34 Phil. 655

[G.R. No. 11389. August 02, 1916]

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JUAN SELLANO AND MAXIMO ARBOLANTE, DEFENDANTS. MAXIMO ARBOLANTE, APPELLANT.

D E C I S I O N

JOHNSON, J.:

These defendants were charged with the crime of larceny. The complaint was presented in the Court of First Instance of the Province of Cagayan on the 12th of January, 1915. The complaint alleged :

> "That on or about the 20th day of March, 1914, in the municipality of Ballesteros, Province of Cagayan, P. I., the said Juan Sellano and Maximo Arbolante, willfully, illegally, feloniously and with intent of gain, took and appropriated a female carabao, one year, more or less, of age, worth ₱35, belonging to a third person, and against the will of its owner Quintin Remolleta. Acts committed in violation of law."

Upon said complaint the defendants were duly arrested. Upon the day fixed for the trial, the prosecuting attorney presented a motion asking that the complaint against the said Juan Sellano be dismissed, which motion was granted. Thereupon the defendant Maximo Arbolante was duly arraigned and pleaded not guilty. The cause proceeded to trial. After hearing the evidence, the Honorable John P. Weissenhagen, judge, in a carefully prepared opinion, found that the defendant Maximo Arbolante was guilty of the crime charged in the complaint with the aggravating circumstance of craft, described in paragraph 8 of article 10 of the Penal Code, without any mitigating circumstances, and sentenced him to be imprisoned for a period of two years and four months of *prision correccional*, and to pay one-half the costs.

From that sentence the defendant appealed to this court. In this court the appellant alleges that the lower court committed an error in finding the defendant guilty of the crime charged in the complaint and in finding that there existed the aggravating circumstance mentioned in paragraph 8 of article 10 of the Penal Code.

From an examination of the record we find that certain facts are proved beyond a reasonable doubt.

> First. That Juan Sellano, some time prior to the 20th of March, 1914, was the owner of two carabaos and one carabao calf; that the calf belonged to one of the carabaos.
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> Second. That said carabaos and said calf were kept, or guarded by, or were in the possession of the defendant Maximo Arbolante.
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> Third. That on or before the 20th of March, 1914, Quintin Remolleta was also the owner of a carabao and a calf; that the calf belonged to the said carabao.
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> Fourth. That on or about the 20th of March, 1914, the said calf of Quintin Remolleta was taken from his possession; that on or about the 20th of April, 1914, the calf of Quintin Remolleta was found in the possession of the defendant. At the time said calf was found in the possession of the defendant it had theretofore been marked with the mark of Juan Sellano. Before the calf was taken from the possession of Quintin Remolleta, he had marked it by cutting a slit in its right ear. By that mark, as well as others, he was able to identify it.
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> Fifth. That the calf of Juan Sellano mentioned in paragraph one above disappeared some time before the 18th of April, 1914, and up to the time of the trial in the present case had not been found or accounted for.
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> Sixth. That the calf found on the 20th of April, 1914, in the possession of the defendant was the property of Quintin Remolleta.
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> Seventh. That the calf of Quintin Remolleta had been marked by the defendant with the mark of Juan Sellano.
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> Eighth. That when Quintin RemoUeta found the calf in question in the possession of the defendant, on or about the 20th of April, 1914, he and his companions took

possession of it and placed it in the possession of the authorities.

Ninth. That when Juan Sellano learned that Quintin Remolleta had taken possession of the calf in question, he immediately commenced a criminal action against him, believing that Remolleta had wrongfully deprived him of his property. Said criminal action, however, was almost immediately dismissed at the request of Juan Sellano, because he became convinced that the calf in question was not the one which belonged to him and which had been in the possession of the defendant Maximo Arbolante.

Tenth. That the calf mentioned in paragraph No. 1 above, which belonged to Juan Sellano, had not been marked by him nor by his authority before its disappearance.

