

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. GO-LENG, DEFENDANT AND APPELLANT.

G.R. No. 6707. February 08, 1912

Ponente: MAPA, J.

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MAPA, J.:

The defendant appeals from a judgment convicting him of a violation of Act No. 1761, wherein he was sentenced to six months' imprisonment, a fine of P300, and, in default of such payment, to the corresponding subsidiary imprisonment at the rate of one day for each 12 pesetas and a half he fails to pay, not to exceed one-third of the time of the principal penalty, and to payment of the costs.

It is a fact which we find to be sufficiently proven that on the date mentioned in the complaint, an internal-revenue agent went to the defendant's house and found in various places therein two little cans and a small horn jar, all containing opium; another small tin with about 50 grams of opium ashes; scales for weighing opium; a pan for cooking the said drug, and two small lamps such as are used in smoking opium. This fact effectively sustains the finding in the judgment appealed from as to the defendant's guilt.

Counsel for the defense alleges that the trial court obliged the defendant to stand trial without the assistance of an attorney, and refused to allow his request for time to procure such counsel for his defense; this, he alleges, is an error that affects the essential rights of the defendant.

The facts in no manner support this allegation. Nowhere in the record does it appear that any postponement was requested by the defendant for securing counsel. That part of the record in which reference is made to this point reads as follows:

"The above-mentioned case was called for hearing on this date, September 29, 1910, there being present the defendant, not represented by counsel, and the "fiscal representing the United States. On the defendant's being asked whether he could afford to employ a lawyer, he replied in the affirmative, but said that he had been unable to come to an agreement with one as to the amount he should pay him for his services. This court being of the opinion that the defendant is not entitled to the appointment of counsel de oficio, and, declining to recognize the fact of his not having reached an agreement with his attorney in the matter of his fees as a proper excuse for postponing the hearing of this case, orders the reading of the complaint."

The reason of the court for not postponing the hearing is set forth in another part of the record and is as follows:

"The bond given by the defendant in this case was first forfeited; later, the forfeiture was canceled. Another date was set for the hearing, at least two days in advance. The court sees no reason whatever for postponing this case, and still less for showing any consideration to the defendant because he is not represented by counsel, since he does not belong to the class of poor people who are entitled to the appointment of counsel de oficio. If he can not come to an agreement with Mr. Sotto as to the amount of the latter's fees for defending him, the court is not called upon to take the matter into consideration as a ground for postponement and other similar delays."

By order of the court the complaint was duly read to the defendant: the latter acknowledged notification thereof and replied by pleading not guilty. Neither on that occasion, nor before, nor afterwards, nor, in short, at any time during the progress of the trial, did the defendant request the postponement or suspension of the same or raise any objection or protest of any sort against the continuance of the trial. Far from so doing, the record shows that during the presentation of the evidence he cross-examined the witnesses for the prosecution and afterwards testified himself as a witness, notwithstanding that he was advised by the court of his right not to testify unless he desired to do so of his own free will and consent.

These being the facts, the assignment of error contained in the brief filed by defendant's counsel is absolutely devoid of foundation. Accused persons are undoubtedly entitled to appoint an attorney to defend them at trial, or to have one appointed *de officio*, should they ask for one and not possess the necessary means to employ an attorney of their own. But it devolves exclusively upon them to avail themselves of this right. It is one which they are perfectly entitled to waive and they may defend themselves in person. The law expressly authorizes them, as it could not but do, to defend themselves in person, without the assistance of counsel. (Sec. 15, General Orders, No. 58.) It is understood, of course, that they waive their right to be assisted by counsel when they not only do not appoint or request one, but voluntarily submit to trial, and especially when they actually exercise therein the right of defense by cross-examining the witnesses for the prosecution and by introducing evidence in their own behalf, as was done in the present case. It is evident that the defendant herein preferred to defend himself personally in the Court of First Instance and, therefore, he can not be heard to complain that he was not assisted by any attorney in the proceedings there had. When an accused person in a criminal case chooses to defend himself in person, none of his rights are infringed by the fact that the action was prosecuted without the intervention of an attorney in his behalf. In such a case the attendance of the latter is in no wise necessary for the legality and perfect propriety of the proceedings.

In consideration of the circumstances of the case, we are of the opinion that a fine of P300 is a sufficient penalty for the crime committed by the accused.

The judgment appealed from is therefore modified in the sense that the defendant is sentenced only to pay the fine of P300, or, in case of insolvency, to suffer the corresponding subsidiary imprisonment at the rate of one day for each P2.50 which he may fail to pay, and the costs in this instance.

Torres, Johnson, Carson, and Moreland, JJ., concur.

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