

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LAURO FONTANILLA, DEFENDANT AND APPELLANT.*G.R. No. 12916. December 15, 1917*

Ponente: MALCOLM, J.

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The defendant and appellant was charged in the Court of First Instance of Ilocos Sur with the crime of lesiones menos graves (less grave physical injuries) inflicted on the persons of Victoriano Gimenez and Antonio Montanes. He was found guilty and sentenced to six months of arresto mayor with the accessory penalties provided by law, and to pay the costs. On appeal, counsel de officio assigns seven errors of the trial court, all of which can be divided into questions concerning the sufficiency of the evidence and the penalty to be imposed. Counsel supports his assignments of error with an elaborate and carefully prepared brief. The Attorney-General answers with an equally well written brief, concluding with the recommendation that the judgment be affirmed.

We have read the respective briefs and the decision of the trial court and have checked the evidence with the record. After a full consideration, but without taking the time to set forth the facts in detail, we cannot say that we are warranted in disturbing the findings of the trial court. More specifically, as the president of the municipal board of health testified, the wound of Victoriano Gimenez incapacitated him for labor for nine or ten days, and the wound of Antonio Montanes kept him from performing his regular work between five and seven days. Consequently, the facts as to Gimenez come under article 418, and as to Montanes under article 587, of the Penal Code.

This court recently held in a decision handed down by Justice Carson,[^]with Justice Street and the writer dissenting, that an accused can be convicted of more than one offense under one information. (U. S. vs. Balaba [1917], ante, p. 260. Following this rule, the accused must be found guilty of a violation of the two articles of the Penal Code above mentioned. As the record discloses that the accused is several times a recidivist, and as no mitigating circumstances are found, the court was justified in imposing the penalty in the maximum degree. The defendant and appellant is further sentenced to twenty-one days of arresto menor.

No evidence to prove damages for medical treatment, loss to the offended parties because of inability to perform their usual vocation, etc., was introduced at the trial. The lower court made no finding as to indemnification. Without such proof and finding, this court can of course not determine the amount of the indemnity.

With the addition above indicated, judgment is affirmed with the costs of this instance against the appellant. So ordered.

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

TORRES, J., dissenting in part.

The undersigned concurs in the preceding decision in respect to the defendant's guilt and the personal penalties

imposed upon him. He believes, however, that the inflicter of the less grave and the slight physical injuries {lesiones menos graves y leves} should be compelled to indemnify the aggrieved parties, respectively, for the losses occasioned them, though it be only for the wages they failed to earn in consequence of the punishable acts performed by the aggressor.

So long as the Penal Code, promulgated on March 13, 1887, is in force and effect in these Islands the provision of article 17 thereof, which prescribes that every person criminally liable for a felony or misdemeanor is also civilly liable, should be complied with.

With respect to indemnity, article 122, in connection with article 119, of the same code provides as follows:

"Indemnification for losses shall include not only those caused the injured party, but also those suffered by his family or by a third person by reason of the crime.

"The courts shall determine the amount of this indemnification in the manner prescribed for the reparation of damages in the next preceding article."

We agree that in fact the record discloses no proof of the amount of the expenses incurred by the offended parties for medicine and medical fees, but it does duly show, and is so stated in the majority decision, that Victoriano Gimenez was incapacitated for labor for nine or ten days, and Antonio Montanes, between five or seven days; and as they failed to earn their respective daily wages during those days, it is unquestionable that both they and their families suffered positive loss in their interests. Although the amount of the daily wages they failed to collect during the time they were under medical treatment was not, on their petition or at the request of the provincial fiscal, made of record, yet the failure so to do in this matter of detail cannot excuse compliance with said article 122 in so far as it prescribes that the courts shall determine the amount of the indemnification, and it is well known that the current rate of wages in the provinces is from 62 to 75 centavos a day, and in Manila, from 80 centavos to one peso.

So then, the number of days during which the injured parties were unable to work—a detail shown in the record—is undeniable proof of the losses suffered; and the court having the power to regulate, in accordance with prudent judgment, the amount of the loss suffered, by fixing it concordantly with the ordinary and current rate of wages in the provinces, it is not just that it should fail to comply with the law, to the detriment of the aggrieved parties.

For the reasons hereinabove stated, and supplying the omission made by the trial court in his judgment, the defendant should also be sentenced to pay an indemnity to Victoriano Gimenez in the sum of P7.20, and to Antonio Montanes in that of P4, and in case of insolvency in the payment of the first sum he should suffer the corresponding subsidiary imprisonment, and in the payment of the second sum, also subsidiary imprisonment calculated on the basis of 15 pesetas a day.

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