

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PEDRO LAHOYLAHOY AND MARCOS MADANLOG, DEFENDANTS AND APPELLANTS.

G.R. No. 12453. July 15, 1918

Ponente: STREET, J.

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STREET, J.:

This case is submitted to the Supreme Court for review of a decision of the Court of First Instance of the Province of Iloilo, sentencing the defendants Pedro Lahoylahoy and Marcos Madanlog to death upon a complaint charging the crime of robbery with multiple homicide under the circumstances stated below.

It appears that in the year 1912 some ten or a dozen people were living on the small island of Sicogon, in the jurisdiction of the municipality of Balasan, Province of Iloilo. Two of these were an aged couple named Francisco Seran and his wife Juana. Two others were Roman Estriba and his wife Rosa. The latter couple had two children Miguela and Bartolome, aged at that time respectively about 14 and 9 years. Upon the night of the commission of the crime charged in the complaint the two children were staying with Juana, their grandmother, in a house some distance removed from that occupied by Roman and Rosa and located farther back from the shore. The grandfather, Francisco, had gone to the beach as was his custom to watch for turtles. After the grandmother and the children had gone to rest on a mat where they slept together, and probably only a short while after it had become dark, the two accused appeared and demanded money of Juana. She gave them P100 in money in response to this demand, and the accused then required the three to leave the house and go in the direction of the sea. When the party had arrived at or near the beach, a further demand was made upon the old woman for money, which demand she was unable to comply with. Lahoylahoy then struck her with a bolo just below her breast, killing her instantly. The two children were at the time close to their grandmother, and being greatly frightened, they ran away separately for some distance and remained hidden during the night in the bushes.

The next morning the children made their way to the house where the old couple had lived, which was vacant; but they there found each other and proceeded together to the house of their parents. Going in that direction they stopped at the house of their sister, the wife of the defendant Madanlog. When they went a little later to the house where their parents had lived, the fact was revealed that Francisco, Roman, and Rosa had also been killed. All the bodies were collected and buried early in the morning by the two accused, assisted by Eugenio Tenedero, son-in-law of Lahoylahoy. The two children Miguela and Bartolome say that they were threatened with death if they should make complaint. Nevertheless their lives were spared, and for sometime they stayed with their sister in the home of Madanlog; and after staying for a long time on the island; they were afterwards taken to the home of another sister, named Dionisia Estriba, at Escalante, on the Island of Panay. They here revealed the facts above narrated. This sister, Dionisia, afterwards filed the complaint in this case. Pedro Lahoylahoy was arrested first; and when he was examined before the justice of the peace, he made a confession in which he stated that the four deceased persons had been killed by Madanlog, with his assistance.

At the trial the two children gave a very consistent account of the robbery and of the murder of their grandmother; but the boy said that he did not remember that Madanlog was present when Lahoylahoy struck the fatal blow. Another important witness for the prosecution was Eugenio Tenedero, the son-in-law of Lahoylahoy. This witness testified that the defendants killed the four deceased persons, and that early in the morning they came to his house and required him to help them bury the dead, which he did. The accused gave no explanation to Tenedero of their motive or of the reason for the commission of the deed, and told him not to tell anybody. During the next day or two after the tragedy above narrated, the defendant Madanlog went to the house where Francisco and Juana had lived and carried away some palay, some dawa, three pigs, and a trunk containing wearing apparel. We believe that the asportation of these things should not be considered as a continuation of the acts of robbery and murder previously committed, but rather as a spoliation of the estate of a deceased person. It results that the only property taken in the act of robbery was the P100 obtained from Juana.

As against Madanlog, the case rests chiefly upon the testimony of Miguela, who says he was present at the robbery and at the murder of Juana. His guilt is also indicated by his own conduct subsequent to the murder. We are satisfied with the conclusion reached by the lower court with respect to the sufficiency of the evidence, and we have no doubt of the guilt of both the accused.

