

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FELICIANO DIVINO, DEFENDANT AND APPELLANT.

G.R. No. 4490. December 04, 1908

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

This cause was brought against Feliciano Divino for the crime of lesiones graves, and appealed by him to this court from a judgment of the Court of First Instance of Davao, Moro Province, whereby he was sentenced to the penalty of two years eleven months and eleven days of presidio correccional, with the accessory penalty of suspension from all public office, profession, occupation, or right of suffrage, and to pay the costs of the proceedings. The appeal having been heard, it appears—

That in September, 1907, a complaint was filed and proceedings were instituted by reason of a deed which, from the findings of the court below, is said to have occurred four years ago on a certain night, "the date of which can not be determined from the evidence," consisting of lesiones of which there is no further description than that made by the court below at the trial as follows:

"The feet of the witness show several large scars which surround both feet, beginning at the instep and extending to the sole all around the feet. The appearance of the said scars indicates that they were not caused by blows inflicted by a cutting instrument, but are the result of a lesion of considerable width. In addition to the wide scar that surrounds each foot there are several small scars (folio 103).

"The court observes that both feet are deformed at the instep as if they had been tightly bound with a cord, and the resulting depression had become permanent. The left foot is also quite deformed, the toes being separated to an abnormal extent; the right foot is deformed in the same manner although not so much. The soles of both feet are deformed on account of protuberances of what seems to be callous matter." (Folio 109.)

With regard to said lesiones the complaint reads:

"That one day in the month of July, 1903, in the municipality of Davao, district of Davao, Moro Province, the accused, in his house, tied a girl named Alfonsa by the hands and legs, laid her on the floor, stuffed a piece of cloth into her mouth, and fastened her body to the boards of the said floor; he then wrapped her feet around with pieces of cloth, saturating said cloth with petroleum, and thereafter set the cloth on fire by means of a match; the cloth burned for about five minutes or more, seriously burning the girl's feet, and causing lesiones in said members from the result of which the said girl became disabled in the said principal members." (Folio 18.)

The so-called Alfonsa does not know her age, but the court below, however, estimated her to be 13. Neither does she know who are her parents; her former surname was Divino but is now Esperat, and she calls Segundo Esperat her father, because she says she lived in his house a month; when asked if Esperat was her true father, she answered no, that she was only his adopted child. She described the affair in the following manner:

"I was in the kitchen preparing food and they sent for me to go to the sala. After I was in the sala Feliciano's daughter took a rag and soaked it in petroleum. Feliciano then ordered me to lie down on the floor. Feliciano's

eldest daughter took a rag and forced it into my mouth. She then got another rag and blindfolded me with it. Feliciano's daughter then got a pestle used for hulling rice and handed it to Feliciano who placed it across my legs, tying its ends to the floor so that I was unable to stir. While I was in this position on the floor; Feliciano's daughter caught me by the head and shoulders and held me down. Feliciano then lighted a match and set fire to my feet. They left me thus for the length of time required to smoke two cigarettes and until the flames were extinguished. After half a minute Feliciano released me and took me to the storehouse; there they left me and looked the door. At noon they gave me some food; they kept me three nights in the storehouse. Afterwards they took me out and locked me up in the hog-pen; they left me there without any covering and exposed to the open air, but they afterwards fixed up a temporary cover to protect me."

And in answer to questions put to her, she continued to say that there were present in the sala while Feliciano was burning her feet, Clara, the eldest daughter of the latter, who was then 13 years old, and the younger ones Nining and Nating together with three servants, Petra, Catalina, and Pedro; that while they were burning her feet, her hands were tied alongside her body; that Clara, Feliciano's daughter, held her by the head and shoulders; that a stick was placed over her legs and tied to the floor, and another was put over her chest and also tied to the floor; that thereafter she was taken to a storeroom beneath the house wherein she remained three days and nights, and from thence she was taken to a hog-pen in the rear of the kitchen, which she now says had a roof, remaining there one month, and that when she left it she continued to live in the house for three months, until one day, at midnight, without the knowledge of Feliciano, she left in company of a girl named Irinea for the purpose of making a complaint; that they then went to the office of Mr. Wood, which gentleman was present in the court-room (pointing him out). And when asked where Mr. Wood's office was she pointed out the government building of the district of Davao.

