

2 Phil. 124

[G.R. No. 1139. April 08, 1903]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. LEANDRO DIAZ ET AL.,
DEFENDANTS AND APPELLANTS.**

D E C I S I O N

TORRES, J.:

The provincial fiscal in his complaint, dated the 29th of November, 1902, charges the defendants with being brigands, because Diaz knowingly accepted the office of vice-president, Pioson the office of captain, and Leongsong that of lieutenant, under appointments made by the brigands, whom they were doubtless assisting, without the knowledge of the authorities and against the provisions of Act No. 518.

The defendants plead, not guilty. As evidence against Diaz the prosecution introduced a statement made by him before Mr. Ira Keithley, inspector of Constabulary, and other witnesses. This statement is written in Tagalog and appears on page 5 of the record. It is dated the 27th of November, 1902, and signed by Leandro Diaz. Translated it is as follows:

“Leandro Diaz, domiciled in the town of Tambolong, states that he is the vice-president of the new K. K. K. and accepted the said office a little less than one month ago on account of his fear of the ladrones, adding that the person who acts as president is one Gregorio Suarez, and that since they received the official appointment they have not held any meetings.”

Both Major Keithley and Inspector McIlvaine, and the policemen Vicente Domingo and Francisco Martinez, testified that they heard the statements made by Leandro Diaz, which do not show that the accused was a member of any band of brigands, or what was the true purpose of the K.K. K. association of which he was vice-president. It may be said, judging from the result of other cases referred to by the prosecuting attorney, that this society had

for its purpose the preparation of a new revolution against the Government of the United States in these Islands.

Act No. 518 was passed on November 12, 1902. As this act is not retroactive it can not be applied to those engaged in brigandage prior to that date, and if, as Diaz confessed on November 27, 1902, he accepted the office of vice-president a little less than a month before, and regarding this statement, the only evidence against him, as true, it follows that his appointment was prior in date to the law referred to, and the crime committed was therefore subject at that time to the provisions of the Penal Code. The record contains no evidence to show that Leandro Diaz was a member of a band of brigands engaged or about to engage in acts prohibited and punished by said Act No. 518. He can not, therefore, be found guilty of the crime of brigandage, and, in our judgment, must be acquitted, as were the other defendants, Pioson and Leongsong.

Therefore, for the reasons stated, we are of the opinion that the judgment of the court below with respect to the appellant Leandro Diaz should be reversed and the latter acquitted, with the costs of both instances *de officio*. Upon the filing of an information for the crime of insurrection, sedition, and conspiracy, defined and punished by Act No. 292, the judge will take action against the three defendants in accordance with the law. So ordered.

Arellano, C.J., Cooper, Willard, Mapa, and Ladd, JJ., concur.
