

## THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LAURENTE KEY; DEFENDANT AND APPELLANT.

*G.R. No. 3326. September 07, 1907*

Ponente: JOHNSON, J.

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### JOHNSON, J.:

This defendant was charged with the crime of robbery in the Court of First Instance of the subprovince of Masbate, in the words and figures following:

"The undersigned accuses Laurente Key, as principal, of the crime of robbery, committed as follows:

"That on or about the 26th of September, 1905, in the municipality of San Jacinto, subprovince of Masbate, Philippine Islands, the accused, Laurente Key, in company with Hipolito Roblora, Lucio Estay, Jose Sudueno, Demetrio Sudueno, Melecio Hernandez, and Luis Almosara, willfully, intentionally, maliciously, with intent of profiting thereby, against the will of its owner and employing force with regard to the property, took possession of the sum of fifteen thousand pesos, in silver currency and paper certificates, all in the legal tender of the Philippine Islands; that said amount is the property of Urrutia & Co. and of Munoz & Co., both commercial firms doing business in the city of Manila; that the above-mentioned amount was placed by those firms on board the steamship Gantabria, which was totally wrecked and lost off the Island of Mababuy, within the municipality of San Jacinto, subprovince of Masbate, Philippine Islands; that said amount was packed in several boxes; that those boxes were reenforced with iron straps and nails, which were broken by the accused in order to take possession of the said sum of money; that the accused, once having taken possession of the money, delivered to Petrona Justiniano, who had knowledge of the perpetration of the crime, the paper certificates, which were dried out by her with a smoothing iron and were kept by her with the intent of appropriating the same. All contrary to the statute.

"Masbate, March 14, 1906."

After hearing the evidence adduced during the trial of said cause, the lower court found the defendant guilty of the crime charged in the complaint and sentenced him to be imprisoned for a period of four years, and to restore to the Union Insurance Company of Canton, Limited, the sum of 10,000 pesos and to pay the costs of the prosecution. From this sentence the defendant appealed and made the following assignment of errors:

"(1) The court erred in finding that the crime of robbery had been committed.

"(2) The sentence of the court is contrary to the evidence and the law."

By these assignments of error the defendant presents two questions, one of law and one of fact.

An examination of the record brought to this court shows that some facts were admitted and some were denied by the respective parties. The facts admitted were substantially as follows:

That on or about the 19th day of September, 1905, the steamer Gantabria sailed from the port of Manila, destined for the pueblo of Tabaco, in the Province of Albay, and after remaining in quarantine at the quarantine station of

Mariveles, continued the journey from said quarantine station on the 24th day of September, and on or about the 26th day of said month said ship was totally wrecked off the small Island of Mababuy and all its officers, passengers, and cargo were totally lost.

It is proved that said ship had on board at the time of sailing from the city of Manila, as a part of her cargo, three boxes containing money, amounting to at least 25,000 pesos. There is some confusion in the evidence concerning the exact amount of money. This money was shipped by the firms of Urrutia & Co. and Munoz & Co.

It is proved that one Jesus A. de Sendagorta, in the month of January, 1906, recovered from the wreck of said ship the sum of 10,000 pesos.

It is proved that of the 25,000 pesos shipped on the said Gantabria, 20,000 of said amount belonged to Urrutia & Co. and 5,000 belonged to Munoz & Co.

It is admitted that on the 16th day of October, Mr. Edward E. Hill, as agent for the Union Insurance Company of Canton, Limited, paid to Urrutia & Co. the sum of 35,000 pesos for losses which the said company incurred by reason of the wreck of said steamer, and that 20,000 of said amount was for the purpose of covering the 20,000 pesos shipped by the said Urrutia & Co. on said steamer on the 19th day of September.

The facts charged by the fiscal and denied by the defendant are substantially as follows:

That the defendant, with several others, on the 28th day of September, 1905, after having discovered the existence and location of the wrecked steamer, took from the said wrecked steamer the sum of 15,000 pesos, a part of which was distributed among his companions, the largest portion of which was retained by the said defendant.

