

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FRANCISCO LAGUNA ET AL., DEFENDANTS. – FRANCISCO LAGUNA, APPELLANT.

G.R. No. 5533. December 20, 1910

Ponente: MORELAND, J.

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MORELAND, J.:

The defendant in this case was found "guilty of the crime of robbery, with violation and intimidation of the person, with resulting homicide, as the said crime is defined and penalized by article 502 in connection with paragraph 1 of article 503 of the Penal Code," and was sentenced to death. The case comes before us en consulta.

The first question presented for our consideration on this appeal is one of the fact, arising from the claim of the accused that the facts proved are not sufficient to warrant a conviction.

The court below found that -

"On the 26th day of August, 1904, a young woman by the name of Nicolasa Azucena left her home in the village of Concepcion with the intention of going to Ajuy, where she was to act as godmother at a christening. She was accompanied by her cousin, Bonifacio de Castro, and by two other men, Roman Alfonso Molina and Tomas Punsalan. They walked along the road leading to Ajuy, carrying with them some clothing as well as certain small articles of jewelry and adornment to be used at the christening. They were overtaken on the way by darkness, but continued their journey until they arrived at a bridge known as Tibit, situated in a lonely and uninhabited spot, where they heard a voice issuing from the darkness, commanding them to halt. They then saw a group of six men dressed in dark clothes who approached them stating that they were soldiers, or officers of the law, and demanded to see the cedula of the male members of the party. These men, who were all armed with long bolos, rapidly approached the little party of travelers and separated the three men from the girl, two of the band carrying the latter away toward a place called Pinantan, where they made improper proposals to her, which being rejected they beat her with sticks and finally one of them stabbed her in the left breast with a dagger or bolo. The unfortunate girl fell into a ditch by the roadside, where the miscreants left her for dead. She was, however, able to make her way slowly and painfully to the house of Bonifacio de Castro's father, where she died on the following day after making an ante-mortem statement concerning the attack upon her and her companions, Which statement was introduced in evidence and appears in the record. Meanwhile, Bonifacio de Castro, Roman Alfonso Molina, and Tomas Punsalan also fell victims to these bloodthirsty wretches, having been bound and cruelly murdered with the exception of De Castro, who survived the wounds inflicted upon him but became permanently disabled as the result thereof. During the course of these proceedings the assailants forcibly and by means of violence and intimidation possessed themselves of all the property carried by their victims, including Roman Alfonso Molina's and Nicolasa Azucena's clothing, as well as the articles which Nicolasa had brought along for use at the christening. It is unnecessary to dwell further upon the painful details of this heartless crime, it being sufficient to state that the evidence fully and clearly establishes the guilt of the perpetrators of the deed of the complex crime of robbery with homicide, as denned and penalized by article 502 in connection with paragraph 1 of article 503 of the Penal Code, with the aggravating circumstances of the culprits having taken advantage of the cover of darkness, committed the

crime in a gang and in an uninhabited place (par. 15, art. 10, Penal Code); treachery (par. 2, art. 10, Penal Code); employment of craft, fraud, and disguise (par. 8, art. 10, Penal Code); taking advantage of superior strength (par. 9, art. 10, Penal Code); committing the crime with the assistance of armed persons (par. 14, art. 10, Penal Code)."

After an attentive examination of the record in this case and a careful reading of the evidence presented on the trial, we are satisfied beyond question that the defendant is guilty of the crime charged. His guilt is established not only by the direct testimony presented, but also by every circumstance which the case discloses. At the time of Laguna's arrest there was found in his possession part of the clothing taken from the victims of the assault, which the accused expressly admitted to the justice of the peace of the town of Sara was his share of the plunder resulting from the crime. Moreover, when arrested, he was wearing a pair of white trousers marked with the name "Alfonso" and an undershirt bearing the initials "R. A. M.," manifestly part of the clothing of Roman Alfonso Molina. That the accused was one of the perpetrators of this frightful crime can not be doubted.

