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[G.R. No. 1401. January 27, 1904]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. ESTEBAN BARE ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

MAPA, J.:

The accused are charged with the crime of brigandage. The Court of First Instance sentenced Esteban Bare and Donato Rodriguez to the death penalty, Vicente Armiso to that of life imprisonment (*cadena perpetua*), and Fulgencio Enano and Bernardo Olbis to twenty years of imprisonment. The cause has been brought to this court for review of the judgment with respect to the first two defendants, and on appeal as to the latter three. The other defendants, twenty-seven in number, were either acquitted by the court below or failed to appeal from its judgment, which, as to them, has accordingly become final.

The guilt of Bare and Rodriguez and of the other three appellants is fully proved in the record. We agree with the findings of the lower court as to the responsibility of these defendants, and with its classification of the crime prosecuted. The penalties imposed upon Esteban Bare, Vicente Armiso, Fulgencio Enano, and Bernardo Olbis are, in our opinion, also in accordance with law; but we do not concur in the imposition of the penalty of death on Donato Rodriguez.

The latter defendant was not permanently affiliated with the band of brigands. His connection with it was, it may be said, only momentary and transient. He neither entered the town of Surigao in their company, nor did he leave it with them when they retreated

after sacking the Constabulary barracks therein located,

Eduardo de los Santos, the so-called commander of the band, testifies that Donato Rodriguez arrived at the barracks during the course of the attack. He further-states that he is unable to say whether or not Rodriguez was armed, because he did not observe him particularly in this respect. Vicente Atillo, another of the band's leaders, testifies that Donato Rodriguez was not with them when they entered Surigao, but that he joined them in the barracks, where Adriano Concepcion gave him a revolver, and that he separated from the party at the barracks. This witness also testifies that Rodriguez took no part in the occurrences at the barracks beyond the fact of receiving the revolver from Adriano Concepcion. That Rodriguez left the band while it was still at the barracks and took no part in the assault is conclusively established. During the progress of the assault, Rodriguez was in another place attempting to induce Agaton Dehaso, a Constabulary soldier, to surrender a revolver with which he was armed, telling him that the captain of the Constabulary, the captain of the port, and the provincial inspector had already been killed by the brigands. After this moment no one saw Rodriguez with the band. On the contrary, it appears that on the night following the attack on the barracks he presented himself to the local authorities.

There is a great difference between the degree of guilt of this defendant and that of Esteban Bare, also condemned by the court below to the death penalty. It is fully proven that the latter took a direct and very important part not only in attacking and sacking the barracks but also in the murder of Captain Clark.

The fact that Donato Rodriguez was a member of the municipal police of Surigao, the consideration of which chiefly induced the court below to impose upon him the death penalty, should indeed be regarded as a circumstance in a high degree tending to aggravate the offense, but not to such an extent as to make it equal to that of Esteban Bare, who was guilty of the two grave crimes above mentioned.

The damaging facts with reference to Donato Rodriguez are very

similar to those with respect to Vicente Armiso, who was condemned by the trial judge to life imprisonment. Although it is true the former was a municipal policeman, the latter likewise was a member of the Constabulary. Furthermore he participated in the assault upon his own barracks, firing in the course of the attack three shots at the provincial warden, Mr. Tracy, who endeavored to go to the assistance of those in the barracks. Donato Rodriguez was guilty of none of these acts. We see no reason for imposing upon him a heavier penalty than that imposed upon Vicente Armiso, which we consider to be wholly adequate.

Act No. 518, which defines and punishes the crime of brigandage, in designating the penalty to which the defendants should be condemned, makes no mention of "imprisonment in chains" (*cadena*), but simply of "imprisonment" (*prision*).

Consequently the penalty of *cadena perpetua* imposed upon the defendant Armiso should be understood as life imprisonment.

For the reasons stated we affirm the judgment of the Court of First Instance with respect to Esteban Bare, Vicente Armiso, Fulgencio Enano, and Bernardo Olbis. The penalty of *cadena perpetua* imposed upon Armiso is changed to life imprisonment. The judgment is reversed with respect to Donato Rodriguez, whom we condemn to life imprisonment, imposing upon all the said defendants the costs of this instance. So ordered.

Arellano, C. J., Torres, Cooper, Willard, McDonough, and Johnson, JJ., concur.