

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CIRIACO PUNSALAN, DEFENDANT AND APPELLANT.

G.R. No. 7539. November 05, 1912

Ponente: CARSON, J.

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CARSON, J.:

The defendant and appellant in this case was charged with the crime of lesiones graves (serious physical injuries) in the Court of First Instance Province of Tarlac, upon the following information:

"The undersigned charges Ciriaco Punsalan with the crime of lesiones graves committed as follows:

"On or about August 11 of the present year (1910), the said accused did maliciously and criminally attack Juan de Jesus with a penknife, inflict him injuries in three fingers of his left hand, as a result of which said have become useless. The motive was that the accused suspected that the victim knew about the abduction of the former's sister.

"The affair occurred in the municipality of Tarlac, Province of Tarlac, violation of the law."

Accepting, as we do, the view of the trial judge as to the degree of credibility which should be accorded to the respective witnesses of the prosecution and the defense, we are satisfied that the evidence of record conclusively establishes the guilt of the defendant and appellant of the with which he was charged.

The trial court found the defendant and appellant guilty of the crime of lesiones