

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LORENZO MENDOZA, DEFENDANT AND APPELLANT.

G.R. No. 6714. February 02, 1912

Ponente: MAPA, J.

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MAPA, J.:

The defendant herein, charged with the crime of lesiones menos graves, was sentenced by the trial court to the penalty of four months of arresto mayor, to pay an indemnity of 20 pesos to the injured party, and the costs, from which judgment he appealed to this court.

In said judgment it was found that:

"The defendant sent two persons to call Fermin Castillo and when, in answer to such call, he appeared at the house of the defendant, the latter assaulted him and caused several injuries which were ten days in healing, during which period the said Castillo was incapacitated for performing his usual work."

By the same judgment, the damages resulting from the injuries were fixed at 20 pesos.

In his brief, counsel for the defense admits the assault by the defendant upon the occasion specified in the complaint. He alleges, however, that the defendant gave the victim only one slap and did not cause any injury whatsoever. In support of this allegation he presented as sole proof the testimony of a physician who stated that, by direction and request of the defendant, he made four visits at the house of the offended party for the purpose of examining and observing the latter, and that, although he always found him abed and complaining of pains in his chest, he had no external or internal injury and the pains of which he complained were merely feigned. This witness added that he made the first examination on the fourth or sixth day after the occurrence of the alleged crime, and the subsequent ones at intervals of two days each. On the contrary, the offended party testified that he was slapped and kicked by the accused, and received injuries upon different parts which produced the pains in his chest, and that as a result of which he spat blood and was bedridden for a period of ten days, during which time he was incapacitated for performing his customary labors. These facts were fully corroborated by the wife and a son of the offended party and in part by the president of the board of health of the pueblo, who was a medical practitioner and who examined the offended party on the day after the assault; this witness testified that the latter had a black and blue bruise in the breast and another in the jaw, and felt pains in his chest and had difficulty in breathing.

The defense maintains that the testimony of their witness, a physician, should prevail over that of a mere cirujano ministrante like the president of the municipal board of health who testified for the prosecution. Theoretically, it is true that a physician is presumed to possess greater scientific knowledge than a cirujano ministrante, and for this reason, in circumstances affecting the veracity and impartiality of each and his opportunity for observing the facts submitted to his expert examination, greater consideration should, as a general rule, be given to the opinion of the former than to that of the latter, in matters which come within their technical knowledge. But in the present case it is not a question of a strictly expert opinion, or of facts which require, for their proper and exact appreciation,

technical of scientific knowledge. The fact with respect to which the testimony of the president of the board of health may be held to be worthy of consideration, consists in the existence, as asserted by him, of several discolored contusions on the person of the offended party, and it is evident that this is a fact which can be perceived and testified to by any person who has a clear sense of sight, without the necessity of his possessing any notion whatever of either medicine or surgery. In regard to this point there is no reason at all for claiming that greater credibility should be given to the statements of the witness for the defense. merely because he is a physician, especially as this witness did not examine the offended party until the fourth or sixth day after the occurrence of the alleged crime, while the president of the municipal board of health made his examination two days after the assault. It being a matter of superficial bruises of an unimportant nature, such as were certified to by the said president of the board of health, it would not be at all strange that they had completely disappeared before the physician made his first examination some days afterwards. What is certain is that the existence of the injuries was asserted at the trial, not only by the president of the municipal board of health, but also by the wife and a son of the offended party, all of whom fully corroborate the testimony given by the latter on this point.

The injuries having been proven, there remains to be determined the period of time required for their cure and disappearance. In the judgment appealed from it is held to have been proven that Permin Castillo, the complaining witness, was incapacitated from engaging in his customary labors for a period of ten days as a result of the said injuries, and certainly this conclusion of fact is sufficiently supported by the testimony of the offended party himself, of his wife and son, as hereinabove stated; the testimony on this point is conclusive. It is averred, in the brief presented by counsel for the defense, that this last witness testified in clear and categorical terms that his father's injuries were cured seven days after the assault. It would really seem that this witness did so state in his testimony, but, upon a perusal of that testimony in its entirety it clearly appears that the witness referred to the external injuries, that is, to the contusions certified to by the president of the municipal board of health, and not to the effects produced by such injuries and by the blows received by the offended party on his chest, inasmuch as this very witness in his same testimony asserted that his father was spitting blood every day for a period of ten consecutive days. The bruises might very well have disappeared after a lapse of seven days or sooner, and yet he still might have continued to spit blood and suffer from pains in his chest, both caused by the blows which prevented him from working, since he was unable to make any exertion without spitting blood, as this witness affirmed in his testimony. Contusions are not necessary indications of such pains and the spitting of blood, both of which may exist without the former.

