

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CIRILO MARTIN, DEFENDANT AND APPELLANT.

G.R. No. 6999. August 24, 1912

Ponente: JOHNSON, J.

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JOHNSON, J.:

This defendant was charged with the crime of robo en cuadrilla. The complaint was in the following language:

"On or about the night of May 16 of the present year the said accused and four others unknown, armed with a gun and bolos, did maliciously and criminally go to the house of Alvaro Lozano, dressed as Constabulary soldiers and pretending to be such, and take the said Lozano and his carabao away; but upon arriving at a distant and uninhabited place, they released the said Lazono and, by means of intimidation and with intent of gain, took possession of his carabao, which was worth about P200 and has not yet been recovered."

After hearing the evidence, the Honorable Julio Llorente, judge, found the defendant guilty of the crime charged in the complaint and sentenced him to be imprisoned for a period of eight years eleven months and eleven days of presidio mayor, with the accessory penalties of the law, to return the carafyao stolen or to indemnify Alvaro Lozano in the sum of P200, and to pay the costs.

From that sentence the defendant appealed to this court and made the following assignments of error:

"1. The court erred in classifying the crime under prosecution as robbery.

"2. Likewise, in finding the defendant guilty.

"3. And finally, in qualifying the craft employed as one of the aggravating circumstances in the present case."

The lower court made the following findings of fact in his sentence, which upon a careful examination of the evidence adduced during the trial of the cause, we find supported beyond a reasonable doubt:

"About midnight of May 16, 1910, five men armed with bolos and a gun appeared at the house of Alvaro Lozano and, pretending to be officers of the law, called him out and demanded that he exhibit to them his personal cedula and the documents for a carabao that he had. Alvaro Lozano delivered the said documents to one of the malefactors, who was dressed as a Constabulary soldier, and who, after reading them, put them in his pocket and said to Alvaro Lozano that it was necessary to go to the pueblo with the carabao. The herein accused also said to Alvaro Lozano that he ought not to be afraid to go to the pueblo, because he was there. The offended party accompanied the malefactors with his carabao, and upon their arrival at a rice-field they inquired of him whether the animal was dangerous; and when Lozano made no reply, the defendant seized him by the hand and struck him with the fiat of the bolo he was carrying. In the meantime three of the malefactors seized the carabao and took it away with them, and the one who was dressed as a Constabulary soldier and the defendant conducted Alvaro Lozano to the sitio of Dulong where they again maltreated him until he was able to escape and run away. The offended party's carabao has not yet been recovered and was worth about P200."

The defendant, Cirilo Martin, was identified by the owner of the carabao, Alvaro Lozano, on the night in question,

as well as by his wife, Teodora Macaldo.

With reference to the first assignment of error, the question presented is whether or not the defendant and his companions committed the crime of robbery as charged in the complaint.

It will be noted that the defendant and his companions went to the house of Alvaro Lozano in the nighttime, representing themselves to be officers and demanded of Lozano that he show them the documents for his carabao as well as his personal cedula. Lozano delivered to the defendant his documents, who, immediately after reading the same, placed them in his pocket and demanded that Lozano accompany them with his carabao to the municipality. Lozano accompanied the defendant as requested, with his carabao, believing that it was necessary.

