

CONSTANCIO ORDONIO, PETITIONER, VS. THE HON. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 91721. July 31, 1991

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

In an information dated July 12, 1982 before the Court of First Instance of Negros Oriental, Constancio Ordonio was indicted of the crime of cattle rustling committed as follows:

That sometimes in the evening of Tuesday, January 5, 1982, at Bgy. Omanod, Sta. Catalina, Negros Oriental, and within the preliminary jurisdiction of this Honorable Court, the above-named accused, with the intent of gain, did then and there willfully, unlawfully and feloniously took, steal, and carry away one (1) male cow, color red and white (cabang) highbreed, more or less eleven months old, without the knowledge and consent of the owner Mr. Anastacio Pajunar.

That as a result thereof, the victim Anastacio Pajunar was damaged and prejudiced in the amount of SEVEN HUNDRED PESOS (P700.00), Philippine Currency, as the estimated cost and value of the stolen cow.

With damages.

Contrary to law.[1]

As found by the trial court and affirmed by the Court of Appeals, the attendant circumstances which precipitated this petition for review on certiorari are clear.

A study of this case showed that on January 6, 1982, Anastacio Pajunar discovered the loss of his eleven month old cow (which he pastured 100 meters from his house on January 5, 1982). He searched for it and asked his not too distant neighbor, Constancio Ordonio, whether he had seen it. Ordonio allegedly denied having seen it, and when Pajunar heard the mooing of a cow, Ordonio was quick to say that was the cow he was tending. However, Pajunar followed the direction of the sound and discovered that it was his own cow. Ordonio insisted that it was his brother's cow which was entrusted to him. So Pajunar tied it near Ordonio's house and left to report the matter to the authorities.

Pajunar went to Barangay Captain Leopoldo Enumerabellon who gave him a note for the PC. Two PC soldiers accompanied him and went with him to the house of Barrio Councilman Leonardo Pajaron, and together they went to Ordonio's place. He also took with him his milking cow and upon arrival at Ordonio's place, the calf ran and approached its mother. The PC soldiers told the wife that since Ordonio was not around, the calf had to be entrusted to the barrio official and the wife consented. The following day, the 7th of January, 1982, they met with sub-barangay captain Enumerabellon. When asked why he, Ordonio was claiming the cow, his answer was that it was his brother's cow entrusted to him. But Ordonio's wife told her husband thus, "Ne, let's just give the cow to the real owner and we will pay the damages." [2]

In his defense, the accused, Constancio Ordonio, presented a different version.

x x x Ordonio declared that on January 6, 1982, at about 6:00 o'clock A.M., Santiago Oyhoc reported to him that he saw a cow in his mongo and corn farm. Ordonio just wanted to drive the cow out of his farm but Oyhoc suggested it be caught so that it would not return. So, with a rope he caught the cow and tied it near his house. He claimed that he recognized the cow to be Pajunar's and even left instructions to his wife to return it to Pajunar should he come for it. In the meantime, he went to Calanian about 9 kilometers from his house to sell corn. When he returned in the evening, he learned from his wife that they were accused of stealing the cow and that the two PC soldiers who came together with Pajunar and Pajaron took the cow to place it in the custody of Enumerabellon. That very evening too, he got a letter from Enumerabellon instructing him to go to his place. So that on the 7th, he and his wife went to see Enumerabellon. At Enumerabellon's house were also the complainant, Anastacio Pajunar, barrio councilman Pajaron and Pajunar's son. An investigation was conducted with Ordonio and his wife saying that Pajunar owned the cow, so it was given back to Pajunar who brought it home.[3]

In a decision dated January 26, 1988, the trial court* rendered this judgment of conviction:

IN VIEW OF THE FOREGOING, it is the opinion of this Court and so holds that the prosecution has proven beyond the shadow and doubt the guilt of accused and finds said accused guilty of the crime of Violation of Presidential Decree No. 533, otherwise known as the Anti-Cattle Rustling Law of 1974. There being no mitigating nor aggravating circumstances and applying the Indeterminate Sentence Law, accused Constancio Ordonio should be punished with a penalty next lower by one (1) degree than that provided for the crime committed and therefore accused Constancio Ordonio should be sentenced to suffer the penalty of imprisonment ranging from four (4) years, two (2) months and one (1) day as minimum to six (6) years as maximum of prison correccional.

