

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ALIPIO BALUBAR, DEFENDANT AND APPELLANT.

G. R. No. 40940. October 09, 1934

Ponente: VICKERS, J.

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VICKERS, J.:

The appellant was tried in the Court of First Instance of Abra on the following information:

"Que en o hacia el 14 de abril de 1933, en el Municipio de Bangued, Provincia de Abra, Islas Filipinas, el referido acusado voluntaria, ilegal y criminalmente y sin ningun motivo justificado, agredo y acometio con un pedazo de hierro llamado vulgarmente manigueta a Isidro Pizarro dindole un golpe con ello en la boca, y de resultas de dicho golpe el referido Isidro Pizarro sufrio una herida lacerada en el labio superior y se le rompieron dos dientes y se fracturaron otros dos, cuyas heridas se curaron en diez dias con asistencia facultativa y se causo al ofendido una deformidad permanente.

"Hecho cometido con infraccion de la Ley."

After hearing the evidence the trial judge found that the defendant had committed the offense alleged in the information, with the aggravating circumstance of nocturnity, and sentenced him in accordance with subsection 3 of article 263 of the Revised Penal Code to suffer four years and two months of prision correccional and the accessory penalties provided by law, and to pay the costs.

The attorneys for the appellant have not made any assignments of error, but the following "relation de hechos":

"1. Que en la noche del Viernes Santo de 1933 (1) estaba el acusado vigilando su truck, dentro de dicho truck a la sazón parado frente a la casa de su padre, y (2) pasaron carretones corriendo, y (3) el ofendido que era uno de los conductores de aquellos carretones, profirió malas e insultantes palabras contra dicho acusado y sus parientes, porque (4) en dicha ocasión dicho ofendido estaba borracho.

"2. Que el acusado, naturalmente ofendido por el insulto, bajo de su truck; sujeto el mecate del vacuno del carretón del ofendido Pizarro; estiro dicho mecate con fuerza; y el ofendido que estaba sentado en un lado del carretón (lado opuesto al en donde estaba el acusado), y que naturalmente sujetaba el otro extremo del mismo mecate, se tumbo en el carretón.

"3. Que el ofendido estaba sentado en el borde izquierdo de su carretón y el acusado apareció hacia el lado derecho de dicho carretón y dicho carretón tiene una pared en forma de veranda que en la parte alta termina en una madera dura.

"4. Que el sitio es muy arbolado. Había luna; pero es sitio arbolado.

"5. Que el golpe (sostenido por la acusación como golpe de una manigueta, y por la defensa como efecto del choque que sufrió el ofendido al caer sobre el borde de su propio carretón) produjo (1) una ligera herida en el labio superior del ofendido, y (2) algunas pequeñas roturas de dientes, que todo fue curado en seis (6) días.

"6. Que el ofendido, queriendo aprovecharse de la ocasión, sostenía que el acusado pagase al dentista para

poner dientes de oro en lugar de los dientes que se le habian quebrado, proposicion que tuvo lugar un mes quizas despues del suceso; a la cual el acusado no accedio."

It appears from the evidence that the defendant struck the offended party in the mouth with an iron instrument used for cranking the engine of a motor truck, thereby breaking four of the offended party's front teeth and inflicting on his upper lip a wound which required medical treatment for six days. The incident occurred late at night. The offended party, accompanied by three girls, was driving an ox cart, preceded by the cart of Ambrosio Belandres. It was the night of Good Friday, and they were going home after seeing the procession in Bangued. The defendant stopped his motor truck in front of his father's house, and when the two carts came up he got out and after asking Ambrosio Belandres for Isidro Pizarro, the offended party, went to the cart driven by Isidro Pizarro, and struck him with the piece of iron. The motive for the assault appears to have been the defendant's resentment because the offended party had been a witness for Paulino Belandres in a case between Belandres and the defendant.

The foregoing facts are duly proved by the testimony of the offended party and Dolores Belandres, one of the offended party's three companions. Dr. Jose Purugganan testified as to the injuries sustained by the offended party. The offended party had to have the broken teeth extracted because they ached and hurt his gums. The trial judge found that the offended party had a very noticeable disfigurement in the mouth at the time of the trial.

