2 Phil. 718

[G.R. No. 1236. November 30, 1903]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. PEDRO MAANO ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

WILLARD, J.:

Juan Bermudez and his wife Francisca fully identified the defendants at the trial as two of the persons who entered their house on the night in question. The defendants say in their brief that both of these witnesses testified, at the preliminary investigation, that they did not know who their assailants were. This statement, so far as the husband is concerned, is not borne out by the record. There is nothing therein to show that he did not, upon the question of identity, testify before the justice in the same way that he did in the Court of First Instance. His wife explains her testimony before the justice by saying that she had never before been in a court and that she was so overawed by the judicial presence that she was not fully herself.

That the naming of these defendants was not an afterthought, suggested subsequent to the examination in the justice court, is conclusively shown by the testimony of the sergeant of police who went to the house on December 26, two days after the robbery, for the purpose of investigating it. He says that the wife, Francisca, there told him that it was committed by the two defendants and others. The same day the sergeant presented the complaint to the justice of the peace, charging these defendants and one Ricardo with the crime. This was of course prior to any hearing before the justice.

The failure of the complaining witnesses to mention, on the first examination before the justice, the taking of the money is not important. They did testify to the taking of a razor, a bolo, and two pocketknives. The taking of the money did not add anything to the offense; it did not make the crime different or its punishment greater.

The evidence in regard to the alibi is not sufficient to overcome the positive testimony of identification by two witnesses who had known the defendants for a long time.

The failure of the servant, Leon Sabal, to recognize the defendants is not strange. They remained in the sala, and the two unknown men came into the kitchen, where the servant was, bound him, blindfolded him, and left him there. He had no opportunity at all to see the defendants.

The defense has made a motion in this court for a new trial on the ground of newly discovered evidence. Of the five affidavits presented, four of them relate to alleged attempts of Juan Bermudez to induce witnesses by bribery and threats to testify against the defendants. The trial was concluded on February 13, and the judgment was pronounced on February 14, yet one of these affidavits states that on February 16 Bermudez summoned him as a witness and promised him 100 pesos if he would testify against the defendants.

The affidavit of Juan Evangelista, as to the alibi of the defendant Pedro, tends to weaken it rather than to strengthen it, by reason of the contradiction between his statement and those of the other witnesses for the defendants. Moreover, no reason is given why his testimony could not have been procured for the trial.

The showing is not sufficient to justify us in granting a new trial, and the motion is denied.

We hold that the crime committed was that of *bandolerismo* under Act No. 518.

The evidence is sufficient to support the judgment, and it is affirmed, Avith the costs of this instance against the appellants.

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

DISSENTING

MCDONOUGH, J., with whom concurs **COOPER, J.:**

The information filed by the fiscal against the defendants is as followS:

> "The undersigned accuses Pedro Maano, Jacinto Maano, and other persons unknown, of the crime of brigandage, committed as follows:

> "At midnight on the 23d of December last, together with other persons unknown, the accused, armed with Remington rifles and war bolos, assaulted the house of Juan Bermudez, situate in the barrio of Pandacaque, of the municipality of Tayabas, taking from the owners of the said house, Juan Bermudez and Francisco Abracia, whom they beat and intimidated, the sum of f90.86 in money, and $4 in goods. This within the jurisdiction of this Court of First Instance of Tayabas, of the Seventh Judicial District of the Philippine Islands, and against the provisions of section 1 of Act No. 518."

Upon this charge the defendants above named were placed upon trial, and the prosecution proved that, about 10.30 o'clock on the night of December 23, 1902, several men called to the occupants of the house to open it; that three voices were heard to call, and the call was repeated three times; that the inmates were afraid and did not approach the window; that then they heard an order given by two persons to discharge the guns, which was done; that shortly after they heard another voice saying, "Aim," and then two shots were fired and the bullets went through the walls of the house; that they saw the two defendants light a match for the purpose of setting fire to the roof near the stairway; and that the wife of Juan Bermudez then opened the door to them. Four men entered, "the first two and another being these defendants here present, armed with rifles." After entering, Pedro Maano again lit a match and wont toward the altar, where the lamp was, and lit it; then these two defendants asked for money, and the wife; gave them the money. As soon as Maano got the $86, Mexican, he said, "Do you know us?" To which the husband and wife replied, "No." All this occurred after they were bound and stretched out on the ground. These two defendants struck the husband with the butt end of the gun, and the defendant Pedro Maano demanded the rest of the money, and the reply was that there was no more, whereupon the two defendants struck the husband and wife with the butt end of the gun. Those who had the guns were Pedro and Jacinto Maano and one Ricardo, Four men with guns entered the house, and about five remained outside, armed with long bolos.

