

3 Phil. 140

[G.R. No. 1406. January 06, 1904]

**UNITED STATES, COMPLAINANT AND APPELLANT, VS. ROSCOE C. COX,
DEFENDANT AND APPELLEE.**

D E C I S I O N

TORRES, J.:

On May 26, 1903, the provincial fiscal of Iloilo filed an information in the Court of First Instance of that province charging Roscoe C. Cox with the crime of assaulting an officer of the law. The information alleged that at 9 o'clock on the night of Tuesday, the 10th of February last, while on duty in General Hughes Street in the city of Iloilo, the policeman Damaso Gonzalez was approached by three American soldiers. The accused, who was one of the trio, asked Gonzalez if he wished to fight, and immediately after, without giving the latter time to reply, seized him by the throat. Having succeeded, with the aid of the other two soldiers, in overcoming the policeman, the accused possessed himself of the club which Gonzalez carried, and with it struck the latter several blows, causing the wounds described in the medical statement exhibited. Gonzalez thereupon shouted for help. Two citizens ran to his aid, at sight of whom the accused and his two companions took to flight.

The information having been admitted, the trial began. George M. Saul, E. J. Saul, the policeman Damaso Gonzalez, and the police sergeant Pedro Carpio, witnesses for the prosecution, testified that on the night and in the street referred to the policeman Gonzalez, who was on patrol duty, encountered three American soldiers; that one of these, the defendant herein, asked the officer if he wanted to fight, to which the latter replied in the negative; that the

defendant repeated the question, and then, without waiting for a reply, seized Gonzalez by the throat, threw him to the ground, and struck him several blows with the club which he succeeded in Arresting from the policeman; that the latter thereupon shouted for help, and, having succeeded in regaining his feet, recovered the possession of the club which his assailant had taken from him; that at this point two native residents came to the aid of Gonzalez, who ordered his assailant to stand where he was; that as the latter took no notice of the command and began to run Gonzalez discharged his revolver four times and started off in pursuit, followed by another policeman patrolling Duran Street; that the soldier was here overtaken, and, after a struggle between the two policemen and the accused, the three fell to the ground, all more or less injured; that at this moment Captain Ferry appeared on the scene. and that he, with the help of several citizens, carried the wounded soldier to the hospital, one of the policemen being borne by others to the house of Mr. Saul.

It seems that the policeman who responded to the calls of Gonzalez was the sergeant Pedro Carpio, and that he assisted Gonzalez in the struggle resulting from the effort to arrest the defendant when he attempted to escape. Captain Ferry and Sergeant Cerera apparently arrived on the scene as the three men fell to the ground. The witnesses who testified stated that they were able to identify the defendant, Cox, as the man arrested on the night in question for the reason that there was a full moon at the time and because they had looked at him carefully. The first witness, George M. Saul, also testified that he thought the defendant was drunk at the time, as he staggered when he walked.

The accused pleaded not guilty, but presented no evidence on his own behalf. The judge below, in view of the fact that the defendant's attorney admitted the identification of the accused by the witness C. R. Maun, and the truth of the doctor's statement that the contusions sustained by Gonzalez were seven to ten days in healing, rendered judgment on the 8th Of June declaring the defendant guilty of breach of the peace and condemned him to the payment of a fine of 125

pesetas and costs. From this decision the prosecution appealed.

The facts set forth constitute the crime of assault on a police officer, covered by articles 249 and 250 of the Penal Code. The municipal policeman Damaso Gonzalez, while patrolling one of the streets of the city of Iloilo in the performance of his duty, was assaulted by the defendant and two others. It was not shown at the trial that the policeman gave any cause for this aggression.

Among others, those are guilty of the crime of assault upon an officer of the law who either actually attack such an officer, or who employ force against him or threaten him with violence, or make other equally serious resistance to him, while he is performing the duties of his office or by reason thereof. (Art. 249 of the Code.)

Notwithstanding the defendant's plea of not guilty it is nevertheless indubitable that he was the author of the crime in question. He was pursued by Gonzalez after the assault, was later arrested by Gonzalez and the other policeman who came to the latter's aid, and has since been identified by the victim of the assault. It can not be questioned that the defendant is the person who was taken in charge by Captain Ferry, of the American Army, after the occurrence. This took place in the presence of several citizens, who, attracted by the cries of the injured policeman and by the revolver shots following immediately after, had also run to his assistance.

It is, therefore, a fact fully proven by the evidence in the case that the defendant, Roscoe C. Cox, without previous provocation or other justifiable motive, assaulted the policeman Damaso Gonzalez, who was at the time discharging his duties as such officer, inflicting upon him injuries more or less serious. The defendant should therefore be condemned, as author by direct participation of the crime of assaulting a police officer, to the penalty of *prision correccional* in its minimum and medium grades, together with the fine provided in the last paragraph of article 250 of the Penal Code,

there having been present in the commission of the crime none of the four circumstances mentioned in article 250 above cited. Since the accused was intoxicated at the time of the commission of the offense, the sixth mitigating circumstance mentioned in article 9 of the Penal Code should be considered present. There are no aggravating circumstances to offset the effects of this mitigating circumstance, and the penalty should accordingly be fixed in its minimum grade.

For the reasons above set forth we think the sentence appealed should be reversed and the accused Roscoe C. Cox condemned to the penalty of six months and one day of *prision correctional* together with the accessories mentioned in article 61 of the Penal Code, to the payment of a fine of 375 pesetas, or, in case of insolvency, to suffer the corresponding subsidiary imprisonment at the rate of one day for each 12 1/2 pesetas unpaid, and to the payment of the costs.

Arellano, C.J., Cooper, Willard, Mapa, McDonough, and Johnson, JJ., concur.
