PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSELITO ESCARDA, JOSE VILLACASTIN JR., HERNANI ALEGRE, AND RODOLFO CAÑEDO, ACCUSED. JOSE VILLACASTIN, JR., ACCUSED-APPELLANT.

G.R. No. 120548. October 26, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the decision dated September 21, 1994, of the Regional Trial Court of Cadiz City, Branch 60, in Criminal Case No. 586-S, finding accused Joselito Escarda and Jose Villacastin Jr., guilty beyond reasonable doubt of violation of the Anti-Cattle Rustling Law. In its decision, the trial court decreed:

> WHEREFORE, in view of the foregoing circumstances, this Court finds both accused JOSELITO ESCARDA and JOSE VILLACASTIN, JR., guilty beyond reasonable doubt of the crime of "Viol. of P.D. 533" (Anti-Cattle Rustling Law), and there being the presence of three generic aggravating circumstances of [r]ecidivism, nighttime and unlawful entry, with no mitigating circumstances to offset the same, as such, the accused are each sentenced to suffer, considering the Indeterminate Sentence Law, the imprisonment of EIGHTEEN (18) YEARS, EIGHT (8) MONTHS and ONE (1) DAY as the minimum to RECLUSION PERPETUA as the maximum, together with all the accessory penalties imposed by law and to indemnify the offended party, Joel Barrieses, in the amount of P5,000.00 without subsidiary imprisonment in case of insolvency.
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> The accused being detained, are hereby entitled to the full credit of their preventive imprisonment as provided for under R.A. 6127.
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> Costs against both accused.
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> SO ORDERED.[1]

In an information dated April 18, 1988, Provincial Fiscal Othello Villanueva charged accused with violation of Presidential Decree No. 533, otherwise known as Anti-Cattle Rustling Law of 1974, as follows:

> The undersigned Provincial Fiscal accuses JOSELITO ESCARDA, JOSE VILLACASTIN, JR., HERNANI ALEGRE (at-large) and RODOLFO CAÑEDO (at-large) of the crime of Violation of Presidential Decree No. 533, (Anti-Cattle Rustling Law of 1974), committed as follows:
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> That on or about the 29th day of July, 1987, in the Municipality of Sagay, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the first two (2) above-named accused, in company of their two (2) other co-accused, namely: Hernani Alegre and Rodolfo Cañedo, who are both still-at-large, conspiring, confederating and mutually help[ing] one another, with intent of gain, did then and there, wilfully, unlawfully and feloniously take, steal and carry away two (2) female carabaos, valued in the total amount of FIVE THOUSAND PESOS (P5,000.00), Philippine Currency, belonging to JOEL BARIESES, without the consent of the latter, to the damage and prejudice of the said owner in the aforestated amount.

CONTRARY TO LAW.[2]

Upon arraignment, accused Escarda and Villacastin, assisted by counsel, entered a plea of not guilty. Thereafter, trial on the merits ensued.

The facts as presented by the prosecution and summarized by the trial court are as follows:

> [Dionesio Himaya] testified that on July 29, 1987 at about 2:00 o'clock in the morning in [Hacienda] Ricky, Jose Villacastin, Jr. and his group passed by his house. [He] was still awake at that time because he was watching over his cornfield and while doing so, he saw the two accused remove the cyclone wire which was used as the corral for the two (2) carabaos of Rosalina Plaza. He was able to see Jose Villacastin, Jr. cut the cyclone wire because he was just four (4) arms length away from them and after Jose Villacastin cut the wire, they swept it aside and untied the two (2) carabaos. After untying the carabaos, they rode on it and proceeded to the canefields. [He] saw two (2) persons riding on the carabao whom he identified as Jose Villacastin, Jr. together with Joselito Escarda. He awakened Rosalina Plaza who thereafter went to Joel Barrieses, owner of the carabaos, to inform the latter that his carabaos were stolen.
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> [Rosalina Plaza] testified that on July 29, 1987 at about 2:00 o'clock in the morning, in the residence of Joel Barrieses, Dionesio Himaya called her and informed her that the carabaos were stolen and when asked who stole the carabaos, Dionesio Himaya only mentioned Jose Villacastin, Jr. Before the incident of July 29, 1987, she already knew the person of Jose Villacastin, Jr., because the latter always passed by their house. After she was informed of the stealing of the carabaos, she went to the corral to check whether the carabaos were there but discovered that the beasts were no longer there and the cyclone wire was destroyed. She informed Joel Barrieses, that Jose Villacastin, Jr., stole the carabaos and she went to the 334th PC Company and reported the incident.[3]

