

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. GABINO SORIANO AND GERARDO VILLALOBOS, DEFENDANTS AND APPELLANTS.

G.R. No. 4563. January 19, 1909

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

This case being submitted to this court by virtue of the appeals respectively interposed by the two accused, it appears:

That Gabino Soriano appealed from the judgment of the Court of First Instance of Occidental Negros sentencing him, as guilty of the theft of a carabao, to pay a fine of 1,875 pesetas and one-half of the costs, and in case of insolvency to suffer subsidiary imprisonment at the rate of one day for every 12½ pesetas that he failed to pay.

And that Gerardo Villalobos in his turn appealed from that part of the judgment which "orders the return to Candido Montilla of the carabao in question, deposited with the said Villalobos whose right of action against Gabino Soriano is reserved."

As to Gabino Soriano, he appealed from the judgment because he was charged with criminal participation in the act; the court below considered that his participation in the commission of the crime was that of an abettor for the reason that he profited by the carabao, although it was not proven that he was guilty as principal of the appropriation. But in one of its findings of fact the court below held: (1) That on the 24th of February, 1905, Gabino Soriano obtained the registration of the carabao in the municipality of Silay, and that on the same day he transferred it by sale to Gerardo Villalobos for the sum of P150; and (2) that Miguel Tionco, who was municipal treasurer of Silay, declared that at the time of registration of the carabao, Gabino Soriano produced an old certificate, issued in the time of the Spanish Government, but did not give any particulars as to the town or the date on which the document had been issued, and said that he returned the said document to Soriano in order that he might attach it to his certificate of ownership as provided in the new law. And finally, the new law referred to by Tionco is Act No. 1147 of the Philippine Commission, section 9 of which provides that persons charged with the duty of branding or registering large cattle and issuing the proper certificates, shall satisfy themselves of the ownership of the cattle so branded or registered. And it has been fully proven that in addition to the original brand of the real owner, Candido Montilla, the accused, placed his own brand, that is, his initials, on the carabao in question.

Given these facts and the settled rule of this court, the fact that a number of stolen carabaos were found in the possession of an individual who kept them hidden away, and that a few days prior to the recovery thereof he had altered or modified the old marks on the animals, gives rise to the presumption that said individual was the principal in the crime, and not merely an accessory, unless it be satisfactorily proven that it was another person who stole the carabaos. (U S. vs. Jamero, 10 Phil. Rep., 137.) His participation as an accessory, as found in the judgment appealed from, can not be admitted; he must be considered as principal in the crime as sustained by the

Attorney-General in this instance; therefore, lie is guilty as principal in the crime of theft as denned by paragraph 3 of article 518 of the Penal Code, applied by the court below.

But it was also found in the judgment appealed from that Gabino Soriano had been sentenced by the same court for tins same¹ crime of theft of carabaos in cases Nos. 131, 164, 185, 235, 238, and 285, and was then serving sentence in three of the cases. In this case the aggravating circumstance No. 18 of article 10, that is, that the culprit is a recidivist, should be considered, and it is so considered in the judgment appealed from; but then article 520 should be applied—

"Theft shall be punished with penalties next higher in degree to those respectively prescribed in the two preceding articles:

"1. * * * * *

"3. If the culprit were a recidivist two or more times."

The penalties imposed by paragraph 3 of article 518 for the crime herein are arresto mayor in its medium degree to presidio correccional in its minimum degree; hence the penalties next higher are presidio correccional in its medium degree to presidio mayor in its minimum degree. Therefore, the medium degree of this penalty should be imposed on him, which we determine to be five years of presidio correccional.

With respect to the appeal of Gerardo Villalobos, it is based on the allegation that the court below erred in ordering that the stolen carabao be returned to its lawful owner, Candido Montilla, without reimbursing Gerardo Villalobos for its value, notwithstanding the fact that he was fully acquitted and declared to be the possessor and purchaser thereof in good faith, and holding title in accordance with Act No. 1147.

It is true that he was acquitted; for the judgment appealed from says "A reasonable doubt as to his guilt exists in the mind of the court" for the reason that it was not proven that he was aware of the unlawful origin of the animal. "Apparently, the carabao was lawfully acquired by Villalobos, but, notwithstanding this, the true owner, Candido Montilla, is entitled to recover it, inasmuch as the acquisition by Villalobos is null and void, because the supposed vendor is not the real owner of the animal."

What does not appear to be equally certain is that the court below held that he was a possessor and purchaser in good faith; the only thing that the court below said is, that it does not agree with the opinion of the defense "even admitting that the carabao was acquired in good faith."

Had Villalobos acquired it in good faith at a public sale, he would be entitled to reimbursement by the real owner upon recovery by the latter; but the third purchaser in this case, Villalobos, did not obtain the animal at a public sale, but by private purchase from Soriano. The registration of the purchase and transfer in the books of a municipality does not confer a public character upon a sale agreed to between two individuals only, without previous publication of notice for general information in order that bidders may appear. Therefore, the finding contained in the judgment impugned on this appeal is entirely in accordance with the law, that is, with the provisions of articles 120 of the Penal Code, and 464 of the Civil Code for which reason this part of the judgment appealed from should be affirmed.

In view of the foregoing, the said judgment is reversed as far as concerns the penalty imposed on Gabino Soriano as an accessory, and we hereby sentence him to five years of presidio correccional with the accessories of article 58 of the Penal Code and one-half of the costs of both instances ; and we affirm the said judgment as to the restoration of the stolen carabao to its lawful owner, Candido Montilla, without right on the part of Gerardo Villalobos to first obtain reimbursement for the value thereof; his right of action, in accordance with the judgment, is reserved and he is hereby sentenced to pay one-half of the costs of this instance.

Torres, Mapa, Johnson, Carson, Willard, and Tracey, JJ., concur.

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