4 Phil. 511

[G.R. No. 1883. May 01, 1905]

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. VICENTE PADILLA ET AL.., DEFENDANTS AND APPELLANTS.

D E C I S I O N

WILLARD, J.:

The defendants were tried in the court below under a complaint for brigandage and were convicted of robbery with homicide. Padilla and Pablo Gallano were sentenced to life imprisonment (*cadena perpetua*), Benedicto Gallano to twelve years and one day, and Paulino Gacillos to six years ten months and one day of *prision mayor*.

We think that there is evidence in the case sufficient to convict the defendants of the crime of brigandage and that the conviction for robbery with homicide should be set aside. As the minimum penalty for brigandage is twenty years, the defendants Benedicto Gallano and Paulino Gacillos should have been sentenced for that period at least. A majority of the court are of the opinion that we have the power to impose that sentence now. (U.S. *vs.* Flemister,[1] March 18, 1905.) In this, however, the writer of this opinion does not agree. In his opinion the case of Kepner *vs.* United States[2] (2 Off. Gaz., 974) establishes the proposition that after a trial and judgment in the Court of First Instance, a trial here on the merits is a second trial and can not be had without the consent of the defendant. The writer thinks that his appeal gives consent only to the examination here of those errors of the court below which are prejudicial to him or at most to those errors which he specifically assigns here and as to which his assignment is sustained; that he does not by his appeal give his consent that this court may examine errors which the court below may have committed to his advantage and which the Attorney-General may

here assign, and that his appeal is not a waiver of all his rights and a consent that the whole case may be retried here.

One of the defendants below was Gabino Gallano, a boy 14 years of age. The record before us does not show that any judgment either of conviction or acquittal was entered against him. Said record would, in our judgment, have justified an acquittal. When the case is returned to the court below, that court will take such action in regard to the defendant Gavino Gallano, if none has already been taken, as may be in conformity with law.

The judgment of the court below is reversed, and the defendants Vicente Padilla, Pablo Gallano, Benedicto Gallano, and Paulino Gacillos are convicted of the crime of brigandage, and are sentenced, Vicente Padilla and Pablo Gallano each to life imprisonment (*prision perpetua*), and Benedicto Gallano and Paulino Gacillos each to twenty years' imprisonment, with the costs of this instance against the said four appellants.

Arellano, C. J., Torres, Mapa, and *Carson, JJ.*, concur in the result.

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[1] Page 300, *supra.*

[2] 195 U.S., 100.

CONCURRING

JOHNSON, J.:

We concur in the opinion that the defendants in this case should be punished in the manner indicated in the decision prepared by Mr. Justice Willard. We do not, however, agree with that part of his decision in which it is intimated that this court has no power to modify the decisions of the inferior courts in criminal cases except where the modification is favorable to the defendants.

We believe that this court, when a defendant appeals, has the

authority to render such a decision upon the complaint and evidence as is justified by the law.

For example: A complaint is filed against A. under section 1 of Act No. 518, charging him with the crime of brigandage, the minimum punishment for which is twenty years. The evidence adduced during the trial shows beyond peradventure of doubt that the defendant is guilty of the crime charged in the complaint. The judge finds him guilty of the crime charged, and imposes a sentence of one year of imprisonment only. The defendant appeals to, this court, alleging that the lower court committed certain errors; for example, that the evidence was not sufficient to show that he was guilty of the crime of brigandage as charged in the complaint. This court on the appeal examines the evidence and finds that it is sufficient beyond a reasonable doubt to show that the defendant is guilty of the crime of brigandage, as charged in the complaint. We are of the opinion that we have the authority to impose a sentence upon the defendant in accordance with the complaint, the evidence, and the law. It certainly can not be contended that where the law provides that the minimum penalty shall be twenty years that an inferior court has authority to impose a penalty of one year as is supposed in our example.

