

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JUAN LABIAL AND ARCADIO ABUSO, DEFENDANTS AND APPELLANTS.

G.R. No. 8984. March 13, 1914

Ponente: CARSON, J.

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CARSON, J.:

The appellants in this case were convicted in the court below of a violation of paragraph 1 of section 30 of the Election Law, in that they voted illegally at the general elections held in the municipality of Mambajao, Province of Misamis, P. I., on June 4, 1912.

The evidence of record conclusively establishes the guilt of the appellants of the offense with which they are charged and of which they were convicted, and we find no error in the proceedings prejudicial to the rights of the accused.

So far as can be gathered from the record, the accused were not represented by counsel at the trial of the case in the court below, and it does not affirmatively appear from the record whether the trial judge did or did not comply with the provisions of section 17 of General Orders No. 58 as amended by section 1 of Act No. 440, which are as follows:

"If the defendant appears without counsel, he must be informed by the court that it is his right to have counsel before being arraigned, and must be asked if he desires the aid of counsel. If he desires and is unable to employ counsel, the court must assign counsel to defend him. A reasonable time must be allowed for procuring counsel. Section 1 of Act No. 440 provides:

"Section seventeen of General Order Number Fifty-eight, issued from the office of the United States Military Governor in the Philippine Islands on the twenty-third day of April, nineteen hundred, relating to criminal procedure, is hereby amended by adding at the end thereof the following words:

"The counsel so employed or assigned must be a duly authorized member of the bar: Provided, nevertheless, That in provinces where duly authorized members of the bar are not available, the court may, in its discretion, admit or assign some person, resident in the province and of good repute for probity and ability, to act as counsel for the defendant, although the person so admitted or assigned be not a duly authorized member of the bar.' "

Counsel for appellants insists that the judgment of the lower court should be reversed and the appellants acquitted because of the failure of the record to show that the trial judge complied with these provisions of law; and the Attorney-General in a motion dated October 20, 1913, appears to be in accord with counsel for the appellants as to the reversal of the judgment of conviction, but prays that the case be remanded to the court below for a new trial.

In the case of the United States vs. Santos (4 Phil. Rep., 419), this court said: "If on answering the complaint he (the defendant) did so without the assistance of a lawyer, this would not be ground for alleging a defect in the procedure. To be able to urge this, it should first appear that the defendant had asked for the assistance of a lawyer

to answer the complaint and that the trial had proceeded without any attention being paid to his request."

Adhering to the doctrine laid down in that case, the only question to be determined in this case is whether the failure of the record to disclose affirmatively that the trial judge advised the accused of their right to have counsel is sufficient ground to reverse the judgment of conviction and to send the case back for a new trial. Upon this point we are all agreed that in the absence of an affirmative showing that the court below did in fact fail to advise the accused of their rights under the provisions of section 17 of General Orders No. 58, as amended by section 1 of Act No. 440, the mere omission from the record brought here upon appeal of an entry affirmatively disclosing that he did so, is not reversible error.

In the absence of an affirmative showing to the contrary, the court below must be presumed in matters, of this kind to have complied with the provisions of law prescribing the procedure to be followed in the trial had before him.

In Elliott's Appellate Procedure, section 291, the rule as to presumptions in favor of the legality and regularity of the proceedings in trial courts, is stated as follows:

"It is an established rule in criminal cases, as well as in civil cases, that the appellate tribunal will indulge all reasonable presumptions in favor of the legality and regularity of the proceedings of the trial court. Where all the instructions are not in the record those asked by the defendant will be presumed to have been properly refused because included in the instructions given. Where the evidence is not in the record it will be presumed that the instructions were based upon it, and that there was no error, but if the instructions can not be correct upon any supposable state of the evidence this presumption will not prevail. It is held that where the record shows the presence of the accused at the beginning of the trial it will be presumed that he continued in court; this presumption would certainly prevail where it appeared that the accused had an opportunity to make, and did make, all of the motions that could be of service to him. It will be found, on investigation, that the rule that the trial court is presumed to have done its duty and conducted the proceedings legally and regularly is substantially the same in criminal cases as it is in civil cases. There is no valid reason why the rule should be different, nor do the decided cases warrant the conclusion that it is different; on the contrary, the decisions very generally refer to civil cases in support of the conclusions asserted. The doctrine deducible from the decided cases is, it may be said in a general way, that the presumption is, that there was no prejudicial error, and that error must be shown affirmatively by the record, or the presumption will prevail."

