4 Phil. 672

[G.R. No. 1898. August 17, 1905]

THE UNITED STATES, PLAINTIFF AND APPELLANT, VS. WILLIAM D. BALLENTINE, DEFENDANT AND APPELLEE.

D E C I S I O N

JOHNSON, J.:

On the 23d day of February, 1904, the prosecuting attorney of the city of Manila presented a complaint against the defendant, charging him with the crime of having knowingly uttered a false and fraudulent Chinese certificate at Manila, about the 21st day of September, 1903. On the same day a warrant was issued and the defendant was arrested and brought before the court. On the 24th day of February, 1904, the defendant presented a demurrer to the complaint, alleging, first, that the facts charged in the complaint did not constitute a public offense, and second, that the complaint did not conform substantially to the prescribed form.

Upon a consideration of the demurrer the court found that the facts set out in the complaint did not constitute the crime charged and therefore ordered that the demurrer entered therein be sustained, and that the defendant be discharged from custody and his bail exonerated.

On the 25th day of February, 1904, the prosecuting attorney of the city of Manila gave notice of his appeal from the order of the court sustaining the demurrer.

On the 28th day of February, 1904, the cause was brought to this court.

On the 27th day of February, 1905, the attorney for the defendant presented a motion in this court asking that the said appeal be

dismissed for the reason that the Supreme Court of the United States had declared in the case of the United States *vs*. Thomas E. Kepner that the Government has no right to appeal against a final decision in favor of the defendant in a criminal case.

The Supreme Court of the United States in the case of the United States *vs*. Kepner[1] (2 Off. Gaz., 974) held that the Government could not appeal from a *final decision* in a cause wherein the defendant had been dismissed, upon the theory that to permit such an appeal would be to put the defendant in jeopardy twice for the same offense, Which was prohibited by section 5 of the Philippine bill (act of Congress of July 1, 1902).

Is a decision of an inferior court sustaining a demurrer a final decision under the laws of the Philippine Islands? Section 23 of General Orders, No. 58, provides:

> "Sec. 23. If the demurrer is sustained,, the judgment shall be final on the complaint or information demurred to, and it shall be a bar to another prosecution for the same offense, unless the court delivering judgment was without jurisdiction, or unless the court, being of opinion that the objection may be avoided, directs a new complaint or information to be filed. If the court does not direct that the accused be remanded to a court of proper jurisdiction for trial or that a new information be filed, the defendant must be discharged or his bail be exonerated."

Section 44 of the same General Orders provides as follows:

> "Sec. 44. Either party may appeal from a final judgment or from an order made after judgment affecting the substantial rights of the appellant, or in any case now permitted by law. *The United States may also appeal from a judgment for the defendant rendered on a demurrer* to an information or complaint and from an order dismissing a complaint or information."

It will be seen that section 44 expressly provides for an appeal on the part of the Government "from a judgment for the defendant rendered on a demurrer to an information or complaint."

If a defendant, upon a hearing upon a complaint and a demurrer, is thereby placed in jeopardy, then he can not be placed upon a hearing again, for the reason that that would be placing him in jeopardy a second time, and that provision of section 44 which gives the Government the right of appeal from a judgment for the defendant on a demurrer to an information or complaint has been repealed by the said provisions of the Philippine bill.

The question then is, Is a defendant placed in jeopardy upon a hearing upon a complaint and a demurrer?

It has been established by a great weight of authority in the United States and England that a defendant in a criminal prosecution is in legal jeopardy *when he has been placed upon trial* under the following conditions:

(1) Upon a valid indictment or information;

(2) Before a court of competent jurisdiction;

(3) After he has been arraigned;

(4) After he has pleaded to the indictment or information;

(5) When a competent jury has been impaneled and sworn.

(U.S. *vs*. Van Vliet? 23 Fed. Rep., 35; U. S. *vs*. Shoemaker, 2 McLean, 117; U. S. *vs*. Jones, 31 Fed. Rep., 725; People *vs*. Roberts, 114 Cal., 67; People *vs*. Cage, 48 Cal., 323; People *vs*. Taylor, 117 Mich., 583; State *vs*. Sommers, 60 Minn., 90; State *vs*. Whipple, 57 Vt, 637; Cooley' Constitutional Limitations, p. 399.)

