

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FELICISIMO BAGSIC ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 11042. November 18, 1916

Ponente: ARAULLO, J.

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ARAULLO, J.:

In the Court of First Instance of Nueva Ecija these proceedings against the defendants were commenced by a complaint by the provincial fiscal, as follows:

"The undersigned provincial fiscal charges Teofilo Lagman, Felicisimo Bagsic, Juan de Guzman, and Doroteo Mendiola with the crime of robbery, committed as follows :

"That on or about the night of January 15, 1915, in the municipality of Guimba, Province of Nueva Ecija, P. I., said defendants, conspiring together and provided with clubs, did, willfully, unlawfully and criminally strike on the head a certain Juan de Ocampo when he was in the street and, when he fell on the ground unconscious, did against his will, with intent of unlawful gain, seize from him P150.30 belonging to him, to the damage and prejudice of the said Juan de Ocampo in the amount of P150.30, equivalent to 751 and a half pesetas. With violation of law.

"Cabanatuan, Nueva Ecija, May 5, 1915.—(Sgd.) L. Carduno, provincial fiscal of Nueva Ecija."

The defendants were arraigned and pleaded not guilty.

The case came to trial, evidence was introduced by both the prosecution and the defense and on May 13, 1915, said court rendered judgment in which he sentenced each of the defendants, as guilty by direct participation in the crime of robbery with violence committed with the aggravating circumstance of nocturnity without any extenuating circumstance—defined in article 502 and punished in paragraph 4 of article 503 of the Penal Code—to the penalty of 12 years and 1 day of cadena temporal with the accessory penalties of article 56 of the same Code, jointly or severally to return to the aggrieved party the money robbed, and to pay in equal shares the costs of the trial. From this judgment defendants appealed and in this instance their counsel alleges that the lower court erred (1) in overruling the motion for dismissal made by defendants, based on the insufficiency of the evidence offered by the prosecution; and (2) in holding defendants guilty of the crime charged.

The following facts were proven at the trial and are not discussed by defendants' counsel. Between 9 and 10 o'clock of the night of January 15, 1915, Juan de Ocampo, an old man 80 years of age, left his house in the pueblo of San Juan de Guimba to go to a bakery of the same pueblo, as on some nights he was accustomed to do, for the purpose of buying a few centavos' worth of bread. In the pocket of the blouse he wore was a pocketbook containing P150.30 which he intended to send to some of his nephews for their expenses. On his return, when arriving in front of the schoolhouse of said pueblo, he was suddenly assaulted by a blow from a club on the right side of his head as well as his right ear. He fell to the ground unconscious and a few moments later, on regaining consciousness, became aware on account of the pain that his ear was injured and also noted the loss of the pocketbook containing the amount of money aforementioned. As he was too weak to walk, he crawled on his

hands and knees to a near-by store where he was found by his family and given the necessary aid. The occurrence was immediately reported to the office of the municipal president. The bruised wound of Ocampo's ear, caused by the above-mentioned blow slightly deformed, same. Had the wound been attended to properly only 10 days would have been required for a cure, but, due to improper treatment, it had not yet entirely healed at the time of the trial.

Proceedings having been brought against the four defendants, their participation in the commission of the acts above recited was proved beyond all doubt.

