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[G.R. No. 2408. November 24, 1906]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. JOSEPH J. CAPURRO AND PAUL A. WEEMS, DEFENDANTS AND APPELLANTS.

D E C I S I O N

JOHNSON, J.:

The defendant was charged with the crime of a criminal attempt against an agent of the authorities, committed as follows:

> "That on or about the 3d day of August, 1904, in the city of Manila, Philippine Islands, and within the police jurisdiction of the said city, the said Joseph J. Capurro did then and there, willfully, unlawfully, feloniously, and with craft, fraud, disguise, and deliberate premeditation, attack, employ force against, gravely intimidate, and otter grave resistance to an agent of the authorities of the Government of the Philippine Islands, to wit, one George E. Shannahan, a duly appointed, qualified, and acting postal clerk of the Government of the Philippine Islands in the Manila and Dagupan Railway post-office, who was then and there in the discharge of the functions of his office as such postal clerk in the mail car of a regular train of the said Manila and Dagupan Railway, in this, to wit : That the said Joseph J. (Japurro did then and there enter the mail car aforesaid, where the said George E. Shannahan was discharging the functions of his office assorting, guarding, and caring for the mail then and there carried in said car, and did then and there employ force against, gravely intimidate, lay hands upon, assault, beat, and strike the said George E. Shannahan with a dangerous and deadly weapon, to wit, a heavy club and a heavy glass bottle filled with water, and did then and there inflict on the head and body of the said George E. Shannahan serious and painful wounds and bruises and compelled the said George E. Shannahan, by reason of and as a consequence of said force employed,

> to yield to the exactions of the said Joseph J. Capurro and permit the said Joseph J. Capurro to ransack and search the mail in said car in the care and custody of the said George E. Shannahan and break open and mutilate registered letters, envelopes, and packages contained in said mail."

This complaint was signed and duly sworn to by the said George E. Shannahan.

To this complaint the defendant, through his attorney, demurred, upon the ground that the said complaint was defective in that the facts therein alleged did not constitute the offepse of "assaulting an agent of the authorities."

After a consideration of the demurrer, the judge of the inferior court found that the allegations contained in the complaint were sufficient to constitute the offense charged in said complaint and therefore overruled said demurrer; whereupon the defendant presented a plea, which was amended so as to contain the language following:

> "I plead not guilty of the offense charged and a former acquittal by a judgment rendered on the 23d of September, 1904, by the Hon. Manuel Araullo, one of the judges of the honorable court, in Case No. 1752, and entitled United States vs. Joseph J. Capurro et al."

No exception was taken by the defendant in the court below to the order of the judge overruling said demurrer.

The judge of the inferior court withheld his decision upon the plea interposed by the defendant of aiitrefois acquit until after the close of the trial of the defendant upon the above complaint.

During the trial below the defendant presented no evidence in his defense, but did present the complaint which had theretofore been filed against him in said case No. 1752, as well as the judgment of acquittal rendered therein, for the purpose of supporting the plea of autrofok acquit.

At the close of the trial in this cause, the lower court overruled the plea of *autrefois acquit* and held that the defendant had not been acquitted of the crime with which he stood charged; that the complaint presented in said case No. 1752 was a complaint for a different

and distinct offense .rpon the issue of fact presented during the trial to the lower court, the court found the defendant to be guilty of the crime charged and sentenced him to be imprisoned for the period of five years and one month of prisions correccional. From this decision the defendant appealed to this court.

The appellant in this court makes the following assignment of errors:

First. That the court erred in finding from the evidence adduced during the trial that the defendant was guilty of the crime "of a criminal attempt against an agent of the authorities."

Second. That the court committed an error in overruling the plea of *autrefois acquit* presented by the defendant.

Third. That the Court of First Instance of the city of Manila had no jurisdiction to try the appellant for the offense charged.

The defendant and appellant made no attempt in the court below to disprove the facts alleged in the complaint, and by his plea of *autrefois acquit* practically admitted the truthfulness of such facts. This court then is at liberty to treat the facts stated in the complaint as true.