Testifying in his own behalf, the defendant declared that the offended party was drunk and insulted him; that upon hearing the insulting words he got out of his truck and caught hold of the rope on the ox driven by the offended party, and asked the offended party for an explanation; that he gave the rope a sudden jerk, and the offended party fell over in the cart; that the offended party and his companions then drove on, and the defendant returned to his truck. The defendant further testified that a month after the incident in question the offended party told him that he ought to pay for four gold teeth to take the place of the teeth that were broken, but that he declined to do so because he was not at fault; that this conversation took place more than ten days prior to the time when the offended party's broken teeth were extracted. The offended party denied having any such conversation with the defendant. The contention of the defendant rests upon his uncorroborated testimony. The complaint was filed on April 19, 1933, or long prior to the date when the alleged conversation was claimed by the defendant to have taken place.

In our opinion the evidence fully sustains the findings of the trial judge, except as to the presence of the aggravating circumstance of nocturnity.

The principal question involved in this case is whether or not the physical injuries inflicted by the defendant upon the offended party constitute a violation of subsection 3 of article 263 of the Revised Penal Code, the Spanish text of which reads as follows:

"Con la pena de prision correccional en sus grados minimo y medio, si de resultas de las lesiones el ofendido hubiere quedado deforme, o perdido cualquier otro miembro o quedado inutilizado de el, o hubiere estado incapacitado para su trabajo habitual o enfermo por mas de noventa dias."

The official English translation is as follows:

"The penalty of prision correccional in its minimum and medium periods, if in consequence of the physical injuries inflicted, the person injured shall have become deformed, or shall have lost any other part of his body, or shall have lost the use thereof, or shall have been ill or incapacitated for the performance of the work in which he was habitually engaged for a period of more than ninety days."

It will be noticed that the phrase "cualquier otro miembro" has been translated to read "any other part of his body". The Spanish text scarcely justifies that translation. "Cualquier otro miembro" is more accurately translated

"any other member", meaning any other member than an eye, a hand, a foot, an arm, or a leg, which are those mentioned in subsection 2. "Deforme" is better translated "disfigured".

In the case at bar four of the offended party's incisors were broken off. The remaining portions of these teeth had to be removed. The result, as found by the trial judge, was a conspicuous disfigurement.

The Supreme Court of Spain held in its decision of May 5, 1884, where the defendant threw a stone which injured the offended party in the mouth and caused him to lose four teeth, "que las lesiones que producen la perdida de cuatro dientes constituyen una verdadera deformidad irreparable por la accion reconstitute de la naturaleza"; in the decision of October 29, 1886, where the accused struck the offended party with a stone and caused him to lose two incisors, it was held that "la perdida de dos incisivos constituye deformidad"; in the decision of October 31, 1900, where the offended party suffered two wounds on the upper lip with the loss of three teeth, the Supreme Court of Spain said: "Considerando que declarado en la sentencia reclamada que de resultas de las lesiones causadas por Pedro Obrador a Cristobal Soler este quedo sin tres dientes con huella visible de su falta, es aplicable al caso el numero 3.º del articulo 431 del Codigo Penal, porque a causa de la lesion ha quedado permanente deformidad al ofendido por notoria imperfeccion de su regularidad personal"; in the decision of January 12, 1903, where the offended party suffered the loss of a molar and two incisors, one from the upper jaw and one from the lower, it was held that "Considerando que Meforme,' segun el Diccionario de la Academia, es lo mismo que desfigurado, feo o imperfecto, y por ello existe deformidad, en la acepcion dramatical y juridica de la palabra, cuando de resultas de las lesiones padecidas queda el ofendido con huellas visibles de alguna imperfeccion o irregularidad en su persona; y, como evidentemente la produce la falta de dos incisivos, infringe la sentencia, al dejar de estimarlo, el artfculo que se cita en el recurso, e incurre en el error de derecho que sirve de fundamento a este"; in its decision of May 16, 1908 the Supreme Court of Spain said : "Considerando que el Tribunal sentenciador ha procedido con acierto al calificar el hecho justificable a que el presente recurso se refiere, puesto que la perdida de cuatro dientes que Antonio Saraldi sufrid por efecto de los golpes que el procesado le diera, constituye una imperfeccion permanente y visible que determina una verdadera deformidad, con arreglo al significado gramatical y juridico de esta palabra, sin que la mayor o menor facilidad que el lesionado pueda tener para disimular el aludido defecto, despoje a la lesion del caracter legal que por su propia naturaleza le corresponde, etc.", and in that of January 15, 1910: "Oonsiderando que es improcedente el recurso, porque habiendose declarado por la Sala sentenciadora que a Eduardo Fernandez se le curaron, con asistencia facultativa, a los veinticuatro dias, las lesiones que al mismo le fueron inferidas, pero quedandole deformidad por la perdida de tres molares, es evidente que el Tribunal sentenciador aplico con acierto la disposicion legal que por el recurrente se impugna, pues que la perdida de aquellos produce irregularidad fisica visible y determinante de la expresada deformidad, etc.", and in that of February 11, 1910: "Considerando que la deformidad constitutiva de lesion grave a que se refiere el articulo 431, ntimero 3.º del Codigo Penal, es un concepto de hecho sometido a la apreciacion del Tribunal que conoce de las pruebas, pues para juzgar con acierto acerca de la extension y efectos de aquella en orden a la alteracdn que produce en la forma regular de quien la sufre o en la de alguna parte visible de su cuerpo, se requiere el examen personal y directo, como principal factor de conocimiento, de donde se deduce que una vez estimada de visu por el juzgador la deformidad, solo cabra impugnarla con exito en casacdn cuando de los demas elementos materiales que la sentencia contenga aparezca de modo claro haberse incurrido en error el formular esa conclusion: Considerando esto sentado, que al afirmar la Audiencia sentenciadora que por la perdida de un canino y tres molares quedo el lesionado deforme, expresa un juicio jobre la prueba, que es forzoso respetar, no existiendo como no existen datos que permitan combatirlo, tanto mas cuanto que la falta de un canino, unido a la de tres molares, siquiera dicha Audiencia califique esta ultima de deformidad interior, frase que se presta a distintas interpretaciones, puede determinar, atendidas las circunstancias del sujeto, una irregularidad o una imperfeccion, apreciable a simple vista en el rostro del ofendido, hipotesis que impide en el presente caso

