

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. TIMOTEO CAJUCOM, DEFENDANT AND APPELLANT.

G.R. No. 11617. September 05, 1916

Ponente: TORRES, J.

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TORRES, J.:

These proceedings were commenced by an information filed by the provincial fiscal in the Court of First Instance of Nueva Ecija charging Timoteo Cajucom with the crime of theft. On December 4, 1915, judgment was rendered in which the defendant was sentenced to the penalty of four years two months and one day of presidio correccional, to the accessory penalties of article 58, and was ordered to return the stolen carabao and pay the costs. From this judgment the defendant's counsel appealed.

According to the complaint and statement made by Sancho Osias, one day in the month of April, 1915, an unbranded carabao belonging to him and valued at P30, disappeared from a pasture situated within the municipality of Bongabon, Nueva Ecija. Although the animal had not yet been branded, for it had not attained the age of two years required by law, its owner was easily able to identify it by the following marks: Cuts on both of the animal's ears; a twisted tail, scarred at the root; and a circular cowlick in the middle of the forehead between the horns.

The owner at once commenced to search for the lost carabao, and after he had spent some time in fruitless investigations Guillermo Macabangon informed him that the animal was in the possession of Timoteo Cajucom, and that he himself, the informant, and Tomas de la Fuente had caught the carabao in the field at the request of the said Cajucom. Upon this, the owner of the carabao went to see the latter and demanded the return of the animal, but as Cajucom refused to give it up Osias reported the matter to the Constabulary Captain B. L. Whitney, and, by the latter's order, the Constabulary soldier Nazario Defano seized the carabao, which in fact bore the marks its owner said it did.

The witnesses Guillermo Macabangon and Tomas de la Fuente corroborated the references to them made in Sancho Osias' testimony; they added that the carabao was found on Francisco Miranda's land, and that when Macabangon advised Cajucom that the animal belonged to Sancho Osias and that it was in the care of the latter's brother, Cirilo Osias, Timoteo Cajucom, who was then on horseback, assured them that the said carabao was his, and, after it had been caught, took it away with him.

The witness Teodoro Paraton stated that it was he who took care of the dam of the carabao alleged to have been stolen; that the said dam was in Bongabon, and that her calf did in fact bear the marks stated by its owner. The carabao shown to this witness in the justice of the peace court was identified by him as being the calf of the said dam, but he was unable to say on what date the carabao disappeared, though in the month of June, 1915, the owner advised him of its disappearance.

The defendant, Timoteo Cajucom, pleaded not guilty and swore that the carabao that was taken from his possession and alleged to have been stolen was the calf of a dam belonging to him; that it was about three years

old and was in the care of his partner Juan Sarmiento, at San Pablo, the defendant exhibiting Exhibit A, a document issued in the municipality of Bongabon, evidencing his ownership and rights in the said carabao; that the said animal was branded in the said municipality, where it was taken by his said partner Sarmiento; that before it was taken there, as Sarmiento felt sick, the carabao remained in the defendant's possession for three days, tied to a tamarind tree in front of his house at a distance of about 20 yards from the street; that the animal was visible from the street as it was tied close to it and there was no fence along the edge of the road. The defendant added that while the carabao was being taken by Sarmiento to the municipal building, it passed publicly in front of his house and in view of everybody; that Sancho Osias' house was in the same neighborhood and situated about 100 meters from his own; that one morning three days afterwards the carabao disappeared from the place where it had been tied; that he therefore mounted a horse, went to look for it, and found it on the bank of the river of the pueblo; that in order to catch the carabao he asked Tomas de la Fuente to take one of his own to a place where there were a great many people, in order that the defendant's carabao might follow this other animal; that De la Fuente did so, and the defendant's carabao was found in Francisco Miranda's field, where, with the aid of more than thirty people, one of the onlookers, Guillermo Macabangon, succeeded in catching it and tying it; that witness thereupon took his carabao to the municipal building, where it was branded on June 14, 1915; that he denied that the witness Macabangon who had caught and tied the carabao protested and told him that the animal belonged to Sancho Osias, in front of whose house it had passed while being taken to his own and afterwards to the municipal building; that he personally owned twenty carabaos, which were taken care of by about seven of his *aparceros* (partners-on-shares); that since the time the carabao in question was born, it had been taken care of by Juan Sarmiento and together with its dam had been kept in public sight; that the said dam died in December of the previous year; that the place where, after it had been branded, it was found by the Constabulary soldier was a rice field, and that in the neighborhood there were about twenty houses occupied by his lessees, four by his tenants on-shares, and about fifteen by his relatives; that about nine of his carabaos were ear-marked; that bad blood existed between the defendant and the complainant Sancho Osias, as they had always been opposed to each other in the courts and the cockpit, and that as they had adjoining lands sown with rice they had had trouble over the water supply and the dam thereon; that at the time he was accused of the theft of the carabao, three complaints had been filed against him, but that the proceedings brought for recovery of damages, as well as those in connection with the lands of the area of half a cavan of seed, had been dismissed, and, with respect to the complaint for violation of the Irrigation Act, his companions and codefendants were fined, but not the defendant-witness, as proven by Exhibits B and C.

