

3 Phil. 716

[G.R. No. 1546. April 16, 1904]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. FELIPE RAMA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

July 27, 1903, the deputy provincial fiscal filed an information in the Court of First Instance, Cebu, charging Felipe Rama with the crime of brigandage, in that the said accused, after the 12th day of November, 1902, organized a band of brigands for the purpose of stealing carabaos and other personal property by force and violence, and that he and other persons forming the said band, armed with deadly weapons, wandered about the country at Capampañgan, and in the vicinity of the cemetery of San Nicolas of the municipality of Cebu of that island, contrary to the statute in the case made and provided.

From the evidence taken at the trial of the case it appears that during the months of June and July, 1903, a band composed of some fifteen or twenty men, armed with two guns and long bolos, was wandering about the barrio of Guadalupe in the vicinity of the cemetery of San Nicolas of the municipality of Cebu in the Island of that name; that Gavino Rama was the leader of this gang, the members of which were engaged in robbery and the exaction of money from the inhabitants of that place, some of whom were captured and taken to the mountains, where they were held as prisoners for several days, not having been able to pay the ransom demanded; that the members of this band killed some Chinamen for the purpose of robbing them of the sum of 2 pesos; that on various occasions during those months the accused Felipe Rama, who lived in Guadalupe, entertained Gavino Rama, the leader of the

band, who was his son, and the companions of the latter, giving them food and rice which they took into the interior of the mountains. These facts appear from the testimony of the witnesses Manuel Ragasajo, Adriano Caban, Pedro Cabucan, Victoriano Padin, and Meliton Cobarrubias, of whom Caban, Cabucan, and Padin were held as prisoners by the malefactors for several days. Two policemen testified that one night they, together with some other people, went to the house of the accused, Felipe Rama, having received information that his son, Gavino Rama, and several other armed men, were there, but upon their arrival at the house they did not find anyone.

From the facts stated it clearly appears that Felipe Rama, with knowledge of the illegality of his acts, gave aid and protection to a band of brigands, led by his son, Gavino Rama, giving shelter to the latter and to his companions, who, provided with arms, wandered about the country in the barrio of Guadalupe near the cemetery of the town of San Nicolas, and engaged in robbery, pillage, and other offenses, and that the accused supplied them with food in his own house, situated in the said barrio, and furnish'ed them with rice, all of which constitutes the crime defined and punished in section 4 of Act No. 518, enacted November 12, 1902.

The accused pleaded not guilty, and testified under oath that one day, the date of which he can not remember, Meliton Cobarrubias, accompanied by one Simon, came to the house to buy some chickens and a hog from him; that he refused to make the sale, as these things did not belong to him; that Meliton also tried to buy a horse which was there, but that the witness refused to sell it, and that thereupon the two men went away; that on the night of the same day these men returned, and called to the witness to open the door and strike a light; that they then entered his house, and beat him with the butts of their guns, after which they took him to the house of Lieutenant Luga, from whence he was taken to the municipal house of San Nicolas; that he was there examined, and stated that his son Gavino had left his house a long time ago, and that he, the witness, did not know where he was, as his said son had not returned to the house since his departure; that his son was unmarried, and that although he bought some rice it was not more than a

pint or so, as he was a poor man.

Ana Rama, the daughter of the accused,, testified under oath that when her father was arrested he was beaten by his captors; that her brother Gavino had not been in the house of her father since his departure from it a long time ago, and that he had not been there in company with other armed men. The other witnesses, Tranquilino Labeste and Antonio Labra, neighbors of the accused in the barrio of Guadalupe, testified that they had never seen any armed men eating in the house of the accused, and that they had never seen his son, Gavino Rama, there since he went away from it some time ago. These witnesses stated that on working days they were accustomed to leave their houses.

Notwithstanding the denial of the accused, and the testimony of his witnesses, there is sufficient evidence in the case to show beyond a reasonable doubt that the accused on various occasions provided food and shelter for a band of armed men, which was wandering about the fields of the barrio of Guadalupe, engaged in robbery and other crimes. The evidence against the defendant is not overcome by his exculpatory allegations or the testimony of his witnesses. One of these was the daughter of the accused, and the other two stated that they did not stay in their houses on working days, and this explains why they did not see the armed men in the house of the accused. On the other hand, several other witnesses, three of whom had been captured by the brigands, testified to having seen the son of the accused, together with the malefactors under his command, in the house of the accused, and saw him supply them with food.

The fact that the accused was charged in the information with the offense defined and punished by section 1 of Act No. 518, is not a reason for setting aside the decision of the court below, by which the defendant was found guilty of the offense described in section 4 of that act. The offense defined in section 4 is included within the crime of brigandage, as an act of indirect participation, just as the guilt of an accessory is included within the guilt of the author of a consummated crime. It is nothing more than a degree of the crime punished by that act, and therefore under the provisions of section 29

of General Orders, No. 58, the court is authorized to find the defendant guilty of any offense, whether it be the consummated crime, a frustration of it, or an attempt to commit it necessarily included in the offense charged in the complaint or information.

For the reasons stated it is our opinion that the judgment appealed must be affirmed, with the costs against the appellant. The record will be returned to the trial court, with a certified copy of this decision, and of the judgment to be entered in accordance therewith, for execution of the same. So ordered.

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