

4 Phil. 549

[G.R. No. 2208. May 05, 1905]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. GERMAN RAMIREZ,
DEFENDANT AND APPELLANT.**

D E C I S I O N

WILLARD, J.:

The complaint charges the defendant with the robbery of twenty head of cattle, the property of Teodorica Endencia.

That the defendant at the time in question, to wit, November, 1900, in the Island of Mindoro, took twenty head of cattle from the corral of the above-mentioned owner, is admitted by him. The only question is whether that taking was with violence or intimidation.

Sixto Embate was the only eyewitness who testified for the Government. In his first declaration he said that the defendant and a large number of other persons came to the corral during the forenoon of one of the first days of October, 1900; that among them was one Ramon Perez, who appeared to be the purchaser of the stock; that some time was spent in selecting stock, and during the first day fifteen head of cattle were picked out, tied to trees in the corral and left there until the next day; on the next day the people returned, selected five more and the twenty were taken by them out of the corral to a distance of about 600 yards, where they were kept some time. He testifies that the defendant and the people with him were armed with guns, machetes, and arrows, and that they intimidated him and compelled him to assist them with the work. He testifies also that about two o'clock of the first day he went to the pueblo and notified Eulalio Elumir of the occurrence. The owner of the property was in Manila at this time and

had left Eulalio Elumir in charge of it. Elumir, however, took no action until the next day, when he went to the corral, did not find the cattle there, and discovered them at the spot where they had been placed about 600 yards from the corral. Elumir says that he asked the people in charge of them what they were doing with them and that they threatened to kill him if he interfered. This is all the testimony there is in the case relating to the subject of violence or intimidation.

These two witnesses gave their testimony as above stated on the 7th of October, 1903. The case was continued from time to time and upon the 29th day of March, 1904, Sixto Embate was presented a second time as a witness for the defendant. He then stated that his first testimony in regard to the use of violence and intimidation when the cattle were taken away, was false; that no violence or intimidation was in fact used, and that he voluntarily assisted in the delivery of the stock. He stated that he had been instructed by the lawyer for the private prosecutor, the owner of the property, to testify as he did when he first appeared as a witness.

On the same day Eulalio Elumir was again presented as a witness for the defendant and stated that his testimony given in the first part of the trial was false; that no violence or intimidation was used, and that he had been instructed to testify as he did by the lawyer for the private prosecutor. It is shown that after this second appearance of these witnesses the judge committed them to jail for perjury. On the 30th of March the fiscal stated in court that he had a conversation with these witnesses while they were in confinement, and that they wished to testify a third time. Thereupon they were produced in court and declared that the statements made by them when they appeared the second time were false and that the statements made by them on their first appearance were true. After they had thus testified and on the same day, the judge made an order liberating them from confinement,

Even if there were no other evidence in the case in favor of the defendant, we would not convict him upon the testimony of these two witnesses. It would be impossible to know when they told the truth.

There is, however, other evidence which satisfies us that their testimony given upon their second appearance was a true statement of what occurred.

Eight witnesses who were present at the time testified that no force, violence, or intimidation was used. It appears, moreover, that when the defendant and Ramon Perez went to the corral upon the first day in question they were accompanied by nearly all the officials of the pueblo within which the corral was situated. There were present at the time of the taking: Mateo Malocon, president of the pueblo; Cornelio Patricio, *delegado de justicia*; Nazario Nagar, *delegado de rentas*, and Pioquinto Dimailig, a clerk in the office of the president. And according to all the witnesses of the defendant and one witness of the Government, Mamerto Cabrera, *administrador de la hacienda*, was also present. Mindoro was at the time in question under the control of the revolutionists, and these men were all officials of that government.

If the defendant is guilty of this robbery, then all these officials are equally guilty, as well as the other people who accompanied the defendant. It is difficult to believe that practically all the officers of the Government would, in the daytime, publicly, assist in taking away these cattle unless they did it under some claim of right. We hold that the evidence is insufficient to show the commission of any robbery.

The claim of the defendant is that he bought the property from Mamerto Cabrera, who was authorized by the owner to sell it; that he made a contract with Cabrera in the office of the municipal president for the purchase of the cattle, which contract was reduced to writing by one of the witnesses who testified at the trial and was signed by Cabrera and the defendant. Pioquinto, the man who wrote it, testified that he saw Mamerto Cabrera sign it Joaquin Padino testified that he signed the document as *delegado de justicia' interino* and that he saw Mamerto sign it. Several other eyewitnesses present testified to the same thing. This document was introduced in evidence. Witnesses for the defendant also testified that another document was signed at the corral evidencing the transfer of the property from

Mamerto Cabrera to the defendant. This document was also introduced in evidence. It purports to be signed by the local president Mateo Malocon by the *administrador de la hacienda*, Mamerto Cabrera, and by the *delegado de rentas*, Nazario Nagar. Nazario Nagar was a witness at the trial, for the Government, and testified that he was present the time the cattle were taken away. His attention was not called to his signature upon this document and no attempt was made by the prosecution to show that he did not sign it. The president, Mateo Malocon, was a witness for the Government. He does not know how to read or write. His testimony as to whether the document was signed by him at that time, as was testified by some of the witnesses for the defendant, is rather evasive.

Upon this branch of the case the contention of the Government is that Mamerto Cabrera was not in the Island of Mindoro at this time, but was in Batangas, and that his signature to both of these documents was forged. Two witnesses were produced by the Government who testified that they saw him in Batangas at this time, but their evidence as to dates is too vague and uncertain to warrant any conclusion to that effect. They were testifying to something that occurred four years ago and stated that they left Mindoro about the end of September. The event in question took place October 5.

A great deal of time was spent in taking testimony upon the question of these signatures. Other signatures, claimed to be the genuine signatures of Mamerto Cabrera, were produced by the Government, but there is not in the case any signature of his which is admitted by both parties to be genuine.

If we were to determine this question by the number of witnesses who testify as to the different signatures we should have to decide that the signatures to these two documents presented by the defendant were genuine and the signatures presented by the Government were forged, if, as was testified to by one expert for the Government, these various signatures were not made by the same person.

The only evidence as to the genuineness of the documents, at folios 147 and 148, produced by the Government, is that of the grandson of

Mamerto Cabrera, who testified that the signatures were his grandfather's. He did not see him make them. Two other witnesses who did not see the signature made also testified that the signature to the document on folio 147 was the genuine signature of Cabrera. As to the letters marked 1, 2, 3, and 4, at folios 192 to 196, only one witness testified, who said that they were letters which he had received from Cabrera. As to the document at folio 271, one witness testified that he saw Cabrera sign it. As to the document at folio 273, this same witness testifies that that is Cabrera's signature. On the other hand, five witnesses, including the defendant, testify that they saw Cabrera sign the contract of sale introduced in evidence by the defendant, and several witnesses testify that they saw him sign the paper evidencing the transfer made at the corral.

But whatever the fact may be as to the genuineness of these signatures, we do not think that it is at all controlling, for, as we have said above, there was no evidence in the case to show that the property was taken by force or intimidation and consequently no evidence that a robbery was committed. The owner testified that she did not know Mamerto Cabrera. The defendant, however, produced a letter proved to have been signed by her, written to Mamerto Cabrera in May of this same year 1900, which indicates that he had been acting for her in connection with her property in Mindoro during this year. Whether or not he was authorized to make any sale of the property as claimed by the defendant and whether or not any sale was actually made, are questions which should be ventilated in a civil suit.

There is no evidence in the case sufficient to support a criminal prosecution for robbery, and the judgment of the court below is reversed and the defendant acquitted with the costs of both instances *de officio*.

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