

5 Phil. 650

[ G.R. No. 2618. February 26, 1906 ]

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

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

**JOHNSON, J.:**

This defendant was charged with the crime of a criminal attempt against the agent of the authorities as follows; "That on or about the 2d day of October, 1904, in the city of Manila, Philippine Islands, the said John M, Flemister did, then and there, willfully, unlawfully, and feloniously, attack an agent of the public authorities to wit, Feliciano Celimin, a duly appointed, qualified, and acting police officer of the city of Manila, and did then and there, employ force against, gravely intimidate, and offer grave resistance to the said Peliciano Celimin, while he was discharging the functions of his office and on the occasion thereof, and did, then and there, lay hands upon the said Feliciano Celimin while he was discharging the duties of his office, in this, that on the said 2d day of October, 1904, the said Feliciano Celimin, among other police officers of the city of Manila, was detailed and designated by the authorities to preserve the peace at San Lazaro Race Track of the city of Manila, and that, then and there, the said John M. Flemister did commit, in the presence and view of the said Celimin, an assault and breach of the peace, and that the said Celimin, then and there, attempted to place the said Flemister under arrest for such offense; and that the said Flemister thereupon resisted such arrest and attacked and struck the said Feliciano Celimin and used vile, insulting, profane, and obscene language to the said Feliciano Celimin; by reason of which attack, force, intimidation, and resistance toward the said Feliciano Celimin, the authorities of the city of Manila were compelled to yield to the exactions of the said Flemister and refrain from the arrest of said Flemister; that the said offense was accompanied by the following aggravating circumstances:

"That the said John M. Flemister has been previously punished for two or more

crimes for which the law fixes a lighter penalty than that prescribed by law for the offense charged herein.

“(Signed) JOSE DE CRAME.”

The complaint was duly sworn to and was presented on the 5th day of October, 1904, and the defendant was arrested upon the same day. On the 20th day of October, 1904, the defendant was duly arraigned, and after hearing the foregoing complaint read pleaded “Not guilty” of the crime of which he was accused in the said complaint and alleged also that he had already been acquitted in a competent court for the same crime.

The inferior court found that the defendant had been accused of a violation of section 1 of Ordinance No. 28 of the city of Manila and had been tried by the municipal court of said city and that the offenses with which the defendant had been charged in said municipal court did not include the one with which he was charged in the complaint in this cause. The complaints presented against this defendant in the municipal court were as follows:

First:

“The undersigned accuses John M. Flemister of a misdemeanor against the ordinances of the city of Manila, Philippine Islands, committed as follows:

“That on or about the 2d day of October, 1904, in the city of Manila, Philippine Islands, and in a public place in said city wherein various persons were gathered together, and within the hearing and view of such persons, the said John M. Flemister did, then and there, willfully and unlawfully, make and assist in making a disorder, disturbance, and breach of the peace, and did, then and there, assault, beat, and use personal violence upon one Domingo Salvador, without just cause; all contrary to the, provisions of section 1 of Ordinance No. 28, enacted by the Municipal Board of the city of Manila, March 19, 1902.

“(Signed) JOSE DE CRAME.”

The complaint was duly sworn to.

Second:

“The undersigned accuses John M. Flemister of the misdemeanor of violation of ordinances of the city of Manila, Philippine Islands, committed as follows: “That on or about the 2d day of October, 1904, in the city of Manila, Philippine Islands, in a public place in said city where various persons were gathered together, and within hearing of such persons, the said John M. Flemister did, then and there, willfully and unlawfully, utter slanderous, threatening, and abusive language and expressions of and to Oapt. Jos6 Crame, of the Manila Police Department, namely, the said John M. Flemister did, then and there, say of and to the said Capt. Jose Crame in said public place ‘You are G. d. s. of a b. gugo,’ and various other profane and unseemly expressions; all contrary to the provisions of section 1 of Ordinance No. 28, enacted by the Municipal Board of the city of Manila, March 19, 1902.

“(Signed) JOSE CRAME.”

The complaint was duly sworn to.

