

[ G.R. No. 2641. February 10, 1906 ]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. DOMINGO MACASADIA ET AL., DEFENDANTS AND APPELLANTS.**

**D E C I S I O N**

**JOHNSON, J.:**

These defendants were charged with the crime of *bandolerismo* in the Court of First Instance of the Province of Batangas, were found guilty, and sentenced to be imprisoned for twenty years, each to pay one-fourth part of the costs. From this decision the defendants appealed to this court.

An examination of the evidence adduced during the trial of said cause shows beyond peradventure of doubt that these defendants, at about midnight of the 10th of July, 1904, armed with a revolver, a gun, and bolos, entered the house of one Ursula Muger, situated in the barrio of San Isidro, pueblo of Santo Tomas, Province of Batangas, and by force took and carried away, with the intention to gain thereby, certain personal property belonging to the members of the family of the said Ursula Muger, of the value of about 20 pesos.

The complaint was presented against these defendants by the provincial fiscal of the Province of Batangas and was as follows:

“The undersigned, the provincial fiscal of the Province of Batangas, accuses Domingo Macasadia, Alberto Malillos, Feliciano Montero, and Tomas Carpio of the crime of *bandolerismo*, committed as follows:

“That on or about twelve o’clock of the night of the 10th day of July, 1904, in the barrio of San Isidro, pueblo of Santo Tomas, Province of Batangas, having conspired among themselves and being provided with a gun and revolver and bolos, went out upon the highways and arrived at the house of one Ursula Muger,

situated in said barrio, and by violence and intimidation to the persons who were found in said house^ appropriated for the purposes of gain various personal property (mentioned in the said complaint), which property had the value of twenty pesos, Philippine currency, the property of the said Ursula Muger and her daughters, against the statute in such cases made and provided.”

The evidence adduced during the trial is not sufficient to show that these defendants were guilty of the crime of *bandolerismo*; however, the evidence is sufficient to show that they committed the crime of robbery, with force and intimidation, being armed, and with the aggravating circumstance of *cuadrilla*, and should be punished under article 502, in relation with paragraph 5 of article 503 of the Penal Code.

This court has decided in numerous cases that the crime of robbery is included within the crime of *bandolerismo* and persons charged with the latter offense may be convicted of the former provided the complaint describes the crime of robbery. (United States vs. Ortega et al.,<sup>[1]</sup> 3 Off. Gaz., 366.)

The record further discloses the fact that the defendants, Domingo Macasadia and Tomas Carpio, were minors of 17 years of age and therefore entitled to the provisions of paragraph 2 of article 85 of the Penal Code.

The sentence of the inferior court, by reason of the foregoing facts, is reversed and the defendants are hereby sentenced, taking into consideration the aggravating circumstances of *cuadrilla*, nocturnity, and the fact that the crime was committed in the house of another, and without any extenuating circumstances, as follows:

First. Alberto Malillos and Feliciano Montero to be imprisoned for a period of nine years of *presidio mayor* and to suffer the accessory penalties provided for in article 57 of the Penal Code;

Second. Domingo Macasadia and Tomas Oarpio to be imprisoned for a period of six months of *arresto mayor*, with the accessory penalties provided for in article 61 of the Penal Code, and all the defendants to return the property stolen or to indemnify the persons robbed in the sum of 20 pesos, and each to pay one-fourth part of the costs. So ordered.

*Arellano, C. J., Torres, Mapa, Carson, and Willard, JJ., concur.*

<sup>[1]</sup> 4 Phil. Rep., 314.

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