

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. INOCENTE BILLEDOR ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 10883. December 20, 1915*

Ponente: MORELAND, J.

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This is an appeal from a judgment of the Court of First Instance of Ilocos Norte convicting the appellants of the crime of theft of large cattle and sentencing Maximo Venus, Inocente Billedo and Pablo Beimes to 5 years of presidio correccional and the remainder of the appellants to 3 years of presidio correccional, each of the defendants to pay to Hermenegildo Bravo, the owner of the stolen bull, 1/11 of the sum of P100, with subsidiary imprisonment in case of nonpayment, each to suffer the penalties prescribed by article 61 of the Penal Code, and each to pay one-twelfth of the costs.

It appears from the evidence of the prosecution that on the morning of September 25, 1914, Hermenegildo Bravo discovered that a bull owned by him was missing and started out to search for it. While engaged in the search he was notified by the president of Bangued that the head and skin of an animal such as he described had been found by a certain resident of the barrio. Upon an examination Bravo identified them as being parts of the bull which had been stolen the night before. The evidence shows that the appellants Maximo Venus, Pablo Beimes, Florencio Blando, Miguel Berido, Gregorio Bilgrea and Policarpio Bermudez took the animal from the corral in which it had been placed by the owner, agreed to slaughter and divide it among them, and, with the exception of Miguel Berido and Policarpio Bermudez, drove the animal as far as Banaao, where Maximo Venus, Pablo Belmes and Florencio Blando took it and drove it to Puduc. It is further shown that Maximo Venus, Florencio Blando, Felix Garcia, Pedro Valera, Simeon Valera, Sixto Barbosa, Inocente Billedo and Alejandro Venus butchered the bull at Puduc and divided it in accordance with the previous agreement. So far as the record shows, Simeon Valera, Pedro Valera, Sixto Barbosa and Inocente Billedo took no part in stealing the bull but only in the killing and sharing of the spoils.

The attorneys for the appellants attack with vigor the finding of the trial court on the facts. They allege as errors that "the lower court erred in finding that the bull, the head and hide of which was identified by Hermenegildo Bravo as his property, is the same animal stolen from his corral;" that "the court erred in finding that the appellants stole and killed a bull belonging to Hermenegildo Bravo." There are several other assignments of error touching substantially the same point, namely, that the court erred in its finding of facts.

We have examined the evidence in the case with care and are of the opinion that the judgment of the trial court on the facts is fully supported thereby. It appears from the evidence that the chief of police of Bangued, with several of his policemen, stationed themselves, on the night of September 24, 1914, on one of the streets leading from the barrio of Cabulluan. While so stationed, a person, who was not recognized by the police, came along, and, upon being halted, turned and ran away. In the escape he dropped a basket of meat of which the police took charge. A few moments later Pedro Valera came along riding a carabao and, upon being stopped, a sack of meat was discovered in his possession. He admitted that the meat was his share of a bull which he and Florencio Blando,

Maximo Venus, Inocente Billedo, Felix Garcia, Alejandro Venus, Simeon Valera and Sixto Barbosa had butchered that night Pedro told the chief of police that Florencio Blando had the head and skin of the animal. The chief of police then went to the house of Florencio Blando and there found the head and skin and some of the meat, which he carried to the municipal building, where it was identified by Hermenegildo Bravo as already stated. Blando confessed to the chief of police, when he arrived at the house that night, that Maximo Venus and Pablo Belmes had invited him to assist them in stealing a bull.

A hat and chin band belonging to Simeon Valera was found in the street, along with some meat, where the unknown person, halted by the chief of police, had made his escape.

From the evidence it further appears that Maximo Venus, Pablo Belmes, Florencio Blando, Gregorio Bilgera and Miguel Berido went to the corral which was situated near the house of Miguel Berido at a place called Darangep. Arriving there, Policarpio Bermudez secured a lantern from Berido's house, took it to the corral and so held it that the other accused could see which animal to take. Maximo Venus caught the bull and held it while Pablo Belmes put a ring in its nose. While the bull was being caught and roped Miguel Berido was inside the corral and Florencio Blando was standing at the gate. After the animal had been led out of the corral Felix Garcia, Pedro Garcia, Manuel Garcia and Felipe Belmes arrived and joined the others. They then agreed among themselves to take the animal to Puduc. This arrangement was made about 10 o'clock at night. Policarpio Bermudez and Miguel Berido remained in Darangep and all of the others went along together driving the bull until they came to Banaao, at which place they arrived a little before daylight. At Banaao, they separated and Maximo Venus, Pablo Belmes and Florencio Blando drove the bull on to Puduc. On the night of the 24th Maximo Venus, Florencio Blando, Felix Garcia, Pedro Valera, Simeon Valera, Sixto Barbosa, Inocente Billedo and Alejandro Venus killed the bull at Puduc and divided it as had been previously agreed upon, Maximo taking charge of the shares of those who were absent.

