

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CIRIACO IBAÑEZ ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 6003. August 07, 1911

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PER CURIAM:

The complaint filed in this case is as follows:

"The undersigned fiscal charges Ciriaco Ibañez, Enrique Laylay, Raymundo Ibañez, Tomas Machete, Maximino Politico, Rufo Rabino, Valentin Fonte, Domingo Contreras, Maximo Regencia, Aniceto Agbac and Bartolome Monterey, prisoners in the provincial jail, with the crime of bandolerismo con asesinato, committed as follows:

"That on or about the 1st of the month of April, 1909, the said accused Ciriaco Ibañez, Enrique Laylay, Raymundo Ibañez, Tomas Machete, Maximino Politico, Rufo Rabino, Valentin Fonte, Domingo Contreras, Maximo Regencia, Aniceto Agbac and Bartolome Monterey conspired among themselves to form a band of robbers for the purpose of stealing carabaos, horses, rice, or personal property of any description, and on the night of April 23, 1909, the said accused, armed with bolos, assaulted the barrio of CalatraVa of the municipality of Badajoz of the sub-province of Romblon, Province of Capiz, P. L, entered the houses of the Chinaman Sianga, of the Chinaman Lu-Quinghong and of Maria Paulino, and by means of force and violence took possession of various jewels, money, cloths and other articles, to the value of three thousand pesos; they then took the Chinaman Siafiga, bound, along with the articles stolen, aboard a small boat commonly called 'Pasaje,' belonging to the said accused who were waiting on the beach in front of said barrio of Calatrava, and the said accused intentionally and maliciously with premeditation and treachery threw the said Chinaman Sianga into the sea, his whereabouts now being unknown: In violation of law."

After due trial the court below acquitted Rufo Rabino, with his proportional part of the costs de oficio, and after finding all the other defendants guilty of the crime as charged in the complaint, the following sentences were imposed:

Aniceto Agbac and Bartolome Monterey were condemned to be hanged; Ciriaco Ibañez, Raymundo Ibañez, Tomas Machete and Valentin Fonte each to twenty-five years' imprisonment; Domingo Contreras and Maximo Regencia to twenty years each; and Enrique Laylay and Maximino Politico each to ten years' imprisonment, in Bilibid Prison, and each to pay one-eleventh of the costs. They appealed.

During the pendency of this case, Raymundo Ibañez and Valentin Fonte withdrew their appeals and are now serving the sentences imposed upon them by the trial court.

The following errors have been assigned:

Counsel for Ciriaco Ibañez, who has filed a separate brief, alleges that the trial court committed the following errors:

- In declaring that the facts found constitute the crime of bandolerismo, defined and punished by Act No. 578, [518] as amended by Act No. 1121, and not simply robbery in band.

- In finding that the cloth, clothes, and other effects found in the possession of his client were taken by the defendants from the stores of Lu-Quinghong and Teresa Paulino, wife of Siariga, on the night of the 23d of April, 1909.
- In finding that Ciriaco Ibañez entered into a conspiracy with the other defendants to commit this robbery; and,
- In finding that the testimony presented established the guilt of Ciriaco Ibañez beyond a reasonable doubt.

Counsel for the other defendants alleges:

- That the court erred in finding that the proofs presented established the guilt of these defendants of the crime of bandolerismo beyond a reasonable doubt; and,
- That the court erred in finding that the proofs established beyond a reasonable doubt that the defendants committed the crime of murder.

