

[G.R. No. 1498. February 24, 1904]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. MARTIN CABUENAS,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

The defendant was accused of brigandage by the provincial fiscal of Cebu, in a complaint dated July 23, 1903, wherein it was stated that after the 12th of November, 1902, and prior to the date of the complaint, Cabuenas had formed a numerous party of bandits in the barrio of Inagauan, of the pueblo of Talisay in said island, for the purpose of robbing carabaos and other personal property by means of force and violence, and that he led said party under the title of captain-general, and that he and his partisans, armed with deadly weapons, had been wandering through the mountains of Talisay and of Pardo, and that the defendant feloniously received property stolen by said band, and furnished it with provisions, clothing, arms, and ammunition, contrary to the law.

The complaint having been filed and the case called for trial, from the evidence adduced thereat it appears that Martin Cabuenas in Talisay, Cebu, organized a numerous party of malefactors, altogether about 200 persons, of whom he constituted himself the leader with the title of captain-general, and that they, armed with bolos and revolvers, had been wandering over the country and through the mountains of the pueblo of Talisay and Pardo, and had engaged in robbing money, carabaos, and maize, besides committing other outrages against the residents of said towns and the agents of the Government. This is all shown by the testimony of the witnesses Agustin Cabunales,

Ambrosio Bacalso, Gregorio Abapo, Melquiades Lasala, Mateo Luga (lieutenant of Constabulary), Graciano Nadela, Pedro Sabillano, Miguel Bacalso, Meliton Canizares, Patricio Mosqueda, Graciano Ragasa, Bartolome Tabora, Vicente Badayos, Pedro Nadela, Juan Base Villarrosa (justice of the peace of Cebu), Juan Climaco (governor of the province), Juan Capalan, Benigno Timno, Luis Mabazo, and Olimpico Deiparine (municipal president of Talisay). The last-named witness was the one who arrested the accused with the aid of two volunteers. It is to be observed that some of the witnesses above mentioned had been watching the residence of the accused, by order of the authorities, for the purpose of determining his conduct and character.

According to the testimony of Graciano Nadela, one of the companions of the accused, when the party was organized in Manduang, pueblo of Minglanilla, the accused demanded money, under threats and ill treatment, from one Botoy, who on this account died in May, 1903. The witness Graciano Ilagasa testified that when he was sequestered with three other policemen by the partisans of the accused, his companions and he were disarmed, and that their captors then went to the house of Pablo Cabellon in Inagauan, and as the latter resisted them he was wounded with a bolo by the accused, although not seriously.

Mateo Luga, a lieutenant of Constabulary, exhibited a document which appears on page 74 of the record, signed by the accused, which said document was found in the pocket of a person who died in a fight which the Constabulary had with some malefactors in Jacupan, in the town of Talisay, on the afternoon of July 27, 1903, which document is a lieutenant's commission. Governor Climaco testified that the signature appended to the document exhibited was that of Martin Cabuenas, he being familiar with his handwriting of the accused, and that the latter called himself first master, because the supreme chief was Roberto Caballero (record, p. 72). On page 75 of the record there appear the cedula which the defendant distributed.

The facts above stated unquestionably constitute the crime of brigandage, comprised in section 1 of Act No. 518, of November 12, 1902.

It appears perfectly established in the case that the accused, after having organized a numerous band of ladrones, assumed the command of said party, and he, as well as the other members thereof, being armed with deadly weapons, engaged in the robbery of carabaos, provisions, and especially of money, which at different times of the day and night they demanded from the people under threats of death and by means of ill treatment and other personal outrages; that they also took the arms of several policemen whom they sequestered, and that they wandered over the fields and mountains of said towns committing the acts of violence and pillage which mark them as brigands.

Consequently the defendant has incurred some of the penalties prescribed in said section, and according to the opinion of the court that of life imprisonment should be imposed. The death of Botoy can not be considered as fully established, and much less that of Pablo Cabellon, who, according to the witnesses, was only wounded, and that not seriously.

For the reasons stated we are of the opinion that the decision of the court below must be reversed, and the accused, Martin Cabuenas, sentenced to the penalty of life imprisonment and the costs. The case will be remanded to the court below, with a copy of this decision and of the judgment to be entered therein, for execution.

Arellano, C. J., Cooper, Mapa, and McDonough, JJ., concur.

DISSENTING

WILLARD, J.:

In my opinion the decision of the Court of First Instance should be affirmed and the defendant sentenced to death.

DISSENTING

JOHNSON, J.:

The defendant is charged with the crime of bandolerismo, as follows:

That in the month of July, 1903, in the barrio of Inagauan, of the pueblo of Talisay, of the Province of Cebu, he formed a band composed of more than three persons with the object of robbing carabaos and other personal property by means of force and violence; that the said accused was the chief of the said band, with the title of "captain-general;" that the said band went out upon the highways, armed with deadly weapons, with the object of robbing carabaos and other personal property.

During the trial of the case many witnesses were presented on behalf of the prosecution.

