

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MIKE BEECHAM, DEFENDANT AND APPELLANT.

G.R. Nos. 5161 and 5162. October 09, 1912

Ponente: CARSON, J.

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CARSON, J.:

Mike Beecham, the defendant and appellant in this case, was convicted in the Court of First Instance of Pampanga of the crime of *asesinato* (murder in the first degree) and sentenced to life imprisonment together with the accessory penalties prescribed by law.

From the judgment of that court convicting and sentencing him, he appealed to this court. Upon a full review of the whole case and upon the evidence disclosed by the record made up in the court below, this court was of opinion that he was guilty beyond a reasonable doubt of the crime of which he was convicted in the court below, but marked with an aggravating circumstance, *premeditacion conocida* (deliberate premeditation), which was not taken into consideration by the trial judge; and that the trial judge erred in not taking this aggravating circumstance into consideration and in failing to impose the capital penalty upon the convict, that being the penalty prescribed by law for the commission of the crime with which he was charged and of which the evidence of record conclusively established his guilt. Thereupon and, in accordance with the practice in this jurisdiction, and under authority of the law provided in such cases, this court entered final judgment reversing the sentence of life imprisonment, declaring the defendant and appellant guilty of the crime of *asesinato* (murder in the first degree), marked with the aggravating circumstance of *premeditacion conocida* (deliberate premeditation), and sentencing him to the death penalty.

From the judgment of this court an appeal was taken to the Supreme Court of the United States. This appeal was dismissed in that court for lack of jurisdiction. In due course certified copies of the mandate of the Supreme Court of the United States dismissing the appeal and of the judgment entered by this court, were remitted to the trial court, wherein the following *auto* (order) was entered on the 19th day of August, 1912:

"Received certified copies of the mandate of the Supreme Court of the United States and of the judgment and sentence rendered by the Supreme Court of these Islands,

"Observe, fulfill, and execute the provisions thereof and file the case.

"September 9, 1912, at 7 a. m., is fixed for the execution of Mike Beecham.

"So ordered.

(Sgd,) "JULIO LLORENTE,

"Judge of First Instance of the Fourth District"

Thereafter, on the 19th day of August, 1912, the following order was issued to the Director of Prisons:

"Whereas, the Supreme Court of these Islands has reversed the judgment rendered in this case and sentenced the defendant to the penalty of death, with the accessories of article 53 of the Penal Code;

"Whereas, the Supreme Court of the United States has dismissed. the writ of error filed in this case for lack of jurisdiction;

"Whereas, this court issued an order, directing that the mandate of the judgment of said Supreme Court of these Islands be observed, fulfilled, and executed and September 9, 1912, at 7 a. m., be fixed for the execution of the defendant Mike Beecham;

"Therefore, it is ordered that you proceed to carry out said sentence, copy whereof is hereto attached, in accordance with Act No. 1577, on September 9, 1912, at 7 a. m. Please notify this court of compliance herewith.

"Given by the Honorable Julio Llorente, judge of First Instance of the Province of Pampanga, fourth judicial district, this 19th day of August, 1912.

"ESTANISLAO TAMAYO,

"Clerk of Court of Pampanga.

By (Sgd.) "JOSE PANLILIO,
"Deputy Clerk."

On the 27th of August, 1912, counsel for the convict submitted the following motion for the revocation of the action thus taken by the trial judge:

"The defendant hereby appears in the above-named case and asks for reversal of the sentence promulgated by this court on August 19, 1912, for the following reasons:

"First, That it does not appear from said sentence that the defendant and his counsel had any notice of the rendition thereof and neither one nor the other was present in this court at the time of the promulgation of said sentence.

"Second. That it is a fact that neither said defendant nor his counsel was notified to be present at the time of the promulgation of said sentence and neither one nor the other was present in the court at the time of the promulgation thereof, as provided by General Orders, No. 58, section 15., paragraph 1.

"Dated at Manila, this 27th day of August, 1912.

(Sgd.) "FREDERICK GARFIELD WAITE,
"Attorney for defendant."

