

[G.R. No. 1731. February 13, 1905]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. DANIEL MARINAY ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

TORRES, J.:

In a complaint dated November 24, 1903, the defendants, Daniel Marinay, Hermenegildo Repoberbio, Juan Pitonjera, Teodosio Reoperes, Eduardo Sabaybay, Teofilo Bobis, Pedro Villes, Mariano Ortenero, Ricardo Beguillas, Miguel Abichuela, Florentino Casimiro, and Ramon Oliquino were charged with the crime of *bandolerismo*. The complaint stated that from November 12, 1902, up to November 15, 1903, the defendants conspired together and formed a band of brigands; that the object of said band was to steal carabaos and other personal property by means of force and violence; that this band roamed over the country through the Provinces of Albay, Ambos Camarines, and Sorsogon; that all the members of this band were armed with deadly weapons; all contrary to law. The case coming on to be tried by virtue of the aforesaid complaint, as a result of the evidence adduced by the prosecution, the judge, on December 7, 1903, sentenced Daniel Marinay, Hermenegildo Repoberbio, and Juan Pitonjera to the death penalty; Miguel Abichuela and Florentino Casimiro were sentenced to *cadena perpetua*; Teofilo Bobis was sentenced to thirty years' imprisonment; Teodosio Reoperes, Eduardo Sabaybay, and Pedro Villes to twenty-five years' imprisonment, and Ricardo Beguillas, Mariano Ortenero, and Ramon Olequino to twenty years' imprisonment. None of these defendants appealed, and this case has been brought up to this court *en consulta* as regards the death penalty imposed on Daniel Marinay, Hermenegildo Repoberbio, and Juan Pitonjera.

It is clearly proven by the testimony of competent witnesses and by documentary evidence that between November 12, 1902, and October, 1903, quite a good-sized band of brigands was formed between the Provinces of Albay, Sorsogon, and Ambos Camarines; that the members of this band conspired together for the purpose of stealing carabaos and other personal property and to commit other crimes against the peaceable inhabitants of the barrios and pueblos of the aforesaid provinces by means of force and violence; that for this purpose they were armed with deadly weapons of different kinds and roamed over the country and the mountains; that sometimes it was united and at other times separated into small parts; that the organization of this band was of a military character and had officers of different ranks, all of them under the command of Simeon Ola; that this band was formed with a political object; that the members of the band swore allegiance to a flag called "the national flag;" that its name was to cover up the real purpose of the band, viz, that of robbery, abduction, rape, murder, and other crimes, as is proven fully by the evidence adduced in this case; that said band spread panic among the inhabitants of the towns in the said provinces and disturbed the public order. These facts constitute, beyond doubt, the crime of *bandolerismo* as defined and punished by section 1 of Act No. 518, enacted November 12, 1902.

The evidence establishes that a goodly band of male-factors was formed in these provinces; that they conspired together to rob the people and to commit other crimes against their property and persons by means of force and violence. It is also fully proven in the case that they were members of this band which was of a military character and organized for political purposes; that they committed several raids and robberies in certain houses of peaceable inhabitants; that they abducted some women, raped them, took some of the inhabitants prisoners, and murdered several people who were peaceable and defenseless. Among its various crimes this band attacked and robbed, on February 27, 1903, the Constabulary cuartel situated in the pueblo of Oas, on which occasion they killed a municipal policeman and wounded several members of the Constabulary; they also took and carried away forty-seven guns with their munitions, and one revolver. On July 13 of

the same year they entered the town of Bato, Province of Camarines, and raided the municipal building, taking therefrom three shotguns, three rifles, the electric bell of the municipality, the president's cane, and three sacks of rice; they also wounded the policeman, Francisco Martinez, who resisted them. The members of this band also raided the barrio of Buraburahan, town of Buhi, Ambos Camarines, and, after burning some houses, they took four women and two men prisoners; the women were raped by the brigands. And so it is seen that the members of said band not only conspired together and organized for the purpose of robbery and committing other crimes against property and persons by means of force and violence but they pursued their criminal purpose further, committing murder, taking the inhabitants prisoners, and committing rape on defenseless women, showing by this the most degraded criminality. The case then presents facts more than sufficient, when considered with sound reason, to produce on the mind a clear conviction of the guilt of each one of the three defendants sentenced to death. They are criminally liable as principals in said crime of *bandolerismo*. They not only committed crimes against property and persons but also are guilty of abduction and rape; they took the inhabitants prisoners and murdered several of them.

