

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. SIMEON GUENDIA, DEFENDANT AND APPELLANT.

G.R. No. 12462. December 20, 1917

Ponente: STREET, J.

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STREET, J.:

This case is brought to this court by appeal from a judgment of the Court of First Instance of the Province of Iloilo convicting the defendant upon the charge of frustrated murder.

There is no doubt that an assault with intent to kill was committed by the defendant at the time and place mentioned in the record upon the person of his querida; but the proof shows, in our opinion, that the defendant was crazy at the time and has remained so since. He has now been committed by order of the Governor-General to the San Lazaro Hospital for confinement and treatment. The trial judge says, "I really believe that this man is crazy; or he appeared so, at least, during his trial in this court;" and the action of the trial judge in passing sentence upon the defendant must have been in part due to a desire to keep a dangerous insane person in confinement until proper disposition might be made of him. It is clear from the evidence submitted at the trial that the defendant was insane at the time of the perpetration of the act, and he is therefore exempt from criminal liability under subsection 1 of article 8 of the Penal Code. It results that the judgment of the lower court must be reversed and the defendant acquitted.

It has been suggested in this case that inasmuch as it appears from the evidence that the accused was insane at the time of the trial in the court below it was improper for that court to proceed to hear the case and furthermore that it is now improper for this court to reverse judgment and acquit the accused of the offense with which he is charged. This court by no means concurs in this suggestion.

Undoubtedly the rule is well established that no person afflicted with imbecility or insanity in such a degree as to disable him from making his defense should ever be put upon his trial for an alleged crime or be made to suffer the judgment of the law.

In Blackstone's Commentaries we find the following passage:

"Also if a man in his sound memory commits a capital offense, and before arraignment for it, he becomes mad, he ought not to be arraigned for it; because he is not able to plead to it with that advice and caution that he ought; and if after he has pleaded, the prisoner becomes mad, he shall not be tried; for how can he make his defence? If, after he be tried and found guilty, he loses his senses before judgment, judgment shall not be pronounced; and if, after judgment, he becomes of non-sane memory, execution shall be stayed; for peradventure says the humanity of the English law, had the prisoner been of sound memory, he might have alleged something in stay of judgment or execution."

There were good reasons for this tenderness or "humanity" of the English law, as the reader will appreciate when reminded of the fact that until modern times no prisoner arraigned before the bar of an English court was ever

permitted to have counsel to assist him in his defense; that until within the memory of living man no accused person was ever permitted to give testimony in his own behalf; and finally that it was only in our own day that a person convicted of a crime in an English court has been allowed an appeal for a review of the facts.

When Blackstone here speaks of madness he refers to a general perversion and obliteration of the mental powers much more pronounced than that which is considered sufficient to exempt from criminal responsibility. This is apparent from the fact -that the courts have always treated a person as sane for the purposes of being tried if he has sufficient powers to comprehend the nature of the proceedings in which he is involved and to conduct his defense.

In the State of New York, as appears from the case of *Freeman vs. People* (4 Denio, 9; 47 Am. Dec, 216), there was in force in 1847 a statute expressly declaring that no insane person could be tried, sentenced, or punished for any crime. In discussing this provision, the court said:

"In its terms the provision is broad enough to reach every possible state of insanity, so that, if the words are to be taken literally, no person while laboring under insanity in any form, however partial and limited it may be, can be put upon his trial. But this the legislature could not have intended; for although a person totally bereft of reason can not be a fit subject for trial or punishment, it by no means follows that one whose insanity is limited to some particular object or conceit, his mind in other respects being free from disease, can justly claim the like exemption. This clause of the statute, should receive a reasonable interpretation, avoiding on the one hand what would tend to give impunity to crime, and on the other seeking to attain the humane object of the legislature in its enactment. The common law, equally with this statute, forbids the trial of any person in a state of insanity. This is clearly shown by authorities which have been referred to, and which also show the reason for {he rule, to wit, the incapacity of one who is insane to make a rational defense. The statute is in affirmance of this common law principle, and the reason on which the rule rests furnishes a key to what must have been the intention of the legislature. If, therefore, a person arraigned for a crime, is capable of understanding the nature and object of the proceedings going on against him; if he rightly comprehends his own condition in reference to such proceedings, and can conduct his defense in a rational manner, he is, for the purpose of being tried, to be deemed sane, although on some other subjects his mind may be deranged or unsound. This, as it seems to me, is the true meaning of the statute; and such is the construction put by the English courts, on a similar clause in an act of parliament."

