

EXUPERANCIO CANTA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 140937. February 28, 2001

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review on certiorari of the decision, dated August 31, 1999, and resolution, dated November 22, 1999, of the Court of Appeals,[1] which affirmed the decision of the Regional Trial Court, Branch 25, Maasin, Southern Leyte,[2] finding petitioner Exuperancio Canta guilty of violation of P.D. No. 533, otherwise known as the Anti-Cattle Rustling Law of 1974, and sentencing him to ten (10) years and one (1) day of prison mayor, as minimum, to twelve (12) years, five (5) months, and eleven (11) days of reclusion temporal medium, as maximum, and to pay the costs.

The information against petitioner alleged:

That on or about March 14, 1986, in the municipality of Malitbog, province of Southern Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with intent to gain, did then and there, willfully, unlawfully and feloniously, take, steal and carry away one (1) black female cow belonging to Narciso Gabriel valued at Three Thousand Pesos (P3,000.00) without the knowledge and consent of the aforesaid owner, to his damage and prejudice in the amount aforestated.

CONTRARY TO LAW.[3]

The prosecution established the following facts:

Narciso Gabriel acquired from his half-sister Erlinda Monter a cow, subject of the case, upon its birth on March 10, 1984. The cow remained under the care of Erlinda Monter for sometime. Subsequently, Narciso gave the care and custody of the animal, first, to Generoso Cabonce, from October 24, 1984 to March 17, 1985; then to Maria Tura, from May 17, 1985 to March 2, 1986; and lastly, to Gardenio Agapay, from March 3, 1986 until March 14, 1986 when it was lost.[4] It appears that at 5 o'clock in the afternoon of March 13, 1986, Agapay took the cow to graze in the mountain of Pilipogan in Barangay Candatag, about 40 meters from his hut. However, when he came back for it at past 9 o'clock in the morning of March 14, 1986, Agapay found the cow gone. He found hoof prints which led to the house of Filomeno Vallejos. He was told that petitioner Exuperancio Canta had taken the animal.[5]

Upon instructions of the owner, Gardenio and Maria Tura went to recover the animal from petitioner's wife, but they were informed that petitioner had delivered the cow to his father, Florentino Canta, who was at that time barangay captain of Laca, Padre Burgos, Southern Leyte. Accordingly, the two went to Florentino's house. On their way, they met petitioner who told them that if Narciso was the owner, he should claim the cow himself. Nevertheless, petitioner accompanied the two to his father's house, where Maria recognized the cow. As petitioner's father was not in the house, petitioner told Gardenio and Maria he would call them the next day so that they could talk the matter over with his father.

However, petitioner never called them. Hence, Narciso Gabriel reported the matter to the police of Malitbog, Southern Leyte.[6] As a result, Narciso and petitioner Exuperancio were called to an investigation. Petitioner admitted taking the cow but claimed that it was his and that it was lost on December 3, 1985. He presented two certificates of ownership, one dated March 17, 1986 and another dated February 27, 1985, to support his claim (Exh. B).[7]

Narciso presented a certificate of ownership issued on March 9, 1986, signed by the municipal treasurer, in which the cow was described as two years old and female. On the reverse side of the certificate is the drawing of a cow with cowlicks in the middle of the forehead, between the ears, on the right and left back, and at the base of the forelegs and hindlegs (Exhs. C, C-1 to 4).[8] All four caretakers of the cow identified the cow as the same one they had taken care of, based on the location of its cowlicks, its sex, and its color. Gardenio described the cow as black in color, with a small portion of its abdomen containing a brownish cowlick, a cowlick in the middle of the forehead, another at the back portion between the two ears, and four cowlicks located near the base of its forelegs and the hindlegs.[9]

On the other hand, petitioner claimed he acquired the animal under an agreement which he had with Pat. Diosdado Villanueva, that petitioner take care of a female cow of Pat. Villanueva in consideration for which petitioner would get a calf if the cow produced two offsprings. Petitioner claimed that the cow in question was his share and that it was born on December 5, 1984. This cow, however, was lost on December 2, 1985. Petitioner said he reported the loss to the police of Macrohon, Padre Burgos, and Malitbog, on December 3, 1985 (Exh. A and Exh. 1).[10]

Petitioner said that on March 14, 1986, his uncle Meno told him that he had seen the cow at Pilipogan, under the care of Gardenio Agapay. He, therefore, went to Pilipogan with the mother cow on March 14, 1986 to see whether the cow would suckle the mother cow. As the cow did, petitioner took it with him and brought it, together with the mother cow, to his father Florentino Canta.[11] Maria Tura tried to get the cow, but Florentino refused to give it to her and instead told her to call Narciso so that they could determine the ownership of the cow.[12] As Narciso did not come the following day, although Maria did, Florentino said he told his son to take the cow to the Municipal Hall of Padre Burgos. Petitioner did as he was told. Three days later, Florentino and Exuperancio were called to the police station for investigation.[13]

