

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. THE COURT OF FIRST INSTANCE OF QUEZON, BRANCH V, ERNESTO BUSTO, PAULO CORALDE, DONY GRANDE, AND JOSE ASTEJADA, RESPONDENTS.

G.R. No. L-41045. November 28, 1975

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The petition filed by the provincial fiscal of Quezon on behalf of the People seeks a review on certiorari of the "decision" of respondent court dated June 17, 1975, acquitting private respondents as accused in the information filed against them for direct assault upon an agent of a person in authority "not for any other reason than the fact that the information under which they are being tried charges no offense at all."

Honorable Filemon O. Juntereal (now deceased) then presiding judge of respondent court, after summarizing in his "decision" the testimonies of the prosecution and defense witnesses expressly held in his "decision" that.

"This case need not be decided on the merits of the respective contentions of the prosecution and the defense. No attempt will be made on this point.

"Of importance in this case is the lack of allegation in the complaint or in the information that the offended party was an agent of a person in authority and that such fact was known to the accused. The absence of such allegation is fatal in this case."

and issued his verdict above quoted that the information charges no offense at all.

The trial judge correctly cited *People vs. Austria*, 94 Phil. 900, in support of his action, but failed to follow the correct procedure indicated therein of simply dismissing the information for failure to charge an offense, so that the fiscal could properly file a valid information charging the offense.

Private respondents failed to comment on the petition despite their counsel having requested an extension of time to do so, which expired on September 18, 1975.

The Solicitor General in his comment of November 4, 1975 duly observed that "(I)t is patent that the acquittal of the accused herein is not on the merits. There is want of factual finding upon which their conviction or acquittal could have been based."

It need only be observed that contrary to the fiscal's contention, the information was deficient in that it did not allege an essential element of the crime of direct assault that the accused had knowledge of or knew the position of authority held by the person attacked, viz. that of a barrio councilman (and hence the agent of a person in authority under Article 152 of the Revised Penal Code as amended by Republic Act No. 1978).[1]

What was held in *People vs. Balbar*, 21 SCRA, 1119, 1123, cited by the fiscal is that it is sufficient that the information alleged that the accused knew the position of authority, held by the offended party, in that case a public school teacher, then engaged in the performance of her official duties, and that it is not necessary to allege

further that the accused also knew that such position was that of a person in authority, since "this is a matter of law" thus:

"Complainant was a teacher. The information sufficiently alleges that the accused knew that fact, since she was in her classroom and engaged in the performance of her duties. He therefore knew that she was a person in authority, as she was so by specific provision of law. It matters not that such knowledge on his part is not expressly alleged, complainant's status as a person in authority being a matter of law and not of fact, ignorance whereof could not excuse non-compliance on his part (Article 3, Civil Code). This article applies to all kinds of domestic laws, whether civil or penal (De Luna vs. Linatoc, 74 Phil. 15 and whether substantive or remedial (Zulueta vs. Zulueta, 1 Phil. 254) for reasons of expediency, policy and necessity." (emphasis furnished)

Since the "decision" of acquittal was really a mere dismissal of the information for failure to charge an offense and was not a decision on the merits with factual findings as per the trial judge's own disavowal, it is patent that the fiscal's proper course is not the present petition but the refiling of a valid information against respondents-accused, as herein indicated.

ACCORDINGLY, the petition is dismissed, without prejudice to the refiling of a valid information against respondents-accused as hereinabove indicated.

Castro, (Chairman), Makasiar, Esguerra, Muñoz Palma, and Martin, JJ., concur.

[1] See U.S. vs. Alvear, 35 Phil. 626; People vs. Rellin, 77 Phil. 1038; Vol. II, Padilla's Revised Penal Code 10th Ed., p. 225.

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