An important question arises upon the matter of the complaint in connection with the proof as to the ownership of the property which was taken by the accused. The part of the complaint here material to be considered reads as follows:

"The aforesaid accused taking advantage of the darkness of the night, voluntarily, illegally, and criminally and by means of force on the things, took and appropriated to themselves with intent of gain and against the will of the owner thereof, the sum of P100, 5 bayones of palay, 4 bayones of dawa, and 1 trunk which contained various wearing apparel, of the total value of P150, the property of Roman Estriba; in consequence thereof and on the occasion of the said robbery, the aforesaid accused criminally and with known premeditation and treachery, killed Roman Estriba, Rosa Galoso, Francisco Seran, and Juana."

According to the proof the person robbed was Juana; while the complaint charges that the property taken belonged to Roman Estriba. What is the effect of this variance between the language of the complaint and the proof? Subsection 5 of section 6 of General Orders No. 58 declares that a complaint or information shall show, among other things, the names of the persons against whom, or against whose property, the offense was committed, if known. The complaint in this case therefore properly contained an averment as to the ownership of the property; and upon principle, in charging the crime of robbery committed upon the person, the allegation of the owner's name is essential. But of course if his name cannot be ascertained, it may be alleged that it is unknown.

From the fact that the name of the injured person may, in case of necessity, be alleged as unknown it should not be inferred that the naming of such person, when known, is of no importance. Where the name of the injured party is necessary as matter of essential description of the crime charged, the complaint must invest such person with individuality by either naming him or alleging that his name is unknown. (Wharton, Criminal Pleading and Practice, 9th ed., sees. III, 112.) It is elementary that in crimes against property, ownership must be alleged as matter essential to the proper description of the offense.

"To constitute larceny, robbery, embezzlement, obtaining money by false pretenses, malicious mischief, etc., the property obtained must be that of another, and indictments for such offenses must name the owner; and a variance in this respect between the indictment and the proof will be fatal. It is also necessary in order to identify the offense." (Clark's Criminal Procedure, p. 227. See also page 338.)

Now a complaint charging the commission of the complex offense of robbery with homicide must necessarily charge each of the component offenses with the same precision that would be necessary if they were made the subject of separate complaints. It is well recognized in this jurisdiction that where a complex crime is charged and the evidence fails to support the charge as to one of the component offenses the defendant can be convicted of the other. The mere circumstance that the two crimes are so related as to constitute one transaction in no way affects the principles of pleading involved in the case. To permit a defendant to be convicted upon a charge of robbing one person when the proof shows that he robbed an entirely different person, when the first was not present, is violative of the rudimentary principles of pleading; and in addition, is subject to the criticism that the defendant is thereby placed in a position where he could not be protected from a future prosecution by a plea of former conviction or acquittal. If we should convict or acquit these defendants to-day of the robbery which is alleged to have been committed upon the property of Roman Estriba, it is perfectly clear that they could be prosecuted tomorrow for robbery committed upon the property of Juana; and the plea of former jeopardy would be of no avail.

Reference to a few accredited decisions from American courts will make this clear.

In *Comm. vs. Hoffman* (121 Mass., 369), it was held that an acquittal on an indictment for breaking and entering the dwelling house and stealing therein, the property of A, is no bar to a complaint for stealing in the same dwelling house at the same time the property of B, without proof that A and B are the same persons.

In *Comm. vs. Andrews* (2 Mass., 409), the defendant in an indictment for receiving stolen goods which were the property of A, alleged that he had been convicted of receiving stolen goods the property of B. The plea was adjudged insufficient, although it was alleged that the two parcels of stolen goods were received by the defendant of the same person, at the same time, and in the same package, and that the act of receiving them was one and the same.

In *Alexander vs. State* (21 Tex. Cr. App., 406; 57 Am. Rep., 617), it was held that where the goods of two different owners were stolen at the same time, an acquittal on an indictment for stealing the goods of one would not constitute a bar to an indictment for stealing the goods of the other; though it was observed that if the defendant had been convicted upon the first trial, he would have been protected from the second prosecution. (See *Wright vs. State*, 17 Tex. Cr. App., 152.)

In *Comm. vs. Wade* (17 Pick. [Mass.], 395), the offense of burning a building was charged, and the indictment stated that the owner was a certain individual (naming him). It was held that, although the name might possibly have been omitted altogether, yet as the indictment did allege the name, the allegation of ownership was material, being descriptive of the offense, and must be proved.

