

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. SANTIAGO MAQUILAN, DEFENDANT AND APPELLANT.

G.R. No. 3967. February 20, 1908

Ponente: TORRES, J.

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TORRES, J.:

At about 10 p. m. on the 1st of Hay, 1905, Leoncio Robles and Gregorio Villantieva, members of the municipal police, were patrolling the barrio of Sumag, Bacolod, Occidental Negros, and when passing by Calle Araneta they saw that Santiago Maquilan and Tiburcio Delgado were engaged in a fight with sticks. They at once proceeded to separate them, and at the same time ordered the combatants to follow them in order that they might be placed at the disposal of the representative of the barrio. Tiburcio Delgado obeyed at once, but the accused, Maquilan, sat on the ground, and refused to walk. The policemen caught hold of his hands in order to take him before the said official, whereupon Jose Maquilan, a brother of Santiago, made his appearance and, upon being informed of what had taken place, he confronted Tiburcio Delgado. Policeman Villanueva on seeing this, released the accused and approached the other two for the purpose of preventing another quarrel. The accused finding that he was free, attacked policeman Leoncio Robles with a penknife, the latter having caught him by the right hand, and wounded the officer in the left side. In this manner he succeeded in freeing himself and immediately fled in the direction of his house and locked the door in order to escape from his captors.

A complaint was filed by the provincial fiscal with the Court of First Instance charging Santiago Maquilan with the crime of attempt against an agent of the authorities. The corresponding proceedings were instituted, and the court rendered judgment on the 1st of December,. 1906, sentencing the accused to the penalty of two years four months and one day of prision correccional, to pay a fine of 625 pesetas, and in case of insolvency to1 suffer the corresponding subsidiary imprisonment, not to-exceed one third of the principal penalty, and to pay the costs. From said judgment counsel for the accused has appealed.

From the facts stated above, which, appear to be proven in this case, it appears that the crime of attempt with arms against an agent of the authorities was committed at a time when the latter was performing the duties of his office, a crime defined and punished under articles 249, No. 2, and 250, No. 1, of the Penal Code. It is an unquestionable fact that on the night in question Leoncio' Robles and Gregorio Villanueva, members of the municipal police, were patrolling the barrio of Sumag, Bacolod, and upon noticing that Tiburcio Delgado and Santiago Maquilan were fighting and hitting each other with sticks, they intervened and separated them, and said policemen, complying with their duties, tried to take the combatants before the representative of the local authorities, for having committed a punishable offense; that the accused, Maquilan, instead of obeying, began to resist, and in order to free himself from the hands of policeman Robles, who. held him, he wounded the latter in the left side with a penknife that is, with a pointed weapon an aggression which facilitated his escape and which is actually an attempt against an agent of the authorities, and at least with lesiones menos graves, because under medical treatment the wound healed in twenty days this fact was proven by the testimony of the injured man, Robles, by that of the other policeman, Gregorio Villanueva, and by the eyewitness Tiburcio Delgado.

The accused pleaded not guilty, but notwithstanding his denial and exculpatory allegations that while fighting with Tiburcio Delgado, who, as he states, was also a policeman, which has not been proven, the latter was aided by the aforementioned policemen Robles and Villanueva, and that the three together flogged him and inflicted lesiones upon several parts of his body; the record, however, contains sufficient evidence of the charge preferred against him, that of having attacked with arms the policeman who was holding him in order to take him before the representative of the authorities; and aside from the contradictions observed in the testimony of his witnesses, the incredible statements made by them are destroyed by the uniform testimony of the witnesses for the prosecution to such an extent that the justice of the peace who took cognizance of the complaint of the accused on account of his lesiones convicted his adversary, Tiburcio Delgado, and acquitted the policemen of the charge made against them of aiding the said Delgado during the fight.

In the commission of the crime it is proper to consider the mitigating circumstance 7 of article 9 of the Penal Code, because the aggression occurred at a time when Maquilan was engaged in a fight with Delgado, and when he had just received from the latter a blow which wounded him and which undoubtedly must have produced in him loss of reason and self-control. This circumstance is not counteracted by any circumstance of an aggravating character.

The petition for a new trial filed by the accused is not admissible, for the reason that the evidence intended to be adduced by means of sworn statements in the form of affidavits offered by him is not really new, nor was it discovered only after the trial, but it is intended to obtain the withdrawal of two witnesses for the prosecution who were not cross-examined during the trial, an act which shews carelessness and lack of due diligence on the part of the counsel for the accused. It is now pretended to offer counter proof, or to counteract the result of the evidence when the proceedings are closed. Such a pretension is contrary to law and can not be admitted, especially when the record offers sufficient evidence of the commission of the crime and of the responsibility of the accused, even if the withdrawal of the witnesses Robles and Delgado were obtained.

Against the affirmation contained in the judgment, that the two policeman were in uniform on the night in question and that they carried their badges to show they were agents of the authorities, no proof has been adduced, and there is no lawful reason for rejecting the statement. Moreover, the accused himself acknowledges, by his declaration, that the two individuals who separated him and Delgado in their fight, and who tried to take them before the representative of the authorities when the crime was committed, were policemen and agents of the authorities. Therefore, considering these facts, which were fully proven and which form the basis of the judgment of the court below and of the decision of this court, no counter proof is admissible outside of and after the trial.

Therefore, and as the judgment appealed from is in accordance with the law, it is our opinion that the same should be affirmed with the costs against the accused. So ordered.

Arellano, C. J., Mapa, Johnson, Carson, Willard and Tracey, JJ., concur.

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