

4 Phil. 177

[G.R. No. 1958. January 30, 1905]

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

D E C I S I O N

MAPA, J.:

It appears fully proven by the testimony of the witnesses for the defense as well as by those of the prosecution that the defendant was taken prisoner by a band of brigands commanded by Julian Ramos and that he left the band at the first opportunity he found and reported immediately to the local authority of his town, giving an account of what had taken place.

The mere fact that the defendant was among the members of the band during the time he was prisoner does not constitute nor can it constitute the crime of *bandolerismo*. Such a circumstance created by force and, evidently, contrary to the will of the defendant can not be charged against him in any manner, since it is proven that he left the band as soon as he had the chance to do so. Will, on his part, is lacking, and intention is a most indispensable element in determining the existence of any crime.

Therefore we reverse the judgment below and acquit the defendant. The warden of Bilibid Prison shall be given the necessary orders to release him immediately, the costs in both instances to be *de officio*. So ordered.

Arellano, C. J., Torres, Johnson, and Carson, JJ., concur.