On the 30th day of August, 1912, the trial judge entered the following order in the record of the case:

"In the present case the defendant, Mike Beecham, through his counsel, asks for reversal of the 'sentence promulgated by this court on August 19, 1912/ on the ground that they were not 'notified' nor 'present' at the time of the promulgation thereof.

"The 'sentence' to which the defendant's petition refers is an order of this court directing that the mandate of the Honorable Supreme Court of these Islands in this case be observed, fulfilled, and executed and fixing the day and hour for the execution of the penalty imposed. It is not a sentence for the promulgation whereof the notification or the presence of the defendant or his counsel is necessary. It is simply an order of execution, absolutely necessary for executing the mandates of higher courts in this case. Therefore, no legal reason exists for entertaining the defendant's motion.

"Wherefore, the motion is denied.

"So ordered.

(Sgd.) "JULIO LLORENTE,
"Judge of First Instance of the Fourth District"

It is from this auto (order) that this appeal was taken. Counsel for the convict contends that all the proceedings had in the trial court since the receipt therein of the certified copies of the mandate of the Supreme Court of the United States and of the judgment of this court were null and void because neither the accused nor his counsel were given an opportunity to be present, and as he alleges and as it appears from the record, were not in fact present when these proceedings were had.

There is no question as to the authority of the trial court to issue the auto (order) fixing the time and place for the execution of a valid judgment which had been duly rendered and which imposes the sentence of death upon one convicted of a capital offense. Under the provisions of Spanish law still in force in this jurisdiction, whereby all capital sentences imposed by the trial courts are brought to this court for review (en consulta), and whereby this court is authorized in a proper case to reverse a sentence imposing a less penalty and itself impose the death penalty, it has always been and still is the duty of the trial court, after a judgment imposing the death penalty has become final and the record has been returned to that court for the execution of the sentence, to enter in the record an auto (order) fixing the time and place therefor, and directing the proper officer to carry out the sentence of the court. Some modifications have been made by a statute under American sovereignty in regard to the mode in which death penalties are to be executed, and, with certain exceptions, Bilibid Prison has been designated by law as the place of execution of all such penalties. But there are no provisions in these statutes which change or modify the uniform practice whereby the trial court is required to designate the time and place for the execution in a proper auto (order) entered of record after a judgment imposing the death penalty has become final.

But it is contended that no valid judgment imposing the death penalty has ever been rendered in the case at bar because the defendant was not present when the judgment of this court imposing that penalty was promulgated, and it is further contended that even if it be admitted that the judgment of this court was lawfully rendered in the absence of the defendant, nevertheless the order of the trial court designating the place and date for its execution was erroneously entered in the absence of the convict and his counsel. It is urged that no such order can be legally entered of record in the absence of the convict, and that he is as much entitled to be present when such an order is entered as he is at any other stage of the proceedings. It is said that the alleged rights which were denied the convict are guaranteed him not only by the provisions of the Philippine Bill of Rights (sec. 5 of the Act of Congress of July 1, 1902), but also by the express terms of sections 15 and 41 of General Orders, No. 58.

The pertinent provisions relied upon are as follows:

"Sec. 5 of Act of Congress, July 1, 1902,

"That in all criminal prosecutions the accused shall enjoy the right to be heard by himself and counsel, to demand the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to compel the attendance of witnesses in his behalf."

Section 15 of General Orders, No. 58, under the caption of "Rights of Accused at the Trial," provides that:

"In all criminal prosecutions the defendant shall be entitled -

"1. To appear and defend in person and by counsel at every stage of the proceedings."

Section 41 of General Orders, No. 58, provides that -

"The defendant must be personally present at the time of pronouncing judgment, if the conviction is for a felony; if for a misdemeanor, the judgment may be pronounced in his absence."

