

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
SIMEON MIRANDA Y DANA, DEFENDANT AND APPELLANT.***G.R. No. L-841. April 30, 1947*

Ponente: BENGZON, J.

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In the Court of First Instance of Manila, the defendant Simeon Miranda y Dana pleaded guilty to the information charging him with illegal possession of a carbine with rounds of ammunition, committed on or about July 27, 1946, in Quezon City within 2½ miles from the limits of the City of Manila. He was consequently sentenced to an indeterminate penalty of from 5 years and 1 day to 6 years of imprisonment, and to pay the costs. Notwithstanding his confession in open court, he appealed; but his attorney de oficio appointed here reached the conclusion that the sentence was truly in accordance with the law under which he was prosecuted.

However, said counsel calls attention to the fact that the record is silent as to whether or not, at the time appellant was arraigned, the trial court informed him of his right to be assisted by an attorney, under section 3 of Rule 112 of the Rules of Court.

This precise issue was determined in *United States vs. Labial* (27 Phil., 87, 88), in the sense that unless the contrary appears in the records, it will be presumed that the defendant was informed by the court of his right to counsel. " * * * If we should insist on finding every fact fully recorded before a citizen can be punished for an offense against the laws, we should destroy public justice, and give unbridled license to crime. Much must be left to intendment and presumption, for it is often less difficult to do things correctly than to describe them correctly". (*United States vs. Labial*, supra.) The same doctrine was reiterated in *People vs. Abuyen* (52 Phil., 722) and in *United States vs. Custan* (28 Phil., 19). We see no reason to modify it now.

Counsel also suggests that the accused be given a new trial so that he may take advantage of the Presidential Proclamation No. 1 fixing September 30, 1946 as the last day within which firearms may be surrendered without criminal liability. It is enough to point out that such proclamation does not legally excuse possession of firearms until the day fixed, under all circumstances.

Wherefore, inasmuch as the penalty imposed upon him is within the range prescribed by law (Rep. Act No. 4), the decision is affirmed. No costs.

Paras, Pablo, Padilla, and Tuason, JJ., concur.

DISSENTING

PERFECTO, J.:

The attorney de oficio for appellant, with a keen sense of official duty, called our attention to two eloquent facts disclosed in the records: first, that at his arraignment, in which he pleaded guilty, appellant was not represented by counsel; and, second, it does not appear that the trial court performed its duty of informing appellant of his right to have an attorney to represent him, as expressly provided in Section 3 of Rule 112 which reads as follows:

"Duty of court to inform defendant of his right to have attorney.—If the defendant appears without attorney, he must be informed by the court that it is his right to have attorney before being arraigned, and must be asked if he desires the aid of attorney. If he desires and is unable to employ attorney, the court must assign attorney de oficio to defend him. A reasonable time must be allowed for procuring attorney."

The record is also silent as to whether the lower court fulfilled its duty of assigning an attorney de oficio to defend appellant, in case the latter desired the aid of a lawyer and was unable to employ one, or that appellant was allowed "a reasonable time for procuring attorney."

Consequently, the attorney de oficio appointed by the Supreme Court prays that appellant be granted a new trial in order that he may be given an opportunity to present any evidence which, under the provisions of Republic Act No. 4, may exempt him from criminal liability. Counsel called attention to the fact that August 31, 1946, was set as the deadline for surrendering firearms without incurring any penalty, and the police officers came upon appellant on July 27, 1946, more than a month before the deadline. (The majority advert that, by Presidential Proclamation No. 1, the deadline has been fixed on September 30, 1946.) Not having benefited by the advice of counsel, appellant did not know his rights at the time of his arraignment and pleaded guilty for an offense which, as a matter of fact, he might not have committed. He also adverts that under Section 2 of Republic Act No. 4, a person caught with firearms or ammunition in his possession, while on his way to surrender them to the authorities, is exempted from criminal liability.

The question raised by the attorney de oficio is dismissed by the majority of this Court upon the theory that, unless the contrary appears in the records, it will be presumed that the defendant was informed by the trial court of his right to counsel, as provided by Section 3 of Rule 112. We cannot agree with such opinion. The duties imposed by Section 3 of Rule 112 on trial judges are among those expressly provided to make effective the rights guaranteed to an accused by subsection 17 of Section 1, Article III of the Constitution, which provides:

"In all criminal prosecutions the accused shall be presumed to be innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses in his behalf."

