

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ALABOT (ALIAS) PAGUINAGUINA, DEFENDANT AND APPELLANT.*G.R. No. 13052. October 04, 1918*

Ponente: STREET, J.

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This case has been here transmitted for review of a judgment of the Court of First Instance of the Province of Lanao, convicting the accused of the crime of robbery with homicide, committed upon the person of Charles H. Mills, and sentencing him to death.

The evidence establishes beyond doubt that sometime previous to September 14, 1915,—probably a day or two before this date—a party of about eight armed Moros had gone to a certain place near a lafse in the Province of Lanao in order to procure subsistence by begging or stealing. The defendants Alabot, Kao, and Makarimpong, and the witnesses for the prosecution, Kalaku and Kuruaao, were members of the party, but the organizer and apparent chief of it was one named Rumaub. When they had obtained a certain amount of palay they proceeded to return. On their way home they passed the house of the Sultan Sarip, which Rumaub, Alabot and Uru, another member of the party, entered. Upon leaving this house they continued their way until they reached a cotta, where Rumaub told them to rest.

Early in the morning of the next day, September 14, 1915, while the party was still lying in wait in the cotta, a shot was fired by Rumaub at an American passing in the roadway a few meters away. This shot created confusion among some members of the party. The witnesses Kalaku and Kuruaao ran away. While they were thus running Rumaub cried to them asking why they ran instead of shooting; and either because of this cry or out of natural curiosity, they looked back and saw that Alabot was slashing the American with his kris. The defendant Alabot upon hearing the shot did not run away but instead jumped and ran to the place where he was later seen slashing the American.

Sometime afterwards Rumaub and Alabot and the other members of the party caught up with Kalaku and Kuruaao, and they all proceeded to the house of Adam, the father of the latter two. At Adam's house Rumaub and Alabot each related the part he had taken in the killing of the American. Alabot told Adam that he had slashed the American who had been shot by Rumaub and had taken from the former his revolver and money. At this time Alabot was in possession of these things; but they were taken from him by Rumaub who gave the revolver to Adam, as dowry for his daughter, and divided the money among the members of the party.

On or about the same day that the events narrated above took place the dead body of an American by the name of Charles H. Mills was brought to the hospital at Dansalan and was there examined by Dr. E. W. Ames, the provincial health officer, assisted by the witness Nicasio Torres. The body exhibited two bullet wounds in the abdomen, being the places of entrance and exit of the bullet, a wound on the neck which almost severed the head from the body, and other wounds in various parts of the body, caused by blows inflicted with a cutting instrument.

Upon this state of the facts the first and most important question that naturally suggests itself is, whether the

American shot by Rumaub and cut by Alabot was the deceased Charles H. Mills; and counsel for the defendant insists that the proof fails to show that the American attacked by the party* of Moros was Charles H. Mills. In this connection it may be noted that the deceased Charles H. Mills had two wounds caused by a bullet shot which passed clear through his abdomen; the American killed by Rumaub and Alabot had first been shot by the former. Charles H. Mills had several wounds inflicted with a cutting instrument; the American killed by Rumaub and Alabot was slashed by the latter with his kris. Charles H. Mills died on or about September 14, 1915; the killing of the American by Rumaub and Alabot also took place on or about that date.

No question appears to have been made at the trial in the court below as to the identity of the person slain; and counsel for the defendant as well as counsel for the prosecution there assumed, in questioning the witnesses, that the person slain by the party, of which the accused was a member, was none other than Charles H. Mills. In view of all the circumstances, we have no doubt whatever on this point.

The next contention of counsel for Alabot which we consider is that it is not shown that the trial court had jurisdiction over the case, in that it does not appear that the barrio of Tuluan where the killing occurred was in the province of Lanao. In the present case the information charged that the crime was committed in or near the barrio of Tuluan, Province of Lanao. It was proven at the trial that the crime was in fact committed in said barrio but nobody testified directly that this barria is in the province of Lanao. However, a leading question which presupposes that said barrio is in the province of Lanao was asked without objection on the part of the defense, which is: "Sabe Usted si se ha matado a algiin americano en el sitio de Tuluan de la provincia de Lanao? The answer was: "Si señor, yo se; Rumaub fue el que le mato."

This is sufficient in our opinion to show that the barrio of Tuluan where the crime was proven to have been committed is in the province of Lanao. Furthermore, under section 275 of the Code of Civil Procedure courts have the power to take judicial notice of the fact that a certain municipality or barrio is within its jurisdiction. (Marzon vs. Udtujan, 20 Phil. Rep., 232. See also U. S. vs. Chua Mo, 23 Phil. Rep., 233; U. S. vs. Lim Soon, 34 Phil. Rep., 668.)

