2 Phil. 536

[G.R. No. 1351. September 25, 1903]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. FRANCISCO DECUSIN ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

MCDONOUGH, J.:

The defendants were convicted under the provisions of Act No. 518 of the Philippine Commission, passed November 12, 1902, of having on the 3d day of January, 1903, assaulted the house of one Anacleto Salvatera in San Fernando de la Union, and, by means of force and violence, of having robbed the house of said Salvatera, and of having taken from him by force, threats, and intimidation the sum of 800 pesos and a quantity of jewelry. This robbery took place between 8 and 9 o'clock at night.

All of the defendants except two were armed with bolos, and one of the latter had a club.

A question relating to the identity of the defendants arose at the trial in the court below, all of them attempting to prove an *alibi* by witnesses who testified that the defendants were elsewhere on that night. The proof, however, of the identity of defendants and that they were the persons who committed the robbery was sufficient, and the attempt to show that on the evening in question, when the crime was committed, they or several of them were attending a wedding at a house about half a mile away from that of Salvatera is not at all satisfactory.

As the wedding party started for the office of the justice of the peace about 5 o'clock p. m., for the purpose of having the marriage performed, and did not get back to their house until about 9 o'clock p. m., and as the festivities of the occasion did not cease until about 12 o'clock at night, the defendants might well have attended the wedding party before or after this crime and yet have committed the robbery in question.

On conviction the Court of First Instance sentenced the defendants Francisco Decusin and Vicente Decusin to imprisonment for a term of twenty-two years, and the other three defendants to imprisonment for a term of twenty years each.

The crime with which the defendants were charged and of which they were convicted is an aggravated robbery by a band of highwaymen or brigands.

The Penal Code, article 502, provides that 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 upon some inanimate thing, are guilty of the crime of robbery.

Under this article the crime of robbery may be committed by a single person or by several acting in concert, their purpose and intent being simply the commission of this crime; and in the absence of violence done to the person, the highest penalty that can be imposed is imprisonment for a term of ten years.

Evidently this article did not suffice to meet conditions and provide adequately for robberies or thefts committed by roving bands of highway robbers or brigands, and therefore the Commission enacted a law for the punishment of such bands, making the penalty more severe for the aggravation of forming or joining such band.

Section 1 of this act (No. 518) provides that “whenever three or more persons, conspiring together, shall form a band of robbers for the purpose of stealing carabaos or other personal property, by means of force and violence, and shall go out upon the highway, or roam over the country armed with deadly weapons for this purpose, they shall be deemed highway robbers or brigands, and every person engaged in the organization of the band or joining it thereafter, shall, upon conviction thereof, be punished by death or imprisonment for not less than twenty years, in the discretion of the court.”

Section 2 provides that “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, but it shall be sufficient to justify conviction thereunder if from the circumstances it can be inferred beyond reasonable doubt that the accused was a member of such an armed band as that described in said section.” It will be seen at a glance that the main object in enacting this law 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.

In the case before us the charge is made that the robbery was committed by the defendants as members of such a band; but we do not find in the record a particle of proof to show that the defendants, formed a conspiracy for the purpose of stealing personal property by means of force and violence, and that they went upon the highway or that they roamed over the country armed with deadly weapons for that purpose.

May we presume or infer from the mere fact of the commission of a robbery, by three or more men acting together, that therefore they must necessarily belong to a band of brigands, or must the prosecution prove by competent evidence every allegation which had to be averred in order to properly charge the offense?

The rule of law seems to be well settled that there is necessarily imposed upon the Government the burden of showing affirmatively the existence of every material fact or ingredient which the law requires in order to constitute the offense. (Commonwealth *vs.* McKie, 1 Gray [Mass.], 61.)

The element of conspiracy enters into the crime here as well as the purpose of the conspirators.

In a prosecution for a crime to be proved by conspiracy, general evidence of the conspiracy may in the first instance be received as a preliminary to the proof that the defendants were guilty of participation in the conspiracy. The evidence in proof of conspiracy will generally, from the nature of the case, be circumstantial.

Though the common design is the essence of the charge, it is not necessary that the defendants come together and actually agree in terms to have that design and to pursue it by common means.

