

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JUAN ALVEAR ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 11941. December 07, 1916

Ponente: CARSON, J.

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CARSON, J.:

Each of the five appellants in this case, two of whom are women, was convicted in the court below of the crime of *atentado contra los agentes de la autoridad* (assault upon agents in authority) and sentenced to one year eight months and twenty-one days of *prision correccional*, and to pay a fine of five hundred *pesetas*.

The prosecution undertook to prove that a Constabulary sergeant and a soldier, who were duly provided with a search warrant, entered the house where the accused were arrested for the purpose of searching for opium; that immediately upon entering the house, the sergeant proceeded to read the search warrant to those whom he found within; that the occupants of the house fell upon the two soldiers, violently assaulted them, snatched the search warrant from the sergeant while he was reading it, threw the soldier out of one of the windows, and only desisted from their assault upon the sergeant when a uniformed Constabulary soldier, armed with a gun, who had been left on guard outside, came up into the house and arrested the participants in the assault.

The accused and their witnesses testifying for the defense swore that the two police officers entered the house in plain clothes; that the moment they entered one of them seized and held one of the accused women, at the same time drawing and brandishing a revolver, while the other threw himself upon another of the accused who was sitting in a chair near by; that the woman cried loudly for help; that her son and some others came to her rescue; that a fight followed, which was terminated by the arrival of a uniformed Constabulary soldier who put the accused under arrest; that they did not know that the two Constabulary soldiers who first entered were police officers until the uniformed Constabulary soldier appeared on the scene; and that when they saw him and learned that the men who had entered the house in plain clothes were police officers, they promptly surrendered and offered no further resistance.

The witnesses for the prosecution and for the defense contradict each other in practically every detail of their accounts of what occurred, except that all of the witnesses agree that the two Constabulary soldiers entered the house in plain clothes; that immediately thereafter a violent altercation arose; and that all of the accused promptly surrendered and offered no further resistance when the third Constabulary soldier in uniform came up into the house and put them under arrest.

Upon a careful examination of all the evidence of record we think that there is at least a reasonable doubt that these accused knew or had reason to know that the two Constabulary soldiers who first entered the house in plain clothes were police officers until the third soldier entered in uniform.

The police officers claim that they read, or at least began to read a search warrant immediately after they entered the house; but upon the whole record, and having in mind the fact that they entered the house in plain clothes evidently for the purpose of surprising the occupants, we think the weight of the evidence tends to disclose that

what' ever may have been their intentions as to the reading of the search warrant, they attempted, before disclosing their authority to enter the house, to compel the occupants to stay still, lest they might conceal or get rid of the opium for which the search was made; that to this end they used physical force and threats with a revolver against two of the accused, one of whom was a woman; that the cries of the woman brought her son and others to her rescue; and that as a result the fight was precipitated before the police officers had time to make themselves known as such.

A conviction of the grave offense of atentado (assault upon or resistance offered to persons in authority or their agents) cannot be sustained in any case in which a reasonable doubt arises as to whether the accused knew or ought to have known that the persons assaulted or resisted were in fact persons in authority or their agents; provided that the assault or resistance offered would have been justifiable in the event that the persons assaulted or resisted had not been persons in authority or their agents. (Art. 1, Penal Code.)

That these accused assaulted and resisted the police officers who entered the house in plain clothes is not denied; but the assault and resistance would have been wholly justifiable if these men had been what they seemed to be to the occupants of the house; that is to say, two strangers, who without lawful authority had entered the house and physically assaulted the first man and woman they found there, at the same time threatening their victims with a revolver if they moved or gave an alarm.

The exemption from criminal liability which is extended to anyone who acts in defense of his own person or rights from unlawful aggression, under article 8 of the Penal Code must be held to include one who assaults or resists a police officer under circumstances which would justify the assault or resistance, if the person assaulted were not a police officer in the lawful performance of his duties, when it further appears that the person making the assault did not know, and had no reasonable grounds to believe, that the person assaulted was a police officer acting in the performance of his duties as such. (U. S. vs. Ah Chong, 15 Phil. Rep., 488.)

The judgment convicting and sentencing the appellants should be reversed, and they should be acquitted of the crime with which they are charged in the information and their bail exonerated, with the costs of both instances de officio. So ordered.

Torres, Johnson, Moreland, and Trent, JJ., concur.

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