

466 Phil. 734

[ G.R. Nos. 18817-18826. November 10, 1922 ]

**THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. JOSE E. SANTIAGO, DEFENDANT AND APPELLANT.**

**ROMUALDEZ, J.:**

By agreement of the parties, the ten cases above enumerated were tried jointly. The appellant is charged with a violation of section 35 of Act No. 2747, punished in section 49 of the same Act.

The offense alleged to have been committed by the defendant is made to consist in that, according to the prosecution, in spite of the defendant being manager of the branch of the National Bank in Iloilo, he indirectly granted to himself the following loans from the funds of said bank:

P3,859.13 on December  
1, 1920 (R. G. No.  
18817) ;  
P3,099.67 on October  
21, 1920 (R. G. No.  
18818) ;  
P4,513.10 on December  
11, 1920 (R. G. No.  
18819) ;  
P4,768.50 on  
November 27, 1920 (R.  
G. No. 18820) ;  
P2,423.06 on October  
12, 1920 (R. G. No.  
18821) ;  
P4,846.16 on October  
16, 1920 (R. G. No.  
18822) ;

P4,847.00 on August  
31, 1920 (R. G. No.  
18823) ;  
P4,000.00 on  
September 27, 1920 (R.  
G. No. 18824) ;  
P2,326.16 on October  
5, 1920 (R. G. No.  
18825) ;  
P10,000.00 on August  
26, 1920 (R. G. No.  
18826).

After the trial of the cases was, in the opinion of the lower court, terminated, that court rendered judgment sentencing the accused in each of them to one year imprisonment, P1,000 fine, and suppletory imprisonment in the proper case, with costs.

Such is the judgment from which this appeal was taken, and which is erroneous, according to the appellant, in various respects.

After a careful examination of all the proceedings and the evidence, there is one point in the record that attracts our attention in a special manner, which if decided in favor of the defendant, no other course would be left to this court than to reverse the judgment appealed from and order a new trial. And that point is the one raised in the seventh assignment of error, relative to the denial of the lower court to permit the defendant to testify as witness for himself and present other witnesses.

The following petitions of the defense appear in the record to have been denied by the trial court:

“NOLAN (defendant’s counsel). \* \* \* And within the liberal spirit of our laws, we move that we be allowed to present Mr. Gurrea as witness, who is here present.

“COURT. Motion denied.

“NOLAN. Exception. Another motion on the same ground, praying that we be permitted to present the accused in all these cases, and the persons mentioned in the *subpoena duces tecum*. (Felix Gurrea, Sing Juco, Esteban I. Vas-quez, Florentino de Paula, Ulpiano Vergara, Cornelio R. Fuentes and Cornelio Limco.—We make this enumeration from the record.)

“COURT. Motion denied.

“NOLAN. With our exception.

“COURT. Cases submitted, decision reserved.”

(Folios 292 and 293, transcript of stenographic notes.)

It is the constitutional right of the accused in every criminal case to be heard in person. This right is guaranteed by section 3, subsection 2, of the Jones Law, in the following terms:

“That in all criminal prosecutions the accused shall enjoy the right to be heard by himself and counsel, etc.”

This right is expressly recognized by our law of criminal procedure now in force, as appears in General Order No. 58, which says:

“Sec. 15. In all criminal prosecutions the defendant shall be entitled:

\* \* \* \* \*

“3. To testify as a witness in his own behalf;” etc.

As to the other witnesses offered by the defense at the trial of these cases, said General Order No. 58, in its section 31, provides the following:

\* \* \* \* \*

“2. The defendant or his counsel may offer evidence in support of the defense.”

It is true that this petition made by the accused through his attorney that he be allowed to testify on his own behalf and to present the persons above alluded to as witnesses, was presented at the trial held October 17, 1921, after the granting of the reopening of the case, applied for by the fiscal, and after both parties had rested at the close of the-original

hearing had on August 26, 1921.

But the record furnishes reasonable ground to believe that the testimony of the accused, as well as of the witnesses he announced to present, was to be about one of the principal points at issue, to wit, whether or not the defendant had, as alleged in the information, granted to himself the loans in question which the defense contends were mere discounts, and do not come within the purview of the prohibition contained in section 35 of Act No. 2747; which question it is not necessary to solve for the purposes of this decision. Such additional evidence should, in this particular case, have been admitted, as it was necessary in the interests of justice and the right administration thereof.

The same section 31 of General Order No. 58, says in its subsection 3:

“3. The parties may then respectively offer rebutting testimony, but rebutting testimony only, unless the court, in furtherance of justice, permit them to offer new and additional evidence bearing upon the main issue in question.”

The trial court permitted the fiscal to introduce additional evidence regarding Exhibits A-1, A-2, and A-3 in cases Nos. 18819, 18820, and 18821, respectively, but denied equal opportunity to the defense, in spite of the reiterated petition of defendant's counsel (folios 287, 290, 291, 292, and 293, transcript of stenographic notes).

We believe that the ruling of the lower court, denying this petition of the defense constitutes an abuse of discretion and is an error prejudicial to the rights of the accused ; and as to his having been prevented from .testifying in his own behalf, such an abuse of discretion constitutes an unjustifiable violation of a constitutional right.

It being, as we find it to be, imperative to respect such right of the accused, guaranteed by our laws, constitutional as well as remedial, which right the accused unequivocally demands, and to which end the remanding of these cases to the court of origin is unavoidable, so that he may be tried with due process of law, it is at present unnecessary to determine whether or not the other errors assigned by appellant's counsel were committed.

For the foregoing reasons, the judgment appealed from is reversed, and these ten cases ordered remanded to the court of origin, for the holding of a new trial in all .of them, in order that the accused may have the opportunity to introduce additional evidence and the prosecution to present such as it may have for rebutting that of the accused; the evidence

heretofore introduced by the prosecution, as well as by the defense, being understood to be subsisting. Without pronouncement as to costs. So ordered.

*Araullo, C. J., Johnson, Street, Malcolm, Avancena, Villamor, Ostrand, and Johns, JJ., concur.*

*Judgment reversed, cases remanded with instructions.*

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Date created: November 25, 2014