

44 Phil. 910

[G. R. No. 18853. August 22, 1922]

**THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS.
EXEQUIEL ALIPIT AND VICTORIO D. ALEMUS DEFENDANTS AND APPELLANTS.**

D E C I S I O N

ROMUALDEZ, J.:

The information herein is as follows:

“That on or about the 30th of May, 1920, in the municipality of Cabuyao, Province of Laguna, Philippine Islands, the defendants Exequiel Alipit and Victorio D. Alemus, being the municipal president and the chief of police respectively of the said municipality of Cabuyao, did willfully, unlawfully, maliciously and acting under a previous agreement and conspiracy entered into between themselves and assisting and cooperating with each other, after the accused Exequiel Alipit had fired his revolver in the air, enter the session room of the municipal building of Cabuyao wherein the municipal council of Cabuyao was holding a meeting presided over by the vice-president, Manuel Basa, and once in said room, the aforesaid accused Exequiel Alipit and Victorino D. Alemus, abusing their authority as municipal president and chief of police respectively, the former with a revolver in his hand, and both using violence and intimidation not only upon the person of said vice-president Manuel Basa, but also upon those of the councilors present at the aforesaid meeting, and without any justifiable motive or legal authority and by means of force, arrested said vice-president Manuel Basa and compelled him to submit himself to the arrest against the latter’s will and over his protest and that of each and everyone of the councilors and took him to the jail of the municipal building of Cabuyao, the accused Victorino D. Alemus taking at the same time possession of all the papers concerning the meeting that was being held by the municipal council of Cabuyao,

by which acts the defendants succeeded in interrupting and dissolving the aforesaid meeting.”

After the usual proceedings, the trial court found the defendants guilty of coercion through illegal detention and sentenced them, under article 497, in connection with article 89, of the Penal Code, to five months of arresto mayor and fine of P1,500 pesetas, with subsidiary imprisonment in case of insolvency, the accessory penalties and costs. From this judgment the defendants appealed, assigning eleven errors which raise these points, to wit, the illegality of that meeting of the municipal council; the fact of the vice-president presiding over it; the finding of the trial court that the act committed by the accused constitutes coercion; and the conviction of the accused Victorino D. Alemus, who, according to the defense, acted by virtue of an obedience due another; and from this defendants conclude that the appellants should have been acquitted.

The Attorney-General asks for the affirmance of the judgment.

From the record the following antecedents appear:

The accused Exequiel Alipit had been elected municipal president of Cabuyao, Laguna. Agustin Dedicatoria and others petitioned the Executive Bureau not to confirm said election, because said president-elect was a minor. The matter was referred by the Executive Bureau to the provincial board of Laguna for investigation. The provincial board in turn transmitted the papers to the municipal council of Cabuyao, which proceeded to make an investigation, three meetings having been held for the purpose, which were presided over the president Alipit, who left the chair to vice-president Manuel Basa as soon as the aforesaid investigation came up for discussion.

On the 30th of May, 1920, the municipal council held an extraordinary meeting which was presided over by vice-president Basa because the hour fixed had come without the president being present. While the meeting was being held, the accused Victorio Alemus, then the chief of police of that municipality, entered the room, saying that he had an order from the president to arrest vice-president Basa. Basa answered that he had not committed any crime. Dominador Delfino, one of the councilors present, succeeded in persuading the chief of police to wait until the meeting was over. A few minutes thereafter president Alipit arrived at the municipal building and after taking one of the revolvers in the police office, fired a shot in the air, entered immediately the room where the meeting was being held and said in a loud voice to the chief of police who was there : “Arrest him, arrest him,” pointing

out the vice-president. The chief of police obeyed the order, holding the vice-president by the arm and taking him to the jail, president Alipit following them with the revolver in his hand.

Shortly afterwards, councilor Delfino asked president Alipit if they could continue the meeting to the end, to which Alipit answered: "Whoever dare continue holding the meeting will be arrested." The councilors then dispersed, leaving the premises. Alipit ordered the taking of the books and documents used in the meeting and went to Calamba where he asked and obtained from the Constabulary three armed soldiers to protect him against any possible attack from vice-president Basa. By his order, the three soldiers watched vice-president Basa and held him incommunicated in the jail until about two o'clock in the evening, when he was released by the provincial governor who had come there.

