

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ARSENIO BORJAL, DEFENDANT AND APPELLANT.

G.R. No. 37337. March 28, 1933

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Later, upon motion based on newly discovered evidence, this court granted a new trial. The resolution granting a new trial, reads as follows:

The appellant in this case was convicted of the crime of rape by the Court of First Instance of Abra, and sentenced to seventeen years, four months and one day of reclusion temporal, with the accessory penalties provided by law, to indemnify the offended party in the sum of P500, and, to pay the costs. On appeal, this court, in a decision promulgated on September 8, 1931, affirmed said judgment.[1]

"Upon consideration of the motion of the attorney for the accused and appellant in case G. R. No. 34703, the People of the Philippine Islands vs. Arsenio Borjal, praying that the decision heretofore rendered therein be reconsidered and set aside, and that the record be remanded to the court below for new trial, and of the objection interposed thereto by the Attorney-General, IT IS ORDERED that the motion be granted. After ten days let final judgment be entered remanding the record to the lower court, with instructions to grant the accused a new trial, without special pronouncement as to costs."

Pursuant to this resolution, the case was again called for trial in the court below. Instead, however, of presenting its witnesses, the prosecution rested its case with the following statement:

"FISCAL. Voy a reproducir todas las pruebas presentadas en la vista original de esta causa, inclusive los documentos y todos los exhibits, y por ahora no presento pruebas adicionales."

The defense objected to the procedure adopted by the prosecution, and moved that it be required to call its witnesses. This motion was denied, to which ruling the defense duly excepted.

On this appeal, the appellant assigns the following errors as having been committed by the lower court, namely:

"I. The court a quo erred in not requiring the prosecution to present anew at the new trial all the evidence against the accused.

"II. The court a quo erred in discrediting Exhibits 1 and 4, and in rejecting Exhibits 2 and 3.

"III. The court a quo erred in convicting the accused on the evidence taken at the original hearing.

"IV. The court a quo erred in holding that the evidence of record is sufficient to prove his guilt beyond reasonable doubt.

"V. The court a quo erred in not acquitting the accused herein."

By its resolution of September 26, 1931, this court granted the appellant a new trial without any qualification. It

seems well settled that the effect of an order granting a new trial is to wipe out the previous adjudication. Consequently, the case stands as if there had never been a trial. In *United States vs. Ayres* (9 Wall., 609, 610; 19 Law. ed., 627), the Supreme Court of the United States said: "But, it is quite clear, that the order granting the new trial has the effect of vacating the former judgment, and to render it null and void, and the parties are left in the same situation as if no trial had ever taken place in the cause. This is the legal effect of the new trial by a court competent to grant it."

Whenever this court intended to restrict the effect of an order granting a new trial, it did so in express terms. Thus in *United States vs. Tan* (4 Phil., 625, 627), this court said: "It is therefore ordered that the judgment appealed from be reversed and the case remanded to the court below for a new trial, in which new trial it will not be necessary to retake the evidence already taken and appearing in the cause, but either party will have the right to present such other evidence as he sees fit." (See *U. S. vs. Singuimuto*, 3 Phil., 176, 184; *U. S. vs. Dacanay*, 6 Phil., 367, 368.) In a case recently decided, this court, in passing upon a question somewhat similar to the one under consideration, said: "When this court remands a criminal case for new trial without restriction, the previous adjudication is wiped out and the case should proceed de novo and be conducted, as far as practicable, as if there had been no previous trial. (*U. S. vs. Dacir*, 26 Phil., 503, 517.) But the order granting the new trial may restrict the same to particular issues or particular parties, or permit both the prosecution and the defense to offer such further and additional evidence as they may desire to submit without the necessity of retaking the evidence already in the record. (*U. S. vs. Singuimuto*, 3 Phil., 176, 183.)" (*People vs. Avelino de Linao*, p. 116, ante.)

In the view we take of the case, it must be held that there is absolutely no competent evidence to sustain the judgment of conviction rendered in this case; for the evidence taken and filed on the previous trial cannot be considered as part of the evidence on the new trial. It follows that the judgment of the lower court must be reversed, and the appellant acquitted, with costs de oficio. So ordered.

Avanceña, C. J., Street, Ostrand, and Butte, JJ., concur.

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