

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ANDRES COVACHA, DEFENDANT AND APPELLANT.

G.R. No. 29476. January 31, 1929

Ponente: JOHNSON, J.

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JOHNSON, J.:

It appears from the record that on the 13th day of January, 192S, the prosecuting attorney of the Province of Iloilo presented a complaint against said defendant, charging him with the offense of desacato. Said complaint alleged:

"Que en o hacia el 21 de mayo de 1927, el referido acusado, siendo Sheriff Provincial Delegado, de la Provincia de Negros Occidental, recibio como tal el emplazamiento y copia de la demanda en el asunto civil No. 6077 del Juzgado de Primera Instancia de Iloilo, titulado 'Hoskyn & Co., demandante, contra Jose R. Borromeo, demandado,' para su cumplimiento, pero en vez de emplazar al citado demandado, cual era su deber, el citado acusado con manifiesta negligencia en el desempeno de sus deberes, ilegal y criminalmente no hizo caso, ni ha dado cuenta al citado Juzgado de Primera Instancia de Iloilo de su cumplimiento hasta la fecha, no obstante haber sido requerido por el abogado de Hoskyn & Co., que diese cuenta de su cometido. Con infraccion de la ley."

Upon said complaint the defendant was duly arrested, arraigned, pleaded not guilty, wias tried, found guilty of the offense of contempt as defined in section 232 of Act No. 190, and sentenced to pay a fine of P100, with subsidiary imprisonment in case of insolvency and to pay the costs. From that sentence the defendant appealed, and now contends that neither the facts stated in the complaint nor the evidence adduced during the trial show that he is guilty of the offense of contempt. The Attorney-General in a carefully prepared brief reached the conclusion that the facts stated in the complaint and proved during the trial are sufficient to justify the sentence of the lower court, and recommends its confirmation.

The facts upon which the lower court found the defendant guilty of contempt, are stated in its decision as follows:

"Son hechos probados en esta causa que, presentada en este Juzgado de Primera Instancia una demanda civil, registrada con el No. 6077, en que era demandante Hoskyn & Co., representada por el abogado Sr. Jose F. Orozco, y habiendose expedido el correspondiente emplazamiento del demandado Jose R. Borromeo, residente en Negros, dicho abogado Sr. Orozco, en 16 de mayo de 1927, por correo certificado remitio al Sheriff Provincial de Negros Occidental el citado emplazamiento del demandado acornpanado de la carta, cuya copia es el Exhibit A; y el Sheriff Provincial de Negros Occidental, con residencia en Bacolod, cabecera de la provincia recibio dichos carta y emplazamiento el 21 de mayo de 1927, segun la tarjeta de la Oficina de Correos, Exhibit B. No habiendo recibido contestacion alguna el abogado Sr. Orozco, en 24 de junio de 1927, por correo certificado, dirigio ai Sheriff Provincial de Negros Occidental la carta, cuya copia es el Exhibit C, preguntando si no ha sido emplazado el demandado Jose R. Borromeo en la causa civil No. 6077. Esta segunda carta, tampoco obtuvo contestacion, y por tal motivo el abogado Sr. Orozco, en 24 de julio de 1927, dirigio al Sheriff Provincial de Negros Occidental la carta cuya copia es el Exhibit E, donde se preguntaba al Sheriff por el resultado del emplazamiento del demandado Jose R. Borromeo.

"Esta tercera carta del abogado Sr. Orozco mereció al fin la contestación Exhibit F, escrita por el acusado en esta causa, que actuaba como Sheriff Provincial delegado de Negros Occidental, en representación del Sheriff Provincial, que era el Gobernador Provincial de Negros Occidental. En esta carta el acusado Andres Covacha se limita a informar al abogado Sr. Orozco que el emplazamiento del demandado Jose R. Borromeo en la causa civil No. 6077 ha sido remitido al Sheriff delegado Roque F. Marco en 9 de junio de 1927 y no devuelto hasta la fecha de la carta, 27 de julio de 1927.

"El emplazamiento del demandado Jose R. Borromeo en la causa civil No. 6077 del Juzgado de Primera Instancia de Iloilo, enviado al Sheriff Provincial de Negros Occidental desde el 16 de mayo de 1927, hasta ahora no ha sido cumplimentado por dicho Sheriff Provincial; y el abogado Sr. Orozco, como abogado de la demandante Hoskyn & Co. en la citada causa civil No. 6077 tuvo que pedir al Juzgado el nombramiento de un Sheriff especial y un nuevo emplazamiento del citado demandado, para que este emplazamiento pueda ser cumplimentado.

