

THE PEOPLE OF THE PHILIPPINE, PLAINTIFF AND APPELLANT, VS. ESTEBAN CADABIS, DEFENDANT AND APPELLEE.

G.R. No. L-7713. October 31, 1955

Ponente: BENGZON, J.

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BENGZON, J.:

The fiscal of Ilocos Sur has appealed from the order of the court of first instance of the same province quashing, upon motion of the defendant, an information for violation of the election law alleging:

"That on or about the 10th day of November, 1953, and during the period from 9:30 o'clock in the morning until 11:00 o'clock in the evening of the same day, * * * the above-named accused Esteban Cadabis, being then a policeman of said municipality and by taking advantage of his said public position, carried in the polling place of Precinct No. 15 of the municipality of Santa, Province of Ilocos Sur, and within a radius of thirty meters from said polling place, did then and there, voluntarily, criminally, and maliciously carry a deadly weapon consisting of a carbine, the said day of November 10, 1953, the day of voting and canvassing in relation to the last general elections of 1953".

It is contended for the appellant that the court a quo erred: (a) in holding that the facts charged in the information do not constitute an offense and (b) in finding, prematurely, that Esteban Cadabis had been duly authorized to remain in the polling place.

On the first point, the pertinent section of the Revised Election Code declares that "It is unlawful to carry deadly weapons in the polling place and within a radius of thirty meters thereof, during the days for registration, voting and canvass. However, in cases of affray, tumult or disorder, any peace or public officer authorized to supervise the elections may carry firearms or any other weapons for the purpose of preserving order and enforcing the laws." (Section 53.)

In dismissing the information the trial judge held that the allegations therein did not describe a violation of the above section, because there is no statement denying that accused had been authorized to supervise the elections and/or carried the firearm on the occasion of tumultuous affray or disorder. This, in our opinion, constitutes error. It was not incumbent on the prosecution to make the allegation, because the matter was something for the accused to assert and establish in his defense. The law prohibits the carrying of deadly weapons in the polling place. An exception is made for peace or public officers enforcing the law or preserving peace in the premises. (See *People vs. Ayre*, 61 Phil., 149 and section 132 Revised Election Code.) The exception is for the defendant to prove—not for the prosecution to disprove.

"In a prosecution for violation of a statute which contains an excepting clause, the information, as a general rule, need not allege that the accused falls within the exception, it being a matter of defense which the accused must prove. For instance, in an information for the violation of the Opium Law which provides that "save upon the prescription of a duly licensed and practising physician ... no person shall . . . otherwise take or use any such drug . . .," it is not necessary to allege that the accused falls within the saving clause. That he falls within it is a matter of defense which he must prove." (Moran, *Comments on the Rules of Court*, Vol. II (1952 Ed.), p.

621, citing U. S. vs. Chan Toco, 12 Phil. 262; U. S. vs. Gonzales, 10 Phil., 66; IT. S. vs. Eubio Co-Pinco, 10 Phil., 69; U. S. vs. Yao Sim, 31 Phil. 301.)

In connection with the second assignment of error, it appears that the defendant attached to his motion to quash a copy of a document purporting to be a statement of the members of the board of inspectors of the polling place requesting Cadabis to stay in the premises for the purpose of keeping order and carrying out the board's lawful directives. And at the hearing of such motion the original of the document was exhibited. However, the fiscal objected to the consideration and admission of the document, saying it should be exhibited at the trial, because the prosecution doubted its authenticity, and also because the Government had evidence to show that the document had been prepared only at midnight on Election day.

The court, however, overruled the objection and on the basis of the exhibit, acquitted the accused, applying the exceptions established by law.

Save where the Rules expressly permit the investigation of facts alleged in a motion to quash, the general principle is that in the hearing of such motion only such facts as are alleged in the information, and those admitted by the fiscal,[1] should be taken into account in the resolution thereof. Matters of defense can not be produced during the hearing of such motions, except where the rules expressly permit, such as extinction of criminal liability, prescriptions, and former jeopardy (Sees. 4, 5 and 6, Rule 113.) In fact in so far as the appellee's motion rested on the document allegedly signed by the board, it was not a motion to quash within the scope of the Rules, because it could not be classified among those enumerated by section 2 Rule 113.

It was consequently irregular and improper to permit the accused to submit the motion with the document, over the fiscal's objection based on its genuineness and the time of its execution.

Wherefore, the order dismissing the information will be reversed and the record remanded to the court below for further proceedings. Costs against appellee.

Pards, C. J., Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion, and Reyes, J. B, L., JJ., concur.

[1] People vs. Navarro, et al., 42 Off. Gaz., 497-499.

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