6 Phil. 541

[G.R. No. 3291. October 29, 1906]

UNITED STATES, PLAINTIFF AND APPELLEE, VS. POLICARPO TALBANOS, DEFENDANT AND APPELLANT.

D E C I S I O N

JOHNSON, J.:

In this case the defendant was charged with the crime of brigandage, committed as follows:

That the said" accused in the month of August, 1904, willfully, illegally, and criminally conspired, and was a member of a band with Enrique Dagujub, Luis Cosine, Pedro Ramonde, and others whose names are unknown, in order to form in the Province of Samar, Philippine Islands, a band of ladrones, all armed with deadly weapons such as lances, bolos, and daggers, with the object of stealing personal property, sequestering persons for the purpose of extortion and killing them, and to burn houses; and that the said accused was united with said band as an active member of the same with the grade of captain, and killed, with his own hands, by means of a double-edged sword which he carried, one William White, who was also known by the name of Faustino Blanco, while he, the said White, was in his own house situated in the municipality of Catubig, in the Province of Samar, the defendant committing the murder of the said William White on the 12th of August, 1904, against the statutes in such cases made and provided.

The defendant was arrested and duly arraigned and placed on trial in the Court of First Instance of the Province of Samar, P. I. During the trial the defendant was represented by his lawyer, Pablo B. Cinco. The complaint was read to the defendant and he was asked whether he was guilty or not guilty of the crime charged in the manner as stated in the said complaint, to which question he replied that he was guilty.

Notwithstanding the plea of guilty so entered by the defendant, the court, evidently desiring to be advised upon all the facts of the case, called four witnesses for the purpose probably of ascertaining for itself the degree of culpability of the defendant as well as for the purpose of

fixing the grade of punishment to be inflicted under the brigandage law. During the examination of these four witnesses the court made some memoranda of the facts to which these witnesses testified; the court made no effort to record the specific questions nor the answers to the same. This memorandum of the court was united with the record which was brought to this court.

After hearing the plea of guilt on the part of the defendant and the testimony of the four witnesses, the court sentenced the defendant to the penalty of death. The defendant did not appeal from this sentence. The case is here *en consulta.*

It is argued that this court ought not to consider the notes made by the judge in the form above indicated as evidence taken in this cause, for the reason that this evidence, if evidence it may be considered, was not taken in accordance with the requirements of section 32 of General Orders, No. 58. We are of the opinion that these notes can in no sense be regarded as evidence taken during the trial, because they were not signed and certified to in accordance with the provisions of said section 32. This leaves the case without any evidence in the record, The question arises, Can this court affirm a sentence render by an inferior court upon a complaint and plea of guilty unsupported by the testimony of witnesses? Can the Courts of First Instance sentence defendants incriminal causes upon the plea of guilty without further proof guilt of the defendant? Section 31 of General Orders, No. 58, provides for the procedure in the trial of a cause where the defendant pleads not guilty. 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 facts contained in the complaint filed in this case to which the defendant plead guilty

show clearly that the said defendant was guilty of the crime of brigandage as defined and punished in Act No. 518 as amended by Act No. 1121 of the Philippine Commission. The judgment of the inferior court is therefore hereby affirmed with costs.

After the expiration of ten days from the date of final judgment let the cause be remanded to the court below for Proper action. So ordered.

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

Willard, J., concurs in the result.

D I S S E N T I N G

CARSON, *J.,*

I dissent.

If, in fact, no testimony was taken in this case, then the was convicted and sentenced to death on his mere formal plea of "guilty," and I am not prepared to give my assent to such a judgment.

On the other hand, if, as appears from the record and the judgment of the trial court, further testimony was taken upon which the judge exercised his discretion in imposing the death penalty, then all this evidence should be before us when Are are called upon to review the judgment of the court below. We are charged with the dutv of examining the record for the purpose of correcting errors both of law and of fact, and this court has repeatedly held that it will not affirm a judgment in a criminal case unless all the testimony taken at the trial is brought before it on appeal (U. S. *vs.* Pablo Tan,[1] 4 Off. Gaz., 177; U. S. *vs.* Hollis,[2] 4 Off. Gaz., 152; and II. S. *vs.* Quilatan,[3] 3 Off. Gaz., 414.)

The notes referred to in the majority opinion do not purport to contain all the evidence taken at the trial; they are not in the form of question and answer; they are neither signed by the witnesses nor certified by the clerk or the judge; and there is nothing in the record to connect these incoherent and disjointed pencil memoranda with the case at bar. The only part of these notes from which it can be gleaned that the accused made a statement on his

own behalf is as follows: “ace. with Dagujub one day; in hiding a year; nominated a captain;” and yet the trial court in its opinion finds that the accused stated that after the deceased had been struck down by some other person he, the accused, gave him a blow on his stomach with his bolo in pursuance with the order of his chief, Dagujub, in order to be certain that the man should not be left behind alive.

It may be doubted whether in view of this statement it was not the duty of the court below to enter a plea of “not guilty” on behalf of the accused, despite his formal plea, for while the accused may have intended to confess his guilt of the crime of brigandage, it is clear that did not intend by his plea to admit that he had committed the crime of murder as set out in the information; his statements in his own defense are not in accord with his plea of guilty as charged, because he alleges that the blow given the deceased was under compulsion of orders from his chief, and that the fatal blow was inflicted by another.

These statements might not excuse the defendant, but they seem to indicate that the plea of guilty was not entered with a full understanding of all the effects and consequences thereof, and under these circumstances, and in view of the fact that the statement of the accused and the testimony of all the witnesses are not set out in the record, I am of opinion that the judgment and sentence of the trial court should not be sustained.

---

[1] 4 Phil. Rep., 625.

[2] 5 Phil. Rep., 520.

[3] 4 Phil. Rep., 481.

Date created: October 27, 2014