

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. VICENTE DE LEON Y FLORA, DEFENDANT AND APPELLANT.

G.R. Nos. L-25375, 25376. October 08, 1926

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

Early in the morning of December 21, 1925, Vicente de Leon y Flora entered the yard of Vicente Magat's house on Domingo Santiago Street, Manila, and without violence or intimidation against persons nor force upon things, took, with intent to gain, two game roosters which were in the yard, one with colored plumage valued at P8 belonging to Diego Magat, and the other with white plumage and black spots, valued at P10, belonging to Ignacio Nicolas.

Vicente de Leon y Flora was prosecuted in the municipal court for two crimes of theft, one the theft of Magat's rooster and the other that of Nicolas. Upon being arraigned, the accused pleaded guilty and was sentenced by the municipal court in each case to suffer the penalty of three years, six months and one day presidio correctional, to return the stolen roosters to their respective owners and to pay the costs in both cases. The accused appealed from this judgment to the Court of First Instance, and, upon being arraigned again upon the same informations, pleaded not guilty in both cases, which were tried jointly by agreement of the parties approved by the court.

In view of the evidence, the trial court found the accused guilty of one crime of theft, holding that the theft of the two roosters constituted but one crime, and taking into consideration the circumstance that the accused is an habitual delinquent sentenced him in said two cases to the penalty of three years, six months and one day presidio correctional and to pay the costs in case R. G. No. 25375, declaring the costs in case No. 25376, de oficio without the obligation to indemnify, as the roosters were returned to their respective owners. The accused appealed to this court and his counsel alleges that the trial court erred: (a) In holding that the guilt of the accused was proven by his own admission; (b) in not giving him the benefit of reasonable doubt, and (c) in sentencing instead of acquitting the accused, with the costs de oficio.

We have reviewed the evidence and find no grounds to support the contention of the appellant. We are of the opinion, and so hold, that the guilt of the accused in the present case is proven beyond a reasonable doubt. The case falls under the provisions of paragraph 5 of article 518 of the Penal Code, amended by section 1 of Act No. 3244, in connection with paragraph 3 of article 520 of the same Code. The penalty provided in the law is that of presidio correctional in its full extent, and there having been present the aggravating circumstance of nocturnity, the penalty must be imposed upon the accused in its maximum degree, or four years, two months and one day presidio correctional. The accused being an habitual delinquent, under Act No. 3062 an additional penalty must be imposed upon him consisting of half the penalty provided for the crime committed, or 2 years and 1 month presidio correctional. (People vs. Aguinaldo, 47 Phil., 728; People vs. Espiritu, R. G. No. 24753 [1]).

We could stop right here, but the Attorney-General raises a question in his brief which we believe it is necessary

for us to resolve now, due to the fact that it is not only important to our jurisprudence, but also to the due prosecution of violators of the law. The Attorney-General urges that the penalty for two crimes of theft be imposed upon the accused for each of the stolen roosters. The question, then, to determine is whether or not the fact that the accused, with intent to gain, on the same occasion and in the same place, took the two roosters, one belonging to Vicente Magat and the other to Ignacio Nicolas, constitutes two crimes of theft.

It will be remembered that article 517 of the Penal Code contains three paragraphs enumerating the acts which constitute the crime of theft. The first defines theft in general; the second declares a particular act to be theft which is not included in the description in the first paragraph, and the third also considers theft a series of acts with similar characteristics to the general type, with the exceptions therein noted.

Article 517 of the Penal Code reads as follows:

"Art. 517. The following are guilty of theft:

"1. Any person who, with intent to gain, but without the use of violence or intimidation against any person or the use of force upon anything, shall take anything which is the personal property of another without the latter's consent.

"2. Any person who, having found anything which has been lost, shall with knowledge of its ownership appropriate the same with intent of gain.

"3. Any person guilty of malicious damage who shall remove or make use of the things damaged, subject to the exceptions established by paragraphs one, two, and three of article five hundred and ninety-two; paragraph one of article five hundred and ninety-three; paragraph one of article five hundred and ninety-five, and articles five hundred and ninety-six, five hundred and ninety-eight, and six hundred and three."

