

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PONCIANO REMIGIO ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 11034. December 12, 1916

Ponente: TRENT, J.

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TRENT, J.:

The defendants, Ponciano Remigio, Jose Gomez Arce, Antonio Dizon, and Martin Sancianco, each being sentenced to ten years and one day of prision mayor, to pay a fine of 1,250 pesetas, to jointly and severally indemnify the offended party in the sum of P10,000, and to the payment of the costs of the cause for the crime of estafa by means of the falsification of a commercial document, appealed.

After overruling the demurrers, the entry of pleas of "not guilty," and the granting of separate trials by the court, the following proceedings were had; the Honorable Charles S. Lobingier presiding:

The case against Jose de Leon, who was charged in the same complaint, but who has since died, was first called for trial and Southworth said:

"I wish to have it appear that in this case now on trial I only represent Sr. De Leon."

Private counsel for the prosecution then offered in evidence a certain document, and Southworth said: "Objected to as to the defendants Remigio, Arce, and Dizon on the ground that these men have never announced themselves as ready for trial. We are now trying the case of the United States vs. De Leon.

"The court: 'Objection is overruled on the ground that these defendants are present in court and answered when the case was called and announced that they were represented by counsel who makes the objection. Proceed.' "

The prosecution called its first witness, Augusto Tuason, and on being asked this question:

"Now, referring to the employment of Ponciano Remigio, Arce, and Dizon as subagents, by whom were they employed, by you or by Jose Leon?"

South worth objected, saying,

"I ask the court to understand that counsel for De Leon objects to all testimony against Remigio, Dizon, and Arce on the ground that those three men are not on trial, and on the ground that no conspiracy has been established to authorize the introduction of this testimony as against the defendant De Leon. The court: 'Objection overruled.' "

Similar objections were made during the examination of this witness and like rulings were entered, to which counsel noted their exceptions. On the termination of the examination of the witness the court said:

" 'We will now suspend the case against De Leon and take up the separate case of the United States against Ponciano Remigio.' Gibbs, private counsel for the prosecution : 'I offer the testimony of this witness, Augusto Tuason, now on the stand, against the defendant, Ponciano Remigio.' The court: 'Mr. Southworth, have you any cross-examination on behalf of the defendant, Remigio?' Southworth: 'We are not ready for trial; we

announced that to the court.' The court: 'For what reason?' Southworth: 'On the ground that he has made an application for a severance, and on the ground that he is going to make application to have his case tried in such a way that the evidence which is not competent as to him shall not go to the court; on the ground that he will make an application, if his honor, who is now presiding, hears the case of the United States against De Leon through; that the defendant, Remigio, will make an application to have his case heard by another judge who has not heard the incompetent testimony against him.' The court: 'You may make the application now. I am now ready to hear the case of Remigio, and any application you may wish to make you may make now.' Southworth: 'I will state that the application is premature now as his honor has not heard all the evidence in the other case.' The court: 'I prefer to take up each case by itself, and I am now ready to hear the case of the United States against Ponciano Remigio. Is that the only reason you have to offer?' Southworth: 'For the further reason that the case of the United States against De Leon is now pending and on trial before the court and one witness has been introduced and examined and quite a bit of documentary evidence has been introduced. The defendant (Remigio) is not ready to go to trial because his attorney is engaged in court in the trial of the case of the United States vs. Jose de Leon at this time.' The court: 'The trial of Jose de Leon having been temporarily suspended, the objections of counsel for the defendant Remigio are not well taken, and there being no sufficient reasons shown why said defendant is not ready for trial, we will proceed with the trial of the case of the United States against Ponciano Remigio.' Southworth: 'To which defendant objects on the ground that it deprives him of the rights and privileges of his application for a separate trial, which has heretofore (been) presented by the defendant and granted by the Court.' The court: 'The separate trial of Ponciano Remigio will now proceed.'

"Gibbs: 'Have you any cross-examination, Mr. Southworth?'

"Southworth: 'No evidence having been introduced in the case against Remigio, there is nothing for the counsel for Remigio to cross-examine.'

"The court: 'There being no cross-examination, we will now suspend the trial against Ponciano Remigio and take up the separate case of the United States against Jose Gomez Arce.'

"Gibbs: 'I now offer in evidence the testimony of the witness, Augusto Tuason, now on the stand, against the defendant, Jose Gomez Arce. (To Southworth) Do you wish to cross-examine the witness?'

"Southworth: 'To which the defendant Arce objects on the ground that this testimony is sought to be introduced as a whole and not by separate questions and answers. The testimony is sought to be introduced against the defendant Arce which was taken in the case against De Leon when the defendant Arce had announced that he was not ready for the trial and was not represented by counsel in that case. The announcement was made to his honor on the bench.'

"The court: 'The defendant Arce being now present, and having been present throughout the hearing of the testimony now offered, and having stated in open court that he was represented by the same counsel who conducted the cross-examination of said witness, the objection is overruled. The said counsel is given an opportunity to cross-examine said witness.'

