

[G.R. No. 1591. December 28, 1904]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. INOCENCIO DAYUTAL,
DEFENDANT AND APPELLANT.**

D E C I S I O N

MAPA, J.:

The evidence in this case shows that the defendant was a member of a band of insurgents led by a man called Ciriaco Contreras. Four witnesses who, in the months of January and February, 1903, respectively, had been sequestered by the said band, and taken up to the mountains where the insurgents seemed to have their quarters, declare that they saw the defendant there, armed with a gun, among the individuals who composed the said band. The total number of the insurgents according to the statement of two of the said witnesses, was four hundred. One of said witnesses, who is a private in the Constabulary, was at an encounter on the 22d of January, 1903, between several other soldiers of the Constabulary and some members of this band, and it was at this encounter that the witness was made a prisoner by the insurgents. This witness declares that the defendant was one of the combatants and also one of those who made him a prisoner on that occasion.

The defense tried to prove that the defendant, during the months of January and February, 1903, was working constantly in a quarry situated in one of the suburbs of the municipality of Meycauayan, but the evidence offered on this fact is not by far conclusive. There is not a single witness who affirms having seen the defendant daily in the said quarries during the two months aforesaid. At the most, he has been seen twice or three times a week only. Even the mother of the defendant, in testifying to that fact, gives as foundation for her assertion the circumstance that the defendant went out in the morning and returned at night. From this, it can in no way be inferred that the defendant went to the quarries

and never to the place where the witnesses for the prosecution affirm having seen him with the band of Ciriaco Contreras, so much so, since it has not been shown nor has there ever been made any attempt to show that the distance between the two places was such that it was impossible to go and return from one place to the other on the same day. Neither can more credit be given to the owner of the said quarries as to his statement that from the record he kept of the workmen employed by him, corresponding to the year 1903, the defendant appears to have been working in the quarries from January 18 to February 22 and from March until April. This statement is not sufficient, since, according to his own testimony, he was not even once in said quarries during those two months, the record having been made only according to the verbal statement of an employee of his, who, by the way, did not testify in the case. The testimony of the owner of the quarries is mere hearsay, then, and for this reason it has no weight in the trial of the case.

The defense tried to introduce in evidence the record of the workmen which the owner of the quarries referred to in his testimony, but the court refused to admit it on the ground that it was a record kept in a book of loose leaves and without any paging at all, and that it did not bear any authenticity whatever. This ruling of the court was excepted to by the defense. We sustain the ruling of the court and declare the exception overruled, because the record being kept and made in the way it was, according to the court, it could not be evidence according to law.

The defense introduced some evidence tending to prove a confession supposed to have been made extrajudicially by two of the witnesses for the prosecution before several people, that when they (the witnesses) declared against the defendant in the justice of the peace's court of Obando, they did so only for fear of the threats of a Constabulary inspector, and that it was not true that they had seen the defendant in the mountains, as had been testified to. Now, this testimony is totally worthless—first, because there is not in the record of the case any evidence that was given at the justice of the peace's of Obando, neither has any other testimony been taken in consideration to appreciate the guilt of the defendant than that given before the Court of First Instance which took jurisdiction over the case, the spontaneity of which testimony has not been impugned by the defense; and second, because, at any rate, there would be left still the testimony of two of the said four witnesses for the prosecution which

would be sufficient in itself to prove the guilt of the accused.

The testimony of one witness for the defense, who alleges to have been a captain of the band of Ciriaco Contreras, in regard to the fact that the band was composed only of thirty individuals whom he knew personally, and that he had never seen the defendant among these individuals, is absolutely of no importance, since, according to his own statement, that witness was with Contreras only from the month of April, 1903, and the witnesses for the prosecution refer to the months of January and February of the same year.

The facts shown in the evidence given in this case, as it has been correctly stated in the judgment appealed from, are sufficient to constitute the crime of insurrection as provided by section 3 of Act No. 292; and the sentence to four years' imprisonment and two thousand dollars fine imposed on the defendant as principal in the commission of said crime is in accordance with the law.

Therefore we affirm the judgment appealed from, with costs in this instance to the appellant. So ordered.

Arellano, C. J., Torres, Johnson, and Carson, JJ.,
concur.