The judgment brought here *en consulta* has become final as to the other nine defendants because they did not appeal to this court. Considering, therefore, only the facts proven against each and every one of these three defendants who were sentenced to the death penalty, it appears that Daniel Marinay was the chief of a part of said band, composed of twenty persons, armed with deadly weapons; that this division of the band, in its raids through the territory surrounding the town of Guinobatan, about the month of February, 1903, took Silvino Padre prisoner and, by order of Marinay and Miguel Abichuela, they killed him. The body of said Padre was found on the fifth day thereafter in the country, with a wound in the neck; that in the following March this division, commanded by said Daniel Marinay, entered the barrio of Inascan, town of Guinobatan, raided the store of Ong Pooco, a Chinaman, and stole therefrom nine sacks of rice, several cans of sardines, cigarettes, soap, and 108.50 pesos in money; that in

the month of February, 1903, Marinay and his companions took Lorenzo (or Florencio) Cervantes and Paulina Orpiada, his wife, prisoners, who were living at the time in the barrio of Carabidab; that said malefactors pretended to be members of the secret service; that Marinay and one of his subordinates, Esperidion Tolosa, killed Cervantes in Baliti, town of Guinobatan, and Marinay kept the wife as his mistress, the latter being held prisoner for eight months; that Apolonio and Telesforo Alevanto, brothers, were also taken prisoners in the month of March of the same year by another division of the band under the command of Juan Pitonjera, the latter ordering the said Telesforo Alevanto to be killed, this order being executed by one of the brigands in the presence of Apolonio Alevanto, and the reason given for such killing being that Telesforo was a member of the Constabulary. Apolonio Alevanto succeeded in escaping and went back to his town. All this took place in Amibling, town of Guinobatan.

Hermenegildo Repoberbio was a lieutenant of the band and commanded seven armed men. This part of the band took a child prisoner and killed its father, Jacobo Cabansal, because, according to them, he had allowed two persons who were being held by said bands as spies to escape; that one evening in the month of April, 1903, by order of Colonel Magno, an old man named Hilario Quadra and a young man named Vicente Quadra were killed as spies by said lieutenant, Hermenegildo Repoberbio, in the barrio of Talisay, pueblo of Oas.

It is clearly proven that these three defendants, as well as the other members of the band, were armed with firearms and other deadly weapons; that they roamed over the country, mountains, and barrios of the said provinces; that some of them killed certain persons as spies. One witness acknowledged and affirmed the genuineness of the documents which were captured with the brigands and which appear in the record of the case. Antonio Loame, clerk of Simeon Ola, testified to the same facts and also indentified said documents. Among these documents are several oaths of allegiance of the members of said band; there is also a list of the members of the band and several communications between the chiefs of same regarding their doings and their attacks on the police. The witnesses Juan Nas, Canuto Oyales, Atanacio Potong, and the

Chinaman Ong Pocco sustain the charges against Daniel Marinay; they are eyewitnesses of the crimes committed and they affirm that Marinay was the principal in the murder of Silvino Padre and the one who directed the robbery of the store of Ong Pocco. The witness Esperidion Tolosa testifies also that Marinay was the one who ordered the death of Lorenzo (or Florencio) Cervantes; this latter fact was also testified to by the witness Paulina Orpiada, Cervantes' wife. The killing of Jacobo Cabansal by order of Hermenegildo Repoberbio is corroborated by the testimony of Basilio Alano and Permin Rayton; the killing of Hilario and Vicente Quadra by order of Repoberbio is corroborated by the testimony of Manuel Recting and Braulio Rabonsa, who were eyewitnesses to the same. The witness Apolonio Alevanto testifies to the killing of his brother, Telesforo, by order of Juan Pitonjera.

The denial made by the three defendants, Marinay, Repoberbio, and Pitonjera, and the excuses made by them as regards the murders committed by them, which they state they did in compliance with orders of their superior chiefs, can in no way relieve them from the charges made against them or exempt them from liability. They acted illegally when they complied with orders contrary to law, which orders they were not obliged to obey, the same being unlawful and coming from superior officers who had no power or authority to issue the same. Superior chiefs of a band of brigands are not clothed with any authority to order the death of any person, and their subordinates are not obliged to obey them; and if they do, both are directly responsible for the crimes which they commit.

By reason, therefore, of the facts above stated, of the reasons stated in the judgment brought here *en consulta*, the three defendants are found guilty of the crime of *bandolerismo*

in committing which several murders resulted, as well as abductions, sequestrations, and rape. We are of the opinion that in justice the judgment below, rendered December 7, 1903, should be affirmed as to the penalty of death imposed upon the defendants Daniel Marinay, Juan Pitonjera, and Hermenegildo Repoberbio. This penalty shall be carried out in the public square of the capital of Albay on a day and at an hour (not a legal holiday) to be appointed by the judge of the district

and in accordance with the provisions of Act No. 451, dated September 2, 1902. The defendants are also sentenced to pay one-twelfth of the costs each; this case to be remanded to the court below with a certified copy of this decision and of the judgment to be rendered in accordance herewith. So ordered.

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

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