

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MONICO CUSTAN, DEFENDANT AND APPELLANT.

G.R. No. 9073. September 11, 1914

Ponente: CARSON, J.

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CARSON, J.:

The appellant was convicted in the court below of a violation of the Election Law, in that he took the elector's prescribed by the general Election Law, on the 3d day of May, 1912, although at that time he was delinquent in the payment of his taxes in the sum of P1.23. Upon conviction a fine of P200 was imposed by the trial judge.

In the court below the accused substantially admitted the truth of the allegations in the information, but claimed that he took this oath without understanding the requirements of the Election Law, and that the reason for his delinquency was that he was awaiting advices from the municipal treasurer as to the amount due by him. It appears that he paid the taxes in question on June 29, 1912, nearly two months after the date when he took the prescribed election oath.

The insufficiency of general defenses and excuses of this nature upon charges of violations of the Election Law, when unsupported by the most convincing evidence, was discussed at length in the cases of *United States vs. Estavillo* (19 Phil. Rep., 478); and *United States vs. Tabuyo* (19 Phil. Rep., 501).

On appeal, counsel contends that the judgment of conviction should be reversed, because, as he alleges:

"1. The defendant was not properly identified in the court below.

"2. The arraignment of the accused was not had in accordance with the pertinent provisions of General Orders No. 58.

"3. The record does not disclose that the accused was provided with counsel, nor that he was informed as to his right to have counsel."

Upon the first point it is sufficient to say that the answer of the defendant during his, examination at the trial impliedly admitted his identity as the person described in the information.

The second contention: is, we think, disposed of by the mere reading of the record itself. It appears that at the opening of the trial, the presiding judge addressed the following question to the accused:

"Q. You are accused of having taken an oath when you were delinquent in the payment of your taxes,"—which the accused answered as follows:

"A. I do not wish to plead 'not guilty' nor 'guilty.' I wish to tell the court something."

This was followed by a statement by the accused as to his reasons for failing to pay the taxes mentioned in the information, and as to his alleged ignorance of the nature and effect of the oath taken by him.

We think that in the absence of affirmative evidence to the contrary, this entry in the record justifies us in holding

that the accused was in fact arraigned, and given an opportunity to plead to the information. It may be that there was not a strict compliance with the provisions of the statute in this regard. But even if this were so, we think that it is clear that there was a substantial compliance with those provisions: and it affirmatively appearing from the record that the accused was fully advised as to the nature of the charge against him, was given an opportunity to plead to the charge, and thereafter adopted the course which accorded best with the nature of his defense, we are unable to say that his substantial rights were prejudiced by any informality which may have crept into the proceedings. We conclude therefore that if there was error in the proceedings at this stage of the trial, it was at most error without prejudice, and as such not sufficient to justify a reversal of the judgment entered in the court below.

The contentions of counsel, based upon the fact that the accused appears to have gone to trial without counsel and the failure of the record to disclose affirmatively that the accused was formally advised of his right to have counsel, were discussed at length and decided adversely in the case of *United States vs. Labial and Abuso* (27 Phil. Rep., 82), citing the cases of *United States vs. Ramirez and Seradoy* (26 Phil. Rep., 616), *United States vs. Go-Lerig* (21 Phil. Rep., 426), and a considerable number of American authorities.

But while we decline to reverse the judgment entered in the case at bar on the ground of alleged irregularities in the proceedings which do not appear to have prejudiced the substantial rights of the accused, we do not wish to be understood as expressing our tacit approval of such irregularities, or of the omission from the record of formal entries affirmatively disclosing the strict compliance by the court below with those provisions of law prescribing the procedure to be followed in all criminal proceedings. On the contrary, we deem it of the utmost importance that criminal trials should proceed, at every step, in strict accord with the prescribed rules of procedure, and that care should be taken to make the record affirmatively disclose the various incidents of the trial in such form as to leave no room for doubt or question as to what actually occurred. In a former case we quoted from the case of *Beale vs. Commonwealth* (25 Penn. State, 11, 18), as follows:

"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 upon finding every fact fully recorded which must occur 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."

In that case however, after holding that the omission of an affirmative entry in the record showing that the trial judge had advised the accused who appeared without counsel of his right to have counsel, was not reversible error, we quoted an observation by the supreme court of New Mexico in making a somewhat similar ruling, as follows:

"Notwithstanding this ruling, we would not advise that a custom so honored by time and high authority should be disregarded under any circumstances." (2 N. M., 160.)

Although omissions from the record and irregularities and informalities in the proceedings do not always amount to reversible error, nevertheless it is in the highest degree incumbent upon the trial courts and their officers, including the judges, fiscals, clerks and attorneys, to see that the record sets forth a full and complete report of all the incidents of the trial, so far as that is humanly possible, and to take care, also, that there is no relaxation in that strict compliance with all the prescribed formalities of procedure which experience has shown to be necessary to the due administration of justice in criminal cases.

We are convinced that the slovenly and careless manner in which some of the records of criminal cases brought here on appeal appear to have been kept in the courts below is not infrequently indicative of a laxity or informality

in all the proceedings which reflects on the various officers of the courts wherein these records originate, including the judge, the clerk, the fiscal, and the attorneys. These observations are made at this time, in the hope that, the attention of the trial courts having been directed to these matters, we may look forward to a decided improvement in the conduct of the proceedings in those courts in criminal cases, and in the manner in which the records of those cases are prepared and preserved.

The judgment entered in the court below convicting and sentencing the appellant should be affirmed, with the costs of this instance against him. So ordered.

Arellano, C. J., Torres and Araullo, JJ., concur.

JOHNSON and MORELAND, JJ., concur in the result.

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