

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. DANIEL I. SOBREVÍÑAS, DEFENDANT AND APPELLANT.

G.R. Nos. 11544 and 11545. October 11, 1916

Ponente: CARSON, J.

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CARSON, J.:

Daniel I. Sobrevinas, defendant and appellant in two separate cases bearing register numbers 11544 and 11545, was charged in the former case with a violation of subsection (h), section 161, of Act No. 2339, in that as deputy of the provincial treasurer of the municipality of Bagumbayan, Bataan, he willfully, criminally and maliciously failed and neglected to notify the provincial treasurer that one Mateo Pinili had maintained a cockpit without the prescribed license, he having full knowledge and notice of that fact; and in the second case he is charged with a violation of subsections (e) and (f) of the same section of Act No. 2339, in that he willfully, criminally, and maliciously permitted and consented to the maintenance of a cockpit by Mateo Pinili without collecting from him the prescribed license fees.

The defendant and appellant in these two cases is the defendant and appellant in the case bearing register number 11543, just decided, in which we affirmed the imposition of a fine of P400 with subsidiary imprisonment as prescribed by law, on conviction of a violation of subsection (c), section 161 of Act No. 2339, in that, as deputy of the provincial treasurer he "willfully, maliciously, and criminally" neglected to issue the prescribed receipts for the sum of P2 and the further sum of P2.25 which had been turned over to him as license fees paid on account of various cockfights fought in the cockpit of Mateo Pinili.

The accused was brought to trial on the information filed in case 11543, and after the prosecution had submitted its evidence he went on the stand and testified in his own behalf. At the conclusion of the testimony of the witnesses in that case the following entry appears in the record:

"The defendant Daniel Sobreviñas voluntarily pleads guilty to the three actions or complaints filed against him.

"Immediately after this voluntarily plea in open court, the court convicted the said defendant Daniel Sobreviñas."

The entire record of the proceedings had in case No. 1290 of the trial court (corresponding to case No. 11544 of this court) consists merely of the information filed in that case and the sentencia of the trial judge which is as follows:

"During the trial in criminal proceedings No. 1236 against the said accused Daniel I. Sobrevinas, the said accused, on pleading guilty to the charge in said proceedings, also pleaded guilty in this case No. 1290 to a violation of subsection (h) section 161 of Act No. 2339.

"On this voluntary confession of guilt, the court condemned the accused Daniel I. Sobrevinas to pay a fine of P400 and in case of insolvency to suffer the corresponding subsidiary imprisonment, and to pay the costs. So ordered.

"BALANGA, July 21, 1915.

(Sgd.) "DIONISIO CHANCO,

"Judge, 8th District"

In like manner the record in case No. 1291 of the trial court (case No. 11545 in this court) consists merely of the information and the sentencia of the trial judge which is identical with that entered in case No. 1290, except for the change of the letters indicating the provision of the subsection of the statute violated in that case.

It does not appear that either of the cases No. 1290 or No. 1291 was ever called for trial, or that the defendant was arraigned and required to plead therein. No witnesses were presented for either the prosecution or the defense. Indeed it is manifest that when the accused broke down and made the admissions as to his guilt referred to in the above entry in the record in case No. 1236 of the lower court (case No. 11543 of this court), the trial judge, without further ado, entered judgments in both the other cases convicting and sentencing the accused.

Counsel for appellant urges that the constitutional prohibition against placing an accused person twice in jeopardy forbids his conviction in either cases No. 1290 or No. 1291, the offenses charged in those cases, as he contends, being substantially identical with that for which he was convicted in case No. 1236. Counsel further contends that the proceedings had in cases Nos. 1290 and 1291 were fatally defective and irregular, and that the trial judge erred in resting his judgments of conviction in those cases upon admissions made in the course of the trial in another case, without bringing the accused to trial or requiring him to be arraigned or giving him an opportunity to enter his formal plea in each of those cases.

