

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. JUAN CARPIO, DEFENDANT AND APPELLANT.

G.R. No. 30859. November 25, 1929

Ponente: STREET, J.

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STREET, J.:

This appeal has been brought to reverse a judgment of the Court of First Instance of the City of Manila, finding the appellant, Juan Carpio, guilty of larceny in stealing three automobile tires, and sentencing him to undergo imprisonment for four months and one day, *arresto mayor*, and requiring him to pay a third part of the costs of prosecution.

The information upon which the appellant was tried charges him and his coaccused with the larceny of a "Star" automobile of the value of P1,750; but, under the circumstances presently to be stated, the trial judge found the appellant guilty, not of the larceny of the automobile, but of three tires only. At a former day of this term the case was heard upon appeal in the second division of this court, and the judgment was modified by declaring that the accused was guilty of stealing the automobile mentioned in the complaint and not of the three tires only, with the result that the penalty imposed on the accused was raised from four months and one day to two years, *presidio correccional*, with the accessory penalties appropriate thereto.[1] Against the judgment of the court in division a motion for reconsideration was interposed, wherein the appellant suggested a question of law, appropriate for the attention of the full court, and asked that the motion be considered and determined by the court *en pleno*, as is accordingly now done.

The facts of the case are briefly these: Early in the morning of March 10, 1928, one Raymundo Silos hired automobile No. 376 from the Santa Cruz Garage located on the corner of Azcarraga Street and Rizal Avenue, in the City of Manila. This car was of the make known as "Star," and was driven by the chauffeur Resurrection Ledesma. Upon leaving the garage Ledesma observed that another Star car was following them, driven by the appellant, Juan Carpio, with whom was riding one Serapio Feliciano. Ledesma was directed to drive his car, No. 376, to the Luzon Cabaret, in San Pedro Makati, near the City of Manila. At that place Silos and Carpio engaged in conversation for a few minutes, after which Silos ordered Ledesma to direct his course to Manila, which Ledesma did. Meanwhile the car driven by Carpio was still following them.

At the Boston Restaurant, in the City of Manila, Silos invited Ledesma to come in with him to eat something; and, while they were thus engaged, Ledesma's car (No. 376) was stolen and was not to be found when Silos and Ledesma emerged from the restaurant. The next day the stolen car was found in Economia Street, Manila, stripped of three tires with the rims, two of which tires were taken from the wheels of the car and the other from the tire-carrier. A few days thereafter the three tires taken from car No. 376 were found on the "Star" car which was being driven by Juan Carpio. When thus found, the car of Carpio was standing in front of the Legaspi Landing. When the owner of the car No. 376 asked Carpio how his three tires came to be on Carpio's car, the latter admitted that said three tires belonged to the owner of the car No. 376; and they were in fact readily identified by their numbers.

There can be no possible doubt as to the fact that Star ear No. 376 was stolen under the circumstances above stated and stripped of three of its tires by the thieves, one of whom was the appellant, Juan Carpio; 'and the trial court committed no error in finding this appellant guilty of the crime of theft. We are of the opinion, however, that the act of theft was consummated not only with respect to the tires but with respect to the automobile, and we are of the opinion that the trial court erred on the side of leniency in sentencing the appellant for the theft of the tires only.

The gist of the offense of larceny consists in the furtive taking and asportation of property, animo lucrandi, and with intent to deprive the true owner of the possession thereof. The act of asportation in this case was undoubtedly committed with intent on the part of the thief to profit by the act, and since he effectively deprived the true owner of the possession of the entire automobile, the offense of larceny comprised the whole car. The fact that the accused stripped the car of its tires and abandoned the machine in a distant part of the city did not make the appellant any less liable for the larceny of the automobile. The deprivation of the owner and the trespass upon his right of possession were complete as to the entire car; and the fact that the thieves thought it wise promptly to abandon the machine in no wise limits their criminal responsibility to the particular parts of the car that were appropriated and subsequently used by the appellant upon his own car.

But it is insisted that owing to the particular form in which the trial court worded its opinion, it must be considered that the lower court in effect acquitted the accused of larceny of the whole car. In this connection emphasis is placed upon the dispositive part of the opinion of the court below wherein it is declared that the court found the accused guilty of the theft, not of the "Star" automobile, as alleged in the complaint, but only of the three tires.

This contention is not well founded. The complaint charges the theft of the car. The proof shows that the car was taken with the result of depriving the owner of the possession thereof, and that the taking was of a felonious character. It is the uniform practice of this court to modify decisions on appeal not only in a sense favorable to the accused, but, if the circumstances require, in a sense unfavorable to the accused; and this rule has not been infrequently applied here by raising the penalty to death in cases requiring the ultimate penalty.

The car that was stolen in this case (No. 376) appears to have been put into commission in November, 1927, and was stolen in the month of March, 1928. It was thus practically a new car, and we have, no hesitancy in taking judicial notice of the fact that it was worth in excess of 1,250 pesetas, or P250. This puts the offense under No. 3 of article 518 of the Penal Code, and there being neither aggravating nor mitigating circumstance to be taken into account, the penalty to be applied is in the medium degree of the penalty fixed in said provision. This penalty runs from one year, eight months and twenty-one days to two years, eleven months and ten days, presidio correccional; and we are of the opinion that, all circumstances considered, the appellant merits two years of such imprisonment.

The motion for reconsideration is therefore denied. So ordered.

Avanceña, C. J., Johnson, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

[1]Promulgated October 1, 1929, not reported.

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