

**BONIFACIO VILLAREAL, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES, RESPONDENT.***G.R. No. L-1514. August 05, 1949*

Ponente: TUASON, J.

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This is an appeal from a decision of the Court of Appeals. The decision affirmed, with slight modification as to the penalty, a judgment of the Court of First Instance of Batangas finding the defendant, petitioner herein, guilty of a violation of article 341 of the Revised Penal Code (White Slavery Trade), and sentencing him to an indeterminate penalty of from 1 year and 1 day to 3 years, 6 months and 20 days of prison correccional with the accessory penalties provided by law, and to pay the costs.

The ground of complaint is that the Court of Appeals unjustifiably sanctioned "the actuaciones of the Court of First Instance of Batangas in practically railroading the trial of the petitioner and in departing from the accepted and usual course of judicial proceedings which has prejudiced the accused-petitioner and affected his substantial rights as to call for an exercise of the power of supervision of this Honorable Court." Specifically, it is alleged that—

"(a) \* \* \* the complaint against him (accused) was filed by the chief of police on October 15, 1945; the accused arrested on October 16, 1945 (t.s.n., p. 21); the information filed by the provincial fiscal on October 17, 1945; and the arraignment and hearing of the case were set for October 25, 1945 (t.s.n., p. 1);

"(b) That it was only in the evening of October 24, 1945 that the petitioner was able to contract the services of his counsel in the lower court and when he was arraigned on October 25, 1945 (t.s.n., p. 2) he pleaded not guilty and on the same day, by a written motion, his attorney asked that the petitioner and his counsel be given an opportunity to prepare his defense but it was denied. Again when petitioner's turn came to present his evidence, he reiterated his petition to grant him sufficient time to prepare for trial but it was also denied (t.s.n., pp. 9, 14, 19 and 20.)"

The record furnishes a different version regarding the time the defendant moved for postponement. It appears therefrom that a "motion for continuance" was filed before and not after arraignment and the motion was reiterated verbally after one witness had testified for the defense.

The denial to the accused of time to plead or to prepare for trial was not raised or suggested in the Court of Appeals. The defendant-appellant's brief and memorandum filed in the Court of Appeals put in issue only the sufficiency of the evidence. Even though in the brief a recital was made of the dates of the filing of the complaint, of defendant's arrest and arraignment, of the filing of the motion for continuance and of the trial, yet, the purpose of the recital was, not to invalidate the proceeding or to obtain a new trial but to show, for undisclosed reason, that there had been undue haste in the disposal of the case. Bare statement of facts without specifying any particular objection does not present any question for review by the appellate court.

In the present state of the case, the function of this Court is limited to seeing whether the Court of Appeals erred on a matter of law. The Court of Appeals did not err in not reversing the lower court's judgment or remanding the

case for new trial on grounds which the court was not requested to consider. If the refusal of the Court of First Instance to grant the defendant time to plead or to prepare for trial was error, it was error of which this Court may not take cognizance unless the appellate court's attention was called thereto. A judgment of the trial court is not subject to attack in an appeal from an intermediate appellate court's decision unless the ground of the attack was raised or decided by that court, or unless the judgment is clearly void by reason of its having been rendered by the trial court without jurisdiction or by reason of the trial court's having exceeded its jurisdiction. The error in question does not come under this category. "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." (*McMicking vs. Schields*, 238 U. S., 99; 59 Law ed., 1220; 41 Phil., 971.) Such error may be waived; and it was waived when not urged. Objection made for the first time in this Court came too late to take the place of an objection which should have been made in the brief. "To listen to it now would be, not to prevent but to accomplish, an injustice not to be tolerated except under the most peremptory requirement of law." (*De la Rama vs. De la Rama*, 241 U. S., 154; 60 Law ed., 132.)

Section 7, Rule 120 of the Rules of Court, provides that "The briefs in criminal cases shall have the same contents as provided in Sections 17 and 18 of Rule 48 applicable in civil cases except that appellants are not required to make assignment of errors although it is advisable for them to do so." This provision connotes that, unlike in appeals in civil cases, an assignment of errors is unessential to invoke appellate review. (It should be noted that where the law or the Rules of Court require an assignment of errors to be made, this formality is essential to authorize the appellate court to entertain the appeal. In view of such requirement, an appeal will be dismissed without benefit of review if the brief contains no assignment of errors.)

The rule means that, notwithstanding the absence of an assignment of errors, the appellate court will review the record and reverse or modify the appealed judgment, not only on grounds that the court had no jurisdiction or that the acts proved do not constitute the offense charged, but also on prejudicial errors to the right of accused which are plain, fundamental, vital, or serious, or on errors which go to the sufficiency of the evidence to convict. The section of the Rules of Court doing away with formal assignments of error does not dispense with the necessity of pointing out in some other form technical and nonfundamental errors which do not affect the substantial rights of an accused to a fair trial, and are not patent. Such technical and nonfundamental errors must be specified with convenient proposition and argument if they are to be made the basis for modification or reversal of the appealed judgment or for further proceedings. Attention is invited to Section 17(c), Rule 48 of the Rules of Court, which provides that the appellee's brief shall contain, among other things, "the substance of the proof in sufficient detail to make it clearly intelligible, the rulings and orders of the court, \* \* \*, and any other matters necessary to an understanding of the nature of the controversy on the appeal, with page references to the record." The reviewing court is not expected to search the record for every error of which the appellant might take advantage but did not, nor would it be fair to the adverse party for the court to do so.

The judgment of the Court of Appeals is affirmed with costs.

Moran, C.J., Ozaeta, Paras, Bengzon, Padilla, and Montemayor, JJ., concur.

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## CONCURRING AND DISSENTING

### FERIA, J.:

I concur in the result, but dissent from one of the grounds on which it is based. The quotation from the decision of the U. S. Supreme Court in *McMicking vs. Schields*, 238 U. S., 99; 59 Law ed., 1220; 41 Phil., 971, to the effect that "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," is incomplete.

The conclusion of the Philippine Supremo Court in said case was that "The denial of a right to prepare for trial, and the consequent forcing of the defendant to his defense without anytime whatever for preparation is, under the provisions of our law, equivalent, in our judgment, to a refusal of a legal hearing. It amounts in effect to a denial of a trial. It was an abrogation of that due process of law which, is the embodied procedure of the land, and without which a defendant has, in law, no trial at all." (Schiels vs. McMicking, 23 Phil., 526, 537-538). This conclusion is correct as a general proposition. But the decision of this Court in said case was reversed by the Supreme Court of the United States, because the defendant in that particular case had had sufficient time to prepare his defense. The Court of the United States said:

"\* \* \* 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. \* \* \*" (McMicking vs. Schiels, 41 Phil. 971, 978.)

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