

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. HILARIO GALANCO AND VICTORIO GAMIS, DEFENDANTS AND APPELLANTS.

G.R. No. 4440. November 05, 1908

Ponente: MAPA, J.

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MAPA, J.:

When the defendants were informed of the complaint, charging them with the theft of a female carabao and two calves owned by a Magdalena Gallardo, one of them, Hilario Galanco, pleaded guilty, and said that he had received the said carabao and calves from his codefendant, Victorio Gamis, with instructions to sell them in order to afterwards divide between them the proceeds of the sale. In view thereof and without any further evidence, the court found him guilty as accessory of the crime and imposed upon him the corresponding penalty and the said defendant acquiesced in the judgment.

The other defendant, Victorio Gamis, pleaded not guilty, and his trial was proceeded with, the result being that he was sentenced by the court below to the penalty of one year, eight months and twenty-one days of presidio correccional, to pay an indemnity of 100, representing the value of the unrecovered carabaos, and one-half of the costs. The case was brought to this court on appeal from the judgment.

The municipal president of Candon, within whose jurisdiction the crime at bar was committed, testified at the trial, that while investigating the case previous to the filing of the complaint with the court of the justice of the peace, the accused, now the appellant herein, confessed to him that he had stolen the carabao and calves from the place where they were grazing, and that he afterwards turned them over to Hilario Galanco for sale on condition that the proceeds should be divided between them. A similar confession was made by the said defendant at the preliminary hearing held before the justice of the peace, a copy of which was admitted as evidence at the trial without exception by the defense. These confessions, in addition to the statement made by Hilario Galanco, when he was informed of the complaint, and which were likewise presented and admitted as evidence in the case, to the effect that it was the appellant who delivered the animals to him for sale, constitute sufficient proof of the culpability of the said appellant, as was properly considered by the court below in the judgment appealed from.

Counsel for the accused argued that the testimony of the municipal president was merely hearsay, and could not therefore be used as evidence at the trial. This allegation is entirely without foundation. The testimony alluded to does not refer to the fact of the theft itself, as the defense seems to understand it, but to the confession made by the accused to the said witness. With respect to said confession the testimony of this witness is direct and not simply hearsay.

The defense also objects to the admission in evidence of the statement made by Hilario Galanco against the accused when he was informed of the complaint. The manner in which this evidence was introduced at the trial was undoubtedly improper. In lieu thereof the prosecution should have introduced Galanco himself as a witness in order that he might testify in the presence of the accused and be in turn cross-examined by the latter, if he considered it necessary. However, as a matter of fact, the accused has not been deprived of the right to

cross-examine Galanco, inasmuch as the trial judge expressly reserved that right to him when admitting that evidence; it appears, therefore, that if Galanco was not subjected to cross-examination, it was not due to the fact that the accused was not given the opportunity, but that he did not desire, or that it was not to his interest to do so, and in this manner he waived the right that the law granted him and which was so fully recognized by the court below. Considering the fact that none of the essential rights of the accused have been injured, the mere irregularity in the manner in which the evidence was offered and admitted does not vitiate the procedure, nor is it sufficient cause for the reversal of the judgment appealed from, according to the provisions of section 10 of General Orders No. 58. Furthermore, although the defense objected to the presenting of the evidence, he did not except to its admission, and in consequence consented thereto.

The judge below imposed upon the accused the penalty prescribed by paragraph 2 of article 518 of the Penal Code, for the reason that he considered the value of the stolen carabaos to be P260. Their value was so alleged in the complaint, but has not been proven in the case. The only witness who was questioned upon the matter declared that he could not say what the value of the carabaos was because he had never sold any such animals. For this reason evidence as to their value is absolutely lacking. This being the case, no reason exists for applying the provisions of paragraph 2 of article 518, which refers specifically to cases in which the value of the stolen property (value proven, of course) should exceed 1,250 pesetas, but not 6,250. The same reason prevents the application of paragraphs 1, 3 and 4 of the said article, because they all give specified amounts as a basis for the penalties respectively prescribed by each of them. This naturally requires that the value of the stolen property be determined by sufficient evidence at the trial. There remains paragraph 5, which prescribes the penalty of *arresto mayor*, in its minimum and medium degrees, in those cases wherein the value does not exceed 25 pesetas. This is the lightest penalty prescribed by the article, and it is the one that we believe should be applied, since the carabaos were undoubtedly worth something, no matter how little, and, on the other hand as it has not been shown that their value exceeded 25 pesetas, a thing which, although it might be presumed, can not, however, in the absence of proof and to the prejudice of the defendant, be found as an actual fact.

In view of the absence, of such proof, it is not proper to sentence the accused to pay any given sum as an indemnity for the unrecovered carabao or carabaos, inasmuch as the basis for the fixing of the indemnity would have to be their value, and it has already been stated that such value does not appear as having been duly proven in the case.

In consequence thereof, the right of action of the injured party should be reserved to him in order that he may demand the indemnity by means of a proper civil suit.

The judgment appealed from is hereby affirmed, provided, however, that the penalty imposed on the accused shall be two months and one day of *arresto mayor*, credit being allowed him for one-half of the *prision preventiva* (detention pending trial) which he may have undergone; that portion of the judgment sentencing the accused to pay an indemnity of P100, is set aside, and the right of the injured party to demand indemnity by means of the corresponding proceeding is reserved, with the costs of this instance against the accused. So ordered.

Arellano, C. J., Torres, Willard, and Tracey, JJ., concur.
Carson, J., dissents.

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