2 Phil. 58

[G. R. No. 1303. December 12, 1903]

THIS UNITED STATES, COMPLAINANT AND APPELLANT, VS. JOHN B. COLLEY, DEFENDANT AND APPELLEE.

D E C I S I O N

MCDONOUGH, J.:

The defendant, John B. Colley, was a private in Company M, Twenty-sixth Infantry, United States Regular Army, and while in such service and on or about the 29th day of March, 1002, he killed one Frank Ignasiack, also a private in the same company, for which crime said Colley was arrested by the military authorities.

A general court-martial was duly appointed by Brigadier-General Grant, commander, to meet at Catbalogan, Samar, May 24, 1902, or as soon thereafter as practicable. for the trial of such persons as were properly brought before it.

On June 4, 1902, the said court met and proceeded to the trial of said Colley, who was personally present and represented by counsel, on the charge of murder, in violation of the fifty-eighth article of war, in that he did, *in time of insurrection*, willfully, unlawfully, feloniously, and with malice aforethought, murder said Frank Ignasiack by shooting him with a rifle, inflicting a wound of which said Iguasiack died then and there. This at Tarangnan, Samar, Philippine Islands, on or about the 29th day of March, 1902.

The accused plead not guilty, and thereupon and thereafter many witnesses were sworn and gave testimony in the case, and the said court on June 6, 1902, after hearing all the evidence and after due deliberation, found the accused guilty of the charge of murder and also guilty of the specification. The court thereupon sentenced said accused to be "hanged by the neck until dead," at such time and place as the reviewing authority may direct, two-thirds of the court concurring therein. The court then adjourned subject to meet at the call of the president. On July 11, pursuant to an order from Brigadier-General Grant, the court-martial reconvened for the purpose of revising the record in this case, and made

several verbal changes, not, however, affecting the jurisdiction, the finding, or sentence of the court.

The record was then forwarded, July 23, 1902, by Brigadier-General Grant to the adjutant-general, Division of the Philippines, Manila, P. I., with this indorsement:

> "Under the terms of the fifty-eighth article of war, as construed in paragraph 91, Dig. Opin. J. A. G., 1901, any action on this case subsequent to July 4, 1902, seems to be illegal. Private Colley has not been released from confinement."

Subsequently, and on the 12th day of August, 1902, the judge-advocate forwarded the same to the adjutant-general of the division, under indorsement 7, "recommending that, as the 58th A. W. is no longer operative since the proclamation of the President of July 4, 1902, an effort be made to have this man tried by the civil authorities for murder, and that his discharge without honor be requested from the Secretary of War under section 3, paragraph 167. A. R."

On August 14, 1902, under indorsement 8, by order of Major-General Chaffee, it was returned, through headquarters Department of South Philippines, Cebu, Cebu, to the commanding officer, Catbalogan, Samar, for action as indicated in seventh indorsement, and was received and its contents noted.

The proclamation of the President of the United States issued July 4, 1902, is known as the amnesty proclamation, and recites that "the *insurrection* against the sovereignty of the United States (in the Philippine Archipelago) is now at an end, and peace has been established in all parts of the Archipelago, except the country inhabited by the Moros, to which this proclamation does not apply."

Section 1342 of the Revised Statutes of the United States prescribes the Rules and Articles of War. Article 64 of this section provides that –

> "The officers and soldiers of any troops, whether militia or others, mustered and in pay of the United States, shall, at all times and in all places, be governed by the Articles of War, and shall be subject to be tried by courts-martial."

Article 58 of said section provides that –

> "In time of war, insurrection, or rebellion * * * murder * * * shall be punishable by sentence of a general court-martial when *committed* by persons in the military service of the United States; and the punishment in any such case shall not be less than the punishment provided for the like offense by the law of the State, Territory, or District in which such offense may have been committed."

The accused was tried and convicted under this article 58, the crime charged having been committed by the soldier in time of insurrection, and it appears that when the President proclaimed the insurrection at an end July 4, 1002, the reviewing authority of the Army concluded that the military authorities were without power to carry into execution the sentence of the court.

Article 105 of said section provides that –

> "No sentence of a court-martial inflicting the punishment of death shall be carried into execution until it shall have been confirmed by the President except in the cases of persons convicted, in time of war, as spies * * * or murderers * * *; and in such excepted cases the sentence of death may be carried into execution upon confirmation by the commanding general in the field or the commander of the department, as the case may be."

