

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FERNANDO PELEGRINO AND MAXIMO TUTOR, ACCUSED-APPELLANTS.

Ponente: HERNANDO, J.

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### HERNANDO, J.:

This is an appeal filed by accused-appellants Fernando Pelegrino and Maximo Tutor seeking the reversal of the May 18, 2012 Decision[1] of the Regional Trial Court (RTC), Branch 51, of Carmen, Bohol finding them guilty beyond reasonable doubt for violation of Presidential Decree No. 533 or the Anti-Cattle Rustling Law in Criminal Case No. 0590.

#### The Antecedents:

On February 3, 2003, an Information[2] was filed charging the accused-appellants with violation of the Anti-Cattle Rustling Law, allegedly committed as follows:

That on or about the 8[th] day of August 2003 in the municipality of Mabini, province of Bohol, Philippines and within the jurisdiction of this Honorable Court, the above named accused, conspiring, confederating and mutually helping one another, with intent of gain and without any legal justification, did then and there willfully, unlawfully and feloniously take, steal and lead away one (1) female cow registered in the name of Maximo Pelegrino and taken care of by Luciana Pelegrino valued in the amount of FIVE THOUSAND PESOS (P5,000.00), Philippines currency without consent and against and against the will of the owner, to the damage and prejudice of the said owner and caretaker.

Acts committed contrary to the provisions of P.D. No. 533 (Anti-Cattle Rustling Law of 1974)

On February 24, 2004, accused-appellants were arraigned. They registered negative pleas of guilt at said arraignment. Thereafter, trial on the merits ensued.

The facts of the case according to the prosecution are summarized as follows:

On August 8, 2003, at around seven o'clock in the evening, Juanito Libres together with Lardo Olajay, Jamen Olajay, Wilfredo Olajay, Berto Vallejos and Crispin Elle noticed accused-appellants dragging a cow towards a cargo truck owned by Felixberto Curatibo. After boarding the cow on the truck, Felixberto drove away while accused-appellants proceeded to a nearby store. After the incident, Omac Vallejos, son-in-law of Luciana Pelegrino, asked Juanito if he saw the cow of Luciana. Omac described it as a red female cow with a white spot on the head. Juanito then told Omac that he saw a cow matching said description being dragged by accused-appellants. Thus, Omac reported the matter to the barangay captain. Subsequently, when Luciana learned from Juanito that her cow was loaded into a truck, she immediately reported it to the Chief of Police. Luciana clarified that her daughter, Maxima Pelegrino, actually owned the missing cow and that she was merely its caretaker. Luciana also averred that after the Chief of Police filed the complaint against her nephews, the accused-appellants, they never visited her again.

Joel dela Peña alleged that during the pendency of the case, sometime in March 2004, accused-appellant Maximo

Tutor confided to him that he took the missing cow. Joel claimed that Maximo admitted the commission of the offense because he was bothered by his conscience. He stressed that Maximo wanted him to arrange a settlement with Luciana as he was willing to pay for the value of the cow.

On the other hand, accused-appellants interposed denial as their defense. However, they opted not to present any evidence considering what they believed to be a weakness in the prosecution's case against them.

After trial, the court a quo found that the elements of the crime of Anti-Cattle Rustling was duly proven by the prosecution. The trial court ruled that accused-appellants failed to rebut the fact that they were found in possession of the missing cow. Moreover, it found credible the testimony of Joel dela Peña asserting that accused-appellant Maximo Tutor admitted taking the subject cow. Thus, the trial court found them guilty beyond reasonable doubt for the offense charged in its assailed Decision, the dispositive portion of which reads:[3]

WHEREFORE, in view of all the foregoing and for the successful prosecution of the instant case showing the guilt of the two accused beyond reasonable doubt for the crime charged, the court finds accused Maximo Tutor and Fernando Pelegrino guilty beyond reasonable doubt for Violation of Anti-Cattle Rustling Law (P.D. 533), and hereby sentences each of them to suffer a prison term of four (4) years, two (2) months and one (1) day of prision correccional in its maximum period as minimum to twelve (12) years, five (5) months and eleven (11) days of reclusion temporal in its minimum period as maximum.

Considering that the prosecution failed to show clear proof of the value of the subject cow, the court cannot therefore adjudicate for the payment of the civil liability.

SO ORDERED.

Aggrieved, accused-appellant Fernando Pelegrino filed a Motion for Reconsideration[4] dated June 28, 2012, but it was denied[5] by the court a quo.

Hence, the current appeal before Us by both Fernando Pelegrino and Maximo Tutor, both of whom filed their respective Appellant's Briefs.

The Issue:

The main issue here is whether or not the trial court gravely erred in convicting the accused-appellants based on the evidence presented by the prosecution.

The Court's Ruling

The appeal is bereft of merit.

Conviction for cattle-rustling necessitates the concurrence of the following elements: (1) large cattle is taken; (2) it belongs to another; (3) the taking is done without the consent of the owner or raiser; (4) the taking is done by any means, method or scheme; (5) the taking is done with or without intent to gain; and (6) the taking is accomplished with or without violence or intimidation against persons or force upon things.[6] However, considering that the gravamen of the crime is the taking or killing of large cattle or taking its meat or hide without the consent of the owner or raiser, conviction for the same need only be supported by the fact of taking without the cattle owner's consent.[7]

In the instant case, the prosecution proved beyond reasonable doubt the confluence of the foregoing elements. Firstly, Juanito Libres and Crispin Elle categorically stated that they saw appellants board a cow into the truck of Felixberto Curatibo. Secondly, Juanito and Crispin identified the cow as that belonging to Luciana Pelegrino since they are familiar with it. They did not question what appellants were doing at that time since they presumed appellants, who are known buyers and canvassers of cows, had purchased the same from Luciana. Thirdly, the

taking was without Luciana's consent.

