

THE PEOPLE OP THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. JOSE GARCIA, DEFENDANT AND APPELLANT.

G. R. No. 43199. August 14, 1936

Ponente: LAUREL, J.

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LAUREL, J.:

This is an appeal from the decision of the Court of First Instance el Batangas convicting the accused, Jose Garcia, of the crime of lesiones menos graves under article 265 of the Revised Penal Code, with the aggravating circumstance of treachery, and sentencing him to four months and one day imprisonment, to indemnify the offended party in the amount of P137.56 or to suffer subsidiary imprisonment in case of insolvency, and to pay the costs.

The appellant assigns three errors alleged to have been committed by the trial court (1) In convicting the accused of the crime of lesiones menos graves with the aggravating circumstance of treachery instead of convicting him only of maltrato de obra; (2) in sentencing the accused to the payment of indemnity in the sum of P137.56; and (3) in convicting the accused of the crime charged notwithstanding his previous conviction for the same act under a municipal ordinance.

As regards the first assignment of error, we find upon examination of the records of the case that the findings of the trial court are fully supported by the evidence. The testimony of the witnesses is conflicting. The accused, however, admits having given the first blow to the offended party, Benito Chua Kuy. The accused was at one time sergeant of the municipal police force of the municipality of Balayan, Province of Batangas, and two witnesses for the defendant-appellant, Pedro Castillejos and Felix Vidal, were members of the same police force and at one time were under the supervision of the accused. Francisco Garcia, another witness for the defense, was the chief of police of the same town and province and is the uncle of the accused. Mariano R. Apacible, another witness for the defense is an uncle of the defendant-appellant's wife. Vicente Galvez, the last witness for the defense, is a compadre of the defendant-appellant. The trial court gave more credit to the witnesses for the prosecution. We find no reason for disturbing the action of the trial court. The trial court has seen the witnesses in the act of testifying and has observed their manner and demeanor, and there does not appear in their record any fact or circumstance of weight and influence which has been overlooked or the significance of which has been misinterpreted or misapprehended. (XJ. S. vs. Pico [1910], 15 Phil., 549, 551; U. S. vs. Ambrosio and Falsario [1910], 17 Phil., 295, 302, 303; U. S. vs. Benitez and Lipia [1911], 18 Phil., 513, 517, 518; U. S. vs. Soriano [1913], 25 Phil., 624, 628, 630; U. S. vs. Briones [1914], 28 Phil., 367, 380, 381; U. S. vs. Claro [1915], 32 Phil., 413, 421; U. S. vs. Lazaro [1916], 34 Phil., 871; U. S. vs. Maralit [1917], 36 Phil., 155; U. S. vs. Remigio [1918], 37 Phil., 599, 611, 612; People vs. Cabrera [1922], 43 Phil., 64, 81; People vs. De Asis [1935], 61 Phil., 384; People vs. Iris [1935], 62 Phil., 262; People vs. Duran [1935], 62 Phil., 485.

With reference to the second assignment of error, the evidence shows that the offended party was unable to work only for 15 days. His salary, according to his own testimony, was P100 a month. We agree with the Solicitor-General that the offended party is only entitled to a corresponding amount of his salary for 15 days

which is P50 to which should be added the sum of P20.90 incurred by him in coming to Manila and securing medical treatment, or a total of P0.90.

In the third assignment of error, the defendant-appellant contends that having been prosecuted and convicted in the justice of the peace court of Balayan, Batangas, for violation of municipal ordinance, such conviction is a bar to his subsequent prosecution in the Court of First Instance of Batangas for the crime of lesiones menos graves under the Revised Penal Code. The appellant relies on article 48 of the Revised Penal Code. This article, however, as amended by Act No. 4000, has no application to the case at bar as it is applicable only to cases where "a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other" and not to a case as the present where the accused is convicted of violation of a municipal ordinance and is subsequently prosecuted and convicted for lesiones menos graves under the Revised Penal Code.

Appellant also invokes clause 20 of Article III of the Constitution of the Philippines which provides that "If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act." Although the prosecution, trial and conviction of the accused for lesiones menos graves took place before the Constitution went into effect, we would extend to him the favorable provision of the Constitution were this provision applicable to him (*People vs. Linsangan* [1935], 62 Phil., 646). We do not have before us copy of the municipal ordinance under which the accused was convicted. Neither is said ordinance mentioned in the decision, Exhibit 5, of the justice of the peace. Nevertheless, it is clear that when the accused was convicted of violation of the municipal ordinance he was convicted of an act distinct from the act penalized under the general law. Breach of the peace is not lesiones menos graves. Nor is breach of the peace essential in the crime of lesiones menos graves. Upon the other hand, there are many acts which constitute under the Revised Penal Code grave offenses and which may be said to involve at the same time infractions of municipal ordinances. It is apparent that the ends of justice could easily be frustrated by an accused pleading guilty to the violation of a municipal ordinance and thereby avoiding subsequent prosecution under a general law. This result was certainly not intended by the framers of the Constitution. Upon the facts of the present case we are satisfied that the provision of the Constitution relied upon in this instance is not applicable. This third assignment of error is, therefore, overruled.

With the above-stated modification as to the indemnity awarded to the offended party, the decision of the trial court is hereby affirmed with costs against the appellant. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Imperial, Diaz, and Recto, JJ., concur.

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