

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ARCADIO RAMIREZ AND MARIANO SERADOY, DEFENDANTS AND APPELLANTS.

G.R. No. 9241. February 13, 1914

Ponente: TRENT, J.

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TRENT, J.:

An appeal by Arcadio Ramirez and Mariano Seradoy from a judgment of the Court of First Instance of the Province of Pangasinan convicting them of the theft of large cattle.

It is urged that the trial court erred: (1) in convicting the two accused because their counsel was not present during the time in which more than one-half of the testimony was being taken (citing *U. S. vs. Gimeno*, 1 Phil. Rep., 236, and *U. S. vs. Palisoc*, 4 Phil. Rep., 207); and (2) in convicting these two appellants because the evidence introduced was not sufficient with respect to the appellants to establish their guilt beyond a reasonable doubt.

The record shows that the appellants were arraigned on August 5, 1913, and pleaded not guilty; that the court appointed Mr. Denison counsel de oficio; and that Denison did not arrive until after the examination of the first witness and the direct examination of the second witness had terminated. But the appellants interposed no objection to proceeding with the trial in the absence of their counsel. Mr. Denison had an opportunity to cross-examine both witnesses after his arrival.

In the case of *United States vs. Gimeno*, supra, the court said: "Upon an examination of the record we discover that the defendant applied to the Court of First Instance for assignment of counsel for his defense at the trial of the case, and in accordance with the application an attorney was assigned for his defense. Notwithstanding this, it seems that the attorney failed to appear at the trial to represent him, and the burden fell upon him to make his own defense. Under General Orders, No. 58, if the defendant appears without counsel he must be informed by the court that he has a 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. (Sec. 17.) This is a right which the defendant should not be deprived of, and the failure of the court to assign counsel or, after counsel has been assigned, to require him to perform this duty by appearing and defending the accused would be sufficient cause for the reversal of the case. For this reason it will be necessary to remand this case for a new trial, at which the defendant must be assigned counsel for his defense."

In the case of *United States vs. Palisoc*, supra, the court said: "The provisions of sections 16, 17, and 18 of General Orders, No. 58, are mandatory in their terms, and for the reason that the court did not comply with the provisions of these sections, the judgment of the court with reference to Rufino Lavarias is hereby reversed, and the cause is remanded to the Court of First Instance of the Province of Pangasinan for the purpose of a new trial."

We do not now question the correctness of the doctrine enunciated in these two cases. In the cause at bar the court complied with the-provisions of section 17 of General Orders, No. 58, by appointing Mr. Denison to defend the appellants and requiring him to appear and perform the duty assigned to him. It is true as before stated that Mr.

Denison was not present when the trial began but he appeared later and took charge of the defense. If it were error for the court to commence the trial in the absence of counsel this was cured by the latter's subsequent appearance, who had an opportunity to cross-examine the two witnesses. This case is therefore clearly distinguishable from the case of *United States vs. Gimeno*. In both counsel were appointed. In the one he appeared subsequent to the commencement of the trial and took charge of the defense. In the other he did not appear at all.

In regard to the appellants' contention that the evidence is not sufficient to warrant their conviction, it is sufficient to state that if the evidence of record be given credence the appellants were properly convicted. The defense introduced no evidence and made no effort to impeach the witnesses for the prosecution. There is no reason shown why the prosecution's witnesses should not be believed. The positive and direct testimony of these witnesses stands uncontradicted. The guilt of the appellants has been established beyond question. The judgment appealed from is therefore affirmed, with costs.

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

Moreland, J., concurs in the result.

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