

[G.R. No. 1716. March 14, 1905]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ISAIAS AGUASA ET AL.,
DEFENDANTS AND APPELLANTS.**

D E C I S I O N

CARSON, J.:

The appellants in this case were found guilty of the crime of brigandage, as defined and penalized by section 1 of Act No. 518 of the Philippine Commission, and the trial court imposed the sentence of death upon Diego Felizardo and Mariano Colocado, sentence of thirty years' imprisonment upon Angel Maglambayan, and sentence of twenty years' imprisonment upon Isaias Aguasa, Alejandro de Jesus, Melesio Alcantara, Eugenio Campaner, Juan Maglian, Juan Magsino Surigayan, Candido Puspos, Dalmacio Silang, Vicente Collarin, Raymundo Garcia, Ildefonso Malinis, Jose Sapalasan, Sotero Parales, Feliciano Manalaysay, Faustino Remulla, Benito Hermitano, Paulino Casilao, Irineo Buclatin, Leoncio Gendive, Nicolas Pato, Tito Paglinauan, Cipriano Naglian, Catnlino Patan, Agustin de los Santos, Segundo Gendive, Jose Colocado, Domingo Medina, Gervasio Lumucso, Remigio Agco, Jorge Descalzo, Adriano Lacaran, Jacinto Usong, Felipe Clarete, Paulino Candava, Silvestre Cusar (*alias* Cabayo), Lazaro Ordonez, and Antonio Paraiso.

It appearing that Mariano Colocado and Dalmacio Silang have died in Bilibid Prison pending their appeal to this court, the information and all the proceedings had thereon should be dismissed as to them.

"We think there is reasonable doubt as to the guilt of Agustin de los Santos, Paulino Candava, and Nicolas Pato, and that they should therefore be acquitted.

The evidence adduced at the trial fully establishes the guilt of each and all of the other appellants beyond a reasonable doubt, and we are of opinion that the sentence imposed upon each and all of them should be affirmed, except only the sentence of death imposed upon Diego Felizardo, which should be reduced to imprisonment for thirty years. There is no evidence in the record which goes to show that the said Diego Felizardo was a chief or leader of the band of brigands of which he was a member, nor that he took a direct part in any of the murders or assassinations with which the said band was charged, and without proof of one or the other of these aggravating circumstances we do not think that capital punishment should be inflicted.

Counsel for the appellants assigns as error the action of the trial court in dismissing the information as to some of those who were included in the same charge upon which they were convicted and permitting the Government to make use of the persons thus discharged as witnesses; having admitted their guilt of crime of which appellants were convicted, their evidence should not have been taken into consideration. While it is true that the evidence of witnesses of this character is subject to the gravest suspicion and, taken by itself, might not be sufficient to justify a conviction, nevertheless the proceeding subjected to is specifically authorized under section 34 of General Orders, No. 58; and in this case the evidence offered by these witnesses was substantiated by that of many others, both as to the existence of the band of brigands and the connection of the accused with the same, and there was no error in the proceedings prejudicial to the interests of the accused.

We are of opinion, therefore, that the sentence of the trial court should be affirmed as to all the appellants except the said Mariano Colocado, Dalmacio Silang, Agustin de los Santos, Paulino Candava, and Nicolas Pato, as to whom, for the reasons herein stated, said sentence should be, and is hereby, reversed, and, further, except as to the death penalty imposed upon the said Diego Felizardo, which should be, and is hereby, reversed, and a sentence of thirty years' imprisonment imposed in its stead.

A proportionate part of the costs of the appeal is imposed upon each of the appellants, except those as to whom the charge is dismissed, and as to them the costs are declared *de oficio*. So ordered.

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

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