Petitioner presented a Certificate of Ownership of Large Cattle dated February 27, 1985[14] and a statement executed by Franklin Telen, janitor at the treasurer's office of the municipality of Padre Burgos, to the effect that he issued a Certificate of Ownership of Large Cattle in the name of petitioner Exuperancio Canta on February 27, 1985 (Exh. 5).[15] The statement was executed at the preliminary investigation of the complaint filed by petitioner against Narciso.[16]

Petitioner's Certificate of Ownership was, however, denied by the municipal treasurer, who stated that petitioner Exuperancio Canta had no Certificate of Ownership of Large Cattle in the municipality of Padre Burgos (Exhs. E, E-1 and 2).[17] On the other hand, Telen testified that he issued the Certificate of Ownership of Large Cattle to petitioner on March 24, 1986 but, at the instance of petitioner, he (Telen) antedated it to February 27, 1985.[18]

On January 24, 1997, the trial court rendered its decision finding petitioner guilty of the offense charged. In giving credence to the evidence for the prosecution, the trial court stated:

From the affidavits and testimonies of the complainant and his witnesses, it is indubitable that it was accused Exuperancio Canta who actually took the cow away without the knowledge and consent of either the owner/raiser/caretaker Gardenio Agapay.

That the taking of the cow by the accused was done with strategy and stealth considering that it was made at

the time when Gardenio Agapay was at his shelter-hut forty (40) meters away tethered to a coconut tree but separated by a hill.

The accused in his defense tried to justify his taking away of the cow by claiming ownership. He, however, failed to prove such ownership. Accused alleged that on February 27, 1985 he was issued a Certificate of Ownership of Large Cattle (Exh. 2-A) for his cow by Franklin Telen, a janitor at the Office of the Municipal Treasurer of Padre Burgos, a neighboring town. On rebuttal Franklin Telen denied in Court the testimony of the accused and even categorically declared that it was only on March 24, 1986 that the accused brought the cow to the Municipal Hall of Padre Burgos, when he issued a Certificate of Ownership of Large Cattle for the cow, and not on February 27, 1985. Franklin Telen testified thus:

"Q. According to the defense, this Certificate of Ownership of Large Cattle was issued by you on February 27, 1985. Is that correct?

A. Based on the request of Exuperancio, I antedated this.

(TSN, June 3, 1992, p. 7)"

The testimony of Franklin Telen was confirmed in open court by no less than the Municipal Treasurer of Padre Burgos, Mr. Feliciano Salva. (TSN, September 29, 1992, pp. 5-8).

If accused Exuperancio Canta were the owner of the cow in question, why would he lie on its registration? And why would he have to ask Mr. Franklin Telen to antedate its registry? It is clear that accused secured a Certificate of Ownership of Large Cattle (Exh. 2-A) by feigning and manipulation (Exhs. A & B) only after the act complained of in the instant case was committed on March 14, 1986. His claim of ownership upon which he justifies his taking away of the cow has no leg to stand on. Upon the other hand, the complainant has shown all the regular and necessary proofs of ownership of the cow in question.[19]

The Court of Appeals affirmed the trial court's decision and denied petitioner's motion for reconsideration. Hence, this petition. It is contended that the prosecution failed to prove beyond reasonable doubt his criminal intent in taking the disputed cow.

First. Petitioner claims good faith and honest belief in taking the cow. He cites the following circumstances to prove his claim:

- He brought the mother cow to Pilipogan to see if the cow in question would suckle to the mother cow, thus proving his ownership of it;
- He compared the cowlicks of the subject cow to that indicated in the Certificate of Ownership of Large Cattle issued on February 27, 1985 in his name, and found that they tally;
- He immediately turned over the cow to the barangay captain, after taking it, and later to the police authorities, after a dispute arose as to its ownership; and
- He filed a criminal complaint against Narciso Gabriel for violation of P. D. No. 533.

These contentions are without merit.

P.D. No. 533, §2(c) defines cattle-rustling as

. . . the taking away by any means, methods or scheme, without the consent of the owner/raiser, of any of the abovementioned animals whether or not for profit or gain, or whether committed with or without violence against or intimidation of any person or force upon things.

