

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. AFRONIANO FERNANDEZ (ALIAS LABILLA) ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 3741. November 27, 1907

Ponente: JOHNSON, J.

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JOHNSON, J.:

These defendants were charged with the crime of bundolerismo in the words and figures following: "That during the months of July and August, 1906, until the 14th day of the said month of August, and within the jurisdiction of the municipalities of Burauen, Baybay, Ormoc, and Abuyog, in this province, the aforesaid accused, under the leadership of the bandits Faustino Ablen, Felipe Idos, Patoy Quelesong, Florentino Bantasan, and others unknown, did willfully and feloniously conspire among themselves and other unknown persons, and formed a band of ladrones for the purpose of stealing carabaos, cattle, horses, rice, hogs, fowls, and other personal property, and for the purpose of abducting persons by means of force and violence in order to fight and to kill the men belonging to the Army of the United States, to the Constabulary, and to the municipal police and other agents of the Insular, provincial, and municipal governments ; and that the said accused together with their companions armed with bolos, thirteen Remington rifles, six flintlock guns, one revolver, and ten lantacas, roamed over the fields and presented themselves to the bandit leader Faustino Ablen, placing themselves under his orders; and that subsequently, under the orders and command of the said Faustino Ablen, Felipe Idos, Patoy Andong, and others at present unknown, and accompanied by about one hundred men, all of them armed with deadly weapons, the said accused and their companions forcibly entered the municipal building of said municipality and then and there killed policemen Pedro Gonzaga, Doroteo Reas, and Simon Risos, wounded policeman Francisco Briones; and that thereafter the said accused and their companions set fire to the municipal building, which was entirely consumed, together with all the papers, documents, and other property therein contained; and that, immediately after, the said accused and their companions by means of violence and threats entered the store of the Chinaman Gana, in the said municipality of Abuyog, and took two cavanases of rice; and that afterwards the said accused, with known premeditation, treachery, and vindictiveness, entered the houses of Eugenio Villote, Isidoro Antido, and Titong Fundamental, wounded and killed the said Villote, Antido, and Fundamental. All contrary to law."

At the beginning of the trial, upon motion of the provincial fiscal, the cause against the said Paulino Abad was dismissed and the court ordered his discharge. During the pendency of the trial in the court below Baldomero Tisado died, and the cause was therefore dismissed as to him.

After hearing the evidence adduced during the trial of the cause, the lower court found that the evidence was insufficient to support the charges in said complaint against Pantaleon Robin and therefore discharged him from the custody of the law.

Upon the opening of the trial of the cause in the court below, Amzi B. Kelly appeared as attorney for Felix Balanzag and Baldomero Archen and demanded for them a separate trial, which the court granted. Whereupon the

court proceeded to the trial of the two said defendants on the 25th day of October, 1900.

At the close of the trial of these two defendants, the court proceeded with the trial of the other defendants Avithoiit having rendered a sentence in the trial against the first two defendants who were tried separately.

At the close of the second trial, or the trial of the rest of the defendants, the lower court rendered one sentence against all of the defendants, including the two who had been granted a separate trial; however, in the sentence of the lower court a separate finding of facts was made with reference to the said two defendants, as follows: "It is contended that Felix Balanzag and Baldomero Archen were not connected with this band and had nothing to do with it whatever, and the said two defendants so testified. However, five witnesses for the Government, each and all, identified these two defendants, Felix Balanzag and Baldomero Archen, as connected with said band as members thereof and actually participating in the so-called raid of Abuyog, including the robbery of Ehe said Chinese store. The said Felix Balanzag and Baldomero Archen were seriously interested witnesses and the court can not believe that the five witnesses for the Government, as to the said defendants in the cause, have sworn falsely in the trial thereof."

And each, together with some of the others, was sentenced to be imprisoned for a term of twenty-five years. At the time of the trial in the lower court the defendants, Santiago de Paz, Pedro Romollo, Venancio Zamoras, and Ramon Orola, were serving a sentence of six months of imprisonment in the provincial carcel of the Province of Leyte, which period of imprisonment commenced on the 17th day of September, 1906. The lower court, after hearing the evidence adduced during the trial of the cause, found beyond reasonable doubt, that the following defendants were guilty of the crime charged in said complaint: Afroniano Fernandez, Florencio Ardiente, Jose Realino, Felix Balanzag, Leon Ardiente, Bernabe Martesio, Jose Bitoc, Pedro Realino, Aquilino Badiang, Doroteo Maico, Benigno Nanez, Celedonio Escobio, Pedro Malate, Santiago de Paz, Alipio Parado, Isidoro Estrever, Francisco Ventoso, Felix Antojado, Pedro Romollo, Eulalio Rifios, Ramon Crota, Marcelo Rifios, Andres Rifios, Evaristo Olbato, Manuel Nuevas, Pablo Moleda, Macario Matosa, Paulino Anadia, Placido Millanes, Eugenio Agostq, Eleuterio Maldos, Venancio Lobog, Maximo Marquisto, Baldomero Archen, and Carlos Escobio, and sentenced the following of the said defendants to be imprisoned for a period of twenty-five years in the public carcel of the city of Manila: Florencio Ardiente, Felix Balanzag, Leon Ardiente, Bernabe Martesio, Celedonio Escobio, Pedro Malate, Jos6 Bitoc, Aquilino Badiang, Doroteo Maico, Benigno Nafiez, Alipio Parado, Isidoro Estrever, Francisco Ventoso, Felix Antojado, Eulalio Rifios, Marcelo Rifios, Andres Rifios, Evaristo Olbato, Manuel Nuevas, Pablo Moleda, Macario Matosa, Placido Millanes, Eugenio Agosto, Eleuterio Maldos, Hilario Parado, Marciano Lobog, Maximo Marquisto, Baldomero Archen, and Carlos Escobio. The court sentenced the 'following defendants, Santiago de Paz, Pedro Romollo, Venancio Zamoras, and Ramon Crota, each to be imprisoned for a term of twenty-five years, which term of imprisonment was to become operative and effective immediately upon the completion of the sentence which each of them were then and there serving in the provincial jail of the said Province of Leyte; and sentenced the said Afroniano Fernandez, Pedro Realino, Jose Realino, and Paulino Anadia to the penalty of death, which penalty was ordered to be executed in the said Province of Leyte, in the manner and form designated and provided by law, and ordered that each one of the said defendants pay one thirty-seventh part of the costs. From the sentence of the lower court the defendants appealed to this court.