By stipulation in open court, these two complaints were consolidated for trial. After hearing the evidence in said cause, the judge of the municipal court dismissed the second complaint, and, taking into consideration the evidence introduced to support the second complaint, as well as the evidence in the first complaint, found the defendant guilty of the facts charged in the first complaint, and sentenced him to pay a fine of 3P40, Philippine currency. From an examination of the offenses charged in the three complaints, the two in the municipal court and one in the Court of First Instance, for which the defendant was tried, it will be seen that the complaint which was filed in the Court of First Instance of the city of Manila charged the defendant with a “criminal attempt against one Feliciano Celimin, a policeman of the city of Manila and an agent of the authorities,” while the complaint in the first case in the municipal court charged the defendant generally with disorderly conduct and with striking one Domingo Salvador. The second complaint filed in the municipal court charged the defendant with using “threatening and abusive language to one Jos6 Crame.” These offenses are separate and distinct. Therefore the inferior court was justified in denying the plea presented by the defendant of “*autrefois acquit*.”

Even though it should be admitted that the defendant had been proceeded against in the municipal court for a crime resulting from the same acts with which he was charged in the Court of First Instance, yet nevertheless he would not be entitled to be acquitted under his

plea of "*autrefois acquit*" for the reason that the acts with which he was charged in the municipal court constituted a violation of section 1 of Ordinance No. 28 of the city of Manila, and the acts with which he was charged in the complaint in the Court of First Instance constituted an offense punishable under the Penal Code and were distinct offenses.

This court has recently decided in the case of *United States vs. Chan-Cun-Chay*<sup>[1]</sup> (4 Off. Gaz., 42). that "where the same acts constitute an offense against each of two sovereignties exercising jurisdiction over the same territory, a prosecution brought by one does not necessarily bar a prosecution by the other."

It is not necessary to invoke this doctrine here in this case for the reason that the offenses with which the defendant had been charged in the said municipal court did not include the offense for which he was tried in the Court of First Instance.

An examination of section 1 of Ordinance No. 28 of the city of Manila, in comparison with articles 249 and 250 of the Penal Code will also show that the two laws punish different offenses. Section 1 of Ordinance No. 28 provides:

"No person shall make, aid, countenance, or assist in making any riot, affray, disorder, disturbance, or breach of the peace; or assault, beat, or use personal violence upon another without just cause in any public place; or utter any slanderous, threatening, or abusive language, or expression; or exhibit or display any emblem, transparency, representation, motto, language, device, instrument, or thing; or do any act, in any public place, meeting, or procession, tending to disturb the peace or excite a riot or collect with other persons in a body or crowd for any unlawful purpose; or disturb or disquiet any congregation engaged in any lawful assembly."

Paragraph 2 of article 249 of the Penal Code provides that the following persons are guilty of a criminal attempt:

"Those who attack the authorities or their agents, or employ force against them, or gravely intimidate them, or offer an equally grave resistance while they are discharging the functions of their office or on the occasion thereof."

Article 250 provides:

“The criminal attempts included in the preceding article shall be punished with the penalties of *prision correccional* in its medium degree to *prision mayor* in its minimum degree, and a fine of from 625 to 6,250 pesetas, provided that any of the following circumstances are attendant:

“1. If the aggression were accomplished by weapons.

“2. If those guilty thereof were public officials.

“3. If the delinquents laid hands upon the authorities.

“4. If in consequence of compulsion the authorities should have yielded to the exactions of the delinquents.

“Without these circumstances the penalty shall be *prision correccional* in its minimum to its medium degree and a fine of from 375 to 3,750 pesetas.”