Another contention of the defense is that the court below erred in dismissing the separate cases against Adam, Kalaku, and Kurua so that they might testify for the prosecution and against Alabot in this case. The record does not affirmatively show that the three mentioned were charged with the same offense as Alabot. Supposing that such was the case and admitting, without deciding that Act No. 2709 is applicable where the several accused are prosecuted separately upon different informations, it is evident that any error that the court may have made in discharging the three to be used as witnesses in this case did not affect the competency of their testimony. (U. S. vs. Abanzado, 37 PhiU Rep., 658.)

The defendant's last contention is that he was tried upon a complaint upon which he was never arraigned and to which he never pleaded. On this point the record shows that on October 20, 1916, he was charged in the justice of the peace court of Dansalan in the Province of Lanao with the crime of brigandage. Upon this charge he was arraigned, pleaded not guilty, and waived his right to a preliminary investigation. The case was transmitted to the Court of First Instance, where on March 13, 1917, a criminal prosecution was instituted against him charging him with a crime denominated as "robbery with homicide," but which more properly was brigandage as described in the body of the information. On March 14, 1917, an amended information was filed in which he was charged with the complex crime of robbery with homicide. As presented, this amended information was defective in that it did not charge that the criminal act was committed with intent to gain ("con animo de lucro"). On March 15, 1917, the accused was arraigned upon the latter information and put in a plea of not guilty.

Upon these facts we are of the opinion, that, both informations having been filed prior to the day of the

arraignment and plea, the filing of the second information, charging the offense of robbery with homicide, had the effect of withdrawing the original which charged brigandage. It will therefore be presumed in the absence of proof to the contrary that the second was the information upon which the defendant was arraigned and to which he pleaded.

As already stated, the second information was defective in failing to charge that the robbery was committed with intent to gain (*con animo de lucro*); and it appears that after the defendant had pleaded and the first witness for the prosecution had been called to the stand, the attorney for the defendant moved that the case be dismissed on the ground that the information was for this reason insufficient. Thereupon the trial judge remarked that he would permit the prosecuting attorney to amend by inserting the words "*con animo de lucro*," which was accordingly done. To this action exception was taken by counsel for the defense.

In order to determine whether the action of the trial court in permitting this amendment of the information constitutes reversible error, we shall first consider whether the accused could have been convicted of the crime of robbery with homicide upon the information as it stood prior to the insertion therein of the additional words "*con animo de lucro*." Intent to gain is undoubtedly an essential element in the crime of robbery, and this is obvious from the very terms of the definition contained in article 502 of the Penal Code. It will be observed, however, that this factor relates to the internal mental purpose of the actor, and it is not an external circumstance by which one act of robbery can be identified and distinguished from another. The intent is generally discovered by inference from the external circumstances connected with the commission of the offense; and in case of robbery these circumstances usually reveal with infallible certainty the existence of such intent.

It is declared in subsection 3 of section 6 of General Orders No. 58, that the acts or omission complained of as constituting the crime or public offense should be stated in ordinary and concise language, without repetition, not necessarily in the words of the statute, but in such form as to enable a person of common understanding to know what is intended and the court to pronounce judgment according to right.

This provision has been repeatedly applied by this court, and it has been held in numerous cases that it is not necessary for the complaint or information to follow the exact language of the statute. It is enough if it sufficiently describes the crime defined by law. (*U. S. vs. Go Changco*, 23 Phil. Rep., 641; *U. S. vs. Gatmaitan*, 4 Phil. Rep., 265; *U. S. vs. Grant and Kennedy*, 18 Phil. Rep., 122; *U. S. vs. Vecina*, 4 Phil. Rep., 529; *U. S. vs. Sarabia*, 4 Phil. Rep., 566.) Evidently the important end to be accomplished is to describe the act with sufficient certainty that the accused may be apprised of the nature of the charge against him. In section 7 of General Orders No. 58, it is declared 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." Also in section 8 of General Orders No. 58, where a form suitable for a complaint is given, it is indicated that the things to be set forth are the acts or omissions charged as an offense; and there is no indication that, where the external acts are described with certainty, the complaint or information will be insufficient for failure to state the intent with which those acts were done. The obvious conclusion is that the principal purpose of an information is accomplished when the act which is the subject of the prosecution is fully identified.

