

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. LUIS LAPITAN AND DALMACIO LAPITAN, DEFENDANTS AND APPELLANTS.

G.R. No. 38226. November 17, 1933

Ponente: VICKERS, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-38226/>

VICKERS, J.:

Luis Lapitan, Gaudencio Lapitan, and Dalmacio Lapitan were charged in the Court of First Instance of Nueva Ecija with the crime of assault upon an agent of a person in authority, committed as follows:

"That on or about the 29th day of January, 1932, in the municipality of Rizal, Province of Nueva Ecija, Philippine Islands, and within the jurisdiction of this court, the abovenamed accused Luis Lapitan and Gaudencio Lapitan who had a shotgun and bolo respectively together with Dalmacio Lapitan, conspiring and aiding one another, did then and there voluntarily, maliciously, illegally and criminally attack, assault, and hit Juan Sambrano who was then an agent of authority, he being a municipal police, while said Juan Sambrano was engaged in the performance of his official duty, to wit, when he was acting as deputy sheriff and was in custody of 52 cavans of palay placed under his control."

Upon the termination of the trial, Judge E. V. Filamor found the appellants Luis Lapitan and Dalmacio Lapitan guilty of a violation of article 151 of the Revised Penal Code, and sentenced each of them to suffer two months and one day of arresto mayor, and to pay a fine of P150, with the corresponding subsidiary imprisonment in case of insolvency, and to pay the proportionate part of the costs. The defendant Gaudencio Lapitan was acquitted, with one-third of the costs de oficio.

The appellants make the following assignments of error:

"I. El Juzgado a quo incurrio en error al no conceder credito a las declaraciones de los acusados.

"II. El Juzgado a quo incurrio en error al estimar probado el delito previsto y penado en el articulo 151 del Codigo Penal vigente, y condenar por el mismo a los acusados Luis Lapitan y Dalmacio Lapitan, cada uno, a dos (2) meses y un (1) dia de arresto mayor, con las accesorias de ley, a una multa de ciento cincuenta pesos (P150), sufriendo, en caso de insolvencia, el arresto subsidiario correspondiente, y al pago de una tercera parte de las costas.

"III. El Juzgado a quo incurrio en error al no absolver a los apelantes."

It appears from the evidence that on December 10, 1931 an order of execution was issued by the justice of the peace of Cabanatuan in civil case No. 2046 against Pedro Ablao and in favor of Laureana Aves for 60 cavans of palay, returnable within sixty days; that Pedro Ablao was notified of this writ on January 8, 1932; that on January 14, 1932, Luis Lapitan, one of the appellants herein, filed a third party claim with the provincial sheriff to the palay that had been levied upon. The provincial sheriff required the judgment creditor to execute an indemnity bond, but as the creditor delayed in complying with this requirement, the provincial sheriff directed the chief of police of the municipality of Rizal, Province of Nueva Ecija, who was a deputy sheriff ex officio, to deliver the

palay to the third party claimant, and on January 20, 1932 Juan Sambrano, a policeman of the municipality of Rizal, acting in accordance with instructions from the chief of police of that town, delivered the palay to Luis Lapitan. On January 22d, the provincial sheriff directed the chief of police of Rizal to take possession of the palay again, because the judgment creditor had furnished the indemnity bond. The chief of police returned this order with the information that the palay had already been delivered to Luis Lapitan; but the provincial sheriff sent back the papers and directed the chief of police of Rizal to take possession of the palay again immediately.

The offended party testified that on January 29, 1932, the acting chief of police sent him to watch the palay; that while he was there the defendants arrived with two carts, and that when he asked Luis Lapitan why they had brought the carts, he replied that they had come to get the palay. The defendants insisted on taking away the palay, while the policeman maintained that they had no right to do so without an order from the court. In the altercation that followed Dalmacio Lapitan struck the policeman with his fist, and Luis Lapitan threatened him with a gun. The three defendants pushed the policeman away and removed the palay.

