

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. GABINO SORIANO SANTILLAN, DEFENDANT AND APPELLANT.

G.R. No. 3969. December 27, 1907

Ponente: TORRES, J.

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TORRES, J.:

On a certain Tuesday night in the month of March, 1905, the exact date being unknown, a female carabao valued at P110, owned by Magdalena Juntado, a resident of the town of Valladolid, Occidental Negros, disappeared, and after some months, during which search for the same was made from time to time, the owner was informed on a day in the month of June of the same year that her carabao was held in deposit together with others at the cuartel of the Constabulary situated at the capital of the province, and in view thereof the said owner called thereat and produced the certificate of ownership of her carabao; the officer commanding the station, however, directed her to the municipality of Bacolod, where the animal was returned to her. The injured party was not aware as to where and how the animal was recovered by the Constabulary.

Sergeant Leandro Garguefia and Private Gerónimo Monteflor of the Constabulary, having been examined in connection therewith, it appeared from their statements that by reason of the capture of Gabino Soriano, on a certain day in the month of June, as he was riding on a carabao which turned out to have been stolen from its owner, who subsequently recognized it, while the said individual was under arrest in the cuartel, it was discovered that he had four other carabaos, which were in the possession of Donato Segovia, to whom he had forwarded the same through Guillermo Gonzaga, in order that they might be used in tilling the land of the hacienda of Nicolas Villeta, on condition that they were to divide the profits. Accordingly, on the 10th of June, 1905, at noon, the witnesses and another soldier, Crisanto Verde, who did not testify, went to the sitio of Talongon, where Segovia resided in company with the accused, where they found, in a corral pointed out by Segovia, and close to his house, two castrated carabaos and two female ones, all of which were seized and taken to the cuartel; a few days later one of the carabaos was recognized by an individual from the hacienda of Cresenciano Gonzaga; one female carabao was also recognized by a woman resident of Valladolid, and another by Magdalena Juntado; the other carabao remained in the municipality and it is believed that said animal came from the hacienda of Mariano Lacson and that it was afterwards turned over to the justice of the peace. It was subsequently ascertained that Guillermo Gonzaga received the carabaos from the accused and that by the latter's order they were delivered to Donato Segovia, the accused assuring him that he had purchased said animals, some in Iloilo, some in Guiljungan, and others in Silay; that for some he paid P100 and for others P120; that although he did not hold certificates the accused said he would furnish him with a document to show that the carabaos had been delivered by him; this offer was not fulfilled because the accused was captured in the meantime.

For this reason a complaint was filed by the provincial fiscal of Occidental Negros under date of the 17th of March, 1906, accusing Gabino Soriano Santillan of the crime of theft, in that on or about the 15th of March, 1905, he did maliciously and with intent of gain, without violence or force on the things taken nor intimidation of persons, steal a female carabao, the property of Magdalena Juntado, a resident of Valladolid of said district, and

valued at P110; that said female carabao was recovered by the Constabulary on the 10th of June following from the possession of Donato Segovia, together with three others all of which had been delivered to him by Guillermo Gonzaga by order of the accused, from whom he had received them, in order that Segovia might use them in tilling his land.

Proceedings having been instituted by reason thereof, the judge, on the 30th of November, 1906, rendered judgment, sentencing the accused, as accessory in the crime of theft, to the penalty of a fine of 2,000 pesetas and to suffer the corresponding subsidiary imprisonment in case of insolvency, and to pay the costs. From said judgment the accused appealed, and further moved for a new trial on the ground of the discovery of new evidence, which motion was denied because the testimony of the witnesses named in said motion did not constitute new evidence, and for other reasons stated in the denial.

The above-stated facts duly proven in this cause constitute the crime of theft defined and punished under articles 517 and 518, No. 3, of the Penal Code, inasmuch as with intent of gain, without violence or intimidation of persons nor force on the thing; a female carabao was taken from the possession of Magdalena Juntado on a certain night in the month of March, 1905, without her consent; the animal was subsequently recovered from the possession of Donato Segovia, who, by order of the accused, kept it, together with other carabaos, for the purpose of using the same, the profits obtained being divided between these two and Guillermo Gonzaga; all to the prejudice of the owner thereof.

The accused pleaded not guilty, but notwithstanding the allegations set forth by the defense and which do not appear to have been proven, the cause offers conclusive evidence of the guilt of the accused as the unquestionable and proven author of the theft of a female carabao owned by Magdalena Juntado, since the animal was recovered from Donato Segovia on the suggestion of the accused himself, and by order of the latter had been sent with other carabaos to said Segovia, in charge of Guillermo Gonzaga, to be used in working the land on condition of the dividing between them of the profits thereby obtained. The accused has not, however, proven nor given satisfactory explanation that the animal belonged to him, or that he had lawfully acquired the same, but it having been shown that it belonged to the prejudiced woman, there can be no question but that he was the principal and not the mere accessory of the theft, inasmuch as he has failed to prove that he did not participate in the crime in question or that it was another who stole the animal from the possession of its owner.

It is the settled rule of the courts on the question of criminal liability that the finding of the corpus delicti in the possession of a person establishes the presumption that he is the author of the crime, unless it be proven who was the real author, and that the bearer or holder of the stolen property is the mere accessory of the criminal; the mere allegation that a person is an accessory to and did not actually participate in the crime is not sufficient to justify a conviction as an accessory only; it must be shown who is the real author of the crime.

In the proceedings in question Gabino Soriano has not shown who stole the carabao found in possession of his friend or partner, who held it by his order, therefore, he must, without any doubt whatever, be held to be the author of the theft.

In the judgment appealed from the trial judge, among other things, states the following:

"* * * As it is, the accused endeavored to prove that the carabao recovered by him was the same one that belonged to three owners, when, as a matter of fact, in the two cited cases and the present one, the carabaos are other than those that were recovered from the individuals named Segovia and Gonzaga, the partners of Gabino Soriano in this unworthy and scandalous business, as shown by the many convictions of Soriano and the proceedings still pending in this court. Such acts constitute one of the calamities with which the agriculture of this province is afflicted, and for this reason they must be suppressed with a strong hand and the law must be applied with all severity."

Upon the same rules and reasoning applied by the trial judge, the accused should be sentenced as principal and not as accessory to the crime of theft of a carabao belonging to Magdalena Juntado; in the commission of this crime no extenuating or aggravating circumstance is present, nor should the fact that it is a second offense be considered, for the reason that no certified copy of the former judgment was offered as evidence at the trial in the presence of and with the knowledge of the accused; therefore the adequate penalty of *arresto mayor* in its medium degree to *presidio correccional* in its minimum degree should be imposed in the medium degree.

In accordance with the considerations set forth it is our opinion that the judgment appealed from should be reversed, and Gabino Soriano sentenced to the penalty of six "months of *arresto mayor* with the accessory penalties prescribed by article 61 of the Penal Code, without indemnity, for the reason that the stolen carabao has been recovered, and with the costs of both instances. So ordered.

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

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