One of the points whereupon great stress is laid by the appellants is that that meeting of May 30, 1920, was unlawful. The evidence shows that that special meeting of the council was called at the instance of two councilors and that notices had been prepared for all the members of the council, although those addressed to the municipal president and some councilors were not delivered to the addresses.

There were five councilors present at the meeting in question, who constituted a quorum, with vice-president Manuel Basa as chairman. The record shows that the president, as well as the other councilors, was absent from the municipality when an attempt was made to deliver to them the notice of that meeting, the notices to the councilors who were in Manila having been placed in the hands of Agustin Dedicatoria who was coming to Manila. In American jurisprudence it is a doctrine frequently followed that where the members of a council are absent from the municipality, the necessity of notice is dispensed with. (*Russell vs. Wellington*, 157 Mass., 100; *Lord vs. City of Anoka*, 36 Minn., 176.)

But it must be noted that the question here is not concerned with the legality of any resolution adopted by the council at that special meeting. The question is whether or not that meeting of the council in which there was a quorum and which was presided by the vice-president on account of the absence or inability of the municipal president (or of both causes) was a meeting the disturbance and interruption of which should be punished. This is, in our opinion, the point at issue in this case.

The legality of that meeting is attacked on the ground of lack of notice to some members of the council. Nobody has the right to dissolve, through violence, the meeting of a council

under the pretext of the existence of such a legal defect which was not apparent, but required an investigation before it could be determined. Any stranger, even if he be the municipal president himself or the chief of the municipal police, must respect the meeting of the municipal council which for the time being, at least, raises the presumption that no defect exists to render it illegal. The meeting of the municipal council was entitled to this respect on the part of the defendants and the aforesaid presumption was effective as to them. Let it not be said that the presumption of legality did not operate as to the accused Exequiel Alipit for the reason that he did in fact receive no notice of said meeting. The law (sec. 2220 Administrative Code) does not require personal service of the notice; it is sufficient if the same be left in the domicile of the member of the council. Besides said president Alipit was personally interested in the matter to be transacted in the meeting, and so the notice sent to him was, according to the witness, Dominador Delfino, as if it were to a party respondent. Said accused Alipit could not take part in the determination of the matter as a member of the council.

“It is universally recognized that it is improper and illegal for a member of a municipal council to vote upon any question brought before the council in which he is personally interested. * * * When the council is acting in a quasi judicial capacity, for a member to pass upon a question in which he is interested renders the judgment void, even if his vote was not necessary to a decision. Thus the action of the common council of a city in determining an election contest according to the weight of conflicting evidence is judicial in its nature, and a contestant is disqualified to sit as a member of the council in the determination of the contest. His participation makes the proceedings invalid even if the decision reached did not depend upon his vote.” (19 R. C. L., 897 and cases cited.)

We find no valid excuse, exempting the defendants from the criminal responsibility arising from the acts committed by them. With regard to the accused Victorio Alemus, it is no valid justification for him to have acted by virtue of an order received from his coaccused, because said order was unlawful.

We find no error in the judgment appealed from, except as regards the determination of the crime and the imposition of the penalty.

The information charges the accused with the crime of coercion and the trial court found

them guilty of arbitrary detention as a means to commit coercion. We are of the opinion that the law violated by the accused is Act No. 1755, which in its section 1, says:

“Any person who willfully or by force or fraud prevents or attempts to prevent the meeting of the Philippine Commission or the organizing or meeting of the Philippine Assembly or any Insular legislative body of the Philippine Islands hereafter established, or any provincial board or municipal or township council, while in session, or who is guilty of any disorderly conduct in the immediate view or presence of any such body tending to interrupt the proceedings of such body or to impair the respect due to its authority, shall be punished by a fine of not more than two thousand pesos or by imprisonment for not more than five years, or by both, in the discretion of the court.”

And in view of the allegations contained in the information herein, the accused of may, and must, be convicted of a violation of said section 1 of this Act and punished accordingly.

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Regard being had of the gravity of the act committed, as well as the respective condition and position of the accused, Exequiel Alipit is hereby sentenced to three years' imprisonment and Victorio Alemus to one year's imprisonment, with the costs against them. The judgment appealed from being thus modified, the defendants are found guilty of a violation of section 1 of Act No. 1755 and punishable with the penalty thereby provided. So ordered.

Araullo, C. J., Johnson, Street, Malcolm. Avaceña, Villamor, Ostrand, and Johns, JJ., concur.