We are cited to our own construction of these statutes set forth in our decision in the case of *U. S. vs. Karelsen* (3 Phil. Rep., 223) wherein we said:

"In all criminal prosecutions the accused has an absolute right to be personally present during the entire proceedings from arraignment to sentence if he so desires. In cases of felony he cannot waive this right. The court in case of felony must insist upon the presence of the accused in court during every step in the trial. The record must also show that the accused was present at every stage of the prosecution. (*Hopt vs. Utah*, 110 U. S., 574.) It is not within the power of the court, the accused, or his counsel to dispense with the provisions of General Orders, No. 58 (sec. 41), as to the personal presence of the accused at the trial. We mean by the phrase 'at the trial' to include everything that is done in the course of the trial, from the arraignment until after sentence is announced by the judge in open court."

We are of the opinion, however, that both on principle and authority these various provisions securing to an accused person the right to be present "in all criminal prosecutions" must be understood as securing to him merely the right to be present during every step in the trial in the Court of First Instance; and that as was said in the case cited by counsel for appellant, the phrase "at the trial" is to be taken "to include everything that is done in the course of the trial, from the arraignment until the sentence is announced," which clearly refers to the proceedings had in the *nisi prius* court. A careful examination of the language and the context of each of the statutory provisions above cited satisfies us that it was not the intention of the legislature to extend the right to be present beyond the limits just indicated, and we are confirmed in our conclusions in this regard by a review of the decisions of the various courts of last resort in the United States construing similarly worded constitutional and statutory provisions touching the right of accused persons to be present in the course of criminal proceedings instituted against them.

In the case of *Fielden et al. vs. The People* (128 Ill., 595), the supreme court of Illinois, discussing contentions substantially similar to those relied upon by counsel for appellant, said:

"We are not unmindful that it is guaranteed by section 9 of article 2 of the constitution of this State, that 'in all criminal prosecutions the accused shall have the right to appear and defend, in person and by counsel.' But it is clear, from the connection of the clause, that this has reference to trials at *nisi prius*, only. The entire paragraph reads thus: 'In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation and to have a copy thereof, to meet the witnesses face to face, and to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county,' all of which rights these plaintiffs in error have fully enjoyed on the trial in the criminal court resulting in their conviction. But they are not now defending against a prosecution. They are, themselves, prosecuting a suit to reverse the judgment by which they were convicted, and it is therefore impossible that these provisions can have any application to it (*Tooke vs. State*, 23 Tex. Ct. App., 10.)

"The mere naming of the day on which the sentence was to be executed was but the exercise of a ministerial power, which, at common law, was sometimes exercised by the sheriff (1 Chitty's Crim. Law, 5th Am. ed., 782, 783), and is in this state exercised by the governor in case of a temporary reprieve."

In the review of this case on appeal to the Supreme Court of the United States (143 U. S., 452) it was held:

"That due process of law did not require the presence of the accused in the appellate court when the original judgment of the trial court was affirmed, and a new day fixed for his execution."

In the case of *Schwab vs. Berggren* (143 U. S., 442), the Supreme Court of the United States said that:

"The demurrer to the petition for the writ admits that the judgment of the supreme court of Illinois of September 14, 1887, was rendered in the absence of both the appellant and his counsel, and without notice to either that the case would be disposed of at that time. It is, therefore, contended by the appellant that the

judgment was void, as not being, that due process of law required by the Constitution of the United States, where life or liberty is involved.

"At common law, it was deemed essential in capital cases, that inquiry be made of the defendant, before judgment was passed, whether he had anything to say why the sentence of death should not be pronounced upon him; thus giving him an opportunity to allege any ground of arrest, or to plead a pardon, if he had obtained one, or to urge any other legal objection to further proceedings against him. This privilege was deemed of such substantial Value to the accused, that the judgment would be reversed if the record did not show that it was accorded to him. (Ball vs. United States, 140 U. S., 118, 129; 1 Chitty's Crim. Law, 699, 700; Rex vs. Geary, 2 Salk., 630; King vs. Speke, 3 Salk., 358; Anonymous, 3 Mod., 266; 1 Archbold's Crim. Prac. & Plead. (Pomeroy's ed.) 577, 578.) And it has been so ruled in the courts of some of the States. (Hamilton vs. Commonwealth, 16 Penn. St., 129,133; Messner vs. People, 45 N. Y., i, 5; James vs. State, 45 Miss., 572, 579; Crim vs. State, 43 Ala., 53, 56; Perry vs. State, 43 Ala., 53; State vs. Jennings, 24 Kans., 642, 659; Keech vs. State, 15 Fla., 591, 609; Grady vs. State, 11 Ga., 253, 257; Safford vs. The People, 1 Parker's Crim. Rep., 474, 476.)