In fact, it appears from the testimony of Basilio Gamboa, Sixto Gamboa, and Clemente Caballero, witnesses for the prosecution, that the first witness, a herdsman and sacristan of the parish priest of the pueblo of San Juan de Guimba, was living in the convent where the old man Juan de Ocampo, father of the parish priest, also lived; that by reason of these facts this witness knew that Ocampo had a sum of paper money; that he saw Ocampo put this money into his pocketbook and the pocketbook into his pocket; that through this witness himself the defendant Doroteo Mendiola learned that said sum of money was in Ocampo's possession; that at Mendiola's invitation Basilio Gamboa, Sixto Gamboa, and Clemente Caballero, together with Mendiola himself and the other three accused (Felicisimo Bagsic, Juan de Guzman, and Teofilo Lagman) met in a stall of the market of said pueblo before 9 o'clock of the night of January 15, 1915, and there agreed under Mendiola's direction to intercept Juan de Ocampo when he should pass nearby; that Basilio Gamboa, Sixto Gamboa, Clemente Caballero and the defendant Teofilo Lagman received instructions from Mendiola where to station themselves in order to see Juan de Ocampo when he should pass, and to indicate this fact to Mendiola and his other companions, the other two defendants; that the old man Juan de Ocampo did, in fact, later on pass by the place where said watchers and their companions, the defendants, were awaiting him; that thereupon the defendant Felicisimo Bagsic who was carrying a club in his hand approached and struck Ocampo with the club on the right side of his head a blow which felled him to the ground; that thereupon the other two defendants, Juan de Guzman and Doroteo Mendiola, seized the money De Ocampo was carrying in the pocket of the blouse he then wore; that Basilio Gamboa, Sixto Gamboa, and Clemente Caballero then hurriedly left the place of the crime; and that two days afterwards the defendant Teofilo Lagman offered to Sixto Gamboa P5 as a part of Juan de Ocampo's money stolen on the night in question.

The defendants endeavored to prove that at the time Juan de Ocampo was assaulted, they could not have been in the place where the crime was committed inasmuch as one of them, Doroteo Mendiola, was then in the barrio of Pucac which was at least six kilometers from the town of San Juan de Guimba; and as the other three defendants, Teofilo Lagman, Felicisimo Bagsic, and Juan de Guzman, were then in Julio Bagsic's house where there was a social gathering, as it was the third day after the death of Bagsic's aunt. Furthermore it was asserted that Teofilo Lagman was in his own house when a man named Marcos Daniel passed in front at the time the commission of the crime was noted by the excitement occasioned.

However, with regard to the alibi which the defendant Doroteo Mendiola tried to prove, the evidence shows that he himself testified that the distance between the barrio of Pucac and the town of San Juan de Guimba is less than six kilometers and can be traveled easily in a little more than an hour; and that, leaving Pucac at 4 o'clock in the afternoon, one can be in San Juan de Guimba at 6, 7, or 8 o'clock in the evening of the same day. Furthermore, Pedro Padre, a witness for the prosecution, testified that he saw Doroteo Mendiola in the latter's shop in the market of San Juan de Guimba between 7 and 8 o'clock of the evening of the said 15th of January, 1915.

As to the other three defendants, from the testimony of their witnesses Julio Bagsic, Teofilo Ramos, and Ponciano Malonat, introduced to prove the alibi, no specific conclusions can be drawn regarding the impossibility of their having been, between 9 and 10 o'clock at night, in the place where the old man Juan de Ocampo was waylaid and robbed, or to the impossibility of the witnesses for the prosecution having joined Doroteo Mendiola and the three

