

[G.R. No. 2309. April 19, 1906]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ANDERSON TAYLOR,
DEFENDANT AND APPELLANT.**

D E C I S I O N

CARSON, J.:

The evidence adduced at the trial conclusively establishes the facts set out in the complaint, and it was proven beyond a reasonable doubt that the accused, while resisting arrest, violently assaulted one Leoncio Martinez, a municipal policeman of the city of Manila.

Counsel for the defendant contends that the arrest was illegal, and that the policeman was therefore the aggressor, but it appears from the record that the accused and his companions, in violation of a lawful ordinance of the city of Manila, made use of threatening and insulting language on the public streets of the said city, in the presence and within the hearing of the said policeman, and that the said policeman was in the lawful performance of his duty when he attempted to make the arrest.

The trial court imposed the penalty under the provisions of paragraph 3 of article 250 of the Penal Code. That paragraph is only applicable to those cases where the persons accused of an attempt upon an authority (*atentado contra la autoridad*) places violent hands upon the authority himself. It is not applicable to cases where the crime is committed against an agent of the authority (*agente de autoridad*.) A policeman is not an authority as defined in the Penal Code, but an agent of the authority, and therefore the penalty should be imposed in accordance with the last paragraph of the said article.

The, trial court was of opinion that in fixing the penalty the extenuating circumstance defined in paragraph 7 of article 9 should be taken into consideration, because the accused committed the offense in an uncontrollable burst of sudden passion (*arrebato y obcecacion*), but the supreme court of Spain has repeatedly held that the fact that the offense was

committed under the stimulus of a sudden burst of passion should not be taken into consideration as an extenuating circumstance unless it appears that it was provoked by prior unjust or improper acts. (Decisions of the supreme court of Spain of October 15, 1878; March 8, 1884; August 20, 1885; October 11, 1887.) The arrest of the accused and his companions which gave rise to their indignation and anger was a lawful one, and therefore the trial court erred in finding the existence of the said extenuating circumstance.

The judgment and sentence of the trial court should be, and is hereby, reversed, and instead thereof we impose upon the said Anderson Taylor the medium degree of the penalty of (*prision correccional*) in its minimum to its medium degree”—that is to say, one year eight months and twenty-one days’ imprisonment (*prision correccional*) and a fine of 375 pesetas and the costs of the proceedings in both instances.

The accused is entitled to and will be allowed a credit (*abono*) of one-half the period during which he has been held in detention pending the trial of his case and the hearing of his appeal, in accordance with the provisions of rule 93 of the *Ley Provisional*. After the expiration of ten days from the date of final judgment let the record be remanded to the court below for proper action. So ordered.

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