

3 Phil. 20

[G. R. No. 1360. December 04, 1903]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. ADAM SMITH,
DEFENDANT AND APPELLANT.**

D E C I S I O N

JOHNSON, J.:

The defendant was charged with the crime of robbery, as follows:

“In the Court of First Instance of Albay Province, on the 9th day of March, 1903, the undersigned accuses Adam Smith of the crime of robbery, committed as follows:

“That the accused, in the month of December last, in the house of the acting justice of the peace of the said town, Don Esteban Delgado, took money with violence and intimidation, of the value of \$600, more or less, from Pedro Ralla and Josefa Garcia, citizens of that town, contrary to law.”

On the 27th day of April, 1903, the judge of the Court of First Instance of the Province of Albay, after hearing the evidence, found the defendant guilty of the crime of robbery, in the manner and form as charged in the complaint, and sentenced him to be imprisoned for the period of three years and eight months of *presidio correccional* and to pay all costs.

The evidence adduced at the trial showed that the defendant, on or about the 8th day of January, 1903, entered the house of one Esteban Delgado, acting justice of the peace, and then and there represented that he was a detective and that he was looking for certain persons called Josefa Garcia and Pedro Ralla. These said persons were called by the said defendant to the house of the said Delgado on the said day. When the said Josefa Garcia and Pedro Ralla arrived in the said house, the accused informed them that he had authority to arrest them, and that he had arrested one Isabelo Madera, and that he could release him. The defendant showed a letter to these persons, which he told them was his authority to arrest them. Later, on the same day, the accused ordered the said Josefa and

Pedro to prepare their clothing in order to go to Manila, because he was going to take them as prisoners. He also ordered the said Delgado to prepare a vehicle to take the said so-called prisoners to a point where he could secure transportation to Manila. A vehicle could not be found. The said Josefa and Pedro prepared their clothing for the trip to Manila. During the conversation between the accused and the said Josefa and Pedro the former continually threatened them with arrest and with personal harm.

After the said persons were so arrested by the accused, he informed them that they had a remedy. He gave them to understand that if they would give him \$1,000, Mexican, he would release them. Finally a compromise was made on the amount, and Josefa and Pedro paid to the said accused the sum of \$700, Mexican. The accused testified in his own behalf. He admitted that he had received the 700 pesos, but that it was given to him as a bribe by the said persons to secure the release of the said Isabelo Madera. At the time of the arrest, the accused admitted that he had used for his own purposes the sum of 206 pesos of this money. The accused stated that he had received the money in order to use it as evidence against these persons in a complaint against them for attempting to bribe an official.

The complaint alleged that the offense was committed in the month of December, 1902. According to the proof, it was actually committed in the month of January, 1903. The complaint was filed the 9th day of March, 1903. It is argued by the attorney for the defendant that for this reason the accused should have been dismissed upon the theory that the evidence in criminal cases must correspond to the allegations in the complaint.

It is true that the complaint must allege a specific time and place when and where the offense was committed. The proof, however, need not correspond to this allegation, unless the time and place is material and of the essence of the offense as a necessary ingredient in its description. The evidence is admissible and sufficient if it shows that the crime was committed at any time within the period of the statute of limitations and before or after the time stated in the complaint or indictment and before the action is commenced. (See *State vs. Miller*, 33 Miss., 356.) In this cited case the complaint alleged that the offense was committed on the 28th day of October. According to proof it was committed on the 6th day of November following. The court instructed the jury to find the defendant guilty if the crime was committed any time before the finding of the indictment, (See same case in 69 Am. Dec, 351; see also *Cook vs. State*, 56 Am. Dec, 410, and note on p. 418.) If the proof shows that the offense was committed after the complaint is actually filed or the prosecution is commenced it will be held bad. (*Goddard vs. State*, 14 Tex., Cr. Appeals,

566.)

The following decisions support the rule, that when the "time" given in the complaint is not of the essence of the offense, it need not be proven as alleged and that the complaint will be sustained if the proof shows that the offense was committed at any time within the period of the statute of limitations and before the commencement of the action. (People vs. Jackson, 111 N. Y., 362; Herchenbach vs. State, 34 Texas, C. R., 122; Commonwealth vs. Dacey, 107 Mass., 206; State vs. Bell, 49 Iowa, 440; State vs. Walters, 1G La. Ann., 400; People vs. Bidleman, 104 Cal., 608; State vs. Patterson, 116 Ind., 45; State vs. Ingalls, 59 N. H., 89; Commonwealth vs. Bennett, 1 Pitts., Pa., 265; McCarty vs. State, 37 Miss., 411; Cook vs. State, 56 Am. Dec, 56, 410, and note on p. 418.)

It was suggested that the defendant was guilty of *estafa* and not of robbery.

On the 24th day of June, 1875, the supreme court of Spain decided the following question in the language following, defining the distinction between robbery and *estafa*, under the Penal Code in force in these Islands:

"Will he, who presents himself at the houses of various persons and demands money on the pretext that it is for a band of malefactors who are in the mountains and that he has been commissioned to make such demands, and thereby collects various sums from different individuals, be guilty of the crime of robbery with intimidation, or will the offense be simply that of *estafa*? The Supreme Court has declared that the various demands made constitute as many distinct crimes of 'robbery with intimidation.' "Whereas,' it is said, 'the constitutive element of the crime of *estafa* consists in the ingenuity or cunning employed by the agent for the purpose of deceiving the one whom it is intended to victimize, and such astuteness and subtlety consequently excludes all idea of intimidation or the employment of other means of like nature tending to prevent or impede the exercise of the will, which remains free and independent, although influenced by the statements made, circumstances which are also present in the perpetration of the deceits mentioned in the Penal Code; and whereas whether the statement as to the band of malefactors was merely an invention for the purpose of obtaining the money, or whether the band actually existed, Pascual Mengual y Domenech, on demanding the sums he appears to have received from different persons, attained his object by means of threats of injury which the robbers might inflict on the persons upon whom the demands were made, if these persons did not comply therewith; and whereas this intimidation was actually present, the acts committed can not legally be considered to constitute *estafa* or deceit.'" (Viada, vol. 3, p. 341.)

The sentence of the court below is affirmed, with the cost in both instances.

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

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