After the defendants and Lozano had left the house of the latter a short distance, the defendants by force and violence took possession of the carabao and ran away. It may be true that there was no force or violence exercised by the defendant and his companions in the first instance, but certainly it is true that at the time he and his companions took possession of the carabao they exercised violence and intimidation against Lozano. The robbery took place at that moment. While Lozano voluntarily left the house with the defendant, leading his carabao, later he was deprived of its possession by violence and intimidation. The defendant struck Lozano with his bolo, at the same time snatching from his hands the rope with which Lozano was leading his carabao. The defendants by deceit induced the owner of the carabao to take the same from the corral and conduct it in the direction of the municipality, under the plea that it was necessary for him to take his carabao to the municipality. The defendants evidently used deceit in the first instance for the purpose of enticing the owner of the carabao to a point where they might more effectively commit the crime of robbery without the fear of apprehension. The defendants made Lozano believe, through their deceit, that it was necessary for him to show his carabao in the municipality. The defendant represented to Lozano that he and his companions were members of the Constabulary; that they had authority to require him to deliver to them his documents and to take his carabao to the municipality. This misrepresentation, it is true, was made more by the manner and conduct of the defendant and his companions than by anything which was said, but it was none the less effective. A people who for a long period have been accustomed to obey implicitly the commands of the official class and to be punished severely for refusing so to do, are very likely to obey even a suggestion of command. Of course if Lozano had delivered his carabao without protest or without violence or intimidation, the crime would not have been robbery, but this he did not do. He was willing to obey the orders of the alleged officers of the law and he did this without requiring them to show their authority. It will be noted, however, that he did not deliver to them his carabao. It was taken from him by force and violence.

The attorney for the appellant, in support of his contention that the acts done did not constitute the crime of robbery, cites a decision of the supreme court of Spain of the 21st of February, 1873, published in the Official Gazette on the 25th of March of the same year. (3 Viada, 340, Question 4.) The question in that case as Viada puts it is as follows:

"Question IV. - When one demands of another the delivery of a thing, of a horse, for example, offering to give him a receipt therefor, which, after being drawn up, he refuses to sign, and notwithstanding this refusal enters the stable and takes the horse, against the owner's will: which crime does he thereby commit, theft or robbery?"

The attorney for the appellant evidently did not read all that Viada said with reference to this question, nor note carefully the decision of the supreme court of Spain. The supreme court of Spain held that, under the facts put in said question, the defendant was guilty of the crime of robbery and not of larceny. The attorney for the appellant also cites a decision of the supreme court of Spain of the 10th of May, 1879, published in the Official Gazette on the 8th of August of the same year. (3 Viada, 342, Question 7.) The facts in the latter case were stated by Viada as

follows:

"Question VII. - Did he who came up to a man who was lying in a public road and who he thought was asleep, though apparently he was not, and with a knife cut off his belt, which contained a small sum of money, a medal and a rosary, and took it away, but was pursued and caught through the outcry raised by the victim, who had previously remained silent from fear, commit the crime of robbery or the crime of theft?"

It is true, in this latter case that the supreme court of Spain held that the crime was larceny and not robbery, but a mere casual reading of the facts shows clearly that there was no force or intimidation used.

It is scarcely necessary to discuss the question that in case of robbery there must be force and intimidation. These constitute the very essentials of the crime of robbery. Putting one in fear of bodily injury or threats of arrest is sufficient to constitute force and intimidation. (U. S. vs. Smith, 3 Phil. Rep., 20; U. S. vs. Barot, 15 Phil. Rep., 463; U. S. vs. Osorio, 21 Phil. Rep., 237; U. S. vs. Flores, 19 Phil. Rep., 178.)

With reference to the second assignment of error, that the facts are insufficient to show that the defendant is guilty of the crime charged, upon a careful examination of the evidence, we find that the facts stated in the sentence of the lower court are fully sustained and that the defendant and his companions committed the act complained of in the complaint.

With reference to the third assignment of error, to wit: That the lower court committed an error in considering the deceit practiced by the defendant and his companions as an aggravating circumstance, it is sufficient to say, without deciding whether or not deceit in a case of robbery may or may not, under certain circumstances, constitute an aggravating circumstance, we are of the opinion that in the present case it can in no way affect the sentence of the lower court, for the reason that there existed one aggravating circumstance and no extenuating circumstances, and the penalty must, therefore, be in the maximum degree provided bylaw.

After a full consideration of the evidence and the errors complained of by the appellant, we are of the opinion that the sentence of the lower court should be affirmed, with costs. So ordered.

Arellano, C. J., Mapa, Carson, and Trent, JJ., concur.

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