

1 Phil. 544

[G.R. No. 919. December 11, 1902]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. VICENTE SOTELO,
DEFENDANT AND APPELLANT.**

D E C I S I O N

LADD, J.:

The defendant, Sotelo, has been convicted under No. 1 of article 518 of the Code of the larceny of 1,450 pesos, Mexican, the property of Warner, Barnes & Co., and in the possession of J. R. C. Smith, the representative of that firm in Albay.

Sotelo was employed as *escribiente* in Smith's office, and at times had access to the safe where the money was kept. Smith suspected him of the larceny, and accused him of it in the presence of an officer of the Constabulary and another person. Sotelo at first denied his guilt, but upon the officer threatening to have him arrested he requested a private interview with Smith and, according to the latter's testimony, made a full confession to him.

If Smith's evidence as to the confession were uncorroborated, we might possibly regard it as unsafe to convict. But it is admitted that subsequent to this interview with Smith, and after the initiation of criminal proceedings against him, Sotelo sent several telegrams to the manager of the firm of Warner, Barnes & Co. in Manila, in which he asked for pardon and mercy, and that the prosecution be withdrawn and the affair concealed from his family, and promised restitution.

The ingenious argument of counsel for the defense utterly fails to convince us that this conduct is reconcilable with the hypothesis of innocence.

The evidence in the record discloses other circumstances pointing to the defendant's guilt, to which we need not advert. We regard the evidence as to the verbal confession, corroborated as it is by the telegrams, as amply sufficient to sustain the conviction.

There were no aggravating or extenuating circumstances and the court below erred in applying the penalty in the minimum instead of the medium grade. The penalty should be three years six months and twenty-one days of *presidio correccional*.

With the modification indicated the judgment is affirmed with costs of first instance, and the cause will be returned to the court below for the execution of such judgment. So ordered.

Arellano, C. J., Torres, Cooper, and Willard, JJ., concur.

Smith and Mapa, JJ., did not sit in this case.