For the purpose of securing these unfortunate persons from the danger of being improperly arraigned and tried, statutes have been enacted in many jurisdiction requiring the court, where the issue of present insanity is raised, or where the present insanity of the accused is otherwise brought to the attention of the court, to submit to the jury a preliminary issue to determine whether the accused is so far insane as to require a suspension of the proceedings; and even in States where no such statute has been enacted it is recognized that the issue of present insanity ought properly to be tried, either by the court itself or by the jury, as a separate issue.

It is, however, entirely clear that, in a jurisdiction like this, where there is no controlling statute, the trial court has a discretion as to whether a preliminary investigation into the prisoner's sanity shall be made. In *Jones vs. State* (13 Ala., 153), it was said:

"But in the case before us the judge did not see proper to test the prisoner's sanity by any preliminary inquiry to ascertain whether he was capable of pleading to the indictment—he did plead, and a trial and conviction was the result, although we are of opinion that the facts disclosed in the .bill of exceptions might well have warranted the preliminary inquiry as to the prisoner's mental condition, yet this must be left to the sound discretion of the court below."

In *State vs. Peacock* (50 N. J. L., 34), it was held that it rests in the sound discretion of the court whether a preliminary examination shall be had to ascertain the mental condition of the prisoner at the time of trial, and that where no exception is taken at the trial to the failure of the court to order such examination, it is not available upon appeal. Said the court:

"The method of settling this preliminary question, where it is not the subject of statutory regulation is within the discretion of the trial court. The court can itself enter upon the inquiry, or submit the question to another jury empaneled for that purpose. Whether the action of the court is the subject of exception it is not now necessary to decide, for in the present case no objection was made to the action of the court in respect to a suspension of the proceedings, nor was there any request made by the counsel who defended him that such an inquiry should be instituted. There was nothing proved that displayed such a condition of mental derangement that the court, of its own motion, was called upon to direct a further inquiry into the matter. No court would be bound to stop or justified in arresting the progress of a trial by a mere suggestion of, but in the absence of any substantial evidence of the existence of a degree of mental disorder which would unfit the defendant from conducting his cause or instructing his counsel."

In *Webber vs. Commonwealth* (119 Pa. St. Rep., 223; 4 Am. St. Rep., 634), it was likewise held that the making of a preliminary inquiry into the sanity of the prisoner before the trial upon the criminal charge is begun is discretionary with the court. It was there said:

"The existence of the doubt as to the prisoner's present insanity is a matter which, by the very necessity of the case, could only be determined by the court itself. Up to the time of pleading there is no other tribunal which has the prisoner in charge, and there is no other which can say whether there is a doubt upon that subject. It is one of the functions which must be intrusted to the court, and it is not to be presumed that it will in any case be abused."

Where the court examines into the mental condition of the accused and discovers that he is laboring under a condition of insanity such that he ought not to be brought to trial, it is of course the duty of the court to hold the criminal proceedings in abeyance and commit him to an asylum or hospital for the insane, as the case may require. If, on the other hand, no preliminary investigation into the mental condition of the accused is considered necessary by the trial court, and the accused is brought to trial on the complaint, the question whether he was mentally responsible at the time of the commission of the alleged offense is an open one and if it be found that he was insane when the alleged crime was committed, he will be acquitted. We have found no reported decision in which it has been held or even suggested that an accused person should not be acquitted when it appears at the trial that by reason of lunacy or imbecility he was exempt from criminal responsibility. And the circumstance that he may still be an imbecile or lunatic at the time of the trial does not by any means destroy the power of the court to declare him not guilty. In *Queen vs. Berry* (1 Q. B. Div., 447, 451), it was said by Baron Kelly:

"I believe it to have been the law from the earliest times, that if it is found at the trial of a prisoner that he cannot understand the proceedings, the judge ought to discharge the jury and put an end to the trial, or order a verdict of not guilty."

