

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MARCELINO DACAIMAT, DEFENDANT AND APPELLANT.

G.R. No. 10078. February 05, 1916

Ponente: CARSON, J.

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CARSON, J.:

The appellant in this case was convicted in the court below of the crime of theft of large cattle.

The evidence of record conclusively establishes that a caraballa and her calf were stolen from the corral of the complaining witness, and that not long thereafter the calf was found in the possession of the accused. The accused swore that the calf had been turned over to him by a man named Dacanay, who, when called to the witness stand, flatly denied the story told by the accused as to the way in which he came into possession of the animal. We have frequently held that proof of the discovery of stolen property in the possession of one charged with its theft, not long after the time when the property was stolen, raises a presumption of his guilt sufficient to sustain his conviction of the theft of the stolen property, in the absence of a satisfactory explanation of the fact of its possession inconsistent with the presumption of his guilt. A finding as to the guilt or innocence of the accused in this case turns, therefore, upon the respective credibility of the accused and of the witness from whom he claimed to have received the stolen animal. The trial judge, in convicting the accused, necessarily accepted as true the testimony of Dacanay, and rejected as false the testimony of the accused in his own defense, and we find nothing in the record which would justify us in disturbing his conclusion in this regard.

We find no error in the proceedings in the court below prejudicial to the substantial rights of the appellant, and the judgment convicting and sentencing him should therefore be affirmed, with the costs of this instance against him.

During the pendency of these proceedings on appeal, the Solicitor-General invited our attention to the fact that the trial judge had failed to enter in the record an express finding of the facts upon which the judgment of conviction was based, and moved this court to remand the record to the court below in order that the omission might be corrected.

The motion of the Solicitor-General, although it was dismissed in a minute order without setting forth the reasons therefor, presented in a new form a question of practice which has given us no little trouble in the past; that is to say the proper disposition of cases wherein it appears that the trial judge has failed to unite with the record a finding of the facts upon which he based his judgment. In ruling upon the question of practice as raised by the Solicitor-General, and as raised in some other cases, both civil and criminal, pending about the same time, we were compelled to reexamine and reconsider the law and the cases in which the question has heretofore presented itself, in an attempt to lay down a rule of practice by which we ourselves, as well as counsel practicing in this court, should be guided hereafter.

It may be well therefore to seize this opportunity to set out very summarily our conclusions in this respect, and the grounds upon which they are based.

The question, in one form or another, has arisen in a number of unpublished cases, and has been discussed in *Braga vs. Millora* (3 Phil. Rep., 458); *Enriquez vs. Enriquez* (3 Phil. Rep., 746); *City of Manila vs. Insular Government* (9 Phil. Rep., 71); *Alindogan vs. Insular Government* (15 Phil. Rep., 169); *U. S. vs. Mariano* (27 Phil. Rep., 132).

An examination of these cases discloses that our practice in the disposition of the question under consideration has not been entirely uniform; and it would appear that in each case the court has sought a practical solution of the question as it presented itself and as the rights of the parties, as developed by the state of the record when the question has arisen, seemed to require.

Our rulings, in appeals in civil actions, providing for the correction of the omission of findings of fact by the trial judge have been based in part upon the provisions of section 133 of Act No. 190, expressly prescribing the duty of making such findings in such actions; in part upon the provisions of that Act which secures the right of the litigants to appeal from judgments entered in civil actions upon the ground that the findings of fact do not support the judgment, without being subjected to the burden and expense of bringing the evidence here for review (section 497 of Act No. 190); and in part upon the utility of, and in some cases the absolute and essential necessity for the making of such findings in order that this court, in weighing the evidence, may have the benefit of the inferences to be drawn therefrom as to the degree of credit accorded the various witnesses by the trial judge, who sees and hears them testify, observes their demeanor on the witness-stand, and whose opinion in this regard we have always held to be entitled to the greatest respect.

The reasons which impose upon trial judges the imperative duty to make and enter in the record appropriate findings of fact are not less compelling in criminal than in civil cases. This court is called upon to review the evidence in all criminal cases brought here on appeal, and in the case of *United States vs. Mariano* (*supra*) we held that:

"In cases where the Supreme Court must review the facts, as it must in all criminal cases, the trial court should make a statement of facts upon which it relies for the conviction."

But under the provisions of section 501 of the Code of Civil Procedure, and of sections 9 and 10 of General Orders No. 58 (prescribing rules of procedure in criminal cases), the reversal of judgments entered in the court below is prohibited, except for prejudicial error, that is to say error which tends to prejudice a substantial right of a party to the proceedings brought here for review. The first question to be determined, therefore, is whether or not the omission from the record of a finding of facts is prejudicial error in the court below.

There can be no doubt that in some cases such an omission may tend directly to prejudice materially one or other of the parties by depriving him of information of vital importance in the course of the preparation and submission of his case on appeal; and it cannot be denied that cases may present themselves wherein such an omission will deprive this court of information vital to the proper adjudication of the issues raised on appeal.

On the other hand, experience in the examination of many hundreds of records brought here on appeal has taught us that not in every case would such an omission tend to prejudice the substantial rights of any of the parties; and that in many, if not most, instances it may be affirmatively and confidently asserted that no prejudicial error results from the omission of findings of fact from the record.

It would seem then that whatever rule of practice may be adopted it should secure the rights of the parties in the occasional instances wherein the omission amounts to prejudicial error, without subjecting the litigants to unnecessary inconvenience, expense and delay in those cases wherein the omission does not appear to prejudice a substantial right of either of the parties.

Without attempting to lay down a hard and fast rule which will cover every conceivable case which may present itself, we have concluded, after extended discussion, that the end in view will, as a general rule, be best attained by remanding the record to the court wherein it originated, without first reversing the judgment, with instructions to file therewith a finding of the facts upon which the judgment was based, in any case in which either party in a civil action or the defendant and appellant in a criminal action moves this court so to do, with due diligence and without unnecessary delay after the record on appeal has been filed in the clerk's office; this court reserving to itself the right to reverse the judgment and send the case back for new trial in any case wherein, after submission upon the merits, it is satisfied that the omission of a finding of facts resulted in prejudicial error, which, for any reason, it was impracticable to cure by the return of the record on motion as above indicated.

We do not think, however, that the course of the proceedings on appeal in criminal cases should be subjected, on motion of the Attorney-General, to the delay necessarily involved in the return of the record to the court below for the inclusion of a finding of facts. Speaking generally, the nature of the issues raised in criminal proceedings are such that we believe that rarely, if ever, will there be any real necessity therefor; and if such an instance should arise, it can be dealt with after the case has been finally submitted on the merits. And, be this as it may, we are satisfied that any inconvenience to which the Government may be subjected under this rule should and must be subordinated to the right of the accused to a speedy trial, and the adjudication of his appeal with all practicable dispatch.

Ten days hereafter let judgment be entered affirming the judgment entered in the court below with the costs of this instance against the appellant, and ten days thereafter let the record be returned to the court wherein it originated. So ordered.

Arellano, C. J., Torres and Trent, JJ., concur.

Moreland, J., see dissenting opinion.

DISSENTING OPINION

MORELAND, J.:

Inasmuch as this decision has the effect of overruling or seriously modifying several decisions of this court, I find it necessary to dissent in an opinion which I will file later.

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