From this general rule it would appear, then, that if for some reason it should subsequently appear (a) that the indictment was insufficient, or (b) that the court was without jurisdiction, or (c) that the defendant had not been arraigned and pleaded, or (d) that a

competent jury had not been impaneled and sworn, the defendant would not have been in legal jeopardy, and might therefore be placed upon trial again without being able to plead *autrefois acquit or autrefois convict.*

There are also many other exceptions to this general rule—that is to sajr, other conditions under which the State may place the defendant upon trial a second time—for example, the following :

(1) Where the judge dies before the end of the trial;

(2) Where the term of court closes before the end of the trial;

(3) Where a juryman is taken sick or dies before the end of the trial;

(4)
Where it appears after the trial that through the fraud or connivance of the defendant important witnesses were induced not to appear at the trial;

(5) Where it appears after the trial that the
defendant had bribed the court or jury—and many other conditions which might be mentioned.

In the United States, where any of these conditions exist under which the defendant may be placed upon trial the second time, the usual method is to have a new indictment, when necessary, presented, and place him upon trial the second time in the same court, but notwithstanding this general method of placing the defendant upon trial the second time, some of the States have provided by statute that the people may have the right of appeal under certain conditions. These conditions are always stated in the statute, and usually are:

(1) Where a plea of abatement by the defendant has been sustained; or

(2) Where a demurrer on the part of the defendant has been sustained.

It is generally admitted by the courts of the United States that the people, in a criminal case, have no right of appeal, unless the statute expressly provides for it. (People vs. Snyder, 44 Hun. (N. Y.), 193; State vs. Rowe, 22 Mo., 328.)

The right of the State by statutory provision to appeal from the decision of the inferior court in a criminal case is expressly recognized by the Supreme Court of the United States in the cause of the United States vs. Sanges (144 U. S., 310 at p. 312), where Justice Gray, speaking for, the court, said:

> "It is settled by an overwhelming weight of American authority that the State has no right to sue out a writ of error upon a judgment in favor of the defendant in a criminal case, except under and in accordance with express statutes, whether that judgment was rendered upon a verdict of acquittal or upon the determination by the court of a question of law."

This doctrine of the right of the Government to appeal, when the statute expressly so provides in criminal cases, from a judgment of the inferior court upon a question of law, is expressly recognized in the case of the United States vs. Kepner (195 U. S., 100 at p. 128), where Mr. Justice Day, speaking for the court, said:

> "But whatever may have been, or may be, the law of England upon that question, it is settled by an overwhelming weight of American authority that the State has no right to sue out a writ of error upon a judgment in favor of the defendant in a criminal case, *except under and in accordance with express statutes*, whether that judgment was rendered upon a verdict of acquittal or upon the determination by the court of a question of law."

Mr. Justice Day, in discussing this question, further states (p. 130) :

> "We are not here dealing with those statutes which give to the Government a right of review upon steps *merely preliminary* to a trial, and before the accused is legally put in jeopardy, as where a discharge is had upon a motion to quash or a demurrer to the indictment is sustained before jeopardy has attached. Such statutes have been quite generally sustained in jurisdictions which deny the right of second trial where a competent court has convicted or acquitted the accused." (Citing People vs. Webb, 38 Cal., 467.)

In the case of the People vs. Webb (38 Cal., 467) the supreme court of California held that a statute undertaking to give the right of appeal to the people in criminal cases was limited to cases in which errors may have occurred before legal jeopardy attached.

Mr. Bishop, in his valuable work on criminal law, says: "The writ of error, or the like, allowed to the State, can authorize the State to procure the reversal of erroneous proceedings and commence anew only in those cases in which the first proceeding did not create legal jeopardy," (1 Bishop Criminal Law (5th ed.), sec. 1026.)

The court of appeals of the State of Maryland, as early as 1821, allowed an appeal by the State to reverse a judgment in favor of the defendant on demurrer to the indictment. (State vs. Buchanan, 5 Hargrave & Johnson, 317, 324, 330.)