other companions a few moments before the crime in a stall of the market for the purpose of there arranging and agreeing upon what they should do immediately afterwards, and in fact did do, as was proven at the trial. The witness Julio Bagsic was a brother of the defendant Felicisimo Bagsic; he testified that the festival held in his house that night commenced at 8 and ended some time after 10 o'clock; that the guests entertained themselves in playing the game of hariharian; that Felicisimo Bagsic was in his house all the time after 5 o'clock on said afternoon; that Juan de Guzman arrived after 8 o'clock; and that they all left after 10 o'clock at night. The witness Teofilo Ramos testified that he saw said two defendants in said house about 7 o'clock and that during the time he was within he did not see them go down. The third witness Ponciano Malona testified that he arrived at the house about 7 o'clock in the evening, and that the defendants Guzman and Bagsic were also there. Julio Bagsic himself added that while they were gambling he could not know who was coming up into and going down from the house and that, as the guests had commenced to eat supper after 8 o'clock and he was busy in attending them, he paid no attention to those who came into and went out of the house. The other witness, Malonat, on being cross-examined by prosecution, also added that Bagsic and De Guzman were not gambling, were simply looking on, and that he was able to see neither who came up nor went down from the house. Wherefore these witnesses who, according to their own testimony, were willing to assert positively that the three defendants Lagman, Bagsic, and De Guzman (the two latter especially) were in one of their own houses, that is in Julio Bagsic's house, until 10 o'clock that night, were unable positively to assert that said defendants had not left the house after 8 o'clock that night, and so much the less so as, according to the same Julio Bagsic, there were then about 80 people in his house. There must also be taken into account that the houses of Julio Bagsic and Teofilo Lagman were situated in the town of San Juan de Guimba itself, and that Lagman's house was near the place where the crime was committed, according to the witness Marcos Daniel who also said that previous to and during the crime he did not see Teofilo Lagman, consequently it is of little importance whether or not witness on passing in front saw Lagman in his own house at the moment when the commotion was heard, and that the witness for this same defendant Emiliano Alano testified also that on passing in front he saw Lagman a little after 8 o'clock in the evening, because this defendant as well as the other three could have been together a few moments before 9 o'clock, in the place before mentioned, in the market, awaiting Juan de Ocampo's coming, and could have performed the acts herein above related a few moments after 9 o'clock, just as the witnesses for the prosecution testified, and could have immediately returned to their respective houses, or to the one in which that same night they previously may have been.

Furthermore, from the testimony of said witnesses it appears that while Julio Bagsic, the owner of the house in which it was said the festival took place, testified that said festivities ended at a little after 10 o'clock at night, and that at this hour Felicisimo Bagsic and Juan de Guzman went away, yet Teofilo Ramos testified that said two defendants did not leave him during the whole time they were in said house because they were gambling in hip company all that time until 10 o'clock when they left the house. In contradiction to the testimony of the two previous witnesses the other witness Potenciano Malonat positively stated, as we have already said, that Felicisimo Bagsic and Juan de Guzman were not then gambling, were merely looking on, and that they all left together at about 11 o'clock at night—the hour when the festivities terminated—a contradiction which, of course, makes all their testimony unworthy of credence. Besides, so far as the other defendant Teofilo Lagman is concerned, Julio Bagsic's statement that Lagman was in his house during the festival which he himself said began at 8 o'clock in the evening and ended at 10 o'clock is irreconcilable with the testimony given by said defendant's own witnesses, Emiliano Alano and Marcos Daniel, of whom the first testified that Teofilo Lagman was in his house at a little after 8 o'clock that evening, and the second that on passing in front he saw Teofilo Lagman in Lagman's own house at the moment when what had happened to Juan de Ocampo was noticed by the commotion that took place. Neither was it explained why, if Felicisimo Bagsic was in his brother Julio's house, as the latter testified, from 5 o'clock in afternoon until 10 o'clock at night, the other defendant Juan de Guzman who arrived at said house after 8 o'clock, according to the same Julio, left the house for a little while, according to the witness

Ponciano Malonat, and went to the house of Felicisimo Bagsic. All these circumstances produce the conviction of the lack of truth in the defendant's alleged alibi.

In attempting to overthrow the testimony of Sixto Gamboa, one of the witnesses of the prosecution, defendants' counsel endeavored to prove that Gamboa was not with the defendants and their two other companions that night in the market, and that he did not have a hand in the acts committed against Juan de Ocampo, as he claimed when testifying as a witness for the prosecution.

In reality Julio Bagsic himself testified that Sixto Gamboa was among the guests of the festival in his house that night, though he did not state the hour when Gamboa arrived or the hour he left.