In the *United States vs. San Pedro* (4 Phil. Rep., 405) it was held that where all the other facts constituting the crime of robbery have been established, judgment of conviction will not be reversed on appeal on the ground that the information failed specifically to allege that the crime was committed *con animo de lucro*, or that the property taken was not the property of the accused, it appearing that it was taken with force and violence from the possession of the complaining witness. In the opinion in this case, it was said:

"The information in this case alleges that the accused, with force and violence, took a pistol from the possession

of the complaining witness. Unless the contrary appears, the *animo de lucro* is presumed, where all the other facts which would constitute the crime of robbery have been established, and it is also presumed 'that things which a person possesses are owned by him, unless the contrary appears.'"

In support of this proposition reference was made to a decision of the supreme court of Spain wherein the following language was used:[1]

"While it is true that the intent of gain constitutes one of the essential and characteristic elements of the crime of robbery and that of theft, it is no less true that the possession of things belonging to another against the will of the owner, whether force or violence be used, implies, as a general rule, said intent of gain, as being the natural and proper motive for the perpetration of the act. For this reason, it is necessary to overcome in each case the force of this legal presumption, when it is alleged, with facts showing that there was no such intent."

In the case now before us the information, as amended, is in the following words:

"The undersigned, acting as fiscal for the Province of Lanao, accuses Alabut (a) Paguinaguina, a Moro, of the crime of robbery with homicide committed as follows:

"That, on or about the 14th day of September, 1915, in or near the barrio of Tuluan, in the Province of Lanao, Department of Mindanao and Sulu, the said accused Alabut (a) Paguinaguina, forming a band with Moros Adam, Rumaub, Uru, Kalapi, Kalaku, Kurua, Kao, and Makarimpong, willfully, unlawfully, and criminally, did, treacherously, with evident premeditation, in an uninhabited place, in a band, and armed with guns and crises, obtain, by means of violence and (with intent of gain), a revolver with its munitions, a watch worth P3, and P36 in cash belonging to one Charles H. Mills whom the said band killed by shooting, and on whom several wounds were inflicted with his kris by the accused Alabut with a view to securing for himself the articles aforementioned, * * *."

We are of the opinion that, following the decision in *United States vs. San Pedro* (supra), this information charges every ingredient of the offense of robbery which is essential to be stated, even without reference to the words "*con animo de lucro*." From the language used only one reasonable inference with regard to the intention entertained by the accused can in our opinion be drawn, which is, that the robbery was committed with intent to gain. The information clearly shows that the articles were seized unlawfully, by violence and against the will of the owner, and this implies that they were taken with the purpose of gain. Especially instructive in this connection are the closing words of the complaint "*con el fin de apoderarse de los efectos mencionados*." The act of appropriating the personal effects of the person who is the victim of an assault is that described in this complaint necessarily involves the idea that the act was done with intent to deprive the true owner of his property, to the consequent gain of the other party.

If the accused could have been convicted of robbery upon the information as it stood prior to the amendment in question, it is evident that he was not prejudiced by the addition of the words imputing to him an intent to gain; and the fact that the amendment was permitted can not constitute reversible error. We also observe, in passing, that the case is not changed by the circumstance that the attorney for the accused objected to the amendment at the time it was made. In our view the inserted words merely expressed with greater fullness and clearness an idea readily deducible from the other language used in the information and they really added nothing to its legal effect. The addition of words of this character to an information or complaint is not a substantial amendment, such as might prejudice the accused. It must rather be considered a nonprejudicial and formal amendment admissible, in the discretion of the trial court, at any time during the trial. (Sec. 9, Gen. Orders No. 58.)

We acquiesce in the conclusion reached by the Attorney-General in the brief filed by him for the Government in

this case, to the effect that the accused is not clearly shown to have attacked the deceased treacherously; but the aggravating circumstance of the commission of the offense in an uninhabited place was present, since the crime occurred in a place remote from human habitation.

The offense committed was robbery with homicide, punishable under subsection 1 of article 503 of the Penal Code, in the commission of which is to be appreciate⁴ the aggravating circumstance above mentioned. The trial court did not consider lack of instruction and education of the accused as a mitigating circumstance, and we see no reason why the action of the court in this respect should be revised, it not being customary in this court to recognize lack of instruction and education as an attenuating circumstance in offenses against property.

It results that the sentence of the lower court condemning the accused to death was not erroneous; and said judgment is affirmed, with costs of this instance against the accused. The penalty of death will be executed at a time to be fixed by the lower court in accordance with law; and if the death penalty should not be executed by reason of the extension of executive clemency to the condemned person, he shall, during life, be subject to the accessory penalties prescribed in article 53 of the Penal Code, if not specially remitted in the pardon. So ordered.

Torres, Johnson, Malcolm, Avanceña, and Fisher, JJ., concur.

[1] Decision of June 16, 1884 (32 Jur. Crim., 457).

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