In addition to the money there was taken other property consisting of bolos, penknives, and bowie knives. The husband and wife were illtreated, the former requiring five days in which to recover from the effects.

The foregoing is substantially all the testimony taken at the trial bearing on the crime committed and its character. No other testimonj' was received relating to the charge of conspiracy under section 1 of Act No. 518.

Upon this state of facts the court below found the defendants Pedro Maafio and Jacinto Maano guilty of the crime of brigandage, committed in violation of section 1 of Act No. 518, which reads as follows:

> "Section 1. 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."

It will be noticed that in order to convict under this section it is not necessary to prove that the defendants actually stole carabaos or other personal property or committed larceny or robbery; in fact, section 2 of the act expressly provides tliat it shall not be necessary to adduce evidence of robberv or theft.

All the proof that is required in order to establish the offense is (1) that three or more persons conspired together; (2) that they formed a band of robbers; (3) that such band was formed for the purpose of stealing carabaos or other personal property by means of force and violence; (4) that they went out upon the highway or roamed over the country armed with deadly weapons for this purpose; and (5t that the defendant or defendants engaged in the organization of the band or joined it after it was organized. And this proof need not be direct; it may be indirect or circumstantial. Nor did the majority of this court hold in the Decusin case (1 Off. Gaz., 730),[1] as is stated in the dissenting opinion, that the above-mentioned elements of the crime "must be proved by the evidence of witnesses who were present at the organization of the band and who can testify as to its purposes; and that the proof of the actual commission of the robbery is not sufficient."

On the contrary, it is stated in the majority opinion that "the evidence in proof of conspiracy will generally, from the nature of the case, be circumstantial;" and that, as stated in Greenleaf on Evidence, 92-95, and in Kelly *vs.* People (55 N. Y., 565), "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 the same object, the *conclusion* may be *inferred* that they engaged in a conspiracy to effect that

object”

The authorities cited to support this doctrine are worthy of consideration, and, as no authority has been adduced to the contrary, we may safely follow them.

The question to be determined in this case, and which was decided in the Decusin case, is not whether the defendants are guilty of robbery for the evidence shows them to be guilty of that crime beyond a reasonable doubt, but it is whether or not the evidence is sufficient to convict them of the crime of conspiracy under section 1 of Act No. 518.

It is stated in the dissenting opinion in the Decusin case that Act No. 518 does not create a new crime. We think it does. That is not an act to punish the crime of robbery or larceny, for upon proof of the acts of the defendants mentioned in the law, they may be convicted, without proof, on the commission of robbery or larceny; and, if the conspirators or brigands go further, and not only violate the terms of Act No. 518, by conspiring for the purposes mentioned, by forming their armed band, and by going out upon the highway or roaming over the country, acts which complete the conspiracy and the crime, but, in addition to this, if they commit robbery or larceny, they may be convicted in another trial, on the charge of robbery or larceny, as the case may be. The offense committed under Act No. 518 is a felony, highly penal, and it does not merge in the felony of robbery or larceny committed by the same band; nor does the robbery or larceny merge in the conspiracy. Hence, Act No. 518 and the provisions of the Penal Code relating to robbery and larceny are not in conflict, and the former does not expressly or impliedly repeal or modify the latter, for they do not relate to the same crimes.

It has been held that, where the defendant was acquitted of larceny and subsequently indicted for obtaining the same goods under false pretenses, there was no merger and that the defendant was lawfully convicted of the latter crime. (1 Bishop’s Criminal Law, section 1053, subdiv. 4; 34 Texas, 667.)

