

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
NICOLAS L. MINA, DEFENDANT AND APPELLANT.***G.R. No. 45312. June 13, 1938*

Ponente: IMPERIAL, J.

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The defendant was charged with a violation of article 208 of the Revised Penal Code. The case was commenced in the justice of the peace court of Asingan, Pangasinan, through the complaint signed by the municipal mayor. The defendant waived the preliminary investigation and the case was elevated to the Court of First Instance of the province with the opinion of the justice of the peace that the defendant is probably guilty of the offense imputed to him. In the Court of First Instance, the provincial fiscal filed an information alleging: "That on or about February 6, 1936, in the municipality of Asingan, Province of Pangasinan, Commonwealth of the Philippines, and within the jurisdiction of this court, the above-named defendant, being the chief of police of said municipality, voluntarily, illegally, criminally and, in breach of his official duty, maliciously defaulted in the prosecution and punishment of the violators of the law prohibiting and penalizing the game of chance called 'Jueteng,' in that he failed to file the corresponding criminal action against Juan Lazo who, in the aforesaid municipality, was caught possessing jueteng lists and other objects relating to said game, and tolerated and permitted said Juan Lazo to continue acting as jueteng collector. Contrary to law." On June 26, 1936 the case was called for the arraignment of the defendant; in view of the failure of the latter to appear in spite of due notice to his bondsmen, the court confiscated his bond and ordered his arrest. Several days thereafter, upon motion of the defendant who gave satisfactory explanations, the confiscation of the bond and the arrest were set aside. On July 8th of the same year the defendant was arraigned and pleaded "not guilty," and the trial was set for August 7, 1936, at 8 a. m. On the third of the same month, the defendant asked for continuance and the trial was postponed until the 25th, on which date the defendant appeared and asked for another continuance with a view to preparing his defense. The court again acceded and accordingly postponed the trial until August 27th of the same year. On the latter date the defendant, accompanied by his attorney, appeared and was permitted by the court to withdraw his plea of "not guilty" and substitute one of "guilty." The information was again read and, after understanding the same, the defendant voluntarily pleaded guilty. Thereupon the court rendered judgment finding him guilty of the offense charged and sentencing him to six months and one day of prision correccional, accessories of the law, six months and one day of suspension from the office of chief of police of the municipality of Asingan, Pangasinan, and payment of the costs. From this judgment the defendant appealed. On September 3, 1936 the defendant, through another attorney, filed a motion for reconsideration and new trial and prayed that the judgment of conviction be set aside, that he be permitted to withdraw his plea of guilty and to plead not guilty, and that a new trial be held. The motion was denied and the consequent exception noted.

- In this appeal the sole error in the judgment assigned by the defendant is the denial of his motion for reconsideration and new trial and the failure to permit him to substitute his plea of "guilty" with that of "not guilty."

Section 25 of General Orders, No. 58 in part provides that "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." This provision has been construed liberally in the sense that the allowance of said substitution is within the discretion of the court even after judgment of conviction (U. S. vs. Neri, 8 Phil., 669). Before judgment, the substitution, although falling within the sound discretion of the court, is generally allowed (sec. 25, General Orders, No. 58; U. S. vs. Patala, 2 Phil., 752; U. S. vs. Molo, 5 Phil., 412; U. S. vs. Neri, supra; U. S. vs. Sanchez, 13 Phil., 336; U. S. vs. Grant and Kennedy, 18 Phil., 122). In both cases judicial discretion is exercised having in view the question whether the defendant clearly understood the allegations of the information and whether the defense invoked, in case new trial is sought, is meritorious and will alter the outcome of the case (U. S. vs. Grant and Kennedy, supra). The record shows that the defendant had sufficient time to prepare his defense and have his witnesses subpoenaed from the moment he was first informed of the complaint on April 27, 1936 until he voluntarily pleaded guilty and judgment of conviction was rendered on August 27th of the same year.

- The court did not misuse his discretion in denying the motion for reconsideration and new trial, because the new evidence offered by the defendant, supposing it to be newly discovered, did not tend either to alter the result of the case or to exonerate him. The alleged new evidence consists of sworn statements of Luciano de Guzman and Canuto de Leon who declared that they saw the arrest of Juan Lazo and heard the defendant say to him that he would be released on condition that he would accompany the defendant to the place where jueteng was being played and would help in the arrest of the bankers and collectors thereof. This evidence, if admitted, far from justifying the conduct of the defendant, would have further demonstrated his guilt, for the reason that there is no law empowering him to release a violator even if the latter agrees to aid him in the capture of other culprits. Only the court, under the conditions prescribed by section 34 of General Orders, No. 58, as amended by section 2 of Act No. 2709, may exclude a defendant from the charge and absolve him from all criminal responsibility (section 36, General Orders, No. 58).

The penalty for the offense committed by the defendant is prision correccional in its minimum degree and suspension (article 208, Revised Penal Code). Conformably to the Indeterminate Sentence Act, No. 4103, as amended by Act No. 4225, the appropriate penalty is four months and one day of arresto mayor to six months and one day of prision correccional.

For the reasons stated, we hold that the court did not commit the error assigned and, modifying the appealed judgment, the defendant is sentenced to four months and one day of arresto mayor to six months and one day of prision correccional, to six months and one day of suspension from the office of chief of police of the municipality of Asingan, Province of Pangasinan, to the accessories prescribed by the Revised Penal Code, and to the payment of the costs of both instances. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Diaz, Laurel, and Concepcion, JJ., concur.

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