'Southworth: 'To which defendant Arce objects.'

'Gibbs: 'Do you decline to cross-examine the witness?'

"Southworth: 'No evidence having been introduced in the case against Jose Gomez Arce, there is nothing to cross-examine.'

"The court: 'There being no cross-examination of the witness offered by the prosecution in the separate trial of the United States vs. Jose Gomez Arce, we will now suspend said trial and proceed with the separate trial of the case of The United States vs. Antonio Dizon.'

"Gibbs: 'I offer the testimony of this witness, Augusto Tuason, now on the stand, in the case of the United States against Antonio Dizon. (To Judge Southworth) Do you wish to cross-examine?'

"Southworth: 'The same objection, with the further objection that no issue has ever been joined between the United States and Antonio Dizon; that there is a demurrer now pending to the complaint which has never been passed upon and the case has never been set for trial.'

"The court: 'Ruling to the last objection is reversed pending its determination. We will suspend the trial of Antonio Dizon and take up the separate trial of Martin Sancianco.'

"Gibbs: 'I offer in evidence the testimony of the witness Augusto Tuason, now on the stand, against the defendant Martin Sancianco.'

"Paredes: 'Objected to as his case has not been called for trial.'

"The court: 'Counsel is mistaken in his statement that said case has not been called for trial. It was announced for trial at the beginning of the morning session, when the accused was present with his counsel. Objection is therefore overruled and said counsel is given opportunity to cross-examine the witness whose testimony has been offered by the prosecution and which witness is now on the stand.'

"Gibbs to Paredes: 'Do you wish to cross-examine?'

"Paredes: 'There being no evidence against the defendant Sancianco, counsel for Martin Sancianco waives the right to cross-examine the witness for the present. I except the ruling of the court.' "

The case of the United States against Jose de Leon was then resumed and the second witness for the prosecution, Lucas Guevara, was called to the stand, and during the examination of this witness objections were made to the testimony which tended to incriminate the other defendants, but the objections were overruled.

"Southworth: 'I wish to announce to the court that the defendant Dizon asked for time to prepare for his case.'

"The court: 'How much time do you require?'

"Southworth: 'Notice overruling the demurrer was served upon the defendant just fifteen minutes ago, and this is Saturday afternoon. His counsel is engaged in the trial of another case and he asks until Thursday in which to prepare for his trial.'

"The court: 'Mr. Dizon will be given the two days allowed by General Orders No. 58 to prepare for trial. His counsel is hereby notified to be ready at the end of that period.'

"Southworth: 'Exception.'"

Sixto Roxas, the third witness for the prosecution, was introduced and after the termination of the examination the court adjourned until January 12, and upon reconvening, Gibbs said:

" 'I offer the evidence of the witness (Roxas) now on the stand against the defendant Remigio.'

"Southworth: 'I object to this testimony on the same ground as given to the other defendants.'

"The court: 'Same ruling.'"

The case against Jose Gomez Arce was then called and the same offer made by Gibbs, to which the same objections were entered.

"The court: (To South worth) 'Have you any cross-examination?'

"Southworth: 'The defendant has not prepared his case for trial and is not prepared now to cross-examine the

witness.'

"The court: 'There being no cross-examination, we will suspend the trial as to the defendant Jose Gomez Arce and take up the case against Martin Sancianco, now present.'"

The same procedure was gone through with as to the offering of Roxas' testimony and objection by counsel. On resuming the case against Remigio, the testimony of another witness taken in the case of Jose de Leon was offered by Gibbs.

"Southworth: 'To which counsel objects on the ground that he has not prepared the case of Remigio for trial and has not had an opportunity to consult the witness and for other reasons given in former objections.'

"The court: 'The objection is overruled.' "

On resuming the case against Arce and on Gibbs offering in evidence the testimony of another witness taken in the case against De Leon, Southworth objected, saying:

"As stated by counsel in the present case, he does not represent Arce in this trial that is taking place now; but when the case of Arce is regularly called for trial he may or may not appear as counsel for the defense."

The case against Remigio was resumed and a like offer was made by Gibbs, to which Southworth objected, saying:

'I object for the foregoing reasons and on the further ground that the case against De Leon, just having been suspended just one minute ago, I have not had an opportunity to consult with the defendant and determine what cross-examination shall be conducted in the case of Remigio.'

"The court: The court states that if application is made for a consultation with the defendant Remigio, it will be granted.'

"Southworth: 'I will state that having been in four trials in the last fifteen minutes, that I would like to have about thirty minutes to consult the witnesses in the Remigio case.'"

After this question was disposed of the trial of the case against Arce was again resumed, and the same procedure had.

"The court: 'We will now take up the case against Antonio Dizon, who pleaded not guilty on Saturday last.'

