

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JOSE SANTOS, DEFENDANT AND APPELLANT.*G. R. No. 5795. September 19, 1910*

Ponente: TORRES, J.

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Between 9 and 10 o'clock of the night of April 4, 1909, Mr. John W. Willey, accompanied by a friend of his, Mr. Corliss, after having been a little while in the basement of the house where they lived, in which there was a bar, started out, in order to see the people passing in the street, in the direction of the cockpit, where there was a cinematograph in operation at the time. After seeing a few motion pictures, and at the end of the performance, they left the premises and started home; but, on passing near Jose Santos, who was then standing in the street and carrying a cane and a bolo, the latter caught hold of Willey's right arm, asking him where he was going, to which Willey replied by asking Santos in turn why he wished to know. At this moment Santos took a step backward, and with his right hand seized the bolo which he had been holding in his left. Thereupon Willey asked him whether that was not a public place. Santos replied that it was not and that it belonged to him and ordered Willey to return by the same road over which he had come with his companion. In view of the threatening attitude of Jose Santos, Willey requested that the former deliver to him the bolo that he had, as a precautionary measure to prevent Santos from wounding him with it, but the latter raised his bolo and immediately gave Willey a cut, inflicting in his right cheek a wound which extended from the ear to the mouth, knocking out one of the eyeteeth and breaking one upper and two lower front teeth. Wherefore Willey and his companion started off on a run toward their house where, shortly afterwards, the wounded man was attended by Doctor Silva, who was called for the purpose, and on the following day he was removed from Calamba to the Civil Hospital of this city, where he remained for treatment of his wounds until the end of the 23d day of April. On the following day, the 24th, he returned to his house, where he continued under medical treatment without being able to work until the 7th of May of that year, according to the certificate of the physician who attended him, Exhibits A and B. The said wound caused a scar of about 5 inches in length, from the ear to the mouth, as stated by the offended party, page 9 of the record. Dr. Silva asserted that this scar was permanent and that it might contract in width, but could not in length.

For the foregoing reasons, a complaint was filed in the Court of First Instance of La Laguna, by the acting provincial fiscal, charging Jose Santos with the crime of lesiones graves. The case having come to trial, the judge, in view of the evidence adduced therein, rendered judgment on the 18th of November, 1909, sentencing the accused to the penalty of one year and one day's prison correccional, to the accessory penalties, to indemnify the offended party, Mr. Willey, in the sum of P100, and, in case of insolvency, to suffer the corresponding subsidiary imprisonment, and to pay the costs. From this judgment the defendant appealed.

From the facts related, duly proved in the present cause, it follows that the crime of lesiones graves was in fact committed upon the person of John W. Willey, inspector of telephones, which crime is provided for and punished by article 416, No. 3, of the Penal Code, as follows:

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

injuries; with the penalty of prision correccional in its minimum and medium degrees if, as the result of such injuries, the person assaulted should have been deformed, or had lost a member not a principal one, or should have it rendered useless, or should have been, for a period of more than ninety days, ill or disabled for his usual occupation."

As a result of the assault and of the wound inflicted upon the offended party in the right cheek from the ear to the mouth, one of his eyeteeth fell out and a front tooth and two other lower teeth were broken, and after more than thirty days' treatment, during which time he was incapacitated from work, a long scar was left on his face which makes a visible and very noticeable deformity. On account of such deformity, as well as because of the loss and breaking of an eyetooth and other teeth of the injured party, and because of the number of days he was unable to work, the crime charged is one of a serious nature and is comprised within article 416, No. 3, of The Penal Code, inasmuch as the offended party was left deformed, lost an eyetooth and in a certain manner the use of other teeth, which appendages form a part of the mouth, a principal organ of the human body. For the due classification of the crime of lesiones, in accordance with the provisions of the Penal Code, it is not sufficient to take account of the number of days of treatment of the wounds or of the incapacity to work; the injury occasioned and the consequences of the wound received by the offended party must also be considered. For this reason, the preinserted article was divided into four paragraphs, with the specification of each case and the penalty corresponding to each of them. Considering the nature and consequences of the serious wound received by the offended party, Willey, in the right side of his face, it is unquestionable that this wound, though healed in thirty days, produced a noticeable deformity of his features, aside from the loss and damage of a part of his teeth, which results require the imposition of a more severe penalty than for a mere lesion grave not attended by these circumstances.

The guilt of the accused, Jose Santos, as the sole author, by direct participation, of the crime of lesiones graves, is manifest, for, notwithstanding his unsupported exculpatory allegations, the record of the case furnishes conclusive proof of his guilt. Nor can his plea of self-defense be accepted, since it was not proved at the trial that the wounds inflicted were preceded by an unlawful assault on the part of the victim, nor did the latter even insult him; On the other hand it has been shown, beyond all peradventure of doubt, that the defendant, on leaving the cockpit where there was a cinematographic performance, took away from a neighbor a bolo the latter was carrying, without any cause or reason why he should have provided himself with a bolo on that night, and while the offended party and a companion of his were passing near him, the defendant, again without any motive whatever, seized Willey by the arm, asking him where he was going, and as the latter in turn asked the defendant why he wished to know and whether the place where he was passing was not a public one, the accused took a step backward, passed the bolo he was carrying into his right hand and answered that it was not a public one and that the said place belonged to him. He then ordered Willey to return by the same road over which he had come, and in view of the threatening attitude of the accused, Willey requested the latter to deliver to him the bolo as a precautionary measure against an assault; whereupon the accused attacked Willey, giving him a cut in the right cheek. All these facts, affirmed by the injured party, were corroborated by his companion, Mr. Corliss, and two other eyewitnesses; wherefore it is undeniable that the defendant, after having provoked the offended party, assaulted him without a sufficient rational motive and without prior assault on the part of the said Willey.

It is alleged that the offended party, on demanding of the accused the delivery of the bolo, addressed insulting words to the latter, and that when Santos pushed him, Willey brought his hand to his pocket as if he were about to draw a revolver. Aside from the fact that it was not proved that Willey insulted the defendant on demanding of him the delivery of the bolo, as a precaution, in view of the threatening attitude of the accused, and of the fact that the offended party was not then carrying a revolver, the request for the delivery of the bolo, although understood by the defendant Santos to be a threat, can in nowise be called such an unlawful assault or act as might provoke in

return an act of legitimate defense.

In order that the aggressor may allege in his behalf a plea of self-defense, it is absolutely essential, as a principal element thereof, that such defense shall have been preceded by an overt attack, which the record does not show to have occurred in the present case, for had the accused not seized Mr. Willey by the arm and tried to compel him, in a hostile manner and while provided with a bolo, to return the same way he had come, without any right whatever, as they were both on a public highway, Willey would not have asked the bolo of him as a wise precaution against an assault which, in fact, did take place.

There are no aggravating nor mitigating circumstances in connection with the commission of the crime; wherefore the penalty should be imposed in the medium degree.

For the foregoing reasons, whereby the errors alleged have been disposed of, it is our opinion that the judgment appealed from must be affirmed, with the proviso, however, that the defendant shall be sentenced to the penalty of one year eight months and twenty-one days' prison correctional, and to pay the costs of this instance. So ordered.

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

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