If it be proved that the defendants pursued by their acts the same object, often by the same means, one performing one part and another another part, so as to complete it with a view to that same object, the conclusion may be inferred that they engaged in a conspiracy to effect that object. (Greenleaf on Ev., sees. 92-95;[1] Kelley *vs.* People, 55 K Y., 565.)

From the fact that the defendants committed the robbery in question, it may reasonably and lawfully be inferred that they conspired and combined for the very purpose of robbing the house of Salvatera; but may it, in addition, be inferred from this fact that, beyond a reasonable doubt, they also conspired to form a band of brigands for the purpose of going out upon the highway or roving over the country with a view of stealing carabaos or other personal property?

The proof in the case does not warrant such inference or conclusion.

In the case of Black (1 Tex. App., 391) the rule relating to the scope and weight of circumstantial evidence is stated thus:

> "It is not sufficient in case of circumstantial evidence that the circumstances proved coincide with, account for, and, therefore, render probable the hypothesis sought to be, established by the prosecution; but they must *exclude to a moral certainty every other hypothesis* but the single one of guilt, or the jury must find the defendant not guilty. And each fact in a chain of facts from which the main fact in issue is to be inferred must be proved by competent evidence and by the same weight and force of evidence as if each one were the main fact in issue, and all the facts proved must be consistent with each other and with the main fact sought to be proved."

The charge here is "robbery in a gang by brigandage," but no proof whatever, direct or indirect, has been adduced to show the character of the band, the nature and scope of the conspiracy, whether or not as a band they were ever on a highway or roamed about the country with the intent mentioned in the statute.

In the present case may we not reasonably say that the hypothesis indulged in by the prosecution, that because of the commission of this robbery the defendants must have been a band of highway robbers, does not exclude to a moral certainty the other hypothesis which arises from the fact of the crime, and from the fact that the criminals were all neighbors of the party robbed a^nd doubtless knew that lie had in his house a large sum of money, and the conclusion that they therefore conspired to commit this single robbery and no other?

In the case of the United States *vs.* Saturnino de la Cruz et al., recently decided by this court, a judgment of conviction, under Act No. 518, was reversed for lack of proof that the

defendants were bandits. Mr. Justice Wiflard wrote the opinion of the court, in which he stated:

> "The Solicitor-General asks that the judgment in this case be reversed and that the defendant be acquitted of brigandage. We concur in the following statement taken from his brief:
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> " 'With respect to the crime of brigandage, the evidence for the prosecution ought to have shown in such manner as to leave no room for doubt that there existed a band of ladrones *such as is described in* Act No. 5.18; that the *aim and purpose* of this band were *no other* than to commit robbery by means of force and violence, and that the accused had joined the band as members of the same.
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> " 'There is evidence to show the existence of an armed band commanded by Saturnino de la Cruz, and that his codef endants .were members thereof, *but there is absolutely nothing tending to show the aim mid purpose of the band.*"[1]

This opinion conforms to the views expressed in decisions of courts and in text-books, to the effect that in a trial for criminal conspiracy the object or intent of the conspiracy must be proved as alleged in the indictment; that, in fact, every material averment must be proved. (Commonwealth *vs.* Webster, 5 Cush. [Mass.], 295; Commonwealth *vs.* Manley, 12 Pick. [Mass.], 173.)

In statutory robbery the terms of the statute must be duly followed. And where it is aggravated, as by being in a highway or by defendants being armed with dangerous weapons or the like, such added facts must be proved [averred]. (2 Bish. New Cr. Proc., sec. 1002.)

It follows that the conviction of the defendants, under Act No. 518, can not be sustained. The complaint, however, in this case, charging the defendants with robbery, and the proofs are ample to permit a conviction under article 502 of the Penal Code.

The judgment is reversed and the defendants are convicted of the crime of robbery with violence or intimidation, and are sentenced to the penalty of ten years of *presidio mayor*, to return to Anacleto Salvatera the money and property taken, or its value, which is fixed at $1,021, Mexican currency, and to pay the costs of both instances.

Arellano, C. J., Cooper and *Mapa, JJ.,* concur.

