

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. SYDNEY SMITH, DEFENDANT AND APPELLANT.

G.R. No. 14057. January 22, 1919

Ponente: MALCOLM, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-14057/>

MALCOLM, J.:

The defendant, Sydney Smith, a civil employee of the United States Army, was charged by appropriate information filed in the Court of First Instance of the city of Manila with having assaulted Colonel J. B. Bellinger, of the United States Army, "a person in authority." To the information, the defendant interposed a demurrer, based on the principal allegation that the court was without jurisdiction, since the person alleged to have been assaulted was an officer of the United States Army and not a person in the Insular service, so that the offense charged could be at most a simple assault. The demurrer having been overruled, the defendant pleaded not guilty, was tried, was convicted of the crime denounced in article 249 of the Penal Code, and was sentence to two years, four months, and one day of presidio correccional, with the corresponding accessory penalties, and to pay a fine of 625 pesetas and the costs.

Defendant's five assignments of error present three main issues, namely: (1) As the most fundamental, whether those articles of the Penal Code which define the crime of atentado contra la auioridad (assault upon a person in authority) have been displaced by the establishment in the Philippine Islands of a republican form of government; (2) Likewise of primary importance, whether a person in authority or a public officer as mentioned in the Spanish Penal Code, includes an officer in the United States Army; (3) Going to the facts and the penalty, whether the accused has been proved guilty of any offense and, if so, as to what the punishment should be. We will consider these points ad seriatem.

- Counsel for appellant contends that those provisions of the Penal Code dealing with assaults upon persons in authority, are contrary to the genius and fundamental principles of the American character and system of Government, and that they were therefore crowded out, by implication, as soon as the United States established its authority in the Philippine Islands. The argument is that the gulf which separates such articles from the spirit which inspires all penal legislation of American origin is as wide as that which separates a monarchy, like Spain at the time of the promulgation of this legislation, from a democratic republic like that of the United States, and that .penalties, out of all proportion to the gravity of the offense, grounded in a distorted monarchical conception of the nature of political authority, as opposed to the American conception of the protection of the interests of the public, have been obliterated by the present system of Government in the Islands. The Attorney-General replies that in a monarchy the same as in a republic, the prestige of officials must be maintained. "Without order," says the Attorney-General, "there can be no society, and without authority there can be no order."

Mention is made of these antagonistic contentions principally to introduce the second and more decisive issue. As a matter of fact, while the writer endeavored to establish the thesis in his dissenting opinon in the case of United States vs. Tabiana and Canillas ([1918], 37 Phil., 515), that those provisions of the Spanish penal code concerning assaults upon persons in authority were in the nature of a political law enacted and promulgated by a monarchy

and were thus entirely incompatible with democratic institutions, this view failed to convince a majority of the court. It can, therefore, be taken for granted that until otherwise held by a higher tribunal, or until repealed or revised by the Philippine Legislature, the Supreme Court of the Philippine Islands will continue to enforce the provisions of the Penal Code relating to assaults upon persons in authority.

- The Penal Code was formulated by the Spanish authorities for the Monarchy as existing in Spain and in the Philippine Islands in the year 1887. A person in authority within the purview of this Penal Code included religious, military, and civil officials. (See Viada, *Comentarios al Código Penal*, vol. 2, pp. 209, 344 et seq.) For instance, a decision of the supreme court of Spain of October 22, 1885, considered a bishop as a person in authority.

Even if these articles of the Spanish Penal Code are not so repugnant in principle to democratic institutions as no longer to be effective, yet it is undeniable that the courts have on many occasions only grudgingly imposed the severe penalties therein provided for, and have by judicial interpretation attempted to circumscribe their scope. (See, for example, the majority decision in *United States vs. Tabiana and Canillas*, supra.) It would thus be preposterous to suppose that, with a change of sovereignty which has caused a complete separation of Church and State and the abolition of all special privileges for a particular religious sect, the courts would sanction any higher prerogatives for a Church official than they would for any citizen. (See *U. S. vs. Balcorta* [1913], 25 Phil., 273.) It is by following out to its logical conclusion the same line of reasoning, that we believe inapplicable at the present day the Spanish constructions of these articles, or that Spanish jurisprudence inspired by Spanish conditions, should be made to include officers in the military service of the United States.

