

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. LOL-LO AND SARAW, DEFENDANTS AND APPELLANTS.

G. R. No. 17958. February 27, 1922

Ponente: MALCOLM, J.

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MALCOLM, J.:

The days when pirates roamed the seas, when picturesque buccaneers like Captain Avery and Captain Kidd and Bartholomew Roberts gripped the imagination, when grotesque brutes like Blackbeard flourished, seem far away in the pages of history and romance. Nevertheless, the record before us tells a tale of twentieth century piracy in the south seas, but stripped of all touches of chivalry or of generosity, so as to present a horrible case of rapine and near murder.

On or about June 30, 1920, two boats left Matuta, a Dutch possession, for Peta, another Dutch possession. In one of the boats was one individual, a Dutch subject, and in the other boat eleven men, women, and children, likewise subjects of Holland. After a number of days of navigation, at about 7 o'clock in the evening, the second boat arrived between the Islands of Buang and Bukid in the Dutch East Indies. There the boat was surrounded by six vintas manned by twenty-four Moros all armed. The Moros first asked for food, but once on the Dutch boat, took for themselves all of the cargo, attacked some of the men, and brutally violated two of the women by methods too horrible to be described. All of the persons on the Dutch boat, with the exception of the two young women, were again placed on it and holes were made in it, with the idea that it would submerge/although as a matter of fact, these people, after eleven days of hardship and privation, were succored. Taking the two women with them, and repeatedly violating them, the Moros finally arrived at Maruro, a Dutch possession. Two of the Moro marauders were Lol-lo, who also raped one of the women, and Saraw, At Maruro the two women were able to escape.

Lol-lo and Saraw Lol-lo and Saraw later returned to their home in South Ubian, Tawi-Tawi, Sulu, Philippine Islands. There they were arrested and were charged in the Court of First Instance of Sulu with the crime of piracy. A demurrer was interposed by counsel de officio for the Moros, based on the grounds that the offense charged was not within the jurisdiction of the Court of First Instance, nor of any court of the Philippine Islands, and that the facts did not constitute a public offense, under the laws in force in the Philippine Islands. After the demurrer was overruled by the trial judge, a trial was had, and a judgment was rendered finding the two defendants guilty and sentencing each of them to life imprisonment (cadena perpetua), to return together with Kinawalang and Maulanis, defendants in another case, to the offended parties, the thirty-nine sacks of copra which had been robbed, or to indemnify them in the amount of 924 rupees, and to pay a one-half part of the costs.

A very learned and exhaustive brief has been filed in this court by the attorney de officio. By a process of elimination, however, certain questions can be quickly disposed of.

The proven facts are not disputed. All of the elements of the crime of piracy are present. Piracy is robbery or forcible depredation on the high seas, without lawful authority and done *animo furandi*, and in the spirit and

intention of universal hostility.

It cannot be contended with any degree of force as was done in the lower court and as is again done in this court, that the Court of First Instance was without jurisdiction of the case. Pirates are in law *hostes humani generis*. Piracy is a crime not against any particular state but against all mankind. It may be punished in the competent tribunal of any country where the offender may be found or into which he may be carried. The jurisdiction of piracy unlike all other crimes has no territorial limits. As it is against all so may it be punished by all. Nor does it matter that the crime was committed within the jurisdictional 3-mile limit of a foreign state, "for those limits, though neutral to war, are not neutral to crimes." (*U. S. vs. Furlong* [1820], 5 Wheat, 184.)

The most serious question which is squarely presented to this court for decision for the first time is whether or not the provisions of the Penal Code dealing with the crime of piracy are still in force. Articles 153 to 156 of the Penal Code read as follows:

"ART. 153. The crime of piracy committed against Spaniards, or the subjects of another nation not at war with Spain, shall be punished with a penalty ranging from *cadena temporal* to *cadena perpetua*.

"If the crime be committed against nonbelligerent subjects of another nation at war with Spain, it shall be punished with the penalty of *presidio mayor*.

"ART. 154. Those who commit the crimes referred to in the first paragraph of the next preceding article shall suffer the penalty of *cadena perpetua* or death, and those who commit the crimes referred to in the second paragraph of the same article, from *cadena temporal* to *cadena perpetua*:

"1. Whenever they have seized some vessel by boarding or firing upon the same.

"2. Whenever the crime is accompanied by murder, homicide, or by any of the physical injuries specified in articles four hundred and fourteen and four hundred and fifteen and in paragraphs one and two of article four hundred and sixteen.

"3. Whenever it is accompanied by any of the offenses against chastity specified in Chapter II, Title IX, of this book.

"4. Whenever the pirates have abandoned any persons without means of saving themselves.

"5. In every case, the captain or skipper of the pirates.

"ART. 155. With respect to the provisions of this title, as well as all others of this code, when Spain is mentioned it shall be understood as including any part of the national territory.

"ART. 156. For the purpose of applying the provisions of this code, every person, who, according to the Constitution of the Monarchy, has the status of a Spaniard shall be considered as such."

The general rules of public law recognized and acted on by the United States relating to the effect of a transfer of territory from another State to the United States are well-known. The political law of the former sovereignty is necessarily changed. The municipal law in so far as it is consistent with the Constitution, the laws of the United States, or the characteristics and institutions of the government, remains in force. As a corollary to the main rules, laws subsisting at the time of transfer, designed to secure good order and peace in the community, which are strictly of a municipal character, continue until by direct action of the new government they are altered or repealed. (*Chicago, Rock Island, etc., R. Co. vs. McGlinn* [1885], 114 U. S., 542.)

