

G.R. No. 174

[G.R. No. 174. August 05, 1902]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. FRANCISCO RESABA ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

TORRES, J.:

This case was brought before the late *Audiencia, Territorial* of Manila for review of the judgment of the 7th of November, 1894, rendered by the then judge of the First Instance of the District of Lipa, by which judgment Francisco Resaba was acquitted of the offense of resistance to the agents of the authorities and the other accused were convicted of the offense of *lesiones graves* and *menos graves*. Unagan was sentenced to one year eight months and twenty-one days of *prision correctional*, and Gregorio Lat, Valentin Dimaano, Mariano Tagle, and Pelagio Unagan to two months and one day of *arresto mayor*, with accessories and costs, the case having been dismissed with respect to Andres Cariaga, *alias* Pernis, he having died. Counsel for the Government, however, asked that the judgment below be reversed, and that Francisco Resaba be convicted of the offense of resistance to the agents of the authorities and sentenced to one month and one day of *arresto mayor*, with a fine of 325 pesetas, and to the payment of a seventh part of the costs, one-half of the time of the preventive imprisonment to be computed, and also asks that the other defendants be acquitted, with the exception of the deceased Cariaga, they being exempt from criminal responsibility by reason of their having acted in the performance of an official duty, this offense being established by section 11, article 8 of the Penal Code.

The undersigned concurs in the opinion of the representative of the Government and accepts his opinion with respect to the findings of fact and the classification of the offense prosecuted.

In effect, the defendant Francisco Resaba, while armed and in company with the malefactor Cariaga, committed the crime of resistance to the agents of the authorities, because the

officers when attempting to arrest these men were compelled to use force; and although it may be true that the record does not show that Resaba made an attack on the officers with a weapon, it is nevertheless unquestionable that he did resist them by refusing to obey and surrender to his captors, while Cariaga openly attacked them, and it was on this account that their captors wounded them.

Notwithstanding the fact that the acts of the officers constituted the crimes of the discharge of a firearm and of *lesiones graves* and *menos graves*, inflicted upon the persons of Cariaga and Resaba, nevertheless they are exempt from all responsibility, because they were acting in the performance of an official duty, inasmuch as it appears that the judge of the corresponding military court had given orders for the capture of Cariaga and Resaba, they having been prosecuted on a criminal charge. Consequently, the officers must be acquitted in accordance with the provisions of article 51 of the provisional law for the application of the Penal Code.

For the reasons expressed, therefore, and in view of article 252 of the Penal Code and section 50 of General Orders, No. 58,. the judgment of the court below must be reversed and Francisco Resaba convicted and sentenced to one month and one day of *arresto mayor*, with a fine of 325 pesetas, or to the corresponding subsidiary imprisonment in case of insolvency, with accessories, and to the payment of one-seventh part of the costs in both instances, one-half of the time of the preventive imprisonment suffered to be computed, the defendants Pablo Unagan, Valentin Dimaano, Gregorio Lat, Mariano Tagle, and Pelagio Unagan to be acquitted, with the remainder of the costs *de oficio*. The order entered 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.