

## THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. FRANCISCO CARA ET AL., DEFENDANTS AND APPELLANTS.

*G.R. No. 24085. November 06, 1925*

Ponente: VILLA-REAL, J.

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### VILLA-REAL, J.:

This is an appeal taken by Francisco Cara, Juan Cara, Pedro Cara and Ciriaco Cara from a judgment of the Court of First Instance of Nueva Ecija, finding each of them guilty of the crime of robbery in band, with serious physical injuries, and sentencing them to the penalty of twelve years and one day of cadena temporal, with the accessories provided by law, and to indemnify the offended party, Marcelo Gabriel, in the sum of fifty-two pesos and fifty centavos (P52.50), and one-fourth each of the costs of the action.

The appellants assign seven supposed errors as committed by the trial court, which we shall discuss in the course of this opinion.

The theory of the prosecution is that the land in question is formed by lots Nos. 800 and 801 of cadastral proceeding No. 10, G. L. R. O. Record No. 270, of the Court of First Instance of Nueva Ecija, claimed by Marcelo Gabriel, on the one hand, as parts of his homestead, and by Pedro Cara and Candida Cara, respectively, on the other. Candida Cara is sister of Pedro Cara and daughter of Antonio Cara. After hearing the evidence of all the claimants, the Court of First Instance of Nueva Ecija on November 7, 1922, rendered judgment, declaring said lots public lands, and that Marcelo Gabriel had been in possession thereof since twelve years ago, tilling and cultivating them, and had applied for a homestead title thereto after five years of possession without opposition, and overruling the claims of Pedro Cara and Candida Cara (Exhibit C). It does not appear that these persons have appealed from said judgment. When the time for sowing came, Marcelo Gabriel sowed rice thereon. In the same year, he was prosecuted, convicted and imprisoned for arson. On leaving the jail about the month of November, 1924, he found that Juan Rapanan had erected a house on the land in question. On December 16, 1924, at about 7 o'clock in the morning, the offended party saw the defendants reap the rice on said land 400 meters from his house, and went to the place where they were reaping rice, and said to Francisco Cara, "Do not take that rice away from here." Instead of answering him, Francisco Cara struck him with a rattan cane on the hand, and the other defendants cried, "Let us pursue and kill him." Upon hearing this, the offended party ran away pursued by Pedro Cara, who threw at him the sickle which he was carrying, and by Ciriaco Cara who hurled a stone against him, which went over his shoulders. After pursuing him, the defendants returned to reap rice, having gathered about 15 cavans. The price of a cavan was three pesos (P3). Marcelo Gabriel received a bruise with a fracture of a bone below the second phalanx of the forefinger of the right hand, the joints having become half stiff, that is, having lost forever the ordinary flexion and extension, and thereby their former effectiveness and efficiency. The bruise took thirty days to heal, the offended party having failed to earn two pesos (P2) a day as a worker.

The theory of the defense consists in that after lots 800 and 801 of cadastral proceeding No. 10, G. L. R. O.

Record No. 270, claimed by Pedro Cara and Candida Cara, respectively, were declared public lands, said claimants transferred their rights over said lots to Juan Rapanan in the documents Exhibits 3 and 4, respectively, dated March 17, 1924. Lot No. 800 was assessed in the name of Antonio Cara, father of Pedro Cara, since the year 1906 (Exhibit 6), and in that of Pedro Cara since the year 1920, who made the last payment of the land tax in the year 1924 (Exhibit 5)." Lot No. 801 was assessed in the name of Tito Sablay, deceased husband of Candida Cara, in the year 1906 (Exhibit 8), whose land tax declaration was revised in the year 1920 (Exhibit 7). As soon as he acquired the respective rights of Pedro Cara and Candida Cara over said lots, Juan Rapanan took possession of said lots, and applied to the Bureau of Lands first for the lease thereof, and then for a gratuitous title thereto. When in the month of August, 1924, Juan Rapanan received the answer of the Bureau of Lands dated July 3, 1924 (Exhibit 1), wherein he was told to abstain from taking possession of the land whose lease he was applying for, he had already sown rice through his coparcener on shares Ciriaco Cara, and had a house there, which was that of Pedro Cara; On the morning of December 16, 1924, while Ciriaco Cara, Francisco Cara, Pedro Cara and Leoncio Sablay were reaping the rice sown by the first, Marcelo Gabriel came with many companions and asked them, "Why are you reaping my rice? " Ciriaco Cara answered, "We are reaping it because it is mine." Upon hearing this, Marcelo Gabriel attacked Pedro Cara with the bolo which he was carrying, but the latter has been stepping backward, defending himself with a piece of firewood that he had taken from the ground; and when the companions of Marcelo Gabriel said, "Let us kill them all," all of them ran away. After Marcelo Gabriel and his companions had retired, the defendants began again to reap rice, having gathered 15 cavans, which they heaped near the house of Juan Rapanan, who, after having caused them to be threshed, sold them at three pesos and ten centavos (P8.10) a cavan, paying his coparceners on shares with the proceeds of the sale.

