

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. GELASIO TABIANA AND JULIAN CANILLAS, DEFENDANTS AND APPELLANTS.*G.R. No. 11847. February 01, 1918*

Ponente: STREET, J.

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This is an appeal from a decision of the Court of First Instance of the Province of Iloilo convicting the defendants upon the charge of attack upon agents of public authority, in violation of article 249, Penal Code, in connection with the second subsection of article 250, Penal Code. The offense is alleged to have been committed in the municipality of Leon, Iloilo, upon the 23d day of February, 1915.

At the time of the acts giving rise to this prosecution the defendant Gelasio Tabiana was a well-respected citizen of the municipality of Leon, was a member of the municipal council, and had twice served as municipal president. He was also at the time a candidate for reelection to the latter office. The defendant Julian Canillas was also a public officer, occupying the position of justice of the peace of the municipality. The two men were brothers-in-law and occupied the same house. On the morning of the date above-mentioned, a neighbor of Gelasio Tabiana had appeared before Julian Canillas, justice of the peace, and had procured from him a warrant for the arrest of Tabiana and his herdsman upon the charge of a trivial misdemeanor, consisting of an alleged trespass committed upon the complainant's premises by Tabiana's cattle. The defendant Tabiana was subsequently acquitted upon this charge; but the offense which was the subject of prosecution in the present case had its origin in circumstances connected with the arrest under that warrant.

The acts which are the subject of the charge in this case occurred about 8 o'clock p. m. in the tienda of the defendant Tabiana, which is located under the apartments occupied by him and Julian Canillas as a residence. Some reference, however, to things which occurred earlier in the day is necessary.

The warrant for the arrest of Tabiana and his herdsman was placed in the hands of two policemen, Emiliano Callado and Baltazar Cabilitasan, who found the defendant Tabiana about 4 p.m. out in the country. The defendant showed some irritation and instead of coming, in at once told the policemen that he would come in later and report at the municipal building with his herdsman, the other defendant named in the warrant. The policemen consented, subject to the approval of the chief of police, and went away. At 6 p. m., the defendant not having appeared at the municipal building, the policemen were directed by the chief to find him and have him come to the municipal building in obedience to the warrant. The policemen then proceeded to the defendant's house where they found him in the company of friends. When the policemen announced their errand Tabiana showed further resentment over the idea of being arrested but yielded and started to the municipal building with the two policemen. In passing near the market place Tabiana detached himself from the custody of the policemen without their consent and entered the market. The policemen appear to have been considerate and respectful to Tabiana and, instead of following the defendant into the market, they waited about half an hour, at the end of which time they went into the market and found Tabiana with some of his friends. As Callado, one of the policemen, approached the defendant the latter arose and asked for the warrant saying, "Unless you show me the warrant of

arrest I shall not go with you." Callado drew the warrant from his pocket; and as he showed it to the defendant the latter took it, looked at it, and put it into his pocket. After that he said, "Come along" and gave the policeman a push, as did also more than one other of Tabiana's friends.

The party then repaired to the municipal building but as it was getting late, the chief of police and other officials were gone. This had the effect of further angering Tabiana, and the result was that while one of the policemen ran to find the chief of police, Tabiana and his friends left the municipal building, saying that they were going to find the justice of the peace, the idea being to find somebody who could set the defendant at liberty on bail. As the justice of the peace lived with Tabiana, they of course directed themselves towards Tabiana's residence. It may be considered that their departure from the municipal building was effected with the consent of the policemen.

Presently, however, the chief of police arrived at the municipal building, and learning what had taken place, he dispatched the two policemen already mentioned and a third named Leon Cajilig to go after Tabiana and procure the return of the warrant of arrest and to insist that Tabiana should come down at once so that the matter could be finished, or as another witness expressed it, to bring him (meaning Tabiana) to the police station.

When the policemen arrived they found Tabiana in his tienda, with a number of friends on hand. When he was requested to give up the warrant and go to the police station he denied having taken the warrant; and one of Tabiana's friends upstairs called out, "If he has no warrant send him up for a beating." Tabiana then approached the policeman, Callado, and hit him in the breast with his hand or fist, at which instant the policeman seized him by the wrist and resistance ceased. As the policeman started to carry the prisoner away two bystanders interfered and took him away from the policeman. By this time Julian Canillas, the justice of the peace, had arrived on the scene and being evidently excited, he hit Callado on the back, when he too was stopped by another policeman. Meanwhile Tabiana seems to have retired to his apartment, and Julian Canillas directing himself to the policeman said, "Go back to the municipal building and tomorrow you will take those clothes off," referring to the uniforms worn by the policemen. Canillas also appears to have spoken other excited words little comporting with the dignity and duties of his office. The policemen then went away, which may be attributed not only to the command of the justice of the peace but also to the fact that some of Tabiana's friends indicated a determination to fight if the policemen should persist in their purpose of arresting Tabiana. We do not believe that Tabiana should be held responsible for these menaces, nor for anything that occurred after he was taken in hand by the policeman, as his active resistance had then ceased.

At the beginning of this altercation the defendant Tabiana may have entertained the idea that inasmuch as the warrant of arrest had been gotten out of the hands of Callado the authority of the latter to effect the arrest had thereby ended. This of course was a mistake, as Tabiana then had the warrant wrongfully in his own possession, and he cannot be permitted to take advantage of the fact that he was withholding it from the officer charged with its execution.

From the proofs of record we are convinced that everything done by Tabiana upon this occasion is properly referable to the idea of resistance and grave disobedience. We discern in his conduct no such aggression as accompanies the determination to defy the law and its representative at all hazards. Upon the previous occasions of his contact with the policemen on this day, Tabiana yielded, though with bad grace; and it is evident that he would, upon this occasion, have, gone to the police station again if it had not been for the acts of others in rescuing him, and for the intervention of the justice of the peace, who ordered the policemen to desist.

