

4 Phil. 343

[ G.R. No. 1332. March 29, 1905 ]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. GERONIMO LUZON,  
DEFENDANT AND APPELLANT.**

**D E C I S I O N**

**JOHNSON, J.:**

The defendant in this case was charged with the crime of illegal detention.

The evidence shows that on or about the 22d or 23d day of November, 1900, the defendant, in company with seven other individuals, six of whom were armed, went to the house of one Celedonia Santos, in the pueblo of Marilao, in the Province of Bulacan, between 12 and 1 o'clock in the night of said day, and by force and intimidation took possession of said Celedonia Santos and her husband, Gregorio Mistica, and also one Felipe Santos, and carried them away to the sitio of Tagalog, after robbing the house of the said Celedonia Santos.

The evidence further showed that Celedonia Santos was detained by the said accused and his companions for a period of nine days.

The whereabouts of Gregorio Mistica had not been discovered up to the time of the trial of the said cause. It was alleged but not proven that he had been assassinated by the said accused and his companions. Felipe Santos escaped from the custody of the defendant and his companions on the same night on which he was sequestered by the defendant and his companions.

There is no evidence showing what property was taken by the band from the house of Celedonia Santos.

The defendant attempted to prove an *alibi*. The judge of the Court of First Instance of the Province of Bulacan, after hearing the evidence in said cause, sentenced the said defendant to be imprisoned for the period of seventeen years four months and one day of *cadena temporal* and its accessories, and to pay the costs of the trial. The court imposed this sentence under paragraph 2 of article 483 of the Penal Code.

On the 3d day of July, 1903, the attorney for the accused presented a motion before this court asking that the said defendant be included within the amnesty proclamation of the President of the United States, dated the 4th of July, 1902. After full consideration this court, in a divided opinion, denied said motion and held that the amnesty proclamation did not apply to the facts in this case.

On the 21st day of December, 1903, the attorney for the defendant presented a motion in this court asking that a new trial be granted in said cause.

On the 15th day of January, 1904, this court considered the motion for a new trial, and decided that the determination of that motion should be postponed until the consideration of the cause on its merits.

Section 42 of General Orders, No. 58, provides that at any time before the final entry of a judgment for conviction the defendant may move, either in the court in which the trial was had or upon appeal to a higher court, for a reopening of the case upon the ground of newly discovered evidence material to his defense.

The motion presented in this case does not state that the evidence which the defendant would introduce on the new trial was newly discovered, or was discovered after the trial of the said cause. Neither does the motion point out what the evidence is, nor in what manner it would go to prove or disprove any of the facts presented during the trial or in what way the new trial would change the result of the first trial. The motion for a new trial upon the ground of newly discovered evidence will not be granted unless the following conditions

exist:

1. The evidence must have been discovered since the trial.
2. It must be such that with the use of reasonable diligence on the part of the defendant it could not have been secured on the former trial.
3. It must be material and not merely collateral or cumulative or corroborative or impeaching.
4. It must be such as ought to produce a different result on the merits on another trial.
5. It must go to the merits, and not rest on merely a technical defense.

The motion for a new trial here does not show that these conditions exist. The motion is therefore denied.

The testimony relating to the charge of illegal detention in this case shows clearly that the accused, Geronimo Luzon, in company with the seven other individuals, six of whom were armed, went to the house of one Celedonia Santos on the 22d or 23d of November, 1900, between 12 and 1 o'clock at night, and did illegally take possession of the said Celedonia Santos and her husband, Gregorio Mistica, and, after robbing the house of the said Celedonia Santos, did take them away to the sitio of Tagalog, within the pueblo of Polo; that the said accused, with his companions, later took Gregorio Mistica to another sitio, and afterwards returned and said to Celedonia Santos that her husband, Gregorio Mistica, had been killed. (Folios 22, 23.)

The defendant and his companions illegally detained Celedonia Santos for a period of nine days, after which time she escaped from their possession. Celedonia Santos testified that she had not seen or heard from her husband since he was separated from her by the accused in the sitio of Tagalog, on the night of the illegal detention.

The evidence further shows that the defendant and his companions also on the same night took and illegally detained one Felipe Santos, but that he escaped from their possession on the same night.

The only defense offered by the defendant was that on the 22d or 23d of the month of November, 1900, he was in the barrio of Prinsa, in the house of one Vicente, sick, and that he had been in said barrio from

the month of October.

The judge who tried the said defendant found the evidence showed that the defendant was guilty of the crime of illegal detention, defined and punished in paragraph 2 of article 483 of the Penal Code, and sentenced the said defendant, Geronimo Luzon, to be imprisoned for a period of seventeen years four months and one day of *cadena temporal*, with its accessories, and to pay the costs. From this decision the defendant appealed to this court.

