

[G.R. No. 2496. December 13, 1905]

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. SIXTO MOLO, DEFENDANT AND APPELLANT.

D E C I S I O N

JOHNSON, J.:

This defendant was charged with the crime of *bandolerismo*, was tried in the Court of First Instance of the Province of Leyte on the 18th day of January, 1905, was found guilty, and sentenced to the penalty of death. The case is now here *en consulta*. The defendant did not appeal.

The complaint was the ordinary complaint for the crime of *bandolerismo*. When the defendant was arraigned on the 18th day of January, 1905, before the judge of the Court of First Instance of the Province of Leyte, he pleaded guilty to the crime charged, in the following words:

“I admit that there is a certain understanding between Juan Tamayo, Faustino Ablin, Cornelio Jurilla, Felipe Tamayo, Pedro Ligutan, and others. I deny the fact that I conspired with the rest of them to form a band of *ladrones*. I admit that I have been with the band three years. We have organized ourselves in groups. We used to go out in groups of twos and sometimes in groups of fives. In the principal group there were 9 Springfield rifles, 1 Kemington, 1 Krag, 5 revolvers, and the rest carried knives. I usually carried with me a Smith & Wesson revolver. During the time that I was with the band we had two conflicts with the Constabulary commanded by Gervasio Abanilla. The first fight took place between the barrios of Macalpi and Camansi, in the municipality of Carigara. In this fight Felipe Tamayo killed one of the Constabulary. It was dark when we were surprised, and

on account of this surprise we had to fire upon them. After that we escaped. We usually entered towns under the cover of darkness and we used to trade with the people and we used to get our food from them. I admit that I was present in the band with the group that killed the signal sergeant in Bucauan River. The death of this sergeant occurred three days after the attack of the Constabulary commanded by Gervasio Abanilla. We usually used to get bananas from our relatives. Pedro Ligutan was the man who killed the sergeant in question. At the time we killed the sergeant we had three revolvers. At that time I only had a bolo with me. I had no firearms. Juan Tamayo was not present at that time, but his older brother, Felipe Tamayo, was present. I was a captain of the *pulajanes* then."

Later on in the day the defendant was again asked if he pleaded guilty or not guilty and the defendant replied that he was guilty.

It appears from the statement of the judge in the record that the defendant was not sentenced at the time he entered this plea of guilty. The judge suspended the rendering of a sentence in the cause upon the request of the attorney for the defendant in order that the said attorney might have time to present authorities supporting the proposition that the defendant should not be punished with the penalty of death, even though he pleaded guilty to the charges.

Later, on the 23d day of February, 1905, more than a month having elapsed, the defendant was called into court by the judge for the purpose of imposing his sentence; whereupon the attorney for the defendant appeared and without presenting any reasons why the death penalty should not be imposed upon the defendant, requested the court to permit the defendant to withdraw his plea of guilty made on the 18th day of January and interpose the plea of not guilty. This request was denied by the court; thereupon the court sentenced the defendant to the penalty of death, with costs.

The attorney for the defendant in this court argues that the inferior court erred in not permitting the defendant to withdraw his

plea of guilty and to interpose the plea of not guilty. Section 25 of General Orders, No. 58, provides :

“The plea of guilty can be put in only by the defendant himself in open court. The court *may*, at any time before judgment upon a plea of guilty, permit it to be withdrawn and a plea of not guilty substituted.”

Under the provisions of this section, after the defendant has interposed one plea, either guilty or not guilty, his right to change his plea is within the discretion of the trial court. We are of the opinion that the inferior court committed no error in refusing the defendant the right to withdraw his plea of guilty and interpose the plea of not guilty.

It is also argued on behalf of the defense that the fact that he pleaded guilty should be taken into consideration as an extenuating circumstance. This court has decided, however, in the case of *United States vs. Ablaza* (1 Phil. Rep., 740), “*that the fact that the defendant confessed his guilt can not be considered as an extenuating circumstance within the meaning of article 9 of the Penal Code.*”

The facts, however, stated in the confession of the defendant in open court in our judgment are not sufficient to justify the imposition of the death penalty. The sentence of the inferior court is therefore revoked and the defendant is hereby sentenced to be imprisoned for the period of his natural life (*prision perpetua*) and to pay the costs. So ordered.

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