

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ANASTASIO AVILLAR, PEDRO NIEGOS, AND MAXIMIANO NIEGOS, DEFENDANTS AND APPELLANTS.

G.R. Nos. 9609, 9610, and 9611. October 02, 1914

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

Cases Nos. 2370, 2373, and 2374 were prosecuted in the Court of First Instance of Nueva Ecija against the five defendants therein named. Upon being sent up to the Supreme Court on appeal, they were entered in the docket as Nos. 9609, 9610, and 9611.

These three actions were brought for three distinct crimes of theft of carabaos, on three separate complaints, but it was agreed among the parties that they should be heard together and that the same evidence should serve for each of the three prosecutions. This done, and there being only one trial, but one judgment was rendered for all three cases.

Although these actions were joined, three records were made of them in this court and they were numbered separately as in the lower court.

Case No. 9609 is for the theft which, according to the complaint, was committed on April 23, 1913, by the five defendants, who, with intent of gain, stole a carabao from Gertrudis Doliente, which was in charge of Pedro Sinuto, was worth P160, and was sold by them to Luisa Corpus.

This crime was clearly proven by the testimony of the witnesses Pedro Sinuto, Gertrudis Doliente, Francisco B. Peralta, the latter a Constabulary soldier, Tomas Borja, and Luisa Corpus. The ownership of the animal was shown by the document Exhibit A. Pedro Sinuto, who took care of the animal on April 23, 1913, at 9 o'clock of the next morning did not find it in the place where he had tied it. Later he found the animal in the municipality of Mangatarem, Pangasinan, where it had been taken into custody and was held by the Constabulary, as the witness Peralta testified, having been taken from the possession of Tomas Borja and his so-called wife, Luisa Corpus, facts which were corroborated by these latter. Luisa Corpus testified that she bought the animal from Anastasio Avillar, who, on the occasion of this sale, was accompanied by Maximiano Niegos and was driving five other carabaos; and that, on three other occasions, Anastasio Avillar, Maximiano Niegos, and Pedro Niegos, and the last time Domingo Villar also, had gone to Mangatarem to sell carabaos. Pedro Sinuto recovered the carabao. Its brands had been changed and Peralta testified that one of its ears had been split.

Case No. 9610 is for the theft, charged to the said five defendants, of two carabaos, a caraballa, and her calf, valued at ₱550, the property of Francisca Espiritu, Faustino Delo, and Aniceto Pascua. This crime, committed on April 22, 1913, was likewise proven.

Bernardino Espiritu had in his possession a carabao belonging to his sister Francisca that was valued at P150. He lost this animal and it was found by the police of Mangatarem, as the chief, Juan Vinluan, testified. It was

recovered by the chief of police of Cuyapo, the place whence it had been stolen. The seizure of the carabao in Mangatarem was certified to by the two municipal treasurers who successively had it in charge. Pedro Gonzalez bought it from Anastasio Avillar, Maximiano Niegos, and Pedro Niegos, and five days afterwards it was claimed by Francisca Espiritu.

Faustino Delo testified that one day in April, 1913, he lost a carabao that he had bought for P195, and that it was afterwards found in the presidencia of Mangatarem with its brands changed. It was shown that Pelagio Bajo had bought the animal from Anastasio Avillar, the latter being at the time accompanied by Pedro Niegos and Maximiano Niegos, which facts were corroborated by the above-mentioned witness, Pedro Gonzalez, who identified the carabao from among those which during the trial were held in the lower part of the municipal building, as being the one lost by Faustino Delo and bought by Pelagio Bajo.

Anastasio Pascua testified that he had in his care a caraballa belonging to his father; that, in the month of April, 1913, it escaped from the yard of his house where it had been tied; that some time afterwards it was found by some policemen and taken to the presidencia of Mangatarem, where he redeemed it; that, upon finding the animal in the presidencia, he observed that it bore a new brand in addition to the two that it already had; that Exhibit E is the certificate of ownership of the caraballa; and that the caraballa was worth P170. The municipal treasurer of Mangatarem stated that he had returned to Aniceto Pascua the caraballa claimed by the latter.

Finally, the third complaint is for the theft of a carabao owned by Juan B. Santiago and worth P170 (case No. 9611). The allegations of the complaint therein are also clearly substantiated.

Juan B. Santiago testified that, on March 19, 1913, a carabao belonging to him disappeared from the place where it had been secured; that some time afterwards it was found by some policemen of Mangatarem and witness redeemed it from the presidencia of the said pueblo; that the said carabao was worth P170; that the documents Exhibits B, C, and D are the certificates of ownership of the carabao that he had lost; and that the carabao in question was in the lower part of the court building on the day of the hearing; that its brands corresponded to those appearing in the said documents and that they had not been changed or altered. The loss of the animal in Cuyapo and its recovery in Mangatarem were certified by the respective chiefs of police of both municipalities and by the municipal treasurer of Mangatarem. This carabao was sold by Anastasio Avillar to Simplicio Pagtaconan.