On the 14th of April, 1909, Ciriaco Ibañez rented from one Felix Tome a certain embarcacion, or sail-boat, called the Pasaje, for the purpose of transporting to Romblon nipa, palma brava, bejuco, and other effects. At that time Felix Tome and Ciriaco Ibañez resided in Pinamalayan, Province of Mindoro, but the boat was at anchor in the bay of Balete. On the night of the 18th of April of that same year, Raymundo Ibañez and Tomas Machete presented themselves to Felix Tome, saying that they had been ordered by Ciriaco Ibañez to take charge of the boat. On the following day these two defendants went to Balete, to get the boat, being accompanied by Jose Tome, son of Felix Tome, who had been ordered by his father to accompany these two defendants from Balete to Pinamalayan. On arriving in Balete, Raymundo Ibañez, Tomas Machete, and Jose Tome were met by Aniceto Agbac and Domingo Contreras and they all went aboard. On putting out to sea the boat was steered in the direction of Pinamalayan, but after having gone some distance out the course was changed in the direction of Sibali, a point on the Island of Maestre de Campo. Jose Tome called the attention of Agbac to this change in the course and Agbac said that the change was made on account of the condition of the wind. About that time Raymundo Ibañez approached Jose Tome and said, "Keep quiet, we must go to Calatrava and when we arrive there you will then find out what we are going to do." When the boat was between the Islands of Maestre de Campo and Mindoro, being a considerable distance from the land, seven armed men appeared on the deck, having come out of the bodega in the stern of the boat. Up to this time Jose Tome, did not know these men were aboard. Three of these men were Valentin Fonte, Maximo Regencia, and Bartolome Monterey. Maximino Politico, Enrique Laylay, and Ciriaco Ibañez did not accompany the other defendants on this voyage. On the following morning, April 20, they arrived at Sibali and there took water aboard. From that point they continued their course to the barrio of Calatrava, municipality of Odiongan, Island of Tablas, and anchored in a place called Pangoyoc, within the jurisdiction of that barrio. On anchoring at this point Raymundo Ibañez, Tomas Machete, and Aniceto Agbac disembarked and went to the store of Lu-Quinghong, in the barrio of Calatrava, and purchased a certain amount of rice. These three defendants remained in this store for some time and while there carried on a conversation with the wife of Lu-Quinghong. After purchasing the rice they returned to the boat and that same afternoon moved down and anchored just in front of that barrio where they remained until sometime after dark. About 8 p. m. all the men aboard, with the exception of Jose Tome, and an old man called Pedro, disembarked, being armed with bolos, and went to the stores of Lu-Quinghong and Sianga, which were only a few yards from where the boat was anchored. On arriving at these two stores which were only about 3 yards apart, they entered, and by means of force and intimidation took therefrom merchandise, money, and jewelry to the value of more than P3,000 and placed same aboard the boat. They also tied the elbows of the Chinaman Sianga behind his back and by means of force took him aboard. They then started on their return trip with the Chinaman and the booty aboard, and when they were a considerable distance from land, so far that the lights on shore could not be seen,

Aniceto Agbac directed that the Chinaman Sianga be placed near the edge of the boat. This was done and while the Chinaman was standing in that position, with his elbows still tied behind his back, he was, by order of said Agbac, pushed overboard by Bartolome Monterey. Sianga has never since been heard of. The defendants continued their journey, arriving at the place whence they sailed the following day, and after disembarking they divided the effects and disbanded. In the division of these effects Ciriaco received his share. These goods, found in the possession of Ciriaco when he was arrested, were identified by the owners as part of the goods taken from their stores on the night of April 23d. Likewise the goods found in the possession of Enrique Laylay and Maximino Politico were also identified in the same manner. These facts have not only been established by the direct and positive testimony of Felix Tome, Jose Tome, Lu-Quinghong, his wife Eustaquia Farconer, Teresa Paulina, wife of Sianga, Marcos Bindol, and the officers who found a part of the goods in the possession of Ciriaco, Enrique and Maximino, but also by the free and voluntary confession of Bartolome Monterey who admitted that it was he who pushed the Chinaman overboard. In this confession he sought to escape responsibility by stating that he was ordered to do this by his chief, Aniceto Agbac.

Enrique Laylay and Maximino Politico took no part in the commission of this crime, but a part of the goods, as we have said, were found in their possession. They attempted to explain how they came into the possession of these goods by saying that they had purchased them from certain traveling Macabebe salesmen. This explanation was properly found by the court below to be entirely unsatisfactory. These two accused are day laborers, receiving small wages. They have several members in their families dependent upon them. They lived in the same locality with the other defendants and were all known to each other. These goods had been, according to their own testimony, in their possession for quite a while without having been used or even made into clothing.

The first question for determination is whether or not the above facts constitute the crime of bandolerismo, as defined and punished by Act No. 518, as amended by Act No. 1121. The first section of said Act, as amended, provides:

"Whenever three or more persons, conspiring together, shall form a band of robbers for the purpose of stealing carabaos, cattle, horses, rice, or personal property of any description, or for the purpose of abducting persons, either for the purpose of extortion or obtaining ransom, or for any other purpose, by means of force and violence, and shall be armed with deadly weapons for this purpose, they shall be deemed highway robbers, or brigands. * * *

"To prove the crime described in the previous section, it shall not be necessary to adduce evidence that any member of the band has in fact committed robbery or theft or abduction, but it shall be sufficient to justify a conviction thereunder if, from all the evidence, it can be inferred beyond a reasonable doubt that the accused was a member of such armed band as that described in said section." (Section 2.)

