

[G.R. No. 19850. March 24, 1923]

**THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS.
ROMUALDO MIJARES, DEFENDANT AND APPELLANT.**

D E C I S I O N

STREET, J.:

This appeal has been brought to reverse a judgment of the Court of First Instance of the Province of Albay, finding the appellant, Romualdo Mijares, guilty of the offense of resistance and serious disobedience to an agent of authority, under article 252 of the Penal Code, and sentencing him to undergo imprisonment for two months and one day, *arresto mayor*, to pay a fine of six hundred twenty-five *pesetas*, and to pay the costs.

It appears in evidence that on June 4, 1921, Avelino Crisol, a traffic inspector of the Bureau of Public Works, under the supervision of the district engineer of the Province of Albay, went to the municipality of Virac, on the Island of Catanduanes, in the Province of Albay, with instructions there to examine an apprentice, one Julian Nuñez, then in the service of Marta Solano, with a view to ascertaining whether he was qualified to be licensed as chauffeur. Upon presenting himself at the house of Marta Solano, Crisol was met, when about half way up the steps, by the accused, Romualdo Mijares, to whom Crisol made known his errand, at the same time producing and exhibiting to Mijares a letter from the office of the district engineer instructing Crisol to examine the apprentice mentioned. Upon this Mijares asked Crisol what was in the letter, and the latter proceeded to make known its contents by reading it to the accused. However, before Crisol had finished reading, or interpreting the letter, Mijares struck him a blow in the face and in the breast, and as a result Crisol rolled down the steps. As he arose to gather his scattered papers Mijares again struck him repeatedly on the face and body, and Crisol was compelled to

flee, being pursued by the accused, who continued to deliver other blows upon the body and back of Crisol until they got into the street, when Mijares desisted.

The bruises inflicted upon Crisol in the course of this assault were numerous, though not serious, and their effects were manifested in pain and swelling which lasted for about four days, without requiring medical assistance or discapacitating Crisol for the performance of his usual labors.

The explanation of the incident appears to be found in the fact that Mijares supposed Crisol to be responsible for unfavorable reports to the district engineer with respect to Mijares as chauffeur and manager for Marta Solano, and he is reported to have made threats prior to this occasion against Crisol to one Fidel Macuja, an employee of the Bureau of Public Works¹, acting under Crisors directions. The testimony of witnesses for the prosecution also shows that immediately before the assault was made Mijares accused Crisol of being the tale-bearer who was carrying reports to the engineer.

Upon the proof submitted to the trial judge, and now before us upon appeal, we have no hesitancy in holding that titie accused is guilty of committing an assault upon the person of Avelino Crisol substantially in the manner above stated, and the offense was clearly lacking of any provocation whatever on the part of the person assaulted. The trial judge therefore committed no error in finding the accused guilty of an offense of some sort in inflicting physical injuries upon said Crisol; but in respect to the real character of the offense in question and the penalty merited by the accused, there is abundant room for discussion and possible difference of opinion.

The trial judge, as we have seen, found the accused guilty of resistance and serious disobedience to an agent of a person in authority, under article 252 of the Penal Code. The Attorney-General, however, recommends' that the accused be sentenced for the offense of assault upon a public officer, under article 251 of the Penal Code, in relation with the final paragraph of article 250.

In order to resolve the question thus presented it is necessary to determine the character in which Avelino Crisol was acting at the time this assault was committed; and upon this we are of the opinion that he was¹ undeniably a public

officer (*funcionario publico*) within the meaning of article 251 of the Penal Code. In this connection it will be noted that he had been formally appointed by the district engineer of Albay to discharge the duties of inspector in the Bureau of Public Works. The duties involved in the office of inspector are not of a clerical or manual nature, and their proper performance involves discretion in the exercise of the functions of Government, He was therefore a public officer under the definition contained in section 2 of the Administrative Code, and the same must hold good as regards the application of the penal laws.

So much having been determined, it will be at once seen that article 251 of the Penal Code is applicable; and it is unnecessary for us further to consider whether the person assaulted might also be considered to have been an agent of authority, since the provision in question imposes the same penalty for assault on the public officer that it imposes for assault upon an agent of authority.

In connection with article 251 of the Penal Code, we note the fact that the text of said article is erroneously printed in the Spanish edition of the Penal Code for the Philippine Islands commonly used by students and practitioners in this country, that is to say, the small annotated edition published by Gongora, in Madrid, 1896. The error consists of the omission of certain words, possibly a full line, after the expression "para el objeto señalado" and the change of the expression "hubieren" into "de haber." The result of this mistake in the text is to change the sense of the article materially, and the English translation in common use is evidently based upon this garbled Spanish version. The true text of said article, reproduced from an authentic edition, is as follows:

"ART. 251. The maximum degree of the penalty prescribed in the last paragraph of the preceding article shall be imposed upon those who shall have employed the force or the intimidation mentioned in No. 1 of article 249 for the object indicated in No. 1 of article 229 or who shall have placed hands upon persons coming to the assistance of authority or upon its agents or upon public officers."

As the article stands in the incorrect version and in the English translation, it would appear that the offense defined in article 251 is not committed unless the assault is made upon the occasion of a public rising of a rebellious or seditious nature. As the article stands in the official edition the offense contemplated may be either of that nature or may consist of the laying of violent hands upon persons coming to the assistance of authority, or upon its agents, or upon public officers. It results that when violent hands are laid upon a public officer, it is immaterial whether the offense was committed upon the occasion of a public uprising or not.

What has been said furnishes an explanation of the decision in *United States vs. Capurro and Weems* (7 Phil., 24), which must have been decided by this court with the correct text of the article in question before it; and without this explanation said decision would appear to be erroneous, since article 251 was there applied to the case of an assault upon a public officer which was wholly unconnected with the purposes of rebellion or sedition.

His Honor, the trial judge, was of the opinion that Avelino Crisol could be treated as an agent of authority and that the offense committed might be qualified as resistance and serious disobedience, under article 252 of the Penal Code, applying the criterion indicated in the case of *United States vs. Tabiana and Canillas* (37 Phil., 515). In the present case, however, the offense was one of positive aggression throughout, and it cannot be considered to have been a case of mere resistance or disobedience to official authority. The accused was not the person against whom the authority of Avelino Crisol was directed, and his intervention upon the occasion stated, for the purpose of assaulting and beating up the injured party, was an act dictated by his own malice and exhibits none of the aspects of mere resistance and disobedience. For this reason it is impossible to apply article 252 of the Penal Code to the offense in question.

In the light of what has been said, it is evident that the judgment appealed from must be modified; and the accused will be sentenced to undergo imprisonment for three years, four months and eight days, *prision correccional*, to pay a fine of two thousand six hundred twenty-six *pesetas*, with subsidiary imprisonment in case of insolvency, and to pay the costs. So ordered.

Araullo, C.J., Avanceña, Ostrand, and Romualdez, JJ.,
concur.

DISSENTING

MALCOLM, J., with whom concurs **JOHNS,**

J.:

We cannot find guilty an accused person, who thrust out of his home a traffic inspector of the Bureau of Public Works and gave the latter a beating on account of the inspector having entered the house without knocking and of having looked upon the wife of the accused in an insulting manner as she was resting, and cannot see this accused undergo imprisonment for more than three years on account of having done what any man would have done under similar circumstances, without registering our disapproval. There are a number of things which might be said of the case, but for the sake of brevity, we confine ourselves to the most important points.

The majority presumably accept in its entirety the evidence for the prosecution because no mention is made of the evidence for the defense. We, however, see nothing unreasonable in the statement of the witnesses for the defense, and believe that these witnesses were telling the truth. On the supposition, however, that the defendant has done everything which the court attributes to him, yet there are other considerations which should be emphasized.

The court seizes upon a revised version of article 251 of the Spanish Penal Code to convict the defendant. In doing so, the court is straining the meaning of the term "public officer" considerably when it makes it include a *capataz*, temporarily designated as motor vehicle traffic inspector. In this connection, it is to be noted that the Legislature has gone to the trouble to enact a number of special laws relating to assaults, resistance, disobedience, and contempt of officials in different branches of the Philippine Government, but it has not done so for officers and employees of the Bureau of

Public Works.

It is further to be noted that article 251 refers back to the first paragraph of article 249, which relates to public uprisings for the attainment of any of the purposes enumerated in the definition of the crimes of rebellion and sedition, and to paragraph 1 of article 229, which defines the crime of rebellion as committed by any person or persons who shall rise publicly and in open hostility to the Government for any of the following purposes, as for example, to dethrone the King, or to use and exercise the constitutional powers of the Ministers of the Crown. A mere statement of the law conveys to any discerning mind its own comment.

The penalty imposed by the trial judge was imprisonment for two months and one day, and the payment of a fine. The penalty suggested by the Attorney-General is fifteen days' imprisonment. The penalty imposed by this Court is three years, four months and eight days' imprisonment and the payment of a fine. With reference to this latter penalty, it is pertinent to say that when the case was first considered *in banc*, because of a faulty translation of article 251 of the Penal Code, it was decided that the facts merely constituted a misdemeanor, meriting fifteen days' imprisonment. As the court now finds article 251 applicable, it means that fifteen days of the penalty are imposed for the assault and the remaining three years, three months, and some days for *lese majeste*.

The writer has stated so often his opinion that all of the provisions of the Spanish Penal Code relating, as in this case, to such subjects as rebellion and sedition, are no longer effective on account of the change from a monarchical to a democratic form of government, that it is useless to add anything thereto. At least, fifteen days' imprisonment would prove to be ample punishment for the accused.

