

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LAZARO JAVIER ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 12990. January 21, 1918

Ponente: MALCOLM, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-12990/>

MALCOLM, J.:

We find the proven facts as brought out in the trial of this case to be as follows.

Doroteo Natividad on the afternoon of October 22, 1915, fastened his carabao valued at P150 in his corral situated in the barrio of Trapiche, municipality of Tanauan, Province of Batangas. On the following morning when he went to look after the animal, he found the gate to the corral open and that the carabao had disappeared. He reported the matter to the Constabulary, and a patrol of the Constabulary under the leadership of sergeant Presa, now deceased, on the 20th of November following, encountered the accused Lazaro Javier, Apolinario Mendoza, and Placido de Chavez leading a carabao. When the ladrones saw the Constabulary, they scattered in all directions. On the following day, the Constabulary found this carabao tied in front of the house of one Pedro Monterola in the barrio of Santa Clara, municipality of San Pablo. The carabao was identified by Doroteo Natividad as the one which had been taken from his corral on the night of October 22, 1915, and by the Constabulary as the one seen in the possession of the accused.

As corroborative of such evidence, we have the well-known legal principle, which as applied to cases of this character is that, although the persons who unlawfully took a certain carabao are not recognized at the time, and their identity remains entirely unknown, nevertheless, if the stolen animal is found in the possession of the accused shortly after the commission of the crime and they make no satisfactory explanation of such possession they may be properly convicted of the crime. (See *U. S. vs. Divino* [1911], 18 Phil., 425.) In the present instance, the attempt of the accused to insinuate that one of the Constabulary soldiers testified against them falsely because of enmity is hardly believable.

The foregoing statement of the facts and the law disposes of all but one assignment of error, namely, that the lower court erred in admitting Exhibit B of the prosecution as evidence. Exhibit B is the sworn statement of sergeant Presa, now deceased, whose signature was identified, before the justice of the peace of the municipality of Santo Tomas, Province of Batangas. Appellant's argument is predicated on the provision of the Philippine Bill of Rights which says, "That in all criminal prosecutions the accused shall enjoy the right * * * to meet the witnesses face to face," and the provision of the Code of Criminal Procedure, section 15 (5), which says that "In all criminal prosecutions the defendant shall be entitled: * * * to be confronted at the trial by and to cross-examine the witnesses against him." With reference to the clause of the Bill of Rights, which we have quoted, Justice Day said in a case of Philippine origin (*Dowdell vs. U. S.* [1911], 221 U. S., 325) that it "intends to secure the accused in the right to be tried, so far as facts provable by witnesses are concerned, by only such witnesses as meet him face to face at the trial, who give their testimony in his presence, and give to the accused an opportunity of cross-examination. It was intended to prevent the conviction of the accused upon depositions or ex parte affidavits, and particularly to preserve the right of the accused to test the recollection of the witness in the exercise

of the right of cross-examination." In other words, confrontation is essential because cross-examination is essential. A second reason for the prohibition is that a tribunal may have before it the deportment and appearance of the witness while testifying. (U. S. vs. Anastasio [1906], 6 Phil., 413.) The Supreme Court of the Philippine Islands has applied this constitutional provision on behalf of accused persons in a number of cases. (See for example U. S. vs. Tanjuanco [1902], 1 Phil., 374; U. S. vs. Bello [1908], 11 Phil., 526; U. S. vs. De la Cruz [1908], 12 Phil., 87.) It is for us now to determine whether the present facts entitle the accused to the protection of the Bill of Rights or whether the facts fall under some exception thereto.

The sworn statement of Presa was not made by question I and answer under circumstances which gave the defense an opportunity to cross-examine the witness. The proviso of the Code of Criminal Procedure as to confrontation is therefore inapplicable. Presa's statement again is not the testimony of a witness deceased, given in a former action between the same parties relating to the same matter. Consequently, the exception provided by section 298, No. 8) of the Code of Civil Procedure and relied upon by the prosecution in the lower court is also inapplicable. Nor is the statement of Presa a dying declaration or a deposition in a former trial or shown to be a part of the preliminary examination. Under these circumstances, not to burden the opinion with an extensive citation of authorities, we can rely on the old and historic case of R. vs. Paine (1 Salk., 281 [King's Bench Div.]) occurring in the year 1696. It appears that a deposition of B., examined by the Mayor of Bristol under oath, but not in P's presence, was offered. It was objected that B, being dead, the defendant had lost all opportunity of cross-examining him. The King's Bench consulted with the Common Pleas, and "it was the opinion of both courts that these depositions should not be given in evidence, the defendant not being present when they were taken before the Mayor and so had lost the benefit of a cross-examination." Although we are faced with the alternative of being unable to utilize the statements of the witness now deceased, yet if there has been no opportunity for cross-examination and the case is not one coming within "one of the exceptions, the mere necessity alone of accepting the statement will not suffice. In fine, Exhibit B was improperly received in evidence in the lower court.

With such a resolution of this question, we could, as has been done in other cases, further find this to be reversible error and remand the case for a new trial. We are convinced, however, that this would gain the accused nothing except delay for the testimony of the owner of the carabao and of the two Constabulary soldiers, rebutted by no reasonable evidence on behalf of the accused, is deemed sufficient to prove guilt beyond a reasonable doubt.

The facts come under article 518, No. 3, in connection with article 520, as amended, of the Penal Code. Accordingly the defendants and appellants are each sentenced to four years, two months, and one day of presidio correctional, with the accessory penalties provided by law, and to pay one-third part of the costs of both instances; the carabao shall be returned to Doroteo Natividad, if this has not already been done. So ordered.

Arellano, C. J., Torres, Johnson, Carson, Araullo, Street, and Avanceña, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.