It should be borne in mind that the plea of former conviction or acquittal, or former jeopardy, is supposed to be proved by the pleadings and judgment in the former case, supplemented only by proofs showing the identity of the party, or parties. Courts are not accustomed to determine the plea of former jeopardy by examining the proof to discover just what facts may have been developed in the former case. (*Henry vs. State*, 33 Ala., 389; *Grisham vs. State*, 19 Tex. Cr. App., 504.) In fact it is not always practicable or even possible to produce for inspection upon the trial of this issue the evidence which was adduced in court at the trial of the former case.

The second sentence of section 7 of General Orders No. 58 declares that when an offense shall have been described with sufficient certainty to identify the act, an erroneous allegation as to the person injured shall be deemed immaterial. We are of the opinion that this provision can have no application to a case where the name of the person injured is matter of essential description as in the case at bar; and at any rate, supposing the allegation of ownership to be eliminated, the robbery charged in this case would not be sufficiently identified. A complaint

stating, as does the one now before us, that the defendants "took and appropriated to themselves with intent of gain and against the will of the owner thereof the sum of P100" could scarcely be sustained in any jurisdiction as a sufficient description either of the act of robbery or of the subject of the robbery. There is a saying to the effect that money has no earmarks; and generally speaking the only way money, which has been the subject of a robbery, can be described or identified in a complaint is by connecting it with the individual who was robbed as its owner or possessor. And clearly, when the offense has been so identified in the complaint, the proof must correspond upon this point with the allegation, or there can be no conviction.

In *United States vs. Kepner* (1 Phil. Rep., 519), this court had before it a case where the defendant was charged with estafa in the misappropriation of the proceeds of a warrant which he had cashed without authority. It was said that the erroneous allegation in the complaint to the effect that the unlawful act was to the prejudice of the owner of the check, when in reality the bank, which cashed the warrant was the sufferer, was immaterial. This observation was, we think, correct as applied to that case, for the act constituting the offense of estafa was described in the complaint with sufficient fullness and precision to identify the act, regardless of the identity of the offended person. Section 7, General Orders No. 58, was therefore properly applicable. It should be added, however, that the observation to which reference has been made was, strictly speaking, unnecessary to the decision, for it is further stated in the opinion that there was in fact an injury to the owner of the check, which consisted of the "delay, annoyance, and damage caused by the unlawful misappropriation of the warrant." (*U. S. vs. Kepner*, 1 Phil. Rep., 519, 526.) There is evidently nothing in the case cited which can afford support for the idea that an erroneous allegation in a complaint as to ownership of the property robbed is immaterial. If we should hold that a man may be convicted of robbing one person when he is charged with robbing another, the complaint instead of being a means of informing him of the particular offense with which he is charged would rather serve as a means of concealing it.

It is important to note that the complaint in this case is not defective in form, for the charge is clear, direct, and unambiguous. No formal objection could possibly be made by the defendants to this complaint; and their only course, if desirous of making any defense, was to plead not guilty, as was done in this case. The difficulty of the case arises from the facts adduced in evidence. Section 10, General Orders No. 58, declares that no complaint is insufficient by reason of a defect in matter of form which does not tend to prejudice a substantial right of the defendant upon the merits. This provision has no application to such a case as that now before us; and all arguments based upon the circumstance that the defendants made no objection to the complaint in the Court of First Instance are irrelevant to the matter in hand.

The case of *United States vs. Manalang* (2 Phil. Rep., 64) has been called to our attention as an authority upon the point that insufficiency of a complaint is waived by failure of the defendant to object thereto in the Court of First Instance. It there appeared that the statutory offense with which the defendant was charged could only be committed by a Constabulary officer. There was no allegation in the complaint that the defendant was such; but he appeared at the trial, testified in his own behalf, without questioning his character as such officer. It was held upon appeal that the objection to the complaint on the ground stated was unavailing, "as no exception was taken to this defect by counsel for the defendant in the court below, in which it might have been successfully raised by demurrer."

The following cases are also found in our Reports, showing that a complaint may be held sufficient although the commission of the offense is charged by inference only, provided no objection is made in the court below. (*U. S. vs. Cajayon*, 2 Phil. Rep., 570; *U. S. vs. Vecina*, 4 Phil. Rep., 529; *U. S. vs. Sarabia*, 4 Phil. Rep., 566.) In all of these cases the complaint was demurrable for defect of substance, but the language used was so far sufficient that the commission of the crime could be inferred. These cases are not relevant to the case at bar, as the complaint is

not demurrable for defect of any sort.

