

**JOSE R. VILLANUEVA, CITY ATTORNEY OF THE CITY OF BUTUAN,
PETITIONER, VS. THE HON. MONTANO A. ORTIZ, JUDGE OF THE
COURT OF FIRST INSTANCE OF AGUSAN, ANTONIO MORDENO AND
MALAQUIAS...**

G.R. No. 15344. May 30, 1960

Ponente: GUTIERREZ DAVID, J.

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GUTIERREZ DAVID, J.:

On December 9, 1953, the City Attorney of Butuan filed with the Municipal Court of that city Criminal Case No. 607 against Antonio Mordeno and Malaquias Fortun, and Criminal Case No. 608 against Antonio Mordeno, charging the accused in each case with assault upon a person in authority with disturbance of public order. For quick reference, the informations in the said criminal cases are reproduced, to wit:

"That on or about November 10, 1953, in barrio Ba-an, Butuan City, Philippines, and within the jurisdiction of this Honorable Court, and while the board of election inspectors were in session performing their duties as such inspectors and poll clerk in Precinct 36-A in the last general election held on November 10, 1953, the said accused confederating, cooperating and helping one another, entered one of the rooms of Ba-an Elementary School where Precinct 36-A was then located and where inspectors and poll clerk of said precinct were then holding their meeting to canvass the result of the election in said precinct, and once there, the accused Antonio Mordeno did then and there willfully, unlawfully and feloniously attack, assault and use personal violence upon the person of Narciso Medrano, a duly appointed and qualified inspector of said precinct 36-A and while performing his official duties as such inspector and on the occasion of such performance by then and there boxing him and the accused Malaquias Fortun, did then and there willfully, unlawfully and feloniously attack, assault and use personal violence upon the person of Apolinario Lupos, a duly appointed watcher in said precinct and while performing his duties as such watcher thereby causing serious disturbance and interrupting or disturbing public performance and functions of said precinct 36-A and 35-A which was then in the adjacent room in the same building."

"That on or about the evening of November 10, 1953, in barrio Ba-an, Butuan City, Philippines, and within the jurisdiction of this Honorable Court and while the Board of Inspectors were in session performing their duties as such Inspectors and Poll clerk in Precinct No. 35 of the last general election held on November 10, 1953, the said accused entered the rooms of the Ba-an Public Elementary School where Precinct No. 35 was then located and where inspectors and poll clerk of said precinct were then holding its meeting to canvass the result of the election in said precinct, and did then and there willfully, unlawfully and feloniously attack, assault and use personal violence upon the person of Simeon Loquinte, a duly appointed and qualified election inspector of said Precinct No. 35 and while performing his official duties as such inspector and on the occasion of such performance by then and there boxing him and Pablo Remoneda, a duly appointed watcher in the said precinct and while performing his duties as such watcher thereby causing serious disturbance and interrupting or disturbing public performances and functions of the Board of Inspectors of said Precinct No. 35 and Precinct No. 35-A which was in the adjacent room."

The corresponding warrants of arrest were issued by the Municipal Court, and the accused having waived their right to the second stage of preliminary investigation, the cases were forwarded to the Court of First Instance of Agusan for trial on the merits.

New informations for the same charge were thus filed with the Court of First Instance. Upon arraignment, the accused pleaded "not guilty", and after a joint trial, during which evidence was adduced by the parties, the cases were submitted for decision. The Court of First Instance, however, instead of deciding the cases upon their merits, issued, on September 30, 1958, a resolution remanding them to the Municipal Court for lack of jurisdiction. This on the theory that the accused by boxing the election inspectors and watchers as charged in the information committed the crime of assault without intent to kill, one of the offenses enumerated in section 87 (c) of the Judiciary Act of 1948, which is within the concurrent jurisdiction of the Court of First Instance and the Municipal Court, but which falls, in these cases, under the exclusive jurisdiction of the Municipal Court because it was the first to take cognizance thereof.

Motion for reconsideration of that resolution having been denied, the City Attorney, alleging that the lower court acted in excess of its jurisdiction and with grave abuse of discretion, now petitions us to declare null and void the said resolution, and to order the judge to render judgment in the said cases in accordance with the evidence presented during the trial held before him.

The petition is well taken.