It appears that after the insurrection ended, the reviewing authority not having approved or disapproved the sentence, and having reached the conclusion that under the military law no further steps could be taken by such authority toward enforcing the judgment and sentence of the court, nothing further was done by the military authorities except to dismiss the defendant dishonorably from the Army.

Notwithstanding the fact, however, that the one hundred and second article of war provides that "no person shall be tried a second time for the same offense," the defendant was turned over to the civil authorities, and on the 8th day of January, 1903, the provincial fiscal of Samar filed an information in the Court of First Instance of that province duly charging the defendant with the murder of said Ignasiack, at the time and place and in the manner and with the intent mentioned in the complaint made to the court-martial.

On January 8,1903, the accused appeared in person and filed a motion that he be

discharged from the accusation 'on the ground of former jeopardy, setting forth in this written plea the charges and specifications upon which he was tried by the court-martial, and also the judgment of that tribunal.

On March 28, 1903, the prosecuting attorney filed a paper in which he admitted the facts set up by the defense as the proceedings had before the court-martial, and also the identity of the accused as the same person so tried, and that it referred to the same act, the killing of Frank Ignasiack, as that prosecuted in the present cause, but denied that the charge in each one of the said qauses is legally the same or that the said court-martial was a court of competent jurisdiction to try the said case, adding that by reason of the proclamation of July 4, 1902, the said court-martial has declined to continue the said cause or to execute the judgment entered therein.

On the 31st of March, 1902, the case was heard on the plea of jeopardy before Hon. William H. Pope, judge of the Twelfth Judicial District of the Philippine Islands, and in support of the plea of jeopardy the defendant, by his attorney, introduced in evidence the transcript of the proceedings before the court-martial, which was admitted by the court without objection on the part of the prosecuting attorney.

On April 2, 1903, Judge Pope, of the Court of First Instance, entered his decision, finding that the defendant had been placed in jeopardy for the same offense before a court of competent jurisdiction, and directing his discharge. Against this order the prosecuting attorney appealed.

For the purposes of this appeal the facts are not denied or questioned: (1) That the general court-martial which tried Colley was lawfully organized, (2) that the crime charged was one forbidden by law, (3) that in time of insurrection a general court-martial has jurisdiction of the crime charged, (4) that insurrection existed at the time of the commission of the offense and until after the conviction and sentence of the accused, (5) that a trial of the accused took place before that court upon the charge and the defendant's plea of "not guilty," and (6) that upon the evidence in the case that court found the defendant, Colley, guilty of murder and sentenced him to be hanged by the neck until dead.

It has frequently been held that, although courts-martial are the creatures of military orders and are transient and summary, their judgments, when rendered upon subjects within their limited jurisdiction, are as legal and valid as those of any other tribunals, and that their proceedings and judgments can not be reviewed or set aside by the civil courts.

(Swain *vs.* United States, 165 U. S., 553; United States *vs*. Hirsch, 100 U. S., 33; Johnson *vs.* Sayre, 158 U. S., 109; United States *vs.* Ball, 163 U. S., 662; Wales *vs*. White, 114 U. S., 564.)

> "The judgments of courts-martial are conclusive, like those of any other courts, unless some defect in regard to their jurisdiction is shown." (Brown *vs*. Wadsworth et al., 15 Vt, 170.)

Under the practice in force under military law, the defendant could not be tried again by court-martial.

Where the accused has been once duly acquitted or convicted, he has been "tried" in the sense of the one hundred and second article of war and can not be tried again against his will, though no action whatever be taken by the reviewing authority, or though the finding and sentence be wholly disapproved by such authority.

> "It is immaterial whether the former conviction or acquittal is approved or disapproved." (Davis's Military Law, 533, 2d ed.)

The accused now claims that, inasmuch as he was put in jeopardy by his trial, conviction, and sentence by the court-martial, he can not, for the same offense, be put in jeopardy again.

By Article V of the amendments to the Constitution of the United States it is provided:

> "* * * nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb."

This article was made applicable to the Philippine Islands by section 5 of the act of Congress passed July 1, 1902, relating to these Islands, viz:

> "Sec. 5. * * * No person shall be held to answer for a criminal offense without due process of law; and no person for the same offense shall be twice put in jeopardy of punishment."

What is meant by "jeopardy?" Bishop in his work on Criminal Law (vol. 1, sec. 979, 8th ed.) says: "One who in a judicial tribunal has been convicted, acquitted, or put in what the law terms jeopardy in respect to a real or supposed crime can not be further or again pursued for it except as by some step in proceeding he waived his right to rely on this immunity."

