

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ISIDRO JAMERO, DEFENDANT AND APPELLANT.*G. R. No. 3974. February 14, 1908*

Ponente: TORRES, J.

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At about midnight on the 26th of April, 1906, three caraballas (female carabaos), the property of Fulgencio Figuera and brothers, were stolen from the corral where they were kept at the place called Tuburan, in the pueblo of Saravia, Occidental Negros; every one of them was branded with the letters L and G, the brand of said pueblo, and the value of each animal was P140. Two weeks after their disappearance search was made and one of them was found in the possession of the accused, Isidro Jamero in the sitio of Mansiligan, in the capital town of Bacolod; when the return of the animal was asked for, he demanded the sum of P55 as ransom. In order to find out whether the other two caraballas had also been hidden by the accused the ransom was paid, and, upon taking the animal over, it was discovered that a new brand, which was still fresh, had been placed over the old one, for which reason information was at once given to the Insular Police and the justice of the peace, and the latter ordered the arrest of the accused.

As a result of the investigation made while the accused was detained at the cuartel of the Constabulary, he at last stated that the two missing caraballas were at the sitio of Cabatangau, in the pueblo of Granada, where they were actually found by the Constabulary on the bank of a river among the bushes, they also showed signs of having been recently rebranded.

Consequently a complaint was filed by the provincial fiscal charging Isidro Jamero with the crime of theft, and proceedings were instituted. The judge, on the 30th of August, 1906, sentenced the accused, as accessory to the crime, to pay a fine of 1,000 pesetas and the costs, and, in case of insolvency, to suffer the corresponding subsidiary imprisonment, reserving to Figuera, the injured party, his right of action for the P55 paid to the accused, who appealed from said judgment.

The above facts fully proven in this cause, constitute the crime of theft described in articles 517, No. 1, and 518 of the Penal Code, because three caraballas owned by Fulgencio Figuera, kept in a corral with one carabao that was left there, were stolen at a late hour of night on the 20th of April, 1906, no intimidation nor violence being, however, present in the commission of the crime. The disappearance of the caraballas was noticed on the following day and was affirmed by two witnesses who are neighbors of the injured party and knew the stolen animals, and became aware of the fact as residents of the place. The total value of the three caraballas was P420.

Notwithstanding the fact that the accused pleaded not guilty, alleging that the said caraballas had been caught in his field, which is planted with sugar cane, and that they were delivered to him by Narciso Gavoll at between 6 and 7 p. m. on the 8th of May of said year. the day on which Figuera, the injured party, appeared to claim them, such allegation has not been substantiated; the record contains full and satisfactory evidence of the guilt of the accused as principal of the crime, and also shows that it is not true that the caraballas were found grazing on the

field belonging to the accused, notwithstanding the declarations made by himself and by his witnesses.

It is not possible to believe that from (he night of April to the afternoon of May 8—that is, during twelve days—three tame caraballas had been wandering over a tract of land extending from the pueblo of Saravia to the capital of Bacolod without being caught by some resident or by an agent of the authorities, or by persons in favor of carabaos, of whom there are so many in the island, as attested by the many cases appealed to this court; if the animals reached Mansiligan, Bacolod, it was because the accused, who had stolen them from their corral, took them there from Tuburan, Saravia.

The injured party went to the house of the accused to claim his caraballas during the daytime, not at night, and he then found only one of them, already rebranded; and, in order to secure the other two, which the accused had already hidden away, and for the purpose of obtaining proof thereof (because Alejo Cataluna, who had seen the three caraballas by the side of the stairway at the time when the accused himself was rehratiding them, assured him that they were in the possession of the latter) he acceded to the demand of the accused and handed him P55 as ransom, not as an indemnity for the damage caused to his sugar plantation.

When the matter was reported to the Insular Police, to whom the recovered caraballa was presented as evidence, the accused, Jamero, was arrested and after investigation he finally pointed out the place where he had hidden away the two caraballas which were also recovered by the Constabulary, who testified that the new brands put on the three caraballas were of recent date and were in appearance still fresh. This evidence destroys the exculpatory allegations of the accused and proves his culpability; the fact that when the caraballas were seen by the court, in the month of August following, and new marks and the corrections could hardly be noticed on the animals does not counteract the effects of this finding for the reason that, after the lapse of three months, the wounds could have already healed.

The stolen caraballas having been found in the possession of the accused, and there being no proof as to who was the thief, it is assumed that the holder or bearer of the stolen property is the author of the theft or robbery; this presumption against the accused has been neither affected nor destroyed by any evidence to the contrary. This doctrine, which is strictly in accord with the principles of the criminal law in such crimes, has already been applied in decisions of this court in appeals from judgments of the said Court of First Instance of Occidental Negros.

In the commission of the theft the concurrence of the aggravating circumstance of nocturnity, with nothing to mitigate it has been considered; therefore, the penalty should be applied in the maximum degree, with the obligation to refund the 55 paid by the owner of the stolen animals as ransom.

In view of the foregoing and accepting the conclusions in the judgment appealed from, which are compatible and agree with the basis of this decision, it is our opinion that the said judgment should be reversed, and that Isidro Jamero be sentenced to three years of presidio correccional, to suffer the accessory penalties of article 58 of tin; code, to refund to the injured party, Fulgencio Figuera, the sum of 55, and to pay the costs of both instances. So ordered.

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

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