

7 Phil. 127

**[ G.R. No. 2671. December 05, 1906 ]**

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. VICTORIANO POBLETE ET AL., DEFENDANTS AND APPELLANTS.**

**D E C I S I O N**

**WILLARD, J.:**

These defendants were charged with aiding and abetting a band of brigands in violation of the provisions of section 4 of Act No. 518 of the Philippine Commission, as amended by Act No. 1121.

At the beginning of the trial of the cause Pascual de los Santos was dismissed in order that he might be used as a witness on behalf of the Government in accordance with the provisions of section 34 of General Orders, No. 58.

At the conclusion of the trial the court found that there was not sufficient evidence to sustain the charges against Benito Poblete and therefore dismissed him.

After a consideration of the evidence adduced during the said cause the lower court found that Victoriano Poblete and Mariano Borrromeo were guilty of the crime charged and sentenced Victoriano Poblete to be imprisoned for a period of fifteen years at hard labor and Mariano Borrromeo to be imprisoned for a period of ten years at hard labor and to pay the costs. From this decision the defendants appealed to this court.

An examination by this court of the evidence adduced in said cause during the trial in the lower court fails to disclose sufficient proof to show that Mariano Borrromeo in any way violated the said provisions of section 4 of Act No. 518. The judgment of the lower court as to him is therefore reversed.

The evidence adduced during the triad of said cause in the lower court shows beyond peradventure of doubt that during the years 1902, 1903, and 1904 there existed a band of

brigands composed of more than three persons, armed with guns, revolvers, and bolos, in the Province of Albay, organized for the purpose of roaming over the country and stealing carabaos and other personal property, and that the chief of the said band was one Agustin Saria. The evidence further discloses that the existence of this band during said years in said province was notorious; that said band had had several encounters with the Constabulary in said province prior to the time when the defendant is alleged to have given said Agustin Saria food, etc.

Said section 4 of Act No. 518 does not attempt to punish one who aids and abets a band of brigands by giving them food, etc., unless such aiding and abetting is given to such band knowing at the time that the band is a band of brigands; in other words, the furnishing of food, etc., to a band of brigands is not necessarily punishable by law. The person rendering such assistance to a band of this character must know at the time such assistance is rendered that the band is a band of brigands. (U. S. vs. Francisco Martinez Montero,<sup>[1]</sup> case 2316, decided April 25, 1906; U. S. vs. Francisco Balbas et al.<sup>[2]</sup> (5 Off. Gaz., 71) ; U. S. vs. Apolonio Aytona,<sup>[1]</sup> August 3, 1906 (4 Off. Gaz., 742).

In the present case, however, the evidence discloses the fact, beyond peradventure of doubt, that the defendant Victoriano Poblete gave to Agustin Sari a, chief of the said band, food, consisting of rice, etc., with the full knowledge that the said Agustin Saria was the leader of a band of brigands existing in the Province of Albay, and therefore violated section 4 of Act No. 518.

Taking into consideration all the facts and circumstances surrounding the acts of the defendant in aiding and abetting said band, we are of the opinion that the sentence imposed by the lower court should be reduced and that the defendant should be punished with the minimum penalty prescribed by said section 4 of Act No. 518, which is ten years.

With this modification, the judgment of the lower court with reference to the said Victoriano Poblete is hereby affirmed and the defendant Victoriano Poblete is hereby sentenced to be imprisoned for a period of ten years, and to pay the costs.

After the expiration of ten days let judgment be entered in accordance herewith and ten days thereafter the cause remanded to the lower court for proper procedure. So ordered.

*Arellano, C. J., Torres, Mapa, Carson, and Tracey, JJ., concur.*

*Willard, J., dissents.*

<sup>[1]</sup> Not reported.

<sup>[2]</sup> Phil. Rep., 184.

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