Vidal Adansa, another witness for the defense, declared that he was with Sixto Gamboa from 5 of the afternoon till 10 at night of that day but that he left Gamboa in his (witness') house to go with Silvestre Canonizado about nine to look for a cart; that, on returning home with Silvestre, they together with Sixto Gamboa went out again to look for a cart, learning from the tumult on his return what had happened to the father of the parochial curate.

In the beginning of his testimony Silvestre Canonizado stated that he found Sixto Gamboa between 7 and 8 o'clock that night sleeping in Vidal Adansa's house; that, without remaining in the building an hour, they went out with Vidal Adansa to look for a cart; that they returned between 8 and 9 o'clock without having found one; that within the same hour they went out again with Sixto Gamboa to look for a cart in the barrio of San Roque where they were between 9 and 10 o'clock; that, having succeeded in finding a cart, they returned to Adansa's house and then learned of what had just happened to the old man Juan de Ocampo; but immediately after making these declarations he also stated that on his departure with Gamboa and Adansa for the barrio of San Roque in search of the cart, they had already just seen Ocampo in the Chinese shop and that he was wounded.

Sixto Gamboa, the witness for the prosecution, denied having been that night either in Julio Hagsic's or in Vidal Adansa's house, denied that he was with Adansa or Silvestre Canonizado. Pedro Padre, sergeant of police, declared that he did not see Sixto Gamboa in Bagsic's house. Julio Bagsic testified that said Pedro Padre was in his house that same night because the municipal president had ordered the town patrolled and all places of any gathering of people watched.

The testimony of Vidal Adansa conflict with that of Silvestre Canonizado. The former says that the first time he went away from his house he went with Canonizado only, leaving within Gamboa. The latter says that the first time Gamboa went with them to look for a cart, that the three went away a second time. Silvestre Canonizado has also contradicted himself by stating in the first place that on returning for the second time to Adansa's house he had learned of what had happened to Juan de Ocampo and then by stating later in the same declaration that on leaving Adansa's house together with Gamboa and Adansa the second time for the barrio of San Roque to look for a cart they had already seen De Ocampo wounded in the Chinese tienda. For these reasons the testimony of said individuals cannot be considered trustworthy.

Furthermore, the defense had attempted to prove, through Julio Bagsic, that on the night of the commission of the crime Sixto Gamboa was in the house of the said Bagsic with Juan de Guzman, Felicisimo Bagsic, and Teofilo Lagman, and through Vidal Adansa and Silvestre Canonizado, that from five o'clock in the afternoon till ten o'clock at night he (Bagsic) was in the house of the said Adansa and that he did not leave their company until the said hour. This is the best proof to show that what the defense attempted to prove in order to render useless the testimony of that witness of the prosecution was not true.

As already stated, the guilt of the accused has been established by means of the testimony of the said Sixto Gamboa, Basilio Gamboa, and Clemente Caballero. The acts committed by each one of the accused and the acts

wherein they each participated were concisely and minutely told by the said witnesses, they having been placed as watchers or spies under the order of the accused Doroteo Mendiola hoping that he would be attacked and robbed; their statements are in conformity with the acts related by them, both in the essentials as well as in the details, and there is not any discrepancy which may cast doubts as to the truth of their respective testimonies. These, though given by accomplices in the same crime, are competent and admissible, notwithstanding the fact that said testimonies were not corroborated by other witnesses because this lack of corroboration only affects the credit which said testimonies deserve, and not their competency or admissibility, as this court has already held. (U. S. vs. Ocampo, 5 Phil. Rep., 339, and U. S. vs. Granadoso, 16 Phil. Rep., 419.)

"The rule allowing the admission of accomplices to testify is supported by public policy and necessity, since it is scarcely possible to detect conspiracies and many worse offenses without the information of those who are implicated in the crime." (Am. and Eng. Ency. of Law, 2d ed., vol. 1, p. 397.)

"Under the common law, the mere uncorroborated testimony of an accomplice will, if beyond a reasonable doubt it satisfies the jury, who are the sole judges of the evidence, sustain a verdict of guilty." (Bishop's New Criminal Procedure, vol. 2, par. 1169.)

