

## THE UNITED STATES PLAINTIFF AND APPELLEE, VS. TIMOTEO ROMERO ET AL., DEFENDANTS. TIMOTEO ROMERO, APPELLANT.

*G.R. No. 7149. July 30, 1912*

Ponente: JOHNSON, J.

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### JOHNSON, J.:

These defendants were charged with the crime of robo en cuadrilla, alleged to have been committed as follows:

"On or about the night of December 28, 1910, the said accused and other parties unknown, all armed with bolos, did maliciously and criminally proceed to the paddy fields of Braulio Carbonel and after employing violence upon the watchman, Prudencia Carpio, and tying up his arms did seize with intent of gain some 10 uyones of Ilocano paddy, worth about P100.

"The deed was committed in the municipality of Cuyapo, Province of Nueva Ecija, P. I., in violation of law."

Immediately after the prosecuting attorney had closed the presentation of his proof, the attorney for the defendants Timoteo Romero and Esteban Caramat, presented a motion in the lower court asking that the cause of action against them be dismissed and that they be discharged from the custody of the law, for the reason that the proof presented by the prosecuting attorney was insufficient to show that they were guilty of the crime charged. (See record. page 81.)

After a consideration of this motion by the Honorable George N. Hurd, the same was granted with reference to the defendant Esteban Caramat and denied as to the defendant Timoteo Romero. The lower court found that the evidence was insufficient to support the charges against the defendant Esteban Caramat and dismissed 'the complaint against him and discharged him from the custody of the law. The trial of the cause then proceeded against the other defendants.

At the close of the trial the Honorable George N. Hurd, judge, found that the evidence showed, beyond a reasonable doubt, that the defendants, Timoteo Romero, Anastacio Balut, and Mariano Antonio, were guilty of the crime charged in the complaint and sentenced them to be imprisoned for a period of six years ten months and one day of presidio mayor, and to jointly and severally indemnify the said Braulio Carbonel in the sum of P50 and to pay the costs.

The lower, court found that there existed in the commission of the crime the aggravating circumstance of nocturnity.

From that sentence the defendant Timoteo Romero appealed and made several assignments of error, in this court, as follows:

"1. In overruling the motion for dismissal with respect to the defendant Timoteo Romero for lack of evidence.

"2. In finding the appellant guilty of the crime of robo en cuadrilla as a principal and direct participant.

"3. In finding that the crime charged was committed with the circumstances qualifying criminal responsibility of cuadrilla and nocturnity, with sentence to the penalty of six years ten months and one day of arresto mayor, and the accessories specified in the judgment appealed from."

With reference to the first assignment of error, to wit, that the lower court committed an error in refusing to dismiss the complaint against the defendant at the close of the testimony of the prosecution, it may be said that it was not an error for the lower court to refuse to deny said motion. The lower court evidently believed and was convinced, at the time of the presentation of said motion, that a prima facie case had been presented, sufficient at least to show that the defendant and appellant was guilty of the crime charged. The lower court, in view of the evidence admitted, had a right to deny said motion. In the case of *United States vs. Abaroa* (3 Phil. Rep., 116), this court expressed its disapproval of the practice of dismissing a criminal case on motion of the attorney for the accused, when the fiscal announced that he had no more testimony to offer. The court said that this practice should not be allowed, for the following reasons:

- (1) If this court should not agree with the conclusion reached by the court below, it would be authorized to reverse the judgment (sentence) and enter judgment (sentence) convicting the accused upon the facts proved by the prosecution, thus depriving the accused of making a defense below, if he had a defense; and
- (2) If this court, on disapproval of the judgment of the court below, should order a new trial, the result would be that the prosecution would be obliged to place the defendant on trial twice, when all the evidence could have been obtained in one trial, and the defendant would have the benefit of delay and the possible death or disappearance of witnesses for the prosecution.

The court announced the doctrine, in that case that the better practice is to require the defendant to make his defense, if he desires to offer evidence in his own behalf, and not to dismiss the case on motion, until both parties have presented their evidence.

It will be remembered, however, at the time of the decision of *U. S. vs. Abaroa* (supra) (December 29, 1903), that the prosecuting attorney, in case he did not agree with the conclusions of the lower court, had a right to appeal to the Supreme Court from the decision of the lower court. It having been decided in the case of *U.S. vs. Kepner* (1 Phil. Rep., 397; 195 U. S., 100; 11 Phil. Rep., 669), that the prosecuting attorney can not appeal from a decision of the lower court when that decision is based upon the merits of the case, there seems now to be no reason for putting the defendant to the necessity of presenting his proof, if, at the time of the close of the proof of the prosecution, there is not sufficient evidence to convince the lower court that the defendant is guilty, beyond a reasonable doubt, of the crime charged in the complaint. Whether or not the evidence presented by the prosecuting attorney, at the time he rests his cause, is sufficient to convince the court that the defendant is guilty, beyond a reasonable doubt, of the crime charged, rests entirely within the sound discretion and judgment of the lower court. Whether he committed an error in denying the motion to dismiss, for insufficiency of proof, can only be determined upon appeal, and then not because he committed an error, as such, but because the evidence adduced during the trial of the cause was not sufficient to show that the defendant was guilty of the crime charged.