It was shown by the prosecution that Maximo Venus, Pablo Belmes and Inocente Billedo were convicted of a similar crime by the Court of First Instance in 1903 and that Inocente Billedo had been previously convicted of robbery by the Court of First Instance of Abra in October, 1914.

None of the defendants offered any explanation of their possession of the stolen animal. Only one witness testified for the defense and his declaration referred to an alibi in favor of some of the appellants only.

The trial court found all of the appellants guilty as principals; and, in sentencing them, took into consideration the fact of the previous conviction of those already named. He refused to consider nocturnity as an aggravating circumstance, and accorded to all the appellants the benefits of article 11 of the Penal Code.

The accused Florencio Blando did not appeal and, therefore, the judgment of the trial court stands as to him. Felix Garcia, Alejandro Venus and Felipe Belmes were not accused and, of course, no judgment could be rendered by the trial court or by this court as to them. Inocente Billedo died during the pendency of this action and as to him the action abated. As to the accused Gregorio Bilgera the information was dismissed as to him and he was used as a witness for the Government.

We find certain errors in the judgment and sentence of the trial court which must be corrected. In the first place, not all of the accused were guilty as principals. It appears from the record that Simeon Valera, Pedro Valera, Sixto Barbosa and Inocente Billedo took no part in stealing the bull, their activities being confined to sharing in the spoils.

Article 13 of the Penal Code provides:

"The following are considered as principals:

"1. Those who take a direct part in the commission of the act;

"2. Those who directly force or induce others to commit it;

"3. Those who cooperate in the commission of the act by another act without which it would not have been accomplished."

Article 15 provides:

"Accessories are those who, having knowledge of the commission of the crime, and without having participated therein, either as principals or accomplices, take part subsequent to its commission in any of the following manners:

"By profiting themselves or assisting the offenders to profit by the effects of the crime."

* * * * *

We are of the opinion that, under these articles, the crime was consummated when Simeon Valera, Pedro Valera, Sixto Barbosa and Inocente Billedo arrived on the scene.

In the second place, we believe that the court should have applied the aggravating circumstance of nocturnity. There is no question that, from the record, the appellants took advantage of the darkness for the more successful consummation of their plans, to prevent their being recognized, and that the crime might be perpetrated unmolested. It is precisely for such reasons that the aggravating circumstance of nocturnity should be applied. (U. S. vs. Hernandez, 4 Phil. Rep., 499; U. S. vs. Paguia, 10 Phil. Rep., 90; U. S. vs. Gamboa, 11 Phil. Rep., 39, 43; U. S. vs. Fernandez, 11 Phil. Rep., 133, 137; U. S. vs. Quijano, 11 Phil. Rep., 368, 371; U. S. vs. Roque, 11 Phil. Rep., 422, 429; U. S. v#. Burias, 13 Phil. Rep., 118, 128; U. S. vs. Arreglado, 13 Phil. Rep., 660, 665; U. S. vs. Pindong and Carpo, 14 Phil. Rep., 31, 33; U. S. vs. Celestino, 14 Phil. Rep., 34, 37; U. S. vs. Quillo, 15 Phil. Rep., 430, 435; U. S. vs. Laguna, 17 Phil. Rep., 532, 535; U. S. vs. Mananquil, 25 Phil. Rep., 75, 79; U. S. vs. Besuiia, 27 Phil. Rep., 39, 40.)

In the third place, we think that the court erred in applying article 11. (U. S. vs. Maqui, 27 Phil. Rep., 97.)

The accused Maximo Venus, Pablo Belmes, Miguel Berido, Pedro Garcia, Manuel Garcia and Policarpio Bermudez are hereby sentenced to 6 years and 1 day of presidio mayor and to the accessories provided by law. The appellants Simeon Valera, Pedro, Valera and Sixto Barbosa are hereby sentenced to 2 months of arresto mayor and to the accessories provided by law. The said Maximo Venus, Pablo Belmes, Miguel Berido, Pedro Garcia, Manuel Garcia and PoMcarpio Bermudez are hereby required to indemnify, jointly and severally, the said Hermenegildo Bravo in the sum of P100, and, in case of their failure to pay, the said Simeon Valera, Pedro Valera and Sixto Barbosa are, jointly and severally, required to pay such indemnity, and, in case of nonpayment, to suffer subsidiary imprisonment as provided by law; each to pay a proportionate part of the costs. So ordered.

Torres, Johnson, Carson, and Araullo, JJ., concur.

Judgment modified.

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