

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. GABINO SORIANO, DEFENDANT AND APPELLANT.*G.R. No. 3948. December 27, 1907*

Ponente: TORRES, J.

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Late at night on the 1st of February, 1905, Canuto Macasa, the owner of an hacienda, was awakened by the noise made by thirty carabaos that were kept in his corral near the house, and on looking out the window saw that some of them were loose; he then called his workmen to corral the animals and count them over, and upon their doing so the men found two castrated carabaos and a caraballa missing and that the fence on its northern side had been cut open with a bolo. Search was at once made and continued for some days, one of the carabaos being found in the corral of Gerardo Villalobos, at the sitio of Mataboy, which Vilalobos stated he had purchased from Gabino Soriano; another was found in the possession of the latter in a cocoanut grove in the same place, and on being questioned as to whence the animal came, he alleged having purchased it at Guiljungan; a few days later the caraballa was found in the municipality of Guimbalaon, where it was taken by order of Cornelio Hilado, who stated that it had been recovered by his son a few nights previously, it having been abandoned by unknown parties who ran and left it upon being challenged by the night patrol of his hacienda.

It appears that one of the carabaos was originally acquired by the injured party from a Chinaman named Nicolas Ti Cuico (p. 16, record) and the other carabao and the caraballa were bred on his hacienda and are branded with his brand registered in the municipality of Manapla, according to the certificate on page 17 and the statement of the owner, which is confirmed by his workmen, who recognized and duly identified the animals, which are valued at P375.

A complaint was presented by the provincial fiscal under date of the 1st of September, 1905, accusing Gabino Soriano of the crime of robbery by having stolen the two said carabaos and a caraballa, breaking open the corral where they were inclosed. Thereupon proceedings were instituted, and the judge, on the 20th of April, 1906, rendered judgment, sentencing the accused as accessory to pay a fine of 2,500 pesetas and in case of insolvency to suffer subsidiary imprisonment, which should not exceed six months, and to pay the costs, reserving to Gerardo Villalobos his right of action against the accused for the selling of one of said carabaos, setting aside the order for deposit and ordering the final return of the carabaos to their owner; from which judgment the accused appealed.

The above duly proven facts constitute the crime of theft denned and punished by articles 517 and 518, No. 2, of the Penal Code; the breaking of the fence of the corral made of bamboo only, in order to release the carabaos that were therein impounded, can not qualify the crime as robbery as charged in the complaint, said crime only deserving the name of theft according to the settled rule of the courts, in view of the very light construction of the corrals built in these Islands for the impounding of large cattle, the same being only bamboos stuck in the ground with crosspieces tied thereto with rattan or strips of fresh bamboo; as regards the OAvnership, preexistence and subsequent loss of the castrated carabaos and caraballa stolen from the corral of Canuto Macasa in his hacienda called San Koque, town of Manapla, Occidental Negros, the same have been duly proven by valid documents and

by the testimony of the injured party and several witnesses, who recognized and identified the stolen carabaos as the lawful property of the prejudiced party.

The accused pleaded not guilty, but notwithstanding his denial and allegations the cause furnishes proofs and data sufficient to establish beyond doubt his culpability as principal of the theft of three carabaos, valued at more than 1,250 pesetas but less than 6,250, taking into account that the caraballa disappeared at the same time as the carabaos stolen from the same corral where they were impounded together.

It is an unquestionable fact and fully proven that one of the carabaos was found in his possession, and that without denying such possession he attempted to justify it by showing that he had acquired said animal at Guiljungan and that the transfer of the same had been recorded in the municipality of said town on the 17th of June, 1902. This proved to be untrue because the municipal president of Cauayan, to which town Guiljungan was annexed, reported that at said municipality no stub of a certificate for large cattle issued at the date named by the accused existed, and, on the other hand, the latter did not produce any document to prove his ownership, as would have been the case if his statement were true.

It is likewise unquestionable that the carabao found in the possession of Gerardo Villalobos .came from the accused, who sold it without proving that the same was his lawful property, inasmuch as the certificates appearing on pages 30 and 31, issued in the town of Silay on the 24th of February, 1905, were contrary to the provisions of the administrative law for the transfer of large cattle; and having been issued twenty-three days after the animal was stolen, such certificates, far from establishing the lawful origin of the carabao sold to Villalobos, confirmed the guilt of the accused, who attempted to justify by said certificates the origin and possession of the stolen carabao, in spite of the fact that said carabao, like all the others belonging to the same owner, was branded with his brand, which was duly registered in the municipality of Manapla, and that a new brand was put on the animal by the accused. The truth is that he was unable or unwilling to produce the old certificate in order to show his ability to lawfully sell and transfer it to Villalobos, the purchaser; and also to show that the legal requisites had been complied with in the execution of said certificates, that at page 31 of the record, in his name, without previous proof that the carabao mentioned therein and then presented in the municipality of Silay was his, and also the certificate at page 30, without proof that he, as owner of the carabao, had the right to sell it to Villalobos. All such irregularities are the result of arrangements or illegal transactions apt to be resorted to in order to conceal the crime, and give the unlawful possession of cattle a legal appearance.

We can not accept the opinion of the court below when considering the question of the liability of the accused, inasmuch as upon proof that one of the stolen carabaos was in his possession, the theory of criminal liability makes him, in absence of evidence to the contrary, principal in the theft of the carabaos and not a mere accessory to the crime because he has not even attempted to prove their receipt from a third party; on the contrary, he had the boldness to declare or to attempt to prove to the court below that said carabaos belonged to him; and whenever stolen property is discovered in the possession of a person, unless proof be offered that another stole the same, the law assumes that the bearer or holder thereof is the principal in the crime. It is unquestionable, for the reason set forth, that Gabino Soriano deserves to be considered as principal, as otherwise the conviction of the principal in a crime of theft would but seldom occur and the real thieves would be shielded, with liability as mere accessories, which in criminal law are characterized in a very different manner.

It should be taken into account that the accused has a bad record and that he has been subjected to several proceedings for crimes similar to the one at bar, and that in the Island of Negros a certain society of criminals existed engaged in stealing carabaos, to the most serious detriment of agriculture.

In the commission of this crime aggravating circumstance 15 of article 10 of the Penal Code should be considered

for the reason that it was committed in the darkness and silence of night; no extenuating circumstance to counteract its effects being present, the adequate penalty to be imposed is presidio correccional in its minimum and medium degrees, applying it in its maximum degree.

For the considerations above set forth the judgment appealed from should be reversed and Gabino Soriano sentenced, as we do hereby sentence him, to the penalty of three years of presidio correccional, to suffer the accessory penalties of article 58 of the Penal Code, to pay the costs of both instances, and confirming the last two clauses of the sentence appealed from. So ordered.

Arellano, C. J., Mapa, Johnson, Carson, Willard, and Tracey, JJ., concur.

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