THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ISAAC SAMONTE, DEFENDANT AND APPELLANT.

G.R. No. 6649. September 06, 1910

Ponente: TRENT, J.

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TRENT, J.:

The defendant, Isaac Samonte, was tried in the Court of First Instance of the Province of Tayabas on a charge of criminal attempt against an agent of the authorities, and sentenced to one year eight months and twenty-one days of prision correccional, to pay a fine of P65, in case of insolvency to suffer the corresponding subsidiary imprisonment, to the accessory penalties provided in article 61 of the Penal Code, and to pay the costs. He appealed to this court.

Counsel for appellant insists, first, that the prosecution has failed to establish beyond a reasonable doubt that the policeman, Gregorio Glindo, attempted to arrest the accused in Verdades Street, the place where the trouble occurred; and, second, that if said policeman did attempt to arrest the defendant at this place he, not having a judicial warrant, was not, under the circumstances, authorized to make the arrest which he attempted to make.

About 8 o'clock on the night of September 6, 1908, the appellant, Isaac Samonte, and Basilio Rabe were together in the house of one Demetrio Pandenio in the barrio of Macalalong, jurisdiction of Pitogo, Province of Tayabas. They both left this house and met shortly afterwards in the street (Verdades) in said barrio. On meeting there they became engaged in a quarrel, the appellant knocking or pushing Rabe down, then proceeded to maltreat him. At this moment Rabe called "police! police!" Gregorio Glindo, a municipal policeman of Pitogo, being on patrol duty that night in said barrio, hearing these words went to the scene, arriving just as the offended party was getting up, and attempted to arrest the appellant, saying to him: "In the name of the United States, don't move." The appellant, on seeing the policeman and hearing this command, said: "Don't come near, because I will take your life." The policeman continued toward the appellant and when very near him the appellant struck at the policeman with a knife. On account of this resistance the policeman could not arrest the appellant at that time, so he went immediately to the house of the councilman of that barrio, Demetrio Pandenio, and reported the matter. Pandenio ordered him to arrest the appellant. He returned to obey this order, being followed by Pandenio. They found the appellant in a place called Mutingbayan. The policeman attempted to take hold of the appellant, but he resisted, striking at the policeman again with his knife. The councilman then ordered the appellant to submit himself, and on receiving this order the appellant said: "I do not recognize anyone," and struck at the councilman with the knife.

The appellant was not arrested on that night on account of this resistance. He did not lay hands on or touch with his knife either the policeman or the councilman, but he did refuse to submit himself to the authorities, and resisted arrest. The policeman did not see the appellant knock the priest down, neither did he see him kick the said priest, but he heard the cries of the priest calling for help, saying "police! police!" and when he arrived on the scene the priest was just getting up and freeing himself from the appellant. When the policeman heard these cries for help he was only a very short distance - some 6 or 8 brazas- away, and when he arrived the trouble had not

terminated, although no active fighting took place after his arrival. Under these facts and circumstances it was the duty of this police officer to stop this disturbance by placing the defendant under arrest.

Any officer charged with the preservation of the public peace may arrest, without a warrant, any person who is committing, or has committed, a breach of the peace in his presence. (3 Cyc, 881; Carolina vs. McAfee, 10 L. R. A., 607; Commonwealth vs. Tobin, 11 Am. Rep., 375; People vs. Rounds, 35 N. W., 77; and Douglas vs. Barber, 28 Atl. Rep., 805.)

An offense is committed in the presence or within the view of an officer, within the meaning of the rule authorizing an arrest without a warrant, when the officer sees the offense, although at a distance, or hears the disturbances created thereby and proceeds at once to the scene thereof; or the offense is continuing, or has not been consummated, at the time the arrest is made. (3 Cyc, 886; Ramsey vs. State, 17 S. E., 613; Dilger vs. Com., 11 S. W., 651; State vs. McAfee, 12 S. E., 435; State vs. Williams, 15 S. E., 554; and Hawkins vs. Lutton, 70 N. W., 483.)

In the case at bar Gregorio Glindo, being a peace officer, not only had authority to arrest the defendant at that time, but it was. his duty to do so, he having heard the priest call for help and having arrived on the scene before the disturbance had finally ended.

Article 249 of the Penal Code provides that the following commit criminal attempt:

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> "2. Those who attack the authorities or their agents, or employ force against them, or gravely intimidate them, or offer an equally grave resistance while they are discharging the functions of their office or on the occasion thereof."

Article 250 of the same code fixes the penalty to be imposed for those guilty of an attempt against the authorities or their agents, as provided in the above article.

The accused in this case, after an attempt had been made to arrest him by a duly authorized police officer in the discharge of his duty as such, offered grave resistance by refusing to submit himself to arrest and by striking at the policeman with a knife, thereby attempting a personal injury. Although the policeman was not wounded or touched by the accused, these facts do not relieve him from criminal responsibility.

The penalty imposed by the court below being in accordance with the law and the proofs presented, the same is hereby affirmed, with costs against the appellant. So ordered.

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

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