

JORGE TAER, PETITIONER, VS. THE HON. COURT OF APPEALS, AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 85204. June 18, 1990

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

This is a petition for review on certiorari of the decision rendered by the Court of Appeals in "People v. Jorge Taer," CA-G.R. CR No. 01213,[1] dated May 26, 1988, which affirmed in toto the conviction of Jorge Taer for the crime of cattle rustling by the Regional Trial Court of Bohol in Criminal Case No. 3104,[2] and the resolution of the same court denying the petitioner's Motion for Reconsideration.

After the required preliminary investigation in the 11th Municipal Circuit Court at Valencia-Dimiao, in the province of Bohol, the following information was filed in the then Court of First Instance of Bohol, 14th Judicial District, Branch IV, at Tagbilaran City:

The undersigned, Third Assistant Provincial Fiscal, hereby accuses Emilio Namocatcat alias Milio, Mario Cago, Jorge Taer and Cerilo Saludes for the crime of Theft of Large Cattle, committed as follows:

That on or about the 5th day of December, 1981, in barangay Lantang, municipality of Valencia, province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping with each other, with the intent of gain and without the consent of the owner thereof, did then and there willfully, unlawfully and feloniously take, steal and lead away two (2) male carabaos with the total value of FOUR THOUSAND PESOS (P4,000.00), Philippine Currency, belonging to and owned by Tirso Dalde and Eladio Palaca; to the damage and prejudice of the said offended parties in the aforestated amount.

Acts committed contrary to the provisions of Articles 308, 309 and 310 the Revised Penal Code, with the aggravating circumstances of nighttime being purposely sought for or taken advantage by the accused to facilitate the commission of the crime.

City of Tagbilaran, June 1, 1982.[3]

After proper proceedings and trial, Saludes and Cago were acquitted but Taer and Namocatcat were convicted. The dispositive portion of the decision of the trial court, dated July 6, 1984, reads as follows:

WHEREFORE, the Court finds accused Emilio Namocatcat and Jorge Taer GUILTY beyond doubt of the theft of large cattle and appreciating against them the aggravating circumstance of nocturnity and pursuant to Presidential Decree No. 533 each is hereby sentenced to undergo the indeterminate penalty of imprisonment of from SIX (6) YEARS and ONE DAY TO FOURTEEN (14) YEARS, TEN (10) MONTHS and TWENTY ONE (21) DAYS, together with the accessory penalties, and to pay the costs; they are entitled to credit for their preventive imprisonment. Accused Mario Cago and Cirilo Saludes are ACQUITTED for insufficiency of evidence.[4]

Only Jorge Taer appealed to the Court of Appeals. The Court of Appeals, finding the evidence of the prosecution

that conspiracy indeed existed between Emilio Namocatcat and Jorge Taer, affirmed in toto the decision appealed from. But the affirmance did not affect Emilio Namocatcat because, as adverted to earlier, he did not appeal his conviction by the Regional Trial Court.

Hence this petition for review was filed by Taer alone.

In sum, Taer interposed these twin arguments:

1. That the extent of his participation did not go beyond the participation of the original defendants Cirilo Saludes and Mario Cago. Therefore, he submits that the acquittal of these two by the trial court should also lead to his acquittal;[5]
2. That the only evidence proving the alleged conspiracy between him and Emilio Namocatcat was the confession of his co-accused Emilio Namocatcat. However this should not be considered as admissible because the same is hearsay under the rule of *res inter alios acta*. [6]

The undisputed facts as found by the trial court show that:

In the evening of December 5, 1981, accused Cirilo Saludes slept in the house of his compadre accused Jorge Taer at Datag, Garcia-Hernandez, Bohol, whereat he was benighted. At about 2:00 o'clock dawn, December 6, 1981, accused Emilio Namocatcat and Mario Cago arrived at Taer's house with two (2) male carabaos owned by and which Namocatcat wanted Taer to tend. The said carabaos were left at Taer's place.

Tirso Dalde and Eladio Palaca of Lantang, Valencia Bohol discovered in the morning of December 6, 1981 that their respective male carabaos, 3 to 4 years old, were missing at the different grazing grounds whereat they tied the same the afternoon preceding.