This carabao and the caraballa stolen from Anastasio Pascua were among the six or seven carabaos which on different occasions Anastasio Avillar, accompanied by Pedro Niegos and Maximiano Niegos, took to Mangatarem to sell.

The trial court acquitted Domingo Avillar and Ignacio Corpus and sentenced Anastasio Avillar, Maximiano Niegos, and Pedro Niegos to five years imprisonment and to pay, each of them, one-fifth of the costs. The judgment is couched in the following language:

"The court is of the opinion, therefore, that the accused Anastasio Avillar, Pedro Niegos, and Maximiano Niegos are guilty beyond any reasonable doubt and sentences them and each of them to five years in Bilibid and to pay one-fifth of the costs of this proceeding."

This judgment was rendered in Cuyapo, Nueva Ecija. The clerk of the court in instructing the municipal president of that municipality to send the convicted men to Cabanatuan, said that they were sentenced "to the penalty of five years in each cause" (p. 53 of the record). On appeal the convicted men stated that in the judgment "the undersigned are sentenced to five years' imprisonment in each cause" (p. 166 of the record) and Anastasio Avillar, in withdrawing his appeal, says that "he was sentenced to the penalty of five years in each one of the aforementioned causes" (p. 185 of the record). The judgment, however, was one and the same for all three causes;

it was pronounced in a single trial and its language does not warrant the construction that it imposes five years' imprisonment in each cause, or a total of fifteen years.

This manner of pronouncing judgment is most defective; it does not express the exact penalty that the law prescribes. The Solicitor-General remarks in his brief in this court that the Supreme Court has frequently enjoined the observance of the mandates of the law in this respect.

In cause No. 2370, as the value of the stolen carabao is P160, the crime committed should have been punished in accordance with article 518, No. 3, of the Penal Code; but by Act No. 2030, the punishment imposed should be in accordance with article 520, raising the penalty imposed by the former article to the next higher one, which, in the medium degree, as there was no modifying circumstance, is that of four years four months and one day of presidio correccional.

In cause No. 2373, although the value of the stolen carabaos is P515, and not P550 as stated in the complaint, nevertheless the crime should have been punished under paragraph two of the said article 518; but, as this penalty should be raised to the next higher one, that applicable is five years five months and eleven days of presidio correccional.

In cause No. 2374 the penalty is identical with that imposed in cause No. 2370, since the value of the stolen carabao is P160.

All three actions have been dismissed with respect to Anastasio Avillar on account of the withdrawal of his appeal, as may be seen on page 11 of the record in cause No. 2370.

The judgment appealed from is set aside with respect to the defendants Maximiano Niegos and Pedro Niegos, and, in lieu thereof, we hereby sentence them, in case No. 2370, to four years two months and one day of presidio correccional; in case No. 2373, to five years five months and one day of the same penalty; in case No. 2374, to four years two months and one day; and in all three causes, to the accessory penalties of article 58 of the Penal Code, with one-fifth of the costs of both instances against each defendant.

Torres, Johnson, Carson, and Araullo, JJ., concur.

CONCURRING

MORELAND, J.

I am in entire accord with the decision in these cases. I desire simply to emphasize that part of the opinion which refers to the defective condition of the sentences imposed. They do not specify the penalty as required by the Penal Code and by the practice of the courts of the Philippine Islands. It is not correct, under the facts of these cases, to impose a sentence of "five years in Bilibid." It is neither correct as to time nor as to form or substance, as is clearly shown by the preceding opinion. But even assuming that the time is right, five years, the sentence is still defective for the reason that it ought to be five years of presidio correccional. The defect in the sentence to which I desire to call attention in particular is the omission of presidio correccional.

The Penal Code does not permit a sentence in the form here presented and Courts of First Instance in imposing sentence should see to it that the Penal Code is strictly followed and that every sentence imposed thereunder shall be given its appropriate name and shall disclose whether it is in the minimum, medium, or maximum degree thereof. This same matter was called to the attention of Courts of First Instance in the case of *U. S. vs. Mariano* (27 Phil. Rep., 132), in which we said:

"In neither of these cases did the court make a finding of facts upon which its judgment of conviction was based. Neither did the court state in either of the cases the kind of punishment that was inflicted or the provisions of the Penal Code under which it was' imposed. The court simply said:

" 'The accused Roberto Mariano and Pantaleon Mariano and each of them are therefore sentenced to three years' imprisonment in Bilibid, Manila, P. I., to indemnify the offended party in the sum of P14, and in case of insolvency to suffer subsidiary imprisonment at the rate of P2.50 per day, and each to pay-one half the costs of this proceeding.

"The decision of the court in criminal as well as in civil cases should contain a statement of the facts upon which the judgment of conviction is based and should describe the penalty imposed. (Alindogan vs. Insular Government, 15 Phil. Rep., 168.)"

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