

5 Phil. 324

[G.R. No. 1789. November 17, 1905]

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. APOLONIO DE OCAMPO ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

ARELLANO, C.J.:

As a result of the trial of the cause against these two defendants, Maningas was acquitted and Apolonio de Ocampo was sentenced to ten years' imprisonment for the crime of *bandolerismo*, and to return to their owners the property and cattle taken from them, without the penalty of subsidiary imprisonment on account of insolvency in consideration of the nature of the principal penalty, and to the payment of one-half of the costs.

In accordance with Act No. 518 the penalty for *bandolerismo* can not be less than twenty years' imprisonment, nor, in accordance therewith, is it necessary to pass upon the question of civil responsibility. In accordance with the jurisprudence of this court, the nature of the crime involved in this cause, disclosed by the facts contained in the information, is no other than that of *robo en cuadrilla*, punished by article 505 of the Penal Code; for it has not been proved that the six individuals who made the assault had conspired to form a band for the purpose of stealing carabaos, etc., as the crime of *bandolerismo* is defined in the act mentioned.

The responsibility of the accused Apolonio de Ocampo is correctly estimated in the judgment appealed from, it being impossible to object thereto on the ground of error in fact or in law; we therefore hold, after considering the case in all of its aspects, that the said

defendant has been found guilty of the crime of *robo en cuadrilla*, as disclosed by the merits of the case and from the terms of the information. Judging the crime as *robo en cuadrilla* under the provisions of the Penal Code, we must consider the modifying circumstances which, in this case, are that of its having been committed at night, which is an aggravating circumstance, and that of race, which is an extenuating circumstance, thus compensating one another, and also pass upon the civil responsibility, as has been done in the sentence appealed from.

Therefore we sentence Apolonio de Ocampo to eight years' imprisonment (*presidio mayor*), to the return of the stolen property or the payment of indemnity for the amount of its value, without subsidiary imprisonment in case of insolvency, and to one-half the costs in both instances; affirming the sentence appealed from where it is in conformity with this judgment and reversing it where it is not. So ordered.

Torres, Mapa, Johnson, and Carson, JJ., concur.
