

5 Phil. 257

[G.R. No. 1308. November 11, 1905]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PEDRO GIRON,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

The trial of the case was commenced February 24, 1903, upon a complaint filed March 21, 1902, wherein the provincial fiscal charged the defendant, Pedro Giron, with the crime of robbery in a band, in that the accused on a certain afternoon in the month of May or June, 1899, together with fourteen or fifteen men armed with rifles, himself being armed with a revolver, went to the house of one Vicente Guisano Santos, in the barrio of Pandi, municipality of Bigaa, and by means of violence and intimidation took possession of a bay horse belonging to one Antonio Constantino and in charge of Santos, valued at 400 pesos, Mexican currency, in violation of the statute in such cases made and provided.

The court, after hearing the evidence, convicted the defendant of the offense charged and sentenced him to imprisonment for fourteen years eight months and one day, to pay the costs, and to return the horse to its owner or to pay him the value thereof, and, in case of insolvency, to suffer subsidiary imprisonment. From this judgment the defendant appealed.

It appears from the record that the horse in question was delivered by Constantino to Guisano Santos for safekeeping ; that the latter in turn delivered it to his nephew, Eustaquio Sarmiento, to be cared for, and that while in Sarmiento's possession it was stolen from him. Santos

testified that when the defendant asked him for the horse he refused to turn it over, stating that it did not belong to him, but the accused nevertheless took it, remarking at the same time that he would have taken the horse whether the owner were present or not. One of the companions of the accused took the horse away and it was never returned to its owner. Juan Verino corroborated the testimony of Guisano Santos, adding that he was present when the accused ordered his men to take the horse away, while he, the accused, approached Santos' house.

The acts committed by the accused constitute the crime of robbery in a band as denned in articles 502, 503 (par. 5)., 504, and 505 of the Penal Code. It was proved that the accused, accompanied by some fourteen armed men, went to the place where Guisano Santos kept the horse and ordered one of his men to take the horse away, by means of intimidation and notwithstanding the opposition of the person who had charge of the horse. The accused, who was in command of the party, further stated that he would take the horse even though the owner, Antonio Constantino, were present.

The defendant pleaded not guilty and under oath stated that he, as captain of the "Sixth Company, Bulacan Battalion," of the insurgent army, had taken the horse in question by order of his general, Gregorio del Pilar, who in turn delivered it to one of his officers to be used in military operations, adding that Sarmiento delivered the horse to him voluntarily, that he did not know who the owner was, and that he had made no such statements to Guisano Santos as the latter claimed.

We agree with the Solicitor-General that the accused is entitled to the benefits of the amnesty proclamation of July 4, 1902, as contended by the defense in the court below.

The accused, at the time the crime was committed, was a captain in the revolutionary army. He took the horse by means of intimidation and against the will of its custodian, pursuant, however, to orders from his superior, to whom he subsequently delivered it, the horse being thereafter devoted to military operations.

The crime of "*robbery in a band*" committed in this case was therefore of a political nature and was committed by the accused pursuant to his superior's orders and with the object of furthering the ends of the Filipino insurrection.

The offense is therefore covered by the amnesty proclamation. This case is analogous to that of the United States vs. Catalino Vergara, No. 1016.^[1]

The judgment of the lower court is hereby set aside and the defendant held to be entitled to the benefits of the amnesty proclamation of July 4, 1902. The case is accordingly dismissed with costs *de officio*. Upon taking the oath prescribed in the proclamation he will be set at liberty if he is still a prisoner. So ordered.

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

^[1] 1 Phil. Rep., 638.
