

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JUAN MAQUI, DEFENDANT AND APPELLANT.

G.R. No. 8931. March 14, 1914

Ponente: CARSON, J.

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CARSON, J.:

The appellant in this case was convicted in the court below of the theft of a caraballa and her calf, and sentenced to imprisonment for a period of five years, to suffer the accessory penalties prescribed by law, and to pay his share of the costs of the proceedings.

Counsel for the accused contends that the trial court erred in giving probative value to the testimony of one Dagsa, the principal witness for the prosecution; in accepting proof as to certain extrajudicial admissions alleged to have been made by the accused, including an offer to compromise the case by the payment of a sum of money; and in declining to accept as true the testimony of the accused in his own behalf at the trial. We find nothing in the record, however, which would justify us in disturbing the findings of the trial judge as to the degree of credit which should be accorded the various witnesses called at the trial.

Counsel rests his contention that the evidence as to the extrajudicial statements made by the accused should have been excluded on the ground that, as counsel insists, there is no formal proof in the record that they were made voluntarily, and that they were therefore inadmissible as proof in so far as they can be construed as admission or confessions of guilt. In answer to this contention it is sufficient to say that there is no suggestion in the record in the court below that these extrajudicial statements were not made voluntarily, and we are satisfied that if the evidence as to the circumstances under which these incriminating statements were made be accepted as true it clearly rebuts the possibility that they were made involuntarily, or extorted by force, threats, or promise of reward. The record clearly discloses that these extrajudicial statements were made in the course of offers to compromise and that they were made by the accused voluntarily, though doubtless these offers to compromise were made in the hope that if accepted he would escape prosecution.

The question as to the admissibility of offers to compromise in criminal cases has frequently been discussed in the courts of the United States, and the practice there does not appear to be wholly uniform. We think, however, that the weight both of authority and of reason sustains the rule which admits evidence of offers to compromise, but permits the accused to show that such offers were not made under a consciousness of guilt, but merely to avoid the inconvenience of imprisonment or for some other reason which would justify a claim by the accused that the offer to compromise was not in truth an admission of his guilt and an attempt to avoid the legal consequences which would ordinarily ensue therefrom.

Satisfaction to the owner of the goods stolen is admissible, as evidence against the accused, but if made merely to avoid the inconvenience of imprisonment, and not under a consciousness of guilt, it is not evidence. (U. S. vs. Hunter, 1 Cranch, C. C, 317.)

In a prosecution for seduction, evidence that the accused had sought an adjustment with the prosecutrix is

inadmissible, if such offer of adjustment did not contain an admission of guilt. (*Wilson vs. State*, 73 Ala., 527.)

On a prosecution for assault with intent to commit rape upon a married woman, evidence is admissible on behalf of the prosecution to show that the defendant sent a third person to the father of the prosecutrix to ascertain if the case could be compromised. (*Barr vs. People*, 113 Ill., 471.)

In a larceny case, evidence is not admissible to show that defendant stated that he would pay \$50 if it could be settled, in reply to threats by the owner of the goods stolen that he would be prosecuted for damages, and a solicitation to settle. (*Frain vs. State*, 40 Ga., 530.)

In a prosecution for larceny, evidence is not admissible that defendant paid a sum of money in settlement of a civil action brought to recover the property alleged to have been stolen. (*State vs. Emerson*, 48 Iowa, 172.)

An offer of compromise, voluntarily made by the accused, without threat or promise, and the reply thereto, are admissible in evidence upon his trial for a crime. (*State vs. Bruce*, 33 La. Ann., 186.)

An offer of compromise of a crime, unaccepted by the prosecutor, may be proven by the state as an admission of guilt, or as disclosing possession of the property which is the subject of the burglary and larceny charged in the indictment (*State vs. Rodrigues*, 45 La. Ann., 1040; 13 Southern, 802.)