The Congress of the United States has created two agencies to serve the United States in the Philippine Islands. Each agency was given widely different powers and duties. The Army was created for a special service, which it may be called upon to perform in any portion of the country. The Government of the Philippine Islands was created with the broad and general powers of civil government, restricted to a particular portion of territory. These two governments, the one military and the other civil, both deriving their powers from the Constitution of the United States and the Congress of the United States, and acting under the general supervision of the President, stand side by side and independent of each other in the Philippine Islands. (See *Grafton vs. United States* [1907], 206 U. S., 333; *Tan Te vs. Bell* [1914], 27 Phil., 354.)

The United States Army is a national organization with laws, rules, and regulations especially provided for its efficiency and discipline. These laws, rules, and regulations are presumably effective in the Philippines. The Government of the Philippine Islands, a civil government, has likewise laws, rules, and regulations especially adapted to its objects. Members of the Army are for many purposes governed by these civil laws. The Philippine courts have jurisdiction to try military offenders charged with a violation of the penal laws of the Philippine Islands. (*U. S. vs. Sweet* [1901], 1 Phil., 18.) Yet, such jurisdiction does not necessarily mean that officers of the United States Army are to be given special protection by laws of a civil nature.

The decisions of this court have invariably assumed that the officer referred to was a functionary of the Civil Government. But when Major Carrington of the United States Army was charged with a violation of the Penal Code, the United States Supreme Court said that "As a soldier he (Carrington) was not an official of the Philippines, but of the United States." (*Carrington vs. United States* [1908], 208 U. S., 1. See also *In re Fair* [1900], 100 Fed., 149.) Within the meaning of articles 264 and 401 of the Penal Code, an officer of the United States is not a person vested with jurisdiction and is not a public officer, who takes part in the performance of duties in the public service of the Philippine Islands.

We think that the terms "person in authority," and "public officer" found in the Spanish Penal Code must be given a restricted meaning so as to include only persons who perform some of the functions of the Government of the

Philippine Islands.

- The evidence proves beyond a reasonable doubt that the aggressor was Smith, the defendant, and not Colonel Bellinger. It may be that the assault was provoked by a grievance of the accused who thought that the Colonel had said of him that he belonged to a "colored regiment and was married to a negress." However, this is beside the point. The determining fact is that the accused attacked and maltreated his immediate chief.

The information is so worded as to permit of conviction of a minor and included offense. Leaving out the surplusage it would read; "That on or about the 28th day of February, 1918, in the city of Manila, the said Sydney Smith did, then and there wrongfully, feloniously, and with criminal intent, attack and assault Colonel J. B. Bellinger." This charge, proved as it is, constitutes the misdemeanor punished by article 588, paragraph 1, of the Penal Code.

In conformity with the foregoing, it is held that the defendant and appellant cannot be convicted of a violation of articles 249 to 252 of the Penal Code, but is guilty of having inflicted physical injuries upon another, and must therefor be sentenced to fifteen days of arrest, with the costs of both instances against him. The law also provides for censure. And this is right, for no person whether for a real or a fancied grievance, should so demean himself as to attempt to take the law into his own hands and to assault another. For such conduct, the defendant is in addition to the penalty above imposed hereby reprimanded. So ordered.

Johnson, Araullo, and Moir, JJ., concur.

CONCURRING

CARSON, J.,

I concur.

I deem it proper, however, to indicate, expressly, that in modifying the penalty imposed by the court below and in imposing the relatively light penalty prescribed by law for a simple assault and battery, we should not be understood as condoning or overlooking the grave military offense involved in the unjustified and inexcusable assault committed by the accused upon his military superior. We are not blind to the aggravated character of an assault committed, in time of war, by an inferior upon his superior in the military establishment of the United States. But we are of opinion, and so hold, that while the evidence of record fully sustains the charge that the accused committed an unjustified assault upon the complaining witness, and that the relation of the accused to the complaining witness was that of a subordinate to his military chief, the civil courts of these Islands have no jurisdiction over the military offense which thus appears to have been committed, as such. Their power extends only to the imposition of the penalties prescribed in the Penal Code for the commission of acts expressly penalized in that code.