Upon the whole we find the defendant Tabiana guilty of resistance and serious disobedience to public authority under article 252, Penal Code, and not of the more serious offense indicated in subsection 2 of article 249, Penal Code, which was applied by the Court of First Instance. The question whether an offense consists of simple

resistance or of grave resistance is to be determined with a view to the gravity of the act proved and the particular conditions under which committed. In considering this question reference should also be had to the nature and extent of the penalties attached by the authors of the Code to the different offenses. Thus, when it is observed that the offense indicated in article 249 carries with it a penalty ranging from prision correccional to prision mayor in its minimum degree, with corresponding fines, it is obvious that the lawmaker here had in mind serious offenses, characterized in part at least by the spirit of aggression directed against the authorities or their agents. It should be observed that the circumstances mentioned in subsections 1 to 4 of article 250 are not qualifications of the definition contained in article 249 but are aggravating circumstances which are to be used in the application of the penalties. This means that the mere fact that an offense of resistance happens to be characterized by some circumstance mentioned in one of these subsections does not necessarily determine that the offense falls within the definition contained in article 249. It is obvious, for instance, that a Government functionary may commit an offense under article 252 as well as under article 249; and the relative gravity of the offense determines whether it falls under the one article or the other.

The greatest hesitancy which we have felt in applying article 252 instead of article 249 to this case arises from the words "shall employ force against them" (emplearen fuerza contra ellos) contained in article 249. These words, taken without reference to the context, would seem to make absolutely necessary the application of article 249 in every case where any degree of force is exerted. We believe, however, that the words quoted are to be understood as applying to force of a more serious character than that employed in the present instance. We are led to this conclusion not only because of the grave penalty attached, as indicated above, but for the further reason that the Code mentions grave resistance further on in the same paragraph and also makes special provision for the offense of simple resistance in article 252. Now practically and rationally considered in connection with the subject of arrest, resistance is impossible without the employment of some force. A man may abscond or evade or elude arrest, or may disobey the commands of an officer without using force but he cannot resist without using force of some kind or in some degree. If at the ultimate moment no force is employed to resist, there is not resistance but submission ; and if it had been intended that every manifestation of force, however slight, against the authorities and their agents should bring the case under article 249, it was an idle waste of words to make other provisions to cover grave resistance and simple resistance. It therefore seems reasonable to hold that the words in article 249 relating to the employment of force are in some degree limited by the connection in which they are used and are less peremptory than they at first seem. Reasonably interpreted they appear to have reference to something more dangerous to civil society than a simple blow with the hands at the moment a party is taken into custody by a policeman.

As to the defendant Julian Canillas we find that he participated in the offense committed on this occasion, knowing that the defendant Tabiana was liable to arrest under the warrant issued by himself; and he is therefore punishable in the same manner.

The judgment of the court below is therefore modified and each of the defendants is sentenced to two months and one day of arresto mayor, and to pay a fine of "P125, with the accessory penalties and subsidiary imprisonment in case of insolvency, as provided by law, with costs against the appellants. So ordered.

Arellano, C. J., Johnson, Carson, and Fisher, JJ., concur.

Torres, J., did not sit in the case, but is of the opinion that the councilor should be convicted and the justice of the peace acquitted.

DISSENTING OPINION

ARAULLO, J., dissenting:

I do not agree with the foregoing decision. With all due deference to the majority opinion, I believe the defendants should be acquitted.

From the statement of facts made in that decision, as well as from the evidence introduced at the trial, it appears that the defendant, Gelasio Tabiana, tried to avoid being taken by the policemen from the field in which he was at the time and where these officers served him with the warrant of arrest to the town or to the police station of the municipality, and also to avoid appearing in said station, he preferring to report in the municipal building of the town, as in fact he did on that same night; that, therefore, on being shown the warrant of arrest in the field by the policeman Emiliano Callado, he told said policeman and the latter's companion to precede him to the pueblo, that he would go there himself later on and meanwhile would look for his herdsman, Vicente N., also included in the warrant of arrest, and with him would appear at the municipal building; that when Tabiana reached the pueblo he went directly to his house; that afterwards, while accompanied by the policemen, he passed by the market, where he tried to elude the officers, and then went to the municipal building, in which he inquired for the municipal president, the chief of police, and the justice of the peace; but that, as none of these officials were in the building, he returned home.

It is perfectly clear why the defendant, Tabiana, should have performed all the acts above related, and also why he should have shown some irritation, as said in the decision, at being required by the policemen to accompany them, if we but take into account, on the one hand, as stated in the same decision, that he was a citizen of good reputation in that municipality (Leon), was a member of the municipal council, had been twice president of the municipality, and, at the time of this arrest, was a candidate for the office of municipal president; and, on the other hand, that, as also set forth in the majority opinion, the warrant in the hands of the policemen for the arrest of Tabiana and his herdsman had been procured upon the charge of a trivial misdemeanor consisting of an alleged trespass upon the complainant's premises by Tabiana's cattle.

From the same statement of facts and from the evidence, it appears that the chief of police, Vicente Gison, was extremely anxious to have Gelasio Tabiana brought into his presence by the policemen and to have these officers conduct him to the police station by virtue of that warrant, for, at first, after the two policemen had accepted, conditional upon the approval of the chief of police, Tabiana's proposal to present himself together with his herdsman later on in the municipal building, the chief, on learning at 6 o'clock that evening that the defendant had not yet put in an appearance in the municipal building, ordered the policemen (as stated in the majority decision) to go and look for him and see that he appeared at said building, in obedience to the warrant. But as the defendant, Tabiana, did in fact appear there and a short while afterwards returned home, as aforesaid, on account of not finding in the building either the municipal president, the chief of police, or the justice of the peace, said chief of police, arriving a little later at the municipal building, on learning of what had occurred, sent (as is also stated in the majority decision) the two aforementioned policemen, and another named Leon Cajilig, that is, three policemen, to search for Tabiana, make him return the warrant of arrest, and insist upon his immediate appearance in order that the case against him might be terminated, or, as stated by another witness, that Tabiana might be brought to the police station.