We have therefore no hesitation whatever in affirming the decision of the trial court upon the facts.

The only other question before the court on this appeal is that of former jeopardy. This question was presented for the first time on appeal, It was not raised in the court below. Passing the question whether or not it can be presented here on appeal for the first time, we are clearly of the opinion that the defense must be disallowed for other reasons.

It appears from the record that the trial, so called, from the judgment of conviction in which this appeal is taken, was the second time that the accused had been tried for this same offense. Some time before his trial in the case at bar he had been tried upon a complaint charging him with the crime of which he now stands convicted and had been found guilty of that offense and sentenced to death. Upon making up the record for transmission to this court to be used en consulta, it was found that that portion of the same containing the testimony could not be found. A careful search through the records of the court, followed by an investigation by the Attorney-General extending over several months, failed to disclose the missing record. That portion of the case which remained intact having in the meantime reached this court, an application was made by the Attorney-General for the return of the record to the trial court in order that the evidence might be retaken for presentation to this court. In response to such application, this court made an order setting aside the judgment of conviction and sentence previously rendered and returning the cause to the trial court for a rehearing. In that trial, conducted by the Hon. James Ross, judge of the Court of First Instance, the defendant was again found guilty of said crime and again sentenced to death.

Upon these facts the defendant raises here the question of former jeopardy, alleging that the second trial was in violation of the Philippine Bill and of the provisions of the Code of Criminal Procedure.

The proceeding in this jurisdiction when the death penalty has been imposed by the trial court is somewhat unusual. Section 26 of the Code of Criminal Procedure, General Orders, No. 58, reads as follows:

"When a defendant shall have been convicted or acquitted or once placed in jeopardy upon an information or complaint, the conviction, acquittal, or jeopardy shall be a bar to another information or indictment for the offense charged, or for an attempt to commit the same, or for a frustration thereof, or for any offense necessarily therein included of which he might have been convicted under such complaint or information."

Section 50 of General Orders, No. 58 [as amended], reads as follows:

"It shall not be necessary to forward to the Supreme Court the record, or any part thereof, of any case in which there shall have been an acquittal, or in which the sentence imposed is not death, unless such case shall have been duly appealed; but such sentences shall be executed upon the order of the court in which the trial was had. The records of all cases in which the death penalty shall have been imposed by any Court of First Instance,

whether the defendant shall have appealed or not, and of all cases in which appeals shall have been taken shall be forwarded to the Supreme Court for investigation and judgment as law and justice shall dictate. The records of such cases shall be forwarded to the clerk of the Supreme Court within twenty days, but not earlier than fifteen days after the rendition of sentence."

It is apparent from these provisions that the judgment of Conviction' and sentence thereunder by the trial court does not; in reality, conclude the trial of the accused. Such trial is not terminated until the Supreme Court has reviewed the facts and the law as applied thereto by the court below. The judgment of conviction entered on the trial is not final, can not be executed, and is wholly without force or effect until the cause has been passed upon by the Supreme Court. In a sense the trial court acts as a commissioner who takes the testimony and reports thereon to the Supreme Court with his recommendation. While in practice he enters a judgment of conviction and sentences the prisoner thereunder, in reality, until passed upon by the Supreme Court, it has none of the attributes of a final judgment and sentence. It is a mere recommendation to the Supreme Court, based upon the facts and the record which are presented with it. This is meant in no sense to detract from the dignity and power of Courts of First Instance. It means simply that that portion of Spanish procedure which related to cases where capital punishment was imposed still survives.

