

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MARIANO CARALIPIO AND CIPRIANO FERNANDO, DEFENDANTS AND APPELLANTS.

G.R. No. 6320. February 21, 1911

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of the Province of Pangasinan, Hon. Isidro Paredes presiding, convicting the appellants of the crime of theft and sentencing each one of them to one year and one day of presidio correccional, accessories and costs, and also to the return of the property stolen or the value thereof, not to exceed P110.

It appears that one Feliciano de la Pasion was the owner of a young carabao, about 3 years of age, valued at P110, largely white in color, about three and one-half feet in height, without brands, with the horns curved slightly downward and a little longer than the ears. On the night of the 22d of May, 1909, it was tied with a rope near the house of the owner, situated in Poponto, municipality of Bautista, Province of Pangasinan. Sometime during that night or the early morning the young carabao was stolen. Upon examination it was found that the rope with which it had been tied the night before had been cut in two and the carabao taken away, the gate to the enclosure in which it was tied having been forcibly opened. For several days the owner, in company with certain of his neighbors, visited the various barrios in that locality in search of said carabao, but without avail. Some days afterwards and on about the 5th day of June, 1909, Irineo Daquigan and Teofilo Bautista, being in a place a little west of the municipality of San Manuel, Province of Pangasinan, saw the two accused in this case, Mariano Caralipio and Cipriano Fernando, going in the direction of the pueblo of San Manuel, driving the carabao in question, upon which the accused Mariano Caralipio was riding. The two witnesses immediately communicated the fact to Feliciano de la Pasion, and the latter, in company with them, went to the pueblo of San Manuel and there found the carabao in question in the possession of the municipal treasurer. Pasion claimed the carabao, but as Cipriano Fernando, one of the accused, claimed it also, the municipal treasurer, after an investigation relative to the ownership, turned it over to Cipriano Fernando, who, on the 25th of June of the same year, took it to the municipality of Moncada, where it was branded by the authorities, from whom he received the corresponding certificate of ownership. Thereafter Feliciano de la Pasion made complaint to the authorities against the accused, charging them with the theft of his carabao. A preliminary investigation was had before Marciano de Guzman, justice of the peace of Bautista. From such examination the magistrate found that sufficient facts had been proved to demonstrate that a crime had been committed and that there was reasonable ground to believe that the accused had committed the same; whereupon he held them to await the action of the Court of First Instance of the province. Pasion proved his ownership of the young carabao by his own testimony and by the testimony of several other witnesses, who identified it beyond question. On that trial the said justice of the peace, Marciano de Guzman, who had conducted the preliminary investigation in the case, was presented as a witness.

During the progress of that preliminary investigation the said justice, to satisfy himself fully as to who was the

real owner of the young carabao, made a very practical test to that end. He required the accused Cipriano Fernando, who claimed that the young carabao belonged to him and that he still owned the mother of it, to bring the alleged mother of the young carabao to his office, where the preliminary investigation was being held. He also required Pasion, the other claimant of the young carabao, to bring to the office of the justice of the peace the caraballa which he claimed was the mother of the young carabao in question. This was done. Under the orders of the justice of the peace, the young carabao was placed at the farther end of an inclosure, and the two caraballas, alleged mothers of the young carabao, were driven through an opening in the fence at the other end of the inclosure, the caraballa belonging to the accused walking 15 or 20 feet ahead of the caraballa belonging to Pasion. The young carabao, upon seeing the two caraballas enter the inclosure, run forward to meet them. It paid not the slightest attention to the caraballa of the accused, which it was the first to meet, but passed it by with utter indifference to meet the caraballa of Pasion, which it greeted with the customary salutation which a young carabao gives to its mother, manifesting all the signs which are usually shown by a young for a long lost mother.

This witness further stated that he then separated the two caraballas from the young carabao, after which he turned the two caraballas loose. The caraballa of Feliciano de la Pasion immediately began searching for the young carabao, while that of the accused showed itself entirely indifferent to its whereabouts. According to the witnesses Feliciano de la Pasion, Irineo Daquigan, Teofilo Bautista and Vidal del Rosario, these same experiments were tried before the municipal treasurer of San Manuel with substantially the same results.

We have not the slightest doubt that the young carabao in dispute in this case is and was the property of Feliciano de la Pasion. This being so, it is equally undoubted that it was feloniously taken from his possession by the accused in this case. It is a point worthy of note that the accused Cipriano Fernando admitted upon cross-examination that he had branded and obtained certificates of property for two young carabaos of substantially the same age as the one in dispute, one in the month of November, 1908, and the other in the month of February, 1909, both carabaos of the same caraballa which he claimed was the mother of the young carabao in question. As the young carabao in dispute is alleged also to be a calf of the same caraballa of the accused and of substantially the same age as the two young carabaos referred to, it presents the unusual spectacle of seeing a caraballa the mother of three carabaos in less than two years. There is nothing whatever in the case which indicates that the testimony of the complainant and his witnesses is false. On the other hand, every circumstance which has been presented in this case indicates that that testimony is true. It is to be wondered why the accused, being a resident of one municipality, in which he had caused to be branded two young carabaos during the prior year and from which he had received certificates of property of the same, should take the carabao in question to another municipality for the same purpose. We are of the opinion that the conclusions of the learned trial court are fully sustained by the proofs. (U. S. vs. Jamero, 10 Phil. Rep., 137; U. S. vs. Soriano, 9 Phil. Rep., 441; U. S. vs. Paguia, 10 Phil. Rep., 90; U. S. vs. Espia, 16 Phil. Rep., 506.)

The judgment of conviction is affirmed, with costs against the appellants.

Arellano, C. J., Mapa, Carson, and Trent, JJ., concur.

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