These principles, of the public law were given specific application to the Philippines by the Instructions of President McKinley of May 19, 1898, to General Wesley Merritt, the Commanding General of the Army of Occupation in the Philippines, when he said:

"Though the powers of the military occupant are absolute and supreme, and immediately operate upon the political Condition of the inhabitants, the municipal laws of the conquered territory, such as affect private rights of person and property, and provide for the punishment of crime, are considered as continuing in force, so far as they are compatible with the new order of things, until they are suspended or superseded by the occupying belligerent; and in practice they are not usually abrogated, but are allowed to remain in force, and to be administered by the ordinary tribunals, substantially as they were before the occupation. This enlightened practice is, so far as possible, to be adhered to on the present occasion." (Official Gazette, Preliminary Number, Jan. 1, 1903, p. 1. See also General Merritt's Proclamation of August 14, 1898.)

It cannot admit of doubt that the articles of the Spanish Penal Code dealing with piracy were meant to include the Philippine Islands. Article 156 of the Penal Code in relation to article 1 of the Constitution of the Spanish Monarchy, would also make the provisions of the Code applicable not only to Spaniards but to Filipinos.

The opinion of Grotius was that piracy by the law of nations is the same thing as piracy by the civil law, and he has never been disputed. The specific provisions of the Penal Code are similar in tenor to statutory provisions elsewhere and to the concepts of the public law. This must necessarily be so, considering that the Penal Code finds its inspiration in this respect in the Novelas, the Partidas, and the Novisima Recopilacion.

The Constitution of the United States declares that the Congress shall have the power to define and punish piracies and felonies committed on the high seas, and offenses against the law of nations. (U. S. Const. Art. I, sec. 8, ,cl. 10.) The Congress,, in putting on the statute books the necessary ancillary legislation, provided that whoever, on the high seas, commits the crime of piracy as defined by the law of nations, and is afterwards brought into or found in the United States, shall be imprisoned for life. (U. S. Crim. Code, sec. 290; penalty formerly death: U. S. Rev. Stat., sec. 5368.) The framers of the Constitution and the members of Congress were content to let a definition of piracy rest on its universal conception under the law of nations.

It is evident that the provisions of the Penal Code now in force in the Philippines relating to piracy are not inconsistent with the corresponding provisions in force in the United States.

By the Treaty of Paris, Spain ceded the Philippine Islands to the United States. A logical construction of articles of the Penal Code, like the articles dealing with the crime of piracy, would be that wherever " Spain" is mentioned, it should be substituted by the words " United States" and wherever "Spaniards" are mentioned, the word should be substituted by the expression "citizens of the United States and citizens of the Philippine Islands." Somewhat similar reasoning led this court in the case of United States vs. Smith ([1919], 39 Phil., 533) to give to the word "authority" as found in the Penal Code a limited meaning, which would no longer comprehend all religious, military, and civil officers, but only public officers in the Government of the Philippine Islands.

Under the construction above indicated, article 153 of the Penal Code would read as follows:

"The crime of piracy committed against citizens of the United States and citizens of the Philippine Islands, or the subjects of another nation not at war with the United States, shall be punished with a penalty ranging from cadena temporal to cadena perpetua.

"If the crime be committed against nonbelligerent subjects of another nation at war with the United States, it shall be punished with the penalty of presidio mayor."

We hold those provisions of the Penal Code dealing with the crime of piracy, notably articles 153 and 154, to be still in force in the Philippines.

The crime falls under the first paragraph of article 153 of the Penal Code in relation to article 154. There are present at least two of the circumstances named in the last cited article as authorizing either cadena perpetua or

death. The crime of piracy was accompanied by (1) an offense against chastity and (2) the abandonment of persons without apparent means of saving themselves. It is, therefore, only necessary for us to determine as to whether the penalty of cadena perpetua or death should be imposed. In this connection, the trial court, finding present the one aggravating circumstance of nocturnity, and compensating the same by the one mitigating circumstance of lack of instruction provided by article 11, as amended, of the Penal Code, sentenced the accused to life imprisonment. At least three aggravating circumstances, that the wrong done in the commission of the crime was deliberately augmented by causing other wrongs not necessary for its commission, that advantage was taken of superior strength, and that means were employed which added ignominy to the natural effects of the act, must also be taken into consideration in fixing the penalty. Considering, therefore, the number and importance of the qualifying and aggravating circumstances here present, which cannot be offset by the sole mitigating circumstance of lack of instruction, and the horrible nature of the crime committed, it becomes our duty to impose capital punishment.

The vote upon the sentence is unanimous with regard to the propriety of the imposition of the death penalty upon the defendant and appellant Lol-lo (the accused who raped one of the women), but is not unanimous with regard to the defendant and appellant Saraw, since one member of the court, Mr. Justice Romualdez, registers his nonconformity. In accordance with the provisions of Act No. 2726, it results, therefore, that the judgment of the trial court as to the defendant and appellant Saraw is affirmed, and is reversed as to the defendant and appellant Lol-lo, who is found guilty of the crime of piracy and is sentenced therefor to be hung until dead, at such time and place as shall be fixed by the judge of first instance of the Twenty-sixth Judicial District. The two appellants together with Kinawalang and Maulanis, defendants in another case, shall indemnify jointly and severally the offended parties in the equivalent of 924 rupees, and shall pay a one-half part of the costs of both instances. So ordered.

Araullo, C. J., Johnson, Avanceña, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.

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