That Tabiana should have been somewhat vexed on arriving at the municipal building not to find either the municipal president, the chief of police, or the justice of the peace is perfectly conceivable, because he went to comply with his duty to present himself before the official who had ordered his arrest, and because, according to his own testimony corroborated by other witnesses, he intended there to present bondsmen for the purpose of

securing his bail. The fact that Tabiana did present himself in the municipal building that evening is the best proof, of the falsity of the testimony of the policemen to the effect that a few moments before his arrival there and while in the market, upon being approached by one of these latter, Emiliano Callado, Tabiana demanded to be shown the warrant of arrest, and that when Callado showed it to him, the defendant put it into his pocket, subsequently denying having it in his possession. The" very fact that the defendant did appear in the office of the municipal president that evening proves that he knew that a warrant of arrest had been issued against him, and unquestionably his subsequent denial that he had it could be of no avail. Moreover, it is stated in the majority decision, in relating what occurred when Tabiana repaired to the municipal building and did not find the said authorities there, that "this had the effect of further angering Tabiana, and the result was that while one of the policemen ran to find the chief of police, Tabiana and his friends left the municipal building, saying that they were going to find the justice of the peace, the idea being to find somebody who could set the defendant at liberty on bail. As the justice of the peace lived with Tabiana, they of course repaired to Tabiana's residence. It may be considered that their departure from the municipal building was effected with the consent of the policemen." To these statements of the majority decision there should be added, according to the opinion of the undersigned, that by those acts Tabiana demonstrated that he did not intend to resist service of the warrant of arrest, that, on the contrary, he respected the writ but desired to avail himself of the right he had to procure his provisional release under bail by applying to the justice of the peace, the official competent to grant it, and of his right to be accompanied by the persons who were willing to give the bail, as the evidence shows that they were.

Perhaps the matter would have ended here, if the three policemen—whom their chief Vicente Gison ordered, as aforesaid, to search for Tabiana, make him return the warrant, insist that he present himself immediately, and bring him under arrest to the police station—had not gone to Tabiana's residence, where the justice of the peace Julian Canillas also lived.

In the foregoing decision it is stated that the facts proven at the trial constitute, not the offense of assault upon persons in authority, denned in article 249, paragraph 2, of the Penal Code, but that of resistance and grave disobedience to such persons or to their agents, provided for and punished by article 252 of the same Code; and from the statement of facts contained in said decision, it is deduced that the resistance and disobedience consisted, not precisely in said defendant's delay and tardiness in presenting himself before the chief of police in compliance with the warrant of arrest served upon him by the policeman, Callado, and in having uttered in the market and in his own house the words attributed to him by said policemen; but in the fact, primarily, that the defendant, when in the market and upon being served by the policeman, Callado, with the warrant of arrest, gave the latter a push, after saying to him "Come along," and also in the facts that while the policemen were in the store of Tabiana's house to demand of him the return of the warrant and that he accompany them to the station, Tabiana denied having taken the warrant; that one of his friends cried out from above, "If they have no warrant of arrest, send him up here and we'll give him a thrashing," on which occasion Tabiana approached the policeman Callado and gave him a blow on the breast with his fist; and, finally, that on being taken away under arrest, the defendant was snatched from the policeman's custody by two of the persons present in the store; that the justice of the peace Julian Canillas, who arrived on the scene just at that moment, gave the policeman Callado a blow on the back; that being prevented by another policeman from continuing to strike, he forthwith ordered the policemen to return to the municipal building; and that Canillas in his excitement made use of words unbecoming the dignity and duties of his office.

There is complete and absolute contradiction between the evidence presented by the prosecution and that presented by the defense. While the witnesses for the prosecution declared that certain facts occurred, those for the defense denied the same, relating in other terms what took place between the policemen and the defendant Tabiana, first in the market, then between him and his brother-in-law Julian Canillas, on the one hand, and the

policemen, on the other, in the store of the house in which Tabiana and Canillas resided.

With respect to the push which it is said Tabiana gave the policeman, Callado, when they were in the market, after the warrant of arrest had been served upon the former by the latter, testimony was given by the police officer, Callado, his companion Baltazar Cabilitasan, and another witness named Ceferino Calucas.

With respect to the blows given, according to the prosecution, by Tabiana and the defendant justice of the peace, Julian Canillas to the policeman Callado while they were in the store, and in regard to what then occurred, testimony was given by the same policemen and another, Leon Cajilig, who went with them to said house, and by two other witnesses, Tirso Vazquez and Anastasia Capacillo, who stated that they were then in the aforementioned store.

As shown by the evidence, the defendant Tabiana, was at the time a member of the municipal council, had twice been municipal president, and was a candidate for the same office, supported by the Progresista Party, of which he was the president in said municipality. Juan. Capalla—who filed the complaint that gave rise to the warrant of arrest against Tabiana, accusing the latter and his herdsman of a misdemeanor—was of the leaders and the president of the Nacionalista Party in said municipality and also this party's candidate for the office of president of the same municipality, wherefore he was a political enemy of Tabiana and had not been on friendly terms with him for a long time. It was also proven that about one month prior to the filing of the complaint by Juan Capalla against Tabiana which originated the warrant of arrest, on motion by Tabiana the municipal council of Leon, of which he was one of the members, passed a resolution to recommend to the provincial governor the temporary suspension of Vicente Gison from the office of chief of police, on account of there being pending against him two actions, one criminal, brought in the justice of the peace court, for fraud, and the other, brought before the council itself, for the violation of article 28 of the Municipal Code; and that on March 15, 1915, that is, three months prior to the filing of the complaint against the two defendants in this cause, on motion by Tabiana, who was still a councilor of the municipality, the council sharply censured the official conduct of the said chief of police, because of his manifest disobedience to the lawful orders of the council by his failure to appear on the day and hour specified before the committee appointed to investigate the charges brought against him, and recommended to the provincial governor that Gison be dismissed from the office, if, after investigation, his guilt should be proven.

