

1 Phil. 729

[ G.R. No. 900. February 14, 1903 ]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. PEDRO LARDIZABAL, DEFENDANT AND APPELLANT.**

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

**ARELLANO, C.J.:**

It appears that the act with which the accused is charged is that he, while commanding officer of a column of the Filipino army operating in the Island of Marinduque, at a time when he had in his possession an American prisoner of war, having ordered a retreat on account of the immediate presence of the enemy, and considering that the prisoner owing to his weak condition could not keep up with the forced marches of the column, and that in case of his being left where he was he might indicate the direction taken by the column and thus expose it to the danger of falling into the hands of the enemy, directed that this prisoner be executed, an act which unquestionably constitutes a violation of the laws of war.

The purpose of the proclamation of amnesty in favor of the "insurgents who have been until recently resisting the authority and sovereignty of the United States" is "to relieve them from the penalty to which they might have rendered themselves liable by reason of their participation in the insurrections mentioned and by reason of having committed during such insurrections acts in violation of the law."

With regard to Lardizaba's participation in the insurrection it was not necessary for him to avail himself of the benefits of the amnesty inasmuch as he had voluntarily surrendered prior to the promulgation thereof. He was prosecuted on a criminal charge for an act done by him during the insurrection, but this was not an isolated act such as a "political offense committed during the insurrection pursuant to orders issued by the civil or military insurrectionary authorities," but was a measure which, whether necessary or not, was inherent in the military operations for the preservation of the troops commanded by him and of which he was the supreme officer on that island. It was an act which, while from the

standpoint of military law might be regarded as one of cruelty, was at the same time one depending absolutely upon the discretion of an officer in charge of a command for securing the safety of the troops under his control and constitutes no other offense than that of sedition, within which term the war itself is included by the letter and spirit of the proclamation. Therefore as the principal offenses of treason and sedition, committed by those who, by reason of their participation in the insurrections mentioned, were undergoing prosecution at the time of the publication of the amnesty proclamation fall within its scope, and as the accused took part against the United States in the insurrection by placing himself at the head of an armed troop, which in his judgment could not be saved from falling into the hands of the enemy except by means of the removal of a prisoner of war who could have put upon the tracks of the retreating forces the army which was entering the island, he is in our opinion guilty of an act which, although a violation of the laws of war, is one which was inherent in his military operations, and in consequence must be considered as an act of sedition. Lardizabal is, therefore, entitled to the benefits of the amnesty proclamation.

We therefore hold that he is entitled to the amnesty, upon condition of taking the oath prescribed by the proclamation, upon which the criminal case brought against him for murder shall be dismissed.

*Torres and Cooper, JJ.*, concur.

*Ladd J.*, concurs in the results of this opinion.

*Willard, J.*, dissents.