

7 Phil. 149

**[ G.R. No. 2472 and 2473. December 07, 1906 ]**

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. TOMAS CORTES ET AL.,  
DEFENDANTS AND APPELLANTS.**

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

**JOHNSON, J.:**

These defendants were charged with the crime of bandolerismo. Some of them were charged in one complaint and some in another. The crime with which each was charged, however, was alleged to have been committed at the same time and by the defendants together; therefore, on motion, the two causes were united in the court below and the defendants were tried together.

These defendants were found guilty of the crime charged and sentenced by the Court of First Instance of the city of Manila on the 20th day of May, 1904. From this decision the defendants appealed to this court.

The attorney for the defendants filed his brief in this court on the 30th day of July, 1906. The brief on the part of the Attorney-General was not filed until the 13th day of September, 1906. The case was submitted to this court upon the 2d day of October, 1906.

The lower court, after a consideration of the evidence adduced during the trial of said cause, sentenced Fernando Mallari to be imprisoned for a period of twenty-five years, Tomas Cortes to be imprisoned for a period of twenty-two years, and each of the other said defendants to be imprisoned for a period of twenty years, and each, jointly and severally, to pay to Casimiro Estanislao and his wife Estanislaoa the sum of 300 pesos and to return the jewelry stolen or to pay its value, amounting to 32 pesos, or, in default of such payment, to suffer subsidiary imprisonment in case of insolvency, and to pay the costs.

There is no provision in the laws of the Commission providing for a judgment for civil

damages in a criminal prosecution; therefore that part of the sentence of the lower court providing for a judgment for the amount of money stolen, as well as for the value of the jewelry stolen, must be and the same is hereby revoked.

There is nothing in the laws of the Commission to prevent the court from entering an order in a criminal case under such laws returning to the owner the specific property found to have been stolen from him.

This court has decided that subsidiary imprisonment can not be imposed upon persons sentenced under the penal laws of the Commission. (U. S. vs. Glefonea,<sup>[1]</sup> 4 Off. Gaz., 160; U. S. vs. Carvajal,<sup>[2]</sup> April 10, 1906, 4 Off. Gaz., 705.)

An examination of the record brought to this court fully justifies the conclusion of the lower court and the sentence of the lower court is hereby affirmed with the modification above indicated. After the expiration of ten days let judgment be entered in accordance herewith, and ten days thereafter the case will be returned to the court below for execution. So ordered.

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

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<sup>[1]</sup> 5 Phil. Rep., 570.

<sup>[2]</sup> Not reported.

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