

JOSE CRISOSTOMO, PETITIONER, VS. THE DIRECTOR OF PRISONS, RESPONDENT.

G. R. No. 17260. February 07, 1921

Ponente: MALCOLM, J.

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MALCOLM, J.:

The petitioner has prosecuted a writ of habeas corpus in this court in order to have an inquiry made as to whether or not he is unlawfully restrained of his liberty by the Director of Prisons.

The petitioner is serving sentences in Bilibid Prison by virtue of judgments rendered by the Court of First Instance of the city of Manila in criminal cases Nos. 17096, 17108, and 17756. He alleges as the principal ground of his complaint that the Court of First Instance of the city of Manila had no jurisdiction to try these cases or to render judgments therein inasmuch as no new informations were filed in the court at the time the cases were tried on appeal from the municipal court. It is, however, admitted that the informations filed by the city fiscal in the municipal court were read to the defendant in the Court of First Instance upon arraignment and no objection to their sufficiency was there raised.

The single question presented is, consequently, purely legal, and is this—When in a criminal case the defendant appeals from a judgment of the municipal court of the city of Manila to the Court of First Instance of the city of Manila, is it necessary to present in the latter court a new information in order that it may acquire jurisdiction to try and decide the case?

The procedure on appeal from the municipal court of the city of Manila to the Court of First Instance is provided for in a section of the Manila Charter. This portion of the law found in the Administrative Code, section 2473, reads as follows:

"An appeal shall lie to the Court of First Instance next to be held within the city, in all cases where fine or imprisonment, or both, is imposed by the municipal court. The party desiring to appeal shall, before six o'clock postmeridian of the day after the rendition and entry of the judgment by the municipal court, file with the clerk of the court a written statement that he appeals to the Court of First Instance. The filing of such statement shall perfect the appeal. The judge of the court from whose decision appeal is taken shall within five days after the appeal is taken, transmit to the clerk of the Court of First Instance a certified copy of the record of proceedings and all the original papers and process in the case, and the clerk of the Court of First Instance shall docket the appeal in that court. A perfected appeal shall operate to vacate the judgment of the municipal court, and the action, when duly entered in the Court of First Instance, shall stand for trial de novo upon its merits in accordance with the regular procedure in that court, as though the same had never been tried and had been originally there commenced. Pending an appeal, the defendant shall remain in custody unless released in the discretion of the judge of the municipal court or of the judge of the Court of First Instance, upon sufficient bail, in accordance with the rules and regulations now or hereafter in force, to await the judgment of the appellate court."

It will be noted that the law provides that "A perfected appeal shall operate to vacate the judgment of the

municipal court, and the action, when duly entered in the Court of First Instance, shall stand for trial de novo upon its merits in accordance with the regular procedure in that court, as though the same had never been tried and had been originally there commenced." A trial de novo, it has been said, means a new trial in the same manner, with the same effect, and upon the same issues as the case was tried in the lower court, in accordance with the rules of practice in the appellate court. (*Sandlin vs. State* [1910], 3 Okla. Cr., 578; *State vs. Fort* [1909], 164 Ala., 578.) The word "trial" means proceedings in open court after the pleadings are finished and the case is otherwise ready, down to and including the rendition of the judgment. The prior existence of an information would accordingly seem to be implied.

The Code of Civil Procedure contains a section (75) with the caption, Effect of Appeals, which is almost literally the same as the pertinent part of section 2473 of the Administrative Code. But in addition the Code of Civil Procedure contains another section (112) explicitly providing for the filing of new pleadings in the action in the Court of First Instance. This difference between the Manila Charter and the Code of Civil Procedure is eloquent proof of the legislative intent.

The Code of Criminal Procedure in its section 54, while making use of different words than are found in section 2473 of the Administrative Code, reaches much the same result. It says that "All cases appealed from a justice's court shall be tried in all respects anew in the court to which the same are appealed." In construing this provision, the Supreme Court has held in effect that upon appeal by a defendant in a criminal case from a judgment of the justice of the peace, the Court of First Instance may permit a new complaint to be filed if it relates to the criminal act for which the defendant was tried by the justice of the peace. (*Andres vs. Wolfe* [1905], 5 Phil., 60.) The dissenting Justice in the cited case even went so far as to state that "To allow the fiscal to file a new complaint in a criminal cause appealed from the court of a justice of the peace is a dangerous practice and should not be allowed. To permit this would be to create the possibility of placing the defendant upon trial for a different offense than that for which he was tried in the court below." In the later decision of this court in *Carroll and Ballesteros vs. Paredes* ([1910], 17 Phil., 94) it was said: "The nature of the action cannot be changed in the Court of First Instance but must be tried de novo upon its merits on the same process and pleadings; that is, the process and pleadings must be of the same nature as those in the justice of the peace court. The prosecuting officer, however, can substitute his own complaint for that filed in the justice of the peace court, provided the nature of the action is not changed."

The foregoing is reenforced by the general rule of criminal law extant in the United States. The American courts recognize that a new complaint or information need not be filed on an appeal from a conviction before a magistrate, where the statute provides that the accused shall be tried de novo in the appellate court, but the original complaint or affidavit filed before the justice may be used. (16 C. J., 383.)

It must be observed also that upon the arraignment of the defendant in the criminal cases under consideration in the Court of First Instance, the informations filed in the municipal court were read to him and he pleaded not guilty. This was in effect the filing of new informations by the prosecution. It was an election to stand upon the informations presented in the municipal court. The defendant was, therefore, fully informed of the nature and cause of the accusation.

We are persuaded that the prosecution was under no obligation to file new informations in the Court of First Instance on appeals by the defendant from the municipal court of the city of Manila. Accordingly the petitioner makes out no case and the application must be denied with costs. So ordered.

Mapa, C. J., Araullo, Street, and Villamor, JJ., concur.

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