

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. FAUSTO AQUINO, DEFENDANT AND APPELLANT.

G.R. No. 22021. August 07, 1924

Ponente: MALCOLM, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-22021/>

MALCOLM, J.:

About 10 o'clock in the evening of June 30, 1923, Lieutenants Natanawan, Gabriel, and Liwanag of the Philippine Constabulary, accompanied by some soldiers, raided a tienda belonging to one Trinidad Litingko situated in the municipality of Malolos, Bulacan. They interrupted a gambling game of "jueteng" which was being played in the tienda on that occasion. Although not fortified with either a warrant of arrest or a search warrant, Lieutenants Natanawan and Gabriel sought the house of Trinidad Litingko which was located but a short distance from her tienda. Seeing the door to the house partly open, the lieutenants entered to find Trinidad Litingko with her husband, Staff Sergeant Fausto Aquino of the Constabulary, and their children. Shortly afterwards, the lieutenants returned to their companions in the tienda and there Mrs. Litingko and Sergeant Aquino joined them.

In addition to arresting those persons who were caught playing the gambling game, the Constabulary officers attempted to arrest Mrs. Litingko as the owner of the gambling house. But she disputed their authority and alleged that she could not be arrested because there was no warrant of arrest and because she was not caught in flagrante. She also stated that she could not go with the officers because she was sick. As all efforts to persuade Mrs. Litingko to submit to arrest voluntarily were of no avail, Lieutenant Liwanag took hold of one of her hands for the purpose of taking her to the municipal building.

At this juncture, the husband of Mrs. Litingko, Sergeant Aquino, arose from his seat, took hold of his wife, and closing his fist and facing Lieutenant Liwanag, several times shouted in English: "You should behave like a gentleman. You should know how to make an arrest." To which the lieutenant replied, "You are a member of the Constabulary and your duty is to help us accomplish the arrest." Fortunately, before either Lieutenant Liwanag or Sergeant Aquino could further lose their equanimity and before a personal encounter could occur, Lieutenant Natanawan intervened. Sergeant Aquino and his wife were then taken peacefully to the municipal building.

On July 2, 1923, Staff Sergeant Aquino of the Constabulary, in a memorandum for the Adjutant of the Philippine Constabulary, Manila, requested an investigation of the occurrence. On July 4, 1923, Lieutenant Natanawan furnished the inspector of North Central Luzon with a copy of his report pertaining to the gambling raid on the house of Trinidad Litingko. On the same day, Lieutenant Liwanag requested permission from the Adjutant of the Philippine Constabulary to file a criminal complaint in the courts against Staff Sergeant Aquino. This permission was granted on July 7, 1923. The criminal complaint in question was subscribed and sworn to on July 8, 1923, and received and filed on the following day.

Following trial, the Judge of First Instance found the accused guilty of a violation of the second paragraph of article 253 of the Penal Code. The sentence of His Honor was that the accused should suffer one year and one day imprisonment, prison correctional, with the accessory penalties provided by law, and pay a fine in the amount of

325 pesetas, with subsidiary imprisonment in case of insolvency, and the costs. From this judgment, the accused has appealed and in his behalf interesting questions have been raised both by means of the customary brief and by oral argument:

The foregoing statement of the case and of the facts have been taken in the main from the decision of the trial court, the documentary evidence of record, and the briefs of opposing counsel. Except as to the details, there is no dispute as to the facts.

The sole point to be remembered is that Sergeant Fausto Aquino of the Philippine Constabulary, on the occasion when his superior officers, lieutenants in the Constabulary, were attempting to arrest the sergeant's wife, remonstrated with one of them for his methods saying, "You should behave like a gentleman. You should know how to make an arrest." Do these facts justify a conviction of the accused of a violation of article 253, paragraph 2, of the Penal Code? Has article 253, paragraph 2, of the Penal Code been modified in any way by subsequent legislation, and particularly has it been modified by the Constabulary Law?

