

G4 Phil. 625

[G.R. No. 1846. July 29, 1905]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PABLO TAN, DEFENDANT
AND APPELLANT.**

D E C I S I O N

WILLARD, J.:

The defendant, on the 28th day of March, 1903, was convicted of the crime of brigandage in the Court of First Instance of the Province of Leyte, and sentenced to ten years' imprisonment. From this sentence he appealed to this court. A part of the record in the cause was received here on the 30th day of November, 1903.

On the 13th of February, 1904, this court, on the motion of defendant, ordered the record of the cause to be completed by the remission of certain documents.

On the 12th of July, 1904, the defendant filed his printed brief.

On the 3d of February, 1905, the Solicitor-General presented a motion asking that the appeal of the defendant be dismissed on the ground that the record in this court did not contain any of the testimony of Alipio Gimano and Claudio Casiguan, and did not contain a part of the testimony of Leoncio Dapitan.

On the 6th of April, 1905, the defendant presented a motion for a new trial on the ground of newly discovered evidence. This motion and the motion of the Solicitor-General for a dismissal were heard with the hearing upon the merits, on the 6th day of April, 1905.

The record itself furnishes intrinsic evidence that the facts stated

in the motion of the Solicitor-General are true, and it appears that two witnesses testified at the trial in the court below whose testimony is not contained in the record before us, and it also appears that a copy of their testimony can not be obtained so as to complete the record. Under these circumstances we do not think that the Government is entitled to a dismissal of the appeal.

By the provisions of section 32 of General Orders, No. 58, it is the duty of a Court of First Instance to cause all the testimony of the witnesses taken before it to be reduced to writing.

By the terms of section 48 of the same General Orders, No. 58, upon an appeal being taken it is the duty of the clerk of the Court of First Instance to transmit to the clerk of the Supreme Court the complete record of the case. The duties imposed by these sections, 32 and 48, are imposed, not upon the defendant but upon the court and the clerk. It is thus made the duty of the Government to cause a record to be kept of the proceedings in a criminal cause in the Court of First Instance, and to cause that record to be transmitted to this court. This rule is, of course, radically different from the rule which prevails in civil causes, and is also radically different from the rule which prevails in probably most of the United States.

The motion of the Solicitor-General is therefore denied. Upon an appeal to this court in a criminal cause we are required to examine the evidence and to enter the judgment which ought to be entered. This can not be done unless we have before us all the evidence in the case. In this case we have not all of that evidence, and it can not be obtained. The only thing that can be done is to reverse the judgment and direct a new trial. (United States vs. Quilatan et al.,^[1] 3 Off. Gaz., 414.)

It is therefore ordered that the judgment appealed from be reversed and the case remanded to the court below for a new trial, in which new trial it will not be necessary to retake the evidence already taken and appearing in the cause, but either party will have the right to present such other evidence as he sees fit. So ordered.

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

^[1] Page 481, *supra*.

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