

3 Phil. 221

[G.R. No. 1390. January 19, 1904]

**THE UNITED STATES, COMPLAINANT AND APPELLANT, VS. RAFAEL CERVANTES,
DEFENDANT AND APPELLEE.**

D E C I S I O N

ARELLANO, C.J.:

In this case a complaint was filed and proceedings instituted charging the defendant with brigandage, and the court found the facts as proved; but, considering that the acts charged in the complaint are not sustained by the evidence, in that it was not proven that the band of which the accused was a member was organized for the purpose of stealing personal property, as alleged in the complaint, the accused was acquitted without prejudice to a subsequent prosecution upon the facts established by the evidence.

The Solicitor-General calls attention to the testimony of the witnesses Mateo de la Cruz and Regino de la Paz. The former stated that during the time the band remained in the village they went to every house in search of effects, but did not succeed in taking anything away on account of the prompt arrival of assistance. The other testified as follows: "I know them to be men who come into the villages and take property which does not belong to them;" "they took the chickens that were in the huts of my village;" thus showing the error of the court below in not finding that the band of which the accused was a member had robbery for its object. In our opinion the court did err in this particular.

Therefore, the facts set forth in the complaint being duly and sufficiently proved as constituting the crime of brigandage, which is

punished by Act No. 518, according to section 1 of this law we sentence the accused, Rafael Cervantes, to twenty years' imprisonment and the costs and reverse the decision appealed from by the Government. So ordered.

Torres, Cooper, Willard, Mapa, McDonough, and Johnson, JJ., concur.

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