"But this rule of the common law, as the authorities clearly show, applied to the court of original jurisdiction which pronounced the sentence, and not to an appellate court, which, upon review of the proceedings in the trial court, merely affirms the final judgment no error having been committed to the prejudice of the accused without rendering a new judgment. The entire argument, on behalf of the appellant, assumes that the supreme court of Illinois pronounced a sentence of death upon him. But such is not the fact. The sentence of death, by hanging, was pronounced by the criminal court of Cook County, October 9, 1886, 'neither the said defendant nor his counsel for him saying anything further why the judgment of the court should not now be pronounced against him on the verdict of guilty heretofore rendered to the indictment in this cause.' The execution of that sentence having been stayed by the prosecution of a writ of error, with supersedeas, the supreme court of the State, upon examination of the matters assigned for error, affirmed the judgment in all things, and (the day originally fixed for the execution having passed) fixed November 11, 1887, as the day for carrying into execution 'the sentence by the criminal court of Cook County.' What that court did was in strict conformity with the Criminal Code of Illinois relating to prosecutions by indictment for capital offenses, which provides that if the judgment is affirmed, the supreme court shall, by order, fix the time when the original sentence of death shall be executed, a copy of which order shall be sufficient authority to the sheriff for the execution of the prisoner at the time therein specified;' and that 'if the judgment is affirmed, the supreme court shall direct the court in which the original sentence was rendered to carry the same into effect, and shall give judgment against the plaintiff in error for costs, and execution may issue therefor from the supreme court.' (Rev. Stats. 111., c. 38, Crim. Code, par. 459, 466, Div. XV.)

"Numerous authorities have been cited for the appellant in support of the general common law rule that the accused must be present when the judgment against him is pronounced; but they fall far short of establishing the contention that due process of law required his personal presence in the supreme court of Illinois at the time the order was entered affirming the judgment by which he was sentenced to death. No case is cited, and we are aware of no well-considered case, which supports that contention. The personal presence of the accused, from the beginning to the end of a trial for felony, involving life or liberty, as well as at the time final judgment is rendered against him, may be, and must be assumed to be, vital to the proper conduct of his defense, and cannot be dispensed with. This court in Hopt vs. Utah (110 U. S., 574, 579), after observing that the public has an interest in the life and liberty of the accused, and that neither can be lawfully taken except in the mode prescribed by law, said: 'That which the law makes essential in proceedings involving deprivation of life or liberty cannot be dispensed with or affected by the consent of the accused, much less by his mere failure, when on trial and in custody, to object to unauthorized methods. The great end of punishment is not the expiation or atonement of the offense committed, but the prevention of future offenses of the same kind. (4 Bl. Com., 11.) Such being the relation which the citizen holds to the public, and the object of punishment for public wrongs, the legislature has deemed it essential to the protection of one whose life or liberty is involved

in a prosecution for felony, that he shall be personally present at the trial, that is, at every stage of the trial when his substantial rights may be affected by the proceedings against him. If he be deprived of his life or liberty without being so present, such deprivation would be without that due process of law required by the Constitution.' See *Harris vs. People* (130 Ill, 457, 459). But neither reason nor public policy require that he shall be personally present pending proceedings in an appellate court whose only function is to determine whether, in the transcript submitted to them, there appears any error of law to the prejudice of the accused; especially, where, as in this case, he had counsel to represent him in the court of review. We do not mean to say that the appellate court may not, under some circumstances, require his personal presence; but only that his presence is not essential to its jurisdiction to proceed with the case."

