

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JACINTO BALLAD AND VICENTE TAMARAY, DEFENDANTS AND APPELLANTS.

G.R. No. 11372. September 29, 1916

Ponente: JOHNSON, J.

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JOHNSON, J.:

These defendants were charged with the crime of the larceny of three carabaos and one carabao calf, of the total value of P430. The complaint alleged:

"That on or about June 16, 1915, in the municipality of Tuguegarao, Cagayan, Philippine Islands, the said Jacinto Ballad and Vicente Tamaray did, willfully, unlawfully and criminally, and with intent of gain, take and steal a carabao worth P120, two caraballas worth P250, and one carabao calf worth P60 (the value of all being P430, equivalent to 2,150 pesetas) belonging to another person, Bias Taguinod; taken against the will of the owner thereof.

"Acts committed in violation of law."

Upon said complaint the defendants were duly arrested, arraigned, pleaded not guilty, were tried, found guilty of the crime charged in the complaint and sentenced, by the Honorable J. P. Weissenhagen, judge—the said Jacinto Ballad to be imprisoned for a period of four years nine months and eleven days of presidio correccional, and the defendant Vicente Tamaray to be imprisoned for a period of three years six months and twenty-one days of presidio correccional, each to suffer the accessory penalties provided for by law, to indemnify the offended person in the sum of P430, in case of insolvency to suffer subsidiary imprisonment, and each to pay one-half the costs.

From that sentence the defendants appealed to this court.

The appellants in their third assignment of error allege that the lower court committed an error in denying the motion for a new trial by them, on the ground of newly discovered evidence.

With reference to said assignment of error the record shows that the sentence of the lower court was pronounced to the defendants on the 30th of July, 1915; that the defendants on the 31st day of July, 1915, presented an exception to the sentence and on the same day presented a written notice of an appeal to the Supreme Court.

On the 12th of August, 1915, the attorney for the defendants and appellants presented a motion for a new trial.

On the 14th of August, 1915, the defendants, through their attorney, presented a written request for a withdrawal of their appeal.

On the 14th of August, 1915, the Honorable J. P. Weissenhagen, judge, after hearing the respective parties and considering the motion for a new trial together with the request for a withdrawal of the appeal, held that, the appeal of the defendants having been perfected, he as judge of the Court of First Instance had lost jurisdiction to grant their request. To that order of the lower court the defendants and appellants duly excepted.

The rule is well established that when an appeal is perfected from a particular court that court loses all jurisdiction

over the subject-matter of the case, except for the purpose of protecting the property interests involved. While General Orders No. 58 gives the defendant in a criminal case a period of fifteen days after the entry of the judgment within which to perfect his appeal (section 47, General Orders No. 58), yet he may perfect his appeal within a less number of days and, whenever the appeal is perfected, the lower court loses jurisdiction over the same and has no right to make any further order in said case, except for the purpose of preserving the status of the parties. By virtue of the provisions of section 47 of General Orders No. 58 the sentence in criminal cases becomes final after the mere lapse of fifteen days after its rendition. The lapse of fifteen days from the rendition of a sentence in the Philippine Islands has the same effect upon the finality of the sentence as the expiration of the term of court in other jurisdictions. After the sentence has become final any attempt by the judicial department to alter, amend, or modify the same, except to correct clerical errors, is unwarranted in law and can in no way affect the sentence. (U. S. vs. Court of First Instance of Manila, 24 Phil. Rep., 321.)

The Supreme Court of the United States in the case of *Sibbald vs. United States* (37 U. S., 487) said:

"No principle is better settled, or of more universal application, than that no court can reverse or annul its own final decrees or judgments for errors of fact or law, after the term in which they have been rendered, unless for clerical mistakes."

We have in numerous cases held that, after an appeal has been perfected, a court has no power to set aside its judgment or to grant a new trial. A different determination would lead to great uncertainty and possibly to gross abuse. There must be a time when the rights of the parties are to be considered determined and for litigation to cease; and for that purpose the law has wisely fixed the rule here indicated. (*Baldwin vs. Kramer*, 2 Cal., 582; *Casement vs. Ringgold*, 28 Cal., 335; *U. S. vs. Samio*, 3 Phil. Rep., 691.)

It seems to be clear, therefore, from the foregoing rule, that the lower court committed no error in refusing to grant a new trial or to permit the withdrawal of the appeal already perfected. It was the duty of the appellant to present said motions in the Supreme Court. No motion for a new trial nor request for permission to withdraw the appeal has been presented here.

The other assignments of error present a question of fact only. That question is whether or not the defendants and appellants are guilty of the crime charged.

From an examination of the record we find the following facts to be proved beyond a reasonable doubt.

First. That on the 16th of July, 1915, Bias Taguinod was the owner of three carabaos and one carabao calf; that on the night of said day the animals were stolen from the closed yard or solar of the owner; that the value of said carabaos and calf was P430.

