted to this ruling and asked that the exceptions, together with the requests of the petitioner which had been denied, be entered on the record. After the trial, during which the accused presented witnesses in his defense, the Court of First Instance found him guilty and sentenced him to four months and one day of arresto mayor. In denying the petitioner's request for time in which to prepare his defense, the trial court said:

"At the beginning of the trial the defendant asked for further time to prepare, and invoked certain sections of General Order No. 58, which, in our judgment, were not applicable to this case. The prosecution did not file a new complaint in this court. Defendant was tried on the identical complaint which was presented in the court below as long ago as December 1st. To that complaint, as the record shows, he pleaded not guilty, and having further brought this case here on appeal, the presumption is that such plea continued, and to allow delays for the reiteration of such a plea would be an empty formality. The law does not require a vain and useless thing, and the provision in question must be construed as applying to cases where a new complaint is filed in this court. But aside from this, we think that the time of trial caused no prejudice to the accused. As we have seen, the complaint was filed on December 1st, and the accused had more than three weeks to prepare before the trial in this court. During this period there were evidently one or more continuances, and finally, it seems, the defendant had to be called into the municipal court by a bench warrant. Upon bringing the case here it was incumbent upon him to follow it up and to be ready and waiting its disposition by this court. Notice of the trial was sent both to him and to his counsel the day before, and it was not claimed that defendant could have produced any further testimony; if the case had been postponed. On the contrary it appears that he called one witness who did not testify in the court below. After all, the question in the case is mainly one of law. The

principal controversy as to the facts relates to the question of the alleged permission to take articles, and this, as we have seen, would not have excused the defendant, even had it been proved, though he admits that himself and Frandom are the only witnesses on that point."

This court granted the petition for habeas corpus and ordered the discharge of the petitioner from confinement on the ground that under section 30 of General Orders No. 58 the accused, on demand, had the right to at least two days in which to prepare for trial and that the refusal of the time in which to prepare for trial was equivalent to the refusal of a legal hearing. On appeal by the respondent Director of Prisons to the Supreme Court of the United States, the latter reversed the judgment. Said that court:

"We are unable to agree with the conclusion of the Supreme Court that the judgment pronounced by the Court of First Instance was void and without effect. Under the circumstances disclosed denial of the request for time to answer and to prepare defense was at most matter of error which did not vitiate the entire proceedings. The cause—admitted to be within the jurisdiction of the court—stood for trial on appeal. The accused had known for weeks the nature of the charge against him. He had notice of the hearing, was present in person and represented by counsel, testified in his own behalf, introduced other evidence, and seems to have received an impartial hearing. There is nothing to show that he needed further time for any proper purpose, and there is no allegation that he desired to offer additional evidence or suffered substantial injury by being forced into trial. But for the sections in respect of procedure quoted from General Order No. 58, it could not plausibly be contended that the conviction was without due process of law. The Court of First Instance placed no purely fanciful or arbitrary construction upon these sections and certainly they are not so peculiarly inviolable that a mere misunderstanding of their meaning or harmless departure from their exact terms would suffice to deprive the proceedings of lawful effect and enlarge the accused * * *"

It will be noted that in said case the fact that the cause stood for trial on appeal from the municipal court; that the accused had known for weeks the nature of the charge against him; that he had notice of the hearing, was present in person and represented by counsel, testified in his own behalf, introduced other evidence, and seems to have received an impartial hearing; that there was nothing to show that he needed further time for any proper purpose; and that there was no allegation that he desired to offer additional evidence or suffered substantial injury by being forced into trial—weighed heavily against the pretension of the petitioner that the sentence entered against him was void for lack of due process of law.

There is no analogy between the facts of that case and those of the present case.

A more pertinent and analogous case is that of *Johnson vs. Zerbst*, 304 U. S., 458; 82 Law. ed., 1461. Johnson was indicted by the grand jury for feloniously uttering, passing, and possessing counterfeit Federal Reserve notes. Upon arraignment he pleaded not guilty, said that he had no lawyer, and—in response to an inquiry of the court—stated that he was ready for trial. He did not ask for and was not provided with the assistance of counsel. He was tried, convicted and sentenced to four and one-half years of imprisonment. Subsequently he petitioned for habeas corpus. Although the Federal District Court believed that the petitioner was deprived, in the trial court, of his constitutional right to have the assistance of counsel for his defense, it denied the petition for habeas corpus, holding that the proceedings "were not sufficient to make the trial void and justify its annulment in a habeas corpus proceeding, but that they constituted trial errors or irregularities which could only be corrected on appeal." The Circuit Court of Appeals affirmed that judgment; but the Supreme Court on certiorari reversed it. We quote the pertinent portions of its ratio decidendi:

"The purpose of the constitutional guaranty of a right to Counsel is to protect an accused from conviction resulting from his own ignorance of his legal and constitutional rights, and the guaranty would be nullified by a determination that an accused's ignorant failure to claim his rights removes the protection of the Constitution. True, habeas corpus cannot be used as a means of reviewing errors of law and irregularities—not involving the

question of jurisdiction—occurring during the course of trial; and the 'writ of habeas corpus cannot be used as a writ of error.' These principles, however, must be construed and applied so as to preserve—not destroy—constitutional safeguards of human life and liberty. * * *

"Since the Sixth Amendment constitutionally entitles one charged with crime to the assistance of Counsel, compliance with this constitutional mandate is an essential jurisdictional prerequisite to a Federal court's authority to deprive an accused of his life or liberty. When this right is properly waived, the assistance of Counsel is no longer a necessary element of the court's jurisdiction to proceed to conviction, and sentence. If the accused, however, is not represented by Counsel and has not competently and intelligently waived his constitutional right, the Sixth Amendment stands as a jurisdictional bar to a valid conviction and sentence depriving him of his life or liberty. A court's jurisdiction at the beginning of trial may be lost 'in the course of the proceedings' due to failure to complete the court—as the Sixth Amendment requires—by providing Counsel for an accused who is unable to obtain Counsel, who has not intelligently waived this constitutional guaranty, and whose life or liberty is at stake. If this requirement of the Sixth Amendment is not complied with, the court no longer has jurisdiction to proceed. The judgment of conviction pronounced by a court without jurisdiction is void, and one imprisoned thereunder may obtain release by habeas corpus. * * * (82 Law. ed., 1467-1468.)

We have already shown that there is no law or precedent which could be invoked to place in doubt the right of the accused to be heard or to present evidence in his defense before being sentenced. On the contrary, the provisions of the Constitution hereinabove cited expressly and clearly guarantee to him that right. Such constitutional right is inviolate. No court of justice under our system of government has the power to deprive him of that right. If the accused does not waive his right to be heard but on the contrary—as in the instant case—invokes that right, and the court denies it to him, that court no longer has jurisdiction to proceed; it has no power to sentence the accused without hearing him in his defense; and the sentence thus pronounced is void and may be collaterally attacked in a habeas corpus proceeding.

- There is no doubt that if the petitioner had prosecuted his appeal to a successful conclusion, the sentence against him would have been set aside and the case would have been remanded to the trial court to allow him to present his proofs, as was done in the case of *People vs. Mamacol*, supra. We make this observation to show that the petitioner cannot by this habeas corpus proceeding secure a greater relief than he could have obtained by appeal, and that in any event he is only entitled to the restoration of the right of which he has been unlawfully deprived, namely, the right to present evidence in his defense. Under section 17 of Rule 102, a person who is set at liberty upon a writ of habeas corpus shall not be again imprisoned for the same offense unless by the lawful order or process of a court having jurisdiction of the cause or offense. Although the sentence against the petitioner is void for the reasons hereinabove stated, he may be held under the custody of the law by being detained or admitted to bail until the case against him is finally and lawfully decided. The process against him in criminal case No. 1472 may and should be resumed from the stage at which it was vitiated by the trial court's denial of his constitutional right to be heard. Up to the point when the prosecution rested, the proceedings were valid and should be resumed from there.

Under the title "Proceedings and Belief" and subtitle "Judgment and Costs" on the subject of Habeas Corpus, *American Jurisprudence* says: "After the hearing, the court should dispose of the petitioner in such manner as the justice of the case may require; he may be discharged, remanded, or admitted to bail * * * Even though a petitioner is entitled to be relieved of the particular restraint under which he is held, he may, if there is sufficient cause for his detention, be restrained until valid proceedings against him may be taken." (Sections 152 and 154.)

Wherefore, in view of the nullity of the sentence under which the petitioner has been committed to imprisonment by the respondent, the judgment appealed from is reversed and the writ prayed for is granted. The respondent shall discharge the petitioner unless within fifteen days from the promulgation of this decision the provincial fiscal of

Leyte should move the lower court to reset for trial said, criminal case No. 1472 to allow the petitioner to present his evidence and the trial court to decide said case anew. Pending such new trial, the petitioner may be admitted to bail.

It is so ordered, without costs.

Moran, C.J., Paras, Feria, Montemayor, and Torres, JJ., concur.

[1] 81 Phil., 543.

DISSENTING

REYES, J.:

This is a petition for habeas corpus.