I do not doubt that under Spanish sovereignty an atentado committed against an officer of the Spanish Army was included in the fourth chapter of the Penal Code defining and penalizing "assaults upon persons in authority and their agents, resistance and disobedience thereto"—but I agree with the writer of the majority opinion that the change of sovereignty, with its attendant changes in the political relations of the citizen, and its basic changes in the relation of the army to the civilian population, abrogated the provisions of this chapter of the Penal Code in so far, at least, as their terms would appear to contemplate the imposition of the extraordinarily severe penalties provided therein for resistance, intimidation, disobedience or employment of force against officers of the United States Army and their "agents," including non-commissioned officers and privates in the ranks,

I was strongly inclined to agree with Justice Malcolm in his dissenting opinion in the case of United States vs.

Tabiana and Canillas (37 Phil. Rep., 515) wherein he contended that most, if not all the, penal provisions of this chapter of the code should be deemed to have been abrogated by the change of sovereignty from Spain to the United States; and had the question then raised been one of first impression, I might have joined him in his dissent. But having in mind the fact that a long line of decisions had established the contrary doctrine, and that the local Legislature had not seen fit to intervene, though it must be presumed to have been fully advised as to the repeated rulings of the court, I did not feel at liberty, at that late day, to challenge the settled doctrine of the court in this regard. I had no hesitation, however, in concurring with the court in its ruling that the change in the political relations of the citizen involved in the change of sovereignty, abrogated the penal provisions of this chapter in so far as they contemplated atentados against religious and ecclesiastical authorities (25 Phil. Rep., 273);¹ and have no hesitation now in joining with the majority in ruling that a like abrogation of the provisions of this chapter of the Penal Code was involved in the change of sovereignty, in so far as the language of these provisions would appear to define and penalize atentados against officers and enlisted men of the Army of the United States while in the performance of ordinary garrison duty in these Islands. It is not necessary to consider, at this time, the effect with relation to the provisions of this chapter, of details or orders placing detachments or individual officers or men of the United Service on special duty looking to the "suppression of violence, the maintenance of order and the enforcement of the laws of the Philippine Islands" in response to a request by the Governor-General under the terms of subsection (g), section 64 of the Administrative Code.

TORRES, J., with whom STREET and AVANCEÑA, JJ., concur, dissenting

The undersigned regrets that he cannot concur in the worthy opinion of the majority of the Justices of this Court, for, in his humble judgment, the Court is obliged to choose one of the alternatives of the following dilemma:

Either the act performed by Sydney Smith is provided for and punished by the military laws, and therefore this Court lacks jurisdiction to take cognizance thereof or, on the contrary it is governed and punished by the penal law of civil nature, for the application of which the Court of First Instance and, on appeal, this Court is called upon to officiate; in this last alternative the criminal act is considered as subject to the authority and jurisdiction of the ordinary courts which administer justice by virtue of the sovereignty of the people of the United States.

By the mere fact that there has not been any discussion as to the authority and jurisdictional powers of the ordinary courts which heard and tried the instant case brought against the defendant Smith, it is beyond all doubt that it is a recognized fact that both the Court of First Instance and this Court have understood that they have a perfect right to pass upon and decide this case.

Acting upon this supposition, the ordinary courts of common jurisdiction were unable to, nor can they, classify the crime that is the subject matter of this cause, and, in a proper case, impose the proper punishment upon the presumed perpetrator of the offense, except in accordance with the penal laws in force, the provisions of which have heretofore been applied to the crimes committed by military subordinates of the War Department.

We agree that certain articles of the Penal Code in force have been inapplicable since freedom of worship and the complete separation of Church and State were implanted in this country; but, in spite of all this, in no manner can be considered repealed the penal provisions relative to punishable acts of assault upon the authorities, the agents thereof, and other public officers committed, by citizens and residents of the Archipelago, with the exception, perhaps, of those acts which should be punished in accordance with certain special laws distinct from the penal laws in force.