An examination of the record does not disclose any reason that would justify us in disturbing the trial judge's findings of fact. The only difficulty which the case presents is the determination of whether or not the offended party, a member of the police force of the municipality of Rizal, was lawfully discharging his official duties when he was assaulted. This involves the question of the service of process of a justice of the peace.

Section 217 of the Revised Administrative Code reads as follows:

"The sheriff of the province shall serve or execute, or cause to be served and executed, all civil writs, processes, and orders issued by any justice of the peace in the province; and civil process, other than executions, may be served by any person designated by the justice for that purpose. Criminal process issued by a justice of the peace shall be served or executed by the president of the municipality or other local political division, by means of the local police, or in the City of Manila by the members of its police department; but such process may also be served or executed with equal effect by the sheriff.

"Criminal process may be issued by a justice of the peace, to be served outside his province, when the judge of first instance of the district, or in his absence the provincial fiscal, shall certify that in his opinion the interests of justice require such service."

Section 184 of the Revised Administrative Code, as amended by Act No. 3598, provides that the provincial sheriffs in provinces of the first and second class may appoint three deputies; in provinces of the third and fourth class, two deputies; and in provinces of the fifth and sixth class, one deputy; and that the chief of police in each municipality shall be ex officio deputy sheriff in his municipality without additional compensation.

The present case involves an order of execution issued by the justice of the peace of Cabanatuan. The personal property levied upon was situated in the municipality of Rizal in the same province. After the palay had been levied upon, Luis Lapitan, one of the accused filed a third party claim, and because of the judgment creditor's delay in furnishing the indemnity bond required by the provincial sheriff, the palay was delivered to said claimant. Once the palay was delivered to him, as evidenced by his receipt, Exhibit 2, the original levy ceased to be of any force or effect, and he had the right to retain possession of the palay until it was again levied upon in accordance with the law.

In the case of *Walker and Rohde vs. McMicking* (14 Phil., 668), it was held that a valid levy requires that the sheriff shall take and retain actual possession of the property; that if the sheriff fails to maintain control the levy becomes invalid and cannot prevail over the rights of subsequent rightful possessors of the property.

In the case at bar the order of execution, which is dated December 10, 1931, was made returnable within sixty days. It was therefore still valid when the provincial sheriff directed the chief of police of Rizal as deputy sheriff

ex officio, on January 25, 1932, to seize the palay again by virtue of the writ of execution in the possession of the chief of police as deputy sheriff. In accordance with this order the chief of police as a deputy sheriff ex officio ordered the municipal policeman, Juan Sambrano, to take possession again of the palay in question.

The attorneys for the appellants maintain that the chief of police as a deputy sheriff ex officio was not authorized by law to delegate the seizure of the palay to a policeman, but that it was necessary for the chief of police in person to levy upon the palay.

Although we admit that there is some force in the argument of counsel for the appellants, we cannot believe that it was the intention of the Legislature, when it limited the number of deputies a provincial sheriff could appoint to three in the most important provinces and made the chief of police of each municipality a deputy sheriff ex officio without additional compensation, that the chief of police should be required to perform personally the duties of a deputy sheriff in his municipality. It is obvious that such a requirement might make it necessary for the chief of police to devote a large part of his time to the performance of the duties of deputy sheriff, and thereby seriously interfere with the discharge of his duties as the head of the police force. The chief of police of each municipality is, as we have seen, made a deputy sheriff by virtue of his office, without additional compensation, and we think it must have been the intention of the Legislature that he might make use of the members of the police force under him in discharging the duties devolving upon him as a deputy sheriff.

The Solicitor-General maintains that the acts of the appellants constitute a violation of article 148 of the Revised Penal Code, and that their sentence should be increased to three years, six months, and twenty-one days, but in our opinion their acts do not require the imposition of the severer penalty. The decision of this court in the case of *United States vs. Tabiana and Canillas* (37 Phil., 515), referring to the difference between the provisions of articles 249 and 252 of the Penal Code applies with equal force to articles 148 and 151 of the Revised Penal Code.

The decision appealed from is affirmed, with the costs against the appellants.

Avanceña, C. J., Street, Abad Santos, and Butte, JJ., concur.

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.