

4 Phil. 689

[G.R. No. 1639. August 18, 1905]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. RICARDO DELFIN,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

It is an established fact that on the 19th of April, 1903, the defendant Ricardo Delfin, a corporal of the Philippines Constabulary, while on duty with three other soldiers at the San Lazaro Hospital, in the district of Santa Cruz, and while on guard in the quarantine department, after having absented himself from his post on the morning of the day in question, he returned about noon in a carromata, and, on the pretext that he had received a communication wherein he was directed by the captain of his command to gather the arms then in the possession of his soldiers, he proceeded to do so, taking away from privates Lorian (or Laureano) de la Rosa and Eugenio Patrimonio their revolvers and ammunition. He failed however, to obtain the revolver of the other private, Alberto Dimalanta, either because he could not find it or because the latter refused to turn it over to him. It further appears that the defendant immediately drove down Calle Magdalena and did not return thereafter, either to his post or to the Constabulary barracks; that the three soldiers then reported the occurrence to their superiors and, upon an investigation of the facts, it was found that the defendant, Ricardo Delfin, had deserted, taking away with him the two revolvers of the soldiers under his charge, together with the ammunition on hand.

Some time in the month of August of the same year, a corporal of Constabulary, Prudencio Bustos, who had received certain orders and

instructions from his superiors, while stationed at Macabebe, Pampanga, sought and arrested the defendant at the railway station at Calumpit, Bulacan, while the latter was about to board an outgoing train by pointing his revolver at him in order to overcome any resistance on the part of said defendant, Ricardo Delfin, who through fear surrendered to the corporal and, upon being asked, stated that he was on his way to Dagupan ; he was thereafter brought to this city and turned over to the authorities.

It is therefore an established fact that the defendant, Ricardo Delfin, abandoned his post while in charge of a guard and deserted, taking with him the arms and ammunition of two of his subordinates in violation of military discipline and of the provisions of Act No. 619, dated February 6, 1903.

The defendant pleaded “not guilty” to the charge of desertion, but his guilt is manifest, and was proved at the trial by the testimony of witnesses and by the fact that, being a member of the Constabulary or Insular police, receiving pay and being duly enlisted therein, he absented himself therefrom without leave, and with intent not to return thereto, and did not thereafter return to his post or otherwise report to his superior officers, but, on the contrary, some six months after his desertion, he was arrested while about to board a train bound for Dagupan, Pangasinan.

There should be taken into consideration the fact that the defendant absented himself without first having obtained permission from his superior officers, and with the deliberate intention of remaining away, and that, upon deserting, he took with him the arms and ammunition belonging to his subordinates.

The evidence introduced by the prosecution in this case can not be overcome by the allegation of the defendant that he was kidnaped and taken away to the mountains by five brigands, and that he only succeeded in making his escape from them some five months afterwards. His story is highly improbable considering the place and circumstances under which he claimed to have been kidnaped; furthermore, he offered

no evidence in support of this allegation. He is therefore guilty of desertion and should be punished in accordance with section 7 of Act No. 619 of the Philippine Commission of February 6, 1903, which is as follows:

“Any member of the Constabulary who, having received pay or been duly enlisted therein, absents himself therefrom without leave and with intent not to return thereto, or advises or persuades others to do the like, shall be fined not exceeding two thousand dollars or imprisoned not exceeding two years, or both.”

That act, however, does not authorize subsidiary imprisonment in case of nonpayment of the fine imposed therein. The provisions of the Penal Code and the provisional law relating to subsidiary imprisonment, and the crediting of the defendant with the time he was held in detention, have no application to crimes punished under this special act of the Commission, which is based upon principles and a system of legislation entirely different from those upon which our Penal Code is based.

For the reasons hereinbefore set out, we are of opinion that the decision of the court below, dated the 13th of October, 1903, should be and is hereby affirmed, and the defendant, Ricardo Delfin, is sentenced to two years of imprisonment at hard labor and to pay the costs of these proceedings, and a fine of two thousand pesos, Philippine currency, without subsidiary imprisonment in case of insolvency, not being entitled to credit for the time he was held in detention.

Let the cause be remanded to the court from whence it came, with a certified copy of this decision, and of the judgment to be entered in accordance herewith for its execution. So ordered.

Arellano, C.J., Mapa, Johnson, Carson, and Willard, JJ., concur.