Bishop also states, in the same section, that after acquittal for larceny the defendant may be convicted of obtaining the same chattels through a conspiracy with third persons.

At common law, where a person by the same act committed two crimes, one a felony and the other a misdemeanor, the latter merged in the former, but if the crimes were both of the same degree, both felonies or both misdemeanors, there was no merger. (Clark’s Criminal Law, 35; 1 Bishop’s Criminal Law, sections 787, 788, 804, etc.)

Under Act No. 518, the two offenses, brigandage and robbery, all felonies, can not be committed by the same act, for the act or acts that complete the crime of brigandage precede, and must necessarily precede, the robbery; or, in other words, the conspiracy is complete before the robbery begins, and they are, therefore, separate and distinct offenses. If three or more persons were tried and convicted under Act No. 518, and subsequently if the same persons were put upon trial for robbery, committed while members of the band, they could not set up a former conviction in bar and plead their constitutional right not to be put in jeopardy twice for the same offense, because the acts differ, the proofs differ, and the crimes differ. (4 Bl. Com., 336; Commonwealth *vs.* Roby, 12 Pick., Mass., 496; People *vs.* Majors, 65 Cal., 138.)

The very definition of a conspiracy makes this point clear. "It is a combination of two or more persons, by some concerted action, to accomplish some criminal or unlawful purpose, or to accomplish some purpose not in itself criminal or unlawful, by criminal or unlawful means." (Pettibone *vs.* United States, 148 U. S., 197.)

It is not necessary, therefore, that the object for which the criminal purpose entered into should be accomplished in order to complete the crime; and this is especially true of the crime of conspiracy mentioned in Act No. 518, for the act itself says that it shall not be necessary to prove the robbery or theft. It therefore follows that this act does create a new crime; and that it is not in conflict with the provisions of the Penal Code relating to robbery or larceny. The proof in this case clearly shows robbery, under article 502 of the Penal Code; and from this proof of robbery, and this proof alone, must Ave infer or conclude, in the language of the act, "beyond reasonable doubt that the accused wrere members of such an armed band?"

In the Decnsin case, on a similar state of facts, a majority of the court held that such inference or conclusion was not warranted by the evidence in that case; and that it was necessary to prove directly, or by circumstantial evidence, something more than the bare fact of robbery committed by three or more armed men, in order to justify the conclusion that those men conspired together and formed a band of robbers for the purpose of stealing personal property and went out on the highway or roamed over the country armed with deadly weapons for this purpose.

A brigand is defined in Webster's International Dictionary as a "lawless fellow who lives by plunder; one of a band of robbers, especially one of a gang living in mountain retreats; a highwayman; a freebooter." In the same book a robber is defined as "one who feloniously

takes goods or money from the person of another by violence, or by putting him in fear."

From these definitions, it may be reasonably concluded that, while every brigand is a robber, every robber is not a brigand, and so this court held that the proof which was sufficient to convict the accused of robbery was not sufficient to convict them of brigandage under Act No. 518.

It may be asked, how can the crime of conspiracy, mentioned in the act in question, be proved other than by showing robbery by an armed band of three or more persons?

Here is the answer of Judge Speer in the case of the United States *vs.* Lancaster (44 Fed. Rep., 896) :

> "What is the nature of the proof necessary to support a charge of conspiracy? The first cardinal rule of existence is this: After evidence showing the existence of the conspiracy is submitted to the jury the acts of the conspirators may, in all cases, be given in evidence against each other, if these acts were done in pursuance of the common illegal object. * * *
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> "It is not required that the conspiracy or the act of conspiring be proved by direct testimony. It is indeed competent to show the conspiracy by showing disconnected overt acts, where the proof also shows that the conspirators were thrown together, or acted through a common medium, and had a common interest in promoting the object of the conspiracy.
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> "A common design is the essence of the charge of conspiracy, and this is made to appear when the parties steadily pursue the same object, when acting separately or together, by common or different means, all tending to the same unlawful result."