In view of the foregoing facts, it is not at all strange that, upon being served by the two policemen with the warrant of arrest issued on complaint filed by his political enemy Juan Capalla, Gelasio Tabiana should have endeavored to avoid being taken by the policemen to the chief of police, and that he should have preferred to go to the municipal building and give bail to the justice of the peace; nor is it at all strange, and it is rather perfectly conceivable, that the chief of police, on his part, should have tried to annoy Tabiana by having him conducted, not by a single policeman, as could have been done in view of the trivial misdemeanor that gave rise to the complaint against him, but by two policemen, as if it were a question of a dangerous criminal; nor that the chief of police should have shown such a persistent determination to have the defendant brought before him as to have had the policemen look for him at his house on his return from the field, notwithstanding that Tabiana had promised them that he would present himself at the municipal building; nor that after he had done so and when he was looking for the justice of the peace for the purpose of giving bail, the said chief should have sent three policemen to bring him to the station. Indeed it is evident that the behavior of the chief of police could only have been the result of the enmity that he harbored against Gelasio Tabiana and, consequently, also against the latter's brother-in-law and house companion, the justice of the peace Julian Canillas, and of his desire to improve the opportunity to revenge himself upon the defendant Tabiana on account of the latter's having asked for and obtained of the municipal council the temporary suspension of the chief of police one month before, that is, on January 15, 1915. Moreover it cannot be denied that, though Tabiana had succeeded in getting the municipal council to reprimand the chief of

police for the reason above stated and to request the provincial governor to dismiss him from office, that is, on March 15, 1915, or three months before the filing of the complaint against Tabiana in the present cause, the chief of police—who was still officiating as such at the time of the trial and the examination of the policemen, his subordinates, as witnesses for the prosecution, whom it was alleged Tabiana and the other defendant Canillas had assaulted—could have influenced them to testify as they did and as appears in their respective testimony. The mere perusal of the statements made by them on the witness stand convinces the reader that they tried to exaggerate the facts by attributing to Tabiana and his co-defendant, Canillas, words and acts of resistance and insubordination to the authorities, all of which were denied and contradicted by the defendants and their four witnesses. To be convinced that such was the case, one needs but notice how said policemen in their respective testimony repeated with almost exact uniformity the words which they said they heard uttered by Gelasio Tabiana and his brother-in-law, the justice of the peace, in the sense above stated on the occasions referred to by these witnesses; and how they testified, almost unanimously, with respect to the acts performed, as they declared, by Tabiana and his codefendant, Canillas, which consisted in Tabiana's having given the policeman Callado a push in the market, and both defendants having struck this same policeman while they were in the store of Tabiana's house. And such is the uniformity with which each one and all of these policemen testified with respect to the said words that it would seem that they all had learned them by heart in order to repeat them exactly in their respective testimony. With respect to the aforementioned acts imputed to the defendants, it was easy for said witnesses to relate them in the general manner in which they did. So, then, little or no credence can be given to the testimony of the policemen, not only because of what is shown by their testimony in itself, but also because their individual testimony must necessarily be regarded as suspicious and partial in favor of the prosecution, so shown by their own acts at the time of their execution of the warrant for the defendant's arrest, in view of the aforementioned antecedents as well as of their relations with the chief of police Vicente Gison, who must have entertained no very cordial sentiments towards Tabiana and the latter's brother-in-law Canillas,

It is true that a witness, not a policeman, Ceferino Calucas, corroborated the testimony given by the policemen with respect to Tabiana's pushing the policeman, Callado. This witness stated that when he entered the market Tabiana was already there; that a short while afterwards Callado arrived and went directly into the market toward Tabiana; that the latter turned his head and said: "Here is the policeman who wants to arrest me," and then asked the policeman where the warrant of arrest was, to which the latter replied: "Here it is;" that Tabiana took the warrant from the policeman, went with it to a place where there was light, read it, and then said: "Let's go to the municipal building," and thereupon pushed the policeman, saying: "If you people want a lawsuit, we'll go to court; if you want a fight, we'll fight;" and that afterwards they went to the municipal building. This witness ended his testimony by admitting that he had seen nothing more. The account of this witness differs from that of the policeman Callado in respect to what occurred in the market between the latter and his companion Cabilitasan, on the one hand, and Tabiana, on the other. The policeman Callado in his testimony, after saying that he waited about half an hour for Tabiana to come out of the market, stated that he looked for the latter in the market; that in the doorway he met a man named Apolonio Cajilig to whom he said that he was going to catch Tabiana because witness had a warrant of arrest; that then he went to where Tabiana was, and when within two brazas of him Tabiana stood up and said: "So then, here is the policeman who is going to arrest me. * * * I am not afraid of all of you," and asked him where the warrant of arrest was; that upon witness replying that he himself had it, Tabiana said to him that unless witness showed him the warrant, he would not go with witness; that thereupon witness took the warrant out of his pocket and showed it to Tabiana; that the latter took it, looked at it and put it into his pocket, afterwards saying: "Let's go," and gave witness a push; that thereupon Apolonio Cajilig ran toward witness, caught him by the coat near his throat and also pushed him; that immediately another man named Damian Calope likewise pushed him, as did also still another man named Maximo Asebuque; that when these men had pushed him, witness said to them: "What are you doing here outside?" that thereupon they went away;

that Bernabe Calope approached witness, caught him by the shoulder and told him not to insist on arresting Gelasio Tabiana, because the latter knew more than witness; that witness replied that such was indeed the case because Tabiana was a councilor, but that Tabiana had to remain that night in witness' custody because witness had a warrant of arrest; and that after all this, Tabiana said to witness: "Let's go to the municipal building."