In *Donnelly vs. State* (2 Dutcher (26 N. J. Law), 463, 471), it was said:

" 'If the presence of the prisoner is necessary in cases of murder to conduct a writ of error, or to receive the judgment of the court, it is, upon the principles of the English law, equally so in all other cases of felony or crimes above misdemeanors. But upon examining the precedents, we do not find a single case, where, upon writ of error, the defendant was either brought into this court or prosecuted the writ in person.' After referring to several previous cases, the court proceeded: 'We think it must be considered as settled by the practice in this State, that in proceedings upon writ of error the personal presence of the prisoner in court is not a technical necessity; that he appears by counsel, errors are assigned by counsel, and judgment may be pronounced in the defendant's absence.' "

In *State vs. Overton* (77 N. C, 485), it appears that the prisoner objected to any judgment being rendered against him, because he had been denied his constitutional right of being present in the supreme court of North Carolina when his case was there argued and determined. In that case the court said:

"This objection is founded upon an erroneous idea of a criminal trial, and of the power and duty of this court in such a case brought before it by appeal. The constitution provides that a defendant in a criminal action shall be informed of the accusation against him, and shall have the right to confront the accusers and witnesses with other testimony, and shall not be convicted except by the unanimous verdict of a jury of good and lawful men in open court as heretofore used. That is his trial. This of course implies that he shall have a right to be present. If he complains of any error in his trial, the record of the trial is transmitted to this court. Here, are no 'accusers,' no 'witnesses,' and no 'jury;' but upon inspection of the record this court decides whether there was error in the trial, and without rendering any judgment, orders its decision to be certified to the court below. It has never been understood, nor has it been the practice that the defendant shall be present in this court; nor is he ever 'convicted' here. To the same effect are *State vs. Leah* (90 N. C, 655); *State vs. Jacobs* (107 N. C, 772). (See also *People v. Clark*, 1 Parker's Criminal Rep., 360, 367.)"

In commenting on these various decisions of the state courts, the Supreme Court of the United States said in the case of *Schwab vs. Berggren* (supra):

"We are of opinion that the practice prevailing in Illinois, New Jersey and North Carolina, as shown in the above cases, is that which is pursued, and has always been pursued, in the different States, as well as at common law. It is not only consistent with 'due process of law' - giving these words the most liberal interpretation but is founded on a wise public policy.

"Nor is the question affected by the fact that the supreme court of Illinois, under express authority conferred by statute, fixed the time when the punishment prescribed by the judgment which it affirmed should be inflicted. Neither the statute nor due process of law required that the accused should, upon the affirmance of the judgment, be sentenced anew by the trial court to suffer the punishment of death, or that he should be present when the day was fixed by the appellate court for carrying the original sentence into execution. The judgment prescribing that punishment was not vacated by the writ of error; only its execution was stayed pending proceedings in the appellate court. Besides, it is well settled that the time and place of execution are not,

strictly, part of the judgment or sentence, unless made so by statute. (Holden vs. Minnesota, 137 U. S., 483, and authorities there cited; 1 Chitty's Crim. Law, 780, 787; Costley vs. Commonwealth, 118 Mass., 32.)"

In the case of Holden vs. Minnesota (137 U. S., p. 483), the Supreme Court of the United States, discussing a statute of the State of Minnesota conferring upon the governor of the State the power to designate the day upon which sentences of death imposed by the courts shall be executed, said:

"The court sentenced the convict to the punishment prescribed for the crime of murder in the first degree, leaving the precise day for inflicting the punishment to be determined by the governor. The order designating the day of execution is, strictly speaking, no part of the judgment, unless made so by statute. And the power conferred upon the governor to fix the time of infliction is no more arbitrary in its nature than the same power would be, if conferred upon the court. Whether conferred upon the governor or the court, it is arbitrary in no other sense than every power is arbitrary that depends upon the discretion of the tribunal or the person authorized to exercise it. It may be also observed that at common law the sentence of death was generally silent as to the precise day of execution. (Atkinson vs. The King, 3 Bro. P. C. (2d ed.), 517, 529; Rex vs. Rogers, 3 Burrow, 1809, 1812; Rex vs. Doyle, 1 Leach (4th ed.), 67; Cuthcart vs. Commonwealth, 37 Penn. St., 108, 115; Costley vs. Commonwealth, Commonwealth vs. Costley, 118 Mass., 1, 35.)"

