

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. SALVADOR VALLEJO ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 4367. September 03, 1908

Ponente: TRACEY, J.

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TRACEY, J.:

On the 17th of May, 1907, in consequence of a complaint of a public disturbance lodged by Januario Duran with the police authorities of Polangui, in the Province of Albay, the officer in charge at the city hall sent two municipal policemen, named Tranquilino Saravillo and Dalmacio Sabio to the place of the disturbance, which was the house of Salvador Vallejo, and the narrative of the policeman Sabio as to what occurred there is as follows:

"The guard said to us, 'Go to San Diego and get the people who are making a scandal there.' I immediately went, following Tranquilino, to the house of Salvador Vallejo. While we were still on the ground we heard the shouts of Vallejo. He was running from one side to the other of his house. When I approached the house of Vallejo I heard the words, in a loud voice, Matza, turco, tesorero municipal secretario de * * * (using obscenity which it is unnecessary to quote). We were about 5 rods distant. When he spoke those words he was upstairs in his house at the window, Tranquilino and I and a great many other people were near the house. We were in front of the house, looking and listening. There are other houses there, but none immediately opposite. We immediately went up the steps to arrest the accused Vallejo. On arriving at the top of the stairs I knocked on the door. We heard Vallejo ask, 'Who is it?,' and I said, 'Municipal police.' Thereupon Vallejo immediately came to the door to meet us, and as he approached us he said '* * *' (another obscene expression), policias municipales.' He stopped inside the doorway, and asked us, 'Have you any warrant to come in?' I replied that we had none, and then he immediately struck Tranquilino Saravillo with his list, and immediately afterwards he struck me also. When I felt him strike me here in the cheek, I dodged and struck him with my club. When he attempted to strike me again with his fist, I caught his right hand. I said to Salvador Vallejo, 'You are arrested.' We arrested him because he did not come with us but resisted. Then Bias Ausina came out and threw his arms around Vallejo's body and dragged him away from us, and immediately drew him inside and closed the door,"

Tranquilino Saravillo gives substantially the same account. Both policemen were at the time in uniform.

These facts are not seriously contested, and upon them the judge of First Instance found both defendants guilty of an attempt against an agent of authority, and giving Vallejo the benefit of drunkenness as an extenuating circumstance, sentenced him to Bilibid for three years and six months, with P100 fine, and sentenced Bias Ausina to four years two months and one day, together with a like fine. The prosecution was under the Penal Code.

The defense rests upon points of law: First. That within his own house a man's person is sacred and he may conduct himself as he pleases. The inviolability of a dwelling has been well explained in *United States vs. Arceo* (3 Phil. Rep., 381), but while it may be true in general that "a man's house is his castle," it is equally true that he may not use that castle as a citadel for aggression against his neighbors, nor can he within its walls create such disorder as to affect their peace. It is clear from the testimony that in this case the behavior of the defendant amounted to more than private misconduct and constituted a public annoyance and a breach of the peace of the

neighborhood.

Second. It is further urged that even for a breach of the peace the policemen had no right to arrest without a warrant and that in doing so they acted without authority, so that resistance to them was lawful. Municipal police in the Philippines hold office under the statutes of the Commission, by which their powers are supposed to be defined, and which may be construed in the light of American law. It is axiomatic in the law of England and America that a peace officer may arrest without warrant for a breach of the peace committed in his presence, but it is contended that municipal policemen outside of Manila have not conferred upon them by statute any such powers. The extent to which police officers may go in the city of Manila is considered in the case of the United States vs Alexander (8 Phil. Rep., 29), in which the policeman was held empowered to arrest without warrant for breach of municipal ordinances committed in his presence. And their powers in other municipalities may be implied from our decision in United States vs. Burgueta (10 Phil. Rep., 188).

The law for municipalities in general gives the municipal council power to establish, regulate, and maintain a police department to promote the prosperity, improve the morals, peace, good order, comfort, and convenience of the township and inhabitants thereof, and to enforce obedience thereto with such lawful fines and penalties as the council may prescribe. (Act No. 82, sec. 39, subdivision t, dd, and jj.)