After searching in vain for the carabaos at the vicinity, Dalde and Palaca reported the matter to the police. On December 15, 1981, one Felipe Reyes of Hinopolan, Valencia, Bohol, informed Dalde that he saw the latter's lost carabao at Datag, Garcia-Hernandez. Forthwith Dalde and Palaca went on that day to Datag and there they found their missing carabaos tied to a bamboo thicket near the house of accused Taer who was then not in the house as he was in Napo, Garcia-Hernandez, attending the fiesta where he cooked for the accused Saludes. Upon query by Dalde and Palaca why their carabaos were found at his place, accused Taer, according to Dalde and Palaca replied that the carabaos reached his place tied together without any person in company. According to accused Taer, what he told Dalde and Palaca was that the carabaos were brought to his place by the accused Namocatcat who asked him to tell anybody looking for them that they just strayed thereat.

The 2 carabaos were taken by Dalde and Palaca from accused Taer's possession on that day, December 15.[7]

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The Court of Appeals would consider these as proof of the existence of conspiracy:

Altho (sic) accused Taer admitted that before December 6, 1981, he had not met accused Namocatcat since 1975 and had not previously tended any carabao belonging to Namocatcat, it is unbelievable that Taer was not suspicious of the origin of the 2 male carabaos which to say the least were delivered to him to be tended under strange circumstances, to wit, at the unholy hour of 2:00 o'clock dawn after a travel of 14 kilometers in the dead of the night. He unreservedly accepted the charge of tending them with the agreement as to the sharing of the produce out of said carabaos (sic) use. If, as he asserted, Namocatcat left the carabaos with him with the word that if anybody would look for them he was to tell that the carabaos just strayed into his other carabaos (sic), the more Taer ought to be more suspicious as to the origin of said carabaos, yet, since that dawn delivery on December 6, 1981, until they were retrieved from his possession, he never apprised the barangay captain, living just 2

kilometers away from his house, about the matter. He continued to hold on to the stolen carabaos until they were recovered 10 days later.

Ordinarily, one would not hold on to a thing he suspects to be stolen to obviate any criminal responsibility or implication. But accused Taer did the opposite--a clear indication that he and accused Namocatcat did have some kind of an unlawful agreement regarding the stolen carabaos. He did not even reveal immediately to the authorities that the carabaos delivered to him by Namocatcat were stolen and he tried his best to keep under cover Namocatcat's identity.

The Court, therefore, finds that conspiracy between accused Namocatcat and Taer in the theft of the carabaos has been established beyond doubt.[8]

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We disagree with the findings of the respondent court; they are mere suspicions and speculations. The circumstances adverted to above do not establish conspiracy beyond reasonable doubt.

There is conspiracy when two or more persons come to an agreement regarding the commission of an offense and decide to commit it. Although the facts may show a unity of purpose and unity in the execution of the unlawful objective, essential however is an agreement to commit the crime and a decision to commit it.[9]

Only recently we emphasized the rule that:

Conspiracy must be established not by conjectures, but by positive and conclusive evidence. The same degree of proof necessary to establish the crime is required to support a finding of the presence of criminal conspiracy, which is, proof beyond reasonable doubt.[10]

Thus mere knowledge, acquiescence to, or approval of the act, without cooperation or agreement to cooperate, is not enough to constitute one a party to a conspiracy absent the intentional participation in the transaction with a view to the furtherance of the common design and purpose.

At most the facts establish Taer's knowledge of the crime. And yet without having participated either as principal or as an accomplice, for he did not participate in the taking of the carabaos, he took part subsequent to the commission of the act of taking by profiting himself by its effects. Taer is thus only an accessory after the fact.

Article 19 of the Revised Penal Code states:

Accessories are those who, having knowledge of the commission of the crime, and without having participated therein, either as principals or accomplices, take part subsequent to its commission in any of the following manners:

1. By profiting themselves or assisting the offender to profit by the effects of the crime;

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A person who received any property from another, and used it, knowing that the same property had been stolen is guilty as an accessory because he is profiting by the effects of the crime.[11] By employing the two carabaos in his farm, Taer was profiting by the objects of the theft.[12]

On the conspiracy charge, the most cogent proof that the prosecution could ever raise was the implication made by the accused Namocatcat (he did not appeal his conviction to the Court of Appeals) in his affidavit of confession.[13]

However, the settled rule is that the rights of a party can not be prejudiced by an act, declaration, or omission of

another.[14] The testimony, being *res inter alios acta*, can not affect another except as provided in the Rules of Court. This rule on *res inter alios acta* specifically applies when the evidence consists of an admission in an extrajudicial confession or declaration of another because the defendant has no opportunity to cross-examine the co-conspirator testifying against him.[15]

Since this is the only evidence of the prosecution to prove the conspiracy with Namocatcat, this uncorroborated testimony can not be sufficient to convict Taer.

