

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JOSE MALLARI AND VICENTE CUESON, DEFENDANTS AND APPELLANTS.*G.R. No. 7108. February 20, 1913*

Ponente: JOHNSON, J.

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These defendants were charged with the crime of lesiones menos graves and found guilty by the judge of the Court of First Instance of the Province of Cagayan. Jose Mallari was sentenced to be imprisoned for a period of three months of arresto mayor and Vicente Cueson was sentenced to be imprisoned for a period of one month of arresto mayor, and each to pay one-half the costs. From that sentence both of the defendants appealed.

During the pendency of the appeal the defendant Vicente Cueson withdrew his appeal (see Record), and the sentence of the lower court as to him became final.

An examination of the evidence shows clearly that the defendant Jose Mallari, on the evening of the 29th of August, 1910, in the municipality of Aparri, Province of Cagayan, did voluntarily, illegally, and criminally with a stick or club beat and wound one Ignacio Alvarado, causing several slight wounds upon his body. The evidence tends to show that Ignacio Alvarado was incapacitated from pursuing his regular avocations for a few days. Alvarado testified that he was incapacitated for a period of ten days.

Mr. C. F. Brantigan, a sanitary inspector of the municipality of Aparri, testified that Alvarado was probably incapacitated from pursuing his ordinary avocations for a period of from seven to nine days. There is no positive proof that Alvarado was incapacitated from pursuing his ordinary avocations for a longer period than seven to nine days. There is nothing in the record which shows that his injuries were at all serious. We are inclined to give the defendant the benefit of the doubt and find from the evidence that Alvarado was not incapacitated from pursuing his ordinary avocations for a period longer than seven days, and therefore that the defendant should be punished in accordance with the provisions of article 587 of the Penal Code. (U. S. vs. Lazada, 9 Phil. Rep., 509.)

The Attorney-General recommends that the defendants should be required to indemnify the offended party in the sum of P140, that being the amount which Alvarado claims he expended in being cured from the effects of the wounds inflicted upon him. Upon an examination of the evidence relating to this particular question, we find that Alvarado did testify that he expended the sum of P140, but the evidence does not show that this amount was expended in effecting a cure of his injuries. We are, therefore, disinclined to make any allowance whatever for the expenditure alleged to have been made by Alvarado.

The plaintiff claims that the sentence of the lower court was void because the Court of First Instance did not have jurisdiction over the subject matter; that it was a cause falling within the original jurisdiction of a justice of the peace. In order to determine the jurisdiction of the court in criminal causes, the complaint must be examined for the purpose of ascertaining whether or not the facts set out therein and the punishment provided for by law for such acts fall within the jurisdiction of the court in which the complaint is presented. If the facts set out in the complaint are sufficient to show that the court in which the complaint is presented has jurisdiction, then it is

sufficient to hold that that court has jurisdiction. The mere fact that after the trial and after the court has heard the evidence, it is found that a lesser crime has been committed than that described in the complaint, the court cannot then dismiss the case because the action should have been brought in the court of a justice of the peace or in a lower court. To illustrate: A complaint is presented charging the defendant with the crime of attempted murder. After the trial the court finds that the crime which had actually been committed was nothing more or less than assault and battery. In such a case the court taking jurisdiction over the crime described in the complaint retains jurisdiction for the purpose of imposing the penalty provided for by law for the crime proved to have been committed. In other words, the court's jurisdiction in the first instance is determined by the facts alleged in the complaint.

After a careful consideration of the facts, we are of the opinion that the judgment of the lower court should be reversed, and that the defendant should be sentenced to be imprisoned for a period of thirty days of *arresto menor*, and to pay one-half the costs. So ordered.

Arellano, C. J., Torres, Mapa, Moreland, and Trent, JJ., concur.

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