

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLANT, VS. RICARDO MENDOZA, DEFENDANT AND APPELLEE.

G.R. No. 39275. December 20, 1933

Ponente: DIAZ, J.

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DIAZ, J.:

In criminal case No. 4851 of the Court of First Instance of Pampanga, the provincial fiscal thereof filed an information against the herein appellee, which reads as follows:

"The undersigned provincial fiscal accuses Ricardo Mendoza of the crime of assault upon a person in authority committed as follows:

"That on or about September 30, 1932, in the municipality of San Fernando, Province of Pampanga, Philippine Islands, the said accused, Ricardo Mendoza, being a pupil of the teacher Iluminada Tinio, did then and there willfully, unlawfully and criminally attack and lay hands upon her person, to wit: slapped said Iluminada Tinio on one of her cheeks, while she was engaged in the performance of her duties as such teacher and while she was within the premises of the high school building exercising the functions inherent in such capacity."

Upon motion of the appellee, as accused in the aforesaid case, the trial court dismissed the information on the ground that the facts alleged therein did not constitute a crime but simply a misdemeanor or light felony. The present appeal was taken by the fiscal for the purpose of setting aside the order of dismissal in question.

The question to decide, therefore, is whether or not the facts as alleged in the said information really constitute the crime of assault upon a person in authority or at least an assault upon an agent of authority, or any other grave or light felony.

The fiscal bases his appeal on the findings of this court in the cases of *People vs. Villacenda* (G. R. No. 32596, promulgated April 26, 1930, not reported); *People vs. Lagrimas* (G. R. No. 33529, promulgated April 8, 1931, not reported); and *People vs. Tacud* (56 Phil., 800) wherein a question similar to the one under consideration was discussed and decided, claiming that the facts as alleged in the information constitute an assault upon a public officer and agent of authority at the same time.

In the three cases above-cited, this court, in modifying one and affirming two of the judgments rendered by the courts a quo, really held that the acts committed by the defendants therein constituted the crime of assault upon a public officer and, therefore, they should be sentenced to the penalty prescribed in article 251 of the old Penal Code. The reason for such doctrine is based on the fact that the said article, as explained in the case of *People vs. Mijares* (44 Phil., 684), provided as follows:

"The maximum degree of the penalty prescribed in the last paragraph of the preceding article shall be imposed upon those who shall have employed the force or the intimidation mentioned in No. 1 of article 249 for the object indicated in No. 1 of article 229 or who shall have placed hands upon persons coming to the assistance of authority or upon its agents or upon public officers."

Inasmuch as the afore-cited article was in force at the time the decisions in the three cases were promulgated and the acts complained of therein had been committed long before the present Revised Penal Code went into effect, it was necessary that the defendants and appellants in the aforesaid cases be convicted of the crimes with which they had been charged and sentenced later to the penalty prescribed in the afore-cited article. The reason is obvious because said acts constituted a violation of the article in question, as held by this court.

However, the truth is that said article 251 was not fully reproduced in the Revised Penal Code as shown by article 149 thereof. The article in question now reads as follows:

"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."

It will be noted that the Legislature suppressed and omitted all reference to public officers in the article just cited, which necessarily conveys the idea that it did not intend to make the same applicable to cases of assault upon public officers who are not persons in authority or agents thereof. And there cannot be the least shadow of a doubt that a teacher is not a person in authority in the strict sense of the phrase, as employed in article 148, on the ground that he does not exercise a directly vested jurisdiction. Neither is he an agent of authority on the ground that, as has been held in the case of *United States vs. Fortaleza* (12 Phil., 472), wherein *Viada* was cited in support thereof, agents of authority are only those persons who, by direct provision of law, or by appointment by competent authority, are charged with the maintenance of public order and the protection and security of life and property, and those who come to the aid of persons in authority.