"Since accomplices are competent witnesses, it appears to follow, as a necessary consequence, that if their testimony is believed by the jury, a prisoner may be legally convicted upon it, though it be unconfirmed by any other evidence. It is the peculiar province of the jury to determine upon the degree of credit to be attached to any competent evidence submitted to their consideration; and it has accordingly been laid down in many cases as a settled rule that a conviction obtained upon the unsupported testimony of an accomplice is strictly legal." (Phillips on Evidence, vol. 1, p. 110, fourth American edition.)

"Since the testimony of accomplices is competent, and since the jury are to judge of the credibility of witnesses, it logically follows that a defendant may be convicted upon the unsupported evidence of an accomplice. If the jury so act upon such testimony, the verdict will not be set aside." (Jones' Law of Evidence, vol. 3, par. 787.)

In the case at "bar three accomplices were utilized by the prosecution as witnesses in regard to the defendants' participation in the performance of the acts recited in the beginning of this decision. The statements made by all of them, confessing and affirming their own participation in said acts and relating what each did, agreeing in their essential points and narrating the details of the same facts, must be taken into consideration and are worthy of credence, being able naturally to serve as a basis for the defendants' conviction.

The judge who rendered the decision from which the appeal is taken had an opportunity to see and to hear the witnesses testify, to estimate under adequate and proper circumstances the degree of credibility of their respective testimony and, after he had so done, by virtue of said witnesses' testimony, he held the defendants' guilty beyond all reasonable doubt. There is no reason whatever to alter or modify that finding; on the contrary we have to affirm it on the grounds aforementioned. The lower court did not err, as the appellants allege, in overruling the motion for dismissal presented by the defendants, based on the alleged insufficiency of evidence for the prosecution, evidence which, far from having been overthrown and invalidated by that of the defendants' alibi, has been corroborated by the result, negative and counter-effective, of said evidence.

The trial court classified the crime as that defined in article 502 and punished in paragraph 4 of article 503 of the Penal Code, with the penalty of presidio mayor in its medium degree to cadena temporal in its minimum degree, as he was of opinion that the blow given the lobe of Juan de Ocampo's right ear caused quite a noticeable deformity.

In the complaint, however, the defendants were charged only with the crime of robbery, it was not therein alleged that Juan de Ocampo had been disfigured as a result of the injury inflicted by the defendants. In the complaint it

was merely stated that the P150.30 which Juan de Ocampo carried was stolen against his will and with intent of unlawful gain after having struck him on his head, leaving him stretched out on the ground unconscious. The crime that is the subject of the complaint is, therefore, that of robbery with violence and intimidation against persons, defined in article 502 and punished in paragraph 5 of article 503 of the Penal Code. On the other hand, taking into account the slight importance of the disfigurement the aggrieved person has been found to have in his right ear and the nature of the injury to this organ, the defendants should be punished for the crime specified in the complaint, in conformity with the principle laid down by this Supreme Court in the case of the United States vs. Lazaro (34 Phil. Rep., 871).

Since defendants' guilt as perpetrators of said crime has been proven, and since they availed themselves of the aggravating circumstance of nocturnity, without any extenuating circumstance, it follows that upon said defendants there should be imposed the penalty of presidio correccional in its maximum degree to presidio mayor in its medium degree, to the corresponding accessory penalties and to whatever else is set forth in the judgment appealed from. For the foregoing reason, understanding that said judgment is modified by the substitution therein of the penalty of seven years of presidio mayor and the accessory penalties of article 57 of the Penal Code, for the penalty of 12 years and a day of cadena temporal and the accessory penalties of article 56 of the same Code, which had been imposed on each one of the four defendants, we affirm the same in all other respects, with the costs in equal shares against the appellants. So ordered.

Torres, Johnson, Carson, and Trent, JJ., concur.

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