

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. BASILIO CERNIAS (ALIAS HANGAS), DEFENDANT AND APPELLANT.

G.R. No. 4222. March 30, 1908

Ponente: CARSON, J.

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CARSON, J.:

The information filed in this case translated literally from the original Spanish is in the following language:

"[The United States of America, Philippine Islands. In the Court of First Instance, Province of Leyte, Twelfth District. The United States vs. Basilio Cernias (alias Hangas). For Brigandage—No. 1297.]

"The undersigned charges Basilio Cernias with the crime of brigandage, committed as follows:

"That the said accused between the 1st day of January, 1906, and the 31st day of December, 1906, within the jurisdiction of the municipalities of Ormoc, Carigara, Barugo, Jaro, Alang-Alang, Dagami, Tanauan, Tolosa, Dulag, and Abuyog, of this province, willfully and for the purpose of stealing carabaos, cattle, rice, guns, revolvers, ammunition, and other personal property, and with the object of abducting persons for the purpose of extortion, to obtain ransom, and to wreak private vengeance, by means of force and violence, conspired together with the brigands, Faustino Ablen, Felipe Idos, Pablo Tisado, and others, and together with these formed a band of robbers, armed with rifles, revolvers, lances, bolos, daggers, and other deadly weapons, for the purposes above mentioned, Faustino Ablen being the supreme chief of the said band, Felipe Idos, the commanding general, the accused Basilio Cernias, a major, and Pablo Tisado, a captain, and that they went out upon the highways, and roamed over the country, committing during the said period of time, and in the said places, among other acts, the following:

"On the 3d of August, 1900, the said accused, in company with Felipe Idos, and some hundred-odd men, in agreement and connivance with the said supreme chief, Faustino Ablen, and other officers of the band, within the jurisdiction of Burauen, in this province, entered into an agreement to assault the town of Abuyog, to kill the police of the said town, to burn the municipal building, and kill Eugenio Villote, Isidoro Antido, and Margarito Fundamental.

"The day following this agreement, the said accused, accompanied by the said Pablo Tisado, Felipe Idos, and some hundred individuals, taking advantage of the darkness of the night, and armed with guns, bolos, daggers, and lances, went to the said town of Abuyog, abducting various persons on the road, and treacherously entered and attacked the said town, went up into the municipal building, killed there the policemen, Pedro Gonzaga, Doroteo Rios, Simeon Risos, at the same time wounding Francisco Briones; they further burned the municipal building, and later went to the houses of Eugenio Villote, Isidoro Antido, and Margarito Fundamental, whom they killed in their respective houses, with deliberate premeditation, treachery, and vindictiveness, and finally they broke into, by use of force, violence, and intimidation, the store of a Chinaman, named Gana, from which they carried away 2 cavans of rice and other personal property of the said Chinaman.

"On the 9th day of November, 1906, the said accused, in company with some, fifty men, together with Pablo Tisado, with deliberate premeditation, treachery, and vindictiveness, wounded and killed two old men, named Alejandro Tabion and Isidoro Candela, and unlawfully and by means of force, violence, and intimidation broke

their way into the store of two Chinamen, named Quia and Dua, and from thence carried away 3 cavans of rice, 1 cavan of salt, a quantity of cloth goods, and trousers belonging to the said Chinamen.

"All this contrary to the law, and especially to Acts Nos. 518 and 1121 of the Philippine Commission."

The trial court found the accused guilty of the crime of bandolerismo, and found further, in the language of the decision, that—

"A large number of pulahanes, on the night of the 3d of August or the morning of the 4th-of August, 1906, forming an armed band, entered the town of Abuyog and at about 2 o'clock in the morning certain members of the band took Eugenio Villote from his house and led him outside of the house and inflicted several stabs upon him, thereby causing his death; that the defendant was one of the parties that stabbed the said Eugenio Villote, inflicting a stab in the back. * * * That they proceeded to the house of one Eulalio Brillo and there found Isidoro Antido, and that he was taken from the house and killed in the same way, the defendant participating in such homicide ; and that they then proceeded to the house of Margarito Fundamental and killed him in like manner, the defendant participating also in the murder of the said Margarito Fundamental."

The evidence of record fully sustains the findings of the trial court, and establishes beyond a reasonable doubt the guilt of the accused of the crime of brigandage, as defined and penalized in Acts Nos. 518 and 1121.

The counsel for the defendants assigns the following errors:

" (1) There is no authentication of the record.

"(2) Act No. 1427, section 12 [1], provides:

" 'The official language of all courts and their records shall be the Spanish language.'

"There is a provision as follows:

" 'And provided, further, That in cases in which all the parties, or counsel, stipulate in writing, and the court consents, the proceedings may be conducted in English.'