The witness Juan Sarmiento corroborated the testimony given by the defendant Cajucom, and stated that the carabao had seven cowlicks and was ear-marked; that he knew the animal very well because he had taken care of it since it was born of a dam belonging to the defendant which had died; that at the time the Constabulary soldier seized the carabao, it was tied in front of the defendant's house, where witness was in the habit of tying it; that said place was part of a rice field and not wild grass land; and that he did not leave the animal loose, because it would have destroyed the rice planted in the neighboring fields. He added that Sancho Osias had twice been in the said place, the first time claiming that he was looking for seed, while on the second occasion he said he was looking for chickens, though he approached the tied carabao and with a pencil drew a description of its marks on a piece of paper; that the animal escaped after three days and when caught was taken or driven to the municipal building to be branded; and that when the carabao was seized by the Constabulary soldier, witness, by the latter's order, rode the animal to the municipal building.

Sancho Osias, however, denied that before Ire filed his complaint he had been to the spot where the carabao was tied for the purpose of taking notes, although on cross-examination he stated that he had gone there to find out if the carabao was really his.

From the facts above related, it cannot positively be inferred that the defendant, Timoteo Cajucom, committed the punishable act of having, for the purpose of unlawful gain, taken away the carabao of which Sancho Osias claims to be the owner. The principal point that arises in this case and one that is wholly in doubt, is: Who is the true and lawful owner of the carabao in question?

In order that the crime of theft may be considered to have been committed, it is necessary and indispensable to clearly prove the identity of the person who, as the result of a criminal act, without his knowledge and consent, was wrongfully deprived of a thing belonging to him.

The record does not show satisfactory proof that the carabao seized from the possession of the defendant Cajucom belonged exclusively to the complainant Osias, inasmuch as the defendant on his part alleges, with the support of considerable evidence, that the carabao is his, on account of its being the calf of a dam belonging to him.

The complainant Osias was unable to present any certificate or document of ownership to prove that he was really the owner of the carabao in question. His evidence is reduced to the testimony of the witness Teodoro Paratoni who stated that he knew the carabao and that it bore the marks indicated by the complainant Osias.

However, the defendant in turn testified that the animal in question was the calf of a dam belonging to him, that it was ear-marked and had several cowlicks, and to bear out his testimony he called upon the witness Juan Sarmiento who had taken care of the animal and of the dam that had calved it about three years before. To prove his right, he exhibited the certificate of ownership of the carabao, issued by the municipality of Bongabon (rec, p. 25).

The witness Juan Sarmiento corroborated the statements made by the defendant, and further testified that the complainant twice went to the place where the carabao was tied, and that on the second occasion he took notes with a pencil and paper of the description of the animal. He added that the carabao was not hidden away but that on the contrary it was tied in a rice field situated a short distance from the house of its owner and that it could be seen from the street near by.

Were it true that the carabao had been stolen by the defendant or by some other person by his order, he would not have kept it in plain view of the public, knowing that its owner was a resident of the neighborhood, living near his house; moreover, Cajucom would not have availed himself of the help of two townsmen to catch the carabao in the presence of more than thirty people, at the time it escaped from the place where he kept it tied. Immediately after it was caught it was taken to the municipal building by one of his tenants-on-shares who conducted the animal through the streets of the town, passing in front of the house of Osias who claims to be the owner of the carabao, and the defendant had no hesitation in publicly presenting the animal at the municipal building for the purpose of having it branded.

Furthermore, while the defendant was unable to bring forward the dam of the disputed carabao, no explanation has been offered why the complainant Osias did not in turn present the dam that according to the witness Paratoni gave birth to the animal, in an endeavor to furnish the proof that is usually decisive in cases similar to the one at bar.

The foregoing extremely contradictory evidence forbids a finding that the said carabao is the property of the complainant, in view of the fact that the evidence offered by the prosecution is seriously offset by that adduced by the defendant, and, taking into consideration the fact that the latter is the owner of lands and several carabaos, and that judging by the evidence there appears to be strong enmity between the complainant and the defendant, this court, bearing in mind that in criminal prosecutions an accused person must be presumed to be innocent until he is proven guilty and that where there is a reasonable doubt and his guilt has not been satisfactorily proven, holds that

he is unquestionably entitled to acquittal.

For all the foregoing reasons, the judgment appealed from is reversed and we hereby acquit Timoteo Cajucom from the complaint with the costs of both instances de officio. Any right of action Sancho Osias may have in said carabao is hereby reserved to him, to be exercised in the proper civil proceedings. So ordered.

Johnson, Moreland, Trent, and Araullo, JJ., concur.

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