

1 Phil. 236

[G.R. No. 555. April 19, 1902]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. PANTALEON GIMENO,
DEFENDANT AND APPELLANT.**

D E C I S I O N

COOPER, J.:

The defendant, Pantaleon Gimeno, was on November 21, 1901, convicted in the Court of First Instance, Fifth Judicial District, of the offense of robbery and sentenced to six years and one day of presidio mayor and to the payment of damages and costs.

Upon an examination of the record we discover that the defendant applied to the Court of First Instance for assignment of counsel for his defense at the trial of the case, and in accordance with the application an attorney was assigned for his defense. Notwithstanding this, it seems that the attorney failed to appear at the trial to represent him, and the burden fell upon him to make his own defense.

Under General Orders, No. 58, if the defendant appears without counsel he must be informed by the court that he has a right to have counsel before being arraigned, and must be asked if he desires the aid of counsel. If he desires and is unable to employ counsel the court must assign counsel to defend him. (Sec. 17.) This is a right which the defendant should not be deprived of, and the failure of the court to assign counsel or, after counsel has been assigned, to require him to perform this duty by appearing and defending the accused would be sufficient cause for the reversal of the case.

For this reason it will be necessary to remand this case for a new trial, at which the defendant must be assigned counsel for his defense.

It is so ordered and directed, and the costs of this appeal are adjudged *de officio*.

Arellano, C. J., Mapa, and Ladd, JJ., concur.

DISSENTING

WILLARD, J.:

I can not agree with the opinion of the court in this case. It appears that at the request of the defendant on the day before the trial the court appointed a lawyer to defend him. At the trial this lawyer not appearing, the defendant conducted his own defense and cross-examined some of the witnesses. As far as the record shows he made no objection to proceeding without the presence of his lawyer. Why that lawyer was not present does not appear. Upon this record the majority of the court reverse the judgment for a non-compliance with section 17 of General Orders, No. 58. As a matter of fact the court did comply with section 17 and did nominate a lawyer for the defense. In the absence of any showing to the contrary we ought to assume that the judge would not have proceeded with the case in the absence of this lawyer unless there was some good reason for doing so. He had recognized the right of the defendant to have counsel by appointing such counsel. It is not credible that the next day he would have ignored the right of the defendant to this protection. For the purpose of reversing the judgment we ought not to presume that the court neglected his duty which he must then have had in mind; we ought rather to presume that the defendant consented to proceed without the presence of his lawyer; his conduct shows this.

I think that the judgment should be affirmed.

Torres, J., did not sit in this case.