We are convinced. that the principal authority is not incompatible with democratic sovereignty nor with a government of the people by the people themselves, inasmuch as in the most democratic nations, such as

Switzerland and the North American Union, there exists a supreme authority, emanated from popular sovereignty, and a gradation of officials and subordinate employees provided for the government and administration of the State; wherefore, we arrive at the conclusion that the provisions of articles 249, 250, and 251 are not incompatible with the implantation of American sovereignty in these Islands, nor with the organic laws, especially with the last one known as the Jones Bill, and so true is this that in practice these articles have continuously been applied in cases of crimes committed by a violation of their provisions.

The penalty fixed by the present Code may be severe, which Code certainly was written by monarchical legislators for the repression of the crime of assault upon or attempt against the authorities and their agents; but, although the penalty may be severe or excessive, it is not a good reason for considering that said articles of the Penal Code have been completely repealed, that is, that the crimes of attempt against the authorities, their agents, and other public officers should go unpunished, because then it would be lawful and permissible for a private person or a minority to rebel, to employ force, and to oppose the legal provisions prescribed by the established authorities through the consent of a majority of the governed.

It may be conceived that an attempt against a public officer not vested with the character of an authority or of an agent of authority does not merit special and severe punishment; but to consider as a mere assault upon a private citizen an attempt, against a person vested with a superior character and the head of a department or office, by his subordinate, would be, in short, the implantation of a revolutionary and chaotic system in the social regime.

The principle of authority is absolutely indispensable, not only for a monarchical society, but also, and especially, for a democratic society whose members, for the very reason that they enjoy ample freedom and the full exercise of their rights, should have a consciousness of their social duties and of their responsibilities, because, without an authority duly constituted through the consent of the majority, or without a stable government, as we are wont to say, it would not be possible for a regularly organized civil society or a quiet and peaceable community to subsist, inasmuch as, without a just and responsible authority, the citizens could not enjoy full freedom and all the rights inherent in human nature, for, if there were no authority to protect and guarantee the rights that pertain to all, there would be no order nor social guaranty, there could be no harmony among those associated together, nor could these latter enjoy in the community all their liberties and rights as free citizens.

The only persons inclined to disobey the law and to be disrespectful to the duly constituted authorities are those who have nothing to lose in the country, but much to gain, and when they succeed in substituting themselves for the persons who exercise functions of authority, they dominate with terror and commit all kinds of horrible and abominable crimes, as shown by history. Once an authority has been constituted in conformity with law, it must be sustained equally as the law itself by such penalties as may prevent all violation of, and attempts to violate, the law.

It behooves us to distinguish between the idea of an authority and a public officer, for all persons vested with authority are public officers, but not all public officers exercise functions of authority.

Colonel J. B. Bellinger, as chief officer of the Quartermaster Department of the United States Army is, in my judgment, a public officer having a military functions, who, though not vested with the character of authority, is, however, the head of the department under his charge. While exercising the function of his office he was assaulted by a subordinate of his, Sydney Smith, and therefore the latter committed, not a misdemeanor, but the crime comprised in the last paragraph of article 251 of the Penal Code, inasmuch as, on Smith's assaulting the colonel, his immediate superior, he laid hands on a superior public officer having military functions, and incurred the penalty prescribed in said article, which is the maximum degree of the penalty of prison correctional in its minimum and medium degrees.

Although this penalty be deemed heavy and severe, it should be applied, because the articles of the Code which prescribe it are in force and have not been repealed by another law. In any event, pardon could be granted if the Governor-General saw fit; but in the meanwhile the law should be complied with, for the sake of liberty itself, the constitutional guarantees¹, and order which secures the exercise of the rights of all the citizens.

The commission of the crime having been attended by no aggravating circumstance whatever, but by the 7th extenuating circumstance of the Penal Code, the penalty should be applied to the defendant in its medium degree, to wit, two years, eleven months, and eleven days of prision correctional, with costs.

Judgment modified penalty reduced.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.