

[G.R. No. 1821. March 21, 1905]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. PEDRO ORTEGA ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

JOHNSON, J.:

These defendants were each charged with the crime of *bandolerismo*. They were tried by the Court of First Instance of the Province of Nueva Ecija in the month of October, 1903.

Apolonio Ortega and Pedro Ortega were found guilty of the crime of *bandolerismo*, and were each sentenced to be imprisoned for the period of twenty years; to return to Tomas Avesamis two carabaos found in their possession, or in default thereof to pay to him the sum of 200 pesos, the value of said carabaos; and to pay one-fifth of the costs of said suit. The other defendants, Apolinario Ortega, Andres Ligon, Mariano Madrid, and Andres Pascual, were found not guilty of the crime charged, and were dismissed by the trial court. Apolonio Ortega and Pedro Ortega appealed from said sentence.

The evidence adduced during the trial of said cause shows that on the night of the 27th of March, 1903, seven armed persons entered the corral of Pedro Manalang, where were kept five carabaos, the property of Tomas Avesamis, and by force and violence took and drove away the said five carabaos. Apolonio Ortega and Pedro Ortega admitted before the members of the police who arrested them, before the justice of the peace who prepared the preliminary investigation, as well as before the Court of First Instance, that they assisted in the robbing of said carabaos. There was no evidence, however, which showed that the defendants belonged to a band that went out upon the highways and

roamed over the country armed with deadly weapons for the purpose of stealing carabaos and other personal property; neither was there any evidence, direct or circumstantial, which justifies this court in finding that the defendants, together with other persons who assisted in stealing the said carabaos, had conspired together for the purpose of going out upon the highways and roaming over the country for the purpose of stealing carabaos and other personal property. The evidence was therefore insufficient to convict the defendants of the crime of *bandolerismo*, as denned in Act No. 518. The evidence, however, does show that the defendants were guilty of the crime of robbery, with force and violence, in company with other persons armed with deadly weapons.

The sentence of the Court of First Instance of the Province of Nueva Ecija rendered in this cause is therefore reversed and the defendants are hereby sentenced to be imprisoned for the period of eight years of *presidio mayor*; to return to Tomas Avesamis the two carabaos found in' their possession or to pay to him the sum of 200 pesos, the value of said carabaos; and to pay one-fifth of the costs of said suit. So ordered.

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

Carson, J., reserves his vote.