Notwithstanding the decision of this court in the case of *U. S. vs. Abaroa* (supra), we see no reason now, after the doctrine announced in the *Kepner* case, for denying the right of the lower court to dismiss a case at the close of the presentation of the testimony by the prosecuting attorney, if at that time there is not sufficient evidence to make out a prima facie case against the defendant. If, however, the lower court, at that time, in the course of the trial, refuses to dismiss the defendant, his dismissal can not be made the basis of an appeal for the purpose of reversing the sentence of the lower court.

With reference to the second assignment of error, to wit: That the lower court committed an error in finding the defendant guilty of the crime of robo en cuadrilla, it will be noted that two of the original defendants, Apolonio de la Cruz and Felix Camacho, testified as witnesses for the prosecution. They each testified that on or about the 28th of December, 1910, in the nighttime, eight or ten persons, each, of them with a carretón, armed with bolos, went to the field of Braulio Carbonel, where the latter had a quantity of rice under the charge and care of one Prudencio Carpio, and after manacling the latter and blindfolding him, took and carried away a quantity of said rice, and later on, the same night, deposited the same in the granary of Timoteo Romero.

It will be noted also that during the trial of the cause, Timoteo Romero testified in his own behalf. He admitted the rice found in his granary soon after the 28th of December, 1910, was the rice of Braulio Carbonel. He testified, however, that at about midnight on a certain night in December, 1910, his cousin, Anastacio Balut, brought the rice to his house while he was sleeping and awoke him and asked permission to place the rice in his granary. This fact is denied in part by Anastacio Balut. Anastacio Balut admits that he brought a part of the rice to the house of Timoteo Romero at about midnight of one of the nights of December, 1910. He testified, however, that the rice did not belong to him, but belonged to one of the other defendants. He, Anastacio Balut, admits that he, together with eight or ten other persons, with carretones, armed with bolos, went to a certain place at nighttime and secured a quantity of rice, and took the same to the house of the defendant, Timoteo Romero. It will also be remembered that Anastacio Balut is one of the defendants; that he was sentenced by the lower court to be imprisoned for a period of six years ten months and one day of presidio mayor and that he did not appeal. We have then the positive declaration of two witnesses who had been originally charged, jointly with the present defendants, that in the nighttime on or about the 28th of December, 1910, they, together with Timoteo Romero and seven or eight other persons, went to the fields of Braulio Carbonel, and there by force and violence, being armed with bolos, took and carried away a quantity of rice and deposited the same in the granary of the said Timoteo Romero.

For the defense another one of the defendants admitted that he, together with seven or eight others, armed with bolos, went to a certain place, with carretones, and obtained a quantity of rice and deposited the same in the granary of Timoteo Romero. Timoteo Romero testified that the latter witness, Anastacio Balut, was his cousin, and that he, Anastacio Balut, brought a quantity of rice to his house and asked permission to deposit the same in his granary, which permission was granted. It thus appears that the declaration of Timoteo Romero, to the effect that his cousin, Anastacio Balut, brought the rice in question to his house and secured permission to deposit the same in his granary, is absolutely false. Anastacio Balut swore positively that the rice did not belong to him and denied also that he had obtained permission from Timoteo Romero to deposit the same in the latter's granary.

In view of these contradictory statements of Timoteo Romero and Anastacio Balut, we are driven to the conclusion that the declarations of Apolonio de la Cruz and Felix Camacho were in accordance with the facts and that the declarations of these two witnesses show beyond a reasonable doubt, that the defendant, Timoteo Romero, took a direct part in the commission of the robbery described in the complaint presented in the present cause, if he were not even the leader of said band of robbers.

With reference to the third assignment of error, to wit: that the lower court committed an error in qualifying the crime as that of robo en cuadrilla, with the aggravating circumstance of nocturnity, we are of the opinion, after a careful examination of the evidence, that the crime was properly qualified as that of robo en cuadrilla. The evidence shows that it was committed at nighttime, in an uninhabited place. It will be remembered that Prudencio Carpio, the person in charge of the rice stolen and who was manacled and blindfolded at that time, testified that he cried out for help; that there were no persons living near the place where he was guarding the rice; that some fishermen who happened to be in the vicinity soon after the robbers left the place, heard his cries and came to his assistance and unmanacled him. We think that the proof clearly shows that the place where the crime was

committed was an uninhabited place.

The Attorney-General, the Honorable Ignacio Villamor, after a careful analysis of the evidence, makes the recommendation that the defendant and appellant should be sentenced to be imprisoned in the maximum degree of that provided for by paragraph 5 of article 503 in connection with articles 504 and 505 of the Penal Code. With this recommendation we fully agree. A man who organizes a band for the purpose of robbing his neighbors of the just fruits of their labors, should receive but little mercy at the hands of the courts. Therefore, the sentence of the lower court is hereby reversed, and it is hereby ordered that the defendant and appellant, Timoteo Romero, be sentenced to be imprisoned for a period of nine years of presidio mayor, with the accessory penalties of the law, to indemnify the said Braulio Carbonel in the sum of P70, the value of the rice stolen and. not recovered, and to pay the costs. So ordered.

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

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