

1 Phil. 381

[G.R. No. 848. September 27, 1902]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. JUAN CARDONA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

WILLARD, J.:

In the fall of 1901 Clayton J. Bailey was an inspector of the Constabulary and in command of the forces stationed in the Province of Tarlac. Complaints were made to him by some of the inhabitants of Gerona that the defendant had robbed them of carabaos and horses. After making investigations he seized about ninety head of stock in the possession of the tenants of the defendant and deposited this stock in the Government corralat Tarlac. Juan Jose produced at the trial, and there is attached to the record, a certificate of transfer to him in June, 1896, of a caraballa marked with the brands described in said certificate. The witness Bailey stated that he had personally compared the brands on one of the animals taken from Cardona's farm, and at the time of the trial in the corral near the court-house, with the brands that are set forth in the said certificate and that they were the same. He also testified that Juan Jose had claimed this animal as his own.

Felix Llorente, an inspector of Constabulary of the fourth class, testified that the animal referred to by the witness Bailey had been taken from Cardona's farm; that the day of the trial he had compared the marks on it with the marks on the certificate and that they were identical.

Juan Jose testified that about the 5th or 6th of March as lie, in company with his uncle Paulo Jose and Cipriano Jose, was going toward Gerona with his caraballa and its calf, he met the defendant, Cardona, with four other persons in an unfrequented part of the road; that Oardona, holding a revolver at his head, told him to take himself off and leave his animals there together with the cart to which the caraballa was harnessed. That he at once departed with his uncle Paulo Jose and Cipriano Jose. Juan Jose then had in his pocket the said

certificate, but Cardona made no inquiry for it. He testified that he had seen the animal referred to by Bailey then in the corral and that it was his. His uncle corroborated him as to the occurrence in the road, and also stated that since that date he had seen the caraballa of Juan in the said Government corral.

The testimony of the defense was directed to three points: (1) To show that Oardona was in Tarlac and not in Gerona about March 25; (2) to show his good character, and (3) to the fact that one Paulo Tafiedo had bought in August, 1901, at public auction held in Gerona by the municipal authorities, the caraballa taken from Juan Jose.

(1) The evidence is ample to show that Oardona by violence and intimidation took from Juan Jose his caraballa and sent it to his, Cardona's, farm, from which it was taken by the Constabulary. There was no attempt whatever to contradict the statements of Juan and Paulo Jose as to the forcible taking of the animal; and the identification of it with the one seized on Cardona's farm was only sought to be overcome by the testimony of Paulo Tanedo, but that testimony and the documents presented on a motion for a new trial fall far short of accomplishing it. The most that Tafiedo would say was that he did not know whether the caraballa which he had bought was the one taken from Jose or not; that his had three marks, one of which was like one of those on Juan Jose's but the other two were not. The documentary evidence in connection with the public sale to Paulo Tailedo shows also that only one of the three marks corresponds to any of the three marks on the animal of Juan Jose.

(2) The testimony as to the whereabouts of the defendant on March 25 was unimportant, as the evidence shows the robbery was committed about the 5th or 6th of March. The defendant in his brief claims that the evidence should be restricted to the date mentioned in the complaint, which was the 25th of March. In this case, however, the date was not a material ingredient of the offense, and under the provisions of article 7 of General Orders, No. 58, the Government was not limited in its proof to the date stated therein.

(3) The testimony as to good character could not in any event outweigh such positive and uncontradicted evidence as was produced in this cause to show defendant's guilt. It is to be noted moreover that some of the defendant's witnesses on this point admitted on cross-examination that they had heard that the defendant's reputation prior to the American occupation of these Islands was bad.

(4) In the petition for a new trial it is alleged that the trial was void because the evidence

was not read over to the witnesses before they signed it as required by article 32, General Orders, No. 58. But it does not affirmatively appear that this was not done, and, even if it were not, this, without anything more appearing, would be a defect of form for which the judgment could not be reversed. (Art. 10, General Orders, No. 58.)

(5) The defendant has filed a petition that he be discharged because he is included in the amnesty proclamation of July 4, 1902. It is obvious that this petition must be denied.

(6) The offense proven is covered by article 503, No. 5, of the Penal Code. The complaint did not allege that the offense was committed in an unfrequented place. It is not necessary to decide whether without such an allegation the defendant could be convicted under the provisions of article 504, as we arrive at the same result which the court below reached by considering the fact that the offense was committed in an unfrequented place as an aggravating circumstance under the provisions of article 10.

(7) There is not, in our opinion, sufficient evidence to show that the defendant in the commission of the crime took advantage of his official position as provincial secretary, so as to make applicable article 10, No. 11, of the Penal Code. Juan Jose testified that he did not know that Cardona held this office. It is true that he stated on cross-examination that he believed Cardona to be one of the authorities of Gerona, but we do not think this sufficient to justify us in saying that his official position was a material factor in the crime. Juan Jose was induced to abandon his property by the revolver which Cardona held at his head and by the fact that four men accompanied Cardona,

(8) The defendant in his brief asks us to apply in his favor article 11 of the Penal Code as an attenuating circumstance. It is clear that we are not warranted in making any such application of this provision.

(9) The presence of the aggravating circumstance which we have taken into consideration raises the punishment to the maximum grade. The penalty imposed by the judge below is within that grade, and the judgment is consequently affirmed with costs of this instance to the appellant.

Arellano, C. J., Torres, Cooper, Ladd, Smith, and Mapa, JJ., concur.

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