

G.R. No. 999

[G.R. No. 999. February 10, 1903]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. CARLOS SANTIAGO ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

TORRES, J.:

On the afternoon of the 29th of September, 1901, the three accused and four others armed with bolos and guns, seized two carabaos belonging to D. Teodoro Sandico. One of these carabaos was being ridden by a boy called Abdon Somera and the other by Modesto Palasigui, 9 and 15 years of age, respectively. The robbery occurred at a place called Sacumvaca of the town of Talavera. At the same time eight other carabaos belonging to Don Casimiro Tinio were taken, the total value being \$580. The three accused were subsequently arrested on October 17, 1901, at a place called Pinambatan of the town of San Miguel de Mayumo. Part of the stolen carabaos were found in their possession, as well as Abdon Somera, one of the boys kidnaped. The other lad, Palasigui, succeeded in escaping after being in the hands of the robbers for four days.

The crime of kidnaping is being prosecuted in a separate case.

The fact that seven of the armed robbers seized these ten carabaos on two of which the boy Somera and the lad Palasigui were riding and who were carried by the defendants is fully shown in this case by the testimony of Modesto Palasigui, an eyewitness of the robbery; by the testimony of Rosalio Somera, the father of the boy Abdon, who, upon arriving at the place where the boys had been, noted their disappearance and was unable to find them; and also by the testimony of the three policemen who captured the accused, and found in their possession some of the stolen carabaos, as to the possession of which the accused were unable to give a satisfactory account. The policemen also found the boy Abdon Somera in their hands.

This fact constitutes the crime of robbery in a band, punishable under article 502, 503, paragraph 5, and 504 of the Penal Code, the robbery having been committed by intimidation by the seven robbers, the majority of whom—if not all—were armed with guns and bolos and the robbery being committed, in an uninhabited place.

The guilt of the accused is evident notwithstanding their plea of not guilty of the offense with which they are charged. This is shown by the testimony of witnesses, and by the conclusive circumstantial evidence found in the record. This evidence indicates that the seven men who committed this robbery were brigands engaged in assaulting and robbing travelers and stealing carabaos from the fields. The fact that the record does not show that any force or threats were used with respect to the two boys who were riding the two carabaos makes no difference, the fact that seven men armed with firearms and bolos seized these two boys and took the carabaos and carried them off being sufficient to raise the presumption that this was against the will of these boys and that the intimidation which characterized the robbery was present, it not appearing that the boys voluntarily accompanied the robbers or that they voluntarily delivered to them the carabaos.

In the commission of this crime of robbery no generic mitigating or aggravating circumstances are present, the circumstances of the robbery having been committed by a gang and in an uninhabited place being inherent in the specific offense. They are therefore subject to the penalty prescribed by section 5 of article 503 in the medium period of the maximum grade in accordance with the provisions of article 504 of the Penal Code.

The judgment of the court below must therefore be reversed as to the personal penalty imposed upon the accused. Carlos Santiago and Jacinto Alfonso are condemned to suffer the penalty of eight years of *presidio mayor* with the accessory penalties of absolute temporal inhabilitation in its full extent and subjection to the vigilance of the authorities for a period equal to the duration of the principal penalty, the same to be counted from the time of the expiration of the latter, and to the payment by each one of one-third part of the costs of both instances. The judgment of the court below is otherwise amended with the other third part of the costs *de officio*.

Arellano, C. J., Cooper, Willard, Mapa, and Ladd, JJ., concur.