In contrast to the evidence of the prosecution relative to this feature, there is the physician's testimony presented by the defense, reference to which has been made above. This witness, in testifying that he did not observe any internal injury on the person of the victim, although he carefully examined him two or three times, tends to prove that there were no pains in the chest and no spitting of blood, as related by the witnesses for the prosecution. But in weighing the evidence the trial judge found the testimony of these latter more worthy of credibility than that of the said witness for the defense, and indeed we see no reason for not holding his opinion to be correct. The question of the greater or less credibility of the witnesses, is one for consideration by the judge of the Court of First Instance who has personal opportunity to observe their behavior and manner of testifying; for which reason his opinion in this matter must be upheld, unless it be shown that it is manifestly erroneous, which has not been done in the present case.

The defense alleges that there is no proof in the record with regard to the amount of the damage suffered by the offended party and that, consequently, the fine of twenty pesos imposed upon the defendant, as an indemnity for such injuries, is entirely unjustifiable and therefore illegal. It is true that no direct and positive proof was presented. It was shown, however, that the offended party is by Occupation a laborer and that he was incapacitated from working for a period of ten days. That incapacity for work constitutes a real and actual damage

to him and consequently the fact of the damage suffered by the herein defendant on account of such incapacity is unquestionable. Upon this premise, we believe that, in the absence of proof, the judge could legally exercise a prudent and sound discretion for the determination of the amount of the damages. The law leaves much to the power and discretion of the courts, as may be readily seen from the provisions of the statutes. The Penal Code, after prescribing, in article 119, that civil liability springing from crimes comprises first, restitution, second, reparation of the damage caused, and third, indemnification for consequential damages, provides as follows:

"Art. 122. Indemnification for losses shall include not only those caused the injured party, but also those suffered by his family or by a third person by reason of the crime.

"The courts shall determine the amount of this indemnification in the manner prescribed for the reparation of damages in the next preceding article."

The preceding article reads:

"Art. 121. The court shall determine the amount of damage, taking into consideration the price of the thing whenever possible, and its special value to the injured party, and reparation shall be made accordingly."

Words of practically the same meaning as the court shall determine are also used in article 120, which is of the following tenor:

"The restitution of the thing itself must be made whenever possible, with allowance for any deterioration or diminution of value, as determined by the court."

This last phrase clearly shows that the determination of the amount of the deterioration or of the diminution of value, as well as of the damages and losses, in the respective cases, has been commended by the law entirely to the discretion of the courts. By this, we do not wish to say that proofs are unnecessary and useless; on the contrary, they should, whenever possible, be produced to enlighten the discernment of the judge. The meaning we wish to convey is merely that, with proofs or without them, the determination of the question always depends finally upon judicial discretion. So true and patent is this that sometimes it is not even possible to present concrete and positive proof, as, for example, when it is a question of the special value mentioned in the aforecited article 121. The impossibility of establishing, in many cases, precise and exact bases for indemnification is doubtless the reason taken into account by the law, according to the express language of the statute, for submitting the same to the determination of the courts.

"This determination is in some cases materially easy to be made," says Pacheco in his work, commenting on the said provisions of the Penal Code, "as, for example, in the matter of expenses for medical attendance and for wages lost. In nearly all other matters, there necessarily must be arbitrary appraisal, in the calculation of which consideration must be had, not only of what is just, but also of what is suitable and possible. When it is a question of a rich criminal, it goes without saying that the courts have greater amplitude for the exercise of discretionary power than in the case of a culprit who is poor. * * * Therefore the law must rely so much on judicial discretion, for there can be no hard and fast rules in this matter such that they will not be subject to the influence of circumstances * * *. To the prudence and to the discretion of the courts," he adds, "much must necessarily be left in order that such liabilities may be adequate."

It is but the application of this principle which justifies the constant practice in the decisions of this court of sentencing those convicted of the crimes of homicide or murder to pay a fixed sum as indemnity, without necessarily requiring any concrete proof of the exact amount of the damage. In such cases this court simply avails itself of the power conferred upon it by law to determine, in its discretion, the amount of the damage, pursuant to the provisions above quoted.

In the present case, it has not been shown that the trial judge abused his discretionary power in fixing the amount of the damages suffered by the offended party at twenty pesos; indeed, we do not consider the said sum to be excessive, in view of the fact that the person injured was a laborer who was prevented from engaging in his work for a period of ten days, taking into account, at the same time, the position of the defendant, who, as clearly shown by the record, was a rich man.

The judgment appealed from is affirmed, with the addition that, in default of the payment of the indemnity of twenty pesos imposed upon the defendant, the latter shall suffer the corresponding subsidiary imprisonment at the rate of one day for each twelve and a half pesetas that remain unpaid. The costs of this instance are assessed against the appellant.

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

Carson and Moreland, JJ., concur in the result.

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