SO ORDERED.[4]

Upon motion of the accused on the ground of newly discovered evidence, and against the vigorous objection of the prosecution, the trial court conducted a new trial. This time, the defense presented Pastor Banquerigo, an 81-year-old barrio entertainer, who substantially corroborated the account of Constancio Ordonio. Pastor swore that on January 6, 1982, he saw Constancio take possession of a cow and tie it near his house where it could be easily seen by passersby.

Unconvinced, the trial court in the Order dated August 11, 1988[5] maintained its judgment of conviction, reasoning that upon consideration of the testimony of Pastor Banquerigo, it found no urgent reason to disturb its decision dated January 26, 1988.

The accused took exception to the judgment of the trial court and interposed an appeal to the Court of Appeals, imputing the following errors:[6]

- a) The lower court erred in presuming that the elements of the crime are obtaining in the case at bar;
- b) The court a quo erred to bank merely on the weakness of the evidence of the accused, while it failed, of its own evidence, to prove the guilt of the accused beyond reasonable doubt;
- c) The lower court overlooked certain facts of substance and value that, if considered, would affect the outcome of the case, and the decision is based on misapprehension of facts.

Unimpressed, the Court of Appeals* affirmed in toto the decision of the trial court,[7] and subsequently denied the accused's motion for reconsideration through a Resolution dated November 13, 1989.

The accused now comes before this Court, reiterating all the three errors he assigned to the trial court and the Court of Appeals.

The accused faults the decision of the respondent court for its misapprehension of facts. The actual taking of the calf was not proven by the prosecution, he points out. That the complainant found the calf tied in the appellant's upland property does not make him a cattle rustler. Nor does his supposed failure and/or refusal to tell the complainant where the cow was even if he (the accused) knew where it was. Actually, the accused claims, he was at that time in Calanian--nine kilometers from Sta. Catalina--how could the complainant have asked him about his calf? And the mere stepping on the rope (granting this is true) to which the calf was tied when complainant towed it does not constitute theft of the calf either. Because if the accused had intended to steal it why would he tie it near his house?

The accused asserts that the animal had gone astray and consequently destroyed his plants. To prevent further damage to the plants he caught it and tied it near his house. He thought it burdensome to report the matter to the Barangay Captain or bring the calf to him. The complainant should not kick up a storm over the matter as he was able to recover his calf anyway.

Besides, the accused alleges that the complainant pressed charges against him out of spite as he and the complainant were litigants in a land dispute. The complainant tried to "blackmail" him into abandoning the civil case in exchange for his dropping of this case. But he (the accused) refused, so the complainant proceeded to file this case in the trial court.

The petition must fail.

We note at the outset that in petitions under Rule 45 of the Rules of Court like this case, review is limited only to errors of law committed by the Court of Appeals. Factual findings of the trial court which are especially confirmed by the Court of Appeals are conclusive and can no longer be reviewed.[8] Of course, there are well-defined exceptions, for instance, misapprehension of facts[9] which the accused now posits.

The records however show that the respondent court, as well as the trial court, committed no such misapprehension of facts.

Significantly, the lower courts did not anchor the conviction of the appellant on what he alleges to have resulted in a misapprehension of facts. The lower courts did not convict the appellant on the basis of the missing calf's having been found tied in the accused's premises nor on his failure and/or refusal to tell the owner the whereabouts of the calf, nor on the accused's stepping on the rope to which the "lost" calf was tied when the complainant was towing it. Rather, the lower courts convicted him on the basis of his actuations when the lost calf was found in his possession. The lower courts noted the following:

1. When complainant discovered the loss of his calf, he inquired from petitioner whether he has seen the calf but the latter denied having seen it.[10]
2. When complainant queried the whereabouts of the calf for the second time, accused anew denied having seen it.[11]
3. When complainant eventually located the calf in accused estate, the latter refused to give the calf claiming it belonged to his brother, Agustin.[12]
4. Complainant needed the assistance of a barangay official and two PC soldiers to dispossess accused of that calf and eventually placed it in the custody of the Barangay Captain.[13]
5. At the Barangay Captain's residence accused still insisted that the calf belonged to his brother, Agustin.[14]

The accused-petitioner had the temerity to act thus even if the calf did not belong to him, but to the complainant as he admitted before the trial court. But independent of the admission by the accused, complainant ownership of the calf is further fortified with this one important circumstance. When complainant went to accused's house, accompanied by barangay councilman, Pajunar, and two PC soldiers, the milking cow was brought along. Upon arrival, the PC soldiers let loose the calf and the latter immediately ran to the milking cow to suck on its milk. Such conduct of the calf manifests all the signs of the young whether human or not, on finding a lost mother.[15]

Section 2 (c) of P.D. 533, defines cattle-rustling as follows:

SEC. 2 (c). Cattle rustling is taking away by any means, methods or schemes, without the consent of the owner/raiser, of any of the above mentioned 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. It includes the killing of large cattle, or taking its meat or hide without the consent of the owner/raiser.

