

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. GREGORIO JIMENEZ, DEFENDANT AND APPELLANT.

G.R. No. 16388. July 21, 1920

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

The appellant in this cause was sentenced by the Court of First Instance of Manila to four months of *arresto mayor* and payment of costs for the crime of *lesiones graves* by reckless imprudence.

The information by virtue of which he was tried and found guilty is as follows:

"That on or about November 20, 1918, in the city of Manila, Philippine Islands, the said accused, being then the motorman and person in charge of electric car No. 150 which was among those making the run between Pasay and San Juan, ran and operated said car along Calle P. Burgos in this city, in a careless, negligent and imprudent manner, giving it a greater speed than traffic conditions permitted and without taking the proper precautions in order to avoid accidents to life and damages to property, thereby causing his car through his said imprudence, recklessness and carelessness, to strike and knock down a boy named Aurelio Ibañes, who as a result thereof lost a principal member, which is his left arm, and suffered the consequent injuries which will require medical assistance for a period of more than thirty days and incapacitate him permanently for manual labor, contrary to the law in such case made and provided."

The brief for the appellant having been presented, the Attorney-General asks in his motion of May 27, 1920, that the cause be dismissed in order that the accused may be tried by a competent court, it being alleged that by reason of the subject-matter of the suit the Court of First Instance lacked jurisdiction over the case charged in the information.

In order to determine the jurisdiction of the court in criminal cases, the complaint must be examined for the purpose of ascertaining whether or not the facts set out therein and the punishment provided for by law for such acts, fall within the jurisdiction of the court in which the complaint is presented. If the facts set out in the complaint are sufficient to show that the court in which the complaint is presented has jurisdiction, then the court has jurisdiction. (*U. S. vs. Mallari and Cueson*, 24 Phil., 366.)

A careful examination of the information herein quoted shows that the facts therein stated would constitute, had malice been present, the crime of *lesiones graves* punished with a correctional penalty, that is, with *prision correccional* in its medium and maximum degree, according to case No. 2, article 416, of the Penal Code. If, as alleged in the information there was reckless imprudence, then the same acts fall under the provisions of the first paragraph, case No. 2, of article 568 of the same Code, which imposes the penalty of *arresto mayor* in its minimum and medium degree. It therefore results that the penalty which the law fixes upon the criminal act complained of in the information cannot exceed four months of *arresto mayor*, and, therefore, the Court of First Instance, according to section 56, paragraph 6, of Act No. 136, had no original jurisdiction of the case by reason of its subject-matter.

If, malice being present, the facts set out in the information, were punished with an afflictive penalty, they would, when committed by reckless imprudence, fall under the provisions of the first paragraph, first case, of said article 568 of the Penal Code, which imposes the penalty of *arresto mayor* in its maximum degree to *prision correccional* in its minimum degree, that is, from four months and one day of *arresto mayor* to two years and four months of *prision correccional*. In this case the Court of First Instance would have jurisdiction of the case and could impose the penalty which, according to the evidence, should be imposed, even if said penalty should be lower than that which is within the original jurisdiction of the court to impose. (U. S. vs. Mallari and Cueson, *supra*.)

The accused did not object to the jurisdiction of the court, nor did he answer the motion of the Attorney-General in which the dismissal of the appeal is asked, although he has been notified thereof. His silence, however, produces no effect, for when jurisdiction has not been conferred by law, the accused in a criminal case cannot confer it by express waiver or otherwise. (U. S. vs. De la Santa, 9 Phil., 22; U. S. vs. Jayme, 24 Phil., 90.)

In view of what has been said the present case is dismissed without any special pronouncement as to costs, the Attorney-General being granted the right to institute in any competent court the action which he may deem necessary for the prosecution of the same crime. So ordered.

Mapa, C. J., Johnson, Carson, Araullo, Malcolm, and Avanceña, JJ., concur.

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