

3 Phil. 675

[G.R. No. 1547. April 12, 1904]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. SANTIAGO MANIQUE ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

TORRES, J.:

February 13, 1903, Andrew Petterson filed a complaint in the Court of First Instance of the city of Manila, charging Santiago Manique, Mateo Tamba, Mariano Manique, Ciriaco Reynoso, Domingo Reyes, Clemente Apolinario, and Severo Lacson with the crime of brigandage, in that on or about the 1st of September, 1902, the accused willfully and feloniously conspired together and formed a band of thieves for the purpose of stealing carabaos, horses, or other personal property in Manila, Philippine Islands, by force and violence, and during a period of more than five months went out upon the highways and wandered over the country, armed with deadly weapons, for the purpose of committing crimes against property, and did take and carry away horses and other personal property, contrary to the statute in the case made and provided.

From the evidence taken at the trial it appears that the witness Fred J. Severence, a member of the police of this city, stated under oath that upon complaint of the said Petterson, superintendent of the Pasay Cemetery, he arrested the accused, and had discovered in consequence of an investigation made by him that some of them had stolen a mare belonging to the said Petterson, which animal was kept by him at a place in Malate; that one night Severo Lacson told him that if he, the witness, would go with him to a certain house, he would point out the place where the stolen mare was to be found; that he did so,

accompanied by a member of the native police, but as the accused was going through the door of the house he picked up a bolo with which he attacked the native policeman, wounding him in the head; that thereupon the witness fired his revolver and killed Lacson. The policeman, seriously wounded, was taken to the hospital.

A.N. Petterson testified under oath that he had known the accused for more than one year, they being employed in the cemetery under him; that on the 14th of November, 1902, the witness lost a mare, worth one hundred and fifty pesos, the animal having been left outside the fence some 50 feet away from the stable, with a halter and a new rope with which she was tied up; that since he commenced to hold the position as superintendent of the cemetery, some five months ago, he has been losing food, utensils, tools, and other things, but was unable to find out by whom they were taken, although he offered a reward of \$5 to anyone who would give him information as to who were the thieves; that after the disappearance of his mare he offered a reward of \$25 to anyone who would bring her to him alive, or 10 pesos if she were dead; that about the beginning of January, 1903, a woman from Malate, who was helping the witness's wife during her illness, told him that the mare was alive, and that some of his men had her hidden away; that when he commenced to look for the mare the foreman of the men under him told the witness that he did not care if he were killed, as there were plenty of men who would revenge him by making away with the witness.

Mariano Manique, also under oath, testified that he was 17 years of age and an employee of the cemetery; that Severo Lacson stole Mr. Petterson's mare; that Santiago Manique and Mateo Tamba knew about it and proposed to sell the animal and divide the proceeds of the sale among themselves; that Lacson had stolen two other horses during the preceding year, and had them at a place called Legiro, near his house; that the witness did not know whether Ciriaco, Domingo, and Clemente knew about that theft, but that it was known to his father, Santiago Manique, and to Mateo Tamba. Agapito Novenario in turn testified under oath that he was a member of the police, and was at the police station when Tamba, Lacson, Santiago, Mariano, and Manique were arrested; that Tamba stated that when he was out behind

the race track one day he saw the mare running along, and that then Severo Lacson invited him and Mariano and Santiago to catch her; that as the mare was sick Lacson kept her with a view to curing her and selling her afterwards; that they all knew the mare was the property of the complaining witness.

The facts established by the testimony of these witnesses do not constitute the crime of brigandage, defined and punished in Act No. 518, for it does not appear therefrom that the defendants, to the number of three or more, armed with deadly weapons, had formed a band and conspired together for the purpose of engaging in brigandage, that is to say, the stealing of animals by force and violence, and other crimes against property, to that end going out upon the highways and wandering over the country for the purpose of committing such depredations. It does not appear that the theft of Petterson's mare, which was loose in a field, was committed by a band of armed men or by means of force, intimidation, and violence.

The offense committed may be that of theft, defined and punished in articles 517 and 518 of the Penal Code, but not the crime of brigandage. The crime of theft can not be considered as necessarily included in the crime of brigandage, and as the complaint does not charge the accused with the former crime, it is our opinion that the judgment of the court below must be reversed, and the defendants Santiago Manique and Mateo Tamba acquitted, with the *costs de officio*. We make no decision with respect to Mariano Manique, Ciriaco Reynoso, Domingo Reyes, and Clemente Apolinario, as the case was dismissed with respect to them and they were discharged. This acquittal will not be a bar to a prosecution upon a proper complaint or information for theft of the mare. The case will be remanded to the trial court with a certified copy of this opinion and of the judgment, which in due time will be entered in accordance therewith.

So ordered.

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

Johnson, J., did not sit in this case.

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