In their defense, Escarda and Villacastin denied the charges. Escarda claimed that he was sleeping in the house of Gilda Labrador during the incident while Villacastin declared that he too was sleeping in his house at that time.[4] The defense version of the incident was summarized by the trial court as follows:

> ...Joselito Escarda testified that he did not know his co-accused in this case, specifically, Jose Villacastin, Hernani Alegre and Rodolfo Cañedo. Neither did he know of somebody by the name of Dionesio Himaya although he knew somebody by the name of Gilda Labrador. In the early morning of July 29, 1987, he was working as cane cutter and hauler in the hacienda of Javelosa located in Barrio Malubon, Sagay, Negros Occidental which is fifteen (15) kilometers away from the house of his mother where he was residing. On July 29, 1987, he started working at 8:00 o'clock in the morning and ended at 11:00. After he finished working in the field, he went to the house of his mother where he ate lunch and rested until 3:00 o'clock in the afternoon. In the evening of July 29, 1987, he slept at the house of Gilda Labrador starting at 7:00 o'clock in the evening and woke up at 6:00 o'clock in the morning of July 30, 1987. Sometime on August 29, 1987, he left alone for the dance hall located at Hda. Ricky to attend a dance held there because there was a fiesta at that time. While he was at the dance hall, he was arrested by the PC elements and brought to the 334th PC Company where he was maltreated. He was asked whether or not he stole the carabaos at Hda. Ricky but he denied the commission of the crime and again, he was maltreated. He suffered injuries when they maltreated him so he made a confession before them but did not sign the same. His injuries were not treated by a physician because the PC would not let him go out of the jail, so, his injuries healed while he was in jail. He did not know the names of the PC who maltreated him and forced him to admit the loss of the carabaos at Hda. Ricky because the maltreatment happened in the evening. Furthermore, he did not know the complainant in this case, i.e. Joel Barrieses.
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> [Jose Villacastin, Jr. testified] that on or before July 29, 1987, he did not know the accused Joselito Escarda, Hernani Alegre and Rodolfo Cañedo because in the early morning of July 29, 1987, at more or less 2:00

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> o'clock to 3:00 o'clock, he had not gone with Joselito Escarda, Hernani Alegre and Rodolfo Cañedo because he was sleeping in his house which is located in Sitio Candiis. He started sleeping at 8:00 o'clock in the evening of July 28, 1987 and woke up the next day, July 29, 1987 at 7:00 in the morning. On August 29, 1987 at 10:00 o'clock in the evening, he was attending a dance at Hda. Ricky and while watching the dance, he was arrested and brought to the 334th PC Headquarters in Tan-ao, Sagay, Negros Occidental. When they arrived at the PC Headquarters, they were investigated about the stealing of the carabaos and the PC elements wanted them to admit it. He denied what they were accusing him of because he has not committed the crime. He does not know of anybody by the name of Joel Barrieses. When he denied the commission of the crime, he was maltreated and was forced to admit it and to make a confession. They were detained for about a month at the 334th PC Headquarters and they were transferred to the Municipal Jail of Sagay, Negros Occidental and there was no lawyer present during his refusal to admit the stealing of the carabaos.[5]

The trial court found the testimonies of the prosecution witnesses credible, while it disbelieved the defense of denial and alibi of accused Escarda and Villacastin. They were found guilty as charged. However, the charge against accused Rodolfo Cañedo was dismissed for insufficiency of evidence. Earlier, the charge against co-accused Hernani Alegre was dismissed on motion by the prosecution, for lack of evidence.