An examination of the complaint discloses the fact that at the time the defendant attacked and employed force against the said George E. Shannahan, as charged in the complaint, he (Shannahan) was a duly appointed, qualified, and acting postal clerk of the Government of the Phil ippine Islands in the Manila-Dagupan post-office, who was, at the time of the said attack, then and there in the discharge of the functions of his office as such clerk in the mail car of a regular train of the said Manila-Dagupan Railway.

Article 249 of the Penal Code provides that the following commit criminal attempts:

> "1. * * *
>
> "2. Those who attack the authorities or their agents or employ force against them or gravely intimidate them or offer equally grave resistance Avhile they are discharging the functions of their office or on the occasion thereof."

Articles 250 and 251 provide for the punishment of those who are guilty of the crime

charged in the above complaint. The defendant and appellant in his brief quotes article 264 of the Penal Code and attempts to show that the said George E. Shannahan was not an agent of the authorities for the reason that he does not come within the provisions of said article 264.

A careful reading of article 264 ,will show that said article makes no attempt to define who are agents of the authorities, but simply to include persons who might otherwise be omitted against whom the crime described in article 249 and the succeeding articles might be committed.

Article 264 provides:

> "For the purpose of the articles included in the three preceding chapters, a person who by himself alone or as a member of any corporation or tribunal shall exercise special jurisdiction shall be considered as an authority.
>
> "The officials of the department of public prosecution •shall also be considered authorities."

Article 401 of the Penal Code defines who shall be considered functionaries in the following language:

> "For the purpose of this and the preceding titles of this book, every person shall be considered a public official who, by the immediate provisions of law or by popular election or appointment by competent authority, takes part in the exercise of public functions."

By referring again to the said complaint, it will be seen that, the said George E. Shannahan had been duly appointed and had qualified and was then acting, at the time said offense was committed, as a postal clerk of the Government of the Philippine Islands. Admitting these allegations to be true, they are sufficient to constitute the said George E. Shannahan a public official. (U. S. vs. tfarmiento, 1. Phil. Rep., 484; U. S. vs. Fulgencio, 2 Phil. Rep., 452; U. S. vs. Cox,[1] 2 Off. Gaz., 110.)

The attack which was made upon the said Shannahan by the defendant and appellant in the manner and form as described in said complaint was a criminal attempt, punishable under

the provisions of article 249 in its relation with article 251 of the Penal Code.

The second assignment of error made by the defendant and appellant, to wit, that the court erred in not dismissing the defendant under his plea of atitrefois acquit, or former jeopardy, presents a question pregnant with many difficulties. The defendant claims that in said case No. 1752 he had been tried and acquitted of the same offense for which he was being tried in the present cause in the Court of First Instance of the city of Manila.

The complaint presented in said case No. 1752 charges the defendant and appellant with the crime of robbery committed as follows:

> "That on or about the 3d day of August, 1904, in the city of Manila, Philippine Islands, and within the police jurisdiction of said city, Joseph J. Capurro and Paul A. Weems did then and there, willfully, unlawfully, and feloniously, and with the intent of profiting thereby, and with violence and intimidation against the person of one George E. Shannahan, forcibly take possession of the following personal property, to wit:
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> 1 registered package envelope bearing the P. O. No. 60, and the contents of said package being 1 registered letter bearing the P. O. No. 79, directed to the Collector of Customs of Manila, P. I.
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> 1 registered package envelope bearing the P. O. No. 107, and contents of said package envelope being registered letters Nos. 123 and 126, and one five-peso Conant bill.
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> 1 registered package envelope bearing the P.O. No. 50, and registered letter inclosed in said package No. 71.
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> 1 registered package envelope bearing the P. O. No. 58, and registered letter No. 77, and 30 pesos in Conant paper money, denomination of bills unknown, contained in said registered package envelope last above mentioned inclosed in said package envelope.
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> 1 registered package envelope bearing the P. O. No. 36, and registered letter No. 391, and 34 pesos in Conant paper bills, denomination of bills unknown, inclosed in said envelope.