"Again:

" 'And provided, further, That when a case, civil or criminal, is so tried in the English language in the trial court, in the event of an appeal the English record shall be used in the Supreme Court.'

"As this is not an appeal case, there seems to be no authority of law for the Supreme Court to receive or consider an English record. The only portion of the record which complies with the law is the complaint, which alone is in Spanish. A sentence of death can not be sustained on a complaint, without more.

"(3) There is no recital in the record, nor does it appear by any certificate of the clerk, that H. B. Bamberger, who signs the transcript of testimony, was the stenographer who took the testimony.

"(4) The stenographer's notes show that four witnesses were examined in English before the assistant attorney was appointed by the court, and that the attorney for the defendant did not understand the English language.

"(5) Section 3, Act No. 518, relating to brigandage, provides:

"'Persons guilty of the crime defined in section 1 may be punished therefor in the Court of First Instance in any province in which they may be taken or from which they have fled.?

"The record does not disclose that the defendant was taken in the Province of Leyte or that he had fled from it.

"(6) The record does not disclose that the defendant was ever taken into custody, which is the only method of serving process in a criminal case; nor does the record disclose that the defendant voluntarily entered his

appearance in said court.

"(7) The record fails to show that any process was ever issued in said cause. The only process which can be issued in a criminal case is a warrant or order of arrest, without which the court can not obtain jurisdiction. Even if the defendant had been arrested on process, his detention at the present time is illegal, because the sentence of the court does not impose imprisonment as part of the punishment, nor does it authorize his detention for any purpose. The original process was only for the purpose of bringing the defendant to trial, and when sentence was pronounced the original process was no longer authority to hold the defendant.

"(8) If the defendant is not now legally in custody, the Supreme Court has no jurisdiction and can only order the discharge of the defendant and the dismissal of the case.

"(9) The record fails to show that the defendant was arraigned.

"(10) The record fails to show that the defendant was furnished a copy of the complaint, or that he was ever informed of the nature of the charges against him.

"(11) The record fails to show that the defendant was required to plead to the complaint, or that he ever did plead.

"(12) The complaint is against Basilio Cernias alias Hangas, while the man who was convicted seems to be Basilio Cernias, and there is nothing in the record to show that they are one and the same person.

"(13) The record does not disclose that the defendant was present at any stage of the trial except while he was examined as a witness; that the witness was also defendant appears only by inference.

"(14) The court erred in finding the defendant guilty of brigandage.

"(15) The court erred in finding the defendant guilty of murder.

"(16) The court erred in sentencing the defendant without indicating the particular crime for which he is to be punished.

"(17) There is no authority of law for pronouncing a sentence of death in a criminal case in the English language.

"(18) The stenographer's notes show that all the proceedings of the court were in English and do not show that any interpreter was present at any stage of the trial, or that the proceedings were interpreted into the Spanish language at the time.

"(19) The stenographer's notes show that at a certain stage of the case the court ordered the testimony theretofore taken to be interpreted to Mr. Valdez and Mr. Navarro. There is nothing in the record to show by whom the interpretation was made, or that the interpretation which may have been made was correct, or that the testimony was interpreted into the Spanish language."

We do not think that any of these assignments of error are of such weight as to justify a reversal of the judgment of conviction of the accused or of the sentence imposed by the trial court. Some because admitting that the error assigned actually exists, it must be regarded as error without prejudice; some because an examination of the record does not sustain the allegation on which the assignment of error is based; and others because the record has been perfected since it came to this court, so as to disclose the facts the omission of which forms the basis on which the assignment of error rests.

After defendant's brief had been filed, upon motion of the Solicitor-General, of which counsel for the defendant was duly notified, and without objection by counsel for the defendant, the clerk of the Court of First Instance of Leyte was directed to certify to this court a copy of any record he might have touching the arraignment of the

accused at the trial of this case. In compliance with this order the following quotation was certified as a true copy of an extract from page 424, of criminal docket No. 3, of the Court of First Instance of Leyte, under the title of case No. 1297, The United States vs. Basilio Cernias (alias Hangas) :

"August 3, 1907. Trial of the case. Present, the accused before the court in public session. The information was read to him, and under the advice of his counsel appointed by the court, Messrs. Valdez and Navarro, he pleaded 'not guilty.'"

The record thus perfected, taken together with the fact that it affirmatively appears that the accused testified in his own behalf, and that he was represented by counsel at all stages of the trial, completely and finally disposes of assignments of error numbers 9, 10, 11, and 13.