The lower court made the following finding of facts from the evidence adduced during the trial of the cause:

"That on the 19th of September, 1905, silver and paper money amounting to 25,000 pesos belonging to the firms of Urrutia & Co. and Munoz & Co., of Manila, was placed on the steamer Gantabria at Manila by the said firms for shipment; that 5,000 pesos of the said money belonged to Munoz & Co. and 20,000 pesos to Urrutia & Co.; that on the 26th day of September the Cantabria was totally wrecked off the Island of Mababuy, every person on her being drowned, the bills of lading of said money being lost, and the money sunk with the ship; that on the 28th day of September the defendant, Laurente Key, with the assistance of several men who were in his employ, proceeded to said wrecked steamer and willfully, unlawfully, and with the intention of appropriating it to his own use took therefrom two boxes, one containing 10,000 pesos and the other 5,000 pesos; that 10,000 pesos of the said money was the property of Urrutia & Co. and 5,000 pesos was the property of Muñoz & Co."

Admitting the foregoing disputed facts to be true for the purpose of discussing the first assignment of error made by the appellant, the question arises whether or not the defendant, under these facts, is guilty of the crime of robbery, under the provisions of the Penal Code.

The theory of the defendant and appellant is that the said property which was sunk with the wrecked steamer, the said Cantabria, was abandoned property and therefore, granting that he had taken possession of said property and appropriated it to his own use, he was not guilty of the crime of robbery. The defendant and appellant, in his brief, admits the following fact:

That it was more than six weeks after the cyclone (in which the Gantabria was sunk) before any definite knowledge was received in regard to the fate of the Cantabria, thus admitting that the owners of the money alleged to have been robbed had no definite knowledge of its loss for six weeks or more after the destruction of the said ship.

Article 400 of the Civil Code provides how the possessor of property may lose his possession of the same:

"(1) By abandonment of the thing.

"(2) By transfer to another for a good and valuable consideration.

"(3) By the destruction or total loss of the thing or by the thing becoming unmarketable.

"(4) By the possession of another, even against the will of the former possessor, if the new possession has lasted more than one year."

The evidence shows, if it can be believed, that the defendant and his companions entered the wrecked ship and removed therefrom the said money and appropriated the same to his own use in about twenty-four hours after the time of the sinking of the said ship. Can one be charged with the abandonment of his property without even knowing that the same has passed out of his possession or has been lost? We are of the opinion, and so hold, that this question must be answered in the negative.

Manresa, in his Commentaries upon the provisions of the Civil Code, says (vol. 4, p. 291) :

"He who has a right may renounce it. This act by which a thing is voluntarily renounced constitutes an abandonment. There is no real intention to abandon a property when, as in the case of a shipwreck or a fire, things are thrown into the sea or upon the highway."

Certainly the owner of property can not be held to have abandoned the same until at least he has some knowledge of the loss of its possession or of the loss of the thing.

Property can not be considered abandoned under the law and the possession left vacant for the finder until the spes recuperandi is gone and the animus revertendi is finally given up. (The Ann L. Lockivood, 37 Fed. Rep., 233.)

The theory of abandonment on the part of the owners of the money stolen is fully refuted by the fact that some weeks after the wreck of the said ship they sent men to the place of the wreck for the purpose of recovering the property which belonged to them, which was on board the ship at the time of her sinking. The mere fact that cargo is sunk with a ship wrecked at sea by no means deprives the owner of said cargo of his property therein. The owner certainly still has the right to reclaim such property and to recover the same if possible. If it should be recovered by others, the real owner would be entitled to recover its value less the necessary expense of recovering the same and carrying it ashore by the most approved appliances for that purpose by others. (Murphy vs. Dunham, 38 Fed. Rep., 503.)

If the defendant and his companions had recovered the cargo from the sunken ship for the benefit of the owners of the same, he might have been entitled to compensation for his labor, but when he entered the sunken ship and took therefrom, by force, the property of another before actual abandonment by the owner and appropriated the same to his own use, he was, under the provisions of the Penal Code in force in the Philippine Islands, guilty of the crime of robbery.

Upon the question whether or not the defendant and his companions did actually commit the acts charged in the said complaint, Ave are of the opinion, and so hold; that the evidence adduced during the trial in the lower court fully shows that the defendant did commit such acts in the manner and form as charged in said complaint. Therefore we hereby affirm the sentence of the lower court and do hereby sentence the defendant to imprisonment for a period of four-years of presidio correctional, under the provisions of paragraph 5 of article 512 of the Penal Code, to return to Urrutia & Co. and Munoz & Co., or the Union Insurance Company of Canton, Limited, the sum of 15,000 pesos, in case of insolvency to suffer subsidiary imprisonment in accordance with paragraph 1 of article

50 of the Penal Code, and to pay the costs. So ordered.

Arellano, C. J., Torres, Willard, and Tracey, JJ., concur.

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