

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PRUDENCIO ARCOS, DEFENDANT AND APPELLANT.

G.R. No. 3879. November 04, 1908

Ponente: CARSON, J.

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CARSON, J.:

The information in this case charges the appellant with the crime of brigandage, in the following language:

"That between the 2d and the 15th day of August, 1906, the said Prudencio Arcos, within the jurisdiction of the municipalities of Burauen, Abuyog, and Baybay, in this province, under the leadership of the bandits Faustino Ablen, Felipe Idos, Patoy, Quelesong, and others unknown, did willfully and maliciously conspire with them and other unknown persons, and formed a band of ladrones for the purpose of stealing carabaos, cattle, horses, rice, poultry and other personal property, and for the abduction of persons by means of force and violence to fight and kill soldiers of the Army of the United States and of the Philippines Constabulary, and members of the municipal police and other agents of the Insular, provincial and municipal governments; and in fact the said accused and his said companions armed with bolos, three Remington rifles, six flint-lock guns, one revolver and ten lantacas, wandered over the fields and reported to the bandit chief, Faustino Ablen, and placed themselves under his orders, and subsequently under the orders and command of the said Fausstino Ablen, Felipe Idos, Pa toy, Andong and others at present unknown and, together with about one hundred armed men, all of them carrying the said deadly weapons, the aforesaid accused and their companions entered the municipal building of said municipality with violence and then and there killed the policemen Pedro Gonzaga, Doroteo Reas, and Simon Risos, and wounded policeman Francisco Briones, and immediately after set fire to the said municipal building which was entirely burned down, with all the papers, documents and other articles therein contained; and that thereafter the said accused and companions, forcibly and by threats, entered the store of Chinaman Gana in said municipality of Abuyog, and took two cavaness of rice.

"That the said accused knowingly, within the said period of time and at the places named, did assist and protect the said band, described in the foregoing paragraph, furnishing them with information as to the movements of the police force of the towns, of the regular troops, the Constabulary, and of the agents of the Government, acquired and received property stolen by the said bandits, procured money, food, clothing, arms and ammunition, concealed and sheltered them in his own house, and facilitated the escape of the members of the said band. All contrary to law."

When arraigned in the trial court, the appellant entered the plea of double jeopardy, and in support of his plea offered in evidence the original record in the case of the United States vs. Ramon Martinez et al.,^[1] wherein it appears that the appellant was charged with the crime of brigandage, and acquitted for lack of evidence connecting him with the band of which it was alleged he was a member.

The offense was charged, in the information filed in that case, in the following language:

"That the said accused in and during the period comprised between the 1st of January, 1906, and the month of August, 1906, within the jurisdiction of the municipalities of Tanauan, Tolosa, Dulag, Burauen, Dagami, and Abuyog, in this province, did conspire among them and other persons unknown, and formed a band of ladrones

for the purpose of stealing carabaos, cattle, horses, rice, hogs, poultry, and other personal property, and for the purpose of abducting persons by means of force and violence and to fight and kill soldiers of the Army of the United States and of the Philippines Constabulary, members of the municipal police and other agents of the Insular, provincial and municipal governments, and in fact, the said accused armed with bolos and two flint lock guns, and other deadly weapons, wandered over the fields and reported to the chief of the bandits, Faustino Ablen, and placed themselves under his orders and received from him three Remington rifles and eight lantacas; and subsequently, under the orders of the said Faustino Ablen and of the captains of bandits, Mariano Almaden (alias Marigoso), Margarito Gamba (alias Marga), Espiridion Rota (alias Pidion), they overran the country and within the said period of time, on the 21st day of July, 1906, together with about two hundred men, all of them armed with deadly weapons and within the jurisdiction of Burauen, in this province and at the place called Maabab, also named Tambis, Paitan Salay, with known premeditation, treachery and cruelty, with the deadly weapons that they carried they attacked a column of Constabulary forces and wounded the scout McBride, Lieutenant Woswick of the constabulary, and ten constabulary soldiers who, in consequence of said wounds, then and there died, and the said accused and the individuals forming their band, then and there took ten Springfield carbines, one Krag carbine, and two revolvers, which weapons were carried by the said scout and constabulary soldiers.

