4 Phil. 566

[G.R. No. 2302. July 01, 1905]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. PEDRO SARABIA, DEFENDANT AND APPELLANT.

D E C I S I O N

WILLARD, J.:

The complaint in this case is as follows: ”

> [Criminal No. 225. For unlawful possession of a revolver.]
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> *“The United States vs. Pedro Sarabia.*
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> “In the Court of First Instance of Bataan, Sixth District, Balanga, September 14, 1904.
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> “The undersigned .provincial fiscal accuses Pedro Sarabia of the crime of the unlawful possession of a revolver, in the following form:
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> “On the night of the 6th of September, 1904, the said Pedro Sarabia was arrested by the Constabulary in the barrio of Sisiman, Mariveles, Bataan, for having fired a revolver, his own property, without having the necessary license, in violation of section 1 of Act No. 652 of the Philippine Commission.
>
> “A. DELGADO, PROVINCIAL FISCAL.”

Under this complaint the defendant was convicted of having in his possession a revolver without any license authorizing such possession,

and was sentenced to one month's imprisonment and to a fine of 200 pesos. The judgment provided that if the fine was not paid he should suffer three months' imprisonment.

The evidence is sufficient to justify the judgment so far as the unlawful possession of the revolver is concerned. The defendant, however, in this court claims that the complaint is insufficient in several respects. He alleges that the complaint charges the defendant with having fired the revolver and not with having the revolver in his possession. It will be observed that the complaint notifies the defendant three times of the general nature of the offense charged against him. In the title it is declared that the case relates to the illegal possession of a revolver. At the commencement of the body of the complaint he is charged with the crime of the unlawful possession of a revolver, and at the end of the complaint the precise section of the law under which he is prosecuted is stated. He had, therefore, abundant notice that he was to be prosecuted for having in his possession a revolver contrary to law. When the fiscal came to state how the offense was committed he alleged that the defendant discharged a revolver which was his property. This is a sufficient allegation that he had the revolver in his possession at the time he discharged it.

General Orders, No. 58, section 6, paragraph 3, provides that the facts shall be stated "in such a form as to enable a person of, common understanding to know what is *intended*." There can be no doubt but that the fiscal intended to make such an allegation.

It is also claimed that the complaint is insufficient because it does not allege the place where nor the time when the offense was committed, nor that the defendant was not connected with the Army or Navy of the United States and was not otherwise authorized by law to have in his possession this revolver. With reference to these objections to the complaint, it may be said that the defendant in the court below was represented by the same American lawyer who represents him in this court. That lawyer was present and took part in the trial in the court below. He was of course furnished before the trial with a copy of this complaint. He made no objection to its sufficiency, either

by demurrer or motion or in any other way. Evidence was produced at the trial to show when the offense was committed. He made no objection to this evidence on the ground that the time the offense was committed was not stated in the complaint. Evidence also was presented to show where the offense was committed. He made no objection to this evidence on the ground that the place where the offense was committed was not stated in the complaint. Evidence was produced to show that the defendant was the captain of a steam launch belonging to the Atlantic, Gulf and Pacific Company, and that he was engaged in transporting stone from Mariveles to the works of the port which this company was then engaged in constructing. This evidence tended to show that the defendant was not connected with the Army or Navy, but the defendant made no objection to its introduction on the ground that such fact was not alleged in the complaint. The alleged defects in the complaint which his counsel now points out must have been as apparent to such counsel then as they are now, and why, if the complaint was in fact insufficient and if from it he could not understand the acts with the commission of which his client was charged, he did not take some action to secure further information, does not appear. The presumption would be, from his failure to seek any further information, that he was sufficiently informed of the charge and was satisfied with the complaint, understood what it meant, and was willing to go to trial on the assumption that it was sufficient.

The law requires the court to appoint a lawyer to defend the accused gratuitously if he so requests. By section 19 of General Orders, No. 58, he and his counsel are allowed at least one day to study the complaint. If after such an examination they can not understand what it means, the law furnishes them a way by which they can obtain further information. They may demur to it on the ground that it does,not, as they understand it, charge any offense. They have the right to submit an oral argument or one in writing in support of the demurrer in which they can set forth fully the reasons why they think that they are not sufficiently informed of the nature of the charge against the defendant. During the progress of the trial, if evidence is introduced to prove a fact of which the complaint gave them no notice,, they can,

on that ground, object to its being received. After the evidence is closed, they can, in the final argument, call, the court's attention to any defects in the complaint which, in their opinion, would render a judgment void. After judgment against them they can, by a motion for a new trial, again raise the question as to the sufficiency of the statement of facts in the complaint.

