3 Phil. 573

[G.R. No. 1656. April 02, 1904]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. MARIANO DE LA CRUZ, DEFENDANT AND APPELLANT.

D E C I S I O N

WILLARD, J.:

The complaint in this case charged the defendant with the violation of section 4 of Act No, 518, alleging that he had given to a party of brigands information as to the movements of the Constabulary and had furnished the party supplies and money.

The court below found that some time after November 12, 1902, the day when Act No. 518 went into force, the defendant obtained from Juan Dizon 25 pesos, which he sent to Faustino Guillermo, the leader of a baud of brigands, convicted him of a violation of said section 4, and sentenced him to fourteen years and six months of imprisonment.

We doubt very much if the evidence was sufficient to prove this charge. Both the defendant and Juan Dizon, a witness for the Government, testified that no money was paid by the latter to the former. The only evidence to support the charge are certain confessions alleged to have been made by the defendant after his arrest to officers of the Constabulary. But whether the evidence is sufficient or not is immaterial, for even if the money was paid by Dizon to the defendant and by him sent to Guillermo, this would not constitute an offense under said section 4. (United States *vs.* Agaton Ambata, No, 1437, decided February 13,1904[1]; United States *vs.* Maria Gonzales, decided February 13,1904.[2])

There was evidence in the case tending to show that about two months after the money was said to have been paid, the house of Juan Dizon was entered in the nighttime by a band of men, one of whom was the defendant, and by force and violence a certain amount of money was taken therefrom. The witnesses could not state that the members of this party were

armed. The Attorney-General claims that under a complaint for brigandage there can be a conviction for simple robbery and cites the case of United States *vs.* Anastasio Mangubat, December 2, 1903,[3] in support of his contention. In that case the complaint charged the crime of *robo en cuadrilla o bandolerismo* and alleged that the defendants had actually robbed various persons. We held that under it the defendants could be convicted of simple robbery, there being in that case, as in this one, no evidence that the defendants were armed.

But the complaint in the present case alleges no act of robbery. It does not even allege that the defendant was a member of a band of brigands. It is limited, as has been
said, to charging the defendant with funishing information and supplies. We hold that under such a complaint a defendant can not be convicted of simple robbery, defined in the Penal Code. Such a complaint gives the defendant no notice whatever of the specific things which are to be proved against him. He is notified by the complaint that
the evidence of the Government will be directed to proving that he furnished information or supplies to a band of brigands. At the trial he finds that the evidence relates to
a robbery committed in a specific house at a designated time. This last offense is not *necessarily* included in the offense charged.

The judgment is reversed and the defendant acquitted with the costs of both instances *de oficio* and without prejudice to the presentation of another complaint against the defendant for simple robbery.

Cooper, McDonough, and *Johnson, JJ.,* concur.

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[1] Page 327, *supra.*
[2] Not published.
[3] Page 1, *supra.*

CONCURRING

ARELLANO, *C. J.,* **TORRES** and **MAPA,** *JJ.,*

We concur in the acquittal of defendant for lack of evidence of the crime charged, but do not concur in the doctrine that furnishing money to a band of brigands does

not constitute a crime and is not included in section 4 of Act No. 518.

Date created: January 24, 2019