It is evident, therefore, that until the Supreme Court has passed upon the cause en consulta the trial of the accused is not finished, and jeopardy, although it may have attached, has not been terminated. In principle, it is very much like those cases in which it has been held that, though, in general, jeopardy begins when the trial begins, yet if afterwards, and before a decision has been reached, some unforeseen circumstance arises which renders it impossible for the trial to proceed or for a valid judgment to be rendered, the trial may be suspended and the defendant again put on trial for the same offense. Whether this exception with respect to the general rule relating to former jeopardy is put on the ground of necessity which requires a modification of the doctrine in the interests of public justice *Nugent vs. State*, 24 Am. Dec, 746; *People vs. Goodwin*, 18 Johns., 187), or whether on the ground that the supervening facts show that no jeopardy ever existed (*Bishop's Crim. Law*, par. 1031; *Mixon vs. State*, 55 Ala., 129; 4 Crim. L. Mag., 488), or whether on the ground that though jeopardy has attached it has never ended (*Wharton's Crim. PL & Pr.*, par. 508; 4 Crim. L. Mag., 488), the result is the same.

In the case of *Simmons vs. U. S.* (142 U. S., 148), it was held that when it is made to appear to the court during the trial of a criminal case that either by reason of facts existing when the jurors were sworn but not then disclosed or known to the court, or by reason of outside influence brought to bear on the jury pending trial, the jurors or any of them are subject to such bias or prejudice as not to stand impartial between the government and the accused, the jury may be discharged and the defendant put on trial by another jury, and the defendant is not thereby twice put in jeopardy within the meaning of the fifth amendment to the Constitution of the United States. This principle is laid down and followed in *People vs. Goodwin* (18 Johns., 187); *Mixon vs. State* (55 Ala., 129); *State vs. Emery* (59 Vt., 84); *State vs. Falconer* (75 Ia., 416); *U. S. vs. Perez* (9 Wheat., 579); *Commonwealth vs. Bowden* (9 Mass., 494); *Commonwealth vs. Purchase* (2 Pick., 521); *State vs. Washington* (89 N. C, 535); *State vs. Washington* (90 N. C, 664); *Re Ascher* (130 Mich., 540); *U. S. vs. Ballentine* (4 Phil. Rep., 672).

It was not intended by the provisions of the Constitution or of the Code of Criminal Procedure providing against an accused being placed twice in jeopardy for the same offense to destroy or disrupt the system of procedure which is provided for the trial of criminals in the country in which such provisions are in force. The purpose of such constitutional provisions is simply to protect the accused from going through a second time the proceedings which constitute the trial under the system then in vogue, whatever that system may be. Here the proceedings which constitute the trial of the accused are not terminated by that portion had in the Court of First Instance. They are terminated only when the Supreme Court has passed upon them en consulta. Until that time arrives, jeopardy, although it has attached, has not terminated, and during that time the proceedings may, by reason of unforeseen

circumstances, be suspended and the case returned for action de novo.

Every person who finds himself in a court of justice, in whatever capacity, must hold himself while there subject to those unforeseen events which suddenly and unavoidably intervene and change the whole aspect of things. The sickness or death of the judge, or of counsel for the prosecution, the destruction by fire or flood of the court-house and all the records and evidence of the pending trial - any of these things are sufficient to interrupt the course of the proceedings and to require that they be begun anew. Such events weigh equally against all. As no one can be charged with their occurrence, so no one can legally lose or profit by their results. While the law protects persons charged with crime from the unjust and arbitrary acts of man, there is no shield which may be interposed against the tyranny of unforeseen events. Until the proceedings which, under the system which the law provides, constitute his trial are terminated, the happening of an unforeseen event which renders the continuance of his trial for the time impossible, as it can not be used for his conviction, can not be urged for his absolution. As the burning of this court-house with all the criminal records which it contains could not be used as a basis for the affirmance of the convictions of all those whose causes are pending in this court, so the same event could not be urged as a reason for the delivery of such persons from jail on the ground that a retrial would be a second jeopardy.