After hearing the evidence the inferior court found the defendant guilty of the crime provided for and punished under article 252 of the Penal Code and taking into consideration the fact that the defendant had been condemned twice for an offense for which the law imposes a less penalty, as an aggravating circumstance, and without any extenuating circumstances, sentenced the defendant to be imprisoned for a period of four months and ten days of *arresto mayor*, with the accessories of the law provided for in article 61 of the Penal Code, to pay a fine of 2,000 pesetas, to suffer in case of insolvency corresponding subsidiary imprisonment, which should not exceed one-third part of the principal penalty, and to pay the costs. From this decision the defendant appealed to this court. From an examination of the evidence adduced during the trial of said cause in the court below, we find the following facts:

That on the 2d day of October, 1904, while attending the races at San Lazaro race track in the city of Manila, the defendant attempted to pass through a gateway leading to a portion of the grand stand of said race track which was and had been for sometime prior thereto reserved exclusively for members of the association in charge of said race track, which association was known as the Manila Jockey Club; that one Domingo Salvador was an attendant at said gate and in the employment of said association and was instructed to allow

no one to pass through the said gate except members of the association; that the defendant attempted to pass through the said gate and was informed that he could not pass through because he was not a member of said association; that thereupon the said defendant, by means of force, broke open the said gate and passed through into that portion of the grand stand reserved for members; that this action on the part of the defendant was reported to a policeman called Feliciano Celimin, who was stationed, by the proper authorities, near the said gate to assist in the maintenance of order; that the defendant, in passing through the gate, threw the attendant, Salvador, to the ground, while he, the said attendant, was attempting to prevent the defendant from passing through the said gate; that when the said policeman, Celimin, saw this conduct on the part of the defendant he approached the defendant and attempted to place him under arrest, whereupon the defendant struck the said policeman in the stomach; that during this proceeding the defendant used vile, abusive, and threatening language toward the said Celimin, as well as to the other policemen who had assembled there in the meantime.

From these facts we are of the opinion that the defendant is guilty of a violation of the provisions of paragraph 2 of article 249 of the Penal Code and must be punished under paragraph 5 of article 250 of the same code. Under this conclusion of fact it becomes necessary, under the provisions of the Penal Code applicable to the same, to impose a severer penalty than that imposed by the lower court. The question now arises, Has this court the right, when a defendant appeals from the decision of an inferior court, to modify or reverse the sentence of such inferior court and increase the penalty? This court has already decided in numerous cases that it has that authority. (See *United States vs. Trono*,<sup>[1]</sup> 2 Off. Gaz., 296; *United States vs. Flemister*,<sup>[2]</sup> 3 Off. Gaz., 386.)

In the case of *United States vs. Flemister* this court said:

“This court has the power, whenever a final judgment in any criminal case shall be reversed upon 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.”

In the case of *United States vs. Trono* the defendant appealed to the Supreme Court of the United States, upon the theory that this court had no authority to increase the penalty imposed by the inferior court, for the reason that thus the defendant had been put in jeopardy twice for the same offense.

The Supreme Court, in its decision of the 4th of December, 1905, (199 U. S., 521) sustained the decision of this court. In deciding the case, Mr. Justice Peckham, who wrote the majority opinion, said among other things, at page 534:

“When at his own request he (the defendant) has obtained a new trial, he must take the burden with the benefit and stand for a new trial of the whole case. It does not appear to us to be a practice founded on solid reason to permit such a limited waiver (of jeopardy) by the accused party, while he himself is asking for a reversal of the judgment.

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“A further question is made as to the power of the Supreme Court of the (Philippine) Islands to reverse the judgment appealed from and itself convict the accused on appeal. The Supreme Court (of the Philippine Islands) in so doing, acted within its power and jurisdiction. It is a result of the ordinary procedure in the courts of that country (the Philippine Islands) proceeding under the act of Congress.”

The judgment of the inferior court is therefore reversed and the defendant is hereby sentenced to be imprisoned for a period of two years and six months of *prision correccional*, to suffer the accessory penalties provided for in article 61 of the Penal Code, to pay a fine of 3,750 pesetas and in case of insolvency to suffer corresponding subsidiary imprisonment for a period not to exceed one-third of the principal penalty, and to pay the costs. So ordered.

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

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<sup>[1]</sup> Page 385, *supra*.

<sup>[1]</sup> 3 Phil. Rep., 213.

<sup>[2]</sup> 4 Phil. Rep., 300.