1 registered package envelope bearing the P. O. No. 35, and registered letters Nos. 64 and 66, contained in said package envelope—

the registered package envelopes being the property of the Unted States Government of the Philippine Islands, and the other articles above named being the property of various parties whose names are unknown, then and there in the possession, care, and custody of the said George E. Shannahan as custodian for the United States Government of the Philippine Islands; that the acts aforesaid were committed by the said defendants, Joseph J. Capurro and Paul A. Weems, on a moving train, and the said defendant, Joseph J, Capurro, did then and there attack and enter a moving train then and there on the Manila and Dagupan Railway within the limits of the city of Manila, and did then and there, in the execution of said acts, enter the passenger coinpartment of said car, and did then and there surprise the said George E. Shannahan, who was a passenger and postal clerk in the service of the United States on said train and within a car of said train, and did then and there severely and purposely beat, wound, and gravely mutilate with a dangerous and deadly weapon, to wit, a heavy bottle filled with water and a heavy club, the body of the said George E. Shannahan in a manner manifestly unnecessary for the execution of the acts of robbery above set forth;

"That the said acts above set forth were all executed by and were the acts of the defendant, Joseph J. Capurro, and the said Paul A. Weenis was not present and did not participate directly in the execution of the acts above set forth, but the said Paul A. Weeins did then and there willfully and unlawfully and feloniously conspire with and induce the said Joseph J. Capurro to execute the acts aforesaid, and did then and there cooperate with and assist the said Joseph J. Capurro in the execution of the said acts aforesaid by them and there providing a horse and carromata in which the said Joseph J. Capurro could and did escape and could carry away the objects above named and described, and the said Paul A. Weems was then and there watching near by with a horse and carromata for the purpose of assisting the said defendant, Joseph J. Capurro, as aforesaid, and did then and there, by means of said horse and carromata, assist him to escape after he had committed the acts aforesaid and change his blood-stained garments and to elude, evade, and prevent discovery, capture, and arrest."

At the conclusion of the trial of the defendant and appellant upon this complaint, the court found that the defendant was not guilty of the crime of robbery as charged in said complaint, but ordered him to be detained until the prosecuting attorney of the city of Manila could present a complaint against him. The court in that trial found that the defendant had assaulted the said George E. Shannahan, who was a public official, in the performance of his duties, and said that this was "an act which should not go unpunished."

One of the paragraphs of section 5 of an act of Congress temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes, dated July 1, 1902, provides, among other things, that:

"No person for the same offense shall be twice put in jeopardy of punishment," etc. This provision corresponds to one of the provisions of the Bill of Rights contained in the Constitution of the United States, as well as the provisions of the bill of rights of the constitutions of the various States of the United States, and has been interpreted many times by the Supreme Court of the United States, as well as by the supreme court of nearly every State of the Union.

The provision is that a person shall not be tried twice for the same offense. A comparison of the complaint filed in this case with that filed in case No. 1752 will show that in the present case the defendant was tried for the crime of "a criminal attempt against an agent of the authorities," and that the complaint presented in case No. 1752 was for the crime of "robbery." These facts would seem to constitute a complete answer to the argument of the defendant and appellant that he had been placed upon trial twice for the same offense. The defendant and appellant, however, argues that notwithstanding the fact that the offense described in each of the two complaints was a different offense, yet the facts set out in the body of the respective complaints described the same offense.

The defendant cites many authorities to support his contention, among the most important of which is the case of *In re* Hans Neilsen (131 U. S., 176). In this case two indictments were found against the defendant. The first charged that on the 15th of October, 1885, and continuously from that time until the 13th of May, 1888, he did unlawfully claim, live, and cohabit with more than one woman as his wife, to wit, Anna Lavinia Neilsen and Caroline Neilsen.

The second indictment charged that the defendant, on the 14th day of May, 1888, did unlawfully and feloniously coiniiiit adultery with one Caroline Neilsen, he being a married

man, etc.

To the first, indictment the defendant plead guilty and wns sentenced on the 19th of November, 1888, to be imprisoned for three months and to pay a fine of f 100 and the costs. “When the defendant was arraigned on the second indictment he plead not guilty and further plead that lie had already been convicted of the offense charged in this second indictment. The’ defendant was not placed upon trial on the second indictment until after he had suffered the penalty imposed by the sentence under the first indictment. At the time of trial on the second indictment he presented a more formal plea of autrefois acquit and claimed that the unlawful cohabitation of which he had been convicted, though formally made only for the period from October 15, 1885, to the 13th of May, 1888, *yet in law covered the entire period from October, 1885 to the time of the finding of the indictment September 21, 1888*, and thus embraced the time within which the crime of adultery was charged to have been committed; and further averred that the said Caroline Neilsen was the same person with whom he was now charged to have committed adultery; that the unlawful cohabitation charged in the first indictment continued without intermission until the day of the finding of the second indictment, and that the offense charged in both indictments was one and the same offense and not divisible and that he had suffered the full penalty prescribed by law.

