

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. SANTIAGO FONTANILLA, DEFENDANT AND APPELLANT.***G.R. No. 4580. September 07, 1908*

Ponente: CARSON, J.

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The accused is charged with illegally detaining Apolonio de Peralta and Emeterio Navalta on the 18th day of July, 1907, in the hamlet of Magatel, municipality of Luna, Province of La Union. The evidence for the prosecution and the defense is conflicting to a degree, but we think that the following facts are established beyond a reasonable doubt:

The defendant, Santiago Fontanilla, went to the hamlet of Magatel, where five men were engaged in tilling a tract of land under the directions of Apolonio de Peralta. A dispute there arose as to the right of Peralta to cultivate the land, which Peralta claimed to be the property of his brother, but which the accused insisted belonged to him. A fight ensued as a result of which the accused captured and tied with a rope Peralta and one Emeterio Navalta, after having driven the rest of the laborers away. He then took his two prisoners to the municipal jail, where he turned them over to the jailer in charge. The prisoners were held in detention a couple of hours at the jail, after which they were turned loose by the orders of the municipal president or the justice of the peace.

There is irreconcilable conflict in the testimony as to the details of the fight, but we do not deem it important for the purpose of this case definitely to determine what occurred on that occasion. The accused claims that Peralta and his men assaulted him without provocation, and that, all he did was to defend himself and afterwards to arrest two of the party who attacked him. We agree with the trial judge that this story is incredible, and we are convinced from a review of all the evidence that the fact is that the accused, finding Peralta and his laborers tilling a piece of land in which he claimed a right of possession, ordered them off the land, and undertook to drive them away by force, thus precipitating the dispute in which he was clearly the aggressor. It does not appear that the persons whom the accused arrested committed any crime which would justify their arrest without warrant by a peace officer, and the evidence of record leaves no room for doubt that there was no justification whatever for their arrest by a private person. The accused was not a peace officer, and was not exercising any public function when he made the arrest, nor did he have any authority to seize trespassers upon his land and commit them to the public jail, yet the fact remains that he did apprehend and detain these parties, and turn them over to the authorities.

Article 483 of the Penal Code provides that any person who, cases permitted by law being excepted, shall without sufficient reason, apprehend or detain another, in order to turn him over to the authorities, shall be punished with the penalties of arresto menor and the fine of 325 to 3,250 pesetas, and the offense committed by the accused clearly falls under the provisions of this article. The trial court was of opinion that the offense committed is that prescribed by article 481, which provides that any private person who shall lock up or detain another, or in any way deprive him of his liberty shall be punished with the penalty of prision mayor. We think, however, that the fact that the accused, after he had apprehended the complaining witnesses, immediately conducted them to the

municipal jail, and thus turned them over to the authorities, takes the offense out of that article and brings it within the purview of article 483.

The penalty prescribed under this article is that of *arresto menor*, which seems hardly adequate in view of all the circumstances of this case, but it is the penalty prescribed by law and the only one which can lawfully be imposed. Viada in his third volume of Commentaries on the Penal Code of Spain (p. 288), commenting on article 497 in that code which corresponds to article 483 in the Penal Code in force in the Philippine Islands, makes the following observation:

"*Arresto menor*, a light penalty under the general scale of penalties set out in article 26, is here applied for the first and only time in this code to a 'delito correctional' (offense greater than misdemeanor). It would appear that in place of this offense it was intended to prescribe *arresto mayor*; but the error which had already been committed in the Code of 1848 was repeated in the Code of 1850, and has not been amended in the Code of 1870, thus gravely marring the classification of crimes and misdemeanors set out in article 6 of this code, and of those which preceded it."

However this may be, it is our duty to impose the penalty prescribed by law and no other, but in view of all the circumstances, and the court having authority to exercise its discretion within the limits of the penalty prescribed, without dividing that penalty into maximum, medium, and minimum degrees, we think the light penalty prescribed by law should be imposed in its utmost severity.

The judgment and sentence of the trial court should be and are hereby reversed, and in place thereof, this court finds the accused guilty of the offense of unlawful detention defined and penalized in article 483, and sentences him to thirty days of *arresto menor*, to the payment of a fine of 3,250 pesetas, and in case of insolvency, to suffer subsidiary imprisonment, as prescribed by law, not to exceed one-third the term of the principal penalty, and to pay the costs in both instances. So ordered.

Arellano, C. J., Torres, Mapa, Willard, and Tracey, JJ., concur.

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