Judge Dyer, in the case of the United States *vs.* Goldberg (25 Fed. Cases, 1342), tried in the circuit court of Wisconsin, in discussing this question, said: "The understanding, combination, or agreement between the parties, to effect the unlawful purpose charged, must be proved, because without the corrupt agreement or understanding there is no conspiracy, but circumstantial evidence may be resorted to to show the agreement or conspiracy.

> "The acts of the parties, the nature of the acts, their declarations and statements, whether verbal or in writing, and the character of the transactions, with the accompanying circumstances as the evidence may disclose them, should be investigated and considered as sources from which evidence may be derived of the existence or nonexistence of the agreement which may be expressed or implied to do the alleged unlawful act.
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> "The burden of proof is on the Government to prove what it affirms, by legal and competent evidence."

The evidence in the case at bar falls far short of the proof pointed out by Judges Speer and Dyer. It does not show the very essence of the crime charged, viz, a "common design," the "understanding, combination, or agreement," on the part of those engaged in the robbery, to form an armed band of robbers for the purpose of stealing carabaos or other personal property, and that for that purpose they went out on the highway or roamed over the country. In other words, it does not show that they formed a band of brigands and went out as brigands, which is the crime charged; nor can such essence of the crime be fairly inferred beyond a reasonable doubt, from the facts proved.

In the case of the United States *vs.* Newton (52 Fed. Rep., 275) it was laid down as law, in a case of conspiracy to defraud the United States, that the evidence must show (1) that the conspiracy charged existed; (2) that the overt act charged was committed; and (3) that the defendant was one of the conspirators.

In the case before us the overt act alleged, the robbery, has been proved, and the fact that the defendants took part in its execution, but we have no direct proof relative to the conspiracy. It is said, however, that we may infer it from the fact that the accused took part in the overt act alleged, which, by the way, is not the overt act required to be shown by Act No. 518.

In order to justify the inference of legal guilt from circumstantial evidence, the existence of the inculpatory facts must be absolutely incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt. (Burrell on Criminal Evidence, sec. 737.)

The inculpatory facts in the case at bar are not incompatible with innocence of the crime of conspiracy, nor incapable of explanation upon any other reasonable hypothesis than that of

being guilty of conspiracy; they may be explained on the reasonable hypothesis that the defendants intended to commit the robbery in question—an entirely different crime.

It was said in the case of Pogue *vs.* State (12 Tex. Ap., 283-294) that if the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused (of the crime charged, of course), and the other consistent with his guilt, then the evidence does not fill the test of moral certainty, and is insufficient to support the conviction.

In the celebrated Webster case (5 Cush., Mass., 312-313) Chief Justice Shaw, in discussing this subject, stated:

> "In case of circumstantial evidence, where no witness can testify directly to the fact to be proved, it is arrived at by a series of other facts, which by experience have been found so associated with the fact in question that in the relation of cause and effect they lead to a satisfactory and certain conclusion; as when footprints are discovered after a recent snow, it is certain that some animated being has passed over the snow since it fell, and, from the form and number of footprints, it can be determined with equal certainty whether they are those of a man, a bird, or a quadruped.
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> "Circumstantial evidence, therefore, is founded on experience and observed facts and coincidents establishing a connection between the known and proved facts and the fact sought to be proved.
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> "The advantages are that, as the evidence commonly comes from several witnesses and different sources, a chain of circumstances is less likely to be falsely prepared and arranged, and falsehood and perjury are more likely to be detected and fail of their purpose. * * *
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> "It is manifest that *great care* and *caution* ought to be used in drawing inferences from proved facts. * * *
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> "The inference to be drawn from the facts must be a natural one, and to a *moral certainty, a certain one*. It is not sufficient that it is probable only; it must be reasonably and morally certain."

The reasonable and natural inference in this Maano case does not lead us to a moral certainty that the defendants were not only guilty of the robbery but were also guilty of conspiracy for the purposes mentioned in section 1 of Act No. 518. Otherwise we should have to reach the conclusion, in every case where the evidence showed robbery committed by three or more men armed with dangerous weapons and showed nothing further, that the perpetrators were brigands as defined by law and that they must be convicted of brigandage instead of robbery.