Whether the duties have been performed is a matter that must affirmatively appear in the records. Silence in the records cannot mean otherwise than that they were not performed.

The "right to be heard by counsel" has been generally considered as a fundamental one and, for that reason, has been placed under the protection of a constitutional guarantee.

If the silence of the records as to whether the duties imposed by Section 3 of Rule 112 were carried into effect can be supplied by a mere affirmative presumption, then there is no way for appellate courts to check whether the duties provided in said section have been duly executed or not. If the trial court committed a dereliction of its duty of informing an accused of "his right to have attorney and is unable to employ" one, "the court must assign attorney de oficio to defend him," no one will be supposed to complain and to have the dereliction spread on the records but the accused himself. Not being represented by any counsel, how can he know his rights in a criminal case, how will he exercise them, and how will he learn the duties imposed by law to the trial court? Attorneys and

judges are not all sure of having complete knowledge of said rights and duties, notwithstanding their special training in law. How then can we expect the accused to make of record the dereliction of duty committed by the trial court?

The Supreme Court, recognizing the importance of keeping correct and complete records for a proper administration of justice, devoted for said purpose the whole Rule 125. Under Section 6 thereof, the clerk is duty bound to "attend all of the sessions of the court and enter its proceedings for each day in a minute book to be kept by him," and, under Section 8, he "shall keep a general docket" where he shall enter "all cases, numbered consecutively," and, "under the head of each case, the date of each paper filed or issued, of each order or judgment entered, and of each other step taken in the case." Section 17 provides that the stenographer who has attended a session of a court shall deliver to the clerk "all the notes he has taken, to be attached to the record of the case," immediately at the close of each "morning or afternoon session." Section 18 provides for the recording of the "date of issuing preliminary and intermediate process," the date "of the appearance or default of the defendant," "the names and addresses of all witnesses," including "the minutes of the trial" and of "all adjournments." If the trial court had in this case complied with the duties imposed by Section 3 of Rule 112, the fact cannot fail to have been recorded in all or in, at least, one of the following: (a) the stenographic notes; (b) the transcript thereof; (c) the general docket; (d) the minutes; (e) the record of the particular case. Their unanimous silence is a conclusive evidence that the duties were not performed.

The majority invokes the authority of *United States vs. Labial* (27 Phil., 87), *United States vs. Custan* (28 Phil., 19), and *People vs. Abuyen* (52 Phil., 722), in support of their theory on presumption.

The decisions in said cases, interpreting Section 17 of General Orders, No. 58, from which the provision of Section 3 of Rule 112 was taken, are not convincing and, therefore, cannot be taken as reliable authority. The decisions in the cases of *Labial* and *Custan* depict a wavering judicial attitude. They reveal stern disapproval "of the omission from the record of formal entries affirmatively disclosing the strict compliance by the court below with those provisions of law prescribing the procedure to be followed in all criminal proceedings," describing such omissions as "irregularities" but, at the same time, lack of resolve to carry to its natural and logical consequence the dictates of such conviction, by grabbing the weak and precarious support of an unreasonable presumption. We refuse to follow a guide who is not sure of the way leading to the goal.

If we are to profit from the above-mentioned precedents it is the one which will keep us from falling into their error.

The following pronouncements in the case of *Custan*, with which we fully agree, are enlightening:

"* * * we deem it of utmost importance that criminal trials should proceed, at every step, in strict accord with the prescribed rules of procedure, and that care should be taken to make the record affirmatively disclose the various incidents of the trial in such form as to leave no room for doubt or question as to what actually occurred. * * * it is in the highest degree incumbent upon the trial courts and their officers, including the judges, fiscals, clerks and attorneys, to see that the record sets forth a full and complete report of all the incidents of the trial, so far as that is humanly possible, and to take care, also, that there is no relaxation in that strict compliance with all the prescribed formalities of procedure which experience has shown to be necessary to the due administration of justice in criminal cases."

And in the first case of *Labial*, decided on March 13, 1914, the Supreme Court declared:

"* * * we think that in all cases wherein the accused is not defended by counsel the record should be made to show affirmatively that the trial judge has complied with the provisions of the statute in this regard."