On cross-examination she said that a Bagobo named Andalan had taken her over to Feliciano's house to live; that she did not know whether her parents were Bagobos, nor who they were, and that, when she reached the age of reason, she found herself in the house of Feliciano, so that her first recollections are of the time when she was in Feliciano's house; that she had reported the matter to the American military governor, but to the questions of the counsel for the defense as to whether any action was taken, the fiscal objected and the court sustained the objection; that, when she went to Feliciano's house, she already had a scar on the left cheek and another near the mouth; that they tied her body with a rope, bound her hands, placed over her legs a pestle such as is used for hulling¹ rice, and the three daughters sat on her head and shoulders (it is no longer one daughter who held her down by the head and shoulders). Subsequently these question were put:

"Q. How many times was the rope passed around your body?—A. Three times.

"Q. Before the pestle was placed over you?—A. Yes, sir.

"Q. What was the rope tied to, the floor?—A. Yes, sir.

"Q. Tell me for the last time, is it actually true that, when the said stick was placed over you, you were already tied down with the rope?—A. Yes, sir.

"Q. When you were tied down, do you mean that the rope passed through the crevices of the floor?—A. Yes, sir.

"Q. You say that this rope passed through one crevice in the floor and came out by another, fastening you to the floor; do you not?—A. Yes, sir.

"Q. Was no one beneath the house when this occurred?—A. No, sir.

"Q. Before placing the rag over your feet, is it true that they first soaked it with petroleum and then placed it on your feet?—A. Yes, sir.

"Q. How long did the rag burn?—A. Nearly an hour and a half."

By the court:

"Q. Do you mean to say that the rag was burning on your feet for an hour and a half?—A. Yes, sir.

"Q. How many cigarettes could you have smoked while the rags were burning?—A. About two cigarettes.

"Q. How long have you been testifying this afternoon?— A. I don't know.

"How many cigarettes could you have smoked since you arrived up to the present time?—A. Four cigarettes.

"Note by the court.—The witness has been testifying two hours."

Another witness called Petra, who has no surname and does not know the race to which she belongs nor what age she is, although the court below reckons her to be between 17 and 21, and who lives in Davao, with Maria (the accused's third wife who, according to other data contained in the proceedings, was at the time separated from him), declares that Alfonsa's injuries were the result of the burns caused by the accused one night; that the latter called her, laid her on the floor of the sala of the house, tied her down, placing sticks over her chest and feet, put some rags on the latter and set fire to them, the flames lasting the time required to smoke one cigarette and a half (Alfonsa said two cigarettes and afterwards one hour and a half); she further testified in relation to the incidents of the storeroom and the hog-pen, and said that, while she was still in the sala, she saw the feet, that the skin was swollen, and that Alfonsa was kept for one year in the hog-pen. But upon being afterwards asked by the court how many months there were in a year she said: "One crop of rice," and that she did not know how many months there were in a year, nor days in the week nor hours in a day, and that, when saying one year, she meant a long time; that when she left the house Alfonsa was still in the hogpen. Regarding the rope with which she says Alfonsa was bound, there are the following questions:

"Q. In order to tie this rope to the floor is it not true that four nails were driven in the floor?—A. No, sir; the rope was simply tied to the floor, to the listones (strips used in filling crevices between the boards).

"Q. Did this rope with which She was tied pass entirely around her body?—A. No, it was the stick that was tied down to the floor.

"Q. Then you mean to say that the rope did not go around Alfonsa's body but that it was only tied to the stick?—A. Yes, and the stick was tied to the boards of the floor [entirely the reverse of what Alfonsa testified].

"Q. Was anybody beneath the house?—No, sir.

"Q. Were the strips of palma brava wide or narrow?— A. They were narrow.

"Q. What distance was there between the strips?—A. There were cracks between them.