"Southworth: The defendant Dizon objects to coming to trial at this time.'

"The court: 'On what ground?'

"Southworth: 'On the ground that he has not been allowed the time allowed under the law to prepare his trial, and also on the ground that he has not been allowed the time asked for in the preparation of his case: that his counsel has been unable to prepare his case on account of the fact that he has been engaged in the trial of these other cases.'"

The court ordered the trial to proceed.

"Southworth: The defendant (Dizon) now requests that he be granted a separate trial as provided for in G. O. 58.'

"The Court: The request is granted. Proceed with the separate trial of Antonio Dizon.'

"Southworth: 'Having been engaged in the trial of Ponciano Remigio up to a half a minute ago, the counsel asks for five minutes in order to get himself together to prepare himself for this trial.'

"The Court: 'Counsel for the defendant having announced himself to be now well and in good condition, and there being no apparent reason for further preparation, we will proceed with the trial of the United States vs. Antonio Dizon.' "

The trials of the cases proceeded in the same manner until all the evidence was presented, at the close of which Judge Lobingier ordered the stenographer to transcribe the notes and furnish the private prosecutor with a transcription who was to file his brief within ten days thereafter, giving counsel for the defense a like period within which to file their argument on behalf of the defendants. Before the stenographer had completed the transcription Judge Lobingier was appointed United States Federal Judge in Shanghai and left the Philippine Islands before deciding the cases. Another judge of the city, in pursuance to a mandate of the Supreme Court, examined the record and entered the judgment appealed from.

Counsel for the defendants contend that the procedure above set forth shows that the defendants were, in fact, denied separate trials in violation of section 33 of General Orders No. 58. We find it unnecessary to consider at this time any of the other assignments of error, as we are clearly of the opinion that the contention of counsel upon the question of separate trials is well founded.

Section 33 of General Orders No. 58 reads:

"When two or more defendants are jointly charged with a felony, any one of the defendants demanding it must be tried separately."

The language of this section is positive and unequivocal. It confers a substantive right, which was, in the opinion of the legislative body, necessary to provide against the hazard of one defendant being prejudiced or injured in his defense by evidence of the guilt of his codefendants in court. The guilt of a defendant cannot be said to have been legally ascertained; nor can a judgment awarding punishment be rightly imposed, unless the proceedings and trial have been conducted substantially according to the forms prescribed by law. Such formulas have been sanctioned by long experience as approved methods to protect the innocent, and assure reasonable certainty that a conviction was right and true. The plea of not guilty having been entered, the trial must proceed in the following order: (1) The prosecution must offer evidence in support of the charge or charges; (2) the defendant or his counsel may offer evidence in support of the defense; (3) the parties may then offer rebutting testimony and, by permission of the court, new and additional evidence upon the main issues; and (4) the arguments. (Sec. 31, General Orders No. 58.)

"In all criminal prosecutions the defendant shall be entitled: * * * (5) To be confronted at the trial by and to cross-examine the witnesses against him. Where the testimony of a witness for the prosecution has previously been taken down by question and answer in the presence of the accused or his counsel, the defense having had an opportunity to cross-examine the witness, the deposition of the latter may be read, upon satisfactory proof to the court that he is dead or insane, or cannot with due diligence be found in the Islands." (Sec. 15, General Orders No. 58.)

Section 5 of the Act of Congress of July 1, 1902, provides: "That in all criminal prosecutions the accused shall enjoy the right * * * to meet the witnesses face to face, * * *" and the same privilege is granted in the Act of Congress, approved August 29, 1916.

"To be confronted at the trial by and to cross-examine the witnesses against him" means at his own trial and not at the trial of another. The only exception to this rule of substantive law is where a deposition has been taken in the manner set forth in paragraph 5 of section 15 of General Orders No. 58, combined with satisfactory proof that the witness is dead or insane or cannot, with due diligence, be found in the Philippine Islands. To introduce the testimony of a witness taken in one criminal case into another criminal case over the objection of the defendant in

the latter is a direct violation of the above quoted provisions of General Orders No. 58, although such defendant may have been present in court when the witness testified.

The rule as to the scope of a severance is stated in 12 Cyc, 505, as follows:

"A statute giving a right to a severance is imperative. The court must grant the severance without condition or limitation, and a refusal to do so is reversible error."

Applying these principles to the instant case it is quite clear that the rights of the defendants have been prejudiced by the procedure adopted and followed by the court. The judgment appealed from is therefore set aside and a new trial ordered, with costs. So ordered.

Torres and Araullo, JJ., concur.

Moreland, J., concurs in the result.

Carson, J., see concurring opinion.

CONCURRING OPINION

CARSON, J.:

I concur, on the ground that the judge who pronounced the judgment of conviction and imposed the penalty did not preside at the trial of the appellants, and no finding as to the facts or as to the credibility of the witnesses was made by the judge who presided at the trial and saw and heard the witnesses testify.

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