It is a very general practice in England and the United States, where a person is acquitted on the ground of insanity, for the court to order his detention in a lunatic asylum. (*People vs. Chandler*, 196 N. Y. 525; 25 L. R. A. [N. S.], 946; *Caffey vs. State*, 78 Miss., 645; *Peabody vs. Baker*, 59 Misc. [N. Y.], 359; *People vs. Lamb*, 118 N. Y. Supp., 389; *Ex parte Brown*, 1 L. R. A. [N. S.], 540.) Indeed there is a presumption that a person once shown to have been afflicted with insanity or lunacy of a permanent character has remained so, and this presumption prevails, even in the absence of a special finding of the court, until the contrary is shown. (*State ex rel. Thompson vs. Snell*, 46 Wash., 327; 9 L. R. A. [N. S.], 1191; 89 Pac, 931; *In re Thomas Brown*, 39 Wash., 160; 2 Ann. Cas.,

492.) This idea is at the basis of numerous decisions holding that the statutes providing for the confinement of such persons, without further trial of the issue of insanity, are valid.

In *Rex vs. Little, Russ & R. C. C.* 430, the defendant was found to have been insane at this time of the commission of the offense, and also at the time of the trial, and was acquitted on account of such insanity. The trial judge ordered him to be kept in strict custody in jail till His Majesty's pleasure should be known.

In *U. S. vs. Lawrence* (4 Cranch, C. C, 518; Fed. Cas. No. 15,577) it was proved that the defendant had shot at the President of the United States under the insane delusion that he himself was King of England and of the United States as an appendage to England, and that the President stood in his way in the enjoyment of his right, and that the shooting was done under such delusion. The jury found him not guilty by reason of insanity, and the court remanded him, being of opinion that it would be extremely dangerous to permit him to be at large while under such delusion.

The conclusion to which we arrive is that when a judge of first instance is informed or discovers that an accused person is apparently in a present condition of insanity or imbecility, it is within his discretion to investigate the matter, and if it be found that by reason of any such affliction the accused could not, with the aid of his counsel, make a proper defense, it is the duty of the court to suspend the proceedings and commit the accused to a proper place of detention until his faculties are recovered. If, however such investigation is considered unnecessary, and the trial proceeds, the court will acquit the accused if he be found exempt from criminal responsibility by reason of imbecility or lunacy. In such case an order for his commitment to an asylum should be made pursuant to the provisions of paragraph 2 of article 8 (1) of the Penal Code. In passing on the question of the propriety of suspending the proceedings against an accused person on the ground of present insanity, the judges should bear in mind that not every aberration of the mind or exhibition of mental deficiency is sufficient to justify such suspension. The test is to be found in the question whether the accused would have a fair trial, with the assistance which the law secures or gives; and it is obvious that under a system of procedure like ours where every accused person has legal counsel, it is not necessary to be so particular as it used to be in England where the accused had no advocate but himself. Judgment reversed and defendant acquitted, with costs of both instances de officio. But the defendant shall be kept in confinement in the San Lazaro Hospital, or such other hospital for the insane as the Director of Health may direct, and shall not be permitted to depart therefrom without the prior approval of the Court of First Instance of the Province of Iloilo. So ordered.

Arellano, C. J., Johnson, Araullo, and Malcolm, JJ., concur.

CARSON, J., concurring and dissenting in part:

I concur to so much of the disposition of this case as provides for the detention of the accused and his treatment in an insane asylum, so long as he continues of unsound mind; but I dissent from so much of the majority opinion as solemnly declare that the accused committed the acts with which he is charged, but without incurring criminal liability therefor because of his insanity at the time when those acts were committed.

Both on principle and authority, I am of opinion that when it affirmatively appears that an accused person is insane or of unsound mind at the time of his trial, all further criminal proceedings should be suspended; and that thereafter the complaint or information should be dismissed if there is no present prospect of his recovery of his mental equilibrium, without prejudice to the right of the state to present a new complaint or information in the event that the accused should thereafter be restored to his health.

The doctrine as laid down by the authorities is quite clearly set forth in the following citations:

"If the defendant is deaf and dumb, he may nevertheless, if he understand the use of signs, be arraigned, and the meaning of the clerk in addressing him may be conveyed to him, by some proper person, by signs, and his signs in reply may be explained to the court. If he is insane he cannot be arraigned or tried at all until he becomes sane." (Clarke's Criminal Procedure, Vol. 2, sec. 128.)

"The defendant cannot be arraigned or tried or sentenced while he is insane, though he may have been sane when the offense was committed." (Idem, Vol. 2, sec. 149.)

To the like effect are the following citations from Bishop's New Criminal Procedure, than which there is no higher textbook authority in the United States:

"There will be no trial.—If the defendant is dead, insane, or drunk, or from any other cause incapable of understanding the proceeding and making his defense." (Vol. 1, sec. 950 c.)

