

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. SATAOA BUNGAOIL, DEFENDANT AND APPELLANT.*G.R. No. 11505. August 25, 1916*

Ponente: MORELAND, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-11505/>**MORELAND, J.:**

The appellant is charged with the theft of a cow and calf belonging to one Almonda in the township of Banaao, subprovince of Lepanto, Philippine Islands. The cow was of the value of P80. He was convicted of the crime charged upon his plea of guilty and was sentenced to one year 8 months and 21 days of prison correccional, to pay an indemnity of P80, with subsidiary imprisonment in case of nonpayment, and to pay the costs.

Counsel for the appellant assigns two errors. The first one is that "the trial court erred in failing to dismiss the charge against the accused, because of a failure of the evidence upon a material point of the information;" and the second that "the trial court erred in admitting evidence of the commission of a crime of theft seven (7) years prior to the time charged in the information."

The information alleged that "the defendant above named did, in or about the month of February, 1915, * * * take, steal, and carry away one cow with its calf." Upon the trial it developed that instead of the cow having been stolen in the year 1915 it was stolen in the year 1908.

Counsel for appellant argues that there is a variance between the allegations, of the information and the evidence offered by the prosecution to sustain it in that, whereas the information charged that the crime was committed "in or about the month of February, 1915," the evidence shows that it was committed in the year 1908; and concludes that the appellant is entitled to an acquittal by reason of that variance. We do not believe this position is tenable for the reason, among others, that the attention of the trial court was not called to the variance and no relief was asked on such ground. The accused, after the prosecution had finished its case, entered upon his defense and produced his witnesses, giving evidence with regard to the very transaction concerning which the prosecution's witnesses had offered their testimony. No surprise or prejudice was alleged or shown by the accused resulting from the variance between the allegations of the information and the testimony of the witnesses for the prosecution, and the case was decided by the court, with the consent of the defendant, upon the evidence adduced by the witnesses for both parties, all of which evidence being directed to the same event and the same issue.

The same remarks apply to the argument of counsel that the prosecution failed to show the precise day on which the crime charged by the information was committed and for that reason the accused should be acquitted. No question was raised during the trial or at any other time before the trial court based on the failure of the prosecution to establish the precise date on which the crime alleged was committed; and, like the variance heretofore referred to, the objection comes too late in this court, it clearly appearing that the crime set out in the information was actually proved and it having been clearly shown that the accused was guilty thereof. At no time during the course of the trial did the accused plead surprise or prejudice by reason of the variance between the information and the evidence, or on account of the failure of the prosecution to fix the precise date on which the

crime was committed.

In the case of *United States vs. Javier Dichao* (27 Phil. Rep., 421), where the court held the information defective under a demurrer interposed thereto by the accused on the ground that it was so indefinite and uncertain as to the time when the crime was supposed to have been committed as not to give him a fair opportunity of defending himself,[1] the objection, as we have seen, was made in the lower court opportunely. Moreover, in that case we said that a variance between the allegations of the information and the evidence of the prosecution with respect to the time when the crime was committed would not result in an acquittal of the accused; but if the accused interposed timely objection to such variance and showed that it was prejudicial to his interests in that it deceived him and prevented him from having a fair opportunity to defend himself, the trial court might grant an adjournment for such time as would enable the defendant to meet the change in date which was the cause of his surprise. It should be noted, however, that a variance, such as that in this case, as well as the failure to allege in the information or prove on the trial a specific date on which the crime was committed, is of no consequence unless the accused takes advantage thereof some time during the trial by appropriate objection and satisfies the trial court that he has been prejudiced by reason thereof. Having established to the satisfaction of the trial court that he has been prejudiced by the variance or failure to prove a specific date the trial courts has the authority, and would be required, to take such measures as would give the defendant an opportunity to produce such witnesses or evidence as the variance or failure made necessary. In that case we said:

"As before intimated, we are not to be understood as saying that a variance between the date of the commission of the crime as alleged in the information and that as proved on the trial warrants necessarily the acquittal of the accused. The result of what we intend to say is that, if such a variance occurs and it is shown to the trial court that the defendant is surprised thereby, and that, by reason of that surprise, he is unable to defend himself properly, the court may, in the exercise of sound discretion based on all the circumstances, order the information amended so as to set forth the correct date and may grant an adjournment for such a length of time as will enable the defendant to prepare himself to meet the variance in date which was the cause of his surprise."

The contention of counsel that the reception of the evidence of the commission of the crime "seven years prior to the time alleged in the complaint is tantamount to arraigning a person upon one charge and trying him upon another" is not necessarily sound. If the date of the commission of a crime is erroneously set forth in the information, the fact that the prosecution proves the correct date does not mean necessarily that an inference could legitimately be drawn that two crimes had been committed. If the accused himself offers no objection to such a variance it must be assumed that he is not prejudiced thereby and that the change in date has in no wise affected his ability or opportunity to defend himself. This is especially true where, in place of objection, the accused accepts the issue tendered by the evidence of the prosecution and proceeds to meet it with evidence of his own. In the case before us he even went so far as to permit without objection evidence of the crime committed in 1908 to be introduced to establish the allegation of an information that the crime was committed in 1915. Under such circumstances an objection in this court based on the ground set out in the appellant's argument cannot be sustained.

The penalty imposed must be modified. The accused was sentenced under article 520 of the Penal Code as amended by Act No. 2030. The crime charged was committed in 1908, long before the amendatory Act was passed. As that Act increases the penalty it is not retroactive and can exercise no influence in this case. The penalty must be imposed in accordance with the provisions in force before the Act became effective. There being no aggravating or extenuating circumstances the judgment is modified by changing the penalty to 4 months and 1 day of arresto mayor. As so modified it is affirmed. No costs in this instance. So ordered.

Torres and Araullo, JJ., concur.

Johnson, J., concurs in the result.

Trent, J., concurs in the result. Understands, as he do, that no question was raised as to the prescription of the crime.

[1] In the case of *Ledbetter vs. United States* (170 U. S., 606) the court said, at page 612: "Good pleading undoubtedly requires an allegation that the offense was committed on a particular day, month, and year, but it does not necessarily follow that the omission to state a particular day is fatal upon a motion in arrest of judgment. Neither is it necessary to prove that the offense was committed on the day alleged, unless a particular day be made material by the statute creating the offense. Ordinarily, proof of any day before the finding of the indictment, and within the statute of limitations, will be sufficient"

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.