

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JUAN LOPEZ, DEFENDANT AND APPELLANT.*G.R. No. 8193. October 22, 1913*

Ponente: CARSON, J.

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This is an appeal by Juan Lopez from a judgment of the Court of First Instance of Cagayan Province, convicting him of the crime of theft. The information charges Juan Lopez and Jorge Malazzag with the crime of theft, as follows: "That the said Juan Lopez and Jorge Malazzag, on or about June 8, 1911, in the barrio of Agusi, municipality of Camalaniugan, Province of Cagayan, P. I., did willfully, unlawfully, and criminally, and with intent of gain, abstract, and take away a carabao calf, worth P60, equivalent to 300 pesetas, the property of another and without the consent of the owner, Fernando Tion."

Fernando Tion, being duly sworn, testified substantially as follows: "I am 43 years of age, married, a laborer, and a resident of Camalaniugan, Cagayan Province. On June 8, 1911, I was the owner of a caraballa and calf; on that day I noticed that the calf was missing and I set out to look for it. I found the calf in the possession of Jorge Malazzag, in the barrio of Bebbay, municipality of Camalaniugan. Meliton Talosig and Eugenio Talosig were with me when I found the calf. When I asked him why the calf was there he said: 'This is our carabao.' I then replied: 'Let us draw a document to the effect that I saw my carabao here,' to which he answered: 'Never mind drawing a document because whenever Juan Lopez is brought here and returns P60 we paid him for the carabao we will give you the carabao.' I then returned to Camalaniugan and made a complaint in the justice of the peace court. When the calf was brought home it immediately began to suck the mother. The calf was 7 months old when it was stolen and was worth P60. I knew the features of the calf very well and I also identified it by the marks on its ears; I put my mark on both ears, and one of the ears had been recently branded in a different way. The calf in question was turned over to me by the justice of the peace and it died on August 20 last." (Rec, pp. 41-49).

Jose Casibang, being duly sworn, testified substantially as follows: "I am 25 years old, single, a Constabulary soldier, and a resident of Aparri, Cagayan Province. I am acquainted with Fernando Tion. He brought a warrant for the arrest of Juan Lopez to me and I took some soldiers and went to arrest Lopez. We went by the barrio of Bebbay and I had Jorge Malazzag get the carabao as we had a search warrant for it. I brought Juan Lopez and Jorge Malazzag to the barracks at Aparri and reported to the lieutenant of Constabulary. The next day I took them to the municipality of Camalaniugan and turned them over to the justice of the peace and the municipal president then sent for the mother of the calf found in the possession of Jorge Malazzag" (pp. 49-51).

Meliton Talosig, being duly sworn, testified substantially as follows: "I am 38 years of age, married, a laborer, and a resident of Camalaniugan, Cagayan Province. In the month of June last I was asked by Fernando Tion to accompany him on a search for a carabao that had been lost. We found the carabao in front of the house of Jorge Malazzag in the barrio of Bebbay. When he arrived Jorge was not at home and his wife told Fernando Tion that they had acquired the carabao from Juan Lopez. We returned home the same day" (pp. 51-54).

The record shows that the fiscal waived calling Eugenio Talosig as a witness, stating that his testimony would be simply corroborative of that of Meliton Talosig (p. 54).

Juan Lopez, being duly sworn, testified in his own behalf substantially as follows: "I am 46 years of age, married, a laborer, and reside in Camalaniugan, Cagayan Province. On May 29, 1911,¹ sold a young carabao to Jorge Malazzag for P50. He paid me P23 and agreed to pay the balance when the carabao was registered. I gave Jorge Malazzag a receipt for the money given me for the carabao. The calf I sold to Jorge Malazzag was the offspring of my own caraballa; I sold the mother first to Tomas Arica" (pp. 54-61).

Domingo Aguao, being duly sworn, testified for the defense substantially as follows: "I am 48 years old, married, a laborer, and a resident of Aparri. Some time in May last I was at the house of Jorge Malazzag and Juan Lopez came there to sell a carabao. I had seen the carabao before; I had seen Juan Lopez riding the mother, and the calf following. There was no mark on the carabao sold to Jorge Malazzag" (pp. 61-64).

Fermin Macanaya, being duly sworn, testified for the defense substantially as follows: "I am 34 years old, married, a merchant, and a resident of Aparri. I am acquainted with Jorge Malazzag and Juan Lopez. Jorge came to my house and asked me to make out a receipt on my typewriter to be signed by Juan Lopez, stating that he had purchased a carabao from Lopez. I made out a receipt in blank and later Juan Lopez and Jorge Malazzag came to my house with the receipt already signed. I did not see the carabao that Malazzag bought " (pp. 64-66).

Toribio Letang, being duly sworn, testified for the defense substantially as follows: "I am 67 years of age, married, a laborer, and a resident of Camalaniugan, Cagayan Province. I am acquainted with Juan Lopez; I used to see him when I went out to the cockpit at Dugu; I saw a caraballa with the calf in his possession in 1910. I have not been out to his barrio during the last year" (pp. 66-68).