The crime is committed if the following elements concur: (1) a large cattle is taken; (2) it belongs to another; (3)

the taking is done without the consent of the owner; (4) the taking is done by any means, methods or scheme; (5) the taking is with or without intent to gain; and (6) the taking is accomplished with or without violence or intimidation against person or force upon things.[20]

These requisites are present in this case. First, there is no question that the cow belongs to Narciso Gabriel. Petitioner's only defense is that in taking the animal he acted in good faith and in the honest belief that it was the cow which he had lost. Second, petitioner, without the consent of the owner, took the cow from the custody of the caretaker, Gardenio Agapay, despite the fact that he knew all along that the latter was holding the animal for the owner, Narciso. Third, petitioner falsified his Certificate of Ownership of Large Cattle by asking Telen to antedate it prior to the taking to make it appear that he owned the cow in question. Fourth, petitioner adopted "means, methods, or schemes" to deprive Narciso of his possession of his cow, thus manifesting his intent to gain. Fifth, no violence or intimidation against persons or force upon things attended the commission of the crime.

Indeed, the evidence shows that the Certificate of Ownership of Large Cattle which petitioner presented to prove his ownership was falsified. Franklin Telen, the janitor in the municipal treasurer's office, admitted that he issued the certificate to petitioner 10 days after Narciso's cow had been stolen. Although Telen has previously executed a sworn statement claiming that he issued the certificate on February 27, 1985, he later admitted that he antedated it at the instance of petitioner Exuperancio Canta, his friend, who assured him that the cow was his.[21]

Telen's testimony was corroborated by the certification of the municipal treasurer of Padre Burgos that no registration in the name of petitioner was recorded in the municipal records. Thus, petitioner's claim that the cowlicks found on the cow tally with that indicated on the Certificate of Ownership of Large Cattle has no value, as this same certificate was issued after the cow had been taken by petitioner from Gardenio Agapay. Obviously, he had every opportunity to make sure that the drawings on the certificate would tally with that existing on the cow in question.

The fact that petitioner took the cow to the barangay captain and later to the police authorities does not prove his good faith. He had already committed the crime, and the barangay captain to whom he delivered the cow after taking it from its owner is his own father. While the records show that he filed on April 30, 1986 a criminal complaint against Narciso Gabriel, the complaint was dismissed after it was shown that it was filed as a countercharge to a complaint earlier filed on April 16, 1986 against him by Narciso Gabriel.

Petitioner says that he brought a mother cow to see if the cow in question would suckle to the mother cow. But cows frequently attempt to suckle to alien cows.[22] Hence, the fact that the cow suckled to the mother cow brought by petitioner is not conclusive proof that it was the offspring of the mother cow.

Second. Petitioner contends that even assuming that his Certificate of Ownership is "not in order," it does not necessarily follow that he did not believe in good faith that the cow was his. If it turned out later that he was mistaken, he argues that he committed only a mistake of fact but he is not criminally liable.

Petitioner's Certificate of Ownership is not only "not in order." It is fraudulent, having been antedated to make it appear it had been issued to him before he allegedly took the cow in question. That he obtained such fraudulent certificate and made use of it negates his claim of good faith and honest mistake. That he took the cow despite the fact that he knew it was in the custody of its caretaker cannot save him from the consequences of his act.[23] As the Solicitor General states in his Comment:

If petitioner had been responsible and careful he would have first verified the identity and/or ownership of the cow from either Narciso Gabriel or Gardenio Agapay, who is petitioner's cousin (TSN, 9/12/91, p. 26). Petitioner, however, did not do so despite the opportunity and instead rushed to take the cow. Thus, even if petitioner had committed a mistake of fact he is not exempted from criminal liability due to his negligence.[24]

In any event, petitioner was not justified in taking the cow without the knowledge and permission of its owner. If he thought it was the cow he had allegedly lost, he should have resorted to the court for the settlement of his claim. Art. 433 of the Civil Code provides that "The true owner must resort to judicial process for the recovery of the property." What petitioner did in this case was to take the law in his own hands.[25] He surreptitiously took the cow from the custody of the caretaker, Gardenio Agapay, which act belies his claim of good faith.

For the foregoing reasons, we hold that the evidence fully supports the finding of both the trial court and the Court of Appeals that accused-appellant is guilty as charged. There is therefore no reason to disturb their findings.

However, the decision of the Court of Appeals should be modified in two respects.

First, accused-appellant should be given the benefit of the mitigating circumstance analogous to voluntary surrender. The circumstance of voluntary surrender has the following elements: (1) the offender has not actually been arrested; (2) the offender surrenders to a person in authority or to the latter's agent; and (3) the surrender is voluntary.[26] In the present case, petitioner Exuperancio Canta had not actually been arrested. In fact, no complaint had yet been filed against him when he surrendered the cow to the authorities. It has been repeatedly held that for surrender to be voluntary, there must be an intent to submit oneself unconditionally to the authorities, showing an intention to save the authorities the trouble and expense that his search and capture would require.[27] In petitioner's case, he voluntarily took the cow to the municipal hall of Padre Burgos to place it unconditionally in the custody of the authorities and thus saved them the trouble of having to recover the cow from him. This circumstance can be considered analogous to voluntary surrender and should be considered in favor of petitioner.

