

6 Phil. 447

[G.R. No. 2433. September 15, 1906]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. DEOGRACIAS BUENAVENTURA, DEFENDANT AND APPELLANT.

D E C I S I O N

WILLARD, J.:

Esteban Sergio was arrested without a warrant by the defendant, an officer in the Constabulary, for alleged violation of the act defining and punishing brigandage. He was kept in confinement by the defendant for four days and was then released by him. Within a short time thereafter he paid to the defendant 150 pesos cash, and delivered to him a certain amount of cacao. The defendant was prosecuted for bribery, and having been convicted, was sentenced to two years eleven months and ten days⁷ imprisonment and to pay a fine of 540 pesos. From this judgment he appealed. Sergio was never brought before a justice of the peace by the defendant for prosecution.

The facts above stated are conclusively proved. It is claimed by the appellant, however, that the money was not paid by virtue of any agreement or promise made between the parties prior to the release, but that it was a present given to him by Sergio after such release, and that the case therefore is governed by article 386 of the Penal Code. The wife of Sergio gave testimony to this effect, and something was said also by Sergio himself to the same effect, but he also testified that before he was released he promised to pay the defendant 200 pesos, and it is proved beyond question that before he was released he gave to the defendant a receipt or paper, and that when the defendant was paid the first 100 pesos this paper was destroyed by the defendant. We think the evidence is sufficient to show that Sergio was released from imprisonment by the defendant by reason of the promise made by him before the release to pay this money to the defendant.

The facts above set forth show the commission of the crime of bribery. (United States vs. Eustaquio Horca,^[1] No. 2676, March 31, 1906.) The court below convicted the defendant of

bribery under the provisions of article 381 of the Penal Code. The crime committed by the defendant is that defined by article 383 of that code. (United States vs. Pablo Valdehueza,^[2] 3 Off. Gaz., 413.)

It is suggested by the Solicitor-General that the case falls within section 19 of Act No. 175. We do not think, however, that that section is applicable, for there is no proof that the arrest was made for the purpose of extorting this money from the complaining witness.

The judgment of the court below is reversed, and the defendant is convicted of the crime defined and punished in article 383 of the Penal Code, and is sentenced to four months and twenty days' imprisonment (*arresto mayor*), temporary special disqualification for eight years and one day, to pay the costs of both instances, and to pay a fine of 540 pesos, with the accessories provided by law, and in case of insolvency to suffer subsidiary imprisonment as provided by law. After the expiration of ten days from the date of final judgment let the cause be remanded to the court of its origin for proper procedure. So ordered.

Torres, Johnson, and Tracey, JJ., concur.

Carson, J., disqualified.

^[1] Page 52, *supra*.

^[2] 4 Phil. Rep., 470.
