

4 Phil. 194

[G.R. No. 1886. February 04, 1905]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. CANDELARIO CUISON,
DEFENDANT AND APPELLANT.**

D E C I S I O N

JOHNSON, J.:

The defendant in this case was charged with the crime of robbery in that he did, on or about the 20th day of October, 1903, in the municipality of Danao, of the Province of Cebu, enter the house of one Salvador Casas, and then and there, with intent to gain and by means of intimidation, appropriate to himself thirty “tejidos de nipa” and one “haz tambien de hojas de nipa.’

After hearing the proof in said cause the Court of First Instance of the Province of Cebu sentenced the said defendant to be imprisoned for the period of six months and one day in the provincial jail of the Province of Cebu, to pay to the said Salvador Casas the amount of 75 cents, Mexican, the value of the nipa stolen, and the costs of the suit, and in case of insolvency to suffer *prision subsidiaria*.

The evidence shows that the said defendant did enter the house of Salvador Casas on the day mentioned in said complaint, and take and carry away the quantity of nipa stated in said complaint. The defendant, however, introduced proof to show that he entered the house of the said Casas and carried away the said nipa by virtue of a search warrant, issued by the justice of the peace of the pueblo of Danao. This fact is supported by the testimony of the justice of the peace of said pueblo.

While the search warrant under which the defendant alleges that he

took possession of the said nipa was not offered in evidence, yet the statement of the defendant, confirmed by the testimony of the said justice of the peace, convinces us that the defendant did, by lawful means, take possession of the said nipa, and is therefore not guilty of the crime of robbery. The defendant and the said justice of the peace each allege that the search warrant was issued for the purpose of searching the house of the said Casas, and for the purpose of taking possession of the nipa described in the complaint in this case. The defendant at the time of the service of the said search warrant was president of the pueblo of Danao.

An officer who takes possession of personal property by means of a search warrant lawfully issued and properly served can not be held liable for the crime of robbery of the said property. The judgment of the court below is therefore reversed, and the defendant is discharged, with costs *de officio*. So ordered.

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