

7 Phil. 287

[G.R. No. 3002. January 03, 1907]

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. VICTORIANO MANGUERA ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

CARSON, J.:

The appellants, Pedro Tapisan, Eufemio Alimento, Irineo Luang, Lucio Dingos (*alias* Spiala), Francisco Alingalan, Gaudencio Alingalan, and Mamerto Encabo, having died pending their appeal, the information as to them must be dismissed, with their proportionate share of the costs *de officio*.

The evidence of record conclusively establishes the guilt of the crime of brigandage of each and all of the remaining appellants, and the sentence of the trial court as to all and each of them should be affirmed, except only in the case of Victoriano Manguera, upon whom the trial court imposed sentence of death, and whose punishment, in our opinion, should be reduced to that of imprisonment for life.

While the record sustains the finding of the trial court that he was chief, or one of the chiefs, of a band of brigands which operated in the Island of Cebu, it does not affirmatively appear that he personally participated in the commission of any capital offense, or that while under his command this band committed any of the atrocious crimes, or practiced the fiendish cruelties which have always marked the conduct of the members of such bands in those cases wherein we have sustained the imposition of the death penalty upon the chief without conclusive evidence of his personal participation in the grave offenses of which the members had been guilty. The trial court was of opinion that the evidence tended to prove that he was guilty of the murder of one Irineo Sialana, but we do not think that his guilt of this crime was sufficiently established to justify the imposition of the death penalty. The only testimony of record which tended to prove that the accused murdered Sialana is the uncorroborated statement of Tomasa Bañares, widow of Sialana, but her statement is not

conclusive in itself, and is contradicted in an important detail by the evidence of Lucio Paquiao, who was also called for the prosecution.

The judgment and sentence of the trial court should be modified by substituting the penalty of life imprisonment for that of death imposed upon Victoriano Manguera, and thus modified said judgment and sentence is affirmed as to all the appellants except the above-mentioned Pedro Tapisan, Eufemio Alimento, Irineo Luang, Lucio Dingos (*alias* Spiala), Francisco Alingalan, Gaudencio Alingalan, and Mamerto Encabo, as to whom the complaint is dismissed, with a proportionate share of the costs of this instance against the appellants as to whom the judgment and sentence is affirmed, and *de officio* with respect to those appellants as to whom the complaint is dismissed. After expiration of ten days let judgment be rendered in accordance herewith and ten days thereafter the record remanded to the court below for proper action. So ordered.

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