In Pennsylvania the right of the State to appeal, in criminal cases, was allowed from a very early period in the history of the State without question. (Commonwealth vs. Taylor, 5 Binney, 277; Commonwealth vs. McKissen, 8 Sarj. & Rawle, 420.)

In many of the States the right to sue out a writ of error, or to take an appeal in the nature of a writ of error in criminal cases, has been given to the State by positive statute. Statutes have been passed allowing the State the right of appeal in the following States:

Alabama (State vs. Agee, 83 Ala., 110).
Arkansas (Jones vs. State, 15 Ark., 261).

California: Section 1238 of the California Code provides that an appeal may be taken by the people—

> "(1) From an order setting aside the indictment or information ;
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> "(2) From a judgment for the defendant on a demurrer to the indictment or information;
>
> "(3) From an order granting a new trial;
>
> "(4) From an order arresting a judgment;
>
> "(5) From an order made after judgment, affecting the Substantial rights of the people."

Florida (State vs. Burns, 18 Fla., 185).
Iowa (State vs. Tait, 22 la., 140; State vs. Vail, 57 la., 103).

Kansas (Kansas Crim. Code, sec. 283).
Missouri (2d Mo. Rev. Stat, 1889) : Section 4290 provides :

"When any indictment is quashed or adjudged insufficient upon demurrer, or when judgment thereon is arrested, etc., the court may, in its discretion, grant an appeal."

Montana (Montana Crim. Proc. Act, sec. 396).
New York (New York Code of Crim. Proc, sec. 518).

This section provides that an appeal may be taken to the supreme court by the people in the following cases only :

> (a) Upon a judgment for the defendant on a demurrer to the indictment;
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> (b) Upon an order of the court arresting the judgment.
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> Ohio (Ohio Eev. Stat., sec. 7356).
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> Oregon (State vs. Brown, 5 Oreg., 119).

South Carolina (State vs. Young, 30 S. C, 399).

An examination of the statutes of these States, which allow appeals in criminal cases, discloses the fact that the appeal in almost every case is allowed from the ruling of the judge upon a matter with which the jury has nothing to do, where the question presented was for the judge alone-as, for example, where a demurrer was presented to the indictment or where a motion was made in arrest of judgment after conviction.

But, inasmuch as there are no jury trials in the Philippine Islands, When is a defendant placed upon trial so that it may be said that he has been placed in legal jeopardy? At what time during the proceedings has the defendant been placed in the same position here in the courts of these Islands that he is in the United States when the jury is finally impaneled and sworn and charged, with his deliverance? We are of the opinion that after the defendant has been arraigned and has pleaded to the indictment, and the court has proceeded to the investigation of the charges preferred against him in the indictment by calling a witness, that the defendant then and there is placed in legal jeopardy. In other words, under the laws of the Philippine Islands a defendant is not placed in legal jeopardy until he has been placed upon trial under the following conditions:

(1) Upon a good indictment;

(2) Before a competent court;

(3) After the defendant has been arraigned;

(4) After the defendant has pleaded to the indictment;

(5) After the investigation of the charges has actually been commenced by the calling of a witness.

Inasmuch as in the hearing upon the complaint and demurrer the

defendant had not been arraigned; neither had he pleaded to the complaint; neither had the court commenced an investigation of the charges by calling witnesses—the defendant had not been put in legal jeopardy and may be placed upon trial for the offense charged in the complaint, unless the Government shall accept the decision of the court upon the demurrer as final.

The only interpretation which can be given to sections 23 and 44, construed together, if the legislature intended that section 44 should have *any* force, is that the decision of the court sustaining a demurrer shall be final unless the Government shall deem it advisable to appeal.

Whereas a defendant is not placed in legal jeopardy upon a hearing upon a complaint and demurrer; and

Whereas the State has the right to provide for an appeal by statute from a decision sustaining a demurrer; and

Whereas the legislature of the Philippines has so provided :

> We hold that the decision in the Kepner case does not prevent an appeal by the Government from a decision of an inferior court sustaining a demurrer. Therefore the motion to dismiss this appeal is denied. So ordered.

Arellano, C. J. Torres., Mapa, Carson, and *Willard, JJ.,* concur.

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[1] 195 U.S., 100.

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