In the case of State vs. Haddox (40 S. E. Rep. (W. Va.), 387) it was held, in the language of the syllabus -

"1. If a prisoner pending a sentence of death obtain a writ of error to this court, and thereby delay the execution of such sentence until the time fixed therefor has passed, and the judgment is afterwards affirmed, it is the legal ministerial duty of the trial court, without requiring the prisoner to be again brought before it, to enter an order fixing a further time for the execution of such sentence.

"2. After a sentence of death has been passed upon a prisoner, his trial is at an end, and he has no right to be present, and there is no necessity for his presence, at the further ministerial steps necessary to be taken to carry into execution such sentence. The final denouncement alone requires his presence."

In the body of the opinion in this case it is said that -

"In Ex Parte Howard (17 N. H., 548), it is said that if, from any cause, 'the time prescribed for execution has passed, the court must make a new order, if no other disposition has been made of the case Nor is the presence of the prisoner necessary or required when such order is made. He has had his trial, been convicted, and sentenced to death. All that remains to be done is to fix the time and carry the execution of the sentence into effect. Whether that time shall be short or long, on Monday or Friday, on the first or thirteenth of the month, it is for the law and the trial court to fix; and, having forfeited his life by his criminal conduct, he is permitted no voice in the matter. It has nothing to do with the trial. He is as though dead, in so far as his legal rights are concerned, for his own conduct has destroyed them all. It is probably better for his peace of mind if he know not the day of his death, that it come upon him suddenly, after the law of nature, which blinds the eyes of the doomed, so that on the very verge of the grave their hearts are buoyant with the anticipation, of long life and unnumbered days. Sometimes death had better come as a thief in the night, than as a torturing savage in the noonday sun. After sentence is affirmed, the law gives him no more right to be present when the day for execution is fixed, than to be present when the warden selects the rope for the noose, the lumber for the scaffold, or the coffin for his remains, These arrangements are purely ministerial. His presence is not needed. He is civilly dead. (Fielden vs. People, 128 111., 595, 21 N. E., 584, affirmed in 143 U. S., 452, 12 Sup. Ct., 528, 36 L. Ed., 224.) The conclusion of the whole matter is that the trial court, when the day fixed by it for execution has passed, as soon as convenient after the judgment and sentence has been affirmed by this court by its order entered of record, without requiring the prisoner to be brought before it, should fix a further day for the execution of its sentence, and certify the same to the warden of the penitentiary."

We think that upon the authority and the reasoning of the foregoing citations there can be no question that the

language of the Philippine Bill of Rights in which it secures to the accused the right to be heard by himself and counsel in all criminal prosecutions, and the language of General Orders, No. 58, which secures to the accused the right "at the trial" to be present in person and by counsel at every stage of the proceedings, and specifically "at the time of pronouncing judgment," must be understood to be limited to the proceedings in the trial court, that is to say the Court of First Instance, and to extend only to the actual trial therein, and not to appellate proceedings or to proceedings subsequent to the entry of final judgment looking merely to the execution of the sentence.

But it is contended that the proceedings in the Supreme Court of the Philippines are differentiated from the proceedings in the courts of last resort wherein these opinions were rendered, because while in those courts no new sentence is imposed upon appeal, in the Supreme Court of the Philippines, in a case such as that at bar, the judgment in the court below is reversed, a new trial is had upon the record, and an original judgment is rendered convicting the defendant and sentencing him to a higher penalty than that imposed in the court below. This is true, but it does not justify the conclusion that the language used in the Philippine Bill of Rights and in General Orders, No. 58, is to be given a different meaning from the settled and well known meaning, sanctioned by judicial decision which was given to substantially similar language in general use at the time when those laws were enacted. (*Kepner vs. United States*, 195 U. S., 100.)^[1] Moreover, as we have said already, an examination of the language used clearly indicates that it was intended to apply only to the proceedings in the Court of First Instance in the course of the trial.

