

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. VALERIANO CERNA ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 6696. January 06, 1912*

Ponente: ARELLANO, C.J.

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In December, 1902, Sabina Merenguel, or Maringol, as she is variously called, lost a 3-year-old carabao which joined other carabaos belonging to Julian Nayre and afterwards strayed away and was not found by Sabina Merenguel until April, 1909. In this month of April, 1909, while the latter was one day going to her cousin's to get some rice, she saw the carabao in a river, in the sitio of Hinubigon, about 5 or 6 kilometers distant from that of Cabasan where she resided, but as it was late she determined to return the next day to see it again, which she did, in company with Andres Llorna and Daniel Barola, and they found the animal in the same place. Leoncio Marte told her that Policarpo Cerna was the party who had the carabao. Leoncio Marte, in fact, testified that he saw Policarpo Cerna catch the carabao in the month of January, 1903, in Hinubigon, the animal being loose at the time, and when asked why he had caught it, the latter replied that it was his share, that Policarpo Cerna had not ceased to possess it since then, and that witness was aware of these facts as they were neighbors. The carabao was branded L T, the initials of Sabina Merenguel's husband, but over the old brand there had been marked the initials M C, which appear to be those of Modesto Cerna, whose branding iron, however, did not fit these last letters.

Policarpo Cerna testified that the carabao belonged to his elder brother, Valeriano Cerna, and the latter swore on the stand that the animal in question had been given to him by his brother, Modesto Cerna, in exchange for another carabao of his own which Modesto had borrowed from him. Santiago Cerna claimed and maintained that the carabao in controversy belonged to his father, Modesto, and said that they might bring suit to recover the animal, if they wished, but that he would not deliver it.

The Court of First Instance of Leyte, before which the case was heard, found the defendants guilty of theft, as defined in paragraph 1 of article 517 of the Penal Code and therefore sentenced them to four months and one day of *arresto mayor*, to restore the stolen carabao to Sabina Merenguel or, if its restitution was impossible, to pay her its value, the sum of P110; to suffer, in case of insolvency, the corresponding subsidiary imprisonment, and to pay the costs.

From the letter transmitting the case to this court, it appears that only Policarpo Cerna appealed from the judgment, as shown by his notification; however, the record does not show that Valeriano Cerna failed to appeal and submitted to the judgment.

What is certain is that the party who was required by the clerk of this court to defend himself, in this second instance, was Valeriano Cerna, and the attorney who made the defense *de officio* presented his brief in the name of the two defendants, Policarpo and Valeriano Cerna.

In this manner the appeal was heard.

This court can not affirm the application to the case at bar of paragraph 1 of article 517 of the Penal Code, because, in accordance with this provision, "those who, with intent of gain and without violence or intimidation against the person or force against things, shall take another's personal property without the owner's consent," are guilty of theft; and, in the present case, the accused did not take, but found, the carabao in question, which, according to the woman who claims to be its owner, had been lost by her, and, as testified by the witness, Leoncio Marte, was caught by Policarpo Cerna in Hinubigon, distant 5 or 6 kilometers from Cabasan, the place of residence of the said woman, Sabina Merenguel, who began her testimony by saying that "when that carabao was lost it followed other carabaos of Julian Nay re toward Hinubigon, where the latter took his animals to his mother's house, and, after passing through the sitio of Panamgan, it separated from Nayre's animals." It is an elementary principle that theft consists essentially in taking another's personal property from the 'place where it is held by its legitimate owner. (Viada, art. 530, Penal Code of Spain.)

"It stands to reason and is confirmed by established principles of law—says Manresa—that the word take, as employed in paragraph 1 of article 530 of the Penal Code (517 of that of the Philippines), must be rationally interpreted as the act of taking a thing from the possession of its owner and bringing it into the possession of the guilty party. The thing abandoned, the thing lost, is not in the possession of its owner, is not at the place where it should be at the disposal of such owner, but is, on the contrary, at the disposal of anyone. * * * In principle, it may be affirmed—so he concludes—without hesitation or doubt, that the case to which we refer is not comprised within paragraph 1 of article 530. It was so understood by the legislators since, in amending the Penal Code of 1850, they added the paragraph No. 2 as something new and special not included in paragraph No. 1." (5 Manresa, Civil Code, 47.)

Paragraph 2 of article 530 of the code of Spain, identical with article 517 of that of the Philippines, reads thus:

"The following are guilty of theft: * * *

"2. Those who, finding something lost and knowing who its owner is, appropriate it with the intent of profit."

Continuing his commentary, the learned jurist also takes up the question as to whether paragraph 2 of article 530 (517 of the Philippines) may be applied to the case in hand, and he arrives at this conclusion:

"Neither may it be applied, because, when the owner is not known, there is lacking an essential requisite, for the constitution of the crime referred to. Only in the case where the person who found the thing should come to know who was the owner of it and should continue to keep it, might it be said that theft was committed." (Id., 48.)

