

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MIGUEL CATIMBANG ET AL., DEFENDANTS. MIGUEL CATIMBANG AND PEDRO MALALUAN, APPELLANTS.

G.R. No. 11750, November 24, 1916

Ponente: CARSON, J.

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CARSON, J.:

This is an appeal from a judgment convicting the two defendants and appellants of the crime of theft of large cattle and sentencing each of them to six years and one day of prision mayor together with the accessory penalties prescribed by law, to the return of the stolen cattle or the value thereof, and to the payment of the costs.

The substance of the evidence offered by the prosecution is as follows:

On the night of November 30, 1914, two cows with their calves, which were tied close by the houses of their owners in one of the barrios of the municipality of Lipa, disappeared, the rope (soga) with which one of the cows was tied having been cut, and the rope with which the other was tied having disappeared with the animal. After a fruitless search for the stolen animals the owners reported their loss to the police.

While looking for the animals, one of the owners, Antonino Templo, met the accused Miguel Catimbang, told him of his loss, and asked him to aid in the search. Catimbang promised to do so, and the next day in reply to an inquiry as to whether he had seen the animals, asked Templo for P40 as ransom (rescate) for the return of his property, warning him that if he did not pay the money demanded of him, he would lose the animals altogether.

Templo did not have the money demanded of him and failed to recover the animals. Soon thereafter Miguel Catimbang was arrested, and having been set at liberty on bail, went to Templo's house and promised to return Templo's animals if he would aid him to escape from the criminal charges pending against him. Templo agreed, and sent two men to Catimbang's house to get the animals. Catimbang gave them the calf which had been stolen from Templo but despite his promises did not turn over the cow.

Two brothers, named Lirit, testified that on the 9th day of December, 1914, the appellants, together with a third person unknown, approached the witnesses, who were working on a hemp late, and asked them to take care of two cows and their calves for a few days, until their owners should ransom them. The party had the animals with them, and the description as given by the witnesses tallied with that given by the owners of the two cows with their calves that had been stolen ten days earlier. The brothers declined to take care of the cattle, and the party went away, taking the animals with them.

The accused Miguel Catimbang went on the witness stand and testifying in his own behalf, denied the truth of the testimony of the witnesses for the prosecution in so far as it tended to show that he had ever been in possession of the animals or had any guilty knowledge of the theft with which he was charged.

The other accused, Pedro Malauan, did not go on the witness stand, and the only other witness called for the defense was the owner of the hemp late on which the brothers Lirit said they were working when they saw the

accused with the stolen animals, who testified, in substance, that if the brothers were working on the hemp late on that occasion, they were doing so without his authority.

The trial judge, who saw and heard the witnesses testify, accepted as true the testimony of the witnesses for the prosecution, and declined to give any credence to the denials of Catimbang testifying in his own behalf. We find nothing in the record which would justify us in disturbing his findings in this regard. We find no errors in the proceedings prejudicial to the rights of the accused, and the facts disclosed by the evidence for the prosecution leave no room for reasonable doubt as to their guilt of the crime of which they were convicted in the court below.

Counsel for appellants, while he admits that this court has frequently sustained convictions of the crime of theft upon proof of the theft and the further proof that the stolen goods had been found in the unexplained possession of the accused, vigorously contends that the doctrine upon which these convictions rest is unsound, and that it runs counter to the constitutional provisions which forbid that accused persons be required to testify against themselves.

In the language of Bishop's New Criminal Procedure, (3d vol., p. 1695), "the reported cases on this topic are, in number, enormous," and a multitude of cases might be cited in support of the doctrine, selected from the various States of the United States, wherein these constitutional provisions are substantially identical with those in force in this jurisdiction.

It is sufficient, by way of citation of authority, to refer to the cases cited on this subject in the Cyclopedias and especially those cited in Bishop's New Criminal Procedure, chapter 135; Underhill on Criminal Evidence, chapters 299, 300 and 301; Johnson vs. Miller ([Iowa] 29 N. W. Rep., 743) and note; State vs. Phelps ([Mo.] 4 S. W. Rep., 119) and note.

A number of different views and shades of opinion are set forth in these decisions, and it must be admitted that in the form in which the doctrine has sometimes been announced, it would appear to be subject to the criticism of counsel in his argument on this appeal.

It has sometimes been said that the unexplained possession of stolen property creates a presumption of law that the possessor committed the larceny, and casts the burden of proving the innocent character of the possession upon the accused; and thus stated, it must be admitted that there is some force in counsel's contention that such a ruling may have the effect, in some instances, of destroying the right of the accused to be exempt from testifying against himself, and of declining to testify without having that fact used against him.

According to the modern view, however, convictions in cases of this kind are not sustained upon a presumption of law as to the guilt of the accused. The conviction rests wholly upon an inference of fact as to the guilt of the accused. If as a matter of probability and reasoning based on the fact of possession of the stolen goods, taken in connection with the other evidence, it may fairly be concluded beyond a reasonable doubt that the accused is guilty of the theft, judgment of conviction may properly be entered. The conviction rests upon the evidence introduced by the prosecution—not upon the refusal or failure of the accused to testify.

The inference of guilt is one of fact and rests upon the common experience of men. But the experience of men has taught them that an apparently guilty possession may be explained so as to rebut such an inference and an accused person may therefore put witnesses on the stand or go on the witness stand himself to explain his possession, and any reasonable explanation of his possession, inconsistent with his guilty connection with the commission of the crime, will rebut the inference as to his guilt which the prosecution seeks to have drawn from his guilty possession of the stolen goods.

It is in this sense that it is sometimes said that the unexplained possession of recently stolen goods will sustain a

conviction of the crime of larceny.

When the prosecution closes its case there must be enough evidence in the record to establish the guilt of the accused if nothing further appears; and proof of the possession of recently stolen goods taken together with proof of the commission of the theft, may be and generally will be sufficient to establish the guilt of the accused, if there is nothing in the record to raise a doubt as to the guilty character of the possession, though there is no presumption of law to that effect.

It then rests with the accused to rebut the inference of fact as to his guilt arising from his possession of the stolen goods by the submission of evidence tending to prove that his possession of the stolen goods was not inconsistent with his innocence of the crime of larceny. But this is not to compel him to give evidence against himself. It is merely to give him the opportunity which is given the defendant in all criminal cases, to submit evidence in his own behalf after the prosecution has introduced evidence sufficient to sustain a conviction unless that evidence is rebutted or satisfactorily explained.

Confer as to the general doctrine of the courts the cases hereinbefore cited, and especially, as to the modern doctrine, the discussions, supported by numerous citations of authority, in Underhill on Criminal Evidence, paragraphs 299, 300 and 301; and in Bishop's New Criminal Procedure (2d Ed.), paragraphs 740, 741 and 1704.

We find no error in the proceedings prejudicial to the substantial rights of the accused. The judgment convicting and sentencing the defendants and appellants should, therefore, be affirmed, with the costs of this instance against the appellants. So ordered.

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

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