As is seen, the policeman Callado quotes Tabiana as uttering on said occasion several words more than those mentioned by the witness Calucas, and, like his companion Cabilitasan, relates acts of aggression or assault which Calucas did not mention in his testimony as committed by other men in Tabiana's company in the market at that same moment—nor did he even make any reference to the said men—although, according to his own testimony, he was present when the policemen and Tabiana left the market and went to the municipal building. Neither did the policeman Callado say that on that occasion Tabiana uttered the following words: "If you people want a lawsuit, we'll go to court; and if you want a fight, we'll fight;" nor did the witness Calucas testify that Tabiana then said to Callado: "So then, here is the policeman who is going to arrest me. I am not afraid of all of you." The fact that Calucas did not say these words—but only the others, to wit, "If you people want a lawsuit, we'll go to court; etc." not mentioned by the policemen Callado and Cabilitasan in their testimony relating what occurred in the market, these being the very same words that with others were uniformly repeated by said policemen and their companion Cajilig as having been uttered by Tabiana and Canillas on the other occasions— taken in connection with the discrepancy aforementioned between the testimony of the same witness and that of said two policemen, raises the suspicion that, once learned, it was easier for the witness to remember the words he was to put into Tabiana's mouth on that occasion than the acts he was to attribute to the latter and to the other men who, according to the policemen, were then with Tabiana in the market. For this reason, said witness made no mention of the presence there of Apolonio Cajilig, of Damian Calope, and Maximo Asebuque, of Cajilig running towards the policeman Callado, catching him by the coat near his throat, and pushing him, nor of the other two pushing said policeman—all of which, if true, said witness would have seen also.

Of the two witnesses for the prosecution who testified that they were present when, the policemen being in the store of the defendants' house, Tabiana gave the policeman Callado a blow with his fist, and the other defendant, Canillas, a blow on the back. The first, named Tirso Vazquez, stated that when Callado entered the store Tabiana appeared, and the former said to the latter: "Señor Gelasio, if the saints are merciful, let them return to me the warrant of arrest you took from me, and come with me to the municipal building;" that then Tabiana replied: "I have no warrant of arrest," and immediately gave a blow with his fist (he does not say to whom, but supposedly to the policeman) ; that when witness tried to go out he met only Julian Canillas who, immediately after he had entered, struck Callado a blow on the back; and that thereupon witness left for home.

However, in reply to questions put immediately after testifying that on trying to go out he saw only Julian Canillas, this witness stated that Francisco and Meliton Canillas were in the doorway, and that many other people were there, though he did not notice who they were. But this witness did not mention in his testimony that when the policeman Callado requested Tabiana to return the warrant of arrest to him and when Tabiana replied that he had not taken it, a man named Apolonio Cajilig said that if they had no warrant of arrest they should send them (the policemen) up for a thrashing; nor did he state that after being seized by the wrist to force him outside, Tabiana struck the policeman ; nor that by assisting Tabiana in his struggle with the policeman, Apolonio Cajilig and Francisco Canillas prevented said removal; nor that when the policeman Callado had his back toward the door Juan Canillas, the other defendant, struck him on the back. All this, however, was related in the testimony of the policeman Callado and his companions Cabilitasan and Leon Cajilig as having then occurred.

Therefore said policemen and the witness Vazquez contradicted themselves. Such contradiction shows the measure of credence that should be allowed the testimony of this witness and the three policemen.

The other witness, Anastasia Capacillo, also presented by the prosecution as an eyewitness to what occurred in the store, likewise limited her testimony to saying that she went there that evening to buy some petroleum; that on entering the door she saw Gelasio Tabiana strike the policeman; that afterwards she also saw the justice of the peace strike him; and that when she observed that things looked bad she returned home. It is strange that having seen Tabiana and the justice of the peace Canillas strike the policeman, this witness should have said nothing in her testimony about the struggle that then took place between Tabiana, Francisco Canillas, and Apolonio Cajilig on the one hand, and the policemen on the other (according to the testimony of these same policemen), notwithstanding that she must have witnessed it because it all occurred at the same time. It is further to be considered that this witness was an aunt, as she herself stated, of the complainant, Juan Capalla, a political enemy of Tabiana and the same person who filed the complaint causing the warrant of arrest to issue against Tabiana which, with such inordinate zeal and with so much determination, the chief of police Vicente Gison endeavored to enforce.

In view of the evidence presented by the prosecution, it cannot therefore be considered as proven that the defendants performed the acts alleged to constitute the offense of assault upon the agents of the authorities which, in the majority decision, have been classified as an offense of resistance and serious disobedience to such agents, nor that the defendants uttered the words and phrases attributed to them indicative of opposition and disobedience to the policemen when attempting to serve the warrant of arrest upon Tabiana, one of the defendants. On the contrary, it very clearly appears from the evidence of the prosecution that Tabiana did not seek to disobey the warrant of arrest, nor did he fail to comply therewith, for—in compliance with his offer to the policeman Callado that afternoon when the defendant was in the field, to wit, that the officer might precede him to the pueblo, and that he (Tabiana) would follow and meanwhile would go to look for his herdsman Vicente who was also included in the warrant of arrest—he did in fact then return to the pueblo and, first passing by the market, went, now accompanied by the policemen, to the municipal building where he inquired for the municipal president, the justice of the peace, and the chief of police. This he undoubtedly would not have done if he had not intended to submit to the warrant of arrest, or if he had planned to oppose it in the manner related by these policemen, and much less if he had actually had the warrant in 'his possession and had refused to deliver it to the policemen (as the latter testified that he did), in order to resist "returning with them to the municipal building that same evening or to resist being taken by them to the police station—because the defendant had already acknowledged service of the warrant in the municipal building a few moments before, and therefore a denial of the existence of the warrant could have served no purpose whatever.