Judge Story in his work on the Constitution (5th ed., sec. 1787) says that "the meaning of it is, that a party shall not be tried a second time for the same offense after ho. has once been convicted or acquitted of the offense charged in the verdict of the jury and judgment has passed thereon for or against him." Some authorities hold that jeopardy may take place in the proceeding of the trial before it ends; others that there is no jeopardy until the rendition of the verdict or judgment; but all agree that jeopardy exists when the trial resulted in a judgment of conviction or acquittal, especially if sentence follows the conviction, as in the case at bar. The doctrine that no one shall be twice put in jeopardy for the same offense is favored by the courts. It is fundamental. It is founded on reason and justice. It was a part of the civil law and of the common law, and is incorporated not only in the Constitution of the United States but also in the constitutions of almost all of the States.

The defendant was duly convicted in a military court, having authority and jurisdiction to try the case, and he was convicted and sentenced.

> "If the tribunal has authority either concurrently with another or exclusive whether it is an inferior one, as a justice's court, a court-martial, or the court of a municipalcorporation, or is a superior one a conviction or acquittal in it will be a bar to a subsequent proceeding in whatever court undertaken." (1 Bishop's Cr. Law, sec. 1029; Commonwealth *vs*. Roby, 12 Pick. Mass., 496.)
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> "The acquittal of the accused by a court-martial is a bar to subsequent indictments in courts of common law for the same offense, the tribunal acquitting being competent to acquit." (Wilkes *vs.* Dinsman, 7 How. U. S., 123.)

There are, however, numerous decisions of Federal and State courts holding that by the same act a person may commit two crimes, may offend at the same time two sovereignties that of the United States and that of the State in which the offense is committed. From this doctrine the conclusion was reached that therefore there could be two trials of the accused for the same act, one in the courts of the United States and the

other in the State tribunal, and also, as a consequence, two punishments.

This doctrine has been applied in such offenses as passing counterfeit money, harboring fugitives, illegal sale of liquor, etc. (State *vs*. Rankin, 4 Coldwell, Tenn., 145; Fox *vs*. Ohio, ,5 How. U. S., 410; Baron *vs*. Mayor of Baltimore, 7 Peters U. S., 243; Moore vs. People of Illinois, 14 How. U. 8., 13.)

Conceding this to be an exception to the general rule that an offender shall not be tried twice for the same offense against his will, it is not applicable in this Colley case for the reason that there is no dual sovereignty in these Islands; there is only one to be offended the United States for which and in the name of which the Commissioners of the Philippine Islands as well as courts-martial act.

At the time of the shooting in question the Commission enacted laws "by authority of the President of the United States."

So here there is but one offense, that against the United States, and when that Government chooses the tribunal in which to try an offender, when the trial takes place in that tribunal, and when the accused is convicted and sentenced, he can not again be put in jeopardy in another court of the same sovereignty.

It follows that the defendant having been once in jeopardy can not be tried again for the offense of which he was formerly convicted.

The Supreme Court of the United States has gone a step further, and has held that in time of war, insurrection, or rebellion an officer or soldier of the United States Army can not be tried at all in a civil court for an offense committed in the State, Territory, or District where the war, insurrection, or rebellion exists. It held that such an offense comes within the provisions of the fifty-eighth article of war and that general courts-martial have *exclusive* jurisdiction in such cases.

The case of Coleman *vs.* Tennessee (97 U. S., 509) is authority for this view of the law and it applies to the case at bar. In that case it appeared that Coleman was indicted in a criminal court of Tennessee, October 2, 1874, on a charge of murder, which it was alleged the defendant committed March 7,1865, while he was in the United States Army. To this indictment the defendant pleaded a former conviction, for the same offense, by a general court-martial regularly convened for his trial, at Knoxville, Tenn., March 27, 1865; the United States at that time and when the offense was committed occupying with their armies

east Tennessee as a military district, and the defendant being a regular soldier of their military service; and that he was convicted by said court-martial of the crime of murder and sentenced to death for the killing of the same person mentioned in the indictment, and that such sentence was still standing as the judgment of the court-martial. It seems that, as in this Colley case, nothing was done to carry out the sentence of the court-martial owing to peace being declared soon after the conviction. The Tennessee courts, however, held the indictment good and the plea of jeopardy bad, inasmuch as there was also a violation of the State laws; and the defendant was tried, convicted, and sentenced to be executed.

