

3 Phil. 641

[G.R. No. 1535. April 11, 1904]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS, JUAN GINETE,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

May 21, 1903, an information was filed in the court of the justice of the peace of Cebu by the provincial fiscal, charging Juan Ginete, Honorio Cordero, Pedro Dabon, Ramon Rondina, Isidro Ceno, Miguel Rosalina, Francisco Baja, and Nicolas Baja of the crime of brigandage, in that they on and after the 12th of November, 1902, and more specially in April, 1903, and until the 4th of May following, in the town of Tuburan, of the Island of Cebu, organized a numerous band of thieves, styled pulahanes, for the purpose of stealing carabaos and other personal property, and that these persons, armed with deadly weapons, under the leadership of the first three defendants, wandered about the roads and fields, and on the 4th of May above referred to attacked the town of Tuburan, in which assault the accused took part, and that they furthermore feloniously and willfully protected and aided the said band of thieves, giving them information concerning the movements of the police, and furnishing them with provisions, arms, ammunition, and clothing, contrary to the statute in the case made and provided.

After the preliminary investigation the defendants were held for trial in the Court of First Instance, in which court the judge, on motion of the prosecuting attorney, dismissed the case as to Pedro Dabon, Roman Rondina, Isidro Ceno. Miguel Rosalina, Francisco and Nicolas Baja, and Honorio Cordero, who were discharged, the case being

continued solely with respect to Juan Ginete. From the transcript of the evidence taken at the trial it appears that the witnesses Roberto Caro, Potenciana Guillen, Clemente Maxilon, Carmelino Mapilit, and Pedro Bajesa testified under oath that on the day following the 4th of May, on which the town of Tuburan was attacked by the *pulahanes*, the accused, Juan Ginete, was going about selling to the people pieces of paper with crosses painted on them, at the price of 50 cents each; that when distributing these papers he stated that when the *pulahanes* came back to the town from the mountains they would kill all the people who were not provided with these papers. The witnesses stated that they did not know where Ginete was while the *pulahanes* were in the town, or whether he went out into the mountains to communicate with them, and that they did not know what was done with the money received from the sale of the papers, as the day on which these papers were sold there were no brigands in the town.

Natalio Pisalver, a member of the Constabulary, testified under oath to the same effect, and further that he was in the barracks on the 4th of May, when the *pulahanes* entered the town, but was unable to state where the accused was at that time, or from whom he obtained the pieces of paper which he sold; that after the fight took place between the bandits and the Constabulary on that occasion they found a dead man, and on his breast were some pieces of paper similar to those sold by the accused, and which were exhibited to the witness by the prosecuting attorney while testifying. The witness stated further that he did not know who was the leader of the band, or whether the defendant was a member of it or not, as he had never seen him with the brigands; that he knew that the brigands were engaged in robbery, because on the day of the attack

upon the town they stole a carabao from one of the inhabitants of Tuburan, and that in the shed where the bandits lived rice, hogs,, and carabao hides had been found; that one Roberto Caballero was a member of the band of malefactors, and that in the course of the attack on the town by the *pulahanes* the police captured the wife of one Mintong, a leader of the band, and that this woman was at the time a prisoner in the municipal building,

A piece of paper marked " Exhibit A " (record, p. 36) was introduced as evidence for the prosecution at the trial, over the objection and exception of the defense. Immediately thereafter Lieut. Mateo Luga, of the Constabulary, testified that upon his arrival in Tuburan with his troops he found that the band of *pulahanes* had fled, but that on the road he found pieces of paper, with crosses upon them, some made with pencil, others with blue ink, and others with red ink; that these papers were similar to the one introduced in evidence by the prosecuting attorney, and that they had been taken from some people who had provided themselves with them, fearing that they might be killed unless they had these papers.

Upon this evidence the court below convicted the defendant, Juan Ginete, and condemned him to twenty years' imprisonment at hard labor and to the payment of the costs.

It does not appear from the evidence in this case that the defendant, Juan Ginete, was a member of any band of armed malefactors, engaged in robbery or other crimes against persons and property. The complaint charges Juan Ginete with being one of the leaders of a numerous band of thieves, styled *pulahanes*, who on the 4th of May assaulted the town of Tuburan. This charge is not supported by the evidence, nor is there any proof that the defendant Ginete took part in the commission of that crime, that he was a member of the band, or that he had any connection whatever with it. Neither does the evidence show that Ginete, within the meaning of the law, is guilty of giving aid and comfort to the members of that band. Consequently he can not be convicted of the crime of brigandage. The evidence apparently shows that the accused was engaged in selling papers bearing a mark of a cross in colors, and that he collected for each one of these papers the sum of 50 cents, Mexican currency, by means of the threat that upon the return of the brigands to the town all persons not provided with such papers would be killed. These facts might constitute the crime of robbery, but this offense is not charged in the complaint. The acts of the accused appear to be entirely independent of those of the brigands who formed the band in question.

Consequently, this being a different case from that of the robbery for which Anastasio Mangubat was convicted— the case upon which the Attorney-General relies—we do not consider that the accused can be convicted of robbery in this case, because the offense charged in the information is not robbery, but, brigandage.

Therefore, for the reasons stated, it is our opinion that the judgment of the court below must be reversed, and the defendant, Juan Ginete, acquitted of the crime of which he is accused, with the costs of both instances de oficio. The judge, as soon as an information for the crime of robbery, consisting of the fraudulent sale of papers and the exaction of 50 cents, Mexican currency, by threats and intimidation, is filed against Juan Ginete, will act thereon in accordance with the law. The case will be returned to the trial court with a certified copy of this decision, and of the judgment to be entered in accordance therewith for execution thereof. So ordered.

Arellano, C.J., Mapa, Cooper, McDonough, and Johnson, JJ., concur.