modificar el criterio del inferior, y con mas razon si se tiene en cuenta que la Ley Penal vigente no exige, como exigfa la anterior, que la deformidad sea notable, desprendiendose de aqui, como logica consecuencia, la necesidad de mantener la calificacdn que en el primer motivo del recurso se impugna, sin que obste para ello que el defecto de que se trata se pueda suplir, segun el recurrente alega, por medios artificiales, pues ni esos medios estan al alcance de todos, ni es dable obligar a nadie a utilizarlos, etc."

On the other hand, in its decision of October 15, 1903, the Supreme Court of Spain held that the loss of an incisor by a woman about seventy years old does not constitute the disfigurement to which the law refers. The court said: "Considerando que la deformidad fisica que produce la perdida de dientes incisivos, por la irregularidad en las formas que de esta falta resulta, hay que apreciarla con relacion a la edad y otras circunstancias que pueden concurrir en cada caso concreto, asi como a las declaraciones de hecho del Tribunal sentenciador; y afirmandose en la sentencia reclamada que la ofendida Maria Martinez sufrio unas lesiones, que se curaron a los catorce dias de asistencia facultativa, con fractura de un incisivo, tratandose de una persona proxima a los setenta anos, esta falta no tiene en este caso eficacia bastante para producir el efecto juridico de aumentar la penalidad como constitutivo de un delito de lesiones graves, habiendo procedido con acierto el Tribunal sentenciador al calificar y penar el hecho procesal como delito de lesiones menos graves, conforme, en caso analogo, lo ha resuelto esta Sala en sentencia de 12 de enero de 1892."

In the case of *People vs. Rodas* (G. R. No. 31807, promulgated February 7, 1930, not reported), where two of the offended party's lower incisors were knocked out, a division of this court consisting of four members refused to follow the decisions of the Supreme Court of Spain on the ground that they were obsolete because of the progress in dental science, and held that in the United States and the Philippine Islands the loss of one or more teeth need not be taken as a permanent physical abnormality; and in the case of *People vs. Medina* (G. R. No. 32113, promulgated on the same date and by the same division, not reported), it was held that the loss of four teeth did not constitute a disfigurement within the meaning of the law, because it was not permanent; that the disfigurement was not permanent, because the four natural teeth lost by the offended party had been substituted by artificial teeth. The defendant was sentenced to suffer thirty days of arresto menor and to indemnify the offended party in the sum of P60, the cost of the false teeth.

We have not found any decision of this court in banc that is in point.