The opinion prepared by Mr. Justice Willard takes the position that the hearing in this court is a second trial and therefore the defendant is put in jeopardy the second time; that this court can not modify the sentence from which he appealed, except wherein such modification is favorable to him. If the doctrine be true that this is a second trial, then this court has no authority to consider the case at all, for the reason that under the doctrine of jeopardy, if it can be applied as indicated, we have no authority to consider either the points that are favorable or unfavorable to the defendant, for the reason that the doctrine of jeopardy prohibits a second trial. (U. S. *vs.* Kepner.[1]) Further, if in fact this is a second trial, then upon what theory can this court consider cases that come here *en consulta*
without any request whatever on the part of the defendant, according to the provisions of section 50 of General Orders, No. 58, as amended by section 4 of Act No. 194? This court considers cases *en consulta* in the same manner that it

considers cases on appeal.

We recognize and accept the doctrine announced in the case of the United States *vs.* Kepner, relating to jeopardy, that a man can not be placed upon trial for the second time for the same offense, except with his consent; but we hold that when he appeals, under the system in vogue here, he expressly agrees to a rehearing of his case. The right of appeal is purely a statutory right. The method of perfecting an appeal is provided for by statute. When a defendant appeals he submits his cause to the superior court to be considered under the rules in vogue at the time of his appeal.

Jeopardy begins here the very moment that a defendant is arraigned upon a good indictment before a competent court which is charged with his deliverance, and if for any reason, over which the State has control, the trial *is not concluded against the wishes of the defendant*, or if the same is concluded, the defendant has been in jeopardy and can not be placed upon trial again.

But to this doctrine there are numerous exceptions, which may be briefly indicated as follows:

(1) If it is discovered later that the court had no jurisdiction ; or

(2) If it is discovered that the complaint was defective in that it did not contain some material allegation; or

(3) If the term of the court should have terminated before the end of the trial; or

(4)
If the trial judge should have died before the termination of the trial, or become unable by reason of sickness or otherwise to have concluded the trial; or

(5) If the defendant should have, by reason of sickness or otherwise, become unable to attend the trial; or

(6)
If through fraud on the part of the accused there was a mistrial; for

> example, if the defendant had conspired to prevent witnesses from attending the trial; or
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> (7) If by reason of conflagration or inundation the court could not have concluded the trial; or
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> (8)
> If the defendant should appeal from the decision of the court rendered at the termination of the trial to a superior court, and the superior court for errors committed reverses the sentence and remands the case for a new trial, and in numerous other conditions which might be mentioned, over which the State has no control, the doctrine of jeopardy does not apply and the accused may be placed upon trial the second time.

The reports of the supreme courts of the different jurisdictions of the United States are full of cases holding, where the defendant appeals from the decision of an iferior court and the sentence is reversed by reason of errors committed, that he may be ordered to be tried again.

Under the sovereignty existing here prior to American occupation, this court had authority, when a defendant appealed from a decision of an inferior court, to render such a decision on the appeal as the evidence and the law justified, whether such decision increased or diminished the sentence of the lower court.

This court, as it is now constituted, was organized by the United States Philippine Commission under Act No. 136, by which it was substituted for the former Audiencia or Supreme Court. It stands, therefore, in the position of the Audiencia, under the former sovereignty, and no law has been passed by the legislature of the present sovereignty which in any way affects the criminal jurisdiction exercised by the said Audiencia, except as is found in section 50 of General Orders, No. 58, and section 4 of Act No. 194 of the Philippine Commission. These provisions in no way affect the jurisdiction of this court in criminal cases when an appeal is made from the sentence of an

inferior court by the defendant.

Our conclusion is, therefore, that inasmuch as the Audiencia had power to render such a decision upon an appeal by the defendant, as the complaint and the evidence justified under the law, this court is still possessed of the same power.

When a defendant appeals to this court under the present system of appeals, as provided for by sections 43 to 49, inclusive, of General Orders, No. 58, he submits his case to the court for such a decision as is justified under the law, the complaint, and the evidence. By his appeal he waives any plea of jeopardy which he might have had under an appeal by the State, and submits his rights to this court under the law.

It would be a strange doctrine indeed, under the example given in the beginning of this opinion where an inferior court had rendered a sentence diametrically opposed to the law, the complaint, and the evidence, if this court could consider only such errors as were favorable to the defendant.

