

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TEODORO SABIO, DEFENDANT-APPELLANT.

G.R. No. L-23734. April 27, 1967

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

At about six p.m. of April 12, 1963, Teodoro Sabio was squatting with a friend, Irving Jurilla, in the plaza of Central Manapla, Manapla, Negros Occidental. Romeo Bacobo and two others - Ruben Miñosa and Leonardo Garcia - approached them. All of them were close and old friends.

Romeo Bacobo then asked Sabio where he spent the holy week. At the same time, he gave Sabio a "foot-kick greeting", touching Sabio's foot with his own left foot. Sabio thereupon stood up and dealt Romeo Bacobo a fist blow, inflicting upon him a lacerated wound, 3/4 inch long, at the upper lid of the left eye. It took from 11 to 12 days to heal and prevented Romeo Bacobo from working during said period as employee of Victorias Milling Co., Inc.

Sabio was thereafter prosecuted for less serious physical injuries. In the municipal court he was found guilty and sentenced to imprisonment of 5 months and 10 days plus costs. In the Court of First Instance, however, to which he appealed, he was found guilty but with the mitigating circumstance of provocation, so that the penalty imposed was one (1) month and five (5) days of arresto mayor plus indemnity of P100 and costs.

Defendant appealed from this judgment to Us to raise as a pure question of law the sole issue of whether, under the facts as determined below, a fist blow delivered in retaliation to a "foot-kick greeting" is an act of self-defense and/or justifying circumstance entitling the accused to acquittal and relief from all liabilities, civil and criminal.

A primordial requisite for self-defense is unlawful aggression (Art. 11, Rev. Penal Code). And for unlawful aggression to be present, there must be real danger to life or personal safety (People v. Beatriz Yuman, 61 Phil. 786). For this reason, a mere push or a shove, not followed by other acts, has been held insufficient to constitute unlawful aggression (People v. Yuman, supra). A playful kick - the lower court rejected defendant's claim that it was a "vicious kick" - at the foot by way of greeting between friends may be a practical joke, and may even hurt; but it is not a serious or real attack on a person's safety. Appellant's submission that it amounts to unlawful aggression cannot therefore be sustained. As rightly found by the Court of First Instance, such kick was only a mere slight provocation.

Reference is made to a decision of the Supreme Court of Spain (prom. Jan. 20, 1904, 72 Jur. Crim. 123-124), considering a slap on the face an unlawful aggression. No parity lies between said case and the present. Since the face represents a person and his dignity, slapping it is a serious personal attack. It is a physical assault coupled with a willful disregard, nay, a defiance, of an individual's personality. It may therefore be frequently regarded as placing in real danger a person's dignity, rights and safety. A friendly kick delivered on a person's foot obviously falls short of such personal aggression.

WHEREFORE, the judgment appealed from is hereby affirmed in toto. Costs against appellant.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Regala, Makalintal, Zaldivar, Sanchez, and Castro, JJ., concur.

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