At the time these provisions were enacted there were in force statutes defining and penalizing robbery in band, robbery with homicide, abduction, etc. In fact every kind of robbery was defined and punished in those statutes (Penal Code) but there was no law punishing or making it a crime to form bands for the purpose of committing robbery, larceny, or abduction. At the time Act No. 518 was passed some sections of the country were infested with roving bands of outlaws. The articles of the Penal Code were considered insufficient to meet the existing conditions and to adequately punish members of such bands.

"It will be seen at a glance that the main object in enacting this law (Act No. 518) was to prevent the formation of such bands; in fact the heart of the offense consists in the formation by three or more persons conspiring together for the purpose of theft or robbery, and such formation is sufficient to constitute a violation of this Act. It would not be necessary to show, in a prosecution under it, that a member or members of the band actually committed theft or highway robbery in order to convict him or them; for the crime is proved when the organization and purpose of the band is shown to be such as is prohibited by the statute." (U. S. vs. Decusin, 2

Phil. Rep., 536.)

In the case at bar the first move made was the hiring of the vessel by Ciriaco Ibañez; then followed the journey or voyage which was made almost direct to the barrio of Calatrava, where the robbery was committed. Only one stop was made on the way and that for the purpose of taking on water. No attempt was made at this place to commit any depredations. On arrival at the said barrio of Calatrava three of the defendants went ashore and purchased rice and then returned to the boat where they spent several hours without molesting anyone. About 8 o'clock that night they disembarked and went direct to the two stores of the offended parties, which were almost together. The band then divided and robbed the said stores at the same time, and after the completion of this robbery they returned to the boat with their booty and the Chinaman Sianga. They did not attempt to molest anyone else in that barrio. The robbery of these two stores constituted one continuous act - robbery. These men were sufficient in number and sufficiently well armed to have committed other robberies and abuses if they had so desired. They left this barrio and went directly home, divided the effects, and then disbanded. They committed no other robberies or thefts. From all the facts and circumstances in the case it appears that when they left their homes they had in mind to rob these two stores and no others. Their subsequent acts show this to be true.

"Whenever three or more persons, conspiring together, shall form a band of robbers for the purpose of * * * and shall be armed with deadly weapons for this purpose, they shall be deemed highway robbers, or brigands, * * *." [Sec. 1, Act No. 1121.]

The defendants were more than three in number. They were armed with deadly weapons (bolos); they left their homes and went together (except Ciriaco Ibañez, Laylay, and Politico) to the barrio of Calatrava and there committed the robbery. From these facts it may reasonably and lawfully be inferred that they conspired together for the purpose of committing said robbery; but may it, in addition, be inferred that they also conspired together to form a band of highway robbers or brigands? We think not. The words "highway robbers" and "brigands" are synonymous.. A brigand is defined by Webster as being "A lawless fellow who lives by plunder; one of a gang living in mountain retreats; a highwayman; a freebooter." A band organized for the purpose of committing depredations and disturbing organized society by disregarding the laws of the land and the rights of the people, something more than a mere robber. We, therefore, conclude that the facts in this case do not constitute the crime of bandolerismo.

The fiscal characterizes this crime as that of bandolerismo with murder. The allegations in the complaint are sufficient to constitute this offense, but the facts established are not. It is alleged in the complaint, among other things, that the defendants, being armed with bolos, did, on the night of the 23d of April, 1909, by means of force and violence, appropriate jewelry, money and other effects to the value of P3,000; that after tying the Chinaman Sianga they took him, with the effects appropriated, aboard the boat; and that after so doing they did, intentionally, maliciously, treacherously, and with known premeditation, push the said Chinaman into the sea. These were the specific allegations the defendants were called upon to answer. They denied having committed these acts. As to Whether or not they did actually commit these acts was the real issue between the prosecution and the defense. The characterization of the crime was of no importance to them. (U. S. vs. Lim San, 17 Phil. Rep., 278.) The above allegations are sufficient to constitute the complex crime of robbery with homicide. This was the real crime for the commission of which the defendants were tried. The prosecution confined itself to these facts and the defense denied and sought to show that the defendants did not commit these specified acts.

