

6 Phil. 436

[G.R. No. 2794. September 11, 1906]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CLARO PAGUIO,
DEFENDANT AND APPELLANT.**

D E C I S I O N

MAPA, J.:

This is a prosecution for the crime of brigandage alleged to have been committed as follows: "That in or about the months of June to October, 1904, in the barrio of Cabcabén, Mariveles, Province of Bataan, P. I., the said Claro Paguio maliciously, unlawfully, and feloniously gave shelter in his own house and furnished food and money to a band of more than three men armed with revolvers under the leadership of one Cosme Caro or another man named Simon, organized for the purpose of robbing and plundering the inhabitants of the said barrio, in violation of the statute made and provided."

Several witnesses testified for the prosecution. The testimony of two of them is so incoherent and improbable that the court below was compelled to reject it as inadmissible for the purpose of establishing the guilt of the accused.

The testimony of the others was completely contradicted by a large number of witnesses called by the defense. The trial court, in weighing the testimony of the witnesses both for the prosecution and the defense, stated that the witnesses presented by the accused were in a better position to see and observe what happened daily in the defendant's house during the time referred to in the complaint, and proceeding upon this theory, decided the doubt arising from such conflicting testimony in favor of the defendant. We think that this conclusion of the trial court is correct and that it must, therefore, be sustained.

But even assuming that the testimony of the witnesses for the prosecution was true, yet it could not be said that the men to whom, according to them, the defendant furnished money and rice were really brigands, as the only reason, absolutely insufficient, which they gave

for believing them such was that they were armed with revolvers. There is no proof of any act of brigandage committed by them either before or during the long period they remained, according to the testimony of the witnesses for the prosecution, in the vicinity of the barrio of Cabcaben. On the contrary one of those witnesses testified that they were engaged in cultivating the field. On the other hand, it was proved at the trial that, at that time, Constabulary soldiers from Mariveles and Cavite, armed with revolvers, used to go to the defendant's house.

It is true that one of the witnesses for the prosecution stated that one of the men referred to, called Simeon, was Cosine Caro, the defendant himself having told him so, and there is evidence to the effect that Cosme Caro was the chief of a band of brigands. But the testimony of this witness was contradicted by that of the accused, who stated that the said Cosme Caro had never been in his house. Aside from this there is no other evidence tending to show that the men referred to by the witnesses for the prosecution were members of the band of brigands of Cosme Caro.

In view of the evidence introduced at the trial the court below found that the crime of brigandage with which the defendant was charged in the complaint had not been satisfactorily established, but that during the months of June and July there had been in the vicinity of the barrio of Cabcaben, of which the defendant was the councilor, several members of a band of brigands and that he had failed to report their presence to the provincial governor or the Constabulary inspector, in violation of section 5 of Act No. 781, and sentenced the said defendant to one year's imprisonment and to pay a fine of 200 dollars, United States currency, with the costs of the proceedings.

Without deciding whether the crime provided and punished in section 5 of Act No. 781 is necessarily included in the crime of brigandage, and whether the accused can, therefore, be convicted for the former crime, under a complaint for the latter, the fact is that there is not sufficient evidence in the case to convict the defendant under the aforesaid provision of law. The reasons above stated why we are precluded from finding that the crime of brigandage has been committed, may also be advanced for the conclusion that the provisions of Act No. 781 have not been violated. If credit were to be given to the witnesses for the prosecution we would have to conclude that the crime of brigandage had been committed, otherwise there would be no evidence that any band of brigands had ever been in the vicinity of the barrio of Cabcaben, and much less that the defendant had knowledge of its presence. In any event it has not been satisfactorily proved that the men referred to by the witnesses for the prosecution were really brigands.

We accordingly reverse the judgment appealed from and acquit the defendant, with the costs of both instances *de officio*. After the expiration of ten days let judgment be entered in accordance herewith, and ten days thereafter the case be remanded to the Court of First Instance for execution. So ordered.

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

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