Suppose three servants employed in a hotel ascertain that a guest has in his room a sum of money, and these servants arm themselves with bolos or revolvers, go to the room, intimidate the guest, and take forcible possession of his money. On such a state of facts there could be no doubt about characterizing this crime as robbery, but could it be inferred, beyond a reasonable doubt, that they would be guilty also of conspiring together to form an armed band of brigands for the purpose of stealing carabaos or other personal property and that they actually went out on the highway or roamed over the country for that purpose?

Such an inference would not be “a reasonable or natural one and to a moral certainty a certain one.” It would not be even probable; it would be wholly illogical.

Many examples of this kind might be suggested where it would not follow as a lawful conclusion, or deduction from the bare proof of robbery, that the criminal acts mentioned in Act No. 51S wove committed.

Something more than the fact of robbery must be shown. Thus in the case of Newel *vs*. Jenkins (26 Penn. St. Kept., 159) in an action against a prosecutor, a magistrate, and a constable for conspiring together to arrest and imprison a person without probable cause, it was held that evidence that each one acted illegally or maliciously would not support the action without proof that the defendants combined and conspired together to do such acts.

For similar reasons it must be slrown here that the defendants conspired together to do, and did do, the acts made criminal under the act in question.

If we are to jump at conclusions, if we are to draw inferences and deductions not warranted by the facts or the law, why could we not just as well convict the defendants in this case of sedition as of conspiracy?

The facts show that nine men, four armed with rifles and five with bolos, and in a tumultuous manner, took part in tliis robbery, and despoiled Juan Bermudez and Francisca

Abracia of their property.

To despoil is to take by violence, or clandestine means, the property of another. (Senol *vs*. Hepburn, 1 Cal., 268.)

Section 5 of Act No. 292 of the Philippine Commission provides that all persons who rise publicly and tumultuously, in order to attain by force or outside legal methods any of the following objects, are guilty of sedition; and one of these objects is (subdiv. 5) "to despoil, with political or social object, any class of persons, natural or artificial, a municipality, a province, or the Insular Government," etc.

It surely could not be reasonably inferred that, because the defendants here took part in despoiling natural persons, therefore they violated this sedition law. It may be observed at a glance that, to convict under that act, it would be necessary not only to prove a violation of the terms of section 5 of the act but also the act of despoliation under subdivision 5 with a *political or social object*. and surely this object or purpose could not be reasonably or logically inferred from the mere act of despoliation. For like reasons we can not infer the existence of the crime of conspiracy or brigandage from the naked fact of robbery and without any proof whatever of the intention of the defendants to organize and go out in violation of Act No. 518.

We should not lose sight of the words of Justice Shaw, "that it is manifest that great care and caution ought to be used in drawing inferences from proved facts."

We know from the evidence before us that the defendants intended to commit robbery; we can not safely guess that they also intended to form such a conspiracy as is defined by Act No. 518.

It has been suggested that this case may be distinguished from that of Decusin, because there the accused were armed with bolos, whereas here four were armed with rifles. In Act No. 518 the words "armed with deadly weapons" are used. This court has repeatedly passed upon cases in which the term of imprisonment depended upon whether the accused were armed or not, and it has invariably been held that when the offenders had bolos at the time of the commission of the offense they were " armed," and this holding seems reasonable and proper, because it is a matter of common knowledge in these Islands that a blow or a stab administered with a bolo may be as dangerous and deadly as a wound made by a rifle ball.

A deadly weapon is not exclusively one designed to take life or inflict bodily injury. (Blige *vs*.

State, 20 Fla., 742; 51 Am. Rept, 628.)

It follows that the defendants are guilty of robbery, and not of conspiracy or brigandage under Act No. 518.

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[1] Page 536, *supra*.

DISSENTING

MAPA, J.:

I do not concur in the opinion of the majority of the court. In my opinion the facts proved constitute the crime of robbery, and not that of brigandage, defined and punished by Act No. 518 of the Commission.

Date created: April 15, 2014