

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. FRANCISCO MERCADO, DEFENDANT AND APPELLEE.

G.R. Nos. L-45471 and L-45472. June 15, 1938

Ponente: DIAZ, J.

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DIAZ, J.:

This is an appeal by the prosecution from an order of the Court of First Instance of Pampanga whereby said court declared itself without jurisdiction to take cognizance of and decide two criminal cases pending before it, for theft of large cattle, against the appellee Francisco Mercado, on the ground that, although the stolen animals were afterwards brought by the appellee to the municipality of Candaba, Pampanga, where they were found in his possession, said crimes had taken place and had been committed in the municipality of Gapan, of the Province of Nueva Ecija.

The informations which gave rise to the criminal cases above-mentioned are of the following tenor:

"That on or about the 21st day of June, 1936, in the municipality of Candaba, Province of Pampanga, Philippine Islands, and within the jurisdiction of this court, the abovenamed accused, Francisco Mercado, with intent of gain, did, then and there, voluntarily, maliciously, illegally and criminally, take, steal, and carry away two male carabaos branded as and with certificates Nos. 7361553, dated at Peñaranda, Nueva Ecija, on October 29, 1929, and 6993322 dated at Gapan, Nueva Ecija, on June 3, 1933, respectively, both belonging to Pedro A. Ladores, worth sixty pesos (P60) each, and to his damage and prejudice in the total amount of P120. The commission of the crime having been commenced at Gapan, Nueva Ecija, and consummated at the municipality of Candaba, Pampanga, and without the knowledge and consent of the owner."

"That on or about the 21st day of June, 1936, in the municipality of Candaba, Province of Pampanga, Philippine Islands, and within the jurisdiction of this court, the abovenamed accused, Francisco Mercado, with intent of gain, but without the use of violence upon persons nor force upon things, did, then and there, voluntarily, maliciously, illegally and criminally take, steal, and carry away a male carabao branded as.....with certificate No. 6696261, dated at Penaranda, Nueva Ecija, on April 11, 1928, valued at ninety pesos (P90), owned by Leon Ladores, without his knowledge and consent, and to his damage and prejudice in the said sum of P90. The commission of the crime having been commenced at Gapan, Nueva Ecija, and completed at the municipality of Candaba, Pampanga."

The foregoing informations were filed by the provincial fiscal of Pampanga in the Court of First Instance of said province after receiving the report of the preliminary inquiries made, upon complaint, by the justice of the peace court of Candaba, Pampanga, where the cases originated. The appellee waived his right to a preliminary investigation and asked that the two cases be remanded to the Court of First Instance for trial and final judgment.

Briefly, the question raised by the prosecution on appeal is the following:

Has the Court of First Instance of Pampanga jurisdiction to try and decide the two cases in question, it being alleged in the informations by which they were commenced that the accused stole the carabaos described therein

in Gapan, in the Province of Nueva Ecija, which is beyond the jurisdiction of the court, in order to bring them, as he in fact did afterwards, to Candaba, Pampanga, where they were found in his possession?

The lower court upheld the negative, being of the opinion that the appellee committed the two thefts in question not in the Province of Pampanga over which its jurisdiction is exclusive of the Province of Nueva Ecija, but in the latter province.

In criminal proceedings, the rule is that one can not be held to answer for any crime committed by him except in the jurisdiction where it was committed. Said rule is based on the legal provision which prescribes the essential requisites of a good complaint or information, one of which is the allegation that the crime was committed within the jurisdiction of the court where the complaint or information is filed and that said court has authority to try it. (Sec. 6, General Orders, No. 58.) As was said in the case of *United States vs. Cunanan* (26 Phil., 376), the jurisdiction of the Courts of First Instance of the Philippine Islands, in criminal cases, is limited to certain well-defined territory, so that they can not take jurisdiction of persons charged with an offense alleged to have been committed outside of that limited territory. Appellant, however, contends that there are crimes which are considered as continuing, as for instance those whose commission does not terminate where the acts of execution began, or where they are consummated for the first time, because the execution or consummation of those crimes continues successively and uninterruptedly until stopped by a cause independent of the will of the offender. It alleges that certain cases of abduction, like that of *United States vs. Bernabe* (23 Phil., 154), partake of this nature because they are partly executed in one province and partly in another. We can not, in truth, find any similarity between the *Bernabe* case and those now under consideration. It was held in that case that the carrying away of the offended party took place in Manila and that the unchaste designs, an essential element of abduction, were not made manifest or begun until the offender and his victim were already in Rizal. For this reason, although the offense was commenced in Manila, it was held that it was consummated only in said province. Neither do the present cases bear any similarity with those of estafa which appear in 23 Phil., 207 (*U. S. vs. Cardell*) and 27 Phil., 408 (*U. S. vs. Santiago*), because although the accused in said cases appropriated their collections in Cebu and in Iloilo, respectively, in compliance with the order which they had previously received from their principals, however, they expressly and formally bound themselves to render an accounting or to deliver their collections in Manila, wherefore, it could correctly be held in said cases that the crimes committed by the accused were triable in the City of Manila. To sustain its theory, the appellant invokes the commentary found on pages 192 and 193 of Volume 16 of *Corpus Juris* and what Wharton has to say in his *Criminal Law* (11th edition, page 1389), and what Clark, in turn, states in his commentary on *Criminal Law*, page 366, in the following language:

"PAR. 1116. Thief carrying goods from county to county may be convicted in either county.—Where a larceny has been committed in one county and the thief removes the stolen property into another county (*animus furandi*) he is, in the eye of the law, guilty of larceny in every county into which the subject may thus have been carried. The rule applies as well to property which is made the subject of larceny by statute, as to property which is made the subject of larceny by the common law." (2 Wharton's *Criminal Law*, 11th ed., p. 1389.)

"Again, property may be stolen in one state, and brought into another. Can the latter state punish the thief? It has been held from the earliest times that if a thief steals goods in one country, and brings them into another, he may be indicted in either, because his unlawful carrying in the second is deemed a continuance of the unlawful taking, and so all the essential elements of larceny exist in the second." (Clark's *Criminal Law*, p. 366.)

We do not believe that these American precedents, much as they are entitled to our respect, apply to the cases in question; for, according to them, "to constitute larceny the first essential is that the thing which is the subject of the crime should be taken from the possession of the owner into the possession of the thief, and be carried away by him, for until this is done there is no larceny, however definite may be the intent of the prospective thief to

commit the theft, and however elaborate his preparations for doing so." (36 C. J., 747.)

"To constitute larceny, there must be a taking and a carrying away of personal property with intent to steal it. Taking without carrying away is not larceny. (Com. vs. Adams, 73 Mass., '1 Gra' 43, 44.)" This is so because their definition of larceny is the following:

"Larceny at common law may, be defined to be the taking and carrying away from any place, at any time, of the personal property of another, without his consent, by a person not entitled to the possession thereof, feloniously, with intent to deprive the owner of his property permanently, and to convert it to the use of the taker or of some person other than the owner." (36 C. J., 734.) It may be inferred from the foregoing definition of "larceny" that the essential elements of this crime are in a sense distinct from those of theft as the latter offense is known in this jurisdiction.

In larceny, except in the State of Texas (36 Corpus Juris, 748), it is not only essential that there must be a taking away or abstracting of personal property belonging to another, but the person taking must also carry it away. In the aforesaid State, the last requisite is not indispensable. But in all the other States, the courts have generally held that, "where goods are stolen in one state and carried into another, there is a larceny in the latter, on the ground that each moment's continuance of the trespass and felony amounts to a new taking and asportation, and that the courts of the state into which the goods are brought have jurisdiction to punish as for larceny in such state." (16 Corpus Juris, p. 167.) This is also the rule in Texas because an express provision is to be found in its procedural law which embodies it. Said provision is section 235 of its Code of Criminal Procedure, which says:

"Where property is stolen in one county and carried off by the offender to another, he may be prosecuted either in the county where he took the property or in any other county through or into which he may have carried the same."

On the other hand, the elements of theft in this jurisdiction are: First, taking away of personal property; second, that the property belongs to another; third, that the taking must be with intent to gain; fourth, that it is done without the consent of the owner; and fifth, that there is no violence or intimidation against persons, or force upon things. It is not an indispensable requisite of theft that the pickpocket or thief carry, more or less far away, the thing taken by him from its owner. Wherefore, relying upon the provisions of article 308 of the Revised Penal Code, which reads:

"Theft is committed by any person who, with intent to gain but without violence against or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent," we hold that the thefts charged in the two informations already referred to were wholly committed in Gapan, Nueva Ecija, and that for their consummation nothing else remained to be done from the moment that the appellee took away, with intent to gain, said animals while they were yet in said municipality and province. It was not necessary that there had been real or actual gain on his part or that he had removed the stolen animals to the town of Candaba, in the Province of Pampanga, in order to make use of or derive some benefit from them. It was enough that on taking them in Gapan, he was then actuated by the desire or intent to gain. This opinion accords completely with that stated in the case of *United States vs. Adiao* (38 Phil., 754). In that case a Manila customs inspector took a leather belt from the baggage of a passenger who had just landed at the port of Manila and kept it in his office desk where the other employees found it afterwards. He was not able to make use of said belt, but he was found guilty of theft for the reason that he had performed all the acts of execution necessary for the consummation of the crime. Our opinion is also in conformity with that expressed by the Supreme Court of Spain in its decisions of December 1, 1897 and October 14, 1898, referred to in the *Adiao* case, and that of the same tribunal of November 16, 1895 where it was said that "the crime of theft consists in taking personal property belonging to another person without his consent and it is no bar to its consummation that the offender may not have been able to make use of the stolen articles, for it is not the gain obtained, but his intention which, together with the other elements above-mentioned, constitutes the crime in question." (II

