

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. EMETERIO DACANAY, DEFENDANT AND APPELLANT.

G.R. No. 3645. September 26, 1907

Ponente: TORRES, J.

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TORRES, J.:

On April 11, 1904, the provincial fiscal filed in the Court of First Instance of Iloilo a complaint charging Emeterio Dacanay with the crime of theft, as follows:

"That in the month of November, 1903, in the municipality of Leon, the said accused took possession of two carabaos belonging to a resident of Alimodian, without force against things or intimidation against persons, but with intent of gain and without the consent of the owner thereof, the latter being unable to recover said animals. That the accused sold said animals in the municipality of Alimodian for \$140, this amount being, more or less, the true value thereof.

"The above is confirmed by the statements of Pedro Santos, Ruperto Mallorca, Juan Lavado, Graciano Lagoon, Nicolas Tano, and Tomas Palomar, all of them members of the Insular police.

"Unless the accused should give a bond, his detention may be directed, for the crime charged is one of the common crimes which may be committed against the law and within the jurisdiction of this court for the purposes of the preliminary investigation."

The case having come on for trial upon the above-quoted complaint, on October 17, 1906, the judge, in view of the proofs presented, rendered judgment sentencing the accused to imprisonment for five months and to the payment of the costs, reserving to whom it may concern the right to recover the value of the animals and approving the return thereof to their owner. From this judgment the accused has appealed.

It appears fully proven by the record that the accused, in his capacity of sergeant of Constabulary in command of the detachment at Leon, proceeded with several of his men to the pueblo of Alimodian. On arriving there he found in the country a young cattleman in charge of a female carabao and two small carabaos, on behalf of Sixto Tabiano, which he seized and took to the barracks at Leon. The animals were kept at the barracks for three days, and on the fourth day they were, by direction of the accused, taken away by a servant. It afterwards appeared that, with the intervention of Evaristo Capalla, the accused sold the animals to San Juco, a Chinaman, for 140 pesos, which sum was appropriated by him without making any report to his superior officers or to the authorities concerning the taking or seizure of the animals. The accused alleged that the animals belonged once to Pedro Gralan, his father-in-law, and that on the latter's demise they became the property of his wife. This allegation was not properly supported by the evidence, but, on the contrary, it was proven at the trial that the carabaos were the property of Laurencio Acero, wherefore the judge, in his decision, wherein he found the accused guilty of the crime of theft, ordered that the female and its two young ones be returned to Laurencio Acero, who was declared, to be the owner thereof.

Article 517 of the Penal Code, among other things, prescribes:

"The following are guilty of theft:

"1. Those who, with intent of gain and without violence or intimidation against the person or force against things, shall take another's personal property without the owner's consent."

From the wording of this article it appears that among the several essential elements constituting the crime of theft, the seizure of the personal property is the first requisite, which consists in taking possession, apprehending, or seizing the thing against the will of the owner; because if the thing is taken or seized with the knowledge or consent of its owner the crime should then be termed as that of estafa. It is a proven fact that, on account of the failure to produce the necessary registration papers, the accused took possession of the animals in the presence of the man who had them in his charge as the personal representative of the owner, Sixto Tabiano. As the cattleman did not oppose nor protest against the realization of this act, nor did Sixto Tabiano on receiving notice make any objection thereto, it must necessarily be admitted that both of them consented to the accused and his companions taking with them the said animals, as agents of the authorities, no violence or intimidation having been proven in the commission of the crime. The trial judge, in his findings of facts, says:

"I am satisfied upon all the evidence that, at the time the carabao was taken by the Constabulary officer, the defendant was acting in good faith and in compliance with his duty, but that after the animals had been taken to Leon, he being in charge there as a Constabulary officer, he formed the design of selling them and so made the claim that they belonged to his wife, while it was clear that they did not belong to her, and the sale was made in pursuance of that plan."

From the foregoing it is clear that a crime other than that mentioned in the complaint has been committed. The act might perhaps constitute the crime of estafa, but even though this crime, which is also classified among those against property, be proven, there are no statutory provisions which will warrant the conviction of the accused, Emeterio Dacanay, on a complaint charging him with the crime of theft, which is entirely different from that of estafa.

Inasmuch as the crime of theft charged in the complaint, and which was the object of the prosecution of the accused, has not been proven, it is our opinion that Emeterio Dacanay should be acquitted, as we hereby acquit him, with the costs de oficio. This decision, however, does not prevent the filing of another complaint on the charge of estafa, under which proceedings may be instituted against the accused in accordance with the law. So ordered.

Arellano, C. J., Johnson, Willard, and Tracey, JJ.; concur.

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