From an examination of the record brought to this court we make the following findings of fact:

- That for some months prior to the 4th day of August, 1906, there existed in the Province of Leyte a band composed of 200 persons, more or less, organized under the leadership of Pablo Tisado, for the purpose of stealing carabaos and other personal property and that said band roamed over the country armed with deadly weapons for the purpose of carrying out the objects of said band.

- That all of the said defendants who were sentenced by the lower court, and who appealed to this court, were members of the said band.

- That on or about the night of the 4th of August, 1906, all of the said appellants, together with other members of the band, entered the pueblo of Abuyog, being armed with bolos and other deadly weapons, surrounded the municipal building of said pueblo, some of the members of the band entering the municipal building, and after killing four of the members of the municipal police, set fire to the said building, which building was then and there completely destroyed by the said fire.

- That on the said night of the 4th of August, some of the members of the said band entered private houses and stores in the said pueblo and by force and intimidation carried away rice and other effects.

- That on the same night some of the members of the said band entered the house of one Eugenio Villote, a citizen of the said pueblo, and, after maltreating, killed him.

- That on the same night some of the members of said band entered the house of Margarito Fundamental, and, after maltreating, killed him.

- That on the same night certain members of the same band went to the house of Capt. Eulogio Brillo and took and carried away therefrom one Isidoro Antido, and, after maltreating, killed him also.

There is some confusion in the evidence as to the identity of all of the persons who actually participated in the killing of the policemen and the above-mentioned private persons; however, it appears, beyond possibility of doubt, that Afroniauo Fernandez did actually participate and used his bolo in inflicting the wounds upon the said Eugenio Villote, from the effects of which the latter died. The death penalty, therefore, imposed upon him, Afroniano Fernandez, is fully justified and ifc hereby affirmed, which sentence is to be executed in accordance with law as to time and place.

The evidence relating to Jose" Realino, Pedro Realino, and Paulino Anadia, as to the part which they took in the killing of the three above-mentioned private persons, in our opinion, is not sufficient to justify the penalty of death imposed by the lower court. We are of the opinion, however, and so hold, that because of the active part which these three defendants took in the attack made upon the night in question upon the pueblo of Abuyog, that they should be sentenced to be imprisoned during the period of their natural lives. The sentence of the lower court imposing the death penalty upon these three said defendants is therefore hereby modified and the said Jos6 Realino, Pedro Realino, and Paulino Anadia are hereby sentenced to be imprisoned in the public carcel of Bilibid for the period of their natural lives.

The attorney for the defendants in this court assigns as error the following:

First That the lower court committed error in not sustaining the demurrer presented in the lower court, which demurrer was based upon the fact that the complaint charged more than one offense.

Second. That the lower court committed an error in rendering one sentence against all of the defendants, including those who had been granted a separate trial. Third. That the evidence adduced during the trial was not sufficient to support the findings of fact of the lower court.

With reference to the first above noted error, we are of the opinion, and so hold, that the complaint filed in the lower court was sufficient, in form and substance, and that the court committed no error in overruling the said demurrer.

With reference to the above second assignment of error, we are of the opinion, and so hold, that the fact that the lower court rendered but one sentence in said cause, including all of the defendants who were tried separately, is

not a reversible error, the court having made a separate finding of facts as to the separate defendants; moreover, no objection was made to the sentence at the time it was announced to the defendants in the court below. This court has frequently decided that no objection as to the form of procedure would be considered by this court, which had not first been presented to the court below. The attorney for the defendants was present in the court below at the time the said sentence was announced and made no objection to the fact that all of the defendants were included in the same sentence.

With reference to the third assignment of error above noted, upon a full consideration of the evidence brought to this court, we are of the opinion that the evidence adduced during the trial of the cause was sufficient to support the findings of fact made by the lower court. The lower court in its sentence ordered that the death penalty should be executed in the pueblo of Abuyog, Province of Leyte. This part of the sentence is hereby reversed, for the reason that the law now provides that all death penalties shall be executed in Bilibid Prison in the city of Manila.

Upon a full consideration of the record brought to this court, we are of the opinion, and so hold, that the sentence imposed upon the other defendants and appellants should be affirmed and that each of them should pay one thirty-seventh part of the costs. So ordered.

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

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