

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PELAGIO CAPA AND AURELIO CARIÑO (ALIAS CALIXTO), DEFENDANTS. – AURELIO CARIÑO (ALIAS CALIXTO), APPELLANT.

G.R. No. 6378. March 20, 1911

Ponente: TRENT, J.

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TRENT, J.:

The defendants in this case, Pelagio Capa and Aurelio Cariño (alias Calixto), were charged in the Court of First Instance of the Province of Pangasinan with the crime of lesiones graves and sentenced, the first to one month and one day of arresto mayor, and the second to two years four months and one day of prision correccional, to the accessory penalties provided by law, to indemnify the offended party, and to each pay one-half of the costs. Aurelio Cariño alone appealed, and now insists that the trial court erred:

- In not informing the appellant of his right to be represented by counsel and in permitting Bernabe de Guzman, who is not a member of the bar, to appear and represent the appellant;
- In finding that the proofs presented establish the guilt of the appellant beyond a reasonable doubt; and,
- In qualifying the crime as lesiones graves and applying paragraph 2 of article 416 of the Penal Code.

When this case was called for trial in the court below the appellant appeared with his defensor, Bernabe de Guzman, pleaded not guilty, and the trial proceeded. At no time during the entire trial was any question raised about Guzman's right or authority to appear and represent the appellant. He cross-examined the Government's witnesses and presented and examined his own. The appellant himself desired to be represented by Guzman. The trial was conducted in an orderly manner and none of the substantial rights of the appellant were prejudiced by being represented by the said Guzman. If the fact that the appellant was represented by an unlicensed attorney was error at all, it was error without prejudice to the appellant.

"No accused person may be heard to challenge any process, pleading, proceeding, or decision in the courts of these Islands on account of any defect or irregularity which does not prejudice his substantial right upon the merits." (U. S. vs. Ancheta, 15 Phil. Rep., 470.)

On the 26th of November, 1909, Francisco Garcia went to the house of Ciriaco Capucao, where the two defendants were living, for the purpose of getting a fighting cock which belonged to one Islao Bautista. On entering the house he made his wants known to Pelagio Capa, and after some few moments trouble ensued, resulting in Garcia receiving a blow over his right eye. Garcia got possession of the cock, and on leaving the house he was struck on the arm with a stick by the appellant, who, at that time appeared from under the stairway. Garcia immediately reported the matter to the local authorities.

The proofs do not clearly establish the nature nor the gravity of the wound inflicted by the appellant. The doctor who dressed and treated this wound was not called as a witness. The only testimony on this point is that of the offended party and Ciriaco Capucao. As to the gravity of the wound and the time required for it to be cured,

Garcia testified as follows:

"Q. Did the blows cause you any injuries? - A. Yes sir.

"Q. How long did it take you to cure them? - A. More than ten days.

"Q. More than ten days, nothing more? - A. My arm has not fully recovered up to the present time.

"Q. But it is now well, is it not? - A. The outside of it, yes sir; but not the bones.

"Q. Then they are broken? - A. The bone was fractured.

"Q. And are you able to grip with your hand? - A. No sir.

"Q. Did a physician attend you? - A. Yes sir.

"Q. How long did he treat you? - A. Eight days.

"Q. And during those eight days that the doctor was treating you, were you able to work? - A. I was not able to work.

"Q. Are you now able to work with that hand? - A. Not up to the present time, sir.

* * * * *

Q. Is your right arm useless? - A. I can no longer work with that hand.

"Q. Why? What is the matter with it? - A. The bone is fractured."

Ciriaco Capucan, who examined the wound within a very few minutes after it had been inflicted, testified as follows:

"Q. You saw and examined these wounds? - A. Yes sir.

"Q. What were they? - A. I saw a small lesion on his right hand, and a contusion on the left eyebrow."

The trial judge, adopting the testimony of the offended party, qualified the crime as that of lesiones graves, defined and punished under paragraph 2, article 416 of the Penal Code. It does not appear from his decision that he made any personal observations with reference to the condition of the offended party's arm at the time of the trial.

Said article 416 reads as follows:

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

* * * * *

"2. With that of prison correctional 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 become useless for the occupation in which up to that time he had been habitually engaged."

In criminal cases the prosecution must prove beyond a reasonable doubt every essential element constituting the crime and upon which the conviction and punishment is based. It was just as essential for the Government to prove that the offended party, by reason of the blow inflicted by the appellant, lost the use of his arm, or was hindered in the use thereof, as it was to show that the appellant inflicted said blow.

The offended party said that he was under the care of the doctor for eight days and that the exterior wound at the

time of the trial was cured, but that the bones which had been fractured had not then been cured; while the other witness stated that when he examined the injured party he saw a small wound on his hand. The best evidence as to the gravity of this wound was that of the attending surgeon. For some reason, which does not appear in the record, the doctor was not called as a witness. It is clear that this testimony does not establish beyond a reasonable doubt that the offended party had lost the use of his arm, nor was hindered in the use thereof, by reason of that blow. He himself admits that he was under medical treatment for only eight days, and it is difficult to see why the doctor would have abandoned this treatment and the care of his patient until his arm had been completely cured.

Under these facts and circumstances the crime must be qualified as that of *lesiones menos graves*, as defined in article 418 of the Penal Code.

The judgment appealed from is, therefore, reversed, and in the absence of any extenuating or aggravating circumstances the appellant is sentenced to two months and one day of *arresto mayor*, and to pay the costs. So ordered.

Arellano, C. J., Mapa, Carson, and Moreland, JJ., concur.

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