

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PONCIANO TREYES ET AL., DEFENDANTS.—PONCIANO TREYES, APPELLANT.*G.R. No. 4339. October 11, 1909*

Ponente: JOHNSON, J.

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The evidence in this case shows beyond reasonable doubt that the injured party, Juan Yllarde, while on his way home to the Lacson Hacienda, from Talisay, as he was about to cross the River Cabanbanan, was captured by the two defendants, Nicolas and Casimiro, and was taken by them to the house of the other defendant, Ponciano, and after arriving at the house of Ponciano, the two, Nicolas and Casimiro, held him while Ponciano administered a severe beating to him with his cane. The evidence shows that the cane was a heavy one and that Ponciano administered blows upon the back and head of the said Yllarde; that said blows were so severe and serious that they disabled Yllarde for a period of nearly two months, and that at the time of the trial the scars upon his head showed that he had received serious injuries. The judge below, remarking upon the character of the injuries as they appeared at the time of the trial said: "It looks as if the top of his head had been pounded into a jelly or into a pomace;" and the evidence shows that aside from the in June's upon his head, that he had other contusions upon other parts of his body.

Upon these facts the lower court found the defendants guilty of the crime charge in the complaint, and expressly finding that there were no extenuating circumstances, sentenced the said Ponciano to be imprisoned for a period of five months, and to pay one-third of the costs of the prosecution; and the other two defendants, Nicolas and Casimiro, to be imprisoned for a period of four months and each to pay one-third of the costs. The defendants were jointly and severally sentenced to pay an indemnity to the injured party in the sum of P150 for his loss of time for two months, his wages for two months, and for his suffering and loss in business. The sentence of the lower court also provided for subsidiary imprisonment in the case of insolvency on the part of the defendants. From this sentence of the lower court the defendant Ponciano appealed.

The fiscal in the court below qualified the offense as lesiones menos graves; the facts, however, set out by the fiscal in the body of the complaint and which were fully proven during the trial, show, beyond question, that the appellant, Ponciano Treyes, while Juan Yllarde was held and confined by the other two defendants, administered a severe beating to him (Yllarde) with a heavy cane; that such blows were administered upon the back and head of the said Yllarde; that such blows were so serious and severe that they disabled the said Yllarde from pursuing his usual occupation for a period of two months and that at the time of the trial the scars upon his head showed that he had received very serious injuries. The complaint, sustained by these facts, shows that the appellant was guilty of the crime of lesiones graves, and the crime should have been qualified as lesiones graves instead of lesiones menos graves. As this court said in the case of the United States vs. Supila (7 Off. Gaz., 1433)[1], the qualification of a crime is not confined to the qualification given by the fiscal in the first part of his complaint. The crime must be qualified by the description of the offense given in the body of the complaint and if the evidence supports the facts alleged in the body of the complaint, the parties should be punished in accordance

with the real offense described and not in accordance with the qualification given by the fiscal. The aggressors were accused of the act generically qualified as lesiones. The greater or less gravity of the wounds does not change its juridical nature; a lesion is a wound light compared with a more serious one, and only influences the degree of punishment fixed by law, so that the premature qualification of the offense as *menos grave* in the fiscal's complaint, does not prejudice the result of the evidence, during the hearing of which the offender was present and of the import of which he was well aware.

In the present case the body of the complaint contains allegations sufficient to justify the conclusion that the offense committed by the appellant was lesiones graves and not lesiones menos graves as denominated by the fiscal and the proof fully sustains the allegations in the body of the complaint. Therefore, under the allegations and the proof adduced during the trial in the present case, we are of the opinion and so hold that the judgment of the lower court should be reversed and that the penalty imposed by the lower court in accordance with article 418 of the Penal Code, should have been in accordance with the provisions of subparagraph 2 of paragraph 4 of article 416. Said subparagraph of paragraph 4 of article 416 provides that if the acts should be committed against any of the persons specified in article 402 or with any of the attendant circumstances specified in article 403 of said code, and the party injured should be disabled from pursuing his usual occupation for a period lasting more than thirty days, the punishment shall be that of prision correccional in its minimum and medium degrees. In the present case the fact that the other two defendants captured the person injured upon the highway and manacled him and carried him to the house of the appellant herein and there held him while the appellant beat him with his cane, in our opinion constitutes the attendant circumstance specified in paragraph 1 of article 403, and therefore the appellant should be punished with the penalty of prision correccional in its minimum and medium degrees. There being no aggravating or extenuating circumstances attending the commission of the offense, in accordance with the provision of paragraph 2 of article 80, the minimum penalty of that prescribed should be imposed. Therefore, the sentence of the lower court, imposing the penalty of five months upon the appellant, is hereby revoked, and it is hereby directed that the appellant be sentenced to be imprisoned for a period of one year, eight months, and twenty-one days of prision correccional.

Yllarde, the offended party, testified that he was a night watchman and that he received P15 per month; that he was disabled from pursuing his usual occupation for a period of two months; that he earned each year, outside of his salary, about P140. His loss of salary for two months then would be P30. The proportional loss of P140 for two months we find to be about P24. The loss, therefore, which the injured party suffered during the period during which he was disabled by the unlawful acts of the defendant, was about P54.

Upon the foregoing facts, in our opinion, the sentence of the lower court should be modified with reference to the indemnity imposed. The sentence of the lower court should be revoked.

Therefore, the defendant, Ponciano Treyes, is hereby sentenced to be imprisoned for a period of one year eight months and twenty-one days of prision correccional, to pay one-third of the costs of the lower court and to pay the costs of this court, and to indemnify the injured party, Juan Yllarde, in the sum of P54, and in case of insolvency to suffer subsidiary imprisonment in accordance with the provisions of the law. So ordered.

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

[1] 13 Phil. Rep., 671.

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