"That after the above fight the said band of labrones wandered over the fields and through the barrios of Aslom (Dagami), Julita (Burauen h Tigbao and San Isidro (Dulag), San Vicente (Tolosa), Cogon, San Victor (Tanauan), and Tabontabon (Dagami), and in this last mentioned barrio they again fought against the regular troops of the Army of the United States and against the Constabulary on the 24th day of July, 1906; thereafter the said band engaged in stealing rice from the aforesaid barrios and in capturing people for the purpose of fighting the Government troops, and the municipal officers and police.

"That the said accused, knowingly, within the said period of time, and at the above-mentioned places, assisted and protected the band of ladrones described in the foregoing paragraph, giving them information regarding the movements of the police forces of the towns as well as of the constabulary and regular forces and of the agents of the Government; they acquired and received property stolen by the said bandits, procured them money, food, clothing, arms, ammunition, concealed and sheltered them in their own houses, and facilitated the escape of the individuals of said band. All contrary to law."

We think there can be no doubt that the crime of brigandage, the conspiracy or the "conspiring together" of "three or more persons" for the purposes set out in the Act of the Commission defining the crime of brigandage, is one and the same as charged in these separate informations; for while the first information charges the accused with being a member of the conspiracy between "the 1st day of January, 1906," and "the month of August, 1906," and the second information charges him with being a member of the conspiracy between the "2d day of August, 1906, and the 15th day of August, 1906," nevertheless, the band of brigands of which the accused is charged with being a member, the manner in which it is alleged this band was formed as well as its purposes and objects, are in all respects substantially and essentially identical. It is of the very nature of a conspiracy of this kind that it continue in existence for an appreciable length of time, be it an hour, a day, a month, or a year. And while it may be said that in a certain sense the conspirator renews afresh his relations to the conspiracy at every moment during which he continues to be a member of the conspiracy, nevertheless, the crime of conspiracy of which the conspirator is guilty must be deemed a single continuous offense from the time when he enters oh the conspiracy until his relations therewith are severed or the conspiracy itself comes to an end. To hold otherwise would be to declare that where one joins a band of brigands or any other conspiracy, and continues to be a member thereof for a day or a month or a year, the prosecution in its discretion, may charge and secure the conviction of the conspirator of as many or more separate and distinct conspiracies as there are hours in the day, or days in the month, or months in the year, during which he has been a member of the band of conspirators. The mere statement of the proposition is a sufficient refutation of the theory upon which it is contended the plea of double jeopardy should

be overruled.

It is true that the specific overt acts which it is alleged were committed by the conspirators in pursuance of the conspiracy are not the same in the different informations. But proof of all and each of these acts tends to establish the existence of one and the same conspiracy, those alleged in the first information tending directly to establish its existence within the period therein set out, and those in the second to establish its continued existence within the period set out therein. The conspiracy or crime of brigandage, with which the accused was charged in the separate informations might have existed, notwithstanding the fact that the band was not guilty of the commission of all or any of the specific overt acts alleged in one or the other of the informations, and proof of its existence might have been made under either information, without proving all or any of the specific overt acts set out therein. The specific overt acts committed by the band and alleged in the different informations do not in themselves constitute the conspiracy or the crime of brigandage, and proof of their commission is not direct proof of its existence; such proof is no more than proof of the existence of certain facts from which the existence of the conspiracy may fairly be inferred. The allegation of such overt acts is not essential in a complaint or information charging the crime of brigandage, and proof as to such overt acts is properly admissible under a complaint charging the crime of brigandage, whether they are formally alleged therein or not, except where it appears that the accused is unfairly surprised by the introduction of the evidence in a specific case; the purpose and object of such allegations in a complaint charging the crime of brigandage being merely to notify the accused of the facts which the prosecution intends to establish, in order to sustain the allegation of the guilt of the accused of the crime of brigandage with which he is charged. Three or more persons may enter into a conspiracy and be guilty of the crime of brigandage, and yet commit no overt act in pursuance of the conspiracy other than that of going out upon the highway or roving over the country, armed with deadly weapons; and one and the same band of brigands may and usually does commit many different kinds of offenses during the existence of the conspiracy. Hence proof of the commission of any number of offenses committed by a single band by no means justifies the inference that there were as many conspiracies as there were separate specific overt acts proven, and tends merely to establish the continued existence of the conspiracy in pursuance of which the band was organized.