Through a habeas corpus proceeding the case was taken to the Supreme Court of the United States: Objection was made that a plea of a former conviction for the same offense was not a proper one, for it admitted the jurisdiction of the criminal court to try the offense if it were not for the former conviction, but it was said that its inapplicability would not prevent the court from giving effect to the objection which the defendant attempted to raise, that the State court had no jurisdiction to try and punish him for the offense. The court discussed at great length the right to govern the territory of an enemy during military occupation, the character, form, and powers of the local civil government to be established, the relations of the military authorities to the people, the civil courts established, and their jurisdiction in civil and criminal cases.

"But this doctrine," said Mr. Justice Field, who wrote the prevailing opinion, "does not affect the exclusive character of the jurisdiction of the military tribunals over the officers and soldiers of the Army of the United States during war, for they are not subject to the laws nor amenable to the tribunals of the hostile country." And so the court held that: "The judgment and conviction in this criminal court should have been set aside and the indictment quashed for want of jurisdiction. Their effect was to Oof out an act done under the authority of the United States by a tribunal of officers appointed under the law enacted for the government and regulations of the Army in time of war, and while that Army was in a hostile or conquered State. The judgment of that tribunal when rendered was beyond the control of the State of Tennessee. The authority of the United States was then sovereign and their jurisdiction exclusive." Coleman was, therefore, discharged from arrest. The same principles are laid down in the case of Dow *vs.* Johnson (100 U. S., 158).

The facts in this Colley case are similar to those in the case of Ooleman in almost every respect, and, therefore, the holding of the Supreme Court that, upon such a state of facts, the court-martial had exclusive jurisdiction, established a precedent which this court should follow.

Consequently, for the reason that the defendant was once in jeopardy, and also because the court-martial had exclusive jurisdiction to try the accused, the judgment of the Court of First Instance discharging the defendant from arrest is affirmed.

Cooper and *Johnson, JJ.*, concur.

CONCURRING

TORRES, J.:

I am of the opinion that the military trial is still pending. The case lmd been decided by a competent court, and on July 1, 1002, the only thing lacking was the approval of the President of the United States or the commanding general of the division, this approval being an indispensable requisite for the execution of a sentence of the military commission. Upon this view of the case, and notwithstanding the information filed by the provincial fiscal of Samar accusing John B. Colley of the crime of murder, it is unquestionable that the judge of that district was without jurisdiction to take cognizance of the prosecution, and, consequently, all the proceedings of the judge of the. First Instance are null and void. There is no legal reason why there should be a new prosecution of a crime which has already been the object of a former proceeding, in which a final decision was rendered and which only lacks the final formality of the approval of the President or of the commanding general of the division.

The amnesty proclamation of July 4, 1902, can not be regarded as producing the effect of a dismissal of the military" proceedings or as a ground for beginning a new criminal prosecution against the defendant for the same crime. The law does not authorize such a procedure, nor is authority therefor contained in the proclamation. Furthermore, no such decision appears to have been made by the court before which the case was tried.

I am therefore of the opinion that the case prosecuted against John B. Colley should be declared null and void, with the costs *de oficio*, and that the judge should immediately discharge the accused and place his person at the disposal of the commanding general of the division.

CONCURRING

WILLARD, J.:

I concur in the judgment on the ground that the case falls either within section 28 or within section 26 of General Orders, No. 58. Section 28 is as follows:

"A person can not be tried for an offense, nor for any attempt to commit the same or frustration thereof, for which he has been previously brought to trial in a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction, after issue properly joined, when the case is dismissed or otherwise terminated before judgment without the consent of the accused."

The court-martial was a court competent to try the case when the defendant was brought before it and when it pronounced its judgment. If this did not end the case the subsequent action of the military authorities amounted to an abandonment of the proceedings. This was a termination of the case without the consent of the defendant.

If it be said that the action of the court-martial amounted to a final judgment without the approbation of the convening authority, and so ended the case, then there was a former conviction, and, under section 26 of General Orders, No. 58, this proceeding could not be maintained.

I do not think that the case of Coleman *vs.* Tennessee, so far as it holds the jurisdiction of the court-martial to be exclusive, is applicable here. The relation which the Province of Samar held to the Government of the United States when the crime was committed and the trial before the court-martial had was not the same as that between said Government and the State of Tennessee during the civil war.

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