

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ESPIRIDION ROTA ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 4201. December 21, 1907

Ponente: CARSON, J.

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CARSON, J.:

The information filed in this case is as follows:

"The undersigned accuses Espiridion Rota, Juan Cabero (alias Tagpal), Mariano Buendia (alias Nonong), and Mariano Nirja of the crime of bandolerismo committed as follows:

"That the above-named accused, Espiridion Rota, Juan Cabero (alias Tagpal), Mariano Buendia (alias Nonong), and Mariano Nirja, during the time elapsing between the 1st of November, 1905, and the 11th of June, 1907, inclusive, within the jurisdiction of the municipalities of Baybay, Ormoc, Jam, Carigara, Barugo, Alangalang, Dagami, Tanauan, Tolosa, Dulag, Burauen, and Abuyog, of this province, for the purpose of stealing carabaos, cattle, rice, guns, revolvers, ammunition, and other personal property and with the object of carrying away persons in order that they might exact extortion and obtain a ransom and gratify their personal revenge, by means of force and violence, conspired together and under the command, direction, influence, and support of Faustino Ablen, a bandit chief, formed a band of robbers, armed with guns, revolvers, lantacas, bolos, swords, and other deadly weapons, in order to accomplish the above-mentioned objects, and went upon the roads and roamed over the country, committing during this time and in the above-mentioned localities the following deeds:

"During the month of December, 1905, the accused attacked the barrio of Paz, Burauen, of this province, and by means of intimidation, threats, force, and violence took possession of two cavanases of rice and other food supplies and property belonging to some Chinamen unknown.

"On the 25th day of May, 1906, they had an encounter with the police of the municipality of Burauen, of this province, in a place called Tambufigan of the said municipality.

"On the 16th day of June, 1906, in a place called Hinatag, Burauen, of this province, in company with and under the direction, orders, and plans of the supreme chief of bandits, Faustino Ablen, and of other title-holders of the said band, they conspired, conferred, and then and there resolved, as appears by a written document, to enter the pueblo of Burauen and to kill the police of said pueblo and secure their arms.

"On the 19th day of June, 1906, the above-mentioned accused, according to the agreement referred to in the preceding paragraph, accompanied by some fifty men who formed the said band, and armed with guns, lantacas, bolos, and daggers, invaded (entered) the said pueblo of Burauen, entering by means of force and violence the municipal building of the said pueblo, and there killed the policemen Lorenzo Marchades, Victor Coral, Policarpo Costiniano, Felipe Antido, Modesto Oanales, and Fortunato Refuerzo and wounded Antonio Agucay, Julian Agucay, Luis Cordero, Emiliano Coranes, Eulogio Gerona, and Florentino Rosalia, and took possession of fourteen guns, one revolver, and also some jewels in the house of Felipe Aguillon, taking possession of and burning documents belonging to the town, and killing Lamberto Renumeron, effecting the assassination of the above-mentioned policemen while they were sleeping.

"During the month of July, 1906, in a place called Hinatag, Burauen, of this province, this said band had an encounter with the police, said band being intrenched behind earthworks.

"During the second week of the said month of July, 1906, the above-mentioned supreme chief, Faustino Ablen, ordered one of the members of the band, Espiridion Rota, to recruit and carry off men, in accordance with which the said Rota did during this time, in the barrio of San Victor, Tanauan, of this province, proceed to recruit and carry off some six hundred men, in accordance with said order, who were brought into the presence of the supreme chief, Faustino Ablen, thus increasing the size of the said band.

"On the 21st day of July, 1906, the said band, obeying the orders of the accused, especially those of the supreme chief, Ablen, in a place called Maabab or Salay, Burauen, of this province, attacked a detachment of Constabulary, killing Scout McBride, Lieutenant Worswick, and ten Constabulary soldiers and taking possession of ten Springfield carbines, one Krag carbine, and two revolvers, all belonging to the said Constabulary and Scouts, and also bread and other edibles which the latter carried with them.

"On the 22d day of July, 1906, in the barrio of Julita, Burauen, of this province, the said band stole two sacks of rice from a Chinaman named Lucio Go Tua, and killed a policeman of said barrio.