One of the rules laid down by the authorities for the determination of the question whether the offense charged in a second complaint is distinct from and not included in that charged in a former complaint, is that we should consider whether a conviction could be sustained on the first complaint, on proof of the facts alleged in the second complaint. (Bishop's Crim. Law, Vol. 1, 1052.)

Where time or place or any other fact alleged is not an essential element of the crime charged, conviction may be had on proof of the commission of the crime, even if it appear that the crime was not committed at the precise time or place alleged, or if the proof fails to sustain the existence of some immaterial fact set out in the complaint, providing it appears that the specific crime charged was in fact committed prior to the date of the filing of the complaint or information within the period of the statute of limitations, and at a place within the jurisdiction of the court. (U. S. vs. Smith, and cases cited, 3 Phil. Rep., 20.) Time not being an essential element of the crime of brigandage, it is evident that in the case at bar (where the only substantial difference between the facts charged in the two informations, is that in one case the accused is charged with the crime of brigandage in that he was a member of a certain band of brigands in and prior to the month of August of a certain year, while in the second he is charged with being a member of the same band of the month of September of the same year), proof of the facts alleged in either complaint would be sufficient to sustain a conviction under the other. From a general consideration, therefore, of the nature of the offense charged, and applying the rule just cited, we are convinced that the crime charged in the information in this case is the same crime as that charged in the information upon which appellant was acquitted, and that he is entitled to be discharged upon the plea of double jeopardy. The trial judge in his decision says:

"That if the defendant in this case should be discharged on a plea of double jeopardy, then a man might be a member of such a band for a substantial period of time, be charged with such crime, tried therefor, and acquitted for failure of proofs; and six months afterwards, he could join the band again, become an active member thereof and do everything in his power to accomplish the purposes of the band, robbing and stealing from the people, attacking the citizens, killing respectable men and women, engaging in battle with the Government forces, and do all the work which the law applicable to this case prohibits, and still be free from attack upon the theory of former jeopardy. This should not be the law, and is not the law. A man may be acquitted of the charge of being connected with a band of robbers at one period of time, but if he allies himself with the band again at another time, he is subject to prosecution therefor. Any other interpretation of the law would be offensive and shocking to the average sense of justice."

We can not agree with the reasoning of the trial judge. Where one after conviction or acquittal of the crime of brigandage is set at liberty, and thereafter commits the crime of brigandage, it is manifest that a plea of double jeopardy will not avail him on a charge of the commission of that crime after the date of the former trial. Not under the above cited rule, for it is evident that proof of the commission of the crime at a time later than the date of the complaint upon which he was originally convicted or acquitted would under no circumstances be admissible upon that complaint And not as a result of an examination of the nature of the offense charged in the second complaint; for when one is arrested, charged with the conspiracy called brigandage, and later set at liberty after either conviction or acquittal, and thereafter organizes a new conspiracy, or reunites himself with the old conspirators, the crime of which he is guilty is manifestly distinct from the crime with which he was formerly charged, and by no possibility could have been had in mind when the first complaint was filed. And if it should develop that the accused had in fact entered the conspiracy with which he was charged in the first complaint and upon discharge, after trial thereon, reentered the conspiracy, he should be regarded as having committed a new crime in thus reuniting himself with the conspiracy, the former "conspiring together" having ceased, at least so far as he was concerned, and his original relations with the conspiracy having been wholly severed, when he was taken into the custody of the law, under the first charge.

The judgment and sentence of the trial court should be and are hereby reversed and the information filed in this case is dismissed, with the costs of both instances de oficio and the appellant will be set at liberty forthwith. So ordered.

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

[1] 9 Phil. Rep., 738 (Note).

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