The testimony of Agustin Cabunales shows that the accused was the head of a band composed of a large number of men; that the accused or his men had sequestered the said witness and had demanded of him money; and because the said witness was unable to comply with the said demands of the accused, he was detained in the house of the accused and was manacled and illtreated; that the accused threatened to kill the witness; that the companions of the accused were armed and went upon the highways armed with bolos and pinutis.

The testimony of Ambrosio Bacalso shows that the defendant and his soldiers compelled him to give them money and threatened to arrest him if he refused to comply with their wishes.

The testimony of Gregorio Abapo shows that the companions of the accused, under the orders of the accused, had compelled him to pay them money; that because of fear and of their threats he paid the money.

The testimony of Olimpio Deiparine shows that he was president of the pueblo of Talisay; that the accused ordered him to surrender his authority to him and his soldiers ; that the accused was at the head of a band of armedmen; that the band was armed with bolos and pinutis.

The testimony of Melquiades Lasala shows that he was chief of police

of the pueblo of Talisay; that he knew the accused, and had known him for a long time, and that he was the leader of a band of men located in one of the barrios of the pueblo of Talisay, and that said band was armed and was engaged in robbery.

The testimony of Mateo Luga shows that he was a member of the Constabulary; that he knew the accused; that the accused was at the head of an armed band and that the object of the accused and his band was to demand money of the people.

The testimony of Graciano Nadela shows that he was a policeman; that he had known the accused; that he had been in the house of the accused; that the accused had said to him that he was the head and leader of a band of about 200 men; that the accused was called "general" by the members of the band; that the band was armed with bolos and pinutis; that the band maintained itself by robbing money and carabaos and by compelling the people to pay contributions; that the band had menaced one Botoy until they killed him; that the people had left the place where the band was located because of the fear they had for the accused and his band.

The testimony of Pedro Sabillano shows that he had been acquainted with the defendant for a long time; that he "was in the house of the accused and saw many armed men there.

The testimony of Meliton Cañizares shows that he had known the accused and that he had seen the accused in charge of a band of about 200 armed men; that the men were armed with bolos and pinutis.

The testimony of Patricio Mosqueda shows that he was a member of the Constabulary and had known the defendant for a long time; that he visited the quarters of the accused as a spy and saw many armed men there.

The testimony of Graciano Ragasa shows that he, together with two others, had been sequestered by the accused and his band, and compelled to go with them; that they followed this band until they arrived at

the house of one Pablo Cabellon, where the band was engaged in a fight with the said Pablo, and the witness and his two companions escaped.

The testimony of Bartolome Tabora shows that he was a municipal policeman and was one of the companions of Graciano Ragasa at the time he was sequestered; that the accused was with the band on that occasion and was armed with a revolver; that the band took his arms from him.

The testimony of Vicente Badayos shows that he was a companion of Graciano Ragasa and Bartolome Tabora at the time they were sequestered by the accused and his band and his testimony agrees with the statements of the two others. He says that the band was armed and that there was a fight between the members of the band and the said Pablo.

The testimony of Juan Base Villarrosa shows that he was a justice of the peace and that the accused had told him on one occasion that he was the captain-general.

The testimony of Juan Climaco shows that he was the governor of the Province of Cebu; that he knew the accused and knew that the accused was at the head of the pulahans; that he had seen a document signed by the accused in which that fact appeared in connection with the signature of the said accused.

The accused offered no proof in defense.

After hearing and considering the evidence in the said cause, the judge found the defendant guilty of the crime charged in the complaint, and sentenced him to the penalty of death.

The evidence given in the trial of the cause against the accused justifies the following conclusions:

First. That prior to the 1st day of July, 1903, and subsequent to the 12th day of November, 1902, there existed in the Province of Cebu an armed band, composed of more than 200 men, who conspired together for the purpose of robbing carabaos and other

personal property.

Second. That the said band was armed with deadly weapons, and went out upon the highways in said province and roamed over the country and did rob carabaos and other personal property.

Third. That the said defendant was known as a captain-general and was the leader of the said band.

Fourth. That while he was acting as the leader of the said band, between the said dates, he had directed and caused the death of one Pablo Cabellon, and the robbery of carabaos and other personal property in the said Province of Cebu, in the Philippine Islands.

This court has, in numerous cases, punished members of bands like the one proven to have existed in this case, by sentencing them to long terms of imprisonment, ranging from twenty to forty years, and in some instances to life imprisonment.

I can not bring myself to believe that this court is consistent with itself and its former decisions when it imposes upon the leader of these bands the same imprisonment which is imposed upon the members of the band who are mere tools of such leaders, and who, perhaps, are members of such bands by reason of fear and coercion.

The facts found by the trial court fully justify its conclusions and the sentence imposed upon the defendant in this cause. It should be a rule of practice in this court that when it finds the facts upon which the court below rendered its judgment to be true and sufficient to sustain the judgment, the terms of the judgment should not be changed in this court.

Therefore, by virtue of the evidence adduced in this cause, and the provisions of section 1 of Act No. 518 of the Civil Commission, the judgment of the court below should be affirmed.

Date created: January 17, 2019