"Q. Is it riot true that this was the distance between the strips [showing half an inch]?—A. No, sir; it was so [showing a quarter of an inch].

"Q. When Feliciano tied the rope to the floor he did it from above; did lie not?—A. I don't know, I did not see it done.

"Q. But you were in the sala at the time; were you not?—A. Yes.

"Q. Were the other servants there also?—A. Yes, sir."

She states that the rags burned during the time that is required to smoke a cigarette, and then come the following questions:

"Q. Where do you live now?—A. I am living with Maria.

"Q. Have you had any conversations with her in connection with these matters?—A. No, sir.

"Q. Is it not true that you told several people that you have had a talk with Maria Verano, the wife of the accused?—A. No, sir.

"Q. Did you go to live with Maria Verano after she separated from her husband?—A. Yes, sir."

The third witness for the prosecution is Mr. Orville Wood, 30 years of age, agriculturist, residing in the municipality of Davao; he was formerly an assistant superintendent of schools, and later served as secretary of the district of Davao from January, 1904, until the time when he testified; he states that he had been in the old house of Feliciano, where the affair is said to have occurred, for about three hours some time in 1905; that he knows Maria Verano who is married to Feliciano Divino, and believes that he saw her the day before that on which he testified; that he has also known Feliciano Divino since the year 1904, and that he knows Alfonsa, the girl who testified in court in his presence on that same day; and he described a conversation that he had with Feliciano Divino on the balcony of the government building in the following terms :

"When Feliciano first came to the balcony we spoke of another matter; what he afterwards stated in connection with this matter was in answer to a question finally addressed to him by Governor Bolton; Governor Bolton said to Feliciano that he, Feliciano, had informed him previously that it was Maria who had burnt Alfonsa's feet, but Governor Bolton knew at the time that this was not true, and asked him who had burnt her feet; Feliciano replied that it was he who burnt Alfonsa's feet, but that his wife, Maria, had ordered him to do it; the governor asked him who was the head of his house; he or his wife."

The witness goes on to say that he subsequently spoke with Petra, Catalina, and Pedro in regard to the affair in 1904, and also spoke with Petra, Alfonsa, and another whose name he does not recollect, and that, when he asked Alfonsa who had burnt her feet, she at first said that she did not know, but when he insisted on her telling him she replied that Feliciano's children had done it. On being asked if he knew of the crime in June, 1903, he said no, that it had come to his knowledge in the month of September, 1904; when asked whether, prior to the time that Feliciano told Governor Bolton in the presence of the witness that he, Feliciano, had burnt Alfonsa's feet, Feliciano had told him that another person had done it, he answered yes, that his wife, Maria, had burnt Alfonsa's feet; this statement was made to him at his office in the month of December, 1904, the other one having been made to the governor in October, 1905; and to the question "Why did he tell you this?" he replied:

"When Alfonsa came to the office for the first time, she was very frightened, and we could hardly get anything from her; we relied upon Feliciano's word as to who was the guilty party; the girl was small and sickly and we could not obtain any information from her. When she was removed from the hands of Feliciano and turned over to another family that was not related to him, and when she found out that she would not have to return to him, it happened one day that I was at the balcony of the office and saw her coming up the street; when she had nearly reached the road, Feliciano Divino was coming out of Auat's store, directly in her road; she turned round at once and ran to the stairs of the office, and hid herself behind Segundo Esperat; as the result of a conversation that I had with her, on said occasion I spoke to Feliciano and he then confessed his guilt; Feliciano told me that Maria had burnt Alfonsa's feet at a time when he was absent from his house; he did not say when, and said nothing more."

The cross-examination was of the following tenor:

"Q. After Alfonsa reported the matter to the government, did she return to Feliciano's house?—A. So far as I know, she did not; the Government placed the girl in charge of Esperat.

"Q. Do you remember the date on which the girl came to the government building?—A. I can not name the day,

but only the month.

"Q. What month was it?—A. December, 1904, toward the end of the month,"

By the court :

"Q. When Alfonsa came to report the matter, to whom did she report?—A. To the governor.

