

[G.R. No. 1593. March 20, 1905]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. BENITO MERCADO,
DEFENDANT AND APPELLANT.**

D E C I S I O N

WILLARD, J.:

There was no substantial dispute about the facts in this case. The defendant, Benito Mercado, and the injured party, Julio Salazar, were on the 21st day of February, 1903, both confined in the Prison of Bilibid. On that day the defendant, without any apparent provocation, struck Salazar upon the side of the head with a heavy club.

At the trial Dr. Lyon, who saw the injured person within a minute or two after he was hurt, testified that under the most favorable conditions it would be impossible for Salazar to recover the normal condition of his hearing within a period of ninety days, and that it was absolutely impossible for him ever to recover such use, and that there was only a slight probability that he would ever recover a part of his hearing.

The defendant, in this court, asks that the judgment be reversed upon two grounds:

- (1) The case was tried within the Prison of Bilibid, probably because the defendant, the complaining witness, and nearly all of the other witnesses were there confined as prisoners. It is claimed by the defendant that this trial was illegal because there was no provision of the law which authorized the judge to hold a trial at that place and because such a trial was not the public trial which is guaranteed to the defendant by the act of Congress. It affirmatively

appears from the record that the defendant offered no objection to the trial of the case in Bilibid Prison. This statement appears in the record prior to the taking of any testimony, and it is clear that the question where the trial was to be held was raised and determined before the trial was commenced. Under these circumstances it is not necessary for us to decide whether, if there had been objection on the part of the defendant, the trial would have been legal. It is sufficient to say that this was one of the rights which the defendant could waive, and as he did expressly waive it before the trial commenced it is too late for him now to insist that the trial was erroneous.

(2) The injury was committed on the 21st day of February, 1903, and the trial took place on the 7th of March, 1903. During the testimony of Dr. Lyon the defendant asked that the trial be suspended until the result of the injury could be known and until the court could be absolutely certain that the injury would be permanent, or, at least, that its effects would continue for more than ninety days, and so bring the case within the provisions of article 416 of the Penal Code.

The question for the court to determine was whether or not the defendant had permanently lost his hearing or whether he would be incapacitated from his usual work or be sick for more than ninety days. The testimony of Dr. Lyon was positive to the effect that he was permanently injured and that he would never recover his hearing. Under these circumstances we do not think it was necessary for the court to postpone the further hearing of the case until the expiration of ninety days. There was evidence before it from which it was justified in finding that the injury was permanent.

As suggested by the Attorney-General in his brief, the fact that no motion for a new trial has been made by the defendant is indicative of the fact that the judgment of the court below as to the permanent character of the complaining witness's injuries was well based upon the evidence which he then had before him.

The judgment of the court below is confirmed, with the costs of this instance against the appellant.

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

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