

PABLO PERLAS, PETITIONER, VS. PEDRO CONCEPCION, JUDGE OF FIRST INSTANCE OF LAGUNA, RESPONDENT.

G.R. No. 11585. March 29, 1916

Ponente: MORELAND, J.

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MORELAND, J.:

This is a petition to this court for a writ of certiorari directed to the Honorable Pedro Concepcion, judge of the Court of First Instance of Laguna, ordering him to send to this court the record in the case of United States vs. Pablo Perlas for such proceedings and action thereon as the law requires.

The petitioner here was the defendant in a criminal action brought for the purpose of punishing him under Act No. 2152. The information charged as follows:

"That the said Pablo Perlas and Ambrosio Paz, on or about the 27th day of March, 1915, in the barrio of Balibago, municipality of Santa Rosa, Province of Laguna, P. I., did willfully and unlawfully obstruct, destroy and otherwise injure the irrigation system in the said barrio, municipality and province, and did divert from its course the water belonging to the Government of the Philippine Islands and devoted to irrigation purposes of the Santa Rosa Estate, to the detriment of the persons entitled to the use thereof, all in open violation of sections 45 and 46 in connection with section 47 of Act No. 2152."

The court convicted the accused after due trial and sentenced him to pay a fine of P25 and to pay the costs, A rehearing was asked for by the prosecuting attorney and the justice's court changed the sentence to P25 fine and the payment of one-half the costs and subsidiary imprisonment in case of nonpayment of the fine. The sentence as modified also required the accused, within fifteen days from the date of the sentence, to open the canal which he had closed and to put it in the same condition it was in before the unlawful acts were committed. The accused appealed to the Court of First Instance where he was again tried and convicted and sentenced to pay a fine of P130, to suffer subsidiary imprisonment in accordance with Act No. 1732, and, unless he should, at his own expense, open the canal and replace it in the condition in which it was prior to the acts complained of, he should pay the Government P150 and, in case of nonpayment of said sum, he should suffer subsidiary imprisonment as provided by Act No. 1732.

The petitioner claims that the judgment of conviction was illegal and void for several reasons. In the first place, he asserts, the court found that the canal in question existed when as a matter of fact the evidence shows that it did not exist. In the second place, the court found that the canal in question belonged to the Government of the Philippine Islands, when, as a matter of fact, it did not. In the third place, the court erred in condemning the accused to pay to the Government P150 as an indemnity for his acts in closing the canal.

None of these objections, with the exception of the last, even if well founded, are sufficient to support a petition for a writ of certiorari. They all relate to the appreciation by the trial court of the evidence in the case and have nothing to do with the jurisdiction of the court or its authority to pronounce a judgment of conviction in the case. Certiorari will not issue to a Court of First Instance in a proceeding of this character unless it appears that the

court acted without or in excess of its jurisdiction. The determination of a question of fact on the trial of a criminal case does not affect the jurisdiction of the court even though the court errs in the finding. (*Government of the Philippine Islands vs. Judge of First Instance of Iloilo and Bantillo*, page 157, ante; *Napa vs. Weissenhagen*, 29 Phil. Rep., 180; *De Fiesta vs. Llorente and Manila Railroad Co.*, 25 Phil. Rep., 554.) For these reasons the court refuses to issue the writ on these grounds.

There is one ground, however, on which the writ will issue to the extent of correcting the judgment of conviction. As we have seen, the trial court in its sentence required the accused to pay to the Government P150 damages unless he opened the canal and put it in the condition in which it was before. The court had the right to require the accused to indemnify the Government for a damage caused (*U. S. vs. Velasquez*, 32 Phil. Rep., 157); and to that extent the judgment was correct. But this court has held that a sentence in a criminal action should not be in the alternative and that the accused, as part of the criminal punishment, cannot be made to perform an affirmative act of the character required by the sentence in this case. (*Carroll and Ballesteros vs. Paredes*, 17 Phil. Rep., 94.) That portion of the sentence requiring the accused to open the canal is void.

It is the doctrine of this court that certiorari and not habeas corpus is the proper remedy in criminal cases which present questions of this character, the accused not being; imprisoned.

The sentence of the Court of First Instance in the case of *United States vs. Pablo Perlas* is modified by striking therefrom the words "unless the accused at his own expense open the canal so closed by the accused and replace it in the condition in which it was." In all other respects the petition for a writ of certiorari is denied. So ordered.

Araullo, J., concurs.

Torres, J., concurs in all but in the penultimate paragraph.

Johnson and Trent, JJ., concur in the result.

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