Another example: A defendant is charged under a provision of the Penal Code which provides an imprisonment and a fine. The court imposed a fine only. Or, if the code should provide for a penalty of imprisonment, or a fine, and the court should have imposed both imprisonment and a fine, can this court under these conditions not correct such an error on an appeal by the defendant? Such a decision by the inferior court is absolutely void, because the penalty imposed is not in accordance with the law. Suppose under these conditions the defendant appeals to this court and the only error which the record disclosed was the fact that the court had not imposed a sentence provided for by law and this error happened to be favorable to the accused, then the only remedy which this court has is to affirm this void sentence. If that is the true doctrine, then what is to prohibit the defendant immediately after his sentence is affirmed, from suing out a writ of *habeas corpus* and securing his liberty upon the ground that the sentence rendered against him, by the inferior court, and affirmed by this court, is null and void? A defendant can not be

held in prison under a void sentence. Can this court affirm a null sentence?

Granting that the consideration of the cause in this court is a second trial, then we can not consider any cause, for the reason that the doctrine of jeopardy prohibits it, unless we accept the doctrine that the defendant by appealing to this court waives jeopardy. If we accept the doctrine that the defendant waives jeopardy, can we say that he waives it only so far as it happens to be favorable to him and that he does not waive it when it detrimentally affects him? We think not. He can not waive it for one purpose and claim its benefits for another in the same appeal. There can be no such thing as a partial waiver of jeopardy.

The method of appealing criminal causes here in the Philippines is very different from the method in vogue in the different jurisdictions in the United States. There it is generally by a writ of error. The appellate court can only consider errors assigned by the appellant. The appellate court can not consider the facts further than is necessary to reach a conclusion upon the errors assigned by the appellant. The facts are found by a jury. The appellate court can not review or revise the facts. Here the appellate court not only reviews the facts, but has authority to make a finding of facts from the evidence adduced during the trial. This court is not limited to the conclusion of facts found by the inferior court.

If the doctrine contended for, that this court has no power to correct a sentence that is manifestly contrary to the law, except where such correction is favorable to the defendant, where the defendant himself appeals, then inferior courts may absolutely disregard the law and impose whatever sentences they please so long as they are favorable to the defendant In other words, under the *bandolerismo* law existing in these Islands, the minimum punishment under section 1 is twenty years, and if the inferior court should impose a punishment of but one year, where the facts clearly show that the defendant is guilty beyond a reasonable doubt and the court so finds, and the appeal comes to this court, this court can not in any way correct this violation of

the law, for the reason that the sentence is favorable to the defendant. This doctrine certainly has no reason in law to support it. It would be a strange doctrine indeed if this Court, in the exercise of its appellate power, can not correct or authorize the correction of errors on appellate proceedings instituted by the defendant.

In the case of Massachusetts *vs.* Murphy (172 Mass., 264; 177 U. S., 155; 87 Fed. Rep., 549; 43 Law. Rep. An., 154; 48 Law. Rep. An., 393) the defendant appealed upon the ground that the statute under which he was sentenced was unconstitutional. The Supreme Court found that the sentence was not in accordance with the law, and therefore reversed it and remanded the case to the court below, with direction that the defendant be resentenced in accordance with the statutes then in force. In that case the defendant contended that one who has been sentenced by a court having jurisdiction of the offense and of the person and the right to sentence, and who has served a substantial portion of the time for which he was sentenced, can not be resentenced if it turns out on a writ of error brought by him that the original sentence was unlawful. He contended that the resentence constituted a second punishment for the same offense; that he had been put twice in jeopardy thereby and had been deprived of his constitutional rights. The court unanimously held in reply to this contention of the defendant:

> "That where, either for want of jurisdiction, or from some defect in the indictment, or from such error in the course of the proceedings, the verdict has been set aside or the judgment has been arrested on a writ of error brought by the defendant, or on a motion made by him, and he has been tried again, he was not thereby put in jeopardy a second time and his constitutional rights were not abridged."

Citing in support of this doctrine the following cases: Massachusetts *vs.* Wheeler (2 Mass., 174) ; Massachusetts *vs.* Peters (12 Met., 387); Massachusetts *vs.* Roby (12 Pick., 496); Massachusetts *vs.* Lahy (8 Gray (Mass.) 459); Massachusetts *vs.* Gould (12 Gray (Mass.), 171); McKee *vs.* People (32 N. Y., 239); People *vs.* McKay (18 Johns., 212); State *vs.* Walters

(16 La. Annual, 400) ; Cooley's Constitutional Limitations (3d ed.), 327.

