

5 Phil. 442

[G.R. No. 2423. December 19, 1905]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. BONIFACIO MORALES,
DEFENDANT AND APPELLANT.**

D E C I S I O N

MAPA, J.:

The death penalty having been imposed upon defendant by the court below, this case has been submitted to this court for revision (*en consulta*), without appeal on the part of said defendant. The crime charged in the information is that of brigandage, of which he has been found guilty by the court below.

The defense in this case neither denies nor discusses the guilt of defendant.; but requests that the trial be declared null and void, on the ground that the rules of procedure were infringed during the same.

The facts on which this petition is based are as follows: Upon being asked whether he pleaded guilty to the crime of which he had been accused, the defendant replied literally that *it was true that he was accompanying the pulajanes; but that he had been kidnapped*. The judge, considering this reply a plea of "guilty," ordered it to be substituted for that of "not guilty," and directed that the trial continue, it being suspended immediately thereafter, by request of the fiscal. Upon the reopening of the trial, and previous to the taking of evidence, the attorney for defendant requested that the plea of not guilty be changed to that of guilty, which petition was denied by the judge as contrary to the law. The defense took no exception to this decision, and the trial continued without any protest or objection on the part of the same.

The defense now argues that the judge committed an error of law,

violating one of the essential rights of the defendant, in denying the aforesaid request that the plea of not guilty be changed to that of guilty, and that such error vitiates and annuls the whole trial.

We do not concur in the opinion of the judge, considering said petition in absolute terms as illegal and contrary to law. In fact, we see no reason why the defendant should not be allowed to plead guilty after having entered a plea of *not guilty*, as such plea can not in any event injure anybody except himself. We do not know of any law prohibiting this, and the mere fact that there is no provision of law expressly authorizing it can not be understood as a prohibition. By this we do not wish to say that after having entered a plea of *not guilty*, the defendant has the right to change the same to a plea of *guilty* at all times and in all cases, because after a plea to the charge has been entered in due form, it is in the power and discretion of the judge to allow the substitution of the plea entered for another. We therefore have here not an absolute right of the defendant, but a right, if we may call it so, subject to the discretion of the court.

Although the judge could permit the substitution of one plea for another without infringing any provision of law thereby, as seems to have been his belief when he declared that such substitution was contrary to law, nevertheless no essential right of the defendant was violated by the denial of his petition, because the action thereon depended, as we have said, on the discretion of the court. For this reason, as well as in view of the fact that it has not been proved that harm of any kind has been caused thereby to the defendant, the allegation of the nullity of the trial, made in the brief of the defense, is unfounded and improper.

Considering the merits of the case, the death penalty imposed upon the defendant seems excessive to us. We consider the penalty of life imprisonment (*prision perpetua*) more adequate to the crime, which we declare sufficiently established.

Reversing the sentence submitted for revision, we sentence the defendant to the penalty of life imprisonment (*prision perpetua*)

with the costs of this instance against defendant. Judgment to this effect to be rendered after the lapse of twenty days, and this case to be returned to the court below for the execution thereof. So ordered.

Arellano, C. J., Johnson, Carson, and Willard, JJ., concur.

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