Eleventh. The defendant insists that the calf which was found in his possession on April 20 and which had been marked by him with the mark of Juan Sellano was the calf mentioned in paragraph No. 1 above.

Twelfth. The fact that the calf in question was not the calf of Juan Sellano is not only emphatically asserted by him, but is also proved by the testimony of Quintin Remolleta, as well as that of several other witnesses.

In conclusion, we think that the proof shows beyond a reasonable doubt that the calf found in the possession of the defendant on the 20th of April was the property of Quintin Remolleta and the one which had been taken or stolen from him on or about the 20th of March.

The defendant contends, however, that the proof fails to show that he had taken the calf with the intent to gain thereby. He argues that if he had taken the animal with the intent to gain he would not have marked it with the mark of Juan Sellano. It will be remembered that Juan Sellano never gave his consent to the marking of the particular calf in question with his mark. It will be remembered also that Juan Sellano ordered the defendant to bring his calf to his house on a certain day in order that it might be marked, but for some reason or other it was not marked on that day and the defendant admits that he marked it himself later, in the absence of the owner. It will also be remembered that the calf of Juan Sellano has not been accounted for. Juan Sellano is ignorant of its whereabouts, and the defendant in whose possession it had been placed months before offers no explanation whatever further than to

insist that the calf of Quintin Remolleta is the property of Juan Sellano.

The theory of the prosecution is that the defendant stole the calf of Quintin Remolleta in order to hide his appropriation, in some way or other, of the calf of Juan Sellano. If that theory be the true one, then the defendant may be guilty of two crimes instead of one. If he stole or illegally disposed of the first calf and then tried to hide his crime by substituting it by one stolen from Quintin Remolleta, then he has committed two crimes instead of one; and neither can he be excused from the second simply because he had, by the commission of that one, attempted to cover up the first. Whether or not he illegally disposed of or appropriated the calf of Juan Sellano to his own use, the fact remains that he was found in possession of the property of Quintin Remolleta which had been stolen from him and he fails and refuses to give or to make any satisfactory explanation of his possession of the calf in question. It is a rule well established that an individual, in whose possession stolen property is found, is the principal in the crime of theft unless he gives some satisfactory explanation of his possession of the property. (U. S. *vs.* Soriano, 9 Phil. Rep., 445; U. S. *vs.* Molina, 11 Phil. Rep., 305; U. S. *vs.* Carreon, 12 Phil. Rep., 51; U. S. *vs.* Soriano and Villalobos, 12 Phil. Rep., 512.)

The contention of the defendant that the fact that he marked the calf in question with the mark of Juan Sellano proves that he took the calf of Quintin Remolleta without intent to gain is not sufficient to absolve him from the crime of which he stands charged. He stands in the position of a man, for example, who illegally disposes of the property of A and then steals the property of B in order to hide his crime. His intent to gain by taking the property of B is self-evident and undeniable. If the contrary rule should be established, then he might steal the property of C to make good the loss of B and so on and so on, and forever be relieved of culpability by reason of the fact that he was continually committing a second crime for the purpose of covering up the first. If A can be relieved from the criminal liability of stealing the property of B by stealing the property of C for the purpose of making B's loss good, then criminal liability can never attach to the second offense for the reason, as the appellant contends, he did not commit the second offense for the purpose of gain, but for the purpose of preventing loss on the part of the person whose property was first stolen.

After a careful examination of the record, we are fully convinced that the defendant is guilty of the crime charged and that the sentence of the lower court should be modified. Taking into consideration paragraph 3 of article 518 of the Penal Code, and the value of the property stolen, in relation with paragraph 4 of article 520 of said Code as amended by Act No. 2030 of the United States Philippine Commission, we are of the opinion and so hold that

a sentence should be imposed on the defendant of four years two months and one day of *presidio correccional*, with the accessory penalties provided for by law and to pay the costs. So ordered.

Torres and *Araullo, JJ.,* concur.
Moreland, J., agrees to the conviction and sentence.
Trent, J., thinks that the appellant should be acquitted.

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