Paragraph 2 of article 483 provides:

“He who shall unlawfully detain any person, and should not state his whereabouts, or should not prove that he had set said person at liberty, shall be punished with the penalty of *cadena temporal* in its maximum degree, to *cadena perpetua*.”

The defendant here gave no testimony. concerning the whereabouts of Gregorio Mistica, one of the persons illegally detained.

This court has held in the case of the United States vs. Baldomero Navarro et al.<sup>[1]</sup> (2 Off. Gaz., 551) that an accused person, under the Philippine bill, shall not be required in any criminal cause to be a witness against himself. This ruling was based upon section 5 of the act of Congress of July 1, 1902. It was held that this provision of the act of Congress repealed by implication paragraph 2 of article 483 of the Penal Code.

In criminal causes the prosecuting attorney must prove all of the essential facts constituting the crime and upon which the conviction and punishment is based. The defendant can not be required to give proof that may extenuate or aggravate the punishment. The accused has a perfect right to remain silent and his silence can not be used as a presumption of his guilt. Neither can the sentence be increased by reason of the fact that the defendant fails to give proof in favor of or against his culpability; he can not be convicted of a higher offense than that alleged in the complaint simply because he fails or refuses to testify.

Since the enactment of section 5 of the act of Congress of July 1, 1902, there is a difference between the old and the new procedure in vogue in the Philippine Islands. Under the old procedure the court had authority to examine the defendant in a prosecution for illegal detention and require him to testify as to the whereabouts of the person alleged to be illegally detained by him, or otherwise the court could increase the penalty. If the defendant answered that he had no knowledge of this fact, he was convicted under paragraph 2 of article 483 of the Penal Code. Under the present system the court can not require the defendant to testify, because the law exempts him from so doing; therefore the penalty may not be increased for his failure to furnish proof.

Under the old procedure in prosecutions for illegal detention where the defendant did not state the whereabouts of the person illegally detained, or should not prove that he had set said person at liberty, there was a presumption that the accused was guilty of homicide and not of illegal detention, and therefore the punishment was increased from that imposed for the crime of illegal detention simply.

It was argued that in the crime of libel the defendant might give evidence of the truth of the alleged libelous publication and if the accused was able to prove the truth of the publication and that the facts were published with good motives and for justifiable ends, he should be acquitted; otherwise he should be convicted. This provision of the law does not require the defendant to give proof, but gives him permission simply to present the truth of the libelous publication as a defense to the crime of libel. Under the old law in force in the Philippines, the truth of the libelous publication was not admissible as a defense. The court has no authority to increase the punishment simply because the defendant does not interpose this defense afforded him by the law; while, under paragraph 2 of article 483 of the Penal Code, if the defendant fails or refuses to give testimony, the punishment may be actually increased.

It was also urged that under section 13 of Act No. 292 of the Commission the defendant is permitted to relieve himself from liability

by giving information concerning the truth of the organization and purposes of certain secret societies. This provision does not justify the court in increasing the punishment for being a member of certain illegal secret societies, but simply relieves him from punishment under certain conditions; in other words, the law gives the defendant, in the crime of libel and in actions for belonging to illegal secret societies, etc., a defense which he may avail himself of or not, at his own option. These laws do not provide that, in case he fails to avail himself of the defense which the law gives him, his punishment shall be increased. The defendant in these cases is not presumed to be guilty of any higher crime by reason of the fact that he fails to give evidence concerning the crime charged. He is simply held where he fails to avail himself of the defense which the law affords him for the specific offense charged in the complaint. He may avoid the penalty provided for by law in the case of libel and of liability for membership in an illegal secret society, in whole or in part, by testifying to and establishing the defense which the law affords him.

Under paragraph 2 of article 483 of the present Penal Code the defendant may be charged with the crime of illegal detention and unless he gives testimony concerning the whereabouts of the person illegally detained, or that he had set him at liberty, he may be punished upon the presumption that he is guilty of homicide, an entirely different offense from that charged in the complaint, to wit, illegal detention. Therefore, it is the judgment of this court that the sentence of the lower court be reversed, and, considering the aggravating circumstance of nocturnity, the defendant is hereby sentenced to be imprisoned for the period of seventeen years four months and one day of *reclusion temporal* and to pay both instances. So ordered

*Arellano, C.J., And Torres, J., concur.*

*Mapa and Carson JJ., concur.*

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<sup>[1]</sup> 3 Fil. Rep., 143.

Date created: April 24, 2014