It will be noted that these two indictments were for different offenses, the first for unlawful cohabitation, covering a definite period, and the second for the crime of adultery alleged to have been committed the day following the end of the period covered by the unlawful cohabitation.

Justice Bradley, in commenting upon the identity of the offenses charged, said:

> “It was not necessary to prove sexual intercourse in order to make out a case of unlawful cohabitation, but this was only because proof of sexual intercourse would have been merely cumulative evidence of the fact. Living together as man and wife is what we decided was meant by unlawful cohabitation under the statute. *Of course, that includes sexual intercourse. And this ican the integral part of the adultery charged in the second indictment*, and was covered by and included in the first indictment and conviction. The case was the same as if the first indictment had in terms laid the unlawful cohabitation for the whole period preceding the finding of the indictment. The conviction on that indictment was in

> law a conviction of a crime which was continuous, extending over the whole period, including the time when the adultery was alleged to have been committed. The petitioner's sentence, and the punishment he underwent on the first indictment, *was for that entire, continuous crime*. It *included the adultery charged*. To convict and punish him for that also was a second conviction and punishment for the same offense."

The same judge adds, however, a statement which suggests a very important question, the following:

> *"Whether an acquittal would have had the same effect to bar the second indictment is a different question on which we empress no opinion."*

It will be noted that the defendant in this case was acquitted on the first complaint. And he continues:

> "We are satisfied that a conviction was a good bar and that the court was wrong in overruling the plea of *autrefois acquit*. We think so because the material part of the adultery charged was comprised within the unlawful co-habitation of Avhich the petitioner was already convicted and for which he had suffered punishment."

It will be noted from an examination of the language used by the court that the court intended to hold and did hold that the crime of illegal cohabitation included the crime of adultery covering a period up to the time of the finding of the indictment, which was many months after the time of the commission of the alleged crime. The Supreme Court of the United States in this case held that in this particular instance the adultery Mras an *instance simply of the illegal cohabitation.*

The other cases cited and relied upon by the defendant and appellant all go to establish the doctrine that where one crime is included in and forms a necessary part of another and is but a different degree of the same offense, that a prosecution of one bars the otjier if a conviction of the other might have been had in the same prosecution. This is a universal doctrine and is not disputed by any of the authorities. There are many cases, however,

which show that the same acts constitute two or more different offenses. This rule is nowhere better stated than in the case from which we have been quoting above.

> "A single act may be an offense against two statutes and if each statute requires proof of an additional fact which the other does not, an acquittal or conviction under either statute does not exempt the defendant from prosecution and conviction under the other."

Many cases have gone even farther than this doctrine would seem to go and have held that the same act may result in two different crimes. For example, A, by means of a gun, kills two persons with the same shot. Would it be contended that the prosecution and conviction for the killing of one person would be a bar to a prosecution for the killing of the other? (See the case of the People vs. Majors, 65 CaL, 138.)

In this case the defendant, with others, in an attempt to rob a certain house, killed two persons. He was indicted, tried, and convicted for the murder of one of these persons and subsequently he was indicted and placed on trial for the killing of the other. To the second indictment he pleaded the defense of *autrefois acquit* This plea was overruled and the defendant convicted of the crime of murdering the second person. From this decision he appealed to the Supreme Oourt where the decision was affirmed.

In this case the court at page 146 said:

> "We have attempted to show that the better rule, and that established by the great weight of respectable authority, is that the murder of two persons, even by the same act, constitutes two offenses, for each of which a separate prosecution will lie and that the conviction or acquittal in one case does not bar a prosecution in the other."

It must be admitted that under these facts the indictments must be the same, only differing in the names of the persons injured, and the evidence must necessarily be the same; therefore we must conclude that the offenses are not necessarily the same when the indictment and evidence are practically identical.