"Q. Were you present when she reported it to the governor?—A, I acted as interpreter.

"Q. What was Alfonsa's reason for reporting it ?—A. She wanted to leave Feliciano's house.

"Q. Who were present when she reported the matter?— A. Governor Bolton and myself.

"Q. Was anybody with her?—A. A boy and a girl; this was the occasion on which she stated that Feliciano's daughters had burnt her.

"Q. Was Feliciano present?—A. No, sir.

"Q. Tell the court as fully as you can remember everything that Alfonsa stated on said occasion.-A. She said hardly anything; it was her friend Quirina who said the most.

"Q. What did Quirina say?—A. Quirina complained of the treatment that she had received in Feliciano's house, and asked that she be sent to some other.

"Q. What did she say with regard to the burns on Alfonsa's feet?—A. She said that she did not witness the burning and that she did not know who did it.

"Q. Was Alfonsa questioned on the matter?—A. Yes.

"Q. Can you state more fully what she said?—A. I think not."

Clara Divino, 16 years of age, a witness for the defense, testified: that when Alfonsa went to their house she had several sores on her face and feet, and a bruise on her ankle; her father wanted to apply some medicines to them but she took no heed; that one day her father said: "Let us cure her with herbs;" the treatment took a long time, and as she would not remain quiet, her father ordered her to stay in the house in order to cure her the better, but she always went out, and her father then called her and put petroleum on her feet; this proved very effective and cured her to some extent; her father, in order to prevent her going out of the house locked her in the storeroom for several days, and afterwards in the pantry upstairs, a room on one side of the kitchen used by the servants; and that after Alfonsa ran away from the house, she saw her in the streets; that no force was used in treating her; that her father held her while they applied petroleum to her feet; she denied that she was ever bound or secured with a stick" or laid on the floor, because she held her by the shoulders; that she was sitting down 'with her feet stretched out; that her feet had been bandaged many times; that her father was not angry on the occasion that petroleum was applied to Alfonsa's feet; that a physician called at their house to attend to Alfonsa; that when Alfonsa came to their house, her feet were sore and ulcerated.

And it was the fiscal who put the question "Whether at the time she had only a small ulcer on her feet," to which she replied yes; that at that time they had previously washed Alfonsa's feet with hot water, and that thereafter the petroleum was applied and the feet bandaged.

Finally, Feliciano Divino, the accused, testified as follows:

"Captain Tomas sent the girl to me for treatment because she was suffering from ulcers. As Captain Tomas insisted, I admitted her to my house. When we got to my house I found out that she had a great many sores and I kept her there in order to cure her. I took care of her and gave her food and clothing. Her malady improved at

times, but after two or three months reappeared. She had ulcers on both feet and on the face. The sores on her face healed, but the ulcers on her feet became worse until they finally extended to the sole of the foot. I ordered her to treat the sore with petroleum, but she would not do it. After some time I had to look after the ulcers personally. At times they improved, and at others became worse. The nicer on the sole of her foot became larger. The other ulcers did not entirely heal, the infection remained inside. The wounds on the instep and upper part of the feet progressed fairly well, but those that she had on her soles did not, because she always went out of the house and walked about. I continued to look after and treat all the ulcers that appeared. As several years elapsed without the ulcers becoming entirely cured, I decided to cure them with petroleum, but she objected because she said it hurt her. As the ulcer had grown big and smelled badly, I called her one evening to the, sola and examined it. When I found that it had grown too large on both feet, I ordered some hot water and told my daughters to hold the girl because she objected to having petroleum applied to her feet. I ordered them to hold her while I washed the ulcers with hot water. I then poured petroleum over her feet and bandaged them. Fearing that she would go out of the house and again walk in the dirt, I put her in the storeroom. After a few days I ordered her upstairs and locked her in the pantry where the servants slept."

