

[G.R. No. 1737. January 25, 1905]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. PETRONILO PATINO ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

MAPA, J.:

The defendants have been charged in the Court of First Instance of Albay with the crime of *bandolerismo*.

After the trial was held the judge found them guilty and sentenced the defendants to the death penalty. The case has been brought before this court *en consulta*.

It is clearly proven that the defendants formed part of a band commanded by Magno Ragel, Patino as major, and Tibis as captain. Several witnesses testified to this fact and it has also been proven by the confession of the defendants themselves when' testifying in their own behalf. It is also proven that the said band was composed of about twenty-five or thirty individuals; that they were armed with guns and had some engagements with the Constabulary forces; that in one of these encounters the chief, Magno Ragel, was killed. There is also proof going to show the character and purpose of this band in that it committed several robberies in different places and on different occasions. A witness for the prosecution, Alipio Olgina, who had been a member of a band commanded by Lazaro Toledo, gives an account of several robberies perpetrated by the said band in several towns together with the band of Ragel. Another witness, Sabino Fumario, who had been a member of the latter's band, states that on one occasion they attacked the cuartel of the Constabulary in the town of Oas, and that in this attack they succeeded in taking forty-seven guns belonging

to the Constabulary. One of the most important robberies committed by the band of Ragel was that committed on Frederick Braun in the month of May, 1903, while he was in a small boat on his way to Sorsogon, having on board twenty-seven bales of abaca and 300 pesos in money. Some members of the band took possession of the cargo and held Braun and his servant, Mateo Dulan, prisoners. Mateo Dulan testified as a witness for the prosecution and gave all the details concerning this latter occurrence. The defendant Patino was appointed by Magno Ragel to take possession of the cargo of the boat, which appears from the testimony of said Patino and that of Anselmo Pulvinar. On this particular occasion the band was not satisfied with committing the robbery only, but they also killed Frederick Braun while he was their prisoner and unable to defend himself. This act was executed with circumstances repugnant in the extreme and which circumstances reveal great perversion in the criminal. They made two attempts against the life of Braun; the first time they did not succeed in killing him because, when they struck and wounded him in the neck and in the arm, Braun succeeded in making his escape before they could give him the fatal blow. For this reason the defendant Patino ordered his codefendant, Pio Tibus, to search for their victim and finish him. Tibus found Braun *seated on the beach mid complaining of the pain from the wound in his neck.*

All this is stated by Tibus himself. The manner in which Braun was killed is described by the witness Esteban Bundri in the following terms: *Three soldiers and Captain Pio [Tibus] held the American; I myself took hold of him. We*

*were all armed with bolos. When we arrived at Saban, Captain Pio ordered me to kill him. I killed him because I was afraid. The American's elbows were tied, and while thus bound Pio Tibus told me to cut his neck. As he was moving and struggling, I struck him in the face and then Pio Tibus ordered a soldier to hold the American by the hair, with order that he might not move. I then struck him in the neck, the American dying instantly * * *. Tibus afterwards wrote a letter to Patino, giving him an account of having complied with his orders and telling him that he sent therewith the left ear of the American* * *. The genuineness of this letter was acknowledged by the defendant Tibus at the trial of the case.*

The band of Magno Ragel, according to the evidence adduced at the trial, had all the characteristics of a band of brigands as defined in section 1 of Act No. 518, because this band was composed of more than three individuals, carried deadly weapons, roamed over the country, going from place to place and from town to town, for the purpose of robbing. This last circumstance constitutes proof that said band had for its object robbery, even granting that it had other ends, as alleged by the defense. The penalty prescribed by law for the crime of *bandolerismo* is that of death or imprisonment for a period of not less than twenty years, in the discretion of the court. Taking into consideration the seriousness of the crimes committed by the band, in some of which crimes the defendants took part directly, and taking into consideration also the fact of the defendants having been officers in this band, we believe that the death penalty imposed upon them by the court below is justified.

In this judgment the defendants are also sentenced to pay 1,000 pesos to the family of the deceased Frederick Braun. We believe that this part of the judgment is not in accordance with the law. The trial against them was held exclusively for the crime of *bandolerismo*, and Act No. 518, which defines and punishes this crime, does not recite among its penalties therein prescribed any indemnification. It is true that on the trial of the case the death of Frederick Braun was proven, but it was only for the purpose of producing evidence against the defendants and to assist the court in the exercise of its discretion, so that the death penalty might be imposed on the defendants as provided for by the law for this crime. The accused were only charged with the crime of *bandolerismo*, and therefore can be sentenced only for that crime.

For the reasons stated above, we affirm the judgment below, except as to the payment of 1,000 pesos to the family of the deceased Frederick Braun. In this respect it is reversed. The defendants should also pay the costs in this instance. So ordered.

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

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