

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. AGATON DUNGCA, DEFENDANT AND APPELLANT.

G.R. No. 9302. March 21, 1914

Ponente: ARAULLO, J.

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ARAULLO, J.:

Agaton Dungca, along with several other persons, was arraigned in the Court of First Instance of Pampanga for having violated section 30, paragraph 4, of the Election Law, by entering his name as a voter in the voting list of the municipality of Macabebe and taking the corresponding oath that he was qualified under the conditions required by that law, when he knew that he was not, thus succeeding in being registered and in voting in the general elections of the year 1912.

After trial of all the accused, with the exception of one who was tried separately, the court acquitted all of them except the defendant Agaton Dungca, whom he sentenced to a fine of P200, with subsidiary imprisonment at the rate of one day for each P2.50 unpaid, but with the condition that the imprisonment could not exceed three months, and to pay one-ninth of the costs. From this judgment said defendant has appealed.

In one of the two briefs submitted by the defense in this instance it is maintained that the court violated section 16 of General Orders, No. 58, by sentencing the defendant without the intervention of his attorneys, one of the latter having through inexcusable negligence and intentional omission failed to present evidence in defense of said defendant; and it is requested in said brief that a new trial be ordered.

From the record it appears that the defendant Dungca and the others indicted along with him appeared at the trial accompanied by the attorneys E. Gutierrez David and Aurelio Pineda; that during the trial the first-named attorney objected on the part of the defendants, without excepting any of them and therefore including Dungca, to the admission of various documents presented by the prosecution and to various questions put by it; that, although in putting the witness Felix Bustos on the stand for the defense and in asking him about the office each one of the accused had held in the municipality of Macabebe, he did not do so definitely with reference to the defendant Dungca, the other attorney, Pineda, made the proposition to the fiscal, which was accepted by him, to stipulate that the accused, each and all of them, in case they were put on the stand in their own behalf, would testify that they had held the office of tenientes, as Felix Bustos had testified, with the exception of Francisco Sanchez, who was going to testify, as he did in fact testify, as a witness; and when the court asked each one of the accused, among them Agaton Dungca, whether the attorney, said Pineda, was authorized to make that stipulation, all of them answered in the affirmative.

It is not, therefore, true that opportunity was not allowed the defendant Dungca to prepare his defense in this trial, nor that he was sentenced without the intervention of attorneys to defend him therein, as is affirmed in said brief. Neither is it strictly true that he was not defended or, what amounts to the same thing, that his attorneys did nothing at the trial which would have tended to defend him, for the stipulation itself proposed by the attorney Pineda and accepted by the fiscal, in not expressly excluding said defendant, but only the person named Francisco

Sanchez, demonstrates that it was the purpose of said attorney to present evidence in Dungca's favor, perhaps under the same conditions as for the other accused. Consequently, the error assigned in that respect is groundless.

But, admitting that at the trial the attorneys for the defendant made some omission, oversight or mistake in submitting and handling the evidence with respect to said Dungca, or some error in regard to the sufficiency, importance or consequence of what they ought to have presented in said defendant's favor, that would not serve as a basis for a new trial, as this court has declared in the case of the United States vs. Umali (15 Phil. Rep., 33). It is true that in the decision cited, this court said that to prevent a manifest miscarriage of justice in a jurisdiction wherein a wholly new system of judicial procedure is being implanted, the rigor of the rule might in an exceptional case be relaxed, this would be done only under very exceptional circumstances, and in cases where a review of the whole record taken together with the evidence improvidently omitted would clearly justify the conclusion that the omission had resulted in the conviction of one innocent of the crime charged. But such are not the circumstances of the present case, as is demonstrated by the contents of the other brief presented in defense of the same defendant.

In said brief it is substantially acknowledged that Agaton Dungca has not been capitan municipal, gobernadorcillo, alcalde, teniente, or cabeza de barangay, but merely an alguacil, according to the testimony of the witness for the prosecution Juan de la Cruz (page 14 of the stenographic notes and Exhibit F, page 31), but it is maintained that as such alguacil he was a member of the government of the municipality to which he belonged, that is, of Macabebe, and that he is therefore; according to the defense, included in subsection (a) of section 13 of the Election Law and qualified to be a voter. In the presence of such an explicit acknowledgment on the part of counsel for the defendant in his brief, it is useless to reopen the trial and attempt to prove that the defendant Agaton Dungca had, previous to August 13, 1898, held any office other than that of alguacil of the municipal government of Macabebe; and it only remains to be determined if as such alguacil he was a member of that municipal government.

The officers composing the municipal governments in the Philippines, according to the royal decree creating them, dated November 12, 1889, were the alcalde, teniente de alcalde, sindico, regidores or councilors, and secretaries, and they were known as members of the municipal government. This classification was not and could not be given to the alguaciles, as they were merely assistants or subordinate employees whose business was to discharge mechanical duties in executing the orders of the municipal government to which they belonged. The alguacil of a municipal government is, according to the Dictionary of the Spanish Academy, an inferior officer who executes the commands of the municipal government or of the alcaldes or tenientes de alcaldes in matters under their respective control; and the word is defined in the Diccionario de la Administracion Española by Martin Alcubilla, volume 1, page 445, in these terms: "The lowest officer in the administrative scale, charged with carrying out the decrees for policing and good government." It being very clear that the lowest officer of a municipal government cannot be regarded as a member of that municipal government, it is also evident that the defendant Agaton Dungca was not qualified, as alleged by his defense, to be a voter in accordance with the provisions of subsection (a), section 13, of the Election Law in force.

For the reasons set forth, we declare that there is no reason for granting the new trial requested by one of the attorneys for the defendant Agaton Dungca, and we affirm the judgment appealed from, with the costs against the appellant.

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

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