"On the 23d of July, 1906, the said band, in the barrio of Tigbao, Dulag, of this province, assassinated Martin Lirios, lieutenant of said barrio.

"On the 24th of July, 1906, in the barrio of Tabontabon, Dagami, of this province, the said band, in number about 250 men, stole rice and shoes from the store of Eugenio Dailo and attacked the Constabulary and soldiers of the Regular Army. An account of the result of this fight being sent to the chief, Paustino Ablen, by Espiridion Kota, the chief on hearing of it approved of and congratulated him upon it.

"During the months of July and August, 1906, in a place called Pato, Dagami, by the order and consent of the accused, the said band, assassinated the lieutenant of the barrio, Teodoro Borja.

"On the 3d day of August, 1906, by the order and consent of the accused, the said band stole a half a Sack of rice from the store of a Chinaman and carried off Marcelino Maray. "On the 1st day of September, 1906, in the barrio of S. Esteban, Burauen, by the order, consent, and connivance of the accused, the said band burned five houses in the barrio of S. Esteban, Burauen, then stealing from Marcelino Abrillo the sum of P530.

"On December 5, 1906, in a place called Capahuan, Dulag, of this province, the said band, numbering some 150 men, made an attack upon and fought with a company of regular troops and Constabulary men, killing certain American soldiers, wounding Lieutenant Yates of the Constabulary, and stealing various guns belonging to said troops.

"During December, 1906, in a place called Binahaan, Burauen, the said band attacked the loyal troops.

"On the 21st day of May, 1907, in a place called Cambatay, Dagami, by the order, consent, and knowledge of the accused, the said band attacked a company of Constabulary, wounding Captain Snodgrass and a soldier of said corps.

"On the 24th day of May, 1907, in a place called Intos, Dagami, the said band, by order and consent of the accused, attacked a company of volunteers, the supreme chief, Faustino Ablen, taking part in and personally directing the attack, as he also did the one referred to in the preceding paragraph.

"On the 25th of May, 1907, in a place called Mercado, Dagami, the said band, by order of the accused, wounded Eduardo Mercader and carried oft Francisco Laron, a resident of said barrio.

"On the 27th of May, 1907, the said Faustino Ablen, personally accompanied by certain members of said band, abducted some person, now unknown, on the banks of the River Daguitan, Burauen, of this province.

"On the 11th of June, 1907, the said Faustino Ablen, accompanied by certain members of the said band, had an encounter with a company of regulars, within the jurisdiction of the pueblo of Burauen, which resulted in the capture of the said Faustino Ablen, who was wounded in the left ear; the said Ablen carrying a Colt revolver, which he used during the fight.

"All contrary to law, and especially the Acts of the Philippine Commission Nos. 518 and 1121."

All of the accused pleaded guilty to the crime of brigandage as charged, whereupon the court, over the objection of counsel, permitted the fiscal to introduce testimony in support of the allegations of the complaint, and thereafter found each and all of the defendants guilty and imposed sentence accordingly. The record does not disclose whether this sentence was or was not reduced to writing, but within three days thereafter, and at the same term of court, the trial judge "of his own motion set aside the sentence" theretofore "rendered;" called the defendant Espiridion Rota to the witness stand, to testify in his own behalf; and on the 2d day of August, 1906, [1907,] sentenced the said Espiridion Kota to be hanged by the neck until he is dead, and sentenced the defendants Juan Cabero (alias Tagpal), Mariano Buendia (alias Nonong), and Mariano Nirja, and each of them, to thirty-five years' imprisonment, and all and each of said defendants to the payment of their proportionate share of the costs of the trial.

None of the defendants appealed, but in accordance with the provisions of section 50 of General Orders, No. 58, as amended by section 4 of Act No. 194, the proceedings are brought here on review in so far as they affect the defendant Espiridion Kota, upon whom capital punishment was imposed.

It is contended that the judgment and sentence of the trial court should be reversed—

First, because testimony was taken over the objection of the defendant.

