

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. BASILIO VILLACORTA, DEFENDANT AND APPELLANT.

G.R. No. 9306. March 18, 1915

Ponente: JOHNSON, J.

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JOHNSON, J.:

This defendant was charged with the crime of larceny. The record shows that on or about the 16th day of January, 1913, the offended person, Domingo Corpus, presented a complaint in the court of the justice of the peace of the municipality of Rizal, Nueva Ecija, charging the defendant with the crime of larceny. A preliminary examination was held by said justice of the peace, who found that there was probable cause for believing that the defendant was guilty of the crime and held him for trial in the Court of First Instance of said province.

On the 2d day of April, 1913, the prosecuting attorney of the Province of Nueva Ecija presented a complaint against the defendant charging him with the crime of larceny. The complaint alleged:

"On or about January 15 of the present year the said accused did maliciously and criminally seize, for the purpose of gain, but without violence against persons or force upon things, 60 cavanes of paddy, worth P150, belonging to Domingo Corpus, without his knowledge.

"The deed occurred in the municipality of Rizal, Province of Nueva Ecija, P. I., in violation of the law."

Upon said complaint the defendant was duly brought to trial. After hearing the evidence, the Honorable Julio Llorente, judge, found him guilty of the crime charged and sentenced him to be imprisoned for a period of four months and one day of *arresto mayor*, with the accessory penalties of the law, to return the paddy stolen or to indemnify the said Domingo Corpus in the sum of P120, and in case of insolvency to suffer subsidiary imprisonment in accordance with the provisions of the law, and to pay the costs. From that sentence the defendant appealed to this court.

From an examination of the record we find that in the month of September, 1912, the defendant herein commenced an action against the said Domingo Corpus and others, in the court of the justice of the peace, for the purpose of recovering the possession of certain parcels of land, described in the complaint in that cause. After hearing the evidence, the justice of the peace found that the parcels of land in question were the property of the said Basilio Villacorta and ordered the defendants to deliver the possession to him. From that decision the defendants appealed to the Court of First Instance of said province.

The appeal was perfected and was finally brought on for trial in the Court of First Instance, before the Honorable Isidro Paredes, judge, who found, on the 9th day of January, 1913, that the plaintiff (Basilio Villacorta) had no right or title in the land in question, and dismissed the complaint, with costs against the plaintiff.

On the 10th or 11th day of January, 1913, a few days after said cause had been decided against the present defendant, he caused the said Domingo Corpus and Basilio Rillo to be arrested and lodged in the municipal jail of the municipality of Rizal. It was while Domingo Corpus was in the municipal jail, that Basilio Villacorta entered

said land and took and carried away the paddy in question. A number of witnesses swore positively that they saw the defendant on the land of Domingo Corpus, taking and carrying away the paddy which had been harvested and piled up on said land. The defendant presented some witnesses in an effort to show that the wife of Domingo Corpus, while the latter was in jail, carried away the said paddy. That was denied absolutely by the wife of Domingo Corpus as well as by several other witnesses. One of the witnesses who saw the defendant carrying away the paddy from the land of Domingo Corpus, gave the names of two persons who assisted the defendant in threshing and carrying it away. The defendant did not call the two persons as witnesses to contradict that proof.

The attorney for the appellant in this court attempts to show that the defendant could not be guilty of larceny, even though it be admitted that he took and carried away the paddy in question, for the reason that he claimed to be the owner of the land. That question had been decided against him by a court of competent jurisdiction and he made no objection to said decision. After that decision he could no longer claim that he was the owner of the land from which he took and carried away the paddy, and, moreover, it was shown during the trial of the cause that Domingo Corpus, by his laborers, had actually planted the paddy upon the land in question. It is difficult to understand upon what theory the defendant could justify his claim that he was the owner of the paddy, after a final decision had been rendered against him to the contrary, and when it was clearly proven that he had not even planted it. The paddy had been planted by Domingo Corpus upon land which a court of competent jurisdiction decided belonged to him and had been harvested by him and piled upon the land at the time the defendant entered the land and took and carried it away. The defendant neither planted the paddy nor reaped it. The court decided, before he took and carried away the paddy, that the land belonged to Domingo Corpus. The defendant must have known that the paddy did not belong to him. In view of the litigation, he must have known to whom it did belong.

After the close of the trial in the lower court, and after the judge had rendered his decision and the defendant had given notice of his appeal to the Supreme Court, he presented a motion for a new trial, supported by the affidavits of a number of persons. The lower court refused to hear said motion for a new trial for the reason that he had lost jurisdiction by the appeal. Said motion was, therefore, presented to this court. We have carefully examined the motion and the accompanying affidavits and find that they contain nothing which might not have been, with reasonable diligence, presented to the lower court. We further find that even though said facts had been presented to the lower court, they would not have been sufficient to have changed the result. The facts contained in said affidavits were wholly disproved by the witnesses for the prosecution during the trial of the cause. We, therefore, deny the motion for a rehearing.

After a careful examination of the record brought to this court, we find that the findings of fact and the conclusions of the lower court are fully sustained thereby. The sentence of the lower court is therefore hereby affirmed, with costs. So ordered.

Arellano, C. J., Torres and Carson, JJ., concur.
Moreland J., dissents.

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