

3 Phil. 614

[G.R. No. 1625. April 07, 1904]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. EULALIO BUNDOC ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

WILLARD, J.:

The evidence is sufficient to convict the appellants of the crime of brigandage. It is claimed, however, that the complaint on which they were convicted is insufficient and that the judgment must therefore be reversed.

The complaint states that—

During the present year, 1903, and until the month of June of the same year, and in the mountains, forests, and towns of this province, the persons above named, with others unknown, led by the so-called General Tomas de Guzman, formed a band of brigands, with firearms and cutting weapons, engaged in robbery and pillage of various articles, causing alarm and terror to the inhabitants of this province, against the United States, and contrary to the law.

It is stated, as is seen, that there was a band of more than three people; that they were armed with deadly weapons; that during a part of the year 1903 they devoted themselves to robbery; and that this same band during the time when they were engaged in robbery were in the mountains, forests, and populated parts of the province. It is said, however, by the dissenting justice, that there is no allegation that they went out on the highway or roamed over the fields. The complaint fairly shows that the robberies to which the band devoted itself were committed in the mountains, also in the forests, and also in the populated parts of the province. In view of the allegations of the complaint, we can not assume that while the band was passing from one of these places to another, as for example from the mountains to the barrios, they did not go by the highways or by the fields and that they

stopped committing robberies when they left the mountains and did not commence again until they reached the barrios.

In view of the act that the complaint alleges that the band devoted itself to robbery, it was not necessary to allege that they conspired for that purpose.

The complaint is sufficient and the judgment is affirmed, with the costs of this instance against the appellants.

Arellano, C. J., Torres, Mapa, McDonough, and Johnson, JJ., concur.

DISSENTING

COOPER, J.:

The complaint in this case reads as follows:

“The defendants, with others unknown, led by the so called General Tomas de Guzman, constituted and were in the mountains, forests, and populated parts of this province, in and during the present year 1903 and until the month of June thereof, a band of brigands, with firearms and weapons of steel; that they devoted themselves to pillage and the robbery of various objects and articles, causing thereby alarm and terror among the inhabitants of this province.”

Section 1 of Act No. 518, under which the complaint is drawn, reads as follows:

“Whenever three or more persons, conspiring together, shall form a band of robbers for the purpose of stealing carabao 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 original formation 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.”

The question presented is whether the complaint is sufficient to charge the offense of brigandage.

All the essential requisites constituting the offense of brigandage as defined in section 1 must be alleged in the complaint. (United States vs. Francisco Decusin et al., 1 Official Gazette, 730.^[1])

The analysis of the definition shows the following elements as constituting the offense:

(1) There must be a conspiring together of three or more persons to form a band of robbers for the purpose of stealing carabaos or other personal property by means of force and violence.

(2) They must go out upon the highways or roam over the country armed with deadly weapons for this purpose.

The complaint is insufficient in that it does not state that the defendants went out upon the highways or roamed over the country armed with deadly weapons for the purpose of committing the offense.

The defendants may have constituted a band of brigands in the mountains and populated places, but forming a band does not constitute the offense. They must have gone out upon the highways, or roamed over the country armed with deadly weapons for the purpose of committing the offense.

There is no allegation in the complaint either that they went out upon the highways, roamed over the country, or that they were armed with deadly weapons for the purpose of committing the offense.

The allegation that they devoted themselves to pillage and robbery is not a sufficient allegation of this fact. This court has made a distinction between the offenses of *robbery and brigandage in several decisions recently made*: United States vs. Francisco Decusin et al., 1 Official Gazette, 730; United States vs. Saturnino de la Cruz et al, 1 Official Gazette, 664;^[2] United States vs. Usis et al., 25th February, 1904, 2 Official Gazette, 344.^[3] It has been held in these cases that the offense of robbery may be committed by an armed band of three or more persons without the offense falling within the definition of brigandage. The case of United States vs. Decusin et al. is based upon the necessity of proving that the band went out upon the highways or roamed over the country armed with

deadly weapons.

It is stated in the opinion that it can not be assumed that while the band was passing from one of these places to another—that is, from the mountains and populated parts of the province in which they constituted themselves a band—that they did not go by highways or by the fields, and that they stopped committing robberies when they left the mountains and did not commence again until they reached the barrios. The answer to this is that the duty of alleging these facts and the burden of proving them rests upon the Government.

The wording of the statute in defining the offense is plain. There is no reason why the prosecuting officer should substitute his own language. While it is not absolutely necessary that the exact words of the statute should always be followed, yet this is the safest course in drafting complaints under the law.

^[1] 2 Phil. Rep., 536.

^[2]
2 Phil. Rep., 431.

^[3] Page 373, *supra*.