* * * * *

"El emplazamiento del demandado Jose R. Borromeo en la causa civil No. 6077 de este Juzgado de Primera Instancia, fue enviado al Sheriff Provincial de Negros Occidental para su cumplimiento; y este emplazamiento fue recibido por el acusado en esta causa, en su capacidad de Sheriff Provincial delegado, el unico nombrado por el Sheriff Provincial o Gobernador Provincial de Negros Occidental; y al proceder dicho acusado cpij dicho emplazamiento, en la forma en que lo ha hecho como ha resultado y probado en la vista de esta causa, dicho acusado incurrió en el delito de desacato definido en el artículo 23, del Código de Procedimiento Civil."

The facts, as disclosed by the record, are simple and may be stated as follows:

- (1) That during the period from May 16, 1927, to March 13, 1928, the defendant was a deputy provincial sheriff of the Province of Occidental Negros, in charge of the office of the provincial sheriff; and that the provincial sheriff was the governor of said province, Hon. Jose C. Locsin.
- (2) That on May 21, 1927, a letter was received in the office of the provincial sheriff of Occidental Negros from Attorney Jose F. Orozco, together with a summons directed to Jose R. Borromeo, a resident of the municipality of Bago, of said province, who was the defendant in a civil case then pending in the Court of First Instance of Iloilo. Said letter was addressed to the "Sr. Sheriff Provincial, Bacolod, Negros Occidental." In said letter Orozco requested the provincial sheriff to serve upon said Borromeo the summons and to make a return of the service. (Exhibits A and B.)
- (3) That the defendant, as the officer in charge of the office of the provincial sheriff, transmitted said summons on June 9, 1927, that is, nineteen days after its receipt, to Roque F. Marco, another deputy sheriff, who was in charge of serving summonses in that section of the province where the municipality of Bago is located.
- (4) That on June 24, 1927, Attorney Orozco sent a letter to the provincial sheriff of Occidental Negros, inquiring about said summons, which letter was received in the office of the provincial sheriff on July 5, 1927. (Exhibits C and D.) Orozco received no reply to said letter.
- (5) That on July 24, 1927, Orozco sent to the provincial sheriff a second letter of inquiry (Exhibit E), to which the defendant on July 27, 1927, answered, stating that the summons had been sent to deputy sheriff Roque F. Marco on June 9, 1927, and that the latter had not yet made a return of service. (Exhibit F.)
- (6) That up to the date of the trial (March 13, 1928) no return of service of said summons has been made by the defendant, and that Orozco had to get another summons and a special sheriff to serve the same.

From the foregoing facts it clearly appears that the defendant, acting as provincial sheriff of Occidental Negros,

without excuse or justification and with misbehavior and gross negligence in the performance of his official duties, failed to make return of service of a summons sent to him. He made no effort during the trial of the cause to justify or to excuse his failure to comply with the order of the court in serving said summons. Under the provisions of the Administrative Code the sheriff and his deputies are officers of the court, and as such, must comply with the orders and serve the processes of the court.

Section 183 of the Administrative Code enumerates the powers and duties of provincial sheriff. Paragraph (c) of said section provides that the sheriff "shall serve all writs, execute all processes, and carry into effect all orders issuing from the Court of First Instance or made by any judge thereof, etc." It is therefore an official duty of the sheriff, as an officer of the court, to serve all summonses and processes and to make a return of the service of such orders and processes to the court. The sheriff is an officer of the court.

The question which now arises is: Does the failure of the defendant, as provincial sheriff and as an officer of the court, to make a return, of service of the summons sent to him, addressed to Jose R. Borromeo, amount to a contempt of court, as that phrase is defined in section 232 of Act No. 190?

Section 232 of Act No. 190, as amended by Act No. 3170, reads as follows:

"SEC. 232. What other Acts are contempts of court—A person guilty of any of the following acts may be punished as for contempt:

"1. Disobedience of or resistance to a lawful writ, process, order, judgment, or command of a court, or injunction granted by a court or judge;

"2. Misbehavior of an officer of the court in the performance of his official duties, or in his official transactions ;

"3. A failure to obey a subpoena duly served;

"4. The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of the court held by him; and

"5. The person defeated in a civil action concerning the ownership or possession of real estate who, after having been evicted by the sheriff from the realty, etc., shall enter or attempt to enter upon the same for the purpose of executing acts of ownership or possession, etc."

