8 Phil. 255

[G. R No. 3621. July 26, 1907]

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MACARIO SAKAY, JULIAN MONTALAN, LEON VILLAFUERTE, AND LUCIO DE VEGA, DEFENDANTS AND APPELLANTS.

D E C I S I O N

JOHNSON, J.:

These defendants were charged in the Court of First Instance of the Province of Cavite with having committed the crime of *bandolerismo*, as follows:

> "That the said Macario Sakay, Francisco Carreon, Julian Montalan, Leon Villafuerte, Lucio de Vega, Benito Natividad, Justiniano Ramos, Vicente Giron, Filomeno Peroy, Isabelo Despida, Felix Estacio, and Gregorio Porto,in and during the years 1902, 1903, 1904, 1905, and 1906,voluntarily, illegally, and criminally, organized bands of *ladrones*, in which organizations the said Macario Sakay was known as president, Francisco Carreon as vice-president, Julian Montalan and Leon Villafuerte as generals, Lucio de Vega as colonel, Benito Natividad, Justiniano Ramos, and Vicente Giron as majors; that the said bands of *landrones* were each composed of more than three persons, armed with deadly weapons, and were organized by the accused for the stealing of carabaos, cattle, horses, rice, and any other kind of personal property, and for the detention of persons for extortion and ransom and for other purposes, by means of force and violence; that the said bands of *ladrones*, organized, commanded, and directed by the said accused, performed each and all of the aforementioned acts in the Provinces of Cavite, Batangas, Laguna, Rizal, and Bulacan; and that more especially they detained, tortured, mutilated, and purposely and treacherously killed some of the inhabitants of the said provinces. That the said accused, each and every one of them, cooperated and associated with said armed *ladrones* when the said bands operated under their command and

> performed the acts above related. All against the statute in such cases made and provided."

These defendants were duly arraigned upon the 17th day of September, 1906, and each pleaded "not guilty" of the crime charged in the said complaint.

At the commencement of. the trial the prosecuting attorney of said province, under section 34 of General Orders, No. 58, requested that the said cause be dismissed against Justiniano Ramos and Vicente Giron, in order that they might be used as witnesses for the Government, which request was granted by the court, the cause of action pending against these two defendants was dismissed and they were given their liberty.

At the same time the prosecuting attorney of said province asked that Francisco Carreon be transferred to the Court of First Instance of the city of Manila for trial, for the reason that said Court of First Instance of the Province of Cavite did not have jurisdiction over the crime alleged to have been committed by the said Carreon. This motion was granted, and the said Carreon was ordered to be transferred to the Court of First Instance of the city of Manila for trial.

The cause then proceeded against the other said defendants each day until the 21st day of September, 1906, when the attorneys for the defendants petitioned the court to permit the defendants to withdraw their former plea of "not-guilty," presented by them at the time of their arraignment, and to permit them to plead "guilty" to the facts charged in the said complaint. This request was granted by the court, basing his conclusion upon the provisions of section 25 of General Orders, No. 58, and the decision of the Supreme Court in the case of United States vs. Molo[1] (4 Off. Gaz., 57), and each of the defendants thereupon was permitted to make a full statement relating to his plea of guilt. (Record, pp. 133-155.)

At the close of the trial in the Court of First Instance, and after a consideration of the evidence adduced prior to the time that the defendants plead "guilty" to the acts charged in said complaint, and a consideration of their plea of "guilty," the court found each of the said defendants guilty of the crime charged therein and sentenced Macario Sakay, Julian Montalan, Leon Villafuerte, and Lucio de Vega to the penalty of death, Benito Natividad to be imprisoned for a period of thirty years, and Filomeno Peroy, Isabelo Despida, Felix Estacio, and Gregorio Porto to be imprisoned for a period of twenty years and each one to pay a proportional amount of the costs of the trial.

From this sentence of the lower court the said Macario Sakay, Julian Montalan, Leon Villafuerte, and Lucio de Vega appealed to the Supreme Court.

