

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. AGAPITO LAZADA, DEFENDANT AND APPELLANT.

G.R. No. 3997. January 08, 1908

Ponente: CARSON, J.

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CARSON, J.:

Agapito Lazada and Santiago Lazada were charged with the crime of lesiones graves (inflicting serious injuries), as defined and penalized in paragraph 4 of article 416 of the Penal Code. The information filed in the Court of First Instance is as follows:

"That on or about the 23d of February, 1906, and within the municipality of Abuyog, Province of Leyte, P. I., the said accused, voluntarily, feloniously, and maliciously, did then and there and with their own fists assault a Chinaman named Pedro Sopengco, by inflicting upon him three bruises, about the eyes, the mouth, and the chest; and that the said bruises took more than thirty but less than ninety days to heal and prevented the injured party from doing his habitual work. All contrary to law."

The trial court acquitted the accused of the crime of lesiones graves with which they were charged, but found the appellant, Agapito Lazada, guilty of the crime of lesiones menos graves (infliction of less serious wounds), as defined and penalized in article 418 of the Penal Code; the court was of opinion that, while physical injuries were inflicted by the appellant as charged in the information, these injuries did not result in the illness or disability for work, of the complaining witness, for more than thirty days, but that they did require the care of a physician, and incapacitated the assaulted person for work for a period of more than seven days. The appellant was sentenced to four months of arresto mayor in the provincial jail of Leyte, to pay an indemnity of P50 to the offended party, with subsidiary imprisonment in case of insolvency, and to pay one-half the cost of the proceedings, and from this judgment and sentence he appealed.

It appears that on the 24th day of February, 1906, the complaining witness, Pedro Sopengco, and the accused appeared before the lieutenant of the barrio of Gervosa, in the local tribunal, and submitted to him a question in regard to the ownership of a hen; and that in the course of the investigation the appellant, without just provocation, attacked the complaining witness, and inflicted upon him various wounds of a not very serious nature. The accused admitted having assaulted the complaining witness, but introduced testimony to prove that the injuries inflicted were of a very trivial character, and did not require the attention of a physician nor incapacitate the complaining witness from his usual work for a period of more than seven days.

Upon a review of all the testimony, we think that the contention of the appellant should be sustained, that the offense committed was a mere misdemeanor (*falta*), as defined and penalized in article 587 of the Penal Code, and that the penalty should have been imposed in accordance therewith.

Counsel for the appellant contends that, in the event that this court found that neither the crime of lesiones graves nor that of lesiones menos graves had been committed, and that the offense was no more than a misdemeanor, the accused can not be sentenced for the latter offense, because the information upon which the trial was had was not

filed until the 18th of January, 1907, more than two months after the commission of the misdemeanor; under the provisions of article 131 of the Penal Code, a criminal action for misdemeanors prescribes in two months from the commission of the offense. It appears, however, that the complaining witness reported the incident to the justice of the peace on the day of its occurrence, and that the preliminary proceedings upon which the information filed in the Court of First Instance was based were had within sixty days after the commission of the offense; it can not be said, therefore, that the time of the prescriptive period has extinguished the penal liability of the accused because the prescriptive period was interrupted by the institution of criminal proceedings, and suspended during the continuance thereof. (Penal Code, art. 131.)

The penalty prescribed in article 587 of the Penal Code for the infliction of physical injuries that prevent the injured person from working from one to seven days or make medical attendance necessary for a like period is that of *arresto menor*—that is, from one to thirty days' arrest. The Solicitor-General prays that this penalty be imposed in its maximum degree in consideration of the aggravating circumstance attendant on the commission of the offense, which is defined and set out in paragraph 19 of article 10 of the Penal Code. Article 105 of the Penal Code provides that:

"In applying the penalties of this book, the courts shall proceed, according to their sound judgment, within the limits of each of them, in view of the circumstances of each case."

Hence, in imposing the penalties prescribed for misdemeanors, the court is not bound by the rules of *Beet ion II*, Chapter IV, Title III, Book I, of the Penal Code, which provide for the application of penalties in consideration of the existence or nonexistence of the extenuating and aggravating circumstances set out in Chapters III and IV, Title I, Book I of said code.

We therefore reverse the judgment of conviction and sentence imposed by the trial court, and find the accused guilty of the misdemeanor defined and penalized in article 587 of the Penal Code, and sentence him to twenty-five days of *arresto mayor* in the municipal jail of Abuyog of the Province of Leyte, to the payment of an indemnity to the complaining witness of P50, with subsidiary imprisonment at the rate of 15 pesetas for each day's arrest, but this subsidiary arrest not to exceed the third part of the principal penalty (art. 609, Penal Code), and to the payment of one-half of the costs in the Court of First Instance, and the costs of this appeal. So ordered.

Arellano, C.J., Torres, Mapa, Johnson, Willard, and Tracy, JJ., concur.

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