When questioned as to where the servants went with Alfonsa, he said that he came to know of it because the governor had sent him word and told him that his servant girl accused him of burning her feet, but he denied it and explained the truth of the matter, of how he had tried to cure her feet; the governor told him to go back to his house, and that he would investigate the affair; he afterwards ordered him to the town, and when he reached it, Mr. Wood alone was there; Mr. Wood told him that the best thing that he could do was to settle the matter as soon as possible. The court then asked:

"Was this the same conversation as to which Mr. Wood testified?—A. I did not understand what Mr. Wood said last night, but I will only say what took place. When I asked him what kind of a settlement he wished, he suggests to me that I support Alfonsa for four years at the rate of 5 pesos a month. He made a written agreement with me, Inasmuch as this girl had rendered me good service, I had no objection to allowing "her 5 pesos a month. He asked me to sign the paper, telling me that the agreement was that I was to pay Alfonsa 5 pesos a month for a period of four years. I did not read the paper because I had great confidence in Mr. Wood. Under said agreement I have been paying for two years and three months.

"Q. In what condition were the feet of the girl when she first entered your house?—A. When she came to my house her feet were somewhat deformed, the toes were twisted, and there was an ulcer on her ankle."

Tomas Monteverde, the Captain Tomas to whom the accused refers, testified that he had twice been gobernadorcillo, and twice justice of the peace; that one day as he was going beyond Talomo, where the accused lived, in order to examine a corpse, he saw Alfonsa on the road in very bad condition; she was covered from the face to her feet with ulcers called ibung, and which smelled offensively; he gave her to Feliciano to be cured; this was in 1898, when he still was justice of the peace in the time of the Spanish Government; subsequently, in answer to questions put by the-court, he said that, after the girl was delivered to Feliciano, he saw her almost every month because when going to the pueblo they called at his house; on making him describe the ulcers and scars that he had seen, he said that the whole of the instep was red in color and denuded of skin, and that she had ulcers in the sole of her foot, a scar above the left ankle, and several scars on her face.

"In view of the admissions of the accused"—says the trial judge—"in view of the present condition of the feet of the injured party, which positively proves that the scars which appear on them are the result of burns, and in view of the lack of any explanation on the part of the defense as to the manner in which said burns were produced, it limiting itself to showing that they are the result of ulcers, the court has no doubt that Alfonsa and Petra told the truth in everything of importance."

And considering that the accused was guilty of the crime of lesiones graves, defined and punished by article 416, paragraph 3, of the Penal Code, with the aggravating circumstances 1 and 2 of article 10 of the said code, without

any mitigating circumstance, the court sentenced him to the penalties stated in the beginning.

The testimony of Orville Wood, who at that time was secretary to the military governor of said district, was not impugned or discredited in any way and far from being ignored in the examination of these proceedings, should command due attention as being the testimony that furnished the data for the proper judgment of facts that four years later were put forward as constituting a crime, without there appearing in the proceedings any reason or cause whereby a poor helpless girl, after living five or six years in the house of the accused, should have been injured by the latter in so cruel a manner as described. If Alfonsa spoke the truth, one month and three weeks after she was tortured she was on her way to the government building, and on seeing the accused in the road she "ran to the stairs of the office and hid herself behind Segundo Esperat." She was accompanied by one Quirina, and Alfonsa "said hardly anything, it was her friend Quirina who said the most," and Quirina only complained of the treatment that she had received in Feliciano's house, and requested that she be sent elsewhere. And as Governor Bolton was aware of the circumstance, had it partaken of the character of a crime, it can not be assumed, because nothing induces such a presumption, that he would have let it pass without causing it to be prosecuted and punished.

That petroleum was forcibly applied to the feet of Alfonsa, there can be no doubt; but that besides the action of the oil, fire was applied, and above all, that said application of lire was a mere stroke of cruelty, and that the torture was kept up for an hour and a half, or the time required to smoke two cigarettes, or one cigarette, when the testimony even regarding the manner in which said coercion was effected was so contradictory, a point which was m important, for the subjection of the tortured girl or the patient to whom the cure was applied, is a thing that can not be conclusively established; and even if, by means of circumstantial evidence, the burns were actually proven, it can not be established in a conclusive manner that the injury was caused maliciously.

