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[ G.R. No. 1445. March 17, 1904 ]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. MARIANO FELICIANO ET AL., DEFENDANTS AND APPELLANTS.**

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

**ARELLANO, C.J.:**

The facts proved are that the five defendants, at 11 o'clock at night, May 25, 1903, assaulted the store of some Chinamen in the town of Cardona, Rizal, the defendants Feliciano and Tolentino being armed with revolvers and the other three with bolos, and that they robbed the store of 248 pesos and other valuable property.

The five defendants are known to be inhabitants of the town in which the robbery was committed, and did not constitute a known band of brigands. There was no agreement between them other than that reached for the particular purpose of committing the crime of robbery in the store of the Chinamen. They were all seen in the town on the day following the robbery. Consequently they are guilty of robbery *en cuadrilla*, within the meaning of the term as defined by article 505 of the Penal Code, and are liable to the penalty prescribed by article 504 in connection with paragraph 5 of article 503. There was no error in the finding of the court below that the offense was committed with the aggravating circumstance of nocturnity.

We therefore affirm the judgment appealed by which the defendants were sentenced to ten years of *presidio mayor* and to the payment of the costs in equal parts, and impose upon them the additional obligation of the return of the money and property robbed, with the consequent accessory penalties, with the payment of the costs

of this instance in the same proportion.

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

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*DISSENTING*

**TORRES, WILLARD, and JOHNSON, JJ.**

We are of the opinion that the crime should be classed as brigandage and the defendants convicted in accordance with the provisions of section 1 of Act No. 518, for the reasons stated in the dissenting opinion in the case of the United States vs. Francisco Decusin,<sup>[1]</sup> 1 Official Gazette, No. 57, published October 7, 1903. See also the decision in the case of the United States vs. Pedro Maano et al., 2 Official Gazette, No. 3, published January 20, 1904.<sup>[2]</sup>

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<sup>[1]</sup> 2 Phil. Rep., 536

<sup>[2]</sup> 2 Phil. Rep., 718

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