

EUSTAQUIO LAGRIMAS, PETITIONER, VS. THE DIRECTOR OF PRISONS, RESPONDENT.

G. R. No. 38046. September 24, 1932

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

The petitioner, who is detained in Bilibid, prays that an order be issued directing that he be set at liberty, invoking article 149 of the Revised Penal Code, which prescribes a lesser penalty for the crime penalized by article 251 of the old Penal Code under which he was sentenced by the Court of First Instance of Samar to two years, eleven months, and eleven days of prison correctional and a fine of 375 pesetas.

The respondent opposes the petition maintaining that article 148 and not 149 of the Revised Penal Code is applicable to the present case.

The record shows that the petitioner slapped and used offensive language to Mamerta Alcazar, a teacher in the public school of the town of Laoang, Samar, while she was performing her official duties. The accused was found guilty of the crime of assault upon a public official as charged, and sentenced according to article 251 of the old Penal Code, to the penalty aforementioned.

It may be noted that in the brief filed against the petitioner in G. R. No. 33529,[1] the Attorney-General contended that the crime committed was penalized by article 250, No. 2 of the old Penal Code, with a penalty ranging from six years and one day of prison correctional to eight years of prison mayor, and the court said that this contention was technically correct. But in view of the fact that the accused was actuated by passion and obfuscation, the court affirmed the judgment appealed from.

According to the old Penal Code, article 249, the offense of assault is committed by: "1. * * *; 2. Any person who shall attack, employ force against, or seriously resist or intimidate, any person in authority, or the agents of such person, while engaged in the performance of official duties, or by reason of such performance."

The penalties for such assaults are given in articles 250 and 251 of the Code.

Similarly, the Revised Penal Code penalizes two kinds of assault, direct and indirect, in articles 148 and 149.

For a better understanding of the matter, we deem it wise to place the old and the new provision side by side:

Old Penal Code

Revised Penal Code

"ART. 250. The penalty for assaults falling within the next preceding article shall be prision correccional in its medium degree to prision mayor in its minimum degree and a fine of not less than six hundred and twenty-five and not more than six thousand two hundred and fifty pesetas, when the offense is committed under any of the following circumstances:

"1. When the person committing the assault displays a weapon.

"2. When the person committing the assault is a government employee.

"3. When the offenders lay hands upon any person in authority.

"4. When, in consequence of coercion, the person in authority has acceded to the demands of the offenders.

"If no one of these circumstances be present, the penalty shall be prision correccional in its minimum and medium degrees and a fine of not less than three hundred and seventy-five and not more than three thousand seven hundred and fifty pesetas.

"ART. 148. Direct assaults.-Any person or persons who, without a public uprising, shall employ force or intimidation for the attainment of any of the purposes enumerated in defining the crimes of rebellion and sedition, or shall attack, employ force or seriously intimidate or resist any person in authority or any of his agents, while engaged in the performance of official duties, or on occasion of such performance, shall suffer the penalty of prision correccional in its medium and maximum periods and a fine not exceeding 1,000 pesos, when the assault is committed with a weapon or when the offender is a public officer or employee, or when the offender lays hands upon a person in authority. If none of these circumstances be present the penalty of prision correccional in its minimum period and a fine not exceeding 500 pesos shall be imposed.

ART. 251. Offenders who shall made use of force or intimidation, as referred to in paragraph one of article two hundred and forty-nine, for the purposes therein mentioned, shall suffer the maximum degree of the penalty prescribed by the last paragraph of the next preceding article, if they shall have laid hands upon any person or persons who shall have come to the aid of the authorities or upon their agents, or upon any public officer."

"ART 149. Indirect assaults.-The penalty of prision correccional in its minimum and medium periods and a fine not exceeding 500 pesos shall be imposed upon any person who shall make use of force or intimidation upon any person coming to the aid of the authorities or their agents on occasion of the commission of any of the crimes defined in the next preceding article."

A comparative reading of the provisions above quoted will show that articles 250 and 148 refer to assaults upon a person in authority or his agents, and both articles are concerned with two cases. The circumstances determining the first case are the same, with the exception of No. 4, article 250, which is not reproduced in article 148. These articles differ with respect to the penalties in the first and the second case. The first case contemplated in article 250 is penalized with prision correccional in the medium degree to prision mayor in the minimum degree in addition to the fine prescribed by the law; whereas the first case of article 148 is only penalized with prision correccional in the medium and maximum degrees, and a fine. These two articles also differ in regard to the second case, for, while article 250 imposes the penalty of prision correctional in the minimum and medium degrees, and a fine, article 148 only provides prision correctional in the minimum degree and a fine.

As for articles 251 and 149 it may be stated that they refer to those guilty of laying hands upon any person coming to the aid of the authorities, with the difference that article 251 also penalizes those who lay hands upon agents of

the authorities or upon public officials, and article 149 does not. These two articles also differ with reference to the penalty, for while article 251 imposes the maximum of the penalty ranging from the minimum to the medium degree of prison correctional, and a fine, article 149 only imposes prison correctional in the minimum and medium degrees, and a fine.

