

1 Phil. 300

[ G.R. No. 275. July 22, 1902 ]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. BALBINO ROSALES ET AL., DEFENDANTS AND APPELLANTS.**

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

**TORRES, J.:**

This case comes up in consultation of the judgment of the 18th of February, 1898, rendered in case No. 13153 of the Court of First Instance of Batangas, for robbery. In that case Balbino Rosales and Leocadio de Guzman were each convicted as principals in the crime and sentenced to suffer the penalty of one year and one day of correctional imprisonment, with accessories, and Ruperto Alse and Julian Dimaculangan, as accessories, were condemned to the payment of a fine of 6,250 pesetas each, and, in case of insolvency, to suffer subsidiary imprisonment not to exceed six months. All four were condemned to pay to the complaining witness damages in the sum of 55 Mexican pesos, the value of the animals stolen, together with 10 cuartos, the amount of damage done to the corral, this obligation being imposed jointly and severally, in accordance with law, with subsidiary imprisonment in case of insolvency. These defendants were also condemned to pay each one-ninth part of the costs. The Government in the second instance asks that the judgment be reversed and that the four accused convicted by the judge below be acquitted.

The taking of a bull belonging to Brigido Bonafe from the corral where he was inclosed on the night of Saturday, the 7th of November, 1891, and the destruction of part of the said corral, can not be properly classified as robbery, but constitutes the crime of theft, since, as in order to take the animal away, it was not necessary to destroy the corral or to cut the stakes driven into the ground. The only thing that was done was to pull up some of these stakes for the purpose of making the opening the thieves required, and so the man in charge found the corral' the next day. The fence opened does not appear to have been firmly constructed and did not offer the slightest security against the most insignificant effort to

force an entrance, as appears from the fact that the thieves, with their hands alone, and without any other instrument, were able to make the opening and to take away the bull. In consideration, moreover, of the fact that the corral was not covered or in any way connected with an inhabited house, it is unquestionable that the offense committed was that of theft, defined and punished by section 3 of article 518 of the Penal Code.

The guilt of the defendants Balbino Rosales and Leocadio de Guzman as principals, and that of Ruperto Also and Julian Dimaculangan (who subsequently died) as accessories, is established by the evidence in the case. Therefore, the undersigned being of the opinion that the findings of fact and conclusions of law of the judgment of the court below are correct, with the exception of its conclusion with respect to the classification of the offense, as stated above, the said findings of fact and conclusions of law are accepted by the undersigned as the basis of this decision, notwithstanding the opinion of the counsel for the Government, with the exception of the part of the said judgment which refers to the deceased defendant.

In determining the appropriate penalty the concurrence of the aggravating circumstance of nocturnity will be considered. There are no mitigating circumstances in the case, and therefore the judgment of the court below should be reversed. Balbino Rosales and Leocadio de Guzman, guilty as principals of the crime of theft prosecuted, should be convicted and sentenced each to six months and one day of correctional imprisonment, with the accessories of article 58 of the Code. Ruperto Also should be fined 1,250 pesetas, and, in case of insolvency, should suffer subsidiary imprisonment, not to exceed one month. All three defendants should be condemned to the restitution of the stolen animal, or to indemnify the complaining witness therefor jointly and severally, in the order established in article 125 of the Code, the value of the animal being fixed at 55 pesos, and in case of insolvency should suffer the corresponding subsidiary imprisonment. Finally, they should be condemned to pay each one-ninth of the costs of both instances. The case is, with respect to Julian Dimaculangan, reversed, with one-ninth part of the costs *de officio*. No decision can be made with respect to the two absent accused, as to whom the course of the case was suspended, nor with respect to the three defendants acquitted below, under section 50 of General Orders, No. 58. The order declaratory of insolvency, made in the incident of embargo, is approved. So ordered.

*Arellano, C. J., Cooper, Willard, and Ladd, JJ., concur.*

*Mapa, J., did not sit in this case.*

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