It is, however, insisted that the crime of robbery with homicide has not been established, for the reason that the prosecution failed to prove beyond a reasonable doubt that the Chinaman Sianga was, in fact, killed by the defendants on the night of April 23. Counsel argues that the said Chinaman might have swum ashore, or could have been picked up or rescued by someone passing in a boat; or, in other words, that the corpus delicti has not

been established. It is true that a conviction can not be entered until the fact that the crime has been actually perpetrated has been first proven. The defendants can not be convicted of this crime, unless the death of the Chinaman be first distinctly proved, either by direct evidence of the fact or by inspection of the body. The body has never been seen or inspected. But can there be any doubt as to whether or not the Chinaman was actually killed on that night? We think there can be none. His arms were securely tied, hard and fast, behind his back. He was thrown into the sea in this condition at a place far out of sight of land and the lights on shore, and upon a dark night. When he struck the water in this condition he was perfectly helpless, as far as he himself was concerned. He could not use his arms and hands for the purpose of swimming, or saving himself, and according to the very nature of things he must and did lose his life. The defendants took care that no one was near when the Chinaman was thrown overboard. He could not possibly have lived more than a very few minutes not by any means sufficiently long enough to have afforded an opportunity for anyone to have come to his rescue. These facts allow our minds to rest perfectly easy when we say that the Chinaman did, in fact, lose his life on that occasion. No other possible conclusion can be reached. The two essential elements in this crime, robbery and the killing of the Chinaman, have been clearly established.

The guilt of the defendants, Tomas Machete, Domingo Contreras, Maximo Regencia, Aniceto Agbac, Bartolome Monterey, Raymundo Ibañez, and Valentin Fonte (the last two having withdrawn their appeals are not now to be considered) of the commission of this crime, by direct participation, has been shown beyond a reasonable doubt. In the commission of this crime there were present the generic aggravating circumstances of alevosia and nocturnity, it having been shown that the defendants took advantage of the darkness of the night to commit this deed, and that the Chinaman was, at the time he was murdered or thrown overboard, tied and in a helpless condition. In the commission of this crime none of the extenuating circumstances set out in article 9 of the Penal Code were present. Upon these findings of fact the capital penalty must be imposed, unless in the exercise of the discretion vested in the courts, the extenuating circumstance of race should be taken into consideration in favor of the defendants, under the provisions of article 11 of the Penal Code. The benefit of the provisions of this article can not be extended to Aniceto Agbac and Bartolome Monterey. Agbac was the leader or chief of the gang. He directed to a great extent their movements. He gave the order for the murder of the Chinaman. This order, as given, was carried out by Monterey. Monterey offered no objection to the carrying into effect of this order, but, on the contrary, did not hesitate to do so. He was to this extent more active than any other of the members, aside from Agbac. It is true that the other defendants, who were in the boat at the time the Chinaman was murdered, made no effort to save him, but they were dominated and controlled by Agbac. They appeared to have been reared in remote barrios and are of an extremely low order of intelligence. We think, under all the facts and circumstances that they should be given the benefits of the provisions of article 11 of the Penal Code, thereby reducing the penalty from death to life imprisonment. (U. S. vs. Santa Maria, 4 Phil. Rep., 635; U. S. vs. Sison, 6 Phil. Rep., 421; and U. S. vs. Pindong, 14 Phil. Rep., 31.)

Ciriaco Ibañez, Enrique Laylay, and Maximino Politico were not, as we have said, present when the robbery and murder were committed.

Articles 13 and 15 of the Penal Code read as follows:

"Art. 13, The following are considered as principals:

"3. Those who cooperate in the execution of the act by another act without which it would not have been accomplished.

"Art. 15. Accessories are those who, having knowledge of the commission "of the crime, and without having participated therein either as principals or accomplices, subsequently take part in its execution in any of the following manners:

"1. By themselves making profit or by assisting the delinquents to profit by the effects of the crime."

* * * * *

Ciriaco Ibañez certainly cooperated in the execution of the act by another act (the furnishing of the boat) without which the robbery would not have been committed. He made the first move in the matter. He furnished the means of transportation without which the other defendants would not have gone to the barrio of Calatrava on that occasion. He had been in this barrio just a short time before and knew the Chinamen and their places of business. It must be inferred from all these facts and circumstances that he entered into an agreement or conspiracy with the other defendants (not including Enrique Laylay and Maximino Politico) to commit this robbery. By so doing, and having received a part of the effects taken from the said Chinamen, he became a principal in a consummated crime. There is no other logical conclusion which can be reached. This result is inevitable. Now, what is that crime?

