

3 Phil. 631

[G.R. No. 1585. April 09, 1904]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. ESTEBAN VIRAY,
DEFENDANT AND APPELLANT.**

D E C I S I O N

COOPER, J.:

The defendant, Viray, was charged with the offense of desertion, committed as follows:

That, being a member of the Philippines Constabulary, duly enlisted and receiving pay therein, on the 8th day of January, 1903, he absented himself from the said Constabulary and from the troop then stationed in Manila, without leave, and with the intent not to return thereto. He was found guilty by the Court of First Instance and sentenced to imprisonment at hard labor in Bilibid for the period of two years and to pay a fine of \$500. He has appealed from this judgment.

It appears from the evidence in the case that the defendant was an enlisted soldier in the Constabulary, receiving pay as a soldier; that having reported to his superior officer his incapacity for service on account of illness, the 8th day of January, he was sent by the captain of his company to the hospital for treatment. Instead of going to the hospital he went to the Province of Pampanga, where he was arrested some time in March. When brought back he stated to his superior officer as the cause for his leaving that he had a fever and instead of going to the hospital he went over to sleep in another place; that he was out of his head and when he came to himself he was out in Pampanga Province.

The defendant testified in his own behalf and stated that at the time he left he was very much frightened and did not have time to go

and see his chief; that he had been sent to the hospital a few days before and they only gave him coffee and rice and no fruit and at midday rice with water, without salt. He denied that he was working in a railroad gang at the time he was captured. He stated that during the time he was in Pampanga he reported to an officer of the Constabulary in Pampanga; he was told to accompany the officer and was thereupon put under arrest.

It is proven that at the time the defendant was arrested he was without uniform and was in charge of a gang working on the railroad.

The proof is sufficient to sustain the conviction and the judgment of the lower court is affirmed with costs.

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