To the first question, all of us answer No. To the second question, a majority of the court makes no answer believing a pronouncement thereon to be unnecessary. Two of us say Yes.

I. The information charges Sergeant Aquino with the crime of resistance and disobedience to the agents of the authority. It alleges that the accused, to avoid the arrest of his wife by a lieutenant of the Constabulary, with closed fists attempted to obstruct with force the arrest of his wife ("con los punos cerrados se dispuso a impedir por la fuerza el arresto de la citada Trinidad Litingko"). The accused was convicted of a violation of article 253, paragraph 2, of the Penal Code which defines the offense of contempt as committed by "any public officer who, while his superior in rank is engaged in the performance of his official duties, shall defame, abuse, insult, or threaten him in his presence or in any writing addressed to him."

The allegations of the information have not been proved. Sergeant Aquino did not actually resist his superior officers. He did not actually impede the arrest. The intention of the sergeant was more properly to remind than to insult, to call attention to than to abuse, to protest than to defame, to criticize than to obstruct. The sergeant "prepared himself to prevent by force the arrest of his wife," as the Attorney-General correctly states, but he did not prevent the arrest.

Had Sergeant Aquino been a private individual, the law would have protected him in looking after his sick wife and in seeing to it that the security of the home was respected. That he happened to be a member of the Constabulary does not materially change the aspect of the case, in so far as the criminal information in relation with the proof is concerned.

The fact that Sergeant Aquino may have had his fist closed and may have spoken in a loud tone of voice, makes no particular difference. A bellicose attitude given up before any actual physical encounter occurs is not a crime. Raising one's voice in protest is not a crime. Should the courts convict everyone who loses his temper or who speaks shrilly and violently, the prisons would be crowded to overflowing with citizens and officials who engage in excited debate, and the courts themselves might find it difficult to function. We have to determine a question of law and not of physical culture or of elocution.

II. On the second question, as above intimated, the court as a body expresses no opinion. Two of us, however, Mr. Justice Ostrand and the writer, believe that the question is fundamental in nature and should be met and decided.

Conceding that the allegations of the information have not been established, the court should determine if the provisions relating to a lesser crime, that punished by article 253 of the Penal Code, have been violated. Conceding again that the facts here narrated require action, our view is that it should take place through the

machinery provided by the Constabulary Law and not by criminal prosecution. It is a matter of internal discipline of a body with military characteristics. To this extent, has the Penal Code been modified by the Constabulary Law as found in the Administrative Code. (U. S. vs. Smith [1919], 39 Phil., 533; People vs. Castro [1922], 43 Phil., 842; People vs. Perfecto [1922], 43 Phil., 887; People vs. Perez [1923], 45 Phil., 599.) It is our opinion that the accused has not been proved guilty beyond a reasonable doubt of the crime charged in the information. As a result, judgment should be as it is hereby reversed and the accused acquitted with all costs de oficio. So ordered.

Johnson, Avanceña, Villamor, Ostrand, and Romualdez, JJ., concur.

CONCURRING OPINION

STREET, J.:

As the opinion written by Mr. Justice Malcolm departs somewhat from conventional lines, I may be permitted to explain my own position, which is this: The acts done by the accused constitute at most a trivial offense and are not sufficiently serious to sustain a conviction under article 253 of the Penal Code. Possibly a prosecution for a misdemeanor under subsection 6 of article 574 might have been justified, but the information does not seem to contemplate an offense of the character there defined. It results that, as the prosecution for the graver crime defined in article 253 cannot be sustained, the defendant is properly acquitted.

I entirely disagree with the proposition—said to be entertained by two members of the court—that certain disciplinary provisions contained in the Constabulary Law (secs. 849 to 860, Administrative Code) have the effect of exempting members of the Constabulary from prosecution in courts. Reference to those provisions will show that they contemplate exclusively the internal discipline of the Constabulary body and have no relation to public order protected by the general penal laws of the country.

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.