The defendants knew that Sabina Merenguel claimed to be the owner of the carabao, in April, 1909, six years and four months after she had lost it, in December, 1902. This being so, could they be guilty of theft under paragraph 2 of the afore-cited article 517, because they continued to keep the carabao, notwithstanding that Sabina Merenguel had informed them that she was its owner? To claim to be the owner does not make one the owner. For this reason, in the present status of the case, the courts must decide who is the owner. The defendants can not now, after the lapse of six years from the finding of the carabao, which was without owner and at large, be deemed guilty, of the crime of theft. This is a new phase of the case at bar, which brings it within the prescriptions of the civil law and withdraws it from the sphere of action of the Penal Code.

Should a person appear to claim a domestic animal six years after it was found roaming at large, its owner being unknown, it may not be taken for granted that such person is the owner thereof and that he who found it should be considered guilty of theft.

The fourteenth provision of the Law of Bases provided that taking possession should be defined as one of the means of acquisition; that rights should be regulated over domestic animals, accidental finding of treasure and

appropriation of abandoned personal property. The Civil Code, in its articles 111, 112 and 113 [611-613], treats of the loss and acquisition of wild and tamed animals. With respect to tame or domestic animals, as well as all other abandoned chattels, the only article applicable is article 116 [615], which prescribes as follows:

"A person finding any personal property, which is not treasure, must return it to its former possessor. Should the latter be unknown, he must deliver it immediately to the mayor of the town where the find was made,"

"Is the act of appropriating personal property found a lawful act? The finder of the thing must return it to its owner, if the latter is known, or, if he is unknown, deposit it with the mayor. If he does not do so, prescription is required to enable the finder or a third person to acquire title to the find; and the former, as a general rule, must have possessed it for the extraordinary term of six years, on account of the lack of good faith and because, for the same reason, his possession is not equivalent to a title, with the exception however of the provisions of article 1956. * * *. (Id., 46.)

"The possession of personal property, acquired in good faith, is equivalent to a title thereto." (Civil Code, 464.)

"The ownership of personal property prescribes by uninterrupted possession in good faith for a period of three years." (Civ. Code, art. 1955, par. 1.)

"The ownership of personal property also prescribes by uninterrupted possession for six years, without the necessity of any other condition." (Id., par. 2.)

Leoncio Marte, a witness for the prosecution, certified to Policarpo Cerna's uninterrupted possession from January 1, 1903, to April, 1909; and his affirmation is in no wise contradicted, but rather is confirmed by all the witnesses for the prosecution, and by Sabina Merenguel herself, who demands the recovery of her ownership and premises the possession of the Cernas since 1903 in order that she may be enabled to demand the possession from the latter; only she has chosen for the purpose a criminal action, taking it for granted that, first, she is the owner; and second, that, notwithstanding the loss of the animal for more than six years, she is still the owner thereof: while, on the contrary, these premises may not be discussed except in a civil suit.

With respect to this criminal action, the conclusions are:

1. That the defendants can not be guilty of theft under paragraph 2, of article 517 of the Penal Code, since, from January 1, 1903, when they took possession of the animal, to April, 1909, they did not know who was the owner thereof; and, in order that liability may attach for theft, pursuant to the provision just above cited, it is necessary that the appropriation, with intent of gain, of the thing lost, be made, "knowing who is its owner."
2. That when the defendants learned, in April, 1909, who claimed to be the owner of the carabao, they had already possessed the lost animal for an uninterrupted period of six years; and the ownership of personal property prescribes by uninterrupted possession for six years, without the necessity of any other condition.
3. That if, on January 1, 1903, they had known who was the owner of the animal, they then would have committed the crime of theft as defined in the afore-cited provision, and would not then have been able to gain by prescription the ownership of the said carabao, except through the prescription of the crime or its penalty and the action demanding civil damages as a result of the crime (Civil Code, 1956); but this provision is not applicable to the present case, because the defendants are not guilty of theft, nor was the carabao stolen, as established by facts perfectly proven.
4. That, the owner of a thing found being unknown, its appropriation does not constitute theft, although the finding may or may not constitute a title of acquisition for the finder, and may or may not be a reason for the loss of the ownership by the original owner: all this is a matter for ventilation in a civil action.

5. As to whether the finding could or could not result in the loss of ownership for the one and the title of acquisition for the other, there is involved the question whether the thing found was or was not delivered into the custody of the mayor and as to what civil effects are derived from a failure to make such a deliverance. It is certain, however, that this failure to deliver into the custody of the mayor does not constitute a crime, nor does it add any element whatever to the crime defined in paragraph 2 of article 517 of the Penal Code, and is not, therefore, an act or omission penalized by law.

Therefore, the judgment whereby the defendants were found guilty of theft does not appear to be in accord with the merits of the case.

The judgment appealed from is reversed, the complaint is dismissed and the costs are assessed de oficio,

Torres, Mapa, Johnson, Moreland, Carson, and Trent, JJ., concur.

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