The lower court, after hearing the evidence, made the following findings of fact in its decision:

> "(a) That the said accused since the year 1902 until their surrender in May and June, 1906, organized several bands of more than three persons supplied with firearms and other weapons, in which bands the accused, Macario Sakay, was known as president, Julian Montalan and Leon Villafuerte as generals, Lucio de Vega as colonel, Benito Natividad as major, and the said Filomeno Peroy, Isabelo Despida, Felix Estacio, and Gregorio Porto as members or privates; and,
>
> "(b) That the members of the bands under the command of the said chiefs, armed with deadly "weapons,roamed over the country and through the towns of the Provinces of Cavite, Laguna, Batangas, Rizal, and Bulacan, committing robberies, assaulting the *pueblos* in order to attack and capture the arms of the Constabulary and municipal police, sacking municipal treasuries, detaining persons, and mutilating their lips and cutting the tendons of the feet, and murdering municipal government officials."

Of course in addition to these facts, the defendants, by their plea of "guilty" admitted to all of the facts charged in said complaint.

A careful reading of the record brought to this court is sufficient to convince us, in the absence of the plea of "guilty" on the part of the defendants, that they and each of them were guilty of the crime charged in said complaint.

In the explanation given by the appellants in this cause at the time they changed their plea of "not guilty" to that of "guilty," they attempted to show that while they were guilty of the acts charged in said complaint, whatever they did was done from a patriotic motive and in defense of the rights of the people of their country. With reference to this patriotic motive on the part of the defendants, we will allow "Exhibit J" (folio of record, 180), introduced by the prosecution during the trial of said cause, to explain:

> "MR. PIO DEL PILAR, *Major-General:*

"Upon receipt of this order, please comply with the same and direct the troops to enter the town of Teresa and carry out the following:

> " (1) Seize all foods, such as *palay*, which you can carry, also take the money in order to defray the expenses of our soldiers and the war.
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> "(2) Arrest the concejal Memimino Grebillos, and all persons concerned with him in detaining our commissioners and as soon as arrested you will punish them as provided in Order No. 9, of April 10, 1904, prescribing that the tendon achilles shall be cut and the fingers of both hands crushed.
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> "(3) Should the townspeople offer resistance to the troops, burn all the houses, without showing mercy to the inhabitants.
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> "All the provisions of this letter have been passed on by the supreme *junta*, on account of the" treacherous conduct of the inhabitants of Teresa toward our commissioners.
>
> (Signed) "MACARIO SAKAY.

"P. S.—In this connection I would warn you that before entering the town of Teresa a plan must be devised so as not to expose our soldiers."

Another letter which was introduced in evidence, known as "Exhibit N" (record, p. 186), signed by Macario Sakay, also demonstrates the humane purpose which he had in organizing the band which was called in the complaint "bandits" and who were charged in the complaint with the crime of *bandolerismo*. Said letter is as follows:

"Major Ramos :

> "Your letter reporting the result of your expedition received in this office. "Upon receipt of this letter, direct Captain Franca to take away Francisco Rosalia and Faustino Custodio and cut the tendons of their feet and crush the fingers of their hands. Do not fail to obey this

> order, otherwise you will be held responsible for noncompliance therewith, because they are traitors to our government. Sultan is major but he is a secret service agent and so is Faustino.
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> "This punishment shall be carried out in the presence of those married persons who are to be released, and enroll and administer the oath of fidelity to such as are not enlisted. Also administer the oath to those that are ordered released and cause a list of their names to be captured by the enemy, so that it may be known that they are members of the army.
>
> "God be with you.
>
> "November 14,1905.
>
> (Signed) "MACARIO SAKAY."

This court has frequently held that, notwithstanding the fact that men are organized under the guise of a military establishment, if they are actually and notoriously engaged in robbery and pillage, such band or members of the same may be convicted of the crime of brigandage. (U. S. vs.Guinacaran et al., 1 Off. Gaz., 871, 2 Phil. Rep., 551; XL S.vs. Cervantes, 2 Off. Gaz., 170, 3 Phil. Rep., 221.)

In this court the appellants assign as error the following:

> (1) That the lower court committed an error in taking into consideration the evidence introduced in said cause.
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> (2) That the lower court erred in not taking into consideration the mitigating circumstance mentioned in article 11 of the Penal Code.
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> (3) That the lower court erred in applying the penalty of death in place of imprisonment, violating paragraph 10 of section 5 of "The Philippine Bill" of July 1, 1902.
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> (4) That the court erred in condemning the appellants to the penalty of death without due process of law, violating paragraph 1 of section 5 of the Philippine Bill.