On the other hand, from the evidence adduced by the defense it appears that neither the defendants nor the persons who were with Tabiana in the market that afternoon committed any act of aggression, assault, or resistance upon or to the policemen who went there in search of Tabiana; that Tabiana had himself accompanied by Apolonio Cajilig on the way from the market and, besides, sent for Bonifacio Alutaya in order to use them as his bondsmen and thus obtain his provisional liberty upon presenting himself in the municipal building that evening where he expected to find the justice of the peace, that not finding the latter there, he went to his house with the said Apolonio Cajilig, where the justice of the peace, his brother-in-law, was living, and that once there, in the presence also of Apolonio Cajilig and Bonifacio Alutaya, he presented these two men as his bondsmen; that the justice of the peace accepted them as such and fixed the amount of the bail at "P25 on account of the offense being a mere misdemeanor; that the justice of the peace so informed the policemen and ordered them to withdraw because the defendant was at liberty under bail; that, as the policemen demurred, the justice of the peace, as he testified at the trial, told them to return that same evening and he would issue an order in writing; that the policemen left and did not return until the following morning; that then the justice of the peace handed them a communication for the chief of police in which it was stated that the defendant Tabiana was released under bail;

that later that same morning, the justice of the peace and Tabiana went to the municipal building, followed by the policemen, and then and there the bail bond was made out and signed by the bondsmen, thus setting Tabiana at liberty; and that upon the trial of Tabiana under the complaint filed by Juan Capalla, this defendant was acquitted by the justice of the peace of Tigbauan, who tried the case because the defendant Canillas, justice of the peace of Leon, was inhibited by reason of being Tabiana's brother-in-law.

It cannot be denied that if Gelasio Tabiana was not taken to the municipal building or to the police station that evening by the policemen who went to his house, there must have been some reason that prevented it. As it cannot be deemed proven, as aforesaid, that the reason just alluded to was resistance on Tabiana's part—with the cooperation of his brother-in-law, the justice of the peace Canillas—to following the policemen, the only reasonable explanation that can be given is that, through the acceptance by the justice of the peace of the verbal security of P25 offered by the defendant Tabiana and given by Apolonio Cajilig and Bonifacio Alutaya, Tabiana was allowed provisional liberty until the following day when such verbal security was to be formalized in writing, and these facts— from the testimony given both by the justice of the peace and by Tabiana and his witnesses, among them, one of the bondsmen themselves—appear to be corroborated by the fact of Tabiana's having gone in company with the justice of the peace, his brother-in-law, on the following morning to the municipal building and there having duly given the required bail, whereby he was temporarily released. It is true that that same morning, according to the testimony of the policeman Emiliano Callado, corroborated by his chief, Vicente Gison, five policemen with Callado, all armed with revolvers and sabers and acting under the orders of the chief of police, again stationed themselves around the house in which Tabiana and Canillas were living, and there, as Callado also stated, stood guard until Tabiana came out, when the policemen followed him and the justice of the peace as they went to the municipal building to give bail. But these very facts, in conjunction with the one which the prosecution apparently tried to prove, to wit, that the previous evening there took place between the defendants and these three policemen the occurrences related by the latter, can also serve as proof of the fact that the chief of police, Vicente Gison, wished to make a show of his authority and power by annoying Tabiana and humiliating him, for, as it may easily be understood—as Tabiana was living in the same house with the justice of the peace, who prevented the arrest of Tabiana that evening—there was no need for five armed policemen to go to watch Tabiana's house and conduct him, as if he were a dangerous criminal, to the municipal building, notwithstanding that he was accompanied by the justice of the peace himself. This— in connection with the facts already stated concerning the resentment which the chief of police must have harbored against Tabiana, and, further, in connection with the very significant detail that the proceedings were instituted and prosecuted solely against Tabiana and Canillas, notwithstanding that, according to the testimony of these very same policemen, Apolonio Cajilig, Damian Calope, Maximo Asebuque, and Domingo Callado also assaulted and attacked said policemen, the last-named even going so far as to lay hand on his bolo and threaten the policeman Callado when he tried to arrest Tabiana, according to this policeman's testimony all the said five men just above named thus cooperating in the execution of the crime—brings out in bold relief the main features of this prosecution.

If the defendants ought to be acquitted for lack of proof of the acts which, as constituting a crime, were charged against them in the complaint, the acquittal of one of them, to wit, the justice of the peace Julian Canillas, independently of that of his codefendant, is in all respects proper, because, even though he may have performed those acts, he could not be considered guilty of, and consequently convicted for, the offense of assault upon the agents of the authorities, nor of that of resistance and serious disobedience to such agents.

In fact, said justice of the peace, in the exercise of his authority as such and by virtue of the complaint presented against Tabiana by Juan Capalla for the commission of a misdemeanor against property, issued against Tabiana the warrant of arrest carried by the policeman Callado and his companion Cabilitan, and, in the evening of the same day when the warrant was issued, upon Tabiana's applying to said justice of the peace and while these two,

the latter and Tabiana, were in their own house, two bondsmen appeared to obtain Tabiana's provisional liberty for that night and until the bail-bond should be formalized in writing in the municipal building on the following day. The justice of the peace accepted the bail offered, fixed the amount at P25, and ordered the policemen to withdraw, for, as the justice of the peace himself said in his testimony, he was convinced that he was empowered provisionally to release the defendant Tabiana under the bail given by these bondsmen, and therefore exercised such authority. The justice also testified that he told the policemen to go to the municipal building because the defendant was released under bail.

