G.R. No. 448

**[ G.R. No. 448. September 20, 1902 ]**

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. PHILIP K. SWEET, DEFENDANT AND APPELLANT.**

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

**LADD, J.:**

The offense charged in the complaint is punishable under the Penal Code now in force by *arresto mayor* and a fine of from 325 to 3,250 pesetas. (Art. 418.) By Act No. 136 of the United States Philippine Commission, section 56 (6), Courts of First Instance are given original jurisdiction "in all criminal cases in which a penalty of more than six months' imprisonment or a fine exceeding one hundred dol lars may be imposed." The offense was therefore cognizable by the court below unless the fact that the appellant was at the time of its alleged commission an employee of the United States military authorities in the Philippine Islands, and the further fact that the person upon whom it is alleged to have been committed was a prisoner of war in the custody of such authorities, are sufficient to deprive it of jurisdiction. We must assume that both these facts are true, as found, either upon sufficient evidence or upon the admissions of the prosecuting attorney, by the court below.

Setting aside the claim that the appellant was "acting in the line of duty" at the time the alleged offense was committed, which is not supported by the findings or by any evidence which appears in the record, the contention that the court was without jurisdiction, as we understand it, is reducible to two propositions: First, that an assault committed by a soldier or military employee upon a prisoner of war is not an offense under the Penal Code; and second, that if it is an offense under the Code, neverthe less the military character sustained by the person charged with the offense at the time of its commission exempts him from the ordinary jurisdiction of the civil tribunals.

As to the first proposition, It is true, as pointed out by counsel, that an assault of the character charged in the complaint committed in time of war by a military person upon a

prisoner of war is punishable as an offense under the Spanish Code of Military Justice (art. 232), and it is also true that under the provisions of the same Code (arts. 4, 5) the military tribunals have, with certain exceptions which it is not material to state, exclusive cognizance of all offenses, whether of a purely military nature or otherwise, committed by military persons. But the fact that the acts charged in the complaint would be punishable as an offense under the Spanish military legislation does not render them any less an offense under the article of the Penal Code above cited. There is nothing in the language of that article to indicate that it does not apply to all persons within the territorial jurisdiction of the law. Under articles 4 and 5 of the Code of Military Justice above cited a military person could not be brought to trial before a civil tribunal for an assault upon a prisoner of war, but by the commission of that offense he incurred a criminal responsibility for which he was amenable only to the military jurisdiction. That criminal responsibility, however, arose from an infraction of the general penal laws, although the same acts, viewed in another aspect, might also, if committed in time of war, constitute an infraction of the military code. We are unable to see how these provisions of the Spanish Military Code, no longer in force here and which indeed never had any application to the Army of the United States, can in any possible view have the effect claimed for them by counsel for the appellant.

The second question is, Does the fact that the alleged offense was committed by an employee of the United States military authorities deprive the court of jurisdiction? We have been cited to no provision in the legislation of Congress, and to none in the local legislation, which has the effect of limiting, as respects employees of the United States military establishment, the general jurisdiction conferred upon the Courts of First Instance by Act No. 136 of the United States Philippine Commission above cited, and we are not aware of the existence of any such provision. The case is therefore open to the application of the general principle that the jurisdiction of the civil tribunals is unaffected by the military or other special character of the person brought before them for trial, a principle firmly established in the law of England and America and which must, we think, prevail under any system of jurisprudence unless controlled by express legislation to the contrary. (United States *vs.* Clark, 31 Fed. Rep., 710.) The appellant's claim that the acts alleged to constitute the offense were performed by him in the execution of the orders of his military superiors may, if true, be available by way of defense upon the merits in the trial in the court below, but can not under this principle affect the right of that court to take jurisdiction of the case.

Whether under a similar state of facts to that which appears in this case a court of one of the United States would have jurisdiction to try the offender against the State laws (see *In re* Fair, 100 Fed. Rep., 149), it is not necessary to consider. The present is not a case where

the courts of one government are attempting to exercise jurisdiction over the military agents or employees of another and distinct government, because the court asserting jurisdiction here derives its existence and powers from the same Government under the authority of which the acts alleged to constitute the offense are claimed to have been performed.

It may be proper to add that there is no actual conflict between the two jurisdictions in the present case nor any claim of jurisdiction on the part of the military tribunals. On the contrary it appears from the findings of the court below that the complaint was entered by order of the commanding general of the Division of the Philippines, a fact not important, perhaps, as regards the technical question of jurisdiction, but which relieves the case from any practical embarrassment which might result from a claim on the part of the military tribunals to exclusive cognizance of the offense.

The order of the court below is affirmed with costs to the appellant.

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

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CONCURRING

Cooper, J.,

I concur in the result of the decision of the court, but am not prepared to assent to all that is said in the opinion. An offense charged against a military officer, acting under the order of his superior, unless the illegality of the order is so clearly shown on its face that a man of ordinary sense and understanding would know when he heard it read or given that the order was illegal, and when the alleged criminal act was done within the scope of his authority as such officer, in good faith and without malice, and where the offense is against the military law—that is, such law as relates to the discipline and efficiency of the Army, or rules and orders promulgated by the Secretary of War to aid military officers in the proper enforcement of the custody of prisoners—is not within the jurisdiction of the courts of the Civil Government, (*In re* Fair, 100 Fed. Rep., 149.) The civil courts, however, may examine the evidence for the purpose of determining whether the act alleged to be criminal was done in the performance of duty under the circumstances above indicated, but should cease to exercise jurisdiction upon such facts appearing.

*Ordered affirmed.*

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