After the prosecuting attorney had presented the testimony of twenty-one witnesses, each of the said defendants asked permission to withdraw his former plea of "not guilty" and to be permitted to plead "guilty" to the crime charged in said complaint. At the same time the attorneys for the defendants requested the court not to take into consideration the evidence adduced for the purpose of his conclusion. In other words, the attorneys for the defendants desired that the court should impose the penalty provided for by law upon their plea of "guilty" simply. The lower court refused to do so, and, in reaching a conclusion with reference to the penalty which should be imposed upon the defendants, took into consideration the testimony adduced. This the lower court had a perfect right to do. Had the defendants pleaded "guilty" in the first instance the court might even then, in its discretion, have examined witnesses for the purpose of ascertaining the degree of punishment to be imposed. (U. S. vs. Talbanos,[1] 4 Off. Gaz..,695.)

The second assignment of error, to wit: That the court refused to take into consideration the mitigating circumstance of article 11 of the Penal Code is equally without merit. The defendant, Macario Sakay, assumed the title of "supreme president of the Tagalog Isles;" Julian Montalan was appointed a lieutenant-general in the army of the said president; Leon Villafuerte was appointed a brigadier-general by said president, and Lucio de Vega was also known as a general. Each of these defendants, according to the evidence, was in charge of separate bands of said bandits. Certainly the attorneys for the defendants did not consult them when they asked the court to apply the provisions of article 11 of the Penal Code to them; at least the lower court committed no error in refusing to so apply said article, for the reason that the provisions of the Penal Code, relating to extenuating and mitigating circumstances have no application to crimes created by the Philippine Commission.

With reference to the third and fourth assignment of error, we find nothing in the record or in the decision of the court below which shows that the lower court in anyway violated any of the provisions of section 5 of the Act of Congress of July 1, 1902.

The attorneys for the appellants argue that, inasmuch as the defendants presented themselves to the authorities, this should be taken into consideration in reducing the sentence from that of death to that of imprisonment. It is true that the defendants did present themselves to the authorities. However, no promise of leniency was made to them by those in authority at that time. They were given expressly to understand that no promise of leniency was made to them by anyone in authority; they presented themselves unconditionally, without any promise of leniency whatever, except that they would not be

shot upon their surrender, but that they would be guaranteed an equitable and just trial. (U. S. 'vs. Unselt, 4 Off. Gaz., 612; 6 Phil.Rep., 456.)

The attorneys for the defendants argue in their brief that this court should take into consideration the fact that they surrendered themselves voluntarily, and reduce the penalty imposed by the lower court. We are of the opinion that we have no authority to do this. If any clemency should be exercised in favor of the defendants for this voluntary act on their part, it should be done by the executive branch of the Government.

The attorneys for the defendants argue that the lower court committed an error in not giving them at least twenty-four hours after arraignment to answer to the complaint. It is time that section 19 of General Orders, No. 58, gives the defendant the right, on arraignment, to require a reasonable time, not less than one day, to answer the complaint or information. It is also true, in the present case, that the lower court refused to give them this one day in which to answer. The attorneys for the defendants, however, expressly renounced the right to present any dilatory exceptions, and four days after the commencement" of the trial and after they had had ample time to examine the complaint, each one of them voluntarily withdrew his plea of "not guilty" and asked the court for permission to plead "guilty" to the said complaint; the error of the court, therefore, if there were any, could not in any way have prejudiced them.

The record fully discloses that each of the defendants was a chief and organizer of bands of bandits and that, therefore, the punishment imposed by the lower court was entirely justified by law. (U. S. vs. Oruga,1 5 Off. Gaz.,161.)

After a full consideration of all the facts presented to this court, Ave are of the opinion that the sentence of the lower court should be affirmed, and it is so ordered, with costs.

Arellano, C. J., Torres, Willard, and *Tracey, JJ.*, concur.

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[1] 5 Phil. Rep., 412.

[1] 6. Phil. Rep., 541

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