The *Rodas* and *Medina* cases, *supra*, were decided upon the finding that there was no disfigurement because the injuries were not permanent, since the teeth that were broken out could be substituted with artificial teeth. In our opinion this was not a correct interpretation of the law. The injury contemplated by the Code is an injury that cannot be repaired by the action of nature, and if the loss of the teeth is visible and impairs the appearance of the offended party, it constitutes a disfigurement. The fact that he may, if he has the necessary means and so desires, have artificial teeth substituted for the natural teeth he has lost does not repair the injury, although it may lessen the disfigurement. The case of a child or an old person is an exception to the rule.

One who unlawfully wounds another is responsible for the consequences of his act. If as a result thereof, the offended party is impaired in his appearance in such a way that the disfigurement cannot be removed by nature, the person causing the injuries is responsible for the disfigurement, and he is not relieved of that responsibility because the offended party might, if he had the means, lessen the disfigurement by some artificial contrivance.

The offended party in the case at bar was twenty-five years old, and he was conspicuously disfigured by the loss of four front teeth. We are therefore of the opinion that the defendant is guilty of a violation of subsection 3 of article 263 of the Revised Penal Code.

A further reason for considering the offense committed by the appellant as lesiones graves is that a front tooth is a

member of the body, other than a principal member, within the meaning of the words, "or shall have lost any other member", as used in subsection 3 of article 263 of the Revised Penal Code. It was held in *Keith vs. State* (282 S. W., 321) by the Texas Court of Criminal Appeals that front teeth are members of the body within the operation of a statute providing punishment for depriving a person of a member of his body. This decision is extensively annotated in 16 A. L. R., 949, 955.

With respect to the aggravating circumstance of nocturnity, it appears that the lower court appreciated this circumstance because "el acusacto esperd al ofendido en el lugar de autos a las 11 de la noche." The evidence shows that the accused had stopped his truck in front of his father's house. Apparently the accused as well as the offended party had just returned from Bangrued. It does not appear that he intentionally sought the cover of darkness or that he took advantage thereof. It was not a dark night, and the accused did not conceal himself.

The evidence shows that the offended party spent P20 for medicine and paid his doctor P20. The accused should be required to indemnify the offended party in the sum of

For the foregoing reasons, the accused is sentenced to suffer one year, eight months, and twenty-one days of prision correccional and to indemnify the offended party in the sum of P40, with the corresponding subsidiary imprisonment in case of insolvency, and in accordance with the Indeterminate Sentence Act the minimum sentence of the accused is fixed at five months of arresto mayor. As thus modified, the decision appealed from is affirmed, with the costs against the appellant.

Avancenja, C. J., Street, Villa-Real, Imperial, Butte, Goddard, and Diaz, JJ., concur.

HULL, J.:

I concur in the result.

DISSENTING

MALCOLM, J.,

The questions so learnedly discussed in the majority decision in banc are hardly deserving of such distinction, and were it not that the decision has the effect of revoking prior decisions' and of aligning the court with obsolete notions of penology, I would not take the trouble to dissent. According to the view I take of the case, the breaking of four teeth neither constitutes a deformity nor the loss of any part of one's body within the meaning of paragraph 3, article 263 of the Revised Penal Code, considering the ease with which an injury of this nature could be remedied by any reputable dentist.

According to the medical certificate, the offended party had four teeth broken as follows: two superior central teeth, one inferior right central tooth, and one inferior right lateral tooth; and according to the decision of the trial judge, the loss of these four teeth was not due to the accused, but resulted from the offended party having them extracted by a dentist.

The majority decision lays great stress on a number of decisions of the Supreme Court of Spain. If it be desired to take into account these decisions, it should be recalled that according to the Supreme Court of Spain, by deformity is meant visible ugliness, permanent and visible physical abnormality. (5 Viada, *Codigo Penal Comentado*, 144.) If this doctrine is correct, the breaking of one or more teeth need not produce permanent and visible deformity, for

any dentist can fill or replace such teeth. Moreover, while decisions coming from the Supreme Court of Spain are entitled to persuasive respect just as decisions coming from any other country are entitled to similar respect, they are no longer absolutely binding on the Supreme Court of the Philippines, and this court is at liberty to take a progressive stand in interpreting our Revised Penal Code.

The majority decision has also seen fit to resurrect a decision of a state supreme court in an endeavor to show that a tooth is "any other member of the body." That decision, however, it should be observed, is simply the interpretation of a local mayhem statute.

