

7 Phil. 335

[G.R. No. 3231. January 19, 1907]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. BRAULIO CADUTDUT AND MELITON GABONADA, DEFENDANTS AND APPELLANTS.

D E C I S I O N

JOHNSON, J.:

These defendants were charged with the crime of *bandolerismo* and were tried by the Court of First Instance of the Province of Cebu. After hearing the evidence adduced in said cause, the lower court found that the said defendant Meliton Gabonada was guilty of the crime of robbery, defined and punished by paragraph 5 of article 508 of the Penal Code, without finding the existence of either aggravating or extenuating circumstances, and sentenced him to be imprisoned for the period of four years and two months of *presidio correccional*, with the accessories of article 61, and to pay one-half of the costs. From this decision he did not appeal.

The court further found from the testimony that the defendant, Braulio Cadutdut, was guilty of the crime of *bandolerismo*, defined and punished under Act No. 518 of the Philippine Commission, and sentenced him to the penalty of death. From this decision the defendant appealed to this court.

An examination of the record brought to this court shows beyond peradventure of doubt the following facts:

First. That the defendant, Braulio Cadutdut, was a member of a band, armed with deadly weapons, composed of sixteen or more men; which band roamed over the country and upon the highways in the Province of Cebu for the purpose of stealing carabaos and other personal property;

Second. That the chief of said band was one Gabino Rama;

Third. That on or about the 22d of April, 1904, said band entered the barrio of Lajug of the pueblo of Marbola in said province and took by force of arms from the people of said barrio clothing, chickens, hogs, and carabaos;

Fourth. That at the time said band entered the said pueblo, besides robbing the inhabitants of their personal property, they burned many of the houses of the said inhabitants;

Fifth. That the said defendant had killed two persons, one called Petrona and the other Mariano.

The court took into consideration this last fact in imposing the death penalty upon the defendant Braulio Cadutdut. The proof does not disclose the circumstances under which the defendant killed these two persons, nor does it disclose sufficient facts to justify this court in imposing the death penalty for this crime. This court has in no case imposed the death penalty for the crime of *bandolerismo* where the evidence did not show clearly:

(a) That the defendant was the leader or organizer of a band of bandits; or

(b) That he had in the operations of such band committed some crime for which the death penalty might be imposed under the provisions of the Penal Code.

The evidence does not disclose that the defendant Braulio Cadutdut was the leader of said band or that he had committed the crime of homicide under conditions which would justify this court in imposing the death penalty. The sentence of the lower court imposing the death penalty upon the defendant Braulio Cadutdut is therefore hereby reversed and the defendant, Braulio Cadutdut, is hereby sentenced to be imprisoned for the period of his natural life and to pay the costs. After expiration of ten days, let judgment be entered in accordance herewith and ten days thereafter the case be returned to the court from whence it came for execution. So ordered.

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