Judge Cooley, one of the greatest constitutional lawyers in the United States, in discussing the question of legal jeopardy, makes the following statements:

> "A person is in legal jeopardy when he is put upon trial, before a court of competent jurisdiction, upon indictment or information which is sufficient, in form and substance, to sustain a conviction. (Price *vs.* State, 19 Ohio, 423; People *vs.* Cook. 10 Mich., 164; People *vs.* Webb, 28 Cal., 467.) * * * The defendant then becomes entitled to a verdict which shall constitute a bar to a new prosecution; and he can not be deprived of this bar by a *nolle prosequi* entered by the prosecuting officer against his will. (Mounts *vs.* State, 14 Ohio, 295; Pizano *vs.* State, 20 Tex. Ap., 139.)
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> "If, however, the court had no jurisdiction of the cause, or if the indictment was so far defective that no valid judgment could be rendered upon it, or if by any overruling necessity the jury are discharged without a verdict, which might happen from the sickness or death of the judge holding the court, or of a juror, or the inability of the jury to agree upon a verdict after reasonable time for deliberation and effort; or if the term of the court as fixed by law comes to an end before the trial is finished; or the jury are discharged with the consent of the defendant expressed or implied; or if, after verdict against the accused, *it has been set aside on his motion for a new trial, or on writ of error, or the judgment thereon has been arrested*—in any of these cases the accused may again be put upon trial upon the same facts before charged against him and the proceedings had will constitute no protection." (Cooley's Constitutional Limitations (6th ed.), 399, 400.)

It can not be said that a defendant is in legal jeopardy in a prosecution brought about by his own procurement.

In the case of McKee *vs.* The People (32 N. Y., 239) the court said that—

> "The trial and conviction were regular and legal;
> and the only ground upon which the judgment pronounced against the
> defendant upon such a verdict is sought to be reversed, is, *that the sentence and judgment pronounced by the inferior court were erroneous*.
> The conviction was legal and the sentence only was erroneous. The term
> jeopardy has no relation to the reversal of an erroneous judgment, and
> pronouncing a legal one pursuant to a legal conviction."

In the case of Jeffries *vs.* The State (40 Ala., 381) the court held that a prisoner could not plead *autrefois convict*
if the former conviction had been reversed on proceedings instituted by
himself, notwithstanding the fact that he had served a part of the term
of his imprisonment before the reversal.

In the case of In re Bonner (151 U. S., 242) the defendant had been
sentenced to be confined in a prison not authorized by law. He applied
to the Supreme Court for the writ of *habeas corpus*, alleging that fact. In passing upon the question the court said:

> "Where a conviction is correct, and where the error
> or excess of jurisdiction is the ordering the prisoner to be confined
> in a penitentiary where the law does not allow the court to send him,
> there is no good reason why jurisdiction of the prisoner should not be
> reassumed by the court that imposed the sentence in order that its
> defects may be corrected."

Such a sentence not in conformity with the law is absolutely void,
and the prisoner should be discharged under such conditions. But the
court in discharging a prisoner in such a case on *habeas corpu*
should delay his discharge for such reasonable time as may be necessary
to have him taken before the court where the judgment was rendered, in
order that the defects in the former judgment may be corrected. (Ex
parte Lange, 18 Wall., 163; Ex parte Parks, 93 U. S., 18; Ex parte

Virginia, 100 U. S., 339; Ex parte Rowland, 104 U. S., 604; In re Coy, 127 U. S., 731; In re Mills, 135 U. S., 263.)

In the present cause the defendants, when they appealed to this court, assigned no errors. A lawyer was appointed *de oficio* in this court. The only error which he assigns is that the "cause discloses an entire lack of evidence on the part of the Government which would justify a conviction." An examination of the proof adduced during the trial convinces us beyond a reasonable doubt that the defendants are guilty of the crime charged in the complaint, and therefore should be punished in the manner indicated in the opinion of Mr. Justice Willard.

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[1] Phil. Rep., 397.

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