In the light of what has been said it is evident that, by reason of the lack of conformity between the allegation and the proof respecting the ownership of the property, it is impossible to convict the two accused of the offense of robbery committed by them in this case; and therefore they cannot be convicted of the complex offense of robbery with homicide, penalized in subsection (1) of article 503 of the Penal Code. No such difficulty exists, however, with respect to the quadruple homicide committed upon the persons named in the complaint; and in conformity with the provisions of article 87 of the Penal Code, the penalties corresponding to all these crimes must be severely imposed. This court has already held in *United States vs. Balaba* (37 Phil. Rep., 260), that where more than one offense (not complex offenses) are charged in the complaint, and the accused fails to demur or ask for a severance, the penalties corresponding to all of the offenses which are charged and proved may be imposed. The doctrine announced in that case applies with even greater propriety to a case like that now before us, because here the statute expressly authorizes the joining of the different offenses in one complaint. (See sec. 11, General Orders No. 58.)

The acts causing the violent death of the four deceased must be qualified as homicide, as the record does not satisfactorily show how and in what manner they were executed.

Even conceding the benefits of article 11 of the Penal Code, this circumstance, as regards both defendants is counterbalanced by the aggravating circumstances of nocturnity and that the crime was committed in an uninhabited place, and, as respects Marcos Madanlog, by that of relationship by affinity. The accused Pedro Lahoylahoy has accordingly become liable to four penalties, each of seventeen years four months and one day, reclusion temporal, and his coaccused Marcos Madanlog also, to the same number of penalties of twenty years each, reclusion temporal, for the homicide of the four deceased, each also being liable to one-half of the costs.

In view of rule 2 of article 88 of the Penal Code, inasmuch as the maximum duration of three times the length of the most severe of the penalties to be imposed upon the accused exceeds forty years, the judgment reviewed is reversed, and we find that each of the accused Lahoylahoy and Madanlog should be, as they are hereby, sentenced to suffer the aforesaid penalties of reclusion temporal, not to exceed forty years, to the accessories prescribed by article 59, to indemnify, severally and jointly, the heirs of each of the deceased in the amount of P1,000 and each to pay one-half of the costs of both instances. So ordered.

Arellano, C. J., Torres, Johnson, and Araullo, JJ., concur.

Malcolm, J., dissents, with whom concurs Fisher, J.

DISSENTING OPINION

MALCOLM, J., dissenting:

The defendants were charged in the Court of First Instance of Iloilo with the crime of robbery with murder. The crime took place on a small island where the deceased lived together. The defendants were found guilty and given the death penalty. The proof in relation to the law shows conclusively that they merit such punishment.

The information charged that the owner of the property was Roman Estriba while the evidence disclosed that the owner was Juana N. Seran. No objection to the information was made in the lower court. Objection to its insufficiency was therefore waived. (*U. S. vs. Manalang* [1903], 2 Phil. Rep., 64.) Notwithstanding, and although neither the attorney for the defendant nor the Attorney-General raises the point on appeal, this court would, by hypercritical examination, now solemnly adjudge the information to be fatally defective and would thereby cheat

the gallows of its prey. Conceding that the court has this prerogative, yet no substantial right of the defendants was prejudiced. Neither the trial court, the prosecution, nor the defense were misled as to the issue being that robbery and murder were simultaneously committed. As to which one of the group had title to the property was relatively unimportant. Such a technical finding in my judgment violates both the letter and the spirit of our law and jurisprudence. "The bill of rights for the Philippines giving the accused the right to demand the nature and cause of the accusation against him does not fasten forever upon those Islands the inability of the seventeenth century common law to understand or accept a pleading that did not exclude every misinterpretation capable of occurring to intelligence fired with a desire to pervert." (Paraiso vs. U. S. [1907], 207 U. S., 368; Whitehead vs. U. S. [1917], 245 Fed., 385; and a multitude of corroborative authority.) To liberalize and modernize procedure should be our goal.

Judgment should be affirmed.

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