Title 13, chapter 2, [chapter 1] of the Penal Code, defines and penalizes the crimes of attempted, frustrated, and consummated robbery. The first article of this chapter provides :

"Art. 502. Those who, with intent of profiting thereby, shall take possession of the personal property of another, with violence or intimidation of the person or by employing force with regard to the personal property, are guilty of the crime of robbery."

The subsequent articles fix the penalties for the different kinds of robbery. These various classes have different penalties, depending upon the attendant circumstances. The basis of all is robbery. All are one and the same crime, the only difference being in the penalties. If on account or on the occasion of robbery there results homicide the penalty is fixed at from life imprisonment to death. If the robbery should be accompanied by rape, or any of the injuries mentioned in Nos. 2, 3, or 4 of article 416 of the Penal Code, still different penalties must be imposed upon the culprit. The same is true all through this chapter, yet all the crimes are those of robbery, except those mentioned in article 506, which are attempted and frustrated crimes of robbery. These different kinds or classes of robbery with their corresponding penalties, are not distinct and separate crimes.

The defendants (except Ciriaco Ibañez, Enrique Lay lay, and Maximino Politico) committed the crime of robbery with homicide, as defined and punished under articles 502 and 503, No. 1, of the Penal Code. This is one of the classes of robbery defined in said chapter. In the commission of this crime or class of robbery there was also committed one of the other classes of robbery, being that defined and penalized under articles 502 and 503, paragraph 5, in relation with article 504 of said chapter, which is known as robbery in band, it having been shown that more than three armed malefactors robbed the two stores belonging to the Chinamen.

When Ciriaco Ibañez furnished the transportation for the other defendants, he did so for the purpose of having the said defendants rob these two stores. The robbery was his principal object. It is true that homicide resulted on the occasion of this robbery, but there is nothing in the record which shows, or tends to show, that Ciriaco gave instructions to kill the Chinaman or intended that this should be done. When the Chinaman was killed the robbery had already been committed, but the killing took place on the occasion of the robbery. The murder was an incident to the robbery, which places the crime, so far as the other accused (excluding Laylay and Politico) are concerned, in a different class. Yet under these facts and circumstances Ciriaco can not be held to be a principal in the commission of this crime or class of robbery, but he is a principal in the commission of the other class, robbery in band. There is nothing in the record to show that he planned or conspired to commit the murder. It has been suggested that as he, Ciriaco, entered into an agreement with the other defendants to commit this crime of robbery, he is responsible for all the results of that crime, as he knew that death might be a necessary incident to the carrying into effect of this plan. If the death of the Chinaman had occurred in the very act or at the very time

that the robbery took place, or while it was going on, and if it had been necessary to kill the Chinaman in order to successfully rob these stores, then the question might have been different (a question which we do not now decide), but as the actual taking of the property had already terminated, and the death of the Chinaman resulted on the occasion of the robbery, we think, in the absence of proof showing that the murder was a part of the original plan, that the foregoing holding is the correct one.

Enrique Laylay and Maximino Politico, as we have said, were not present when the robbery was committed. Neither were they present when the Chinaman was murdered. They took no part in the agreement or conspiracy to commit this crime, but they did receive a part of the property or effects taken from the stores. These effects were found in their possession and were identified by the owners. These two defendants attempted to show that they had purchased these effects from traveling salesmen (Macabebes). This defense, as we have heretofore said, has utterly failed, as the proofs show that these defendants knowingly and willfully misstated the facts when they swore that they had purchased said effects in that manner. Taking into consideration the fact that these two defendants lived in the same neighborhood or locality with some of the principal actors in this crime, that they are men of very limited means, that they had in their possession a considerable quantity of these effects, much more than they could be expected to have, and also the significant fact of their having attempted to deceive the court as to the manner of acquiring said goods, we think the proofs are amply sufficient to show that these two defendants knew that these effects had been taken from the stores of the Chinamen when they took them into their possession.

For these reasons the judgment appealed from is reversed and the defendants are found guilty of the crime set forth in this decision, and Aniceto Agbac and Bartolome Monterey are each sentenced to be hanged by the neck until dead; Tomas Machete, Domingo Contreras, and Maximo Regencia are each sentenced to life imprisonment; Ciriaco Ibañez to eight years eleven months and ten days' presidio mayor, and Enrique Laylay and Maximino Politico each to pay a fine of 500 pesetas, with the corresponding subsidiary imprisonment in case of insolvency. These defendants are further sentenced to the accessory penalties provided by law, and each to pay one-tenth of the coats. It is so ordered.

Torres, Carson, and Moreland, JJ., concur.

Johnson, J., concurs with the dispositive part.

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