

2 Phil. 457

[ G.R. No. 1231. August 29, 1903 ]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. ISIDORO PASCUAL ET AL., DEFENDANTS AND APPELLANTS.**

**D E C I S I O N**

**WILLARD, J.:**

Upon the evidence in the case, the defendants can be convicted of the crime of brigandage only by taking into consideration certain confessions made by them to officers and soldiers of the Constabulary.

Act No. 619, section 4, provides as follows:

“SEC. 4. No confession of any person charged with crime shall be received as evidence against him by any court of justice unless it be first shown to the satisfaction of the court that it was freely and voluntarily made and not the result of violence, intimidation, threat, menace, or of promises or offers of reward or leniency.”

There was no showing made in the court below as to whether the confessions were voluntarily made or not. The judge should not, therefore, have considered them. It is suggested that the defendants, not having objected to their admission, tacitly waived compliance with these statutory provisions. There is force in this suggestion. But, whatever may be said of acquiescence by failure to object in other cases, in this special case the dispositions of the positive law are so strongly stated that we can not hold that they can be ignored on account of the simple silence of the defendants. The result is that a new trial must be ordered, at which the fiscal will have an opportunity of complying with this law.

The Solicitor-General has asked that the defendants be acquitted of the charge of

brigandage and prosecuted for rebellion or insurrection. If the said confessions were voluntarily made, we think that there is sufficient evidence in the case to convict the defendants of brigandage. However, after the case is remanded it will be in the power of the fiscal, with the consent of the court, to dismiss the present complaint and present another one for the crime suggested by the Solicitor-General.

We feel constrained to add that, in many cases coming from this province for the crime of brigandage, it seems to have been the opinion of the prosecuting officer that he made out a case by simply showing that the defendants belonged to a band that carried arms, without showing to what purposes the band was devoted. This is not sufficient. (United States vs. Saturnino de la Cruz, decided Aug. 21, 1903).<sup>[1]</sup>

The judgment is set aside, and the case is remanded to the court below for a new trial, with costs of this instance *de officio*.

*Arellano, C. J., Torres, Cooper, Mapa, and McDonough, JJ., concur.*

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<sup>[1]</sup> Page 431, *supra*.

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