Jorge Malazzag, being duly sworn, testified in his own behalf substantially as follows: "I am 35 years of age, married, a laborer, and resident of Aparri, Cagayan Province. The carabao I purchased from Juan Lopez was taken from me by the Constabulary soldiers. When I purchased the carabao it was not branded. The left ear was cut, but the other ear was whole. I branded the carabao with my brand, which has the shape of an anchor, and cut the other ear" (pp. 68-70).

Francisco Umingan, called in rebuttal, being duly sworn, testified substantially as follows: "I am 41 years of age, married, and am serving as municipal treasurer of Aparri. There is an executive order and a published circular in force in the municipality of Aparri regarding the registration of large cattle. The circular provides that each councilman must keep a register of names of the owners of large cattle in his district. A record must also be kept of the purchase and sale or death of large cattle, giving all particulars regarding the sex, age, etc., of the animal. The councilmen carry out the provisions of the circular through the tenientes of the barrios. Domingo Aguao is the teniente of the barrio of Adaya" (pp. 70-71).

Fernando Tion, called in rebuttal, testified substantially as follows: "I have lived in the same barrio with Juan Lopez, and I know that he has not owned any carabao since 1909. The land, property, and carabaos belonging to Juan Lopez were sold in 1909. This is a matter of common knowledge in the municipality of Camalaniugan" (pp. 71-73).

Marcos Rivera, called in rebuttal, being duly sworn, testified substantially as follows: "I am 42 years of age, married, a merchant, and a resident of Aparri, Cagayan Province. I was councilman of Aparri during the year 1910. The provincial governor issued a circular regarding the registration of large cattle and I published this circular for three consecutive days in the barrio of Bebbay, where Domingo Aguao was teniente. As councilman I gave teniente Aguao instructions regarding this circular and his duties in connection with the making of the

reports" (pp. 73-75).

The trial court convicted the defendant Juan Lopez of theft of a carabao valued at P60 and sentenced him to be imprisoned in the manner prescribed by law for a period of two years eleven months and eleven days, and to pay the costs. The defendant Jorge Malazzag was acquitted.

The appellant claims that the lower court erred: (1) In finding that the carabao calf which disappeared from the premises of the complaining witness was in fact stolen; (2) in finding that the calf found in the possession of Jorge Malazzag was the property of the complaining witness; (3) in finding that the defendant, Juan Lopez, did not sell the calf in question to Jorge Malazzag prior to the date of the alleged theft; (4) in finding the facts as proved sufficient to sustain a conviction.

We are of opinion, however, that the evidence of record clearly establishes the theft of the carabao calf described in the complaint, and that after the date of the theft it was sold and delivered to Jorge Malazzag by the accused.

The trial judge, who saw and heard the witnesses testify, accepted as true the testimony of the witnesses for the prosecution, and declined to believe the story told on the witness stand by the defendant and by his witness Toribio Letang. There is nothing in the record which would justify us in holding that the trial judge erred in this regard. The evidence submitted by the prosecution disclosing that the carabao calf described in the complaint disappeared without his knowledge or consent from the side of its mother on the 8th day of June, 1911, and that not long thereafter it was sold by the accused to Jorge Malazzag, sufficiently establishes the guilt of the accused of the theft of the carabao calf, in the absence of any satisfactory explanation by the accused as to how it came into his possession. The false statements made by the accused in this regard in no wise lessen the force of the presumption against him based on the evidence for the prosecution, and, on the contrary, tend to confirm the presumption of his guilt, which arises under the well settled doctrine of the criminal law as laid down in many cases in our reports, "That the unexplained possession of stolen property raises a presumption that the possessor is guilty of the theft."

The trial court imposed the penalty prescribed by the Penal Code, but overlooked the provisions of Act No. 2030, enacted February 3, 1911, amending the provisions of article 520 of the Penal Code by imposing a severer penalty for the crimes of robbery and theft of large cattle, and prescribing that the penalties next higher in degree than those respectively prescribed in article 518 of the Penal Code shall be imposed for the crime of theft: "4. If the thing stolen was any kind of large cattle."

The theft of which the accused was convicted in the court below was committed on or about the 8th day of June, 1911, and the higher penalty prescribed in Act No. 2030 should have been imposed. The value of the stolen carabao calf having been shown to be P60, the penalty which should have been prescribed was that next higher in degree than that prescribed in subsection 3 of article 518, that is to say, presidio correccional in its medium degree to presidio mayor in its minimum degree. The commission of the offense not having been marked by aggravating or extenuating circumstances, this penalty should have been imposed in its medium degree.

The judgment of conviction of the court below should be and is hereby affirmed, but the sentence there imposed should be modified by substituting the penalty of four years two months and one day of presidio correccional, for so much thereof as imposes two years eleven months and eleven days imprisonment. Thus modified the sentence imposed by the trial court should be and is hereby affirmed, with the costs of this instance against the appellant.

Arellano, C. J., Torres, Mapa, Moreland, and Trent, JJ., concur.

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