The petitioner was sentenced to prison by the Court of First Instance of Leyte for illegal possession of firearms and ammunition. From this sentence he appealed to the Court of Appeals; but the appeal was there dismissed because of his failure to file a brief. And as no steps were taken to have the appeal reinstated, the sentence was in due time declared final. This was on June 22, 1948. Committed to prison to serve his sentence, petitioner, on December 3, 1948, filed the present petition for habeas corpus in the Court of First Instance, and the petition having been denied by that court, the case is now before us on appeal.

The petitioner challenges the validity of the sentence of conviction imposed upon him on the ground that his constitutional right was violated when the lower court, after denying his motion to dismiss for alleged insufficiency of the prosecution's proof, refused to allow him to present his own evidence, holding that his right to do so was waived by his motion for dismissal. It was, of course, error for the trial court to deny him that right, and the error would undoubtedly have been corrected had he prosecuted his appeal to its conclusion. But this he did not do, and the question now is whether, notwithstanding what has happened, the correction may still be made through habeas corpus proceedings, whose only purpose in law is to determine whether or not a person alleged to be illegally detained is entitled to release. Disregarding the legal purpose of this remedy, the majority of the Court has granted the writ but has denied liberty to the petitioner, remanding the case to the court below for further proceedings. Actually, what the majority has done is to allow the remedy of habeas corpus to perform the functions of an appeal that is now dead and can no longer be revived. To this I cannot agree.

No rule is better settled than that habeas corpus is not a corrective remedy. It cannot be used for correcting errors or irregularities of procedure which are not jurisdictional. (25 Am. Jur. par. 28.) It does not take the place of an appeal. (*Abanilla vs. Villas*, 56 Phil., 481.) And even if the error sought to be corrected may have the effect of voiding a judgment, so long as the court that rendered that judgment had jurisdiction, habeas corpus may not be invoked to correct the error. The proper remedy is by appeal or certiorari.

Thus, in the case of *Domingo vs. Director of Prisons*, 44 Off. Gaz. 2201[1], where an attempt was made through habeas corpus proceedings to invalidate a judgment of conviction rendered on a plea of guilty when, so it was alleged, no such plea was properly entered by the accused, this Court, through its Chief Justice, said:

"* * *. 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."

In the present case, there is no question that the lower court had jurisdiction to try the case against the petitioner for illegal possession of firearms and to convict him therefor. The court committed a legal error when it convicted petitioner without allowing him to present his evidence. But the error, though it made the judgment voidable, was only an error in procedure, which could have been corrected by appeal. In fact, petitioner took the first steps to have the error so corrected, except that he later abandoned the appeal by not presenting a brief. And though notified on June 9, 1948, of the dismissal of his appeal, he did nothing to have the dismissal reconsidered, and his petition for habeas corpus was not filed until December 3, 1946, that is, about six months later, when he had already been serving sentence for sometime. As said by this Court in the case of *Domingo vs. Director of Prisons*, *supra*, "this passive attitude is an indication of conformity with the proceedings and that the petition (for habeas corpus) is but an afterthought."

The accused in a criminal case has the undoubted right to present evidence on his behalf. But this right may be waived at any stage of the case, and the waiver may be express or implied. Petitioner in the present case could have insisted on the preservation of that, right when he appealed to the Court of Appeals. But since he gave up the appeal and commenced to serve his sentence, the natural interpretation of his attitude is that he no longer cared to have the error corrected and go through further trial, thereby impliedly waiving his right to present evidence if he had any.

The case of *Johnson vs. Zerbst*, 304 U. S. 458; 82 Law. ed., 1461, relied on in the majority opinion is hardly applicable to the present case. There the accused was denied his constitutional right to have the assistance of counsel at the trial and the Supreme Court of the United States held that the recognition of that right was a prerequisite to the court's jurisdiction, so that when the right was denied the judgment of conviction was void as having been rendered without jurisdiction. It is obvious that the denial of the right to the assistance of counsel in that case was an error which vitiated the entire proceedings of the trial court and made a new trial inevitable. Annulment of the whole proceedings taken while the accused had no legal counsel was, therefore, proper. In the case at bar, as the majority opinion itself rules, the whole proceedings below did not have to be annulled so that the case had to be remanded to the trial court for the reception of defendant's evidence. The question of jurisdiction is not at all in issue and seems to have been invoked merely as an excuse to justify recourse to habeas corpus as a remedy for correcting a procedural mistake.

I therefore vote for the dismissal of this petition and the confirmance of the judgment below.

BENGZON AND TUASON, JJ.:

We concur in the foregoing dissenting opinion of Mr. Justice Reyes.

[1] 77 Phil., 1053.

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