What is the use of keeping incomplete, unfaithful, incorrect records? To allow the keeping of partial or unreliable

records is to open the doors wide to all kinds of judicial arbitrariness and, therefore, to injustice and iniquity. Judicial records should be trustworthy as all official documents should be. Omissions therein may amount to stark falsehoods. Half truths are not truths at all. That is why witnesses are made to swear to tell "the whole truth." Judicial records are kept to bear witness of all judicial proceedings, and they must be scrupulously correct and complete. How can an appellate court revise an unrecorded actuation of an inferior court? How can it determine whether the lower court acted correctly or wrongly, lawfully or unlawfully, justly or unjustly, if there is no record of what said court had done?

The conscientious keeping of correct records is essential to good government. It is one of the most effective safeguards against anomalies and illegalities. Weighty reasons are behind the punctiliousness of auditors in checking books of accounts and in requiring that they be kept with exactitude to the last detail and last monetary fraction. For good grounds falsification of public documents is heavily punished by penal laws. Property, honor, liberty, and other rights, including life itself, may be jeopardized by incorrect or incomplete records. It is not uncommon that only a small scrap of public document stands between freedom and long imprisonment. Upon the authenticity or falsity of a document depended the unjust imprisonment of Dreyfus and his belated revindication through the magnificent endeavors of Emile Zola. A brief diplomatic note may keep peace or doom peoples to ghastly hecatombs. It is high time to remind all public officers of the absolute necessity of insuring correctness and completeness in the records they have to keep. Such records may affect even the destiny of our nation. Correctness and completeness of judicial records must be taken care up to meticulousness if justice is to be duly served, if tribunals are to be true to their role as the bulwarks of law and Constitution and as the protectors of human rights.

Laxity in this respect is dangerous. Lack of scruples in properly keeping trustworthy records is a menace to justice and public interest.

The pronouncements in the Labial and Custan cases, having been made about one-third of a century ago, should be presumed to be known by trial courts. They enjoyed more than enough time to learn the lessons and instructions contained therein.

If, notwithstanding the old age of said pronouncements and the requirements of Rule 125, the records in this case do not disclose that the trial court fulfilled its duty to inform appellant of his right to be assisted by counsel, it is because no such advice has been given to appellant. Otherwise, the lower court and the other judicial officers who intervened with the lower court in this case would have taken pains to have the facts inserted in the record in accordance with the pronouncements in the Labial and Custan cases. We are constrained to conclude that appellant was not informed of his right to be assisted by counsel.

The omission being a flagrant violation of the mandatory provision of Section 3 of Rule 112 and it having affected one of the substantial rights of appellant, the latter is entitled to the benefits of a new trial.

The fact that Republic Act No. 4 has greatly increased the penalty for the possession of firearms, providing a minimum of five years and a maximum of ten years imprisonment for the possession of a carbine, the one for which appellant pleaded guilty, is an additional reason why we should not be unmindful in the present case of the violation of Section 3 of Rule 112, unless we should allow unchecked a miscarriage of justice.

Lastly, it seems clear that if a new trial is granted to appellant he may be entitled to acquittal, under the main provision and the first proviso of Section 2 of Republic Act No. 4, which may, in effect, be interpreted as exempting from criminal liability the mere possession of firearms before the deadline set by presidential proclamation, unless said arms are used by the possessor, except in self-defense or for the purpose of surrendering them to the authorities. Said section is worded as follows:

"The provisions of the foregoing section to the contrary notwithstanding, any person in possession of any of the prohibited articles therein mentioned, may, without incurring any criminal liability, surrender the same to such officer and within such period of time as the President shall by proclamation designate and fix immediately upon the approval of this Act: Provided, however, That this section shall not be interpreted to mean as in any way exempting from such liability any person, without the requisite license, found, within the aforementioned period of time, making use of any of said, articles, except in self-defense, or carrying them on his person except for the purpose of surrendering them as herein required: Provided, further, That this section shall not in any way affect any case pending in court, on the date of the passage of this Act, for violation of section twenty-six hundred and ninety-two of the Revised Administrative Code; and, Provided, lastly, That the President may authorize any officer or agency of the Government to issue to the persons surrendering their firearms temporary licenses therefor for periods not exceeding three months at a time."

For all the foregoing, we vote for the reversal of the appealed decision and that new trial in the lower court be ordered.

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