There is nowhere any express definition of the word "policeman," nor any specification of his powers, which therefore, are left to be inferred from the common law or to be taken from the express provisions of local ordinances. In the municipality of Polangui, ordinances had been passed prohibiting disturbances of public order, drunkenness, and indecent behavior "in a public place or in a place which is in view of the public," but the papers before us disclose no ordinance or regulation directing the police when to act, or empowering a policeman in any instance to arrest without a warrant. Thus, in the absence of any legislation by the Commission or by the municipal council, we are thrown back on the common law powers of the officer.

Among the public officers who may arrest for a felony or a breach of the peace in their presence are the sheriff, the coroner and the constable (2 Blackstone's Com. 292), who are included in the technical term "peace officers," and the general trend of American decisions appears to be that local officers such as policemen who are neither sheriffs, coroners, nor constables shall not be presumed to have such power without a statutory grant of it. There are, on the other hand, decisions indicating that what the law looks to is the character of the duty to be discharged by the officer, rather than the name under which he acts, and that all officers having the general attributes of constables may be inferred to be clothed with their ordinary powers of arrest. Whatever may be the historically correct theory in any one of the several States of the Union, we think that, under the circumstances existing in these Islands, in the absence of an express legislative definition of the faculties of police officers, they must be assumed to possess those powers necessary to the convenient exercise of the duties for which their offices were created. The creation of the office of policeman implies the ability of the incumbent to perform the functions usually inherent in it, and wherever in any American jurisdiction we find such powers in terms conferred by a legislative grant, they appear uniformly to include those proper to peace officers, and among these none is more important than the power to make arrests. See for example the Constabulary Act, No. 175. We therefore hold that, in the absence of any other disposition in the statutes or in the local ordinances, a duly appointed police officer in these Islands has those powers which, under the common law of England and America, belong to a peace officer, and among them the power to arrest without warrant for offenses of this nature committed in his presence.

Third. The accused, Vallejo, set up as a further defense double jeopardy, alleging a former conviction under the municipal ordinance as a bar to his prosecution under the Penal Code. The merits of that contention are covered by our discussion in the case of the United States vs. Gavieres (10 Phil. Rep., 694), in which the majority of the court held that the double prosecution under a municipal ordinance and a general law would lie, and although that

decision is now on appeal to the Supreme Court of the United States, we regard it as binding upon us in the present case, so that the defense must be overruled.

It has been suggested that it is unnecessary to rely upon the Gavieres case, inasmuch as it will bear a distinction from the one before us, on the ground that, while the conviction of Gavieres was for one act viewed in two different aspects, in the present case the act of resistance to the policemen, which characterizes the offense under the Penal Code, did not necessarily enter into the disorderly conduct of the defendants, which indeed preceded the appearance of the policemen, and was not therefore to be considered as part of the same act. But a reference to the complaint before the justice of the peace in the first prosecution shows that this resistance was there specified as a constituent part of the disorder, and for this reason the suggested distinction between the two cases can not be accepted as wholly satisfactory.

The offense of Vallejo falls under the second paragraph of article 249 of the Penal Code, as it amounted to a resistance to public officers while executing their duty. As he has been proved to be a public official, that is, a sanitary officer duly commissioned, he comes within subdivision second of article 250, entailing upon him an increased punishment, while on the other hand, having been intoxicated, without being an habitual drunkard, he is entitled to that as one extenuating circumstance. He is sentenced to prison mayor for two years, four months and one day, with a fine of P100. In the case of Bias Ausina, no one of the circumstances specified in the four numbered paragraphs of article 250 exists, and therefore he is sentenced to prison correccional for one year eight months and twenty-one days, and a fine of P100; each of the defendants to pay one-half of the costs. The sentence of the court below is revoked in so far as it may be in conflict with the foregoing, and in all other respects, as modified thereby, is affirmed. So ordered.

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

WILLARD, J., concurring in the result:

I agree with the result, but think that it appears from the judgment of the justice of the peace that the defendants were there tried only for the offense committed prior to the arrival of the police.

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