In the case of *Trono vs. United States* (199 U. S., 521),^[1] wherein it was held that in reversing the lower court and itself convicting the accused on appeal and imposing a higher penalty than that imposed in the lower court, the Supreme Court of the Philippine Islands acted within its powers and in ordinary procedure in the courts of that country under the Act of July 1, 1902, the Supreme Court of the United States said:

"It is urged, however, that he has no power to waive such a right, and the case of *Hopt vs. Utah* (110 U. S., 574) is cited as authority for that view. We do not so regard it. This court held in that case that in the Territory of Utah the accused was bound, by provisions of the Utah statute, to be present at all times during the trial, and that it was not within the power of the accused or his counsel to dispense with such statutory requirement. But on an appeal from a judgment of this nature there must be a waiver to some extent on the part of the accused when he appeals from such judgment."

It is very clear therefore, upon the authority of this decision, that even if it were granted that the language of the statutes would seem to secure to the accused the right to be present when he is retried in the Supreme Court upon the record, nevertheless he waives any such right when he comes before this court by way of appeal from a judgment entered in the Court of First Instance.

But the truth is, as we have already indicated, that an examination of the language and the context of the provisions of law securing to an accused person in this jurisdiction the right to be present "in all criminal prosecutions" and specifically at the time when the judgment is entered, quite clearly discloses that they were not intended to have any application, and that they have no application to the proceedings in this court on appeal nor to the entry and promulgation of our judgments. Furthermore, the reasons which have been assigned for the original grant of the right of the accused to be present in all criminal prosecutions are not applicable to the proceedings in this court. In *Fielden vs. The People* (supra), the court in discussing these reasons says:

"The common law required, when any corporal punishment was to be inflicted on the defendant, that he should be personally present before the court at the time of pronouncing the sentence. (1 Chitty's Crim. Law (5th Am. ed), 693, 696.) Reasons given for this are, that the defendant may be identified by the court as the real party adjudged to be punished (*Holt*, 399); that the defendant may have a chance to plead a pardon (3 More, 265); that he may have a chance to plead or move in arrest of judgment (*King vs. Speke*, 3 Salk., 358); that he may

have an opportunity to say what he can say why judgment should not be given against him (2 Hale's Pleas of the Crown, 401, 402); and that the example of the defendants, who have been guilty of misdemeanors of a gross and public kind, being brought up for the animadversion of the court and the open denunciation of punishment, may tend to deter others from the commission of similar offenses (Chitty's Crim. Law (5th ed.), 693, 696). It is manifest that none of these can apply to this court, because, first, it acts and decides only upon the record made in the court below. It can therefore have nothing to do with the question of the identity of the party whom the sheriff shall have in his custody for punishment. Nor can it entertain a motion in arrest, or a plea of pardon. And since its opinion is prepared and written out and filed with the clerk without being read from the bench, there is, when judgment of affirmance is given, no animadversion and open denunciation of punishment which could benefit bystanders. If the present plaintiffs in error and their counsel had been actually present in court when the judgment of affirmance, here, was entered, the law allowed them to then say or do nothing which, by any possibility, could have benefitted plaintiffs in error. They were, after judgment was entered, entitled only to move for a rehearing - and this could only be done on printed petition; but thirty days were allowed in which to prepare it (93 111., 11, rule 43). Undoubtedly, if plaintiffs in error or their counsel had been actually present in court when the decision was announced, they would then have known what the decision was; but that fact was equally well made known to them by notice from the clerk - in ample time to avail of their right to file a petition for rehearing. And if, indeed, without any fault of theirs, more time would have been needed within which to prepare the petition for rehearing, it was within the recognized practice of this court to have extended the time for that purpose beyond the thirty days. But no claim is here made that plaintiffs in error were not informed of the decision in the case in time to file a petition for rehearing. They did not seek to avail of that right, but voluntarily waived it, and prosecuted a writ of error upon the record from the Supreme Court of the United States, and it was not until after that was decided adversely to them, that they discovered the claimed error in the record of which amendment is now sought.

