

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. NICOMEDES GUMBAN, DEFENDANT AND APPELLANT.

G.R. No. 13658. November 09, 1918

Ponente: AVANCEÑA, J.

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AVANCEÑA, J.:

The information upon which this case brought is literally as follows:

"The undersigned fiscal accuses Nicomedes Gumban of the crime of assault upon agents of authority committed as follows:

"That on or about August 13, 1917, in the municipality of Jaro, Province of Iloilo, P. I., the said accused did then and there, willfully, unlawfully, and criminally, attack, employ force, and lay hands upon the person of Petronilo Gumban, municipal president of the said municipality of Jaro, and therefore upon the person of an agent of authority of the said municipality, at a time when said Petronilo Gumban was engaged in the performance of his official duties, giving said Petronilo Gumban a slap on the face. Committed in violation of article 250 of the Penal Code."

On the morning of August 13, 1917, Petronilo Gumban, municipal president of Jaro, Iloilo, was in the barrio of Pavia of the said municipality, inspecting the quarantine of animals. He was getting some information from a councilor, Magdaleno Suliano, regarding the condition of the animals in his barrio, when Gregorio Ismaia, a tenant of Magdaleno Suliano, arrived to report the fact that he had surprised a carabao belonging to Policarpio Gumban, destroying a planted area belonging to the said Magdaleno Suliano, and that, having seized the carabao, he brought the same to the police station at Pavia, which is within the zone affected by the quarantine. Then Epifanio Gumban and the accused Nicomedes Gumban, brothers of Policarpio Gumban, the owner of the carabao, arrived there and protested to the president that their brother's carabao was taken to Pavia which is within the zone affected by the quarantine. The president, upon hearing said protest, said that it was his opinion that Gregorio Ismaia was right in taking the carabao to the police station at Pavia. However he promised to intervene in the matter and to telephone to the man in charge of the quarantine to find out whether, on the following day, the said carabao could not be withdrawn from the zone affected by the quarantine. Upon hearing this statement of the president, the accused insulted the said president and gave him a slap on the face which struck his left ear.

The lower court found the defendant guilty of the crime of assault upon an agent of authority, and sentenced him to 3 years, 4 months, and 8 days of prison correccional, to pay a fine of P600, Philippine currency, with the corresponding subsidiary imprisonment, in case of insolvency, and to pay the costs. From this judgment the defendant appealed.

However, the facts proved at the trial constitute the crime of assault with the hands upon a person in authority as defined in paragraph 2 of article 249 in connection with paragraph 3 of article 250 of the Penal Code. Article 249 says:

"The offense of assault (atentado) is committed by:

"1. * * * * *

"2. 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 his official duties, or by reason of such performance."

Article 250 says:

""The penalty for assaults falling within the next preceding article shall be * * * when the offense is committed under any of the following circumstances :

"1. * * * * *

"2 * * * * *

"3. When the offenders lay hands upon any person in authority."

According to the above provisions of law, in order that the crime of assault punishable by these articles may exist, it is sufficient that there be an assault upon a person in authority committed by laying hands upon him. The supreme court of Spain in a decision under date December 7, 1876, held:

"Considering that the fact of giving a slap to a person in authority should necessarily be qualified in the sense of laying hands upon the same person and that the court has not thus erred in applying articles 263 and 264, paragraph 3 (articles 249 and 250, paragraph 3 of the Penal Code of the Philippines) to the defendant who gave a slap to the person of the municipal judge of Canada when the latter was engaged in the performance of the duties pertaining to his office, etc."

