

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ANTONIO NOSCE, DEFENDANT AND APPELLANT.

G. R. No. 41757. November 13, 1934

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

For having slapped the Reverend Father Ulric Arcand, a Catholic priest, before a large congregation, the appellant Antonio Nosce was sentenced to from four months of arresto mayor, as the minimum, to two years and four months of prision correccional, as the maximum penalty, with costs.

The offended party, Reverend Father Ulric Arcand, was the chaplain of the Catholic Youth in the municipality of Lucena, Tayabas, and had his residence in said municipality. Some disgruntled residents were working for his transfer to another municipality. On December 3, 1933, Mgr. Verzosa, the Catholic Bishop of the Diocese of Lipa, was on a pastoral visit in the municipality of Lucena and, taking advantage of his presence there, those who were against the offended party staged a public demonstration, held a meeting, and even sent a delegation headed by the appellant to seek an audience with the bishop and express their desire to have the offended party transferred to another municipality. On the afternoon of that day the bishop administered the sacrament of confirmation in the parish church and later, while he was leaving the church preceded by the priests in attendance, among them the offended party, and while he was presenting his pastoral ring to be kissed by the faithful who thronged the passageway, the appellant arrived. At that moment the offended party was at the main door of the church looking outward and trying to locate the car that was to take the bishop to the convent. The appellant approached the offended party in an attempt to speak to him but the latter told him that he had no time to talk to him then, whereupon the appellant assaulted and struck him in the face with his hand. Upon feeling the blow the offended party called to a policeman for help and while the appellant attempted to pursue the offended party, one of the persons present held and detained the former and put an end to the incident. According to the appellant, when he tried to talk to the offended party, the latter, who had his hand raised to about the level of his head, made gestures of refusal to hear him and what he did was to repel the offended party's hand. It was said offended party's own hand that touched his cheek.

When the offended party was thus assaulted, he was in surplice which is worn only during religious ceremonies. The ceremonies on said occasion consisted in accompanying the bishop from the convent to the altar of the church; then follows the confirmation ceremonies and later the bishop is accompanied from the altar on his return to the convent. In going to the church as well as on his return to the convent, the bishop is accompanied by the faithful and the priests in procession.

The court declared that the facts stated constitute the offenses punished in articles 133 and 359 of the Revised Penal Code.

Article 133 punishes anyone who, in a place devoted to religious worship or during the celebration of any religious ceremony, shall perform acts notoriously offensive to the feelings of the faithful. This court is of the

opinion that the appellant's acts do not constitute this violation. This article is taken from article 241 of the Spanish Penal Code which reads as follows:

"The penalty of *arresto mayor* in its minimum and medium periods shall be imposed upon anyone who, in a religious place shall scandalously perform acts not included in the preceding articles, which shall offend the religious feelings of the people present."

Furthermore, article 240, paragraph 1, of the Spanish Penal Code reads as follows:

"The penalty of *prision correccional* in its medium and maximum periods and a fine ranging from 250 to 2,500 pesetas shall be imposed upon:

"1. Anyone who, by acts, words, gestures or threats, shall insult the minister of any religion while in the performance of his functions."

From these two previsions it may be inferred that the offense penalized in the former does not include that punished in the latter on the ground that both are punished separately. The appellant's acts fall under article 240 and, therefore, are not punished in article 241 of the Spanish Penal Code.

Article 240 of the Spanish Penal Code was not adopted in our Revised Penal Code but in lieu thereof there is article 359 which reads as follows:

"ART. 359. Slander by deed.—The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period or a fine ranging from 200 to 1,000 pesos shall be imposed upon any person who shall perform any act not included and punished in this title, which shall cast dishonor, discredit or contempt upon another person. If said act is not of a serious nature, the penalty shall be *arresto menor* or a fine not exceeding 200 pesos."

This court is of the opinion that the act committed by the appellant falls under this legal provision. The offended party is invested with sacerdotal dignity in his religion and was officiating as such priest during solemn religious ceremonies before a large congregation. There certainly could have been no other circumstances under which greater dishonor, discredit and contempt could be cast upon him before the faithful over whom he held so high a dignity.

Wherefore, by modifying the appealed judgment and taking into consideration the serious nature of the crime charged, the appellant is declared guilty in accordance with article 359 of the Revised Penal Code and sentenced to from three months of *arresto mayor*, as the minimum, to one year and one day of *prision correccional*, as the maximum penalty, with costs. So ordered.

Street, Vickers, Imperial, Butte, and Diaz, JJ., concur.

MALCOLM, J., with whom concur ABAD SANTOS and GODDARD, JJ., dissenting:

It is agreed that while Father Arcand, the offended party, was coming out of the church where he had assisted in conducting services, Antonio Nosce, the accused, struck the father on the left cheek causing, however, no injury. Nosce was prosecuted for this offense, and in the lower court was found guilty of a violation of articles 133 and 359 of the Revised Penal Code, and was sentenced therefor to suffer an indeterminate sentence of from four months' imprisonment, *arresto mayor*, to two years and four months, *prision correccional*. On appeal the accused is again found guilty under article 359 of the Revised Penal Code of an act of a serious nature, and is sentenced to three months' imprisonment, *arresto mayor*, as the minimum, to one year and one day, *prision correccional*, as the maximum. In my humble opinion, however, the offense amounts simply to slight physical injuries punishable by a fine not exceeding P50.

Under the present democratic system of government, in force in the Philippines, neither on the military (U. S. vs. Smith [1919], 39 Phil., 533), the church (U. S. vs. Morales [1917], 37 Phil., 364), or the Government (People vs. Perfecto [1922], 43 Phil., 887), are conferred any special privileges which make it a more heinous offense to assault a person associated with the military, the church or the government than an ordinary citizen. It also remains to be said that for having slapped the offended party, Antonio Nosce has already been confined in prison for nearly one year. That is hardly an approximation of justice.

DISSENTING

HULL, J.,

I believe this offense falls within the second provision of article 359 of the Revised Penal Code and not within the first section thereof.

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