"Counsel.—Present insanity implies a disability to employ, control, or discharge counsel. And the doctrine is believed to be that when the court sees a reasonable ground to institute or persevere in this defence, it will take care that the prisoner has suitable counsel therein, whom it will not permit him to reject, restrain or dismiss.

"When and how.—An insane man cannot even plead to an indictment; therefore, if, at the arraignment, counsel have reason to suppose their client too insane to take his trial, they should then make the objection, which, it is believed, can be adequately done orally to the court. Or the objection may proceed from a third person on affidavit. Or the court may take it on its own observations. It is not technically too late at any subsequent stage of the cause, prior to the commencement of the trial. When the trial has begun, there are obvious reasons against stopping it; and it is, at least, within the discretion of the court to let it proceed, and submit the two issues to the jury together.

"How tried.—This question of present insanity is properly, and in practice is generally, submitted to a jury; which may be either one of the regular juries attending on the court, or one specially impanelled for the purpose. But this course is not imperative; the court has the discretion, on its own inspection of the prisoner's mental condition, and without the aid of a jury's finding, to decline the trial on the main issue, or direct the question to be tried with the plea of not guilty." (Vol. 2, sec. 666.)

"The time—to which this inquiry relates is, it is perceived, the present—what is the mental condition now, not what it was when the offense was committed. And—

"The test of insanity.—is not precisely the same as on the main issue; it is whether the prisoner can make a rational defence." (Vol. 2, sec. 667.)

"The evidence—it seems, need not be limited by the judge within strict rules, its purpose being to enlighten a discretion. Thus, the prisoner may be permitted to make statements and observations to the court and the jury, and what they see and hear of him they may take into the account. He cannot challenge jurors peremptorily, but he may for cause.

"The hearing—may probably, if deemed best, be private.

"The finding—on this preliminary question, that the prisoner is not insane, is not receivable against him on the trial of the main issue." (Vol. 2, sec. 668.)

"Vol. 2t sec. 666, footnote.—Webber vs. C, 119 Pa., 223; 4 Am. St., 634; Crocker vs. S., 60 Wis., 553.) When William Freeman was in 1846 tried for murder (New Crim. Law. I., sec. 376 [4], note), the first inquiry was whether he was sufficiently sane to take his trial. (See, on this and other particulars, P. vs. Freeman, Hall's Trial of Freeman.) This question was submitted to a jury as the more discreet course; though, in point of law, it was

deemed competent for the judge to adopt any other suitable method of ascertaining the fact. (Freeman vs. P., 4 Denio, 9; 47 Am. Dec, 216.) The verdict of the jury negatived the insanity; he was tried on the merits and convicted; a new trial was granted; then, when he was about to be tried a second time on the merits, the judge visited him in his cell, and there satisfied himself of his present deranged condition, and without referring the question to a jury, or making further public inquiry, refused to try him. (New Crim. Law. I., sec. 376 [4], note, par. 9. See also Jones vs. S., 13 Ala., 153; In re Ross, 38 La. Ann., 523; Marler vs. S., 67 Ala., 55, 42 Am. R., 95; Hoiss vs. S., 79 Wis., 513; McQuinn's Petition, 65 N. H., 84; Bennett vs. S., 57 Wis., 69; 46 Am. R., 26; French vs. S., 85 W., 400; 39 Am. St., 855; P. vs. McElvaine, 125 N. Y., 596; Perry vs. S., 87 Ala., 30.)"

Every person charged with the commission of a crime in the courts of these Islands is entitled to the protection afforded by the presumption of innocence until, and unless he is proved guilty in the course of a trial wherein he has a constitutional right to be present at all stages of the proceedings; to be confronted with and to cross-examine the witnesses against him; and to call witnesses, and to appear and testify in his own behalf. And until final judgment is entered, he is entitled to all the further benefits and protection secured to accused persons by law, in both the trial and appellate courts. He may move for a new trial on the ground of newly discovered evidence or error in the proceedings. He may show cause why the prescribed penalty should not be imposed upon him in case of conviction. He may submit argument in support of contentions that a judgment of conviction should be modified or reversed. In a word, he is entitled to a full and fair hearing upon the charges preferred against him. Needless to say that none of these sacred rights are, or can be secured to one who is insane, or of unsound mind at the time of his trial.

The decision of this court in the case at bar, while it declares that the defendant committed the acts with which he is charged, relieves him of criminal liability therefor; but since the accused, as the decision further declares, was insane at the time of the trial, and is still insane, who knows whether if he were in his right mind he might not be able to produce evidence which would conclusively establish the fact that he did not commit the acts charged in the information, and that he was not even present at the time and place mentioned therein.

