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[G.R. No. 1901. March 18, 1905]

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JOHN M. FLEMISTER, DEFENDANT AND APPELLANT.

D E C I S I O N

JOHNSON, J.:

The defendant in this case was charged with the crime of *lesiones graves*. He was tried by the Court of First Instance of the city of Manila on the 21st day of October, 1903, found guilty of the crime charged in the complaint filed in said cause, and sentenced to pay a fine of 1,000 pesetas and the costs of the suit.

The complaint filed in said cause against the defendant was in the language following:

> "That on or about the 1st day of June, 1903, in the city of Manila, Philippine Islands, the said John M. Flemister did, willfully, unlawfully, feloniously, with deliberate premeditation and with vindictiveness, attack, wound, bruise, and maltreat one E. A. Hoosam, thereby inflicting serious physical injuries upon the said E. A. Hoosam which will cause the illness of the said E. A. Hoosam and disable him from following his usual occupation for a period of more than eight days; contrary to the form of the statutes in such cases made and provided.
>
> '"J. C. WERTMANN.
>
> "Subscribed and sworn to before me this second day of July, 1903.

"R. HERAS,
"*Asst. Clerk, Court of First Instance*,
"*City of Manila*."

The sentence imposed by the judge of the Court of First Instance upon the defendant is in the following language:

> "After a consideration of the proof taken in this cause and hearing the allegations of the parties, the court finds that the accused, John M. Flemister, is guilty of the crime of *lesiones graves* in the manner and form charged in the complaint, and therefore the Court sentences the said John M. Flemister to pay a fine of 1,000 pesetas and the costs of this suit."

The defendant was charged with attacking, wounding, bruising, and maltreating E. A. Hoosam, thereby inflicting serious physical injuries upon him, which injuries rendered the said E. A. Hoosam unable to follow his usual occupation for a period of more than eight days. If the evidence adduced during the trial of the cause is sufficient to support this allegation in the complaint, then the defendant should have been punished under article 418 of the Penal Code. Article 418 of the Penal Code is in the following language, to wit:

> "Injuries not included in the preceding articles, which shall render the injured person unable to work for eight days or more, or shall require the care of a physician for a similar period, shall be less grave, and shall be punished with *arresto mayor*, or banishment and a fine of from 325 to 3,250 pesetas, in the discretion of the courts."

The verdict of the judge who tried the defendant was that he, the defendant, was guilty of the crime of which he was charged in the complaint. An examination of the proof adduced during the trial of said cause shows clearly that the verdict of the judge of the Court of First

Instance was justified by said evidence. Therefore, the verdict of the judge of the Court of First Instance, to wit, that "the defendant did willfully, unlawfully, feloniously, with deliberate premeditation and with vindictiveness, attack, wound, bruise, and maltreat E. A. Hoosam, thereby inflicting serious physical injuries upon the said E. A. Hoosam which disabled him from following his usual occupation for a period of more than eight days," is hereby affirmed. The judge erred, however, in applying the provisions of article 418. The only penalty which the court could have imposed under article 418 was the following:

(1) *Arresto mayor* (imprisonment for. one month and one day to six months);or

(2) *Destierro y multa de 325 a 3,250 pesetas*.

The judge imposed a fine only. The law provides that if the judge imposes a fine for the offense described in article 418, he must also impose the penalty of *destierro*. The judge might have imposed the penalty of imprisonment, but inasmuch as he imposed a fine it was his duty under the law also to impose the penalty of *destierro*.

Under the procedure in vogue in the Philippine Islands prior to American occupation, all criminal cases were submitted to the Supreme Court for review, some by appeal and others *en consulta*; and the Supreme Court had authority to examine the records in detail and to render decisions and impose penalties in accordance with the proof and the provisions of the Penal Code. This power of the Supreme Court was expressly recognized and confirmed in General Orders, No. 58, which constitutes the criminal procedure of this court at the present time, except that the cases which may come before the Supreme Court *en consulta* are limited both by the provisions of General Orders, No. 58 (sec.50), and by Act No. 194 (sec.4).

This court has the power, whenever a final judgment in any criminal case shall be reversed upon an appeal by the defendant on account of errors committed by the inferior court in imposing the penalty under the law, to render such judgment in said cause as should have been rendered by the inferior court. This is no new doctrine. Both the

Federal courts of the United States and the State courts in the United States have recognized and applied it. The sentence, therefore, dictated in said cause is hereby reversed and the defendant is hereby sentenced to be imprisoned for a period of four months of *arresto mayor* and to pay the costs of both instances. So ordered.

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

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