

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. POMPOSO BURGUETA AND GREGORIO SALVACION DEFENDANTS AND APPELLANTS.

G.R. No. 3998. February 19, 1908

Ponente: TRACEY, J.

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TRACEY, J.:

In the Court of First Instance of the Province of Leyte the appellants were convicted of illegal detention and sentenced to pay a fine of 325 pesetas or to suffer subsidiary imprisonment until the same should be paid, with one-half the costs against each of them.

The first difference in this case is one of fact. The complainant, a Chinaman named Dem Chipday, present at the celebration of Rizal Day, 1906, in Carigara, was arrested by the accused, Gregorio Salvacion, a municipal policeman, and taken to jail, where he was detained about fifteen hours. According to the complainant's version, while he was watching the celebration his hat was knocked off his head by a cane in the hands of the accused, Pomposo Burgueta, a municipal councilor, who, in reply to his remonstrance, struck him in the face and ordered the policeman to arrest him. Burgueta claimed that he had only pointed with his finger at the Chinaman when directing him to remove his hat, but that the Chinaman struck at him with a whip, whereupon a policeman came up and arrested both and was taking them to jail when he released Burgueta upon his promise to reappear the next day. In the main he was corroborated by the policeman, who said that seeing that Burgueta was a councilor, he let him go.

It is difficult to choose between these two versions, neither of which appears to be entirely accurate. Whoever may have been the aggressor, it is certain that there was a disturbance in the assemblage, with hot words, and blows, constituting an open breach of the peace, which it was not only the right but the duty of the policeman to suppress. His judgment may have been wrong or his action indiscriminating, but the evidence falls short of establishing bad faith, or recklessness, or abuse of power on his part. It would be exacting too much of police officers to require them to inform themselves as to the right or wrong of a quarrel before making an arrest. Their first duty is to restore order, and in doing so they may, in their honest judgment, act on such facts as are patent to their eyes, indicating the guilty person, and in so doing, for the purpose of suppressing present disorder, they may arrest without a warrant. The accused, Gregorio Salvacion, should, therefore, be acquitted.

In regard to Pomposo Burgueta, it is unnecessary for us to consider the important question as to his authority as a municipal councilor, outside his barrio, but within the municipality. The evidence satisfies us that in arresting the Chinaman the policeman acted not by the order of Burgueta but by his request, he being One of the contending parties. For this request he is not responsible criminally, whether it resulted in the arrest of the Chinaman alone or in his own temporary detention as well, and whatever may have been the motive of the policeman in complying with it.

The judgment of the Court of First Instance is hereby reversed and both the defendants are absolved with costs de

oficio. So ordered.

Arellano, C, J., Torres, Mapa, Johnson, and Carson, JJ., concur.

Willard, J., dissents.

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