According to the doctrine above set forth, the facts proved in this case involve all the necessary elements that constitute the crime of assault, inasmuch as the offended party, being a municipal president, was a person in authority (U. S. vs. Dirain, 4 Phil. Rep., 541), and was in the performance of his official duties. In reaching this conclusion, we took into account the decision rendered by this court in the case against Gelacio Tabiana and Canillas,[1] in which it is said that the distinction between an assault and a resistance to agents of authority lies largely in the amount of the force employed in each case, and that a sudden blow given to a policeman while engaged in effecting an arrest does not constitute that employment of force which is punishable as assault. We have also considered the decision rendered by this court in the case against Cipriano Agustin (R. G. No. 13083 [decided December 11, 1917, not published]) in which it was also held that a blow upon a policeman was not an aggression amounting to an assault. It must be remembered, however, that in these two cases the crime involved was that of assault upon agents of authority, in which the essential element is substantially the force employed. It is said in these two cases that any force is not sufficient to constitute an assault, but that it is necessary to consider the circumstances of each case to decide whether the force used is, or is not, sufficient to constitute assault upon an agent of authority. In the present case, the crime involved is that of assault upon a person in authority, in which the force necessary to constitute this crime is specifically defined by the law and consists in laying hands upon the person. In this case, it is not necessary to ascertain what force the law requires in order to constitute an assault, since the law itself defines concretely this force in providing that it consists in laying hands upon the person. The law simply mentions the laying of hands, without making any distinction as to the different cases, and it would not be just to make that distinction when the law does not make it. It is to be noted that the same provision of the law with regard to intimidation or resistance as other constitutive elements of assault expressly requires that they be serious. If the law had intended to distinguish between the case of a serious laying of hands and that which is not serious, it would have laid down that distinction. This seems to indicate that the distinction which the law makes in the cases of intimidation or resistance is not intended to be applied to the case of laying hands.

The information qualifies the crime charged as an assault upon an agent of authority. Inasmuch as the offended party, as municipal president, is a person in authority and not a mere agent of authority, the designation of the crime given by the fiscal is erroneous. But, as has been decided by this court in many cases, this mistake does not affect the information, because the qualification which the fiscal makes is not what constitutes the crime but the facts stated in the information. In relating the facts constituting the alleged crime, the fiscal further says that the offended party was a municipal president and therefore an agent of authority. This, however, is nothing but a mere conclusion of law which can be considered discarded from the information. The allegation made that the offended party was a municipal president is sufficient to make one understand that the crime charged in the information is that of assault upon a person in authority. For this reason, we believe that, in accordance with the information filed in this case, the accused can be found guilty of the crime of assault upon a person in authority.

In accordance with the recommendation of the Attorney-General, we hereby declare the defendant guilty of the crime of assault upon a person in authority in accordance with article 249, paragraph 2, in connection with article 250, paragraph 3 of the Penal Code, and, modifying the judgment appealed from, we hereby sentence the accused to the penalty of 4 years, 2 months, and 1 day of prision correccional, to pay a fine of 625 pesetas, or to suffer the corresponding subsidiary imprisonment in case of insolvency, and to pay the costs.

In view, however, of the special circumstances of the case and of the degree of malice and the damage caused, which may be deducted therefrom, we believe that the penalty imposed, by reason of the strict application of the provisions above cited, is evidently excessive, and, in accordance with article 2 of the Penal Code, it is hereby submitted and recommended to His Excellency, the Governor-General, to grant the accused a partial pardon by reducing the penalty to 10 months of prision correccional. So ordered.

Torres, Johnson, Street, and Fisher, JJ., concur.

[1] U. S. vs. Tabiana ahd Canillas (37 Phil. Rep., 515).

DISSENTING OPINION

MALCOLM, J., dissenting:

My views can best be presented by retrogressive elimination :

1. Should a person who slaps a municipal president be found guilty of a violation of articles 249 and 250 of the Penal Code because he laid hands on a person in authority, and sentenced therefor to four years, two months and one day of prision correccional, to pay a fine of 625 pesetas, with subsidiary imprisonment in case of insolvency, and to pay the costs of both instances all as recommended by the Solicitor-General and agreed to by a majority of this court?

The information by means of which the charge was initiated, under which the accused was arraigned, and regarding which the judge of first instance in his decision was in no doubt, charged the accused only with assaulting an agent of an authority.

Certainly, we should not now strain the language of the information to include what it was not intended to include, simply to furnish a means by which this offender can be severely punished.

2. Is the accused guilty of a violation of articles 249 and 250 of the Penal Code or of the lesser offense penalized by article 252? The doctrine announced in *The United States vs. Tabiana and Canillas* ([1918], 37 Phil. Rep., 515)

is entirely applicable. Even if, it were not, in view of the entirely unjustifiable penalties provided by the Code, intended to protect monarchical officials, the principle should be broadened so as to include every reasonable contingency. Under this hypothesis the defendant should be 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 him.

3. Should the defendant be acquitted? On the facts he should not. On the ideas suggested in the dissenting opinion of the undersigned in *United States vs. Tabiana and Canillas*, *supra*, he should be. On the assumption, however, that chapter IV, title III, of the Penal Code is still in force, it being not entirely appropriate to repeat over and over again this dissent, the defendant should be convicted as above suggested, of a violation of article 252 of the Penal Code. I hold to the latter view.

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