It is true that *Viada* said that by implication and in accordance with the final section of article 264 of the Spanish Penal Code, which corresponds to the aforesaid article 251 of our old Penal Code, it may be affirmed that for the purposes of said article, public officers are also entitled to be considered as agents of authority. However, such consideration was due to the fact that assault upon public officers was penalized likewise in the said article 264 of the Spanish Penal Code.

A teacher is not a person in authority on the ground that he does not possess the necessary requisite therefor prescribed by law. Article 152 of the Revised Penal Code defines a person in authority as follows:

"In applying the provisions of the preceding and other articles of this Code, any person directly vested with jurisdiction, whether as an individual or as a member of some court or governmental corporation, board or commission, shall be deemed a person in authority."

The word "authority" has been given a restricted meaning in the case of *United States vs. Smith* (39 Phil., 533), so as to include only persons who perform some of the functions of the Government of the Philippine Islands and who, according to the aforesaid article, are directly vested with jurisdiction. By "directly vested jurisdiction" is meant "the power or authority to govern and execute the laws, particularly the authority vested in the judges to administer justice, that is, to try civil or criminal cases or both, and to render judgment thereon in accordance with the law" (*Eseriche, Rational Dictionary of Legislation and Jurisprudence*, p. 1154); and "authority" as well as "directly vested jurisdiction" are two things which should be conferred by law.

The Administrative Code, which creates the Executive Department and the bureaus and offices dependent on it, for the purpose of exercising the executive functions of the Government of the Philippine Islands, is silent with regard to powers had or which may be had by high school teachers, in defining those vested in functionaries of the aforesaid offices. The Code in question only defines the duties and powers of the Director of Education and of the division superintendents. Nothing is said about principals, except that their authority should be determined by the

Director of Education, and much less about high school teachers. The powers granted to the said Director of Education and division superintendents are very limited and are not for purposes of government nor execution of any law, but only as provided for in section 910 et seq. of the aforesaid Code.

There can be no doubt that a teacher is not a person in authority not only on the grounds already stated but also because the distinction between the two may be inferred clearly from the very provisions of article 265 of the Revised Penal Code. After defining less serious physical injuries, the law provides as follows:

"Any less serious physical injuries inflicted upon the offender's parents, ascendants, guardians, curators, teachers, or persons of rank, or persons in authority, shall be punished by prison correccional in its minimum and medium periods, provided that, in the case of persons in authority, the deed does not constitute the crime of assault upon such persons."

If the Legislature had not intended to exclude teachers from the category of persons in authority or agents thereof, it would have omitted them from the enumeration of those against whom the act, as defined therein, may be committed and for which a heavier penalty is provided.

There is no question that a teacher is a public officer inasmuch as it is an actual fact that he performs part of the public functions of the Government. Furthermore, the same ruling has been established in the afore-cited cases of Villacenda, Lagrimas and Tacud. However, this cannot be construed to mean that every public officer is at the same time an agent of authority.

Commenting on articles 263 and 264 in connection with article 416 of the Spanish Penal Code, which correspond to articles 249, 250 and 401, respectively, of our old Penal Code and from which articles 148, 149 and 203 of the Revised Penal Code had been taken, with slight alterations, although assault upon public officers has been omitted in the latter Code, Groizard has said:

"Are public officers agents of persons in authority? If not, may they be the subject of assault although they are not included in article 263 which describes and defines said crime? And if they should be so, in the case stated in the last paragraph of article 264, shall it be understood that may also be, in all the cases relative to persons in authority and their agents as stated in article 263? To decide these questions, it is necessary to know beforehand who are public officers. Article 416 defines them as: those who, by direct provision of law, popular election, or appointment by competent authority, take part in the performance of public functions. From the above-cited provision, it follows that every agent of authority is a public officer but not every public officer is an agent of authority. The officers of a ministry and those of provincial governments are public officers inasmuch as they perform functions intended for the preservation and government of the State, yet in spite of it, they are not persons in authority nor agents thereof. They are not persons in authority on the ground that they are not directly vested with jurisdiction either individually or as members of some court or public corporation. They are not agents of authority because, as subordinate officers, they are not charged with the task of executing the orders of any such person. This important difference should be borne in mind so as not to mistake offices for functions.