In the case of *People vs. Medina* (G. R. No. 32113, promulgated February 7, 1930, not reported), mention was made of the decision of the Supreme Court of Spain to which I have previously referred, and it was said:

"La lesion causada a Lin Kip Si, fue calificada de grave por habersele a dicho ofendido caido cuatro dientes a consecuencia del golpe que recibiera en la boca. Es verdad que en la jurisprudencia, especialmente la espanola, como espanol es tambien de origen elCodigo Penal aqui vigente, we ha declarado repetidamente que la pordida de dientes constituye deformidad; pero debe tenerse en cuenta que la deformidad a que se refiere la ley es, segiin sentencia del Tribunal Supremo de Espafia de 11 de diciembre de 1885, la deformidad permanente y definitiva. Y segiin sentencia del mismo Tribunal, de 15 de octubre de 1903, donde la perdida de un incisivo no se considerd deformidad, "la deformidad fisica que produce de dientes incisivos, por la irregularidad en las formas que de esta falta resulta, hay que apreciarla con relacion a la edad y otras circunstancias que pueden ocurrir en cada caso concreto.' (Vide Codigo Penal Comentariado por Viada, tomo 5, pagina 148, 5.a edicion.,)

"Habiendose repuesto con dientes artificiales los perdidos por el aludido ofendido, no puede decirse que la deformidad producida por la perdida de estos dientes sea permanente y definitiva. Observese que lo que agrava la pena es la deformidad, la cual, si llega a desaparecer, sea cual fuere la causa de tal desaparicion, entendemos que no debe estimarse permanente. Ahora bien, en el caso que nos ocupa la desaparicion de tal deformidad se debe a tratamiento facultativo que costo al ofendido P60 de la cual el acusado debe responder. Tenidas en cuenta las circunstancias tddas del caso, entendemos que no debe considerarse que el hecho delictivo de que aqui se trata produjera la deformidad permanente a que se refiere la ley y la jurisprudencia, como dato de agravacion de la delincuencia."

In the case of *People vs. Rodas* (G. R. No. 31807, promulgated February 7, 1930, not reported), a similar question was discussed in the following language:

"The provision of law invoked by the trial court and by the Attorney-General to fit the case is paragraph 3 of article 416 of the Penal Code. Said paragraph provides a penalty of prision correccional in its minimum and medium degrees, if in consequence of the physical injuries the person injured shall have become deformed, or shall have lost some member other than a principal member, or shall have lost the use of such member. It is said that the loss of two teeth brings the case within this penal provision. In support thereof, certain decisions of the Supreme Court of Spain are cited. At the same time, it should be noted that these decisions are from the Supreme Court of Spain, and that some of them are of ancient date. Whatever the state of dental surgery in Spain may be, and as to that we are not informed, in the United States and in the Philippine Islands the loss of one or more teeth need not be taken as providing a permanent physical abnormality. The provisions of our Penal Code, entirely overly severe, old in precept, and out of all harmony with the modern principles of penology, have not had the effect of fastening upon the Philippines each and every idea of ancient lineage which the ingenuity of man has evolved from those provisions. The criminal law, like every other branch of the law, is a progressive science. The members of the judiciary can take into account the advances in other professions such as dentistry to humanize the Penal Code and to minimize its rigor."

In the case of *People vs. Oh Suilay* (G. R. No. 40699, p. 1024, post), the information alleged that various blows had caused the loss of two teeth producing a deformity. The evidence substantiated this allegation and on appeal

to this court it was specifically found as a fact that the injured party received several blows "one of which knocked out two of his teeth." The Solicitor-General, taking cognizance of the evidence to this effect, argued that the case fell under article 263 of the Revised Penal Code, but this court declining to follow this suggestion merely found the accused guilty of the crime of less serious physical injuries penalized by article 265 of the Revised Penal Code. The decision here referred to, it should be mentioned, was written by Justice Street of the first division And concurred in by Justices Abad Santos and Hull, and was promulgated on July 20 of this year.

Lastly, as a foreign court has well said: "The science of dentistry like many others has advanced in later times, specially in the direction of preserving and repairing teeth and in substituting artificial teeth and we are entitled to take cognizance of what is common knowledge in this regard." (Rex vs. Crukshanks, 7 Alta., L., 92, 95.)

With all due respect, I am constrained to dissent.

ABAD SANTOS, J.;

I concur in the dissenting opinion of Justice Malcolm.

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