It may be shown that the prisoner sent a message to the prosecutor, proposing to take a whipping and to be let go. (*State vs. DeBerry*, 92 N. C., 800.)

We are satisfied beyond a reasonable doubt as to the guilt of the accused, but we are of opinion that in imposing the penalty the trial court should have taken into consideration as a mitigating circumstance the manifest lack of "instruction and education" of the offender. It does not clearly appear whether he is or is not an uncivilized Igorot, although there are indications in the record which tend to show that he is. But in any event, it is very clear that if he is not a member of an uncivilized tribe of Igorots, he is a densely ignorant and untutored fellow, who lived in the Igorot country, and is not much, if any, higher than are they in the scale of civilization. The beneficent provisions of article 11 of the Penal Code as amended by Act No. 2142 of the Philippine Legislature are peculiarly applicable to offenders who are shown to be members of these uncivilized tribes, and to other offenders who, as a result of the fact that their lives are cast with such people far away from the centers of civilization, appear to be so lacking in "instruction and education" that they should not be held to so high a degree of responsibility as is demanded of those citizens who have had the advantage of living their lives in contact with the refining influences of civilization.

It is true that this court has quite uniformly held that convicts of the crimes of theft and robbery are not entitled to the benefits of the provisions of article 11 of the Penal Code prior to its amendment by Act No. 2142, this on the theory that under the provisions of the article prior to its amendment the ground upon which the courts were authorized in their discretion to mitigate the penalties prescribed by the code was "the circumstance of the offender being a native, mestizo, or Chinese." As to crimes of this nature we declined to hold that the mere fact that one is a native of the Philippine Islands, a mestizo or a Chinese would justify a claim that upon conviction of crimes such as theft or robbery he should be treated more leniently than the members of any other race or people, no sound presumption arising from the mere racial affiliation of the convict that he was less able to appreciate the criminal character of such offenses or to resist the temptation to commit them than are they.

Under the provisions of the article as amended by Act No. 2142, the ground upon which the courts are authorized to mitigate the prescribed penalties is not the racial affiliation of the convict, but "the degree of instruction and education of the offender;" and while mere ignorance or lack of education will not always be sufficient to justify the mitigation of the prescribed penalties for crimes such as theft and robbery, there can be no doubt that cases

may and will arise wherein under all the "circumstances attending" the commission of these offenses the exercise of a sound discretion will justify a more lenient treatment of an ignorant and semicivilized offender, than that which should be accorded one who has had the advantage of such a degree of instruction and education as would justify the court in believing that he was capable of fully and properly understanding and appreciating the criminal character of the offense committed by him.

We conclude, therefore, that under the provisions of article 11 as amended by Act No. 2142, the courts may and should, even in cases of theft and robbery, take into consideration the lack of instruction and education of the offender where it appears that under all the circumstances attending the commission of the offense, he should not be held to the strict degree of responsibility prescribed in the code for the ordinary offender.

The larceny was of large cattle and falls within articles 517, 518, and 520 of the Penal Code, as amended by Act No. 2030. According to those sections, as amended, the value of the animals stolen being 650 pesetas, a penalty one degree higher than *arresto mayor* in its medium degree to *presidio correccional* in its minimum degree should have been imposed; in other words, *presidio correccional* in its medium degree to *presidio mayor* in its minimum degree. Giving the convict the benefit of the provisions of article 11 of the Penal Code, as amended, this penalty should be imposed in its minimum degree—that is to say, the penalty applicable in this case is that of *presidio correccional* in its medium degree.

Modified by imposing the penalty prescribed for the offense of which the defendant and appellant was convicted in the minimum degree—that is to say, by imposing upon the accused the penalty of two years four months and one day of *presidio correccional*, in lieu of that of five years' imprisonment imposed by the court below—the judgment convicting and sentencing him should be and is hereby affirmed, with the costs of this instance against the appellant.

Arellano, C. J., Moreland, Trent, and Araullo, JJ., concur.

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