The doctrine is further expanded in section 710 of the same author, as follows: "The rule that all reasonable presumptions and intendments will be made in favor of the rulings of the trial court is one of the best settled and most frequently applied rules in appellate procedure. The rule rests on a firm foundation. It is supported by the elementary principle that official acts are presumed to be rightfully performed. But when it is brought to mind that a court acts impartially, upon full information and with calm deliberation, the foundation of the rule stated will at once be perceived to be broader and stronger than that which underlies the rule supporting the acts of ministerial or executive officers."

The doctrine, supported by many citations of authority, is thus stated in the Encyclopedia of Pleading and Practice, volume 2, page 420: "The general assumption obtains in all legal proceedings that judicial tribunals and officials act according to law. On appeal accordingly from the decision of an inferior judicial tribunal an appellate court will presume in review that it has complied with all the requirements of law, and that its determination rested on facts sufficient to sustain them. The burden rests upon the appellant to rebut this presumption of regularity."

In Barnes' Case (92 Va., 794, 803), the court said:

"It is also assigned as error by the accused that she was tried and convicted without the assistance of counsel in

making her defense.

"The record does not show whether she had counsel or not; but if it showed that she did not have counsel, unless it appeared that she was denied that right, it would not be ground for reversing the judgment. Every person accused of crime has a right to have counsel to aid him in making his defense, but no one is compelled to have counsel. If a person accused of crime is able to employ counsel, but declines to do so, and goes to trial without ^counsel, and is convicted, that is no ground for reversing the judgment.

"If a prisoner is unable to employ counsel, the court may appoint some one to defend him, and it is a duty which counsel owes to his profession, to the court engaged in the trial, to the administration of justice, and to humanity, not to withhold his aid, nor spare his best efforts in the defense of one 'who has the double misfortune to be stricken with poverty and accused of crime. No one is at liberty to decline such an appointment, and few, it is to be hoped, would be disposed to do so.' (Cooley's Const. Lim., 406.) But we cannot presume that the trial court denied the prisoner her right to have counsel, or failed, if she were unable to employ counsel, to assign some one to aid her in her defense."

So it has been held that "Where the record once shows the presence of the prisoner at his trial, it will be presumed to have continued to the end unless the contrary is affirmatively shown. The presumption is, rather, that the trial court did its duty, than that it did not." (Folden vs. State, 13 Neb., 328, 332.)

And again: "Another specification of error is, that the record does not show that the prisoner had counsel at the trial. It is based upon an alleged presumption against the regularity of the proceedings—a presumption directly opposite to that which we have shown to exist. It assumes that those rights of the prisoner were denied to him, which the record does not show affirmatively were granted. As well might it be assumed that the court charged the jury erroneously, and the Commonwealth be required to prove that the charge was in all points correct, even before it is attacked. The right to be heard by himself and counsel is doubtless a constitutional right, and if it had been denied there would have been error; but we are not to presume that it was denied, because the record does not exhibit the fact that it was accorded. There are many rights of an accused person, some constitutional and others not, of which the record takes no notice—such as the right to compulsory process for witnesses, the right to call witnesses, or to cross-examine those of the prosecution; and the right to be heard by himself and counsel is one of them. The safety of the accused is not imperiled by the silence of the record; for, if any of these rights be denied, there is an easy method of bringing upon the record the fact of the denial." (Cathcart vs. Commonwealth, 37 Pa. St., 108, 111.)

In the case of Beale vs. Commonwealth (25 Pa. St., 11, 18), the court held: "We are not to expect too much from the records of judicial proceedings. They are memorials of the judgments and decrees of the judges, and contain a general but not a particular detail of all that occurs before them. If we should insist on finding every fact fully recorded before a citizen can be punished for an offense against the laws, we should destroy public justice, and give unbridled license to crime. Much must be left to intendment and presumption, for it is often less difficult to do things correctly than to describe them correctly."

Before closing our discussion of the rule as applied to this case, we deem it proper to indicate that although we do not hold the omission of an affirmative entry in the record showing that the trial judge had advised the accused as to his right to have counsel and that the accused had been asked if he desired the aid of counsel to be reversible error, nevertheless we think that in all cases wherein the accused is not defended by counsel the record should be made to show affirmatively that the trial judge has complied with the provisions of the statute in this regard. As was said by the supreme court of New Mexico, after making a somewhat similar ruling as to the effect in appellate proceedings of omissions from the record:

"Notwithstanding this ruling, we would not advise that a custom so honored by time and high authority should

be disregarded under any circumstances." (Territory vs. Webb, 2 N. M., 147, 160.)

The judgment entered in the court belpw convicting and sentencing the defendants should be affirmed, with their respective share of the costs of this instance against the appellants. So ordered.

Arellano, C. J., Moreland, Trent, and Araullo JJ., concur.

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