Second, the trial court correctly found petitioner guilty of violation of §2(c) of P. D. No. 533, otherwise known as the Anti-Cattle Rustling Law of 1974. However, it erred in imposing the penalty of 10 years and 1 day of prison mayor, as minimum, to 12 years, 5 months and 11 days of reclusion temporal medium, as maximum. The trial court apparently considered P. D. No. 533 as a special law and applied §1 of the Indeterminate Sentence Law, which provides that "if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same." However, as held in *People v. Macatanda*,[28] P. D. No. 533 is not a special law. The penalty for its violation is in terms of the classification and duration of penalties prescribed in the Revised Penal Code, thus indicating that the intent of the lawmaker was to amend the Revised Penal Code with respect to the offense of theft of large cattle. In fact, §10 of the law provides:

The provisions of Articles 309 and 310 of Act No. 3815, otherwise known as the Revised Penal Code, as amended, pertinent provisions of the Revised Administrative Code, as amended, all laws, decrees, orders, instructions, rules and regulations which are inconsistent with this Decree are hereby repealed or modified accordingly.

There being one mitigating circumstance and no aggravating circumstance in the commission of the crime, the penalty to be imposed in this case should be fixed in its minimum period. Applying the Indeterminate Sentence Law, in relation to Art. 64 of the Revised Penal Code, petitioner should be sentenced to an indeterminate penalty, the minimum of which is within the range of the penalty next lower in degree, i. e., prison correccional maximum to prison mayor medium, and the maximum of which is prison mayor in its maximum period.

WHEREFORE, the decision of the Court of Appeals is **AFFIRMED**, with the modification that petitioner Exuperancio Canta is hereby **SENTENCED** to suffer a prison term of four (4) years and two (2) months of prison correccional maximum, as minimum, to ten (10) years and one (1) day of prison mayor maximum, as maximum.

SO ORDERED.

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

[1] Per Justice Jose L. Sabio, Jr. and concurred in by Justices Hector L. Hofilenia and Omar U. Amin.

[2] Per Judge Numeriano R. Avila, Jr.

[3] Records, p. 24.

[4] TSN (Erlinda Monter), p. 4, Oct. 23, 1990; TSN (Generoso Cabonce), p. 5, Feb. 1, 1989; TSN (Generoso Cabonce), pp. 4-5, April 4, 1989; TSN (Maria Tura), p. 7, Jan. 3, 1990; TSN (Gardenio Agapay), p. 7, Oct. 15, 1987; TSN (Narciso Gabriel), p. 7, July 9, 1991.

[5] TSN (Gardenio Agapay), p. 10, Nov. 25, 1987; TSN (Gardenio Agapay), pp. 3-5, Oct. 15, 1987.5

[6] TSN (Narciso Gabriel), p. 18, July 9, 1991.

[7] TSN (Narciso Gabriel), pp. 3-4, July 10, 1991; Bill of Exhibits, p. 1.

[8] Id., pp. 6-7; Id., p 3.

[9] TSN (Gardenio Agapay), p. 7, Oct. 15, 1987.

[10] TSN (Exuperancio Canta), pp. 6-8, Sept. 12, 1991; Bill of Exhibit, pp. 1, 11.

[11] TSN (Exuperancio Canta), pp. 10-11, 18-23, Sept. 12, 1991; TSN (Exuperancio Canta) p. 6, Nov. 6, 1991.

[12] TSN (Florentino Canta), pp. 6-8, Nov. 7, 1991.

[13] Id., pp. 8-11.

[14] Exh. J; Exh. 2.

[15] Exh. J; Exh. 2.

[16] TSN (Franklin Telen), p. 5, June 30, 1992.

[17] TSN (Narciso Gabriel), pp. 8-9, July 10, 1991; Bill of Exhibits, p. 5.

[18] TSN (Franklyn Telen), pp. 4-8, June 3, 1992.

[19] Decision, pp. 3-4; Rollo, pp. 26-27.

[20] People v. Bago, G. R. No. 122290, April 6, 2000.

[21] TSN (Franklin Telen), pp. 9-10, June 3, 1992.

[22] Louise Lindegaard Weinrich. Module: Design And Management of Organic Livestock Systems [5]>

[23] Rollo, p. 89.

[24] Id., p. 90.

[25] Manlapaz v. CA, 191 SCRA 795 (1990); De la Cruz v. Burgos, et al, 28 SCRA 977 (1969).

[26] People v. Rebamontan, 305 SCRA 609 (1999).

[27] Id.; People v. Santillana, 308 SCRA 104 (1999).

[28] 109 SCRA 35 (1981).

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