

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. LEON ACIERTO, DEFENDANT AND APPELLANT.

G. R. No. 36595. November 28, 1932

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the accused Leon Acierto, from the judgment of the Court of First Instance of Ilocos Norte, convicting him of the crime of assault upon a public officer, defined and punished in article 251, in connection with the last paragraph of article 250 of the old Penal Code, with the mitigating circumstance of passion and obfuscation, not offset by any aggravating circumstance, and sentencing him to two years, eleven months, and eleven days of prision correccional, a fine, of 1,000 pesetas, the accessory penalties of the law, with subsidiary imprisonment in case of insolvency at the rate of one day for every P2.50, and the costs of the prosecution.

In support of his appeal, the appellant assigns the following alleged errors as committed by the court a quo in its decision, to wit:

- The lower court erred in not finding that the accused-appellant Leon Acierto acted in self-defense in preventing or repelling with his fists, the unlawful attack begun by the alleged offended party, Hipolito Velasco.
- The lower court also erred in finding the accused-appellant guilty of the crime of assault upon a public officer, defined and punished in article 251 of the Penal Code in connection with the last paragraph of article 250 hereof.
- Lastly, the lower court erred in not acquitting the accused-appellant, Leon Acierto, of all criminal liability for the crime with which he was charged."

The prosecution attempted to prove the following facts:

At about 10 o'clock on the morning of March 2, 1931, while the offended party, Hipolito Velasco, duly appointed postmaster for the municipality of Baearra, Province of Ilocos Norte, was in his office situated in the municipal building, counting two rolls of twenty-peso bills amounting in all to P4,000, the accused, Leon Acierto, entered the office without the postmaster's noticing it, and stood behind him. Without saying a word, the accused took one of the rolls, but the postmaster caught hold of his hand and took away the money, saying: "Get out of here, Lawyer, because we have plenty of work". The defendant moved away towards the north, and the postmaster, believing he had gone, began to count the money again; but the accused came back to his side, and as he did not want to be disturbed, he put the money in the safe, took the key to the office, and as he was going towards the door, said to the accused: "Be so good as to leave now, Lawyer". The other answered: "I don't want to. You may close it". He said this with his hands in his trouser's pockets, and was walking about the room. When he came to the door of the office, the post-master again told the accused: "Be so good as to leave now, Lawyer". The accused gave the same answer. For the third time the offended party said to the defendant: "Go away now," and the latter answered: "I don't want to leave." Displeased with this answer, the

offended party approached the defendant quietly, and took hold of his left hand to conduct him outside. Whereupon the lawyer hit him in the right eye with his fist, leaving him stunned, and making him lose his balance. When he recovered, the accused again hit him, first in the right frontal region, and then below the left eye. The offended party shouted for help, and a member of the municipal police, as well as his office companions, came up. As a result of the blows he had sustained, the offended party suffered an ecchymosis in the orbit of the left eye, and another in the frontal region, which took seven days to heal completely.

Testifying in his own behalf, the accused said that on the morning of March 2, 1931, he had gone to the post office of Bacarra to collect his correspondence, and approached the postmaster, the offended party herein, Hipolito Velasco, who was counting bank bills on his table, and being close friend, he gave him one or two little slaps on the back; that as the man paid no attention, he slapped the table; that the postmaster then got up angrily and said: "Don't you come around with your jokes; I may stick a knife into you." The accused was hurt by this taunt, and began to walk away. The postmaster then got up, put the papers in the safe, and when the accused was already within two meters of the door, passed by him and blocked his way, and said with a gesture of threat; "Get out, you, I say." That as the accused would not budge, he rushed at him, caught his right arm, and pushed him forward, giving him a blow on the right temple; that the accused then returned the blow, giving rise to a fist fight between the two until a policeman came and separated them, and took them outside the hall; that the offended party had not told him to leave his office or was he answered in the manner attributed to him.

The trial court, who saw and heard the witnesses testify, gave more credit to the testimony for the prosecution than that for the defense. There is no doubt that in spite of his intimacy with the offended party, the accused had no right to enter the latter's office and disturb him while in the performance of his duty, counting money he had received from Manila. But taking into account the circumstances of the case and the friendship between the two, it may be supposed that the defendant was joking and the offended party happened to be in an irritable mood, on account of the work he had, and it degenerated into a real fight, having been provoked by the herein accused.

The court a quo found the accused guilty of the crime of assault upon a public officer, defined and punished in article 251, in connection with the last paragraph of article 250, of the old Penal Code. The Attorney-General considers the act to constitute two crimes: assault upon an agent of authority, defined in article 249, paragraph 2, and punished in the last paragraph of article 250 of the Penal Code; and slight physical injuries, defined and punished in article 587 of the same code.

The first question to decide in the present appeal is whether the offended party, Hipolito Velasco, as postmaster of Bacarra, Ilocos Norte, who was discharging his duties at the time of the assault, is merely a public officer, or is an agent of authority besides.

In *People vs. Ramos* (p. 462, ante), by Justice Imperial, it was held:

"From the above-quoted provisions of law we believe it may be deduced that the provincial treasurer is a person in authority within the province where he exercises his jurisdiction, and that the municipal treasurer, being his deputy ex officio, is an agent of authority, and not a person in authority, as this word is employed in the Penal Code under which the information against the appellant was filed."

The postmaster of a municipality is an agent of the Director of Posts, and as such is in charge of the custody of the Government funds that come into his hands by virtue of the transactions with the public in postal matters, telegrams, savings bank, and so forth, and, like a municipal treasurer is an agent of a person in authority in addition to being a public officer, inasmuch as the Director of Posts is a person in authority who by law exercises jurisdiction of his own in postal and telegraphic matters.

Since the offended party, Hipolito Velasco was an agent of a person in authority when he was attacked, the

defendant herein having laid hands upon him, the crime of which the latter is guilty is assault upon an agent of a person in authority, defined and punished in the last paragraph of article 250,. in connection with paragraph 2 of article 249 of the Penal Code, the penalty fixed by law being prison correctional in the minimum and medium degrees, and a fine not less than 375 pesetas or more than 3,750 pesetas, and this penalty must be imposed in the medium degree because there is no modifying circumstance present.

The same offense is punished in article 148 of the Revised Penal Code, the penalty fixed being that of prison correctional in the minimum degree, and a fine not exceeding P500 which is less severe than the penalty prescribed by the old Penal Code for the same crime, and in accordance with article 22 of the Revised Penal Code, and the accused not being an habitual criminal, the penalty provided by article 148 above-mentioned must be imposed.

With regard to the physical injuries sustained by the offended party from the attack, they, being light in character, are to be considered as inherent in the assault, for it cannot be supposed that in laying hands upon a person, no harm or injury will be caused.

In view of the foregoing considerations, we are of opinion and so hold: (1), That a postmaster is an agent of a person in authority; and (2) that the slight physical injuries sustained by such an agent as a result of the defendant's laying hands upon him, are inherent in the offense of assault upon an agent of a person in authority.

Wherefore, the judgment appealed from is modified, and the accused-appellant is held to be guilty of assault upon an agent of a person in authority, and sentenced to suffer one year, one month, and eleven days of prison correccional, and to pay a fine of P100, with subsidiary imprisonment in case of insolvency, plus costs. So ordered.

Avanceña, C. J., Street, Malcolm, Ostrand, Abad Santos, Vickers, Imperial, and Butte, JJ., concur.

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