

4 Phil. 660

[G.R. No. 2199. August 12, 1905]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. RAYMUNDO GACER,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

In a written complaint filed on the 3d of August, 1904, the defendant in this case, Raymundo Gacer, was charged by the provincial fiscal of Ambos Camarines with the crime of brigandage, in that during the period from the 12th of November, 1902, up to the last days of June, 1904, he conspired with more than three persons and organized a band of brigands for the purpose of committing robbery by means of force and intimidation, and further that said band wandered about the country armed with deadly weapons within the municipalities of Sagnay and Buhi of the said province, contrary to law.

The case having proceeded to trial upon the said complaint and notwithstanding the fact that the defendant pleaded "not guilty," the court, after examining the evidence, found him, the said Raymundo Gacer, guilty as charged and sentenced him to twenty-five years' imprisonment and to pay the costs, from which judgment and sentence the defendant appealed to this court.

From the evidence adduced at the trial it appears that on the 3d day of July, 1904, the camp of the ladrone leader, Agustin Saria, in the barrio of Pinagplanchaan, was taken by a force of Constabulary, which captured a number of bolos, took a number of rubber stamps and several documents, one of which purports to be signed by the defendant in this case, and which is found on page 25 of the record, and a translation

thereof on page 26, and reads as follows:

“Under date of May 10,1903, we have appointed a central commanding, officer for the “*visita*” of Patitinan, by the name of Raymundo Gacer, and as proof of the fact that he has received his appointment as such central commanding officer in our Philippine government, he has subscribed his name to this document. Signed, Raymundo Gacer.”

Upon discovery of this document the defendant was arrested on the 5th of July of the same year while at his house in Sagnay according to the testimony of those who arrested him.

The defendant alleges that early on the morning of the 10th of May, 1903, a band of brigands came to his house in Patitinan, township of Sagnay, and requested him to come downstairs, and upon his going down, the leader informed him that he was a lieutenant of the barrio; that the band took him to Gara where they tied him to a tree and about an hour later they took him to another place where they had gathered together, and demanded that he sign a certain paper, and he having refused to do it they took off his clothes with the avowed intention of slashing him with knives; that he then signed the document through fear of losing his life, and not with the intention of joining the band, because he had a wife and children and was always willing to obey the Government; that about noon of the same day, while the bandits were sleeping, he made his escape and returned to his barrio; that, not finding the councilman of his barrio, in order to report the facts to him, he made a report in writing to the president of the place, which was conveyed to him by the second lieutenant of the barrio, and another resident thereof; that about two hours later he took his whole family in a banca to town, and upon his arrival reported the facts to the president, Lamberto San Felipe, who advised him to return to his home and watch the movements of the bandits; that he did not obey this order through fear of being again kidnaped and killed; and that since that time he had remained in town at the house of Ramon Encinas for about

four months, insisting that he had never belonged to the band of Agustin Saria.

The two witnesses above referred to, to wit, Lamberto San Felipe and Ramon Encinas, corroborated the statements of the defendants, the latter saying that the defendant had told him that he had been kidnaped by the bandits, and that through fear of them he had remained in his (Encinas's) house, and the president, San Felipe, stated that the report received by him was dated May 10, 1903, and that when the defendant reported to him personally, he did not say that he had been kidnaped by the bandits, but refused to go back to his house, for fear of them.

There is not even circumstantial evidence tending to show that the defendant committed any act of brigandage, nor does it appear from the record that he conspired with others for the purpose of organizing a band of brigands, nor that he, together with three or more persons, ever engaged in brigandage and kidnaping of persons. It is an established fact that the defendant was kidnaped by the bandits, and that while in their possession he was compelled to sign the document in question, written in Tagalog, the original of which appears on page 25 of the record, and a translation thereof on page 26.

This document purports to be an appointment as central commanding officer with headquarters at Patitinan. This document can not be taken as evidence of the guilt of the defendant—that is to say, it does not show that he was in fact a member of the band of brigands, since it does not appear that he accepted the appointment, nor that he had taken any part whatever in the criminal acts committed by the band, as a member thereof. It was proved at the trial that the defendant, Gacer, escaped from the bandits as soon as he found an opportunity to do so, and that he immediately reported the facts to the local authorities, presenting himself personally to both, and that he remained in the town of Sagnay for fear of the bandits and did not return to his home for about four months. All these facts were fully proved at the trial and they show conclusively that he was actually kidnaped and that he was compelled through force and violence to sign the document in question.

The defendant, Raymundo Gacer, did not voluntarily join the band of brigands which captured him at his house, but on the contrary attempted to escape from the bandits, and did escape as soon as he could. There being no proof that he voluntarily joined the band, nor that it was his intention to become a member thereof, and engage in brigandage, he is not responsible for any punishable act; it having been shown that he was kidnaped by the bandits he can not be found guilty of the crime of brigandage. This is in conformity with *United States vs. Cabingan*,^[1] on appeal from the Court of First Instance of Cavite, No. 1958, for brigandage.

In the case of the *United States vs. Liberate Exaltacion et al.*^[2] for rebellion, this court acquitted the defendants upon the grounds that the documents found in their possession were not sufficient in themselves to convict them for the reason that they had signed them while held by bandits who compelled them to do so, and because it further appeared that the defendants reported the facts to the authorities as soon as they had gained their liberty—the best proof of their innocence.

But even though we were inclined to attach some importance to the document in question, yet it would not of itself be sufficient to convict the defendant, since it has not appeared that he ever actually belonged to the band of bandits, and the document in itself did not even determine the existence of such a band.

For the reasons herein before stated, we are of opinion that the judgment appealed from should be reversed and the defendant Raymundo Gacer acquitted, with the costs *de officio*.

Let the cause be returned to the court from whence it came, with a certified copy of this decision, and of the judgment to be entered in accordance therewith, for its execution. So ordered.

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

^[1] Page 177, *supra*.

^[2]

Phil. Rep., 339.

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