

[G.R. No. 2844. August 30, 1906]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. SAMUEL SAULO ET AL.,
DEFENDANTS AND APPELLANTS.**

D E C I S I O N

WILLARD, J.:

There were sixteen defendants in this case, three of whom were acquitted by the court below and thirteen of whom were convicted. One of the persons convicted and sentenced to twenty years' imprisonment is Samuel Saulo. He testified that while working in his fields he was seized by a band of brigands and carried to their camp, where he remained one day and one night, when he escaped. This testimony is corroborated not only by the testimony of his sister but also by the testimony of one of the principal witnesses for the government, Damian Cabral, who stated that this defendant was abducted by the band and carried to their camp, where he remained one day and one night. Of the other witnesses for the government, all of whom belonged to this band of brigands, one of them, Juan Sandique, testified that he did not know the defendant. This also corroborates the statement of the defendant and of the government's witness, Cabral. The other witness for the government, Rufino Ico, testified that he saw the defendant carrying a gun, but this evidence is not sufficient to overcome the positive testimony of the other witnesses for the government and the evidence presented in behalf of the defense. He should accordingly be acquitted.

As to Anselmo de la Cruz, Juan Paiigan, Pascual Castro, Catalino Bautista, Juan Punsal, Guillermo Gatchalian, and Jose Marcelo, the evidence is sufficient to sustain the judgment.

Eulogio Flaviano was convicted for having been a member of the band of brigands in question and sentenced to twenty years' imprisonment. Of the three witnesses for the government who have been mentioned above, Damian Cabral and Juan Sandique testified that they did not know this defendant. The only testimony against him is the testimony of Rufino Ico. The evidence shows that Cabral was with the band during all of the time which

Ico says that this defendant was a member thereof. Sandique belonged to the band for two weeks during part of this time. It seems improbable that if this defendant was a member of the band that Cabral, at least, should not have known it. The guilt of this defendant is not proved beyond a reasonable doubt and he should be acquitted.

Anibrosio de los Santos was convicted for having been a member of the band and sentenced to twenty years' imprisonment. The evidence in the case shows that he is guilty of a violation of section 4 of Act No. 518, as modified by Act No. 1121, but there is reasonable doubt as to whether he is guilty of the violation of section 1 of the said law. He should therefore be convicted under the said section 4.

Leopoldo Lopez was convicted of a violation of section 4 and was sentenced to ten years' imprisonment. The evidence on which this conviction was based shows that Sandique was a friend of Lopez and that on one occasion Ico and Sandique were entertained at supper in the house of Lopez. Both, of these witnesses at the time carried revolvers. While there is evidence in the case to show that these two men belonged to a band of brigands, there is no evidence to show that Lopez knew this at the time. Being only two, these persons did not themselves constitute a band of brigands within the meaning of section 1 of the law. The evidence is not sufficient to convict this defendant.

Since the appeal was taken the defendants Simeon Mañgalos and Pedro Calasing have died.

As to the defendants Simeon Mañgalos and Pedro Calasing the judgment of the court below is reversed and the case dismissed, with two-thirteenths of the costs in this instance and two-sixteenths of the costs of the first instance *de officio*. As to the defendants Anselmo de la Cruz, Juan Pañgan, Pascual Castro, Catalino Bautista, Juan Punsal, pillerino Gatchalian, and Jose Marcelo the judgment of the court below is affirmed, with one-thirteenth of the costs if this instance against each one of said defendants. As to the defendant Ambrosio de los Santos, the judgment of the court below is reversed and he is convicted of violation of section 4 of Act No. 518, as amended by Act No. 1121, and sentenced to ten years' imprisonment, with one-thirteenth of the costs of this instance and one-sixteenth of the cost of the first instance against him.

As to the defendants Samuel Saulo, Eulogio Flaviano and Leopoldo Lopez the judgment of the court below is reversed and they are acquitted with three-thirteenths Of the costs of this instance and three-sixteenths of the costs of the first instance *de officio*.

Let judgment be entered in accordance herewith and at the proper time the case be

remanded to the lower court for proper action. So ordered.

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

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