

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. RUFINO SANCHEZ, DEFENDANT AND APPELLANT.

G.R. No. 9102. November 05, 1913

Ponente: TRENT, J.

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TRENT, J.:

In this case the appellant, Rufino Sanchez, was sentenced to six years and one day of presidio mayor, to indemnify the injured person in the sum of P150, to the corresponding subsidiary imprisonment in case of insolvency and to the payment of the costs of the cause, for the crime of robbery as defined and penalized in article 508 of the Penal Code.

The first assignment of error raises the question of the sufficiency of the evidence upon which the guilt of the appellant is based. We have carefully examined the record and accept the facts found by the trial court which, so far as this appeal is concerned, are the following:

A Chinaman named Tan Cung Chang, conniving with Rufino Sanchez and Victoriano Normandia, two members of the police force of the municipality of Cebu, sold to a Chinaman named Lua Yap a quantity of what was represented to the latter to be opium but which proved to be only molasses. Immediately upon perfecting the sale and receiving the price agreed upon, P150, Tan reported to his confederates who thereupon proceeded to the railroad station where Lua was awaiting a train on which to leave the city and arrested him for having opium in his possession. They threatened to take him before the proper authorities and have him prosecuted for a violation of the Opium Law and sent to Bilibid prison for a long term of years unless he paid them P500. On account of these threats Lua agreed to pay them P150 to let him go, which the two policemen accepted, and after taking possession of the alleged opium turned him loose. Sometime afterward Lua discovered that what he had purchased and had been deprived of by the two policemen was not opium at all, and the present case is a consequence of his complaint to the authorities. The complaint against Normandia was dismissed and he was used as a witness for the prosecution.

By his second assignment of error the appellant endeavors to show that the crime established by the above facts is not robbery, but bribery. In *United States vs. Gimenea* (24 Phil. Rep., 464), this court said: "Viada, vol. 2, p. 642, in discussing article 381, says that to constitute the crime of bribery as provided in this article, four things are necessary: (1) That the defendant be a public officer according to the meaning of this term in article 401; (2) that he has received either personally or through another gifts or presents or accepted offers or promises; (3) that such reception of gifts or presents or acceptance of offers or promises has been for the purpose of executing a crime; and (4) that the act constituting the crime relates to the exercise of the office which the public officer discharges."

The money was not delivered to the two policemen for the purpose of executing a crime. Had Lua been allowed to retain possession of the molasses no law would have been violated, nor would the two policemen have been guilty of a noncompliance with their official duties. Several reasons are advanced as to why the acts of the policemen did not constitute robbery all based upon the misconception of the injured person as to the nature of the substance

which he had purchased as opium. It is quite true that had the latter been aware of the true state of affairs he would not have permitted the appellant and his companion to force him to pay them the P150. But the guilt of the appellant is not contingent upon the conception or misconception of Lua as to the true state of affairs.

In the case of *United States vs. Flores* (19 Phil. Rep., 178), the court laid down the following doctrine: "A policeman who, knowing that a person has committed no crime for which he could be lawfully arrested and tried, nevertheless arrests such person, falsely accusing him of a crime, and then by means of threats of presentation and imprisonment, thus playing upon his ignorance and fear, obtains money from the said person, secures such money by force and intimidation and commits the crime of robbery as defined by the Penal Code."

In the case of *United States vs. Navarro* (18 Phil. Rep., 357), which is practically identical with the case at bar with the exception that the threats and intimidation employed were more serious than those used by the appellant and his companion, it was held that the following facts constituted the crime of robbery: Several persons entered the store of a Chinaman, one of whom pretended to be an internal revenue agent and exhibited a badge. The intruders commenced a search of the store and after a little while pretended to find a small quantity of opium in one of the boxes. The owner of the store was thereupon threatened with arrest, and at the point of revolvers he was ordered to accompany the party to the municipality. At this moment the pretended internal-revenue agent interfered and offered to release the storekeeper if he would pay him P500. The sum of P260 was finally extorted from the Chinaman.

The decision of the supreme court of Spain of June 24, 1875, from which a quotation appears in *United States vs. Flores*, cannot be distinguished in principle from the case at bar. It appears that a stranger represented to some villagers that he was a representative of a gang of robbers who had their rendezvous in the mountains and demanded money from them under threats of a visitation from the robbers. His demands were acceded to, and it was held that he was guilty of robbery. In that case the villagers were not aware of the true character of the defendant or they would not have paid tribute to him.

The decision of the supreme court of Spain of November 3, 1879, relied upon by counsel for the appellant, is not in point here, for the reason that the person who paid the hush money to the officer of the law in that case was guilty of defrauding the revenues.

We are, therefore, of the opinion that the appellant is guilty of the crime of robbery as defined and penalized in paragraph 5 of article 503, in relation with article 502 of the Penal Code, with the aggravating circumstance No. 11 of article 10 of the same Code, and without any extenuating circumstances. He is therefore sentenced to six years ten months and one day of presidio mayor, to indemnify the offended party in the sum of P150, to the accessory penalties provided by law, and to the payment of the costs of the cause.

Arellano, C. J., Torres, Johnson, Carson, and Moreland, JJ., concur.

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