

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ANTONIO BUGARIN, DEFENDANT AND APPELLANT.

G.R. No. 5588. February 10, 1910

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

According to the complaint the crime herein prosecuted consists in that the accused, Antonio Bugarin, upon being caught by Miguel Guillermo one morning in the act of stealing a carabao, struck Guillermo with his bolo, severing the index and middle fingers of his right hand. As a result the injured man's right hand was rendered useless for work in the fields, his usual occupation.

The accused was very properly convicted on the evidence in the case, and, taking into account the aggravating circumstance that the crime was committed at nighttime, the Court of First Instance of Tarlac sentenced him under the provisions of paragraphs of article 416 of the Penal Code to imprisonment for five years, with the accessory penalties of article 61, to indemnify the injured party in the sum of P20 expended by him in medical treatment, or to suffer subsidiary imprisonment in case of insolvency at the rate of one day for every twelve and a half pesetas that he failed to pay. The court credited him with one-half of the time he had been held in detention, and sentenced him to pay the costs.

This judgment was appealed from, and the defense only discusses here the weight accorded by the trial court to the evidence in the case; we consider, however, that his finding accords with the merits of the case, and that no error of fact or of law has been committed.

In this instance the Attorney-General moves that the judgment be affirmed, and dwells on the adequate definition given by the learned trial judge of the crime of lesiones graves when applying paragraph 2 of article 416 of the Penal Code, and in corroboration cites the decision of this court in the case of U. S. vs. Malig[1] (No. 4869).

Under paragraph 2 of said article 416 a person convicted of lesiones graves is punished with prision correccional in its medium and maximum degrees if, as a result of such injuries, the person assaulted should have lost an eye or any principal member, or should have been hindered in the use thereof, or rendered unable to pursue the occupation in which, up to that time, he had been habitually engaged.

The matter now at issue is not that the assaulted man lost his right hand, or that he has been prevented from using it. The question is whether by having lost a portion of the index and middle fingers of his right hand he has been rendered incapable of working in the fields, which was the occupation in which, up to that time, he had been habitually engaged. We find in the testimony given by the assaulted man :

"Q. Is it not true that you, as a laborer, notwithstanding the fact that your fingers have been cut off, can easily do your work? - A. Yes, sir; but less than formerly.

"Q. But nevertheless you are still engaged in such work? - A. I can assist in field work, but I can not do it myself; I am unable to guide a plow or use a bolo as before."

The trial judge asked the president of the board of health who examined the wounded man and certified and testified as to the result of the injuries: "Q. Can he move his two fingers?" The latter answered: "Yes, sir." "Q. Are they flexible?" "A. Yes, sir."

In our opinion this case can not be compared with that against Malig, in which when the injured person was asked if he could follow his trade as a blacksmith he answered that he could not, "I can no longer use this hand," meaning that he was prevented from using this principal member, "Lupo Malig wounded Macario Valdes in the right hand, almost severing the ring finger, which remained hanging by a strip of the skin and which finally had to be amputated by the surgeon who attended him; the metacarpal bone of the third finger was fractured, and, as certified to by the surgeon at the trial, the said finger had become entirely useless, and could not be bent, and there was no possibility of it setting; the wound extended almost to the wrist, and nearly divided the palm of the hand. Valdes received the wound in stopping the blow that Malig aimed at his head with the bolo, and it took more than sixty days to heal." (Extract from information.)

By paragraph 3 of article 416, above cited, a person convicted of the crime of lesiones graves should be punished with prision correccional in its minimum and medium degrees if, as a result of such injuries, the person assaulted should have been deformed or had lost a member not a principal one, or should have had it rendered useless * * *'. In our opinion the crime herein prosecuted falls within this penalty and should be punished with two years of prision correccional.

The judgment appealed from is hereby fully affirmed; provided, however, that the penalty therein imposed shall be two years of prision correccional, with the costs of this instance against the appellant. So ordered.

Torres, Mapa, Johnson, Carson, Moreland, and Elliott, JJ., concur.

[1] 13 Phil. Rep., 736.

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