

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. WENCESLAO DACQUEL, DEFENDANT AND APPELLANT.

G.R. No. L-12400. August 25, 1917

Ponente: CARSON, J.

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CARSON, J.:

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On the evening of July 21, 1915, some of the Roman Catholic inhabitants of the barrio of Sococ in the Province of Ilocos Sur were having a religious procession, praying to San Roque for rain. There were a considerable number of men, women, and children in the procession, among them Simeona Casabar, a girl about 9 years of age. It was a clear night and many of the people carried candles. The accused, Wenceslao Dacquel, who was a teniente (lieutenant) of the barrio, seems to have been angered because the procession was had without his consent or authorization. As the procession passed near a mound of earth at the side of the street, the accused suddenly appeared at the head of the procession and cried, "Halt!" The procession stopped, and the accused demanded to know why the people were holding a procession without his consent. Immediately thereafter he cried "en cuadrilla" (all together), and three men sprang out from the side of the road, and together with the accused began to disperse the people who had taken part in the procession. The accused struck the 9-year old girl, Simeona Casabar, with his cane on the right arm at, or near the elbow. As a result of the blow, the elbow would appear to have been dislocated, and certainly the arm swelled up nearly twice its natural size, so that, although it was treated by the health officer of the municipality, she was unable to use it for more than thirty days.

The foregoing statement of fact is conclusively established by the evidence of record, notwithstanding the attempt of the accused to prove an alibi, which the trial judge very properly rejected as utterly unworthy of credence.

The court below found the accused guilty as charged of the crime of grave physical injuries (lesiones graves), but being of opinion that the "offender had no intention to commit so great a wrong as that committed," took that fact into consideration as an extenuating circumstance (subsection 3, article 9, Penal Code) and imposed upon the convict the penalty of four months and one day of arresto mayor, that is to say, the prescribed penalty in its minimum degree.

The Attorney-General urges that the trial judge erred in the application of this provision of the Code, and suggests that the penalty should have been imposed in its maximum degree in view of the tender age and the sex of the offended person (subsection 20 of article 10, Penal Code). We do not think, however, that, upon the whole record, we would be justified in disturbing the action of the trial judge. The severity of the injury inflicted appears to have resulted from the fact that the stick happened to fall upon the child's elbow, with the result that a blow, which ordinarily would have done no serious mischief, produced results which were neither intended nor anticipated by

the accused. The stick was about the size and weight of an ordinary walking cane, and, doubtless, the accused laid about him in the crowd, in his efforts to make it disperse, without any thought or intention of doing any of the people any serious injury, or of heaping contumely or insult upon the child because of her sex or her tender age.

Our affirmance of the action of the trial judge in taking into consideration the above mentioned extenuating circumstance and imposing the prescribed penalty in its minimum degree must not be understood as condoning or minimizing the manifest illegality of the conduct of the accused in his wholly unauthorized use of physical force to disperse the procession. The conduct of this village tyrant, clothed with the brief authority of his petty office as lieutenant of his barrio, could not well be condemned too severely, even if his officious intermeddling with his neighbors' religious activities had not had as its outcome the infliction of so grave an injury upon the girl who suffered at his hands. But in this proceeding we are limited to a consideration of his criminal conduct in the infliction of the grave physical injuries charged in the information; and he is entitled, in this connection, to have taken into consideration in his favor, any of the mitigating circumstances mentioned in Chapter III of the Penal Code, which appear to have accompanied the commission of the crime, notwithstanding the evidence disclosing the highly reprehensible conduct of which he was guilty in other respects, at the time when the assault was made.

We find no error in the proceedings prejudicial to the substantial rights of the accused, and we conclude, therefore, that the judgment convicting and sentencing the appellant in the court below should be affirmed with the costs of this instance against him. So ordered.

Arellano, C. J., Johnson, Araullo, and Street, JJ., concur.

MALCOLM, J., concurring:

I concur. I only object to the following uncalled for remark in the majority decision:

"The conduct of this village tyrant, clothed with the brief authority of his petty office as lieutenant of his barrio, could not well be condemned too severely, even if his officious intermeddling with his neighbors' religious activities had not had as its outcome the infliction of so grave an injury upon the girl who suffered at his hands."

The municipal council is authorized to regulate the use of the streets. Under this power, in the opinion of a former Governor-General, "The common council may regulate or prohibit the use of the public streets for religious or other processions if, in the judgment of the council, such processions interfere with the proper use of the streets by the general public, but such regulations or prohibition should be made only in good faith with a view to the public interest and not to gratify any personal or political feeling." In the present case, it is not affirmatively shown that such an ordinance existed in the municipality of which the barrio of Sococ, Ilocos Sur, is a part. But the fact that such an ordinance could be enacted should mitigate the verbal chastisement of a peace officer who mistakenly attempts to assume this authority.

Again, a lieutenant of a barrio may only be a "village tyrant clothed with the brief authority of his petty office," but an equally high authority, Justice Carson, in *U. S. vs. Fortaleza* ([1909], 12 Phil. Rep., 472), has the following to say of him:

"To say that 'each of the members of the council shall be put in immediate charge of a barrio or part of barrio, so that each barrio shall be under the direction of one or more councilors' and that each barrio is placed 'under the immediate supervision of a councilor,' would seem necessarily to imply a grant of some degree of control over the conduct of the residents of the barrio by the councilor placed in charge thereof. * * * and keeping 'in mind, first, the imperative necessity for providing for the maintenance of order in each of these barrios, many of which are located at long distances from the centers of population, where the municipal officials reside;

second, the fact that nowhere else in the Act is any provision made for the appointment of peace officers for the various barrios with the necessary authority to maintain order; and, third, the fact that under the municipal system which was superseded by the system provided in this Act, municipal councilors and their lieutenants placed in charge of particular barrios were always recognized as *agentes de la autoridad* and clothed with the necessary authority for the maintenance of order and the protection of life and property; we think that the Commission, in providing for the assignment of one or more councilors in charge of each barrio or part of barrio, so that each barrio shall be under the direction of one or more councilors, must be taken to have entrusted to these councilors and their lieutenants a duty of maintaining order within their respective barrios, substantially similar to that which was imposed upon municipal councilors under the Spanish law existing at the time of the promulgation of the Act, and thus to have conferred upon, or confirmed to them the functions of *agentes de la autoridad* (agents of authority) within their respective barrios, with the necessary authority incident thereto for the maintenance of order and the protection of life and property."

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