The offense for which Taer is accused is covered by Articles 308, 309, and 310, as amended by "The Anti-Cattle Rustling Law of 1974." [16] The penalty imposed on the principal for the crime of cattle rustling is:

Sec. 8. Penal provisions - Any person convicted of cattle rustling as herein defined shall, irrespective of the value of the large cattle involved, be punished by prison mayor in its maximum period to reclusion temporal in its medium period if the offense is committed without violence against or intimidation of persons or force upon things. If the offense is committed with violence against or intimidation of persons or force upon things, the penalty of reclusion temporal in its maximum period to reclusion perpetua shall be imposed. If a person is seriously injured or killed as a result or on the occasion of the commission of cattle rustling, the penalty of reclusion perpetua to death shall be imposed.[17]

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Inasmuch as Taer's culpability is only that of an accessory after the fact, under Art. 53 of the Revised Penal Code, the penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed.

The penalty two degrees lower than that imposed under the first sentence of Section 8 of PD No. 533 is *arresto mayor* maximum or 4 months and one day to 6 months to *prision correccional* medium or 2 years 4 months and 1 day to 4 years and 2 months.

In addition, the Revised Penal Code provides that when the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, the courts shall observe the rule that when there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.[18] Hence the imposable penalty would be *prision correccional* minimum or 6 months and 1 day to 2 years and 4 months imprisonment.

Since the maximum term of imprisonment exceeds one year, we apply the Indeterminate Sentence Law.[19]

This law provides that the maximum term of imprisonment shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said code which is *prision correccional* minimum or 6 months and 1 day to 2 years and 4 months. And the minimum shall be within the range of the penalty next lower to that prescribed by the Code for the offense. The penalty next lower would be in the range of *destierro* maximum or 4 years 2 months and 1 day to 6 years to *arresto mayor* medium or 2 months and 1 day to 4 months.

WHEREFORE, the decision rendered by the Regional Trial Court of Tagbilaran and affirmed by the respondent Court of Appeals is hereby MODIFIED in that the herein JORGE TAER is convicted as an accessory of the crime of cattle-rustling as defined and penalized by PD No. 533 amending Arts. 308, 309, and 310 of the Revised Penal Code and he will serve the minimum penalty within the range of *arresto mayor* medium, which we shall fix at 4 months imprisonment and the maximum penalty of *prision correccional* minimum which we shall fix at 2 years.

With costs.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

[1] Imperial, Jorge S., J., ponente; Melo, Jose A. R. and Herrera, Manuel C., JJ, concurring; Third Division.

[2] Hon. Fernando S. Ruiz, presiding judge.

[3] "The People of the Philippines, Plaintiff, vs. Emilio Namocatcat alias Milio, Mario Cago, Jorge Taer, and Cirilo Saludes, Accused," Crim. Case No. 3104, For: Theft of Large Cattle, Original Record, 80.

[4] Original Record, 236.

[5] Rollo, 3.

[6] Id., 3, 4.

[7] Original Record, supra, note 1 at 9.

[8] People v. Namocatcat, et al., RTC (Tagbilaran, Br. IV), Crim. Case No. 3104, July 6, 1984 quoted in People v. Taer, CA-G.R. N. 01213, May 26, 1988.

[9] Antonio v. Sandiganbayan, G.R. 57937, October 21, 1989.

[10] Orodio v. Court of Appeals, G.R. 57519, September 13, 1989.

[11] People v. Tanchoco, 76 Phil. 467.

[12] T.S.N., December 8, 1983, 11.

[13] T.S.N., April 28, 1983, 6.

[14] RULES OF COURT, Section 25, Rule 130. Accord, Belvis III v. Court of Appeals, Nos. L-38907-09, November 14, 1988, 167 SCRA 333.

[15] People v. Bazar, No. L-41829, June 27, 1988, 162 SCRA 618.

[16] Pres. Decree No. 533 (1974); People v. Macatanda, No. 51368, November 6, 1981, 109 SCRA 40.

[17] Pres. Decree No. 533 provides:

"c. Cattle rustling is the taking away by any means, methods or scheme, without the consent of the owner/raiser, of any of the abovementioned animals whether or not for profit or gain, or whether committed with or without violence against or intimidation of any person or force upon things x x x."

[18] REV. PEN. CODE, Art. 64.

[19] Act No. 4103 (1933) as amended by Act No. 4225 (1935), Section 1.

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