THE PEOPLE OP THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. GERARDO S. RAMOS, DEFENDANT AND APPELLANT.

G. R. No. 36756. November 04, 1932

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

This is an appeal taken by the accused Gerardo S. Ramos from the judgment of the Court of First.Instance of Occidental Negros, convicting him of assault upon a person in authority and sentencing him to four years, two months, and one day of prision correctional, the corresponding accessory penalties, to pay a fine of 625 pesetas, with subsidiary imprisonment in case of insolvency, and the costs.

The prosecution commenced with the filing of an information, alleging:

> "That on or about the 7th day of August, 1931, in the municipality of Saravia, Province of Occidental Negros, Philippine Islands, the accused herein did then and there willfully, unlawfully and criminally assault, attack and use personal violence upon one Delfin T. Perez, a municipal treasurer of the above-mentioned municipality by then and there striking him with his fist on the shoulder while said Delfin T. Perez was in due performance of his official duties as such municipal treasurer of the above-mentioned municipality and on the occasion of the same."

The appellant was chief of police of the municipality of Saravia, Province of Occidental Negros, and the offended party the municipal treasurer. On the morning of August 7, 1931, while the offended party was seated in front of the door of his office, policeman Julio Nicovera, went up to him, presenting a voucher for the appellant's salary from August 1st to 6th, telling him that the said appellant wanted him to pay that salary. The offended party returned the voucher saying that he could not pay in advance the portion of the salary asked for by the appellant, because he had a circular from the auditor and the provincial treasurer prohibiting such payments, and that according to instructions, the employees could not receive their salaries except at the middle and the end of each month.

The appellant took offense at the treasurer's refusal, and seeing him again on the street on the way to the house of the municipal president with whom he had to consult with reference to the preparation of the municipal budget, followed him. He accosted him with a demand for explanation, after which, he buffeted the other, hitting him once on the left shoulder and causing him to fall into the gutter near by.

The appellant makes the following assignment of errors:

> - The lower court erred in giving greater credit to the testimony of the witnesses for the prosecution than to that of the witnesses for the defense, and in not acquitting the accused.
>
> - The lower court erred in sentencing the accused to four years, two months, and one day of prision correctional, plus a fine of 625 pesetas, or to suffer, in case of insolvency, the corresponding subsidiary imprisonment, with the accessory penalties of the law, and to pay the costs of the trial."

Both assignments may be considered together.

The facts proved leave no room for doubt that the appellant performed the acts above set out. It affirmatively appears that he assaulted the offended party without justification, using his fists, while the latter was discharging his duties as municipal treasurer; and it could not be otherwise since the direct and immediate cause of the assault was the offended party's refusal to pay him the salary he demanded.

The question now arises, whether the offended party was then exercising his function as a person in authority, or merely as an agent thereof. The relevant provisions of law shedding some light upon the question are the following:

The Penal Code defines a person in authority in these terms:

> "ART. 264. In applying the articles contained in the three next preceding chapters, any person directly vested with jurisdiction, whether individual or as a member of some court or public corporation, shall be deemed a person in authority.
>
> "Officers of the department of public prosecution shall also be deemed persons in authority."

The Revised Administrative Code, in referring to the provincial treasurer, provides:

> "SEC. 2069. Chief officials of provincial government.— The chief officials of the provincial government are the provincial governor, the provincial treasurer, and the members of the provincial board."
>
> "SEC. 2088. Provincial treasurer.—The provincial treasurer shall be the chief financial officer of the province. His compensation shall be as fixed below:"

The same Code, with reference to the municipal treasurer, provides:

> "SEC. 2169. Chief officials of municipal government.—The chief officials of the municipal government are the president, the vice-president, the treasurer, and the councilors.
>
> "With the exception of the treasurer, these officers shall be elected by the qualified voters of the municipality."
>
> "SEC. 2208. Duties of municipal treasurer.—The municipal treasurer shall be the financial officer of the municipality and with respect to the collection of revenue shall be ex officio deputy of the provincial treasurer."

There is no definition of an agent of authority in either the Penal Code or the Revised Penal Code.

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 acts performed by the appellant constitute the offense defined and penalized by article 250, in connection with article 249 of the Penal Code, inasmuch as the appellant was a public officer when the assault was committed. But the penalty of prision correccional in the minimum and medium degrees prescribed in article 148 of the Revised Penal Code, being more favorable to the appellant, should be applied, in harmony with article 22 of said Code.

The sentence appealed from is modified and the appellant sentenced to three years, six months, and twenty-one days of prision correccional, to pay a fine of P125, with the corresponding subsidiary imprisonment in case of insolvency, the accessory penalties of the law applicable to the case and to pay the costs of both instances. So

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ordered.

Avanceña, C. J., Street, Malcolm, Ostrand, Villa-Real, Abad Santos, Vickers, and Butte, JJ., concur.

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