As stated above, counsel for the respondent contends that the law applicable to the case is article 148 and not 149 of the Revised Penal Code, averring in his answer that the petitioner was charged with the crime of assault upon a person in authority, and sentenced to two years, eleven months and eleven days, and a fine of 375 pesetas, which is the minimum of the maximum degree of the penalty prescribed in No. 2 of article 250 of the old Penal Code.

It is noted, however, that the sentence of the trial court, affirmed by this court, expressly held that the crime charged is that penalized by article 251 of the Penal Code, to wit, laying hands upon persons coming to the aid of the authorities or their agents or upon public officials, an offense punished with the penalty fixed by No. 2 of article 250, in the maximum degree, that is two years, eleven months, and eleven days of prison correctional and a fine of 375 pesetas, equivalent to P75. And as heretofore stated, article 251 is concordant to article 149, with the difference that the latter contains no penal sanction for the offense of laying hands upon agents of the authorities or upon public officials.

This conclusion relieves us of the necessity of discussing in this case whether a public-school teacher, like Alcazar whom the accused assaulted, is or is not an agent of the authorities or a public official; and the remaining question is whether the petitioner, who was sentenced by virtue of a provision of the former Penal Code, may be set at liberty on the ground that the Revised Penal Code provides no penalty for the crime committed under the former Code.

Article 366 of the Revised Penal Code provides: "Without prejudice to the provisions contained in article 22 of this Code, felonies and misdemeanors, committed prior to the date of effectiveness of this Code shall be punished in accordance with the Code or Acts in force at the time of their commission." We understand that the intention of the Legislature in embodying this provision in the Revised Penal Code was to insure that the elimination from this Code of certain crimes penalized by former acts before the enforcement of this Code should not have the effect of pardoning guilty persons who were serving their sentences for the commission of such crimes. By virtue of this provision, we are clearly of the opinion that the petitioner must serve out the penalty imposed upon him, unless he be pardoned by the Executive Power.

Petition denied, with costs de officio. So ordered.

Street, Malcolm, Ostrand, Abad Santos, Hull, Vickers, Imperial, and Butte, JJ., concur.

[1]People vs. Lagrimas, promulgated April 8, 1931, not reported.

DISSENTING

AVANCEÑA, C. J.,

I dissent, and maintain that the remedy should be granted.

The petitioner was sentenced for a crime penalized by the old Penal Code, but not by the Revised Penal Code. In praying that he be ordered set at liberty, the petitioner invokes article 22 of the Revised Penal Code, which provides:

"Art. 22. Retroactive effect of penal laws.-Penal laws shall have a retroactive effect in so far as they favor the person guilty of a felony, who is not a habitual criminal, as this term is defined in rule 5 of article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same."

The majority denies the petition relying upon article 366 of the Revised Penal Code, which reads as follows:

"ART. 366. Application of laws enacted prior to this Code.-Without prejudice to the provisions contained in article 22 of this Code, felonies and misdemeanors, committed prior to the date of effectiveness of this Code shall be punished in accordance with the Code or Acts in force at the time of their commission."

The majority hold that the intention of the Legislature, in including this provision in the Revised Penal Code, was to insure that the elimination from this Code of certain crimes penalized by former laws should not have the effect of pardoning guilty persons who were serving their sentences for the commission of such crimes.

I disagree with this doctrine.

Article 366 of the Revised Penal Code, in providing that offenses committed prior to its enforcement shall be punished in accordance with the laws in force at the time of the commission thereof, without prejudice to the provisions contained in article 22 of said code, did nothing more than reaffirm the retroactivity of its provisions when favorable, as provided in the latter article.

When the Revised Penal Code has reduced the penalty for a crime committed under the old code, it is because it considers such crime to be less serious than it was formerly considered. In this sense the new Code is favorable. Furthermore, when it has eliminated entirely the penalty for an act which was formerly punishable, it is because it no longer considers such act a crime. In this sense it is even more favorable. When a convict serving sentence Under the old Penal Code has extinguished a portion thereof equal to or greater than that provided in the Revised Penal Code, he is entitled to be set at liberty by virtue of article 22. In fact, we are setting convicts at liberty under these conditions; because the present law, considering the crime committed to be less serious than formerly, prescribes a lighter penalty therefor. In spite of this, the petitioner in the present case, who is serving sentence for an act which is now considered not only as a less serious offense, but, on the contrary, as an innocent act which is no longer penalized, is denied his liberty. If article 22 is applicable when the Revised Penal Code is to some extent favorable to the accused, I see no reason why it should not be applicable when the new code is decidedly, nay, entirely, favorable to him.

When a later law mitigates the penalty prescribed for a crime by a former law, deeming/ it unjust, excessive, and not commensurate, with the offense committed, its purpose is to correct an injustice in legislation. In order not to limit the benefits of this correction to those who have not yet been sentenced for reasons which perhaps render

them less deserving of those benefits (e. g., becoming fugitives from justice), they are extended to those who have already been sentenced, because they submitted to the action of the courts, and are still serving their sentences. The purpose of the provision of the law relating to its" retroactivity is to make amends for injustice to the fullest extent possible. If this be so with regard to a penalty deemed excessive, it should be considered so with greater reason when one is deemed not to have committed a criminal act at all, and hence not liable to any penalty.

VILLA-REAL, J.:

I concur with the dissenting opinion of Chief Justice Avancena.

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