

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. BONIFACIO DIVINO, DEFENDANT AND APPELLANT.

G.R. No. 6368. 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 Nueva Ecija, Hon. Julio Llorente presiding, convicting the appellant of robbery and sentencing him to three years and nine months of presidio correccional, to the accessories provided by law, and to the payment of the costs of the trial.

It appears that on or about the 3d or 4th day of July, 1907, between 8 and 10 o'clock of the night, two persons, one armed with a gun, forcibly took from the possession of one Miguel Lagamia a carabao belonging to his employer, Felix Atacador. They not only took the carabao but compelled said Miguel Lagamia to accompany them as far as a talajal where they liberated him. On or about the 4th day of September of the same year the carabao above mentioned was found in the possession of Leoncio San Gabriel, a cropper in the employ of the accused Bonifacio Divino, who stated that the carabao had been delivered to him by the said accused to be used in the work to be performed by said Leoncio San Gabriel upon the lands of the said accused. Leoncio San Gabriel having possession of the carabao without the documents of title required by law, and the accused not having said documents, said carabao, with three others also at the same time in the possession of the accused without the corresponding evidences of title, was taken by the provincial officials. While the said carabao was being used in public work by the provincial government pending its identification by the owner, it was recognized by Felix Atacador, the man from whose servant it had been forcibly taken by the robbers. Upon recognizing the carabao, Atacador presented the documents justifying his claim of ownership and after due comparison of the marks upon the carabao with those in the documents presented, the provincial governor delivered the carabao to Atacador. The owner recognized the carabao in question not only from the brands which appeared upon it but also from certain natural physical peculiarities which the carabao presented. As a witness Atacador fully identified the carabao not only from its brand but also from said natural physical peculiarities, and had no hesitation in asserting positively and without equivocation that the carabao in question was the one of which his servant, Miguel Lagamia, had been forcibly robbed. The identity of the carabao found in possession of the government with that of which Atacador had been robbed was clearly and fully established by several other witnesses, among them the provincial governor, Sr. Tinio, who testified that at the time Atacador presented his claim to the carabao then in the possession of the provincial government, he had carefully compared the marks in the documents presented by Atacador with those upon the carabao and that he entertained not the slightest doubt that the marks were identical. No direct denial was made by the defendant or his witnesses of the identity of the carabao in question with the carabao found in the possession of the provincial government and that lost by Atacador. The only question presented by the evidence of defendant's witnesses is one over the identity of the marks appearing in the documents of ownership of Atacador and those appearing upon the carabao. All of these witnesses, however, admit the identity of the private marks. The only mark in controversy is the municipal mark. Two of the witnesses seemed to assert that at the time the carabao was taken from the possession of the accused and turned over to the

provincial government the municipal mark upon the carabao was wanting¹. The testimony of these witnesses, however, was not positive, and, in our judgment, does not deserve the consideration which the learned trial court gave to the positive and direct testimony of the witnesses for the prosecution. These witnesses unhesitatingly assert that at the time the carabao came into the possession of the provincial government it had upon its body not only the private mark of Atacador but the municipal mark of Batangas.

While the persons who committed the robbery were not recognized and their identity is entirely unknown, nevertheless, the accused, having been found in possession of the stolen carabao shortly after the commission of the crime, without the documents necessary under the law to justify ownership and possession, and he not having made the slightest explanation as to that possession, his conviction under the evidence presented in this case is justified by law. (U. S. vs. Soriano, 9 Phil. Rep., 441; U. S. vs. Santillan, 9 Phil. Rep., 445.)

The judgment of conviction is affirmed, with costs against the appellant. So ordered.

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

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