

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ANSELMO EMPINADO, DEFENDANT AND APPELLANT.

G.R. No. 5692. October 17, 1910

Ponente: TRENT, J.

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TRENT, J.:

In May, 1909, there were two cockpits owned and operated within sight of each other, one by Antonio Gavato, near the border line in the barrio of Malolos, in the municipality of Barili, and the other by the defendant, Anselmo Emplinado, in the barrio of Patria, municipality of Aloguinsan, Province of Cebu. These two cockpits ran in competition with each other. About 2 o'clock in the afternoon on the 30th. of May, 1909, one Serapio Tapic, being under the influence of tuba, an alcoholic beverage, and armed with a sharp bolo or knife, unexpectedly entered the cockpit of Malolos, where there were a great number of people assembled, and wounded Eugenio Laoronilla twice in the back while the said Laoronilla was in a stooping position in the act of picking up his cock. As a direct consequence of these wounds the said Laoronilla was incapacitated for the performance of his ordinary labor for the period of one and one-half months. Subsequently thereto and on the 6th of September, 1909, the fiscal filed a complaint in the Court of First Instance of the Province of Cebu against the defendant, Anselmo Empinado, charging him with the crime of lesiones graves, alleging that the said defendant maliciously, criminally, and directly forced and induced the said Serapio Tapic to commit this crime of lesiones graves. After hearing the testimony adduced and the arguments presented the defendant was found guilty as charged in the complaint and was sentenced to one year and eight months' prision correccional, with the corresponding accessory penalties, to indemnify the offended party in the sum of P22.50, and to pay the costs. From this judgment he appealed.

The prosecution presented four witnesses, the first being Serapio Tapic, 44 years of age, a laborer, and a resident of Aloguinsan. This witness testified that on the 30th of May, 1909, he had a conversation with the defendant in his, the defendant's, cockpit, in which conversation the defendant asked him if he knew Antonio Gavato and his associates, to which he replied in the negative. The defendant then said: "I wish to confer upon you a commission, which is as follows: Order must be disturbed in the cockpit of Gavato and when you arrive there wound any person." Witness further testified that at first he was reluctant to obey this order, but the defendant gave him something to eat and drink until he became intoxicated and then gave him a bolo and P10 and said: "Comply with what I have ordered, and in case you incur any responsibility I will be responsible to the courts, and as soon as you wound any person or persons return to me and I will defend you."

The second witness, Regino Canocan, testified that he was in the defendant's cockpit on that day and heard the conversation between the defendant and said Tapic; that he saw the defendant give Tapic tuba to drink and a bolo and heard him say to him: "Serapio, in this moment you have to comply with what I have ordered you to do."

Benito Sabalando, another witness for the prosecution, stated that he was in partnership with Antonio Gavato in the cockpit at Malolos and was in said cockpit on the 30th of May when Tapic entered and wounded Laoronilla; that after Tapic had wounded Laoronilla and was hurriedly returning to the cockpit of the defendant he, in

company with the wounded man, pursued the said Tapic to the defendant's cockpit; that on arriving there they were ordered to halt by the defendant and asked where they were going. They replied that they were pursuing Tapic. The defendant then said: "Do you know this?" (waving a revolver) and ordered them to lay down their arms; that they complied with this order on account of the fear of being shot.

The wounded man, Laoronilla, after relating what occurred in the cockpit of Gavato, which corroborates in every detail the testimony of Tapic, then stated what had occurred, in exactly the same manner as a former witness, when they arrived at the defendant's cockpit in pursuit of Tapic.

Notwithstanding the denial on the part of the defendant and his attempt by means of witnesses to prove that he had nothing whatever to do with Tapic's committing this crime, we think that his guilt has been established beyond peradventure of a doubt.

The defendant and Gavato were operating cockpits near each other. There was considerable competition between the owners of these two cockpits. Gavato's business was more prosperous than the defendant's. Tapic was in the defendant's cockpit on May 30, 1909, and went direct from there to and entered the cockpit of Gavato, armed with a bolo, and wounded Laoronilla. Tapic had no enmity against this wounded man, neither did he have any intention of injuring any particular person, but his object was to disturb the people assembled there and injure Gavato's business. After doing this he returned immediately to the defendant's cockpit and sought his protection, and the defendant did, in fact, protect him by means of a revolver.

Article 13 of the Penal Code provides:

"The following are considered as principals:

* * * * *

"2. Those who directly force or induce others to execute it."

Article 416 of the same code is as follows:

"He who shall wound, bruise, or maltreat another shall be' punished as guilty of causing serious physical injuries. * * *

"4. With that of arresto mayor in its maximum degree to prision correctional in its minimum degree, if such injuries should have occasioned the assaulted party an illness or disability for work lasting more than thirty days."

In the commission of this crime there were present no aggravating or extenuating circumstances.

The court below properly applied the above provisions of law. The judgment appealed from is, therefore, affirmed, with costs against the appellant.

Arellano, C. J., Torres, Johnson, and Moreland, JJ., concur.

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