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[ G.R. No. 1493. February 25, 1904 ]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. BERNARDO USIS ET AL., DEFENDANTS AND APPELLANTS.**

**D E C I S I O N**

**COOPER, J.:**

Bernardo Usis, Marcelino Mangubat, Aquilino Cantada, Luis Taganas, and Mateo Ronquillo are charged with the offense of bandolerismo and were convicted in the Court of First Instance of Cavite on the 28th day of August, 1903, as forming a party of bandits defined in Act No. 518 of the Civil Commission, and were condemned to the penalty of twenty years' imprisonment and to pay the costs of proceedings. The defendants have appealed to this court.

From the testimony it appears that in the month of May, 1903, in the barrio of Iba, Silang, in the Province of Cavite, the accused were arrested by a body of Insular police; that at the time of their arrest they were in company with one Aguedo, and, meeting about a dozen of the Constabulary, Aguedo, who was called the chief of the gang, fired his revolver at the Constabulary and succeeded in making his escape; the defendants were captured and four of them were found armed with bolos and one with a Mauser bayonet.

According to the statement of witnesses on the part of the prosecution, upon their capture the defendants stated that they were in search of a carabao which had been lost, the property of one of their number, Mangubat, and that Aguedo was the chief of the band.

The defendants testified in their own behalf, some of them declaring that the lost carabao belonged to Marcelino Mangubat and others that the lost carabao was the property of Aquilino Cantada. Their statements were contradictory, both with respect to the places of their residence, the arms which they bore on that

occasion, the manner in which they were assembled, and other minor details, which induced the court below, in connection with the other evidence, to believe that they formed a band of robbers and that they were guilty under the provisions of Act No. 518.

In order to sustain a conviction under the provisions of this Act, it must appear that the parties charged with the offense formed a band of robbers for the purpose of stealing carabaos or other personal property by the means of force and violence and went out upon the highway or roamed over the country armed with deadly weapons for this purpose.

To prove this crime it is unnecessary to adduce evidence that any member of the band has in fact committed robbery or theft, but it is sufficient to justify a conviction if from the circumstances it can be inferred beyond reasonable doubt that the accused was a member of such armed band as that described in the said act.

There is no proof in the case to show the purposes for which the band was organized or that any robbery or theft had been committed by the band. It is not necessary to make this proof by direct testimony. The purposes for which they were organized may be inferred from circumstances showing their purposes, but there must be something in the case from which the inference can properly be deduced (United States vs. Francisco Decusin, 1 Off. Gaz., 730;<sup>[1]</sup> United States vs. Saturnino de la Cruz, 1 Off. Gaz., 664.<sup>[2]</sup>)

On account of the insufficiency of proof in this respect the judgment of the Court of First Instance must be reversed and the defendants acquitted.

It is so ordered and directed and costs are adjudged *de oficio*.

*Arellano, C. J., Mapa, and McDonough; JJ., concur.*

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*CONCURRING*

**TORRES and WILLARD, JJ.:**

We concur in the acquittal of the defendants because of the lack of proof of the perpetration of the crime of brigandage.

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*CONCURRING*

**JOHNSON, J.:**

I agree with Mr. Justice Cooper in his finding of facts and in his conclusions in this case of the United States vs. Usis et al.

In my opinion the doctrine announced by this court in the cause of the United States vs. Francisco Decusin has been overruled.

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<sup>[1]</sup> 2 Phil. Rep., 536

<sup>[2]</sup> 2 Phil. Rep., 431

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