

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ANDRES DELFIN, DEFENDANT AND APPELLANT.

G.R. No. 42292. February 09, 1935

Ponente: VICKERS, J.

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VICKERS, J.:

The defendant was tried in the Court of First Instance of Capiz on a plea of not guilty to an information for a violation of section 416 of the Election Law, wherein it was alleged:

"Que en o hacia el 5 de junio de 1934, en el Municipio de Panitan, Provincia de Capiz, Islas Filipinas, con ocasion de las elecciones generales y durante el periodo de votaci6n y escrutinio, el referido acusado intencional, maliciosa y criminalmente port6 o tuvo en su persona y posesion un cortaplumas automatico, estando dentro de los 50 metros a la redonda del Colegio Electoral No. 1. Con infracci6n de la ley."

Upon the termination of the trial, the lower court found the defendant guilty as charged and sentenced him in accordance with section 2639^A of the Election Law to suffer imprisonment for thirty days and to pay a fine of P50, with subsidiary imprisonment in case of insolvency, and to pay the costs.

It appears from the evidence that the defendant was an election inspector, and that on the day of the election the other inspectors asked him where they could get a pocketknife for the purpose of sharpening their pencils, as the pencil sharpener furnished them by the municipal treasurer was old and broke the points of the pencils they tried to sharpen; that the defendant, who lived nearby, said he had a pocket-knife at home, and sent his son who was playing not far from the polling place to get the knife. After sharpening their pencils, the election inspectors put the pocket-knife on the table where they were working; subsequently the appellant put it in the watch pocket of his trousers. A representative of the Secretary of the Interior took possession of the knife, and caused charges to be filed against the defendant.

The knife in question is described in the record as an automatic penknife, the length of the handle and blade, when open, being 19.2 centimeters, the length of the blade 8 centimeters, 1.5 centimeters wide, and sharp-pointed.

Section 416 of the Election Law, as amended by Act No. 3387, reads in part as follows:

"It shall be unlawful for any person to carry firearm or any kind of arms within a distance of fifty meters from any polling place during the days of registration, voting, and counting. In cases, however, of affray, riot, or disorder within the radius of fifty meters, any peace officer or public official authorized to supervise the conduct of election may carry firearms or any other kind of arm within the said radius for the purpose of maintaining order or enforcing the law."

The Solicitor-General submits that since the defendant did not try to influence the mind of any voter or intend to violate the law in any other manner, it would be unreasonable and unjust to require him to suffer the penalty imposed by the lower court, which is the minimum penalty authorized by law for the offense charged.

We agree with the Solicitor-General that the minimum penalty prescribed by law is too high. As to the guilt or

innocence of the defendant, we are of the opinion that under the circumstances of this case he should be acquitted on the ground that the penknife in question is not included in the term "arms" as used in section 416 of the Election Law. Although it has been held (*State vs. Buzzard*, 4 Ark., 18) that the term "arms" in its most comprehensive signification, probably includes every description of weapon or thing which may be used offensively or defensively, it ordinarily means instruments or weapons of offense or defense. A penknife, such as the one in question, although capable of being used as a weapon, was not designed to be used as such, and where it clearly appears, as in the present case, that the person in possession of it did not intend to use it as a weapon, it should not be so regarded.

The decision appealed from is therefore reversed, and the defendant is acquitted, with the costs de oficio.

Avanceña, C.J., Street, Abad Santos, and Hull, JJ., concur.

Judgment reversed and defendant acquitted.

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