

SEVERINO P. JUSTO, PETITIONER, VS. THE COURT OF APPEALS, RESPONDENT.*G.R. No. L-8611. June 28, 1956*

Ponente: REYES, J.B.L., J.

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This is an appeal from the decision of the Court of Appeals affirming the judgment of the Court of First Instance of Ilocos Norte finding petitioner Severino P. Justo guilty of the crime of assault upon a person in authority. The Court of Appeals found the following facts to have been established.

"The offended party Nemesio B. de la Cuesta is a duly appointed district supervisor of the Bureau of Public Schools, with station at Sarrat, Ilocos Norte. Between 9:00 and 10:00 a.m. on October. 16, 1950, he went to the division office in Laoag, Ilocos Norte, in answer to a call from said office, in order to revise the plantilla of his district comprising ,the towns of Sarrat and Piddig. At about 11:25 a.m., De la Cuesta was leaving the office in order to take his meal when he saw the appellant conversing with Severino Caridad, academic supervisor. Appellant requested De la Cuesta to go with him, and Caridad to the office of the latter. They did and in the office of Caridad, the appellant asked about the possibility of accommodating Miss Racela as a teacher in the district of De la Cuesta. Caridad said that there was no vacancy, except that of the position of shop teacher. Upon hearing Caridad' answer, the appellant sharply addressed the complainant thus: "Shet, you are a double crosser. One who cannot keep his promise." The appellant then grabbed a lead paper weight from the table of Caridad and challenged the offended party to go out. The appellant left Caridad's office, followed by De la Cuesta. When they were in front of the table of one Carlos Bueno, a clerk in the division office, De la Cuesta asked the appellant to put down the paper weight but instead the appellant grabbed the neck and collar of the polo shirt of the complainant which was torn. Carlos Bueno separated the protagonists, but not before the complainant had boxed the appellant several times." (Petitioner's Brief, pp. 17-18).

The present appeal is directed against that part of the decision of the Court of Appeals which says:

"* * * 'It is argued by Counsel, however, that when the complainant accepted the challenge to a fight and followed the appellant out of the room of Mr. Caridad, the offended party was no longer performing his duty as a person in authority. There is no merit in this contention. The challenge was the result of the heated discussion between the complainant and the appellant occasioned by the latter's disappointment when he was told that Miss Racela could not be accommodated in the district of the former as there was no more vacancy in said district except that of a shop teacher. Be this as it may, when the appellant grabbed the neck and collar of the shirt of the complainant, which is actually laying hands upon a person in authority, he did so while the latter was engaged in' the performance of his duties as the occasion of such performance, to wit: his failure to accommodate Miss Racela as a teacher in his district as he had supposedly promised the appellant." (Petitioner's Brief, pp. 22-23.)

Petitioner argues:

(1) that when the complainant accepted his challenge to fight outside and followed him out of the room of Mr. Caridad where they had a verbal clash, he (complainant) disrobed himself of the mantle of .authority and

waived the privilege of protection as a person in authority; and

(2). that, the Court of Appeals erred in not holding that there was no unlawful aggression on petitioner's part because there was a mutual agreement to fight.

Neither argument is tenable. The character of person in authority is not assumed or laid off at will, but attaches to a public official until he ceases to be in office. Assuming that the complainant was not actually performing the duties of his office when assaulted, this fact does not bar the existence of the crime of assault upon a person in authority; so long as the impelling motive of the attack is the performance of official duty. This is apparent from the phraseology of Article 148 of our Revised Penal Code, in penalizing attacks upon person in authority "while engaged in the performance of official duties or on occasion of such performance", the words "on occasion" signifying "because" or "by reason" of the past performance of official duty, even if at the very time of the assault no official duty was being discharged (*People vs. Garcia*, 20 Phil., 358; Sent. of the Tribunal Supremo of Spain, 24 November 1874; 26 December 1877; 13 June 1882 and 31 December 1896).

Thus, the Supreme Court of Spain has ruled that:

"No es razon apreciable para dejar de constituir el delito de atentado el que no estuviera el guarda en el termino en que ejercia sus funciones, pues resultado que se ejecuto con ocasion de ellas, esta circunstancias siempre es suficiente, por si sola, para constituir el atentado, sin tener en cuenta el sitio en que haya ocurrido." (Sent. 13 de Junio de 1882) (1 Hidalgo, *Codigo Penal*, 642-643).

No other construction is compatible with the evident purpose of the law that public officials and their agents should be able to discharge their official duties without being haunted by the fear of being assaulted or injured by reason thereof.

The argument that the offended party, De la Cuesta, can not claim to have been unlawfully attacked because he had accepted the accused's challenge to fight, overlooks the circumstance that as found by the Court of Appeals, the challenge was to "go out", i.e., to fight outside the building, it not being logical that the fight should be held inside the office building in the plain view of subordinate employees. Even applying the rules in duelling cases, it is manifest that an aggression ahead of the stipulated time and place for the encounter would be unlawful; to hold otherwise would be to sanction unexpected assaults contrary to all sense of loyalty and fair play. In the present case, assuming that De la Cuesta accepted the challenge of the accused, the facts clearly indicate that he was merely on his way out to fight the accused when the latter violently lay hands upon him. The acceptance of the challenge did not place on the offended party the burden of preparing to meet an assault at any time even before reaching the appointed place for the agreed encounter, and any such aggression was patently illegal. Appellant's position would be plausible if the complaining official had been the one who issued the challenge to fight; but here the reverse precisely happened.

We find no reversible error in the decision appealed from, and the same is hereby affirmed. Costs against appellant.'

Paras, C. J., Bengzon, Padilla, Reyes A., Bautista Angelo, Concepcion, and Endencia, JJ. concur.

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