In fact, the law of criminal procedure is wisely planned so as to give to a defendant who is not advised as to the charge against him every opportunity to secure additional information in this regard. But it was never intended that a defendant who had been given these opportunities might neglect them and after a fair trial and a conviction supported by abundant testimony, say, as a means of escaping a deserved punishment, that he had never been informed of the nature of the charge against him.

We hold that no objection to a complaint based upon a defective statement either in matter of form or substance of "the acts or omission complained of as required by section 6, paragraph 3 of General Orders, No. 58, not made in the court below, can be used in this court to obtain a reversal. We have already so held in United States *vs*. Emiliano Cajayon[1] (2 Off. Gaz., 157). (See also United States *vs*. Mabanag, 1 Phil. Rep., 441.)

It may be said that this would require us to sustain a conviction where there was no complaint at all in the lower court. It is not possible that such a case could arise. The judges of the Courts of First Instance are required by Act No. 136 to be men learned in the law. It is impossible to conceive of such a judge rendering a judgment of conviction where there was no complaint at all upon which to base it. And, further, it is impossible to conceive of such a judge rendering a judgment of conviction upon a complaint which he himself did not understand.

The general rule in the United States is that an objection to the complaint, to be available in the appellate court, must have been raised below. In Coffey *vs*. United States (116 U. S., 436) it is said, at page 442:

> "As to the first assignment, that respecting the insufficiency of the information, it is supposed, by the claimant, that his motion for judgment, notwithstanding the verdict, raises that question. But there is no exception to the order of the court denying that motion. There is an exception to the written opinion of the court overruling a motion for a new trial, and to an order made, after judgment, overruling a motion made, after judgment, for a new trial. But there is no other exception in the record. Assuming, however, that the point as to the information can be raised here, it is urged that the first count, that founded on section 3257, is insufficient because the count does not set forth the facts from which the court can infer that Coffey defrauded or attempted to defraud the United States. It is a sufficient answer to this objection to say that the claimant, in his answer, denies the allegations of the first count, specifically, as they are made. After that, he can not, in a court of error, on such a record as this, be heard to say that he did not know the charge made, and could not defend against it, although if he had excepted or demurred to the count the objection might have been presented for consideration."
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> (See also O'Neill *vs*. Vermont, 144 U. S., 323, 327.)

It is not a complete answer to these cases to say that such courts in the United States in general sit only for the correction of errors of law, while this court takes jurisdiction of a case by way of appeal in the strict sense of that word. A trial court which renders a judgment upon a materially defective complaint commits an error of law. But such error will not in the United States be reviewed on a writ of error unless the defendant called the attention of the court below to such error.

The practical reason for this rule is obvious and more apparent here, where we have no grand jury, which in the United States is the only body, generally speaking, that can present or amend a complaint. Under our practice, as said below, the lower court itself can, and it is its duty when its attention is called to a defect in the complaint,

cause it to be corrected. This rule was adopted to prevent the delay and expense of a trial in the lower court, a trial in the appellate court, and a second trial in the lower court for a defect in the proceedings which, if called to the attention of the lower court, could have been corrected and such delay and expense avoided.

There is nothing in this case to indicate that, knowing the defects of the complaint, the defendant purposely refrained from objecting to it, with the plan of proceeding to trial, securing an acquittal if possible, and, if he failed in that, present for the first time these objections to the complaint in the Supreme Court for the purpose of securing a new trial. If, however, a case should arise in which these facts did appear, the appellate court ought to hold that a defendant who purposely refrained from calling attention to defects in a complaint of which he was then aware could not afterwards present them before the Supreme Court for the purpose of securing a reversal in a case of conviction.

Had these objections been made to the complaint in the court below, it would have been the duty of that court, under the provisions of General Orders, No. 58, sections 23 and 37, to direct a new complaint to be filed and the trial recommenced, and in no event would the defendant have been entitled to a discharge, for these defects could all have been cured. Neither would he be entitled to such" discharge in this court if we should hold that the complaint was insufficient. The result would simply be that the judgment would be reserved, and the case remanded to the court below with instructions to that court to direct a new complaint to be filed against him, and in the meantime to hold the defendant in custody.

We change the penalty inflicted by the court below and impose upon the defendant the penalty of one day's imprisonment and P200 fine. With this modification the judgment of the court below is affirmed, with the costs of this instance against the defendant.

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

[1] 2 Phil. Rep., 570.

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