As may be seen, the act of taking another's property without violence or intimidation against persons, nor force upon things, with intent to gain and without the consent of its owner, is what constitutes the crime of theft, as described in the first paragraph of article 517.

The crime of theft is an offense against personal property and what is punished is the alarm caused in the community by the perpetration of the act which is violative of the individual rights guaranteed by the law, as well as the damage that said act may occasion to the members of the community. Under sound principles, the act of taking the two roosters, in response to the unity of thought in the criminal purpose on one occasion, is not susceptible of being modified by the accidental circumstance that the article unlawfully taken belonged to two distinct persons. There is no series of acts here for the accomplishment of different purposes, but only of one which was consummated, and which determines the existence of only one crime. The act of taking the roosters in the same place and on the same occasion cannot give rise to two crimes having an independent existence of their own, because there are not two distinct appropriations nor two intentions that characterize two separate crimes.

The Supreme Court of Spain, in its decision of July 13, 1894, said:

"The act of unlawfully taking two colts, two cows and two calves on one night, belonging to four owners, which livestock was found in various adjacent and open meadows, constitutes only one crime of theft, because the fact that the persons injured by the taking of the cattle by the accused were several, said accused knowing that the meadows in which this livestock was found were open and adjacent, it being easy to pass from one to the other, does not authorize the legal conception that the said accused committed four thefts on said night, but only one as found by the lower court, which did not commit an error of law by holding that the acts were committed on a single occasion."

It is not an element of the crime of theft that the culprit know the owner of the thing stolen, the crime being

consummated provided the thing stolen belongs to another and the same is taken with intent to gain. (Decision of the Supreme Court of Spain of November 22, 1898.) Neither is it necessary for the existence of the crime of theft that it should appear in a specific manner who the owner is of the thing stolen, because the law does not require it nor does it affect the criminal liability, but only the restitution or indemnification of damages, which are merely of a civil nature. (Decision of the Supreme Court of Spain, October 4, 1905.) What constitutes the crime of theft is the taking of another's property with intent to gain, without the consent of the owner, so that after the unlawful act of taking another's property is proven, it is evident that all the elements mentioned in the first paragraph of article 517 of the Penal Code exist. Therefore, we are of the opinion that the unity of the intention to take a thing belonging to another on one occasion and in the same place, constitutes the commission of only one crime of theft; and the fact that the things taken belong to different persons does not produce a multiplicity of crimes, which must be punished separately.

In arriving at this conclusion, we have not lost sight of the doctrine laid down in *United States vs. Balaba* (37 Phil., 260), according to which, where the accused made no objection to the information on the ground that it charged more than one offense, the prosecution properly submitted evidence as to the commission of each and all of the offenses charged; and the trial court also properly entered judgment of conviction of each and all of these offenses which were established by the introduction of competent evidence at the trial and should, therefore, have imposed the prescribed penalties for each and all of the offenses of which the accused was convicted in accordance with the provisions of article 87 of the Penal Code. This doctrine, however, is not applicable to the present case as two separate complaints have been filed herein against the accused, but the trial court convicted the accused in the two cases, considering the facts alleged in the said complaints as constituting but one crime.

In American cases the same doctrine is maintained as in Spanish decisions in regard to the question which is here debated:

In *Corpus Juris*, vol. 36, page 799, it is said in regard to the taking of articles belonging to two different owners at the same time and place: "In a few jurisdictions the rule obtains that if two or more articles belonging to different owners are stolen at the same time and place, the theft of the property of each owner is a separate crime and may be prosecuted as such." (*U. S. vs. Beerman*, 24 Fed. Cas. No. 14,560; 5 Cranch C. C., 412; *State vs. Thurston* 27 S. C. L., 382; *Morton vs. State*, 1 Lea [Tenn.], 498.)

In other jurisdiction it is held that such a theft may be prosecuted, at the pleasure of the State, either as one offense or as several distinct offenses. (*Bushman vs. Com.*, 138 Mass., 507; *Com. vs. Sullivan*, 104 Mass., 552; *State vs. Douglas*, 26 Nev., 196; 65 Pac, 802; 99 Am. St., 688; *State vs. Lambert*, 9 Nev., 321.) But the prevailing rule is that if several articles, stored in the same place, are taken by a single larcenous act, the mere fact that some of them belonged to one person and some to another does not dissolve the act into separate crimes. (*Ala.-Clemm vs. State*, 154 Ala., 12; 45 So., 212; 129 Am. St., 17; *D. C.-Chanock vs. U. S.*, 50 App., 54; 267 Fed., 612; *Hoiles vs. U. S.*, 10 D. C., 370; 36 Am. Rep., 106; *Ga.-Lowe vs. State*, 57 Ga., 171; *Dean, vs. State*, 9 Ga. A., 571; 71 South East, 932; *Ill.-Peo. vs. Israel*, 269 Ill., 284; 109 North East, 969; *Ind.-Furnace vs. State*, 153 Ind., 93; 54 North East, 441; *Bell vs. State*, 42 Ind., 335; *Iowa-State vs. Sampson*, 157 Iowa, 257; 138 North West, 473; 42 Law. Rep. An. [N.S.], 967; *State vs.-Con- grove*, 109 Iowa, 66; 80 North West, 227; *State vs. Larson*, 85 Iowa, 659; 52 North West, 539; *Ky.-Nichols vs. Com.*, 78 Ky., 180; *Md.-State vs. Warren*, 77 Md., 121; 26 Atl. Rep., 500; 39 Am. St., 401; *Mich.-Peo. vs. Johnson*, 81 Mich., 573; 45 North West, 1119; *Miss.-State vs. Quintini*, 51 So., 276; *Dalton vs. State*, 91 Miss., 162; 44 So., 802; 124 Am. St., 637; *Ward vs. State*, 90 Miss., 249; 43 So., 466; *Mo.-State vs. Morphin*, 37 Mo., 373; *Lorton vs. State*, 7 Mo., 55; 37 Am. Dec, 179; *Mont-State vs. Mjelde*, 29 Mont, 490; 75 Pac, 87; *N. H.-State vs. Merrill*, 44 N. H., 624; *N. M.-State vs. Klasner*, 19 N. M., 474; 145 Pac, 679; *Ann.Cas.* 1917-D, 824; *N. C.-State vs. Simons*, 70 N. C., 336; *Oh.-State vs. Hennessey*, 23 Oh. St., 339, 13

Am. Rep., 253; State vs. Smith, 10 Oh. Dec (Reprint), 682; 23 Cinc L BuL, 85; Or.-State vs. Clark, 46 Or., 140; 80 Pac, 101; Pa.-Fulmer vs. Com., 97 Pa., 503; Com. vs. Lent, 15 Pa. Dist, 884; S. D.-State vs. Kieffer, 17 S. D., 67; 95 North West, 289; Tex.-Wilson vs. State, 45 Tex., 76; 23 Am. Rep., 602; Hudson vs. State, 9 Tex. A., 151, 35 Am. Rep., 732; Addison vs. State, 3 Tex. A., 40 Utah-State vs. Mickel, 23 Utah, 507; 65 Pac, 484; Vt-State vs. Blay, 77 Vt., 56; 58 Atl. Rep., 794; State vs. Emery, 68 Vt., 109; 34 Atl. Rep., 432; 54 Am. St., 878; State vs. Newton, 42 Vt, 537; Va.Alexander vs. Com., 90 Va., 809; 20 South East, 782; Wash.State vs. Laws, 61 Wash., 533; 112 Pac, 488; State vs. Butts, 42 Wash., 455; 85 Pac, 33; Terr. vs. Heywood, 2 Wash., 180; 2 Pac, 189; Wyo.-Ackerman vs. State, 7 Wyo., 504; 54 Pac, 228; Eng. Reg. vs. Bleasdale, 2 C. & K., 765; 61 Eng. C. L., 765.)

For the foregoing, the judgment appealed from must be, as is hereby, modified and the accused Vicente de Leon y Flora is sentenced to suffer the penalty of six years and three months presidio mayor, with the accessories of the law, and to pay the costs. So ordered.

Avanceña, C. J., Johnson, Street, Ostrand, Romualdez, and Villa-Real, JJ., concur.
Johns, J., concurs in the result.

[1] Promulgated December 31, 1925, not reported.

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