Marcelo Gabriel had been prosecuted for arson, having been confined in jail for two months.

Juan Cara was not with his codefendants when the latter reaped the rice in question, because he had fever and was confined to his bed.

The only questions to be decided in this appeal are: (1) Whether or not the rice reaped by the defendants was Juan Rapanan's; and (2) whether or not the defendants acted in the defense of their persons or rights.

From the evidence of the prosecution, as well as of the defense, it appears that while Marcelo Gabriel, the offended party, was since over twelve years ago in possession of the land where the supposed crime was committed, yet his possession was but of an applicant for a homestead to whom no title had as yet been granted. So that the land applied for by him continued to be public, as was declared by the Court of First Instance of Nueva Ecija, in dismissing all the claims presented, concerning said lots. Pedro Cara and Candida Cara, who claimed said lots, believing that they still had the right to acquire them, being public lands, sold their rights to Juan Rapanan, who immediately took possession thereof, built a house thereon, and applied to the Bureau of Lands for their gratuitous grant. While he was waiting for the answer of the Bureau of Lands, Juan Rapanan had rice sown on the land in question, and when he received the answer, notifying him that his application will be investigated and that in the meantime he should abstain from doing anything on said land, he had already sown rice. This claim is not altogether groundless, because if Juan Rapanan acquired the rights of Candida Cara on March 17, 1924, and took immediate possession of the lands, building his house thereon, and if the offended party, Marcelo Gabriel, had been in jail for two months, the sowing must have been done during his confinement. And if Marcelo Gabriel cultivated said lands personally, it is not possible that he should have sown rice thereon during the time he was serving sentence. It is, therefore, more probable that the rice reaped by the defendants was that sown by Ciriaco, Cara by order of Juan Rapanan. And if this is the case, the defendants cannot be guilty of robbery, for they did not take away, through force or intimidation, any personal property of another against the owner's will.

As to the second question, the record contains sufficient evidence to show conclusively that when the offended

party approached the defendants, Francisco Cara, Pedro Cara and Ciriaco Cara, in order to ask them why they were reaping the rice, the first struck him on the hand with a rattan cane and the others cried, "Let us beat him." Upon hearing this, the offended party ran away and was pursued by all of them. While he was running, Pedro Cara threw a stone against him. After pursuing him up to his house, his pursuers returned and continued to reap the rice. The claim of the defendants is improbable that when Marcelo Gabriel and his companions arrived at the place where the former were reaping rice, said Marcelo Gabriel, after asking them why they were reaping his rice, attacked Pedro Cara with the bolo which he was carrying, and upon hearing Marcelo Gabriel's companions say "Let us kill them all," all of them ran away.

As to the defense of alibi set up by Juan Cara, we believe it was sufficiently established. Aside from the declarations of the witnesses for the defense that Juan Cara was confined to his bed, because he had fever, it was not necessary for him to deny his presence there, if in fact he was not there, for there is no proof that he had done anything wrong to the offended party.

As to the criminal liability of the defendants, the only one who appears to have injured the offended party is the defendant Francisco Cara. While it is true that Pedro Cara threw his sickle at him, and Ciriaco Cara a stone, none of these instruments hit or injured him. It was not proven that there had been an agreement or conspiracy to assault Marcelo Gabriel, and consequently the others cannot be held responsible for the acts of Francisco Cara, because there was no concert of mind and common design to perpetrate a criminal act, so as to hold that the act of one is the act of all. The fact that the others cried, "Let us pursue and kill him," is not sufficient for drawing the conclusion that there was such concert, because the invitation took place after the aggression made by Francisco Cara and did not have any influence upon the act performed by the latter.

From the foregoing it results that the only one criminally liable is the defendant Francisco Cara. The act committed by him constitutes the crime of serious physical injuries defined and punished by article 416, case No. 3, of the Penal Code, as the offended party has lost the use of a member which is not principal, such as the forefinger of the right hand, the penalty provided by law being prision correccional in its minimum and medium degrees, that is to say, from 6 months and one day to four years and two months. In the application of the penalty, no circumstance is to be taken into consideration to modify the criminal liability; wherefore the penalty provided by the law shall be imposed in the minimum of the medium degree, that is, one year, eight months and twenty-one days of prision correccional.

For the foregoing, the judgment appealed from is reversed, and the defendant Francisco Cara is found guilty of the crime of serious physical injuries, and sentenced to undergo imprisonment for one year, eight months and twenty-one days of prision correccional, to indemnify the offended party in the sum of sixty pesos (P60), with the corresponding subsidiary imprisonment in case of insolvency, the accessory penalties provided by the law, and one-fourth of the costs.

The defendants Pedro Cara, Ciriaco Cara and Juan Cara are acquitted with three-fourths of the costs de oficio, and cancellation of the bond given by them for their provisional release. So ordered.

Avanceña, C. J., Street, Malcolm, Ostrand, Johns, and Romualdez, JJ., concur.  
Villamor, J., reserves his vote.

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