

## THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. DIONISIO TAPAN AND RUFINA DE LEON, DEFENDANTS. DIONISIO TAPAN, APPELLANT.

*G.R. No. 6504. September 11, 1911*

Ponente: JOHNSON, J.

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### JOHNSON, J.:

These defendants were charged with the larceny of three carabaos, the property of Matias Yusay. Rufina de Leon was sick and unable to appear at the trial. The trial of the cause proceeded against the defendant Dionisio Tapan alone.

After hearing the evidence, the lower court found the defendant (Dionisio Tapan) guilty of the crime charged in the complaint and sentenced him, under the provisions of paragraph 2 of article 518, in relation with paragraph 1 of article 517 of the Penal Code, to be imprisoned for a period of four years of presidio correccional, and to pay to Matias Yusay the sum of P150, the value of the two carabaos not recovered, and in case of insolvency to suffer subsidiary imprisonment, and to pay the costs.

From that sentence the defendant appealed to this court.

From an examination of the evidence, the following facts appear:

That Matias Yusay was the owner of three carabaos in the month of March, 1907, which were then in the possession of his tenant, Eugenio Puentespio; that in the night time during the said month of March these carabaos were stolen; that the carabaos were kept in an enclosure under the house occupied by the tenant; that the gate to the enclosure was locked by some form of a lock on the inside of the gate and that when the gate was once locked, the customary way to enter the said enclosure was by means of a ladder or stairway going up into the house from the said enclosure; that on the morning after the carabaos were stolen it was found that the gate to the enclosure had been broken open.

About two years and a half (November 22, 1909) after the carabaos had been stolen, as above described, one of them, which was fully identified by Matias Yusay, was found in the possession of the defendant, Dionisio Tapan. He gave no satisfactory explanation of his possession of said carabao; he produced no witnesses to show how he came into the possession of the carabao. Men who come into the lawful possession of property seldom ever have any difficulty in explaining the source of their possession. In the absence of a satisfactory explanation and under the presumption of law the lower court found the defendant guilty of the crime charged, (U. S. vs. Soriano, 9 Phil. Rep., 441.)

The crime was committed at night and in an inhabited house. It is believed that the enclosure under the house in the form in which it was maintained in the present case should be considered as a part of the house, in accordance with the provisions of article 510 of the Penal Code. Said article 510 provides that -

"Any lodging that shall constitute the dwelling place of one or more persons shall be considered an inhabited

house, even though they should accidentally be absent therefrom when the robbery took place,"

"As the dependencies of an inhabited house or public building or one dedicated to religious worship, shall be considered its courts, corrals, shops, granaries, mews, stables, stalls, and other divisions or enclosures contiguous to the building, having interior connection therewith, so that the same constitute one entire place."  
(Viada, 3d Supplement, 377, decision of the supreme court of Spain of January 4, 1898.)

The circumstance of nocturnity and the fact that the theft was committed in an inhabited house should be considered as aggravating circumstances. There were no extenuating circumstances. The defendant should therefore be punished in the maximum degree of the penalty provided by law. The penalty of the lower court was imposed in the maximum degree; the lower court failed, however, to impose the accessory penalty provided for in article 58 of the Penal Code. The judgment of the lower court is therefore hereby affirmed, with the addition that the defendant be sentenced to suffer the accessory penalty of said article 58, with costs. So ordered.

Torres, Mapa, and Carson, JJ., concur.

Moreland, J., dissents.

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