In tie case of Teat vs. The State (53 Miss., 439) the court, in discussing this same question,

at page 456, said:

> "It is believed that no well-considered case can be found where the putting in jeopardy for one act was held to bar another separate and distinct one merely because they were so closely connected in point of time that it was impossible to separate the evidence relating to them."

In the case of Freeland vs. The People (16 111., 380) it was held that it was no bar to prosecution for a riot that one of the accused had been tried, convicted, and fined for an assault and battery arising out of the same transaction or offense occurring at the same time. (See also Severin ps. The People, 37 I11., 414.)

In the case of Commonwealth vs. Roby (12 Pickering, 496) the court said at page 496 in passing upon the plea of *autrefois acquit*:

> "Unless the first of two indictments was such that the prisoner might have been convicted upon proof of facts contained in the second, an acquittal or conviction on the first can be no bar to the second."

In the case of Burns and Carey vs. The People (1 Parker Criminal Cases, 182) the supreme court of New York lays down the test of identity of offenses as follows:

> "To constitute a bar, the offenses charged in both indictments must be identically the same in law as well as in fact."

To ,the same effect see People vs. Saunders (4 Parker Criminal Cases, 196); Regina vs. Morris (10 Cox Criminal Cases, 480); The People vs. Alibez (49 Cal., 452).

Cases *ad libitum* might be added to the foregoing for the purpose of establishing the rule as to the identity of offenses which constitute a bar to prosecution of another, but we think that sufficient have been cited to show what is the weight of authority upon this question.

With reference to the identity of offenses in this particular case, the first complaint charges the defendant with the crime of robbery simply, in violation of one of the provisions of the

Penal Code. The second complaint charges the defendant with the crime of a criminal attempt against an agent of the authorities, under another provision of the Penal Code. It is true that an examination of the first complaint shows that the defendant, in his attempt to commit the alleged crime of robbery, did some things wliich are alleged to have been done by him in the commission of the second offense. These acts were mere incidents in the efforts of the defendant to consummate the two crimes, punishable under different statutes of the Penal Code. AVe see no difficulty, even under the doctrine laid down in the case of *In re* Neilsen, in holding that the plea of auirvfoiti acquit interposed by the defendant to the second complaint should be overruled for the reason that, admitting the acts to be the same, the alleged crime of the second complaint was an offense against a different statute and therefore a different offense. The lower court, therefore, committed no error in denying the plea interposed by the defendant in this case of *autrefois acquit*.

With reference to the third assignment of error presented by the defendant and appellant, that the Court of First Instance of the city of Manila was without jurisdiction to try the defendant for the alleged offense, the complaint alleges and the proof sustains the allegation that the offense was committed within the jurisdiction of the city of Manila, over which the Court of First Instance of the said city has jurisdiction. No one knew better than the defendant just whore the alleged crime was committed, and upon this question he offered no proof whatever, and we believe from the evidence and the allegations in the complaint the lower court was justified in finding as a fact that the crime was committed within the limits of the city of Manila and within the jurisdiction of the court.

Our conclusion is, therefore, that the defendant should he punished in accordance with article 250 in its relation to article 251 of the Penal Code and that the penalty to be imposed is that of *prision correccional* in its minimum to its medium degree and a line from 375 to 3,750 pesetas.

The said crime was committed at nighttime, and we are of the opinion that the defendant selected this time in order that he might the more effectually commit said crime. Considering nocturnity, therefore, as an aggravating circumstance, the maximum of the penalty proyided by law must be imposed. The maximum penalty is three years to four years and two months, *prision correccional*.

It is the judgment of the court that the defendant should be imprisoned for a period of three years and six months and pay a fine of 2,500 pesetas and the costs. If the defendant has been in prison during the pendency of this action, he is entitled to have one-half of the time

of such imprisonment deducted from the said period of three years and six months imposed by this court, in accordance with article 93 of the provisional laws applicable to the Penal Code.

With the foregoing modification, the judgment of the lower court is hereby affirmed. After the expiration of ten days let judgment be entered in accordance herewith and ten days thereafter the case bo returned to the lower court for execution. So ordered.

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

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[1] 3 Phil. Rep., 140.

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