"The same Code, speaking of the laying of hands upon agents of authority or upon public officers defines the difference between one and the other. Therefore, an agent of authority cannot be confused with a public officer when the legislator himself speaks of them separately.

"Therefore, inasmuch as public officers are not agents of authority, it seems that, generally speaking, they cannot be the subject of the crime of assault, as defined in article 263, on the ground that said article considers assault as only those acts committed upon persons in authority and their agents, it being silent with regard to public officers.

"It is true that there is a manifest contradiction between the generic doctrine of article 263 and the specific

statement of article 264 relative to penalty. It is true that if there can never be any crime of assault upon mere public officers for want of one of the essential requisites thereof as stated in article 263, neither can the last paragraph of article 264, relative to public officers, have any application even if the guilty parties lay hands on them. Yet, what can we do? There is conflict in the law and it is useless to pretend not to notice it." (Groizard, Penal Code, vol. 3, p. 468.)

It is for the specific purpose of clarifying the law and eliminating such conflict that the Legislature suppressed the phrase "public officers" in enacting article 149 of the Revised Penal Code, which is a reproduction of the aforesaid article 264 of the Spanish Penal Code. It therefore becomes clear that the crime of assault cannot be committed against a public officer unless he is a person in authority or agent thereof at the same time.

For further elucidation of the matter, it was held in three decisions of the Supreme Court of Spain: one of May 7, 1874, another of November 16, 1889, and the other of October 8, 1901, that a teacher of a public primary school, a professor in a higher school for teachers, and instructors in public primary schools, are public officers. (Jose Garcia and Romero de Tejada, Penal Monographs on Assaults upon Persons in Authority and Their Agents, Resistance and Disobedience, p. 80; Alcubilla, Dictionary of Spanish Administration, vol. I, p. 742; and Viada, Revised Penal Code of 1870, Fourth Supplement, p. 281.)

The afore-cited reasons show that a teacher is neither a person in authority nor an agent thereof but merely a public officer, and therefore, the assault committed upon him while he is engaged in the performance of his duties as such does not constitute assault upon a person in authority nor an agent thereof.

There is no question that the acts complained of, as alleged in the complaint, constitute light felony, whether they be considered under the provisions of article 359 (Slander by Deed), or of article 266 (Maltreatment) of the Revised Penal Code. However, inasmuch as the complaint does not allege the motive of the defendant in maltreating the aforesaid teacher, in the manner he had so done, nor the fact that the act was committed publicly, it is more proper and more in accordance with the law to consider the aforesaid acts as merely constituting light felony as denned and penalized in the said article 266, with the third aggravating circumstance. In such case, the trial court lacks jurisdiction to try the case by reason of the penalty therefor as prescribed by law.

Let it not be said that we did not take into consideration the doctrine laid down in the case of Provincial Fiscal of Pampanga vs. Rosauo (G. R. No. 39289)[1] for we had it before us in considering the case at bar. The truth is that there is no similarity between the former and the present case on the ground that although the crime alleged therein was "direct assault upon a person in authority" and the offended party therein was a public elementary school teacher acting in the performance of his duties as such, nevertheless, it was clearly alleged in the body of the complaint that the defendant therein gravely intimidated and threatened said teacher. There is no question that, in accordance with the provisions of article 282 of the Revised Penal Code, the jurisdiction to try cases of grave threats belongs to Courts of First Instance by reason of the penalty prescribed therein. Prescinding from the title of the offense stated in the information under consideration, it is observed from the allegations contained in the body of said pleading that the crime committed is slight in nature, the trial of which falls under the jurisdiction of the justice of the peace court.

Wherefore, we are of the opinion and so hold that the order of dismissal appealed from is in accordance with the law and should therefore be sustained.

Let the costs be declared de oficio. So ordered.

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

[1] Decided by resolution of March 31, 1933.

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