Second, because the trial court of its own motion, set aside the judgment originally pronounced, and called the accused to the witness stand to testify in his own behalf.

Third, because the original judgment does not appear in the record, and it is alleged that the record does not affirmatively disclose that the judgment of conviction and sentence before us is the final judgment of conviction and sentence imposed by the trial court.

There is no provision of law which prohibits the taking of testimony where the accused enters a plea of "guilty," and that procedure is the proper and prudent course, especially in cases where grave crimes are charged, and where the court is required to exercise its discretion in imposing a more or less severe penalty in view of all the circumstances attending the commission of the crime. In discussing this question in the case of the United States vs. Talbanos (6 Phil. Rep., 541), it was said (p. 543);

"The procedure for the trial of criminal causes makes no specific provision for the trial of a cause when the defendant pleads guilty. We are of the opinion, and so hold, that the Courts of First Instance may sentence defendants in criminal causes who plead guilty to the offense charged in the complaint, without the necessity of taking testimony. However, in all cases, and especially in cases where the punishment to be inflicted is severe, the court should be sure that the defendant fully understands the nature of the charges preferred against him and the character of the punishment to be imposed before sentencing him. While there is no law requiring it, yet in every case under the plea of guilty where the penalty may be death it is advisable for the court to call witnesses for the purpose of establishing the guilt and the degree of culpability of the defendant. This, however, must be left to the discretion of the trial court. Nevertheless, if the trial court shall deem it necessary and advisable' to examine witnesses in any case where the defendant pleads guilty, he should comply in the taking of said testimony with said section 32 of General Orders, No. 58."

The accused interposed no objection to the reopening of the case in the court below, and therefore must be taken

to have consented thereto. Under the provisions of section 42 of General Orders, No. 58, the court, upon motion of the defendant, was authorized to reopen the case "at any time before the final entry of a judgment for conviction." The accused having consented to the reopening of the case, the mere fact that he does not appear to have formally submitted a motion therefor is of no importance, and if it was error to proceed without the formal submission of said motion, it was at most error without prejudice, and furnishes no ground for a reversal. The rendering of the original sentence in this case was not "the final entry of a judgment for conviction" as that phrase is used in section 42 of General Orders, No. 58, and construed by this court in the case of *United States vs. Flemister* (1 Phil. Rep., 317), wherein it is held that "the final entry of a judgment of conviction" where an appeal or review of the proceedings by the Supreme Court has been allowed, does not take place until after this court has so ordered, or where no appeal has been taken until fifteen days after the rendition of the judgment of conviction.

As to the contention that the trial court erred in calling the accused to testify in his own behalf, it is sufficient answer to point out, first, that the defendant does not appear to have objected to the questions propounded to him; and, second, that the opportunity to testify in his own behalf was accorded the accused not for the purpose of securing testimony in support of the allegations of the information but rather that he might have an opportunity to set up anything in his own defense which might tend to reduce the severity of the punishment which should be imposed upon him; he can not be heard to complain in this court that such an opportunity was accorded to him, when it rested entirely with him whether he would or would not take advantage of it.

It does not appear whether the original sentence was rendered verbally or in writing, but in any event the fact that the trial court failed to include his judgment in the record brought here on review in no wise affects the substantial rights of the accused, since that sentence was set aside and thereupon became null and of no effect. We do not know of any way in which our review of the proceedings in the court below would be facilitated or assisted by its introduction in the record.

An examination of the date of the order setting aside the original judgment, and the second judgment of conviction and sentence imposed, clearly demonstrates that the judgment of conviction and sentence before us is the final conviction and sentence imposed by the trial court.

The information charges Espiridion Rota with the crime of brigandage. He pleaded to the said charge, and it was further proven upon the testimony of the witnesses called at the trial that he was one of the leaders and the acting chief of a dangerous and desperate band of outlaws, and that, with his own hand, he stabbed to death a policeman on duty in the town of Burauen.

Upon this proof we think that capital punishment was properly imposed upon the said Espiridion Rota, and we therefore affirm the judgment of the trial court, with the costs of this review against the accused. So ordered.

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

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