The foregoing facts are proven, not only by the testimony of the justice of the peace himself and his codefendant Tabiana, but also by that of the bondsman Apolonio Cajilig and the three witnesses Maximo Asebuque, Damaso Cambronero, and Lucas Cabaran, present on that occasion, Asebuque, who went in search of the other bondsman Bonifacio Alutaya, being one of them—all of whom witnessed Tabiana's offer to give bail, and the acceptance of that offer by the justice of the peace. These facts were not refuted by the prosecution, notwithstanding that it cross-examined the policeman Callado; on the contrary, it appears from Callado's own testimony on direct examination, that, in the very store of the house of Tabiana and the justice of the peace, that night when the policemen went there, as they stated, to take the warrant of arrest from Tabiana and take him to the station, Francisco Canillas and Meliton Canillas, who were also there, offered to give bail for Tabiana, even though it were P1,000 in cash, and stated that for this purpose they had brought the land-tax receipts. The same disposition was also manifested by those who accompanied the defendant Tabiana from the market to the municipal building, among whom were Apolonio Cajilig and Damaso Asebuque, the latter being the one who went in search of Bonifacio Alutaya to bring him to the house of the justice of the peace, to which the defendant Tabiana went, together with his companions, because he had not found either the justice of the peace, the municipal president, or the chief of police in the municipal building.

Viada, in his Commentaries on the Penal Code (Vol. II, 4 ed., p. 346), in discussing article 278 of the Penal Code of Spain (No. 265 of that of the Philippines) which punishes with the maximum of the respective penalty and also with the penalty of temporary, absolute disqualification, any person who, being vested with authority, commits any of the crimes specified in the three chapters preceding said article, among which crimes are included those relative to assault upon the authorities and their agents, and of resistance and serious disobedience thereto, says:

"We do not believe there can be assault or disobedience upon or to one authority by another when they both contend in the exercise of their respective duties. If in such a case, one of them abuses, defames, insults, or outrages the other, the offense of abuse, or private defamation, or that of lesiones, if the outrage reaches that point, would be committed, but not the crime of disobedience, nor that of assault, which involves the exercise of authority by the offended person and the lack of this circumstance on the part of the offended party. It would be otherwise if the person vested with authority, but not acting in the performance of his duty, should abuse, defame, or outrage the person exercising the private duties of his office; in this case, there actually being disobedience or assault, the special aggravation defined in this article would be applicable."

In a case where a dispute or quarrel arose in the street between several persons, the municipal judge, accompanied by a constable, appeared on the scene to pacify the disputants. The alcalde also intervened and pushed aside the judge, telling him that he, the judge, was nothing there, that in the street he, the alcalde, alone commanded, with other unbecoming and threatening expressions which caused the judge to withdraw. The court of Soria, Spain, held that the facts constituted the offense of assault upon a public official and sentenced the defendant to the corresponding penalty in its maximum degree, taking into account for this purpose the circumstance of the offender being vested with authority. An appeal from that judgment was taken by the fiscal on the ground of violation of law, whereupon the supreme court, in its decision of November 4, 1890, sustained the appeal on the

following grounds:

"That, in offenses of assault as in those of disobedience, the legislator has penalized disobedience to the authorities according to the nature and the greater or lesser violence employed in the act, whoever be the person who commits it and whatever be his capacity. Such capacity may give rise to greater liability, pursuant to the provisions of article 278 of the Code [265 of that of the Philippines].

That such special note of the offenses mentioned excludes the legal possibility of including among them either the outrage that a superior may commit upon an inferior in the course of their relations, even when both of them are public officials, or the abuses, of whatever nature they may be, which one authority commits against another in cases of actual conflict of jurisdiction, inasmuch as, in such cases, there is properly no disobedience against the principle of authority, but an endeavor to enforce the authority which each of the disputants represents; therefore, even though it is evident that all authorities owe each other mutual respect, and that the violence which they commit between themselves on the occasion of such conflicts might perhaps require a special correction they do not, for the reasons stated, fall within the present conception of the offenses of assault and disobedience, and can only be punished, under the Code, according to their nature.

"That the fact that an alcalde, in his character as such and on the occasion of the exercise of his powers, forcibly prevents a municipal judge from exercising his own, evidently constitutes the coercion mentioned in article 510 of the Code."

In another case, a dispute having arisen in the yard of a penal establishment between a prisoner and a guard on duty, as the latter made a motion as if he would draw a weapon, another guard, also on duty, intervened, held the first guard fast and, assisted by several others, caused him to withdraw. The latter thereupon became angry, drew a knife and inflicted upon the guard who intervened an incised wound which was cured in seven days, leaving no deformity nor impediment to labor. The criminal court of Tarragona, Spain, classified the affair as an armed assault against an agent of the authorities, and convicted the defendant of said crime. The defendant, however, appealed from this judgment on the ground of violation of law, and the supreme court of Spain in its decision of January 9, 1890, sustained the appeal on the following grounds:

"That the dispute between two guards of a penal establishment, on the occasion of which one of them inflicted a slight wound upon the other, bears none of the features properly appertaining to the crime of assault, if the quarrel was really of a private nature, because it did not affect the service at the moment it arose, and, on the other hand, it cannot be said that the principle of authority was violated or impaired as a consequence of the aggression, for the reason that both disputants were vested with the same official character."