Assignment of error number 1 is evidently based on an oversight of counsel. On page 1 of the record in this court appears a letter signed by the clerk of the Court of First Instance of Leyte, remitting the record of the case in the Court of First Instance, and setting out the fact that it is the original record composed of the numbered pages as therein set out, together with duly certified copies of the information, judgment, and sentence.

We have frequently decided that the fact that the record or any part thereof appears in the English language is at most error without prejudice, unless the contrary affirmatively appears and this ruling disposes of assignments numbers 2 and 17.

H. B. Bamberger, the official stenographer who certified the transcript of the testimony, is an officer of the courts of the Philippine Islands, expressly authorized by law to certify the transcript of the testimony taken by him, and there is no provision of law which requires that the facts certified by an official stenographer should be again certified by the clerk of the court; and in any event we think that the letter of transmission signed by the clerk of the court, wherein he states that included in the record of the trial transmitted to this court are the stenographic notes transcribed upon the accompanying thirty-eight and one-half separate pages, would be sufficient to identify these notes as the notes taken at the trial, unless the contrary affirmatively appeared.

Assignments of error 4 and 19 rest upon the same incident of the trial. After some of the witnesses had testified, it was discovered that counsel for the defense did not understand the native dialect which these witnesses spoke nor the English language into which the testimony was translated for the benefit of the American trial judge. The testimony already taken was forthwith translated into Spanish and the witnesses recalled and cross-examined by counsel for the defense. No objection was made to the proceeding at the time, and we are convinced that at most the irregularity in the proceedings was error without prejudice.

Assignments of error 5, 6, 7, and 8 may be dismissed without much comment. Section S of Act No. 518, which confers concurrent jurisdiction "to punish persons guilty of the crime of brigandage" upon any Court of First Instance in any province wherein the brigand is found or from which he has fled, neither expressly nor by implication deprives other Courts of First Instance of their general jurisdiction to hear and to try all complaints or informations charging the commission of grave offenses within the territorial limits of their respective provinces. No objection was made in the court below on the ground that the trial court had no jurisdiction over the person of the accused because not brought before it upon a lawful warrant or order of arrest, and it affirmatively appearing that he did in fact appear in open court, assisted by counsel, and that upon being duly arraigned he pleaded not guilty and later went on the stand to testify in his own behalf, it is evident that he can not be heard to urge this objection in this court.

The twelfth error has no sound basis in the record. As will be seen above, while the title of the information refers to 'the accused as Basilio Cernias (alias Hangas), the information itself charges Basilio Cernias with the offense,

and the judgment of the trial court convicts "the defendant, Basilio Cernias," of the crime of brigandage. The record clearly discloses that the person charged in the information, tried and convicted, and the person defended by counsel in this court are one and the same person.

Counsel for the accused, after complaining "that the complaint gives no information as to any particular crime, so as to enable one to make an intelligent defense, and that the fiscal seems to have put in the complaint all the crimes which had been committed in the Province of Leyte prior to its date," states that "for the purposes of this brief it will be assumed that the court will regard this, as a complaint containing nineteen separate counts, and that the trial court found the defendant guilty on the first count, which charges brigandage; on the twelfth count, charging the murder of Villote; on the thirteenth count, charging the murder of Antido; and on the fourteenth count, charging the murder of Fundamental. The court having failed to find the defendant guilty on the other counts, it must be held that the defendant has been acquitted as to the various charges contained in these counts, so that these charges are not before the court for review, and thus the discussion is limited to the first, twelfth, thirteenth, and fourteenth counts."

We do not think that counsel's comment upon the information filed in this case is deserving of serious consideration. Certainly the information itself does not justify his contentions. In the original Spanish it clearly, concisely, and almost in the precise language of the statute, charges the accused with the crime of brigandage as defined and penalized in Act No. 518 as amended by Act No. 1121. It then proceeds to specify certain acts done by the conspirators, acts of such nature that when proven they strongly tend to establish the guilt of the accused of the conspiracy with which he was charged, and while it is true that each of these acts charged to the conspirators was in itself a crime, the prosecution in setting them out in the information did no more than to furnish the defendant with a bill of particulars of the facts which it was intended to prove at the trial, not only as a basis upon which to found an inference of guilt of the crime of conspiracy charged in the body of the complaint, but as evidence of the extremely dangerous and wicked nature of that conspiracy. Evidence as to these facts might have been introduced without the specific recital in the information, and it does not lie in the mouth of the defendant to complain that the prosecution too minutely notified him of the nature and character of the evidence which it intended to introduce at the trial; this more especially as counsel in the same brief complains that the information did not clearly set out the nature of the crime with which accused was charged, or notify him of the charges which he was required to meet.

The judgment of conviction and the sentence imposed by the trial court should be and are hereby affirmed with the costs of this instance against the appellant. So ordered.

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

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