

6 Phil. 639

[ G.R. No. 3294. November 06, 1906 ]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. BUENAVENTURA SERRANO AND GERONIMO VERGARA, DEFENDANTS AND APPELLANTS.**

**D E C I S I O N**

**JOHNSON, J.:**

These defendants were charged with the crime of theft, were tried by the Court of First Instance of the Province of Pangasinan, found guilty, and each was sentenced to be imprisoned in the provincial jail of said province for the term of one year eight months and twenty-one days, and that they each, "jointly and severally, pay to the offended party, Gregorio Villanueva, 55 pesos, and to the offended party, Pascual Ferrer, 110 pesos, and each to pay one-half the costs, and in case of insolvency each to suffer the corresponding subsidiary penalty of imprisonment. From this sentence the defendant Geronimo Vergara appealed to this court.

The evidence introduced during the trial of said cause in the lower, court shows, beyond peradventure of doubt, that these two defendants, together with other unknown persons, at nighttime, on or about the 5th day of February, 1905, took and carried away one carabao, the property of Gregorio Villanueva, of the value of P200, and one vaeuno and one carabao, the property of Pascual Ferrer, of the value of P400; that later, when the said Villanueva and Ferrer discovered these animals in the possession of the defendant Vergara, the said Vergara promised to return the said animals to the said owners for the sum of P165; that the said owners of said animals did then and there, for the purpose of obtaining possession of their animals," pay to the defendant Vergara the said sum of P165; that later, and at the time of the arrest of the defendant Buenaventura Serrano, the officer making the arrest found in the possession of the said Serrano the sum of W0, which he then and there stated was a part of the money which he and his codefendant had received from the owners of the said animals, and that this money was delivered to the court and supposedly has been

returned to the owners of said animals.

The lower court in imposing the said penalty found that there existed one aggravating circumstance, to wit, nocturnity, and one mitigating circumstance, to wit; the provisions of article 11 of the Penal Code, and therefore imposed the medium penalty. An examination of the record convinces us that the mitigating circumstance provided for in article 11 should not have been taken into consideration. Article 11 was not intended to apply to inhabitants of the Philippine Islands who had the capacity to interpose the ingenious defense presented by the defendant here. Considering, therefore, the existence of the aggravating circumstance of nocturnity and the absence of any mitigating circumstance, the maximum penalty should be imposed in accordance with the provisions of paragraph 3 of article 81 of the Penal Code.

Considering that the animals stolen were of the value of P600, or 3,000 pesetas, the defendant Vergara should be punished under article 517, in its relation with paragraph 2 of article 518 of the Penal Code, the maximum penalty under which provision is two years eleven months and eleven days to four years and two months, and considering the fact that the defendant Buenaventura Serrano returned P40 of the amount taken by the defendants from the owners of said animals, it is the judgment of this court that the decision of the inferior court should be modified and that the defendant should be imprisoned for a period of three years and to pay to the clerk of the court of the Province of Pangasinan, for the benefit of the said Villanueva and the said Ferrer, the sum of P125, and to pay one-half the costs incurred in the Court of First Instance, and the costs of this instance, and in case of insolvency to suffer the corresponding subsidiary imprisonment.

After the expiration of ten days let final judgment be entered in accordance herewith and ten days thereafter let the cause be remanded to the lower court for execution. So ordered.

*Arellano, C. J., Torres, Mapa, Carson, Willard, and Tracey, JJ., concur.*