

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
FELIX BENITEZ, ACCUSED AND APPELLANT.***G.R. No. 48396. September 11, 1942*

Ponente: MORAN, J.

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In the morning of October 28, 1939, while D'Artagnan Williams, Division Superintendent of Schools for Negros Occidental, was working in his office, defendant Felix Benitez, special agent in the office of the Provincial Governor, gave the former a fist blow causing him a contusion over the mastoid bone on the left ear. The assault appeared to have been prompted by the defendant's desire to avenge a supposed affront to the Provincial Governor by the Division Superintendent in connection with the appointment of teachers. On an indictment for assault upon a person in authority, defendant was found guilty and sentenced to from 6 months and 1 day to 4 years, 2 months and 1 day of prison correccional and to pay a fine of P500 with subsidiary imprisonment in case of insolvency. This judgment is the subject of review in this appeal.

The sole question here presented is whether or not a division superintendent of schools is a person in authority within the meaning of article 148, in connection with article 152, of the Revised Penal Code. Since, under the law (section 917 of the Revised Administrative Code), a division superintendent of schools is given the power of general superintendence over schools and school interests in his division, with the right to appoint municipal school teachers and to fix their salaries, and further, since education is a state function and public policy demands an adequate protection of those engaged in the performance of this commission, we believe and so hold that a division superintendent of schools should be regarded as a person in authority.

The Solicitor-General maintains that the defendant is guilty of the complex crime of assault upon a person in authority with physical injury it appearing from the evidence that, due to the blow inflicted upon the offended party, he sustained in the left ear an injury which required more than 30 days of medical treatment. This case has been removed to this Court only upon a question of law and we are not at liberty to review the evidence presented by the parties. Accordingly, the finding of the trial court that "no injury of serious nature was caused upon the offended party by the blow of record," cannot now be disturbed. Under article 48 of the Revised Penal Code, as amended by Act No. 4000, a complex crime is committed when a single act constitutes two or more grave or less grave felonies. In the instant case, the physical injury inflicted upon the offended party does not appear to be a grave or less grave felony and, therefore, there is no complex crime. (*People vs. Refre*, G. R. No. 39937 [unpublished], February 2, 1934; *People vs. Acierto*, 57 Phil., 614.)

The crime committed by the defendant is assault upon a person in authority, with the aggravating circumstance that the crime was committed in the place where the person in authority was engaged in the discharge of his duties (article 14, No. 5, Revised Penal Code). The penalty provided by law is prison correccional in its medium and maximum periods and a fine not exceeding P1,000 to be imposed in its maximum degree. Pursuant to the Indeterminate Sentence Law, the maximum of the indeterminate penalty to be imposed shall be within the maximum period of prison correccional in its medium and maximum periods, and the minimum shall be within

the range of the penalty next lower, that is, arresto mayor in its maximum period to prision correccional in its minimum period which may be applied in any of its periods in the discretion of the court according to the circumstances of the case. (See *People vs. Gonzalez*, G. R. No. 48293, April 21, 1942.) The minimum penalty imposed by the trial court is 6 months and 1 day of prision correccional and is within the range of the penalty provided by law. But the maximum imposed is 4 years, 2 months and 1 day of prision correccional, below the range provided by law which is from 4 years, 9 months and 11 days to 6 years.

Judgment is accordingly modified and the accused is hereby sentenced to suffer the indeterminate penalty of from 6 months and 1 day to 4 years, 9 months and 11 days of prision correccional, to pay a fine of P500 with subsidiary imprisonment in case of insolvency not exceeding one-third of the principal penalty, with costs.

Yulo, C. J., Paras, Bocobo, and Generoso, JJ., concur.

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