It is unquestionable that if the justice of the peace Julian Canillas struck the policeman Callado a blow on the back while the latter and his companions were insisting upon taking Tabiana away with them under arrest, and if he made remarks which might be considered offensive to them, such an outrage was committed by a superior, the justice of the peace, upon an inferior, the policeman, in the course of their official relations and in the performance of official duties by the justice of the peace, or, better said, within the very performance of such duties, for, the policeman Callado being charged with serving upon Tabiana the warrant of arrest issued by the justice of the peace Canillas, this latter—under the power and authority vested in him, in ordering said policeman and his companions to withdraw, and in telling them that Tabiana was released under bail—set aside, or, at least, suspended said warrant of arrest, he being the only person who could take such action, the justice or legality of which it was not incumbent upon the policemen to dispute, but, on the contrary, should have been immediately acquiesced in by them.

Therefore, in conformity with the legal doctrine laid down in the above-cited decisions, there not having been any

act of disobedience against the authorities, and as it cannot be said that the principle of authority was violated or impaired in consequence of the blow given by the justice of the peace to the policeman Callado, or in consequence of the words or phrases attributed to said justice of the peace with respect to the policemen herein concerned, these acts do not constitute the offense of assault upon the agents of the authorities, nor that of resistance and grave disobedience to the same. Consequently, the defendant Canillas should not be convicted of either of these offenses.

DISSENTING OPINION

MALCOLM, J., dissenting:

In addition to the analysis of the facts by Justice Araullo, I also dissent because I am convinced that those provisions of the Penal Code dealing with assaults upon persons in authority are no longer in force. To elucidate—Title III of Book II of the Penal Code concerns crimes against public order. Chapter I is entitled "Rebellion." It contains such provisions as these:

"The crime of rebellion is committed by any person or persons who shall rise publicly and in open hostility to the Government for any of the following purposes:

"1. To proclaim the independence of any part of the territory known as the Philippine Islands.

"2. To dethrone the King, depose the Regent, or overthrow the Regency of the Kingdom, or deprive the King or Regent of his personal liberty or compel him to do something against his will." (First article of chapter.)

Surely this chapter is now a nullity. Chapter II is entitled "Sedition." It has been superseded by Act No. 292 of the Philippine Commission. Chapter III dealing with provisions common to the two next preceding chapters falls with the chapters on which dependent. Then follow Chapter IV, assault upon persons in authority and their agents, resistance and disobedience thereto, and Chapter V, contempts, insults, injurias, and threats against persons in authority, and insults, injurias, and threats against their agents and other public officers. These are the two chapters which I claim are no longer in effect.

Notice some of the provisions of these chapters. Article 249, No. 1, reads: "The offense of assault (atentado) is committed by: 1. Persons who, without a public uprising, shall employ force or intimidation for the attainment of any of the purposes enumerated in defining the crimes of rebellion and sedition."—That is, rebellion and sedition against Spain. No. 2 of the same article reads: "Any person who shall attack, employ force against, or seriously resist or intimidate, any person in authority, or the agents of such person, while engaged in the performance of official duties, or by reason of such performance."—That is, any person in authority under the Government of Spain. Passing on to the next chapter, article 253, No. 1, reads: "The offense of contempt is committed by: 1. Anyone who, while a Minister of the Crown or any person in authority is engaged in the performance of official duties, or by reason of such performance, shall by word or deed defame (calumniar), abuse (injuriar), insult, or threaten such minister or person in his presence or in any writing addressed to him."—That is, contempt of a Minister of the Crown of the Monarchy of Spain. For these offenses one can be punished with prison correccional or prison mayor—that is, with as much as six years and one day imprisonment. Offenses which in a democracy are either taken as a joke or pass with a reprimand, or are penalized with a small fine, or a few days imprisonment, are in a monarchy treated as "lese majeste" and solemnly and severely punished.

Again, it is pertinent to ask, Who were the persons in authority for resistance and disobedience to whom such grave penalties were to be meted out? These persons included the Governor-General, who was the personal

representative of the Spanish Crown in the Philippines, and who exercised almost regal power; *alcaldes mayores*, who for a long period of time combined both executive and judicial functions; civil governors, invariably Spaniards, who were the direct representatives of the Governor-General; and the *guardia civil* of unsavory reputation. These provisions of the penal law were moreover formulated by Spain, for the good of Spain, and merely through the will of Spain were they extended to the Philippines.

It is a general principle of the public law that on acquisition of territory the previous political relations of the ceded region are totally abrogated. The political law pertaining to the prerogatives of the former Government necessarily ceases.

"It cannot be admitted that the King of Spain could, by treaty or otherwise, impart to the United States any of his royal prerogatives; and much less can it be admitted that they have capacity to receive or power to exercise them. Every nation acquiring territory, by treaty or otherwise, must hold it subject to the Constitution and laws of its own government and not according to those of the government ceding it." (*Pollard vs. Hagan* [1845], 3 How., 212.)

So likewise it cannot admit of doubt that those provisions of the Spanish Penal Code concerning assaults upon persons in authority were in the nature of political law enacted and promulgated by a monarchy and were thus entirely incompatible with democratic institutions. On every occasion when questions of this nature have been presented to the Supreme Court of these Islands, laws and parts of laws of a similar character have been held not to be in force. Thus in *The United States vs. Sweet* ([1901], 1 Phil., 18), the Supreme Court found the Spanish Military Code no longer operative in the Philippines, presumably because a political law. In *The United States vs. Balcorta* ([1913], 25 Phil, 273), the Supreme Court held those articles of the Penal Code defining special crimes against the state religion as necessarily not now in effect in the Philippines.

Enough has been said to demonstrate that Chapters IV and V, title 3, book 2, of the Penal Code are no longer in force in the Philippines. If necessary, many additional arguments and authorities could be adduced and included in support of this conclusion. As the Philippine Legislature is even now considering a modern Correctional Code to supplant the old Penal Code, such an extended discussion would not prove profitable, and would merely serve to pile up arguments on a point which to me appears not to be in doubt.

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