

THE UNITED STATES PLAINTIFF AND APPELLEE, VS. FELIPE IDOS, DEFENDANT AND APPELLANT.

G.R. No. 4464. August 15, 1908

Ponente: CARSON, J.

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CARSON, J.:

Felipe Idos, the appellant in this case, was charged with the crime of brigandage on the following information:

"That the said accused, during the time between the 1st of January, 1906, and the 1st of October, 1907, within the jurisdiction of the municipalities of Ormoc, Carigara, Barugo, Jaro, Alangalang, Dagami, Tanauan, Tolosa, Dulag, and Abuyog, in this province, willfully, and for the purpose of stealing carabaos, cattle, rice, rifles, revolvers, and ammunition, as well as other personal property, and for the purpose of abducting persons in order to extort, demand, and obtain a ransom, and to take personal revenge, by means of force and violence, did conspire together with the bandit Faustino Ablen et al., and with them formed a band of thieves, armed with rifles, revolvers, lantacas, bolos and daggers, and other deadly weapons, for the above-stated purposes, under the leadership of Faustino Ablen, the accused Felipe Idos being the general commander, Basilio Cernias a major, and Pablo Tisado a captain; that they went out upon the highways and wandered about the fields, then and there committing among other deeds the following, to wit:

"On the 19th day of June, 1906, the said accused, together with about sixty members of the said band, all of them armed with deadly weapons, invaded the town of Burauen, and by means of force and violence entered the municipal building and then and there killed the policemen Lorenzo Marchades, Victor Coral, Policarpo Costiniano, Felipe Antido, Modesto Canales, Fortunato Refuerzo and wounded Antonio Agucay, Julian Agucay, Luis Cordero, Emiliano Coranes, Eulogio Gerona, and Felipe Aguillon, and took the documents of the municipality, which were burned by the gang, who also killed Lamberto Renumeron; the policemen were murdered while they were asleep.

"All "of which is contrary to law."

The guilt of the accused of the crime of which he was convicted, and its commission in the manner and form set out in the information are conclusively established by the admissions of the accused himself upon the witness stand; by the testimony of Ambrosio Camantang, one of the members of Ablen's band of brigands; by the testimony of Antonio Agucay, who was on duty as a municipal policeman on the 19th of June, 1906, when the municipality of Burauen, Province of Leyte, was sacked by the band of brigands under the leadership of the accused; and by the testimony of Victor Antido, who was captured by two brigands named Pablo Tisado and Basilio Cernias, and brought by them to the camp at Talisayan, where the accused was in immediate command of the band of brigands there assembled. The testimony of the witness Agucay leaves no room for doubt that the accused was present personally directing the bandits under his command when the policemen were killed at Burauen, and that with his own hand he slew at least one of these officers of law.

The trial court convicted the accused and imposed the penalty of death. We find no error in the proceedings prejudicial to the rights of the accused, and no reason appears which would justify us in modifying or reversing

the judgment and sentence of the lower court.

While we have uniformly declined to affirm the death penalty imposed by trial courts upon convicts of the crime of brigandage, unless it affirmatively appeared either that the convict had himself taken direct part in the commission of some heinous offense committed by the band, or that he was a chief or subchief of a band, and actively directed its operations when it committed such an offense, nevertheless, we have not hesitated to affirm the imposition of the death penalty when it appeared, as it does in this case, that not only was the accused in direct command of a party of brigands when it committed such offenses, but that he himself took direct part therein. (U.S. vs. Oruga 6 Phil. Rep., 458; U. S. vs. Manguera et al., 7 Phil. Rep., 287; U. S. vs. Cadutdut and Gabonada, 7 Phil. Rep., 335; U. S. vs. Almaden and Gamba, 8 Phil. Rep., 573; U. S. vs. Sakay et al., 8 Phil. Rep., 255.)

It has been suggested that the accused having voluntarily surrendered himself to the authorities, this fact should be taken into consideration, as a ground for reducing the penalty, and reversing the sentence imposing capital punishment. This court held, however, in the case of the U. S. vs. Sakay et al. (8 Phil. Rep., 255), that where an accused person surrenders himself unconditionally, without promise of leniency or reward, such surrender does not entitle the accused to a reduction in the degree of the penalty to be imposed by the courts, and that "if any clemency should be exercised in favor of the defendants for this voluntary act on their part, it should be done by the executive branch of the government."

The judgment and sentence appealed from are affirmed, with the costs of this instance against the appellant. So ordered.

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

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