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[1]Page 431, *supra.*

DISSENTING

WILLARD, J., with whom concurs **TORRES, J.:**

In the band that attacked the house of Salvatera there were at least three persons armed with deadly weapons. By means of force and violence they robbed the house of upward of 800 pesos in cash and jewels to the value of 200 pesos. In committing the robbery they acted in unison, four entering the house and one remaining outside as watch. That they acted pursuant to an agreement previously formed to rob the house is self-evident. Whenever a band of armed men attacks a house as the defendants did, there must necessarily have existed a previous arrangement or conspiracy to carry the attack and robbery into effect.

But the majority of the court say that the evidence in two respects was insufficient to convict the defendants of the crime of brigandage. (1) The defendants did not live in Salvatera's house. There is no positive evidence as to how they reached it, and it is therefore said that there is no proof that the band went out on the highway to commit this robbery. But no one reading the evidence can have any doubt at all that they approached the house by the street. I can not agree to acquit the defendants of this crime on the ground that they casually happened to be in the yard together by no preconcerted arrangement, and then for the first time formed the plan of robbing the house, or that they all lived in such relation to the house that they could have reached it without going into any street. What no one can have any doubt of is that, having agreed to commit the robbery, they went in the night to the house by the public streets,

(2) It is also said by the court that there was no proof in this case of the purposes of the organization, and that therefore there can be no conviction under Act No. 518. What is necessary for a conviction under that article is stated in the case of the United States *vs.* Saturnino de la Cruz (1 Off. Gaz., p 664),[1] cited in the majority opinion. It seems to be the

view of the majority that the particulars therein mentioned must be proven by the evidence of witnesses who were present at the organization of the band, who can testify as to its purposes, and that the proof of the actual commission of the robbery is not sufficient. I can not agree with this view. On the contrary, I know of no better wray of proving what a band was organized for than by proving what it has done. When men are charged with conspiring for the purpose of overthrowing a government by force, I know of no better way of proving the conspiracy than by showing that these men were captured with arms in their hands, fighting against the forces of that government. When it has been proven that armed men entered a town and by force and violence carried from the houses therein personal property of others, it has been by those very facts plainly proven that they met on that day and, before they entered the town, agreed to the commission of the robbery. The evidence that they committed the act in this way proves that they organized the band on that day, at least, for the purpose of committing robbery.

The reasoning of the court leads necessarily to the conclusion that a band such as is described in article 1 can not be convicted if it is organized only for the purpose of committing one robbery. There is nothing in the section to show that it was to be so limited. The result of such a holding would be to practically nullify the law. For a band of robbers might be apprehended in the very act of sacking a town, and yet they could not be convicted of a violation of this law unless evidence were produced that they had sacked some other town, or, unless some one were found who could testify as to what the purposes of the band were when it was organized; and even his evidence would not suffice unless there was proof that they intended to do more than commit this one robbery.

The law is divided into two parts. (1) When an act of robbery can be proved, that is sufficient for conviction. (2) But even if it can not be proved that an act of robbery has been committed by the defendant, he, nevertheless, can be convicted under section 2 of the act if the evidence which we have just referred to can be produced, namely, evidence of witnesses who know that the band to which the defendant belonged was organized for the purpose of committing robbery.

The case of Baturnino de la Cruz supra illustrates this difference. There the defendant and his followers entered the house where the complaining witness was and took him from it by force to another building, in which they compelled him to sign his name in a book of the Katipunan Society. They then released him. The determining point in that case lay in the fact that the defendants took nothing whatever from the house where the witness was. No act of robbery was committed by them. We held, therefore, that there could be no conviction

under Act No. 518, unless there was some evidence that the band was organized for the purpose of robbery. Had there been such evidence the defendant could have been convicted. And such evidence would have been furnished had it been proved that the defendants robbed the house in question instead of making the witness sign his name in the Katipunan book. The acts of the defendants showed the purpose of the organization to be political, just as the acts of the defendants in this case show the purpose of the organization to have been robbery.

Act No. 518 has created no new crime. Its purpose was to make, and it has made, two changes in the existing law: (1) The crime of robbery in a band was recognized by the Penal Code and the maximum punishment in a case of this kind where no serious injury to the person results was ten years. This, by section 1, has been raised to a minimum of twenty years. (2) By section 2 one can now be convicted of robbery in a band by proof that he belonged to a band organized for such purpose, without any proof that any robbery has been committed. This could not be done under the Penal Code.

I think that the judgment should be affirmed.

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[1] Page 431, supra.

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