Insisting on their innocence, Escarda and Villacastin filed their notice of appeal. In their assignment of error, they alleged that the trial court erred in convicting them of the crime charged.[6]

On November 27, 1995, we required the trial court to order the commitment of Escarda and Villacastin to the Bureau of Corrections or the nearest national penal institution. However, Executive Judge Renato Muñez requested that their commitment to the Bureau of Corrections be deferred until the termination of the other criminal case[7] against them pending before the said trial court. Further, Captain Eduardo Legaspi, Acting Provincial Warden of Negros Occidental, also requested to hold in abeyance the commitment of Escarda and Villacastin in view of their pending criminal cases before the Regional Trial Court of Cadiz City.[8] Accordingly, we granted the aforesaid request for deferment.[9] On August 12, 1998, they were eventually committed to the New Bilibid Prison, Muntinlupa City.[10]

On October 12, 1998, Escarda sought the approval of this Court to withdraw his appeal.[11] We required the Director of the New Bilibid Prison to confirm the voluntariness of said withdrawal.[12] In his certification dated July 15, 1999, Atty. Roberto Sangalang, who personally examined Escarda, attested that Escarda executed his urgent motion to withdraw appeal on his own free will and fully understood the consequences of the same. On August 9, 1999, we granted Escarda's motion to withdraw appeal.[13]

Accordingly, we are now concerned only with the appeal of the remaining appellant, Jose Villacastin, Jr. In his brief, he assigns only one error:

> THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED OF THE CRIME CHARGED BEYOND REASONABLE DOUBT.

Appellant contends that the element of "taking away of carabaos by any means, method or scheme without the consent of the owner" was not proven by the prosecution. He also alleges that his identity was not established beyond reasonable doubt, thus, he should be acquitted. He adds that the prosecution failed to prove ownership of the stolen carabaos by presenting the certificate of ownership,[14] as required by the Anti-Cattle Rustling Law.

Cattle rustling is the taking away by any means, method or scheme, without the consent of the owner or raiser of cow, carabao, horse, mule, ass, or other domesticated member of the bovine family, whether or not for profit or gain, or whether committed with or without violence against or intimidation of any person or force upon things. Cattle rustling includes the killing of large cattle, or taking its meat or hide without the consent of the owner or

raiser.[15]

In this case, the overt act which gives rise to the crime of cattle rustling is the taking away of the carabaos by the accused without the consent of the caretaker. Dionisio Himaya testified that he saw appellant cut the cyclone wire used as corral for the carabaos. Afterwards, appellant untied the two carabaos. Then, appellant rode on one carabao while co-accused Escarda rode on the other and immediately proceeded to the canefield.[16] The taking was confirmed by Rosalina Plaza, the caretaker of the carabaos, who declared that after she was informed by Himaya about the incident, she went right away to the corral and discovered that indeed the two carabaos were missing.

Appellant's assertion that his identity was not positively established deserves no serious consideration. Prosecution witness Dionisio Himaya identified appellant and Escarda as the rustlers. In his testimony, Himaya said he was awake at that time as he was watching over his cornfield nearby, and there was enough illumination from the moon.[17] He was just four arm's length away. He saw appellant and Escarda unleash the two carabaos. He stated that appellant rode on one carabao while Escarda rode on the other, and both immediately went away. He said he easily recognized appellant as he knew him long before the incident. According to the witness, appellant was the nephew of his wife and used to visit them before. During the trial, the witness positively identified appellant as the same person who stole the carabaos. Appellant's contention concerning lack of proper identification is, in our view, baseless and unmeritorious.

Similarly, appellant's assertion, that the prosecution should have first presented the certificate of ownership of the stolen carabaos to warrant his conviction, is untenable. It is to be noted that the gravamen in the crime of cattle-rustling is the "taking" or "killing" of large cattle or "taking" its meat or hide without the consent of the owner. The "owner" includes the herdsman, caretaker, employee or tenant of any firm or entity engaged in the raising of large cattle or other persons in lawful possession of such large cattle. In this case Rosalina Plaza, the caretaker of the carabaos, did not consent to the taking away of the carabaos. She immediately informed Joel Barrieses, the owner, that the carabaos were stolen and reported the incident to the police. Note that the carabaos' ownership was never put in issue during the trial in the lower court and is now raised belatedly. It is settled that, generally, questions not raised in the trial court will not be considered on appeal.[18]