It is settled that factual findings of the trial court on the credibility of witnesses and their testimonies are entitled to the highest respect and will not be disturbed on appeal, in the absence of any clear showing that it overlooked, misunderstood or misapplied some facts or circumstance of weight and substance which would have affected the result of the case.[8] Here, there is nothing in the records that warrants the reversal of the trial court's findings particularly since there is nothing to indicate that Juanito and Crispin were actuated by any improper motive to testify falsely against appellants. The absence of any improper motive on their part to falsely testify against appellants certainly shows that their narration of events and their positive identification are candid and constitute the true version as to what actually transpired.[9]

Moreover, it bears stressing that appellants have not offered any explanation whatsoever for their possession of Luciana's cow on the night of August 8, 2003. It is a settled rule that when stolen property is found in the possession of one, not the owner, and without a satisfactory explanation of his possession, he is presumed to be the thief.[10] In the instant case, instead of rebuffing the presumption, appellants decided to remain silent. In *People v. Raul Beriber et. al.*[11], the Supreme Court was emphatic in ruling that:

Although appellant's silence and refusal to testify, let alone refusal to present evidence, cannot be construed as evidence of guilt, we have consistently held that the fact that an accused never testified in his defense even in the face of accusations against him goes against the principle that "the first impulse of an innocent man when accused of wrongdoing is to express his innocence at the first opportune time."

Indubitably, there is direct evidence pointing to appellants as the takers of Luciana's cow and yet they stubbornly chose not to present any evidence to refute the charges against them. Evidently, their silence worked against their favor. Along the same vein, appellants were found guilty for the violation of the Anti-Cattle Rustling Law by direct evidence and not by circumstantial evidence. While witness Crispin Elle was yet unsure whose cow was loaded into Felixberto's truck at the time of the incident, Juanito Libres,[12] on the other hand, was positive and unequivocal that it was Luciana's cow. Thus, Juanito's testimony was direct evidence of appellants' commission of the offense charged. Hence, appellant's argument that the prosecution solely relied on circumstantial evidence is clearly misplaced.

Corollarily, appellants insinuated that since they are known canvassers of cattle, it may be inferred that another person owns the cow they loaded into Felixberto's truck and that someone else may have stolen Luciana's cow.[13] Concededly, this possibility exists and would have exonerated appellants of the crime charged. Thus, it is baffling why appellants chose not to come forward with evidence showing that they loaded someone else's cow into Felixberto's truck. If they were as innocent as they would like this Court to believe, then it would not be a problem for them to satisfactorily explain whose cow they had loaded into Felixberto's truck on the night of August 8, 2003. Therefore, for their failure to give any satisfactory explanation for their possession of Luciana's lost cow, appellants are presumed to be the thieves.

All told, it was only proper for the trial court to convict appellants for violation of the Anti-Cattle Rustling Law as the elements thereof have been duly proven by the prosecution beyond reasonable doubt. Appellants nonetheless argue that the Information filed against them is fatally defective. Granting this is true, it is already too late in the day for them to question the supposed defects in view of the fact that they failed to move for the quashal of the Information against them before arraignment. Their failure to object to the alleged defects before entering their pleas of not guilty amounted to a waiver of any defect in the Information.[14] Verily, objections as to matters of form or substance in the Information cannot be made for the first time on appeal.[15] Thus, there is no cogent reason for this Court to entertain this issue on appeal.

WHEREFORE, in view of the foregoing, the appeal is DENIED. The May 18, 2012 Decision of the Regional Trial Court, Branch 51, of Carmen, Bohol finding Fernando Pelegrino and Maximo Tutor guilty beyond reasonable doubt for violation of the Anti-Cattle Rustling Law in Criminal Case No. 0590 is AFFIRMED in toto. Costs on accused-appellants.

**SO ORDERED.**

Quijano-Padilla, and Azcarraga-Jacob, JJ., concur.

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[1] Penned by Hon. Patsita Sarmiento-Gamutan, Rollo, pp. 22-32.

[2] Original Records, pp. 28-29.

[3] Rollo, pp. 31-32.

[4] Original Records, pp. 421-426.

[5] Original Records, pp. 433-434.

[6] Ernesto Pil-Ey v. People, G.R. No. 154941, July 9, 2007.

[7] Ibid.

[8] People v. Andrew Pacina, G.R. No. 123150, August 16, 2000.

[9] People v. Feliciano, G.R. No. 102078, May 15, 1996.

[10] Supra, note 6.

[11] G.R. No. 195243, August 29, 2012.

[12] TSN, April 19, 2005, pp. 11-12

[13] Rollo, p. 49.

[14] People v. Renandang Mamaruncas et.al., G.R. No. 179497, January 25, 2012.

[15] Ibid, citing Panuncio v. People, G.R. No. 165678, July 17, 2009.

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