The foregoing provisions of section 232 of Act No. 190 enumerate the acts which are considered as contempts of court. "Misbehavior" is defined; by Bouvier as "improper or unlawful conduct." (Vol. 2, Bouvier's Law Dictionary, p. 2221.) "Misbehavior" may further be defined as a wilful refusal or negligent failure, without just cause, of an officer of the court to comply with an order of the court.

The Attorney-General in recommending a confirmation of the sentence appealed from, relies not only on section 232 of Act No. 190 but also on the decision of this court in the case of *United States vs. Manalo* (14 Phil., 747). In that case this court, speaking through Mr. Justice Moreland, said: "Defendant was convicted of neglect of official duty as a deputy sheriff, having failed to arrest one of the two persons named in an order of arrest issued by the court below, and was sentenced, under section 232-240 of the Code of Civil Procedure, to pay a fine of P100, with twenty-five days imprisonment in case of insolvency. An officer of the court who is negligent in the performance of his official duties held to be guilty of contempt, it being essential for the proper administration of justice that courts have complete control over the official acts of those through whom the administration of their affairs proceeds."

In the present case the appellant was a deputy sheriff and an officer of the court. He willfully and negligently

failed to serve a process of the court, thereby interfering with the due and regular procedure of the work of the court. It is not only admitted, but the record clearly shows, that a regular summons was issued by the clerk of the court and placed in the hands of the appellant, who failed utterly to serve the same. He does not even now attempt to justify his failure to comply with the order of the court and the law. He received the summons on the 21st day of May, 1927, and never did serve the same. He, therefore, contemptuously violated the order of the court and interfered with the due administration of justice. We fully agree with the findings of the lower court upon the question of the interference with the administration of justice by the appellant's refusal to serve said summons.

Some question has been raised concerning the sufficiency of the evidence found in the record to justify the sentence of the lower court. Some objection has been made because the copy of the summons was not made a part of the record.

The record clearly discloses that the regular summons provided for by law was issued in the regular way and placed in the hands of the defendant to be served. We think that the evidence amply justifies the conclusions of the lower court. A careful study of the entire record and the law applicable to the facts, fully justifies the findings of the lower court and the sentence imposed by it.

And, without any further argument, we are of the opinion and so decide that the defendant is guilty of contempt as defined in section 232 of Act No. 190, as has been interpreted by this court. Much more might be said concerning¹ the culpability of the defendant as an officer of the court, who directly and perhaps intentionally interfered with the administration of justice. We find no escape from a confirmation of the sentence appealed from. The same is, therefore, hereby affirmed, with costs. It is so ordered.

Street, Malcolm, Villamor, Ostrand, Romualdez, and Villa-Real, JJ., concur.

DISSENTING

JOHNS, J.:

We concede that, if it be a fact that in this case a legal summons was duly issued out of the court and by the clerk of the court and under the seal of the court, and that such facts are proven by competent evidence, the defendant would then be guilty of contempt of court under subdivision 2, section 232, of Act No. 190, as amended by Act No. 3170, and that he should be severely punished.

We also concede that where it can legally do so, it is the duty of the court to prevent delay in the administration of justice.

Even so contempt proceedings are quasi judicial and are to be tried and tested by the rules of criminal law and criminal evidence. Hence, to sustain the conviction in this case, it devolved upon the prosecution to both allege and prove that the summons in question was issued by the clerk of the court, by order of the court and under the seal of the court, and that in all things and respects, it was a legal summons, and there is no legal proof in the record that the summons in question was ever issued by the clerk of the court, by order of the court or under the seal of the court. Neither the summons in question nor an authenticated copy was ever offered in evidence, and are not in the record, and there is no legal proof of any kind, nature or description that the summons in question was issued by the clerk of the court, by order of the court or under the seal of the court. In the absence of such proof, upon what legal principle can the defendant be found guilty of contempt of court for the failure or neglect to serve a summons which, to be valid, must be issued by the clerk, by order of the court and under the seal of the court? In addition to all that, the clerk of the court, who is the only person who has a legal right to issue a

summons, was not even called as a witness for the prosecution, and hence never testified that he ever issued the summons in question in any manner, shape or form. In the instant case, the defendant has been tried and found guilty upon the bare and naked assumption that he was guilty, and it devolved upon him to prove his innocence. That is not the law. It devolved upon the prosecution to prove his guilt beyond a reasonable doubt, and upon that question there is not only a failure of proof, but there is no legal proof of any kind that the summons placed in the hands of the defendant for service was ever issued by the clerk of the court on the order of the court or that it was under the seal of the court, and for such reasons, I dissent from the majority opinion.

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