"In *The People vs. Clark* (1 Park. Crim. R., 360), the supreme court of New York, at general term, held, that on a writ of error brought to reverse a judgment in a capital case, the personal attendance of the defendant on the argument or at the decision in the appellate court is not necessary to give such court jurisdiction. And there was like ruling in *Donnelly vs. The State* (2 Dutch., 468). See, also, in principle, to like effect, *Bales vs. The State* (18 Mo., 318), and *Commonwealth vs. Costello* (121 Mas., 371)."

The comment of the supreme court of Illinois just set forth is substantially applicable in the case at bar, and the reasoning in this regard is in no wise affected by the fact that in cases such as that at bar, the Supreme Court of the Philippines, after reversing the judgment of the trial court proceeds to retry the accused on the record and to convict and sentence him if the evidence of record conclusively establishes his guilt of the crime with which he is charged in the complaint or information.

The Philippine Supreme Court, even when it retries the case, acts and decides only upon the record made up in the court below. The judgments in criminal cases are never entered by the clerk until a sufficient time has elapsed after the order directing the entry of judgment has been filed and after notice thereof has been forwarded to the counsel for the accused and the Government to give to counsel full opportunity to move for a rehearing, or to submit any reason which he may have for objecting to the final entry of the judgment by the clerk. We are unable to perceive any useful end which would be attained by bringing the accused himself before this court in person, during the proceedings on appeal, or at the time of the entry and promulgation of the judgment. We do not believe that it was the intention of the lawmaker to burden the proceedings in criminal cases with an utterly useless formality, for there is nothing which the accused himself can do in his own behalf if he be present during the proceedings in this court on appeal, which cannot be done as effectively by his counsel.

If the appellant is entitled to be present in this court throughout the proceedings on appeal in capital cases he is equally entitled, on principle, to be present in all cases wherein he is charged with a felony. We are satisfied however not only that the various statutes organizing this court and providing for the trial of appealed cases do not

contemplate that the appellant in criminal cases will be personally present coring the proceedings on appeal, but that they contemplate that he will not be present; and it has been the uniform practice of this court from its organization to the present time to hear and decide appeals in criminal cases wherein the accused is represented by counsel in the absence of the accused. Thus in the early case of *U. S. vs. Lewis* (2 Phil. Rep., 193), we held that -

"Proceedings on appeal in the Supreme Court will not be stayed in a criminal case on account of the absence of the accused, as his presence is not necessary at the hearing."

Although it should not be necessary to do so, nevertheless, in conclusion, and to avoid misunderstanding, we repeat that the "rendering," "pronouncing," or "legal promulgation" of our judgments (whichever of those terms may be employed to designate the act), takes place when the clerk of this court enters judgment in accordance with the order of the court, and that when judgment is thus entered it is "legally promulgated," and all the parties to the appeal are bound to take notice of the action of the court, although as a matter of convenience the clerk invariably serves notice on the various counsel of record inviting their attention to the fact that the judgment has been entered. The trial courts have nothing to do with the "rendering," "pronouncing," or "legal promulgation" of our judgments, the duty of those courts in respect to our judgments being merely to see that they are duly executed when in their nature the intervention of the Court of First Instance is necessary to that end.

We find no error in the proceedings had in the Court of First Instance of Pampanga looking to the execution of the sentence imposed upon the appellant, and without stopping to inquire whether counsel for the accused was entitled to bring these orders and proceedings before us for review at this time, a point which was not raised or discussed by counsel, we affirm the orders entered in the lower court from which this appeal was taken. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, and Trent, JJ., concur.

[1] 11 Phil. Rep., 669.

[1] 11 Phil. Rep., 726.

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