

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FRANCISCO MAUHAY, DEFENDANT AND APPELLANT.*G. R. No. 10720. September 28, 1915*

Ponente: TORRES, J.

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By reason of a complaint filed by the provincial fiscal of Batangas in the Court of First Instance of the same province, charging Francisco Mauhay with theft, these proceedings were commenced in which the judgment, rendered on October 21, 1914, sentenced the accused to the penalty of three years of presidio correctional, to the accessory penalties, to pay to Martin Alarcon P150 or in case of insolvency to suffer the corresponding subsidiary imprisonment, and to the payment of the costs; and ordered Martin Alarcon to return to Catalino Beleno the mare in his possession. From this judgment the defendant appealed.

Before daybreak of the night of November 12, 1913, a mare belonging to Catalino Beleno was taken away from the environments of his house in the barrio of Banaba of the pueblo of Rosario, Batangas. Catalino Beleno had left this mare tied to a tree close to his house; he valued the mare at P150; he had purchased it from Regino Laluces, who, to effect the sale, handed over to Catalino Beleno the certificate of ownership Exhibit A issued in the name of the vendor, in the municipality of Lipa, in the month of January, 1911. No certificate of transfer was issued because the vendee was owing a part of the purchase price of the mare. Immediately Catalino Beleno began to look for the said mare and after three months learned that the Constabulary had found it in the possession of Martin Alarcon, a resident of Novaliches of the municipality of Caloocan, Province of Rizal.

Alarcon stated that he had acquired the said mare from Felipe Abrenica and Francisco Mauhay, the latter of whom had given him the two documents, Exhibits D and E, as the certificates of ownership of the mare that had been sold to him; and that on the payment of the price of said mare namely P150, the same vendor, Mauhay Flores, gave vendee the receipt Exhibit F, hereinafter translated; and later handed over the certificate of transfer, Exhibit "B," issued by the Bureau of Internal Revenue.

From the investigations that were made, it appears that Felipe Abrenica sold a horse to the accused, Mauhay, and that the latter, as he had not paid in full the purchase price agreed upon, gave the mare to the said Felipe Abrenica as a guaranty for the unpaid balance, making out the certificate of transfer in the name of Felipe Abrenica. Inasmuch as Francisco Mauhay claimed his mare was worth P200 and he had handed it over to Felipe Abrenica as a guaranty for P100, the said two agreed to sell it, as in reality they did do, to Martin Alarcon. By the comparison of the brands of the mare found in the possession of Martin Alarcon with those in document Exhibit A presented by the complainant Catalino Beleno it appears that this mare is undoubtedly the identical one that was taken away from its owner's yard; furthermore, the chief of police of the pueblo of Rosario recognized it as the property of complaining witness; he had known it previously because he had been in the habit of using it in the said pueblo.

The accused pleaded not guilty and in a sworn statement denied what Felipe Abrenica set forth, to wit, that Felipe Abrenica had sold him, Francisco Mauhay, a gray horse; that because Francisco Mauhay had not been able to pay

the full purchase price, deponent had handed over to Felipe Abrenica, as a guaranty, the mare in question; the accused furthermore denied having made out a certificate of transfer of this mare in favor of Felipe Abrenica. Francisco Mauhay explained further that being in Alarcon's company he offered to sell to Martin Alarcon the mare he had with him; that the two of them had agreed upon its sale and that the certificate should be made out in Manila; that Martin Alarcon thereupon handed over P150, the selling price of the mare, to the said Felipe Abrenica and that a receipt was made out at this time and signed by the latter; that at no time had he issued a certificate of transfer of the said mare in favor of Felipe Abrenica; that he had not fraudulently taken the mare away from Catalino Beleno's yard, and that he had not received anything, as a purchase price of the mare, from Martin Alarcon. Upon making this declaration, at the request of the fiscal, the accused wrote with a pencil the date and his given and surname as they appear in the document Exhibit N.

From the foregoing facts, which were fully proved at the trial, it is seen that the mare found in the possession of Martin Alarcon is the one belonging to Catalino Beleno, which had been taken from the environments of the latter's house. In spite of the denial of the accused, it has been duly proven that with exceeding malice and with daring bad faith Francisco Mauhay handed over to Felipe Abrenica, as a guaranty of part of the purchase price of a horse he had bought from the latter, the said mare, together with certain documents purporting to be certificates of ownership thereof, but which, as it was discovered afterwards, belonged to a horse; that the accused was the one who sold the stolen mare to Martin Alarcon and who received from Martin Alarcon the price of the mare, namely P150, as set forth in document Exhibit F; that, in spite of defendant's denial that he had made out and given the receipt Exhibit F, the writing of the accused in document Exhibit N, especially in his given and surname, is similar to that of his given and surname written on the aforementioned receipt Exhibit F and to that in other documents which undoubtedly were written by the accused in this case. That the accused is not absolutely without education is unquestioned. Making use of that very ability, he succeeded in convincing Felipe Abrenica that he, Francisco Mauhay, was the owner of the mare which he had handed over as a guaranty, together with credentials marked Exhibits D and E, pertaining, not to the mare in question, but to a horse; and afterwards, by agreement with Felipe Abrenica, he succeeded in selling this horse in the name of Felipe Abrenica to Martin Alarcon, causing Martin Alarcon, the buyer, to believe that the certificate of transfer Exhibit B, belonged to the mare sold whereas, the instrument of transfer refers to certificate No. 51295, which is Exhibit D and does not specify this mare but a horse. Furthermore it is clearly evident that Exhibit J describes an animal distinctly different from the mare in question (according to the results of the investigations of the chief of police of this capital) although the accused made use of a certain similarity between the "L," the brand of the mare and of the pueblo of Lipa (the original home of the horse), and the brand "L" of the pueblo of Loob, Province of Romblon. By the foregoing it appears to be conclusively demonstrated that the defendant fraudulently took the mare in question, since it was he who delivered it as security to Felipe Abrenica and who afterwards, in agreement with the latter, sold it to Martin Alarcon, from whom he received P150, the purchase price therefor.

The accused Francisco Mauhay has given no explanation as to how or why he had in his possession Catalino Beleno's mare which had disappeared from the environments of the house where it was tied. The consequent presumption that Francisco Mauhay was undoubtedly the principal in the subtraction of said horse appears convincing, inasmuch as he has explained neither that he obtained the animal from some one else who was the true principal of the deed, nor how he had the said animal in his possession before it was found in that of Martin Alarcon. The deed must be characterized as the crime of theft of large cattle, or that of stealing a mare worth 1,000 pesetas, comprised within article 518, No. 3, in connection with article 520 as amended by Act No. 2030.

In the commission of the crime we must take, into account the circumstance of nocturnity, because it is unquestionable that the accused took advantage of the obscurity and silence of the night, and of the time when the owner of the horse was sound asleep and at rest, to take away the horse stealthily. There is no mitigating

circumstance to offset the said aggravating one, wherefore the penalty provided by law must be imposed in its maximum degree. In view of the foregoing considerations, and as the judgment appealed from is in accordance with the merits of the case, it must be affirmed, with the understanding however, that the accused is sentenced to the penalty of 6 years and 1 day of presidio mayor, to the accessories of article 57 of the Penal Code, to the payment of ₱150 to Martin Alarcon, without subsidiary imprisonment in case of insolvency, and to the payment of the costs of this instance; Martin Alarcon will return the horse which he has in his possession to its owner, Catalino Beleno. The judgment is thus modified. So ordered.

Arellano, C. J., Johnson, Carson, Trent, and Araullo, JJ., concur.

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