The Attorney-General concedes that the offenses charged in cases Nos. 1290 and 1291 are substantially identical, so that over a plea of double jeopardy seasonably interposed it would have been possible to maintain a conviction in but one of these cases; but he insists that such a plea, entered in either cases No. 1290 or No. 1291, in reliance upon the conviction in case No. 1236, could not be maintained, the offense charged in case No. 1236 being wholly distinct from the offense charged in cases Nos. 1290 and 1291.

Citing our ruling in the cases of the United States vs. Perez (1 Phil. Rep., 203) and United States vs. Padilla (4 Phil. Rep., 511), the Attorney-General further contends that since the plea of double jeopardy was not submitted in the court below the accused should not be heard to advance it for the first time on appeal, his failure to rely upon it at the trial being equivalent to a waiver of his right so to do.

In reply to the contention of counsel for the accused as to the failure of the record to disclose that the accused was in fact brought to trial, arraigned or given an opportunity to plead in cases Nos. 1290 and 1291, the Attorney-General contends that under our ruling in the case of United States vs. Custan (28 Phil. Rep., 19), the regularity of the proceedings may be and should be presumed; and that the right to be formally arraigned was waived by the accused by his admission of his guilt in open court during the trial of case No. 1236. (12 Cyc, 347.)

But while it is right and proper, as a general rule, that in the absence of proof to the contrary, courts of appeal may and should presume that the proceedings had in the course of the trial of a case pending in a court of record were regular, and that despite mere omissions from the record the proceedings prescribed by law were complied with (U. S. vs. Custan, 28 Phil. Rep., 19), there is a limit to the indulgence of such presumptions. Certainly, the presumption in favor of the regularity of the proceedings in trials had in a court of first instance cannot be extended so as to include a presumption that there was a trial when the record contains nothing whatever upon which to rest such a presumption, or which tends to disclose that the accused was in fact brought to trial.

The entire record in each of the cases now under consideration consists merely of the information and the judgment of the court convicting and sentencing the accused: and the language of each of the decisions in these

cases, far from sustaining a presumption that those decisions were pronounced after trial, seems rather to justify the inference that the accused having admitted his guilt of the offenses charged in cases Nos. 1290 and 1291, while on the witness stand testifying in his own behalf at the trial of case No. 1236, the trial judge thereafter entered judgment convicting and sentencing him in cases Nos. 1290 and 1291, without having him brought to trial in those cases, without having him arraigned, and without giving him an opportunity to plead to the informations, or to be heard to advance anything in his defense or in mitigation of the offenses with which he was charged.

Judgments of conviction entered in this informal manner should not and will not be sustained. It is the duty of the trial courts, charged with the administration of justice, especially in criminal cases, to conduct the proceedings in strict accord with the prescribed rules of procedure; and while irregularities may and doubtless will intrude themselves which may and should be overlooked on appeal where the rights of the accused are not prejudiced, convictions cannot be maintained when, as in this case, all the safeguards which the law establishes to secure the rights of the accused are flagrantly disregarded.

While a waiver of the right to formal arraignment or of defects in the arraignment has sometimes been implied from the fact that the accused proceeds to trial without objection, or voluntarily pleads, or acquiesces in proceeding to a trial on the merits (12 Cyc, 349), it is very clear that no such implied waiver can be presumed in a case in which there is no record of a trial, or in which it appears that in truth and in fact the accused has never been brought to trial.

We need not now consider the merits of the contentions of counsel as to double jeopardy. But in that connection it is worthy of observation that, due to the failure to give the accused an opportunity to plead at the trial of these cases in the court below, his failure so to plead could not properly be held to be a waiver of the plea under the general rule cited by the Attorney-General.

The judgments entered in the court below convicting and sentencing the defendant and appellant in the cases now under consideration, Nos. 11544 and 11545 of the general register of this court, should, for the reasons stated, be reversed, with the costs in both instances de officio, and the records should be remanded to the court wherein they originated, reserving to the officers of that court the right to bring these cases on again for trial or to dismiss the informations as in their discretion the interests of justice may require.

So ordered.

Torres, Johnson, Trent, and Araullo, JJ., concur.

Moreland, J., concurs in the result.

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