This must have been the consideration which induced the secretary, who, as an honorable man, must have been indignant at the cruel injuries which the prosecution has attempted to exaggerate at the trial, to limit his action to obtaining from the accused a written obligation allowing Alfonsa a monthly pension of five pesos for her subsistence. This was confirmed by the accused, and has in no manner been contradicted in the proceedings, although the investigations to establish the criminality of the deed were most searching;

The expert testimony offered by the prosecution should be carefully noted, as should also the opinion of the lower court in connection therewith contained in its judgment. The said witness states that he rendered assistance to Alfonsa from the 29th of December, 1905, to the 16th of December, 1906—the burns are supposed to have been caused two years previously—on account of a large ulcer that she had on the left foot, in a place that showed an old scar; according to the court's remark on folio 109, said left foot was the most deformed:

"It was a bad ulcer"—says the expert—"that extended over the instep under the ankle, passing to the middle of the sole; it was. two and a half inches wide, and it lacked two inches of surrounding the foot.

"The soles of both feet are deformed by reason of protuberances of what appears to be callous matter."

The witness continues his explanation of the prolonged treatment of the said ulcer, and ends thus :

"After the new soft tissue was formed level with the skin, in order to avoid an excessive contraction, I cut some pieces of the girls' skin and placed them over the wound. I did this several times before effecting a complete cure. I presented my bill for seven hundred and sixty-six pesos (766)." (Folios 145 and 148.)

The following rulings are contained in the latter part of the judgment:

"No damages are allowed as no proof has been offered whereon the court may base the amount thereof. The court considers that the prejudice caused to the injured party by an ulcer on one of the feet that was cured by

Dr. Ames was not directly occasioned by the accused." (Folio 186.)

On cross-examination:

"Q. Did you notice that Alfonsa had scars all over her body?—A. She has numerous scars.

"Q. If a person placed his hand in the middle of a flame, would his hand become charred?—A. Certainly, all the soft parts would be charred.

"Q. By looking at a scar, how can you determine that it is due to a burn and not to impurities of the blood?— A. The scar of a burn is not always characteristic. It may resemble other scars, but in general, scars resulting from burns are superficial, and sometimes cover a large space. Other causes which destroy the skin to a large extent may produce the same kind of scar.

"Q. Have you noticed that non-Christian Bagobos have weak constitutions, and that, as a rule, their skin is covered with eruptions?—A. They show many scars and many eruptions, and their constitutions are weak when they are not well fed.

"Q. Have you noticed that these wounds have become worse by reason of the herbs they apply to cure them?—A. Undoubtedly, the wounds became worse on account of their efforts to cure them.

"Q. With reference to Alfonsa's wounds, is it not possible that the contraction observed in the scars was caused by the lack of proper treatment?—A. The contraction in a wound depends upon the extent of the tissue embraced by the scar, and this depends on the size of the original wound which may become larger owing to lack of proper treatment." (Folios 152 and 153.)

Granting among the admissions made by the accused, that he continued the treatment of the ulcers of the girl until he or his daughters burned her, or that the action of the petroleum irritated the said ulcers and caused, them to spread, as may be judged from the extent of the scars, it is certain that the acts of the guilty person do not seem to have been intended to cause an evil, but rather as a remedy; however, taking into account the imprudence defined in paragraph 2 of article 568 of the Penal Code, as having been committed by an ignorant person who was prohibited from exercising the art of healing not only by the regulations governing it but also by the Penal Code, the penalty prescribed by the paragraph above referred to, that is, arresto, must therefore be applied in its medium and maximum degrees.

In view of the foregoing, the judgment appealed from is hereby reversed, and it is our opinion that, in accordance with the provisions of paragraph 3 of article 568, of the Penal Code, Feliciano Divino should be, and he is hereby, sentenced for simple imprudence to the penalty of four months of arresto mayor, to suspension from office and right of suffrage during the period of his sentence, and to pay the costs of both instances. So ordered.

Torres, Mapa, Carson, Willard, and Tracey, JJ. concur.

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