Second. That early in the morning of the 17th of July, 1915, the owner, Bias Taguinod, discovered that his carabaos had been stolen; that he followed their footprints from the solar or corral in the direction of the sitio of Buntun of the municipality of Tuguegarao; that, following said footprints to the river, he there found the two defendants washing blood clots out of their drawers and blood spots off of their bolos; that he then and there spoke to the defendants and asked them if they had seen his carabaos; that in answer to that question the defendants suggested that the carabaos had probably crossed or had been taken across the river to the other side; that he crossed the river and found no trace of the animals there and returned and continued his search for the carabaos on the side of the river where he lived; that the next day he returned to the place where he had seen the two defendants washing their garments and bolos and there made a further search in that locality for his carabaos; that after a short time he returned to that place and there found the bodies of the three carabaos and the carabao calf; that said carabaos had been killed; that their throats had been cut; that the liver of the largest carabao had been removed, together with some of its other parts; that the meat of two legs of the carabao calf had also been

removed; that Joaquin Dura ray accompanied the owner of the carabaos when they were found dead.

Third. That later the finding of the dead carabaos of Bias Taguinod was reported to the Constabulary; that Feliciano Villaflor, a sergeant of the Philippine Constabulary, by order of his superior officer, together with Florento Dammag and Jacinto Darauay, went to the sitio of Buntun and there found the three carabaos and the carabao calf dead; that Feliciano Villaflor compared the marks which appeared on the bodies of the carabaos with the marks on the certificate of their owner and found that the marks on the dead carabao were the same as those which appeared in said certificate; that he found that one of the carabaos had its stomach open and that its liver was removed; that the calf's stomach was open and its liver removed, as well as the meat from two of its legs.

Fourth. That the carabao meat was taken to the house of the defendant, Jacinto Ballard; that some time after the meat was left in his house Vicente Tamaray went there and told Jacinto Ballard to throw the meat away because the Constabulary were looking for it; and that the carabao meat was taken out of the house and thrown away.

Fifth. That on the night the carabaos were stolen, Elias Mabborang had been to the river fishing; that on his return home some time after the middle of the night, perhaps about two o'clock, he met the two defendants, Jacinto Ballard and Vicente Tamaray, in the road leading toward the river; that they had with them three carabaos and a carabao calf; that he recognized the defendants and knew that the carabaos belonged to Bias Taguinod; that he talked with the defendants and asked them what they were going to do with the carabaos; that they answered by saying that they were taking the carabaos to pasture.

The defense presented by the defendants in the court below was, in effect, a general denial. They denied all of the facts proved by the prosecution. There was a feeble effort made during the trial of the cause to show, as a motive for the killing of the carabaos, that an enmity existed between Felipe de Asis and the owner of the carabaos and that the defendants, being the servants of Felipe de Asis, had killed the carabaos on that account. The proof offered upon that question, however, is not sufficient to implicate Felipe de Asis in the slightest degree.

While there is no positive proof by eye witnesses that the two defendants took the carabaos from the corral of their owner, the proof (a) that they were seen in possession of the carabaos on the night they were stolen; (b) that they were seen the next morning washing blood clots from their clothes and blood stains from their bolos; (c) that the carabaos in question were found dead, with their throats cut, near the place where the defendants had been washing their bloody clothing and bolos; (d) that a portion of the meat of some of the carabaos had been removed; and (e) that the carabao meat was found in the house of one of the defendants, in relation with the fact that one of the defendants was notified by the other to hide the meat because the Constabulary were looking for it, leads the mind to the irresistible conclusion that the defendants were guilty of the theft of the carabaos in question. Not only does the record show, as above indicated, that the defendants were guilty of the crime charged in the complaint, beyond a reasonable doubt, but the record also shows that Jacinto Ballard had theretofore been convicted of the crime of larceny, which fact should be considered as an aggravating circumstance with reference to him. It is also believed that the defendants selected the nighttime for the purpose of more effectually committing the crime in question without discovery. Nocturnity should, therefore, be considered as an aggravating circumstance with reference to each of the defendants.

Therefore, considering the nature of the crime, together with the aggravating circumstances mentioned, the defendants should be punished in the maximum degree of the penalty provided for by law. Therefore the sentence of the lower court should be modified and the defendants should be sentenced in accordance with the provisions of paragraph 2 of article 518 of the Penal Code, in relation with article 81 thereof and Act No. 2030 as follows—the said Jacinto Ballard to be imprisoned for a period of eight years of presidio mayor and Vicente Tamaray to be imprisoned for a period of seven years of prision mayor, and each to jointly and severally

indemnify Blass Taguinod in the sum of P430, to suffer subsidiary imprisonment in case of insolvency, and each to pay one-half the costs. So ordered.

Torres, Carson, Moreland, Trent, and Araullo, JJ., concur.

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