Settled is the rule that the jurisdiction of courts in criminal cases is determined by the allegations of the complaint or information (*People vs. Mission*, 87 Phil., 641; 48 Off. Gaz., 1330). A careful scrutiny of the allegations in the informations aforequoted shows that the accused are charged to have committed not only the crime of assault upon a person in authority defined in Article 148 of the Revised Penal Code but also that of disturbance of public order defined in Article 153 of the same Code. For it is alleged therein that the accused by laying hands upon election inspectors and watchers in public places, had caused serious disturbance and interrupted or disturbed public performances and functions. The accused are thus charged with the complex crime of assault upon a person in authority with disturbance of public order.

The Revised Penal Code (Article 148) imposes the penalty of imprisonment of prision correccional in its medium and maximum periods and a fine not exceeding 1,000 pesos upon anyone who commits the crime of direct assault when, as in these cases, the offender lays hands upon a person in authority. And Article 153 of the same Code imposes the penalty of arresto mayor in its medium period to prision correccional in its minimum period and a fine not exceeding 1,000 pesos for any serious disturbance in a public place, office or establishment, or interruption or disturbance of public performances, functions or gatherings of peaceful meetings. Each separate crime charged in the information is, therefore, punishable with imprisonment of more than six months and a fine of more than two hundred pesos. Consequently, they are, according to section 44, paragraph (f) of the Judiciary Act of 1948 (Republic Act 296), within the original jurisdiction of the Court of First Instance.

The lower court in remanding the cases to the Municipal Court has taken the position that there is only one crime charged, that of direct assault, or, more specifically, assault upon a person in authority. Granting that only the crime of assault upon a person in authority is charged, still the Court of First Instance would have jurisdiction over the cases. While the said section of the Judiciary Act provides that the Justice of the Peace Court and Municipal Court have original jurisdiction over cases of "assault where the intent to kill is not charged and evident upon trial", this does not include direct assaults defined and penalized under Article 148 of the Revised Penal Code. "Assaults where the intent to kill is not charged or evident upon trial" apparently refers to crimes against persons, under Title Eight of the Code. Direct assaults defined under Article 148, on the other hand, are

crimes against public order falling under Title Three of the Code. In direct assaults, the victim is a person in authority or his agent, and the attack, employment of force or intimidation is committed on the occasion of the performance of official duties or by reason of such performance. Also punishable as direct assault is the employment of force or intimidation without a public uprising for the attainment of any of the purposes enumerated in defining the crimes of rebellion and sedition. The principal object of Article 148 is to penalize the commission of acts against public order as may be indicated by its classification in the Revised Penal Code.

In any event, even assuming that the offenses charged in the cases at bar come within the meaning of the "assaults" mentioned in section 87 (c), subparagraph 2 of the Judiciary Act, it has already been held that the jurisdiction of Municipal Courts and Justices of the Peace over the specific offenses mentioned in said section 87 (c) of the Judiciary Act is concurrent with Court of First Instance when the penalty to be imposed exceed six months imprisonment or a fine of more than two hundred pesos (*Natividad vs. Robles*, 87 Phil., 834; *People vs. Colicio*, 88 Phil., 196; *People vs. Palmon*, 86 Phil., 350; 47 Off. Gaz., Supp. December 1951, p. 29). And it clearly appearing that the informations filed with the Municipal Court of Butuan City, contrary to the holding of the court below, were just for purposes of preliminary investigation—not to mention the fact that the Court of First Instance of Agusan had already tried them on the merits—it was error for the latter court to still remand the cases to the Municipal Court. Where two or more courts have concurrent jurisdiction, the first to validly acquire it takes it to the exclusion of the other or the rest (*Alimajen vs. Valera, et al.*, 107 Phil., 244; 57 Off. Gaz. [28] 5095; citing *Valdez vs. Lucero*, 76 Phil., 356; 42 Off. Gaz. No. 11, 2835; *People vs. Livera*, 94 Phil., 771; and *Lumpay, et al vs. Moscoso*, 105 Phil., 968.)

In view of the foregoing, the resolution complained of is declared null and void, and the Court of First Instance of Agusan is hereby ordered to render judgment in the criminal cases above-mentioned in consonance with law and the evidence presented before it during the trial. No costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, and Barrera, JJ., concur.
Concepcion, J., concurs in the result.

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