

[G.R. No. 384. July 18, 1902]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. AGAPITO FORTIN,,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

On the night of the 15th of February, 1897, while several inhabitants of the barrio of Talaonga, in the town of Bulusan, were gathered together in the town hall for the purpose of electing subordinate officers, the presiding officer of the meeting, Lucio Fusio, who was also the *teniente* of the barrio, and was at that time drunk, got into an altercation with Agapito Fortin. The trouble was brought on by Fusio, who, approaching Fortin, bit him in the left shoulder. Against this aggression Fortin defended himself, throwing the *teniente* to the ground, and as a result of the struggle Fusio suffered some slight bruises. This act would constitute the crime of an attack upon an agent of the authorities and not upon the authorities themselves, inasmuch as Fusio was not an authority, but was only a *cabesa de barangay* and the *teniente* of the *barrio*; but in view of the fact that the commission of this crime has not been proven, the provisions of article 249 and the last paragraph of article 250 of the Penal Code can not be applied.

It appears from the record that the provocation and the aggression were both on the part of the *teniente* of the *barrio*, who while drunk bit the accused in the shoulder as stated above, and that the latter in repelling this aggression threw the complaining witness to the ground, the latter being so drunk that he could not represent the authorities with decorum, and that in so doing the defendant only acted in his personal defense against an unlawful attack made without provocation on his part and by means which were entirely reasonable. Therefore, the accused in so acting committed no offense and is exempt from all responsibility, more especially because he simply defended himself against a ridiculous and improper aggression made by a drunken man, who, by reason of his drunkenness and

because he was the aggressor, was divested of his character as agent of the authorities. The law can not grant protection to one who has himself been the first to violate it.

By virtue, then, of these considerations we are of the opinion that the judgment below should be reversed and the accused acquitted, the facts not constituting an offense. The accused being free from all liability, the judge below will act in accordance with law with respect to the attachment of the property of the accused. The cost of both instances are adjudged *de officio*.

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

Mapa, J., absent on account of illness.