The requirement that the Supreme Court pass upon a case in which capital punishment has been imposed by the sentence of the trial court is. one having for its object simply and solely the protection of the accused. Having received the highest penalty which the law imposes, he is entitled under that law to have the sentence and all the facts and circumstances upon which it is founded placed before the highest tribunal of the land to the end that its justice and legality may be clearly and conclusively determined. Such procedure is merciful. It gives a second chance for life. Neither the courts nor the accused can waive it. It is a positive provision of the law that brooks no interference and tolerates no evasions. Unforeseen and fortuitous events interrupt it only for the moment. When they are spent, the measured power of the law resumes its way and its unfulfilled provisions proceed to enforcement.

So when the proceedings which constituted the trial of the accused in this case under the system of procedure in force here were interrupted and stayed by the destruction of the most important element in the record of the cause, that portion of the proceeding's which, perhaps, most perfectly assures the protection of his rights had not yet been fulfilled. In other words, when the accident to the record occurred, the accused had not yet been fully tried; the cause, on the part of the prosecution as well as the accused, had not been terminated. It was still in progress. It was not then known, in reality, whether he was convicted or acquitted. Certain recommendations had been made by the Court of First Instance, but they had not been passed upon or even considered. To sustain the plea of former jeopardy, it is necessary not only that jeopardy shall have attached but that it shall be terminated; that is, that the proceeding on account of which the jeopardy exists shall have ended. To terminate jeopardy, it is not necessary that there be a formal final judgment of conviction or acquittal. Any act of the court terminating the proceeding without the consent of the accused, not founded upon some constraining necessity arising from circumstances over which the court has no control, terminates the jeopardy, and a retrial violates the constitutional rights of the accused. Such an act is, by operation of law, an acquittal of the accused.

Jeopardy can not be terminated by an accident. Such an event merely interrupts or suspends it. Generally speaking, the law does not operate upon pure accidents or lend legal force or significance to them as such. This is especially so in matters of procedure.

It is possible that a different question would have been presented if the loss of the record had been due to the negligence of the officer of the law who had it in charge. We would then have had before us the question of how far an accused person may be made to suffer for the negligence or blunders of those officers of the law who have

to do with his trial or with the records relating to it. In the case actually before us there is evidence only of the loss of the record by accident, pure and simple, without negligence on the part of any person charged with a duty.

Under the Spanish system a person was not in jeopardy in the legal sense until there had been a final judgment in the court of last resort. That this was the case may be seen from reading the Spanish authorities:

"After a man, accused of any crime, has been acquitted by the court, no one can afterwards accuse him of the same offense * * *." (Pueblo Real, law 18, title 20, book 4.)

"It is another of the general exceptions that a person can not be accused who has formerly been accused and adjudged of the same crime, since the most essential of all judicial decisions upon which execution can issue is to constitute unalterable law." (Ency. of Law, Lorenzo Arrazola, vol. 1, p. 511.)

"If a man is acquitted by a valid judgment of any offense of which he has been accused, no person can afterwards accuse him of the offense * * *." (Seven Partidas, law 12, title 1, partida 7.)

Under that system the lower courts were regarded as examining courts, having preliminary jurisdiction, and the accused was not fully convicted or acquitted until the case had been passed upon by the Audiencia, or supreme court, whose judgment was subject to review in the supreme court at Madrid for errors of law, with power to order a new trial. The trial was regarded as one continuous proceeding, and the protection given was against a second conviction after this final trial had been concluded in due form of law. The change made by the introduction of American law affected only those cases where the capital penalty is not imposed. As to those cases, the Spanish system remains in force by virtue of the provisions of the Code of Criminal Procedure above quoted. (Kepner vs. United States, 195 U. S., 100.)

It necessarily follows, then, that the former jeopardy which the accused pleads as a defense was not terminated and the retaking of the evidence before Judge Ross was not a second jeopardy.

For these reasons the judgment of conviction and the sentence imposed thereunder are hereby affirmed, and the judgment and sentence of the court below are made the judgment and sentence of this court. So ordered.

Arellano, C. J., Torres, Johnson, and Trent, JJ., concur.

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