Note the phraseology of the provision--"taking away by any means, methods or schemes." Thus, intent to gain may be inferred from the deliberate failure to deliver the lost property to the proper person, the finder knowing that the property does not belong to him.[16] In this case, the several circumstances enumerated earlier constitute an unbroken chain of events which leads to one fair and reasonable conclusion--which is that the accused indeed took the calf with the intent to appropriate it.[17] To recapitulate, the stubborn insistence of the accused that the missing calf belonged to his brother, Agustin, knowing fully well that it belonged to the complainant (as he later admitted in his answers to questions of the trial court), in essence, is cattle rustling.

In discrediting the evidence of the defense, we quote with approval the decision of the Court of Appeals.

The evidence is clear that appellant twice denied knowledge of the calf when private complainant asked him if he has seen the missing calf. And when the calf was finally located by the private complainant, the appellant stopped the private complainant from bringing the calf home alleging that the calf belongs to his brother Agustin which was entrusted to his care. However, after realizing that his claim can no longer hold water because private complainant has proved his ownership of the calf in question, appellant now avers in his testimony that he caught the calf because it was eating and destroying his plants and it was his intention to return the calf to the owner. Appellant reasoned out further that he was not in his house when private complainant went there but that it was only his wife who was at home and with whom the private complainant talked. We are not the least convinced of appellant's stand. To US, such a posture now being taken by the appellant is nothing but a last and desperate attempt to exculpate himself from liability.[18]

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[And] if it is true likewise that it was appellant's wife only with whom private complainant talked on that day of January 6, 1982 when the latter was looking for his missing calf because the appellant was allegedly not at home, how come that appellant's wife was not even presented by appellant as a witness to rebut at least the clear testimony of private complainant that it was the appellant he talked with that day?[19]

Our thorough review of the case convinces us of the guilt of the appellant beyond reasonable doubt, hence the respondent court did not commit any reversible error in affirming the decision of the trial court.

WHEREFORE, the decision of the respondent Court of Appeals, dated August 9, 1989, and its Resolution, dated November 13, 1989, are AFFIRMED. No costs.

SO ORDERED.

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

[1] Original Record, 4.

[2] Comment, 2-3; rollo, 48-49.

[3] Original record, 238-239.

* Penned by Judge Jesus L. Tabilon, RTC Branch 42, Dumaguete City.

[4] Ibid., 242.

[5] Ibid., 294.

[6] See rollo, 11-12.

* Penned by Justice Felipe B. Kalalo with the concurrence of Associate Justices Ricardo L. Pronove, Jr. and Luis L. Victor, Eleventh Division.

[7] Rollo, 10-17.

[8] Rule 45 Rules of Court; Zubiri vs. Quijano, 74 Phil. 47; Gerio vs. Gerio, 71 Phil. 106; Garcia de Ramos vs. Yatco, 71 Phil. 178; Nazareno vs. Magwagi, 71 Phil. 101; Onglengco vs. Ozaeta, et al., 70 Phil. 43; Hodges vs. People, 68 Phil. 178; Evangelista and Co. vs. Abad Santos, L-31684, June 28, 1973; Perido vs. Perido, L-28248, March 12, 1975.

[9] Cruz vs. Sosing, L-4875, November 27, 1953.

[10] TSN, September 5, 1985, 45.

[11] Ibid., 46.

[12] Ibid., 48, TSN, October 29, 1985, 24.

[13] Ibid., 52.

[14] Ibid., 38, 54, TSN, November 21, 1985, 28.

[15] U.S. vs. Tegrado, 36 Phil. 789 (1917).

[16] People vs. Rodrigo, L-18507, March 31, 1966, 16 SCRA 475.

[17] People vs. Charly Ganahon, G.R. Nos. 74670-74, April 30, 1991.

[18] Rollo, 13-14.

[19] Ibid., 15.

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