Instances of charges preferred against insane persons in order to draw suspicion away from the real criminals are not unknown in the annals of criminal jurisprudence. Sane persons have been known to lose their reason when made the victims of conspiracies to secure their conviction upon unfounded, false, and malicious criminal charges. Justice cannot be done by the form of a trial of such persons while they are insane and wholly incompetent to defend themselves.

I submit that the intolerable wrong done to a person of unsound mind and to his family by a solemn judgment that he committed acts which in a sane person would amount to murder, rape, arson or some other heinous offense, if in fact he did not commit such acts, is not cured by a further declaration that he committed these acts while he was insane and that he is therefore relieved of criminal liability therefor. And I submit further, that no such judgment can properly be entered as a result of a criminal prosecution wherein the defendant appears to be of unsound mind at the time of the trial.

I have found no modern authorities sustaining a contrary view to that set out in the foregoing citations, and I am convinced that this court has been led into error by a failure to distinguish between a defense set up by an accused person, who is sane at the time of his trial, on the ground that he was insane at the time when he committed the acts with which he is charged, and a plea advanced by a counsel on behalf of an accused person that he is insane at the time of the trial. I have urged my brethren in this case as well as in another similar case, recently decided, not to content themselves with a judgment relieving the accused of the criminal liability on the ground of insanity when he committed the acts charged in the complaint, it affirmatively appearing that he was insane at the time of the trial or pending his appeal to this court. It is for this reason also that I have thought it worth while, for the

benefit of the bench and the bar, to set forth my views as to what I believe to be, at least, the better practice to be followed in the trial courts, when a question arises as to the sanity of the accused.

(1) When a defense of insanity at the time of the commission of the alleged criminal acts is set up, but no question as to the sanity of the accused arises at the time of the trial: The trial should, of course, proceed to judgment, and if the defense of insanity is sustained, the accused should be declared to be exempt from criminal responsibility.

(2) If it appears to the satisfaction of the court that the accused is insane when his case is called for trial, no further proceedings should be had until, and unless the accused recovers his reason, except such as may be necessary to secure such detention and treatment of the insane person as the circumstance of his mental derangement and the nature of the crime with which he is charged, may require.

(3) If after the trial has commenced and before judgment has become final in the Court of First Instance, it affirmatively appears to the satisfaction of the trial judge that the accused is then insane, the criminal prosecution should be at once suspended and all proceedings had while the accused was of unsound mind, other than those looking to the verification of these facts, should be declared of no effect; appropriate measures should be taken to secure such detention and treatment of the insane person as his mental derangement and the nature of the offense with which he is charged may necessitate; and the information or complaint should be dismissed, if there is no present prospect that the accused will recover his reason, without prejudice to the right of the prosecution to file a new complaint or information if, and when the accused is restored to health.

(4) If upon appeal, it appears to the satisfaction of the appellate court that the accused was insane at the time of the trial, like orders should be issued by that court.

(5) If upon appeal, it affirmatively appears that the convict in the court below, though sane at the time of his trial, has become insane pending his appeal, the proceedings on appeal should be suspended until it appears that the accused has recovered his reason, whereupon the proceedings on appeal should be prosecuted to final judgment, affirming or reversing the judgment in the court below. In this case also, appropriate orders should be issued looking to the detention and treatment of the insane person pending the final outcome of the proceedings.

(6) Proceedings in the nature of an inquiry as to the sanity of an accused person at the time when such proceedings are had for the purpose of ascertaining whether he is competent to defend himself, and whether he should be detained and treated as an insane person, are to be sharply distinguished from the proceedings had in the course of a criminal prosecution to determine whether a defense that the accused was insane at the time when the alleged crime was committed, is, or is not well founded.

The former class of proceedings are essentially civil in their nature, and since they do not constitute an inquiry as to the guilt or innocence of the defendant of a crime charged against him, and involved no question as to whether the penalties prescribed in the Penal Code should or should not be imposed upon him, it is not necessary that in the course of such proceedings the constitutional guarantees, which are secured to all persons on trial for the commission of a crime be extended to him. On the other hand, when the question to be determined is that of the sanity or insanity of the accused at the time when the alleged crime was committed, there being no question as to his sanity at the time of the trial, the accused is entitled to the protection afforded by the constitutional guarantees throughout the whole course of the proceedings.

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