Hidalgo, *Codigo Penal*, p. 662.) Therefore, in accordance with the clear provision above-cited of section 6, No. 4, of General Orders, No. 58, the prosecution of the appellee should have been and should be commenced in Nueva Ecija.

Besides the foregoing, the following observations may also be made: From a reading of the two informations in the two cases in question, it may be seen that the appellee illegally took the carabaos from the owner thereof in Gapan because the allegation to be found therein, particularly in one of the informations (C. F. I. No. 5224; G. R. No. 45471), that the appellee "did, then and there, voluntarily, maliciously, illegally and criminally, take, steal, and carry away a male carabao branded as with certificate No. 6696261, dated at Penaranda, Nueva Ecija, on April 11, 1928, valued at ninety pesos (P90), owned by Leon Ladores, without his knowledge and consent, and to his damage and prejudice in the said sum of P90. The commission of the crime having been commenced at Gapan, Nueva Ecija, and completed at the municipality of Candaba, Pampanga," is to this effect.

There is not a single allegation or insinuation in the two informations from which it might be deduced that the desire to gain was not that which led the appellee to steal the animals. It is, therefore, natural and reasonable to conclude that he took them with intent to gain. In so holding, we adopt the same rule followed by the Supreme Court of Spain, which we have seen applied in those cases to which its decisions of October 14, 1898, October 18, 1899, January 10, 1900, February 6, 1902, November 15, 1894, and others relate and in which it was held that:

"The intent to gain is the usual motive to be presumed from all furtive taking of useful property appertaining to another, unless special circumstances reveal a different intent on the part of the perpetrator." (Decision of October 14, 1898.)

"It being stated as a proven fact in the appealed decision that the accused took two bundles of barley from a farm, it is clear that, without a declaration as also proven that he did so with a purpose other than to gain and with the authorization of the owner, the elements constituting the crime of theft are included in the word 'take.'" (Decision of October 18, 1899.)

"The act of taking figs from the tree of another without his consent constitutes asportation in which the intent to gain is inherent, which intent is made more manifest by the act of carrying them away." (Decision of January 10, 1900.)

"Although the asportation of a thing belonging to another without his consent does not always imply the intent to gain on the part of the perpetrator, who might have some other purpose in mind, when said purpose is not shown, it is reasonable to believe that the taking was made with that essential element of the crime of theft." (Decision of February 6, 1902.)

"Although the asportation of a thing appertaining to another without his consent does not necessarily imply in all cases the intent to gain on the part of its author, since his purpose might be different; when this is not shown, but on the contrary, in order to justify his holding and free disposition of the thing taken, he alleges title thereto by virtue of a contract of purchase and sale which he has not been able to prove beyond doubt, it is reasonable to infer that the taking was done with intent to gain in the juridical sense which such concept has for purposes of the crime of theft, whatever may be the class or condition of the persons doing the illegal taking." (Decision of November 15, 1894.) (II Hidalgo, *Codigo Penal*, pp. 664, 665, 667, and 660.)

Practical reasons and considerations, however, require that no pass be opened to the thief through which he may easily frustrate the right of the owner of a stolen thing to recover it from him or to go after it, or which may make it difficult, if not impossible, for him to secure the punishment of the offender. By allowing the owner of the stolen thing to follow the thief no matter how far from the scene of the crime the latter may have brought it, in order to have him prosecuted which, surely, will be the effect of sustaining a contrary opinion, is to put obstacles in his way precisely because this will result in expenses and delay. If this were done, the thief would contrive in

all cases to carry as far as possible what he may have stolen so that he would have greater chances of getting unpunished.

In conclusion, we are of the opinion and so hold that the sole court possessing jurisdiction over the cases against the appellee for the theft of the carabaos in question is not that of Pampanga, but that of Nueva Ecija in which they should have been and must be instituted.

Wherefore, the appealed order is hereby affirmed, with costs de oficio. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Imperial, and Concepcion, JJ., concur.

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