

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. FLORO YBOA ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. L-138. September 30, 1946

Ponente: HILADO, J.

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HILADO, J.:

Floro Yboa and Antonio Yboa appeal to this Court from a decision of the Court of First Instance of Samar finding them guilty of the crime of assault upon an agent of a person in authority and sentencing each of them to an indeterminate penalty of from (5) months and (11) days of arresto mayor to (1) year, (8) months and (20) days of prison correccional

to pay a fine in the sum of four hundred pesos (P400.00), with subsidiary imprisonment in case of insolvency, said subsidiary imprisonment in no case to exceed one-third of the principal penalty, and to pay the costs.

The appellants are brothers, Floro being a dentist, and Antonio a driver.

During the first months following the liberation of Samar, the United States Army established in Catbalogan, the capital, its unit known as the Philippine Civil Affairs Unit (PCAU) No. 28, with Captain Myden as supply, relief, and welfare officer. That unit of the United States Army rendered help and assistance to the civil government in a number of matters, principally supplies for civilian relief, health and sanitation, civilian hospitals and medical care, peace and order, reopening of schools, and appointment of temporary officials. However, the said unit did not thereby become in any sense, a branch or agency of the Commonwealth Government nor of that of the province or of the city or town in which it operated—it continued, for obvious reasons, to be a unit of the United States Army. Its officers and employees were not answerable to the Commonwealth Government nor to that of the province, city, or municipality in whose civil affairs it rendered its help and assistance. They naturally continued under the exclusive control and discipline of the Army of which they were but a unit. In contemplation of law, it was the United States Army which was, through its said unit, rendering said help and assistance to the civil government, and, if we were to hold that the officers and personnel, including the civilian employees, of said PCAU No. 28, became functionaries of the civil government while they were rendering the latter said aid and assistance, we would have to hold that the United States Army itself became a part or agency of the civil government on the same account, which is, of course, absurd.

Captain Myden's right-hand man at the PCAU office in Catbalogan during the period referred to in this case was the offended party herein, Jose Claudio, who was employed as cashier in the supply office by virtue of an appointment duly extended to him on January 27, 1945. In that capacity he was authorized by his superiors to enforce PCAU rules and regulations.

In early April, 1945 employees of the PCAU in charge of checking up the distribution of relief detected an anomaly involving the Yboa brothers, Floro and Vicente, who were found to be purchasing rations at two different PCAU stores under one and the same ration card, in violation of PCAU rules and regulations. Before April 28, 1945 when the occurrence giving rise to this case took place, appellant Antonio Yboa was informed by

his wife that Jose" Claudio had been circulating all over the town the talk that Dr. Floro Yboa had committed serious irregularities in the purchase of his PCAU rations. At this, the appellants took offense.

At about 3 o'clock in the afternoon of April 28, 1945 while Jose Claudio was discharging his duties at the supply office of the PCAU in Catbalogan, which was barely 30 yards from the Provincial Capitol, he was told by a fellow employee, named Alejandro Villarin, that Dr. Floro Yboa wanted to see him outside. Villarin transmitted the message to Claudio, but as the latter was busy at the time, he asked Villarin to request Dr. Iboa to wait for a while or to come inside if he so desired. Shortly thereafter, the defendant Antonio Iboa asked Villarin to come out of the PCAU office and there Dr. Yboa reiterated to Villarin his request that Claudio be asked in his name to see him outside. Thereafter, Claudio went out of his office to see Dr. Yboa, who, upon seeing the former, started questioning him saying, "Peping, what is this I heard?" At this moment, the defendant Antonio Yboa appeared from behind his brother and without warning struck Claudio with his fist, as a result of which the latter was stunned and fell to the ground. According to the medical certificate of the Director of the Sasiar Civilian Hospital, who examined and rendered medical assistance to the offended party, the latter suffered a contusion in the interclavicular region which required two days medical attendance.

Before committing the assault the appellant Antonio Iboa had been walking to and fro between the Capitol Building and the supply office of the PCAU for around twenty five minutes, all this time with his knuckles wrapped with a handkerchief "like a boxer before he inserts his hands in the gloves", in the words of the witness Estavillo. This appellant himself admitted in his testimony that, upon being informed by his wife a few days before the incident, that Claudio had been circulating the talk about his brother Floro, he decided to assault Claudio.

The principal question around which hinges the determination of this case is whether Jose Claudio, the offended party, was, under the facts above narrated, an agent of a person in authority. We find no difficulty in holding that he was not, without prejudice to the imposition of the corresponding penalty for the criminal offense committed by the accused, Antonio Yboa, as hereinafter considered.

It has been settled by former decisions of this Court that a "person in authority" referred to by the former Penal Code (whose pertinent provisions have been incorporated in the present Revised Penal Code) is a "functionary of the Civil Government" and that "an officer of the United States is not a person vested with jurisdiction and is not a public officer, who takes part in the performance of duties in the public service of the Philippine Islands" (U. S. vs. Smith, 39 Phil. 533, 537, and cases therein cited). In the same case and on the same page of the cited volume, this Court said:

"We think that the terms 'person in authority' and 'public officer found in the Spanish Penal Code must be given a restricted meaning so as to include only persons who perform some of the functions of the Government of the Philippine Islands."

In the case of *Carrington vs. U. S.*, (1908), 208 U. S. 1, the United States Supreme Court said that "As a soldier he (Carrington) was not an officer of the Philippines, but of the United States."

Captain Myden of the PCAU No. 28 in Catbalogan, Samar, did not cease to be an officer of the United States Army, and therefore of the United States government, because his duties, as head of said unit, comprised the rendering of assistance and help to the liberated areas within the sphere of his activities in civil affairs. He was still rendering that assistance as an officer and a part of the United States Army. Indeed, his unit was a unit of that Army. As already stated above, for the discharge of those duties, Captain Myden was not answerable to either the Commonwealth Government, the provincial government of Samar or the city government of Catbalogan.

If, then, Captain Myden was not a "person in authority", within the meaning of Article 148 of the Revised Penal

Code, his right-hand man, Jose Claudio, could not be an "agent of a person in authority", within the meaning of the same article. This leads inevitably to the conclusion that the offense committed could not be that penalized by the said article.

The evidence falls far short of establishing any guilty participation on the part of appellant Floro Yboa in the offense committed by his brother, Antonio, for which reason the former should be acquitted with one-half of the costs de officio.

As to appellant Antonio Yboa, the evidence establishes beyond a reasonable doubt that he inflicted upon Jose Claudio physical injuries which required medical attendance for two days and which therefore should be classified as slight physical injuries punishable by *arresto menor* under Article 266, paragraph 1, of the Revised Penal Code. We further find from the facts above stated that the commission of the offense was attended by the aggravating circumstances of treachery (*People vs. Capitania*, 49 Phil. 475; *People vs. Pengzon*, 44 Phil. 224) and evident premeditation (*United States vs. Cornejo*, 28 Phil. 457).

Wherefore, reversing the judgment appealed from, we acquit appellant Floro Yboa, with one-half of the costs de officio and convict appellant Antonio Yboa of the crime of slight physical Injuries, sentencing him to suffer 30 days of *arresto menor*, with the corresponding accessory penalty, and to pay one-half of the costs. So ordered.

Paras, Pablo, Perfecto, and Padilla, JJ., concur.

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