Appellant's alibi must likewise fail. He insists that he was sleeping in his house at the time the crime occurred. He slept at 8:00 P.M., July 28, 1987 and woke up the next day, July 29, 1987 at 7:00 A.M. As the trial court noted, it is difficult to believe appellant's claim that he slept for eleven hours straight just like Escarda. Besides, the rule is settled that alibi cannot prosper unless it is proven that during the commission of the crime, the accused was in another place and that it was physically impossible for him to be at the place where the crime was committed.[19] In this case, appellant failed to demonstrate satisfactorily that it was physically impossible for him to be in the crime scene at the time of the incident. Admittedly, the scene of the crime was only a fifteen-minute walk from appellant's house.

We note that the trial court appreciated the aggravating circumstances of nighttime, unlawful entry and recidivism, without any mitigating circumstance. The prosecution, however, failed to specify these circumstances in the charge filed before the trial court, as now required expressly by the Code of Criminal Procedure effective December 1, 2000 but applicable retroactively for being procedural and pro reo.[20]

Moreover, we find that the trial court also erred in appreciating the aggravating circumstance of recidivism. A recidivist is one who, at the time of his trial for one crime, shall have been previously convicted by final judgment of another crime embraced in the same title of the Code. In its decision, the trial court merely mentioned that appellant was convicted for cattle rustling under Criminal Case No. 627-S on February 8, 1993, at the time when

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the case at bar was being tried. It did not state that said conviction was already final. Even the records did not show that appellant admitted his previous conviction. As we had held before, there can be no recidivism without final judgment.[21] The best evidence of a prior conviction is a certified copy of the original judgment of conviction, and such evidence is always admissible and conclusive unless the accused himself denies his identity with the person convicted at the former trial.[22]

P.D. 533 does not supersede the crime of qualified theft of large cattle under Articles 309[23] and 310[24] under the Revised Penal Code. It merely modified the penalties provided for qualified theft of large cattle under Article 310 by imposing stiffer penalties thereon under special circumstances.[25] Under Section 8[26] of P.D. 533, any person convicted of cattle rustling shall, irrespective of the value of the large cattle involved, be punished by prision mayor in its maximum period to reclusion temporal in its medium period if the offense is committed without violence against or intimidation of persons or force upon things. If the offense is committed with violence against or intimidation of persons or force upon things, the penalty of reclusion temporal in its maximum period to reclusion perpetua shall be imposed.

In the instant case, the offense was committed with force upon things as the perpetrators had to cut through the cyclone wire fence to gain entrance into the corral and take away the two carabaos therefrom. Accordingly, the penalty to be imposed shall be reclusion temporal in its maximum period to reclusion perpetua. Applying the Indeterminate Sentence Law, the penalty imposable on appellant is only prision mayor in its maximum period as minimum, to reclusion temporal in its medium period as maximum. Thus, it is proper to impose on appellant only the indefinite prison term of ten (10) years and one (1) day of prision mayor as minimum; to fourteen (14) years, ten (10) months and twenty-one (21) days of reclusion temporal as maximum.

WHEREFORE, the assailed decision dated September 21, 1994, of the Regional Trial Court of Cadiz City, Branch 60, in Criminal Case No. 586-S, is AFFIRMED with MODIFICATION. Appellant Jose Villacastin, Jr., is declared guilty of violating the Anti-Cattle Rustling Law (P.D. 533) and sentenced to suffer the indeterminate penalty of ten (10) years and one (1) day of prision mayor as minimum; to fourteen (14) years, ten (10) months and twenty-one (21) days of reclusion temporal as maximum; and to indemnify offended party Joel Barrieses the amount of P5,000, and to pay the costs.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

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[1] RTC Records, p. 214.

[2] Id. at 1.

[3] Id. at 206-207.

[4] TSN, August 13, 1991, p. 8.

[5] Id. at 208-210.

[6] Id. at 59.

[7] Criminal Case No. 609-S for Robbery in band; Rollo, p. 38.

[8] Criminal Case No. 609-S for Robbery in band; Criminal Case No. 1505-S for Theft of large cattle; Criminal Case Nos. 566-S and 616-S for Illegal Possession of Firearms. Rollo, p. 41.

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[9] Rollo, p. 45.

[10] Id. at 140.

[11] Id. at 123-124.

[12] Id. at 148.

[13] Id. at 152-153.

[14] Id. at 64-66.

[15] Section 2, P.D. No. 533 (Anti-Cattle Rustling Law of 1974).

[16] TSN, November 8, 1990, pp. 6-17.

[17] RTC Records, p. 6.

[18] People vs. Sison, G.R. No. 119307, 312 SCRA 792, 801 (1999).

[19] People vs. Arillas, G.R. No. 130593, June 19, 2000, p. 7.

[20] Rule 110, Sec. 8. Designation of the offense. - The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

[21] R. C. Aquino. The Revised Penal Code, vol. 1, 1997 ed., p. 353 citing People vs. Lopido, 65 Phil 189 (1937).

[22] R. C. Aquino. The Revised Penal Code, vol. 1, 1997 ed., p. 352 citing United States vs. Ah Tung, 26 Phil 321, 327 (1913).

[23] ART. 309. Penalties.--Any person guilty of theft shall be punished by:

- The penalty of prision mayor in its minimum and medium periods, if the value of the thing stolen is more than 12,000 pesos but does not exceed 22,000 pesos; but if the value of the thing stolen exceed the latter amount, the penalty shall be the maximum period of the one prescribed in this paragraph, and one year for each additional ten thousand pesos, but the total of the penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed prision mayor or reclusion temporal, as the case may be.

- The penalty of prision correccional in its medium and maximum periods, if the value of the thing stolen is more than 6,000 pesos but does not exceed 12,000 pesos.

- The penalty of prision correccional in its minimum and medium periods, if the value of the property stolen is more than 200 pesos but does not exceed 6,000 pesos.

- Arresto mayor in its medium period to prision correccional in its minimum period, if the value of the property stolen is over 50 pesos but does not 200 pesos.

- Arresto mayor to its full extent, if such value is over 5 pesos but does not exceed 50 pesos.

- Arresto mayor in its minimum and medium periods, if such value does not exceed 5 pesos.

- Arresto menor or a fine not exceeding 200 pesos, if the theft is committed under the circumstances enumerated in paragraph 3 of the next preceding article and the value of the thing stolen does not exceed 5 pesos. If such

value exceeds said amount, the provisions of any of the five preceding subdivision shall be made applicable.

- Arresto menor in its minimum period or a fine not exceeding 50 pesos, when the value of the thing stolen is not over 5 pesos, and the offender shall have acted under the impulse of hunger, poverty, or the difficulty or earning a livelihood for the support of himself or his family.

[24] ART. 310. Qualified theft. --The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed by a domestic servant, or with grave abuse of confidence, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of a plantation, fish taken from a fishpond or fishery, or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance. (As amended by CA No. 417; RA 120; and BP Blg. 71, May 1, 1980.)

[25] People vs. Martinada, G. R. Nos. 66401-03, 194 SCRA 36, 46-47 (1991); People vs. Macatanda, G.R. No. L-51368, 109 SCRA 35, 40 (1991).

[26] SEC. 8. Penal provisions.-- Any person convicted of cattle rustling as herein defined shall, irrespective of the value of the large cattle involved, be punished by prision mayor in its maximum period to reclusion temporal in its medium period if the offense is committed without violence against or intimidation of persons or force upon things. If the offense is committed with violence against or intimidation of persons or force upon things, the penalty of reclusion temporal in its maximum period to reclusion perpetua shall be imposed. If a person is seriously injured or killed as a result or on the occasion of the commission of cattle rustling, the penalty of reclusion perpetua to death shall be imposed.

When the offender is a government official or employee, he shall, in addition to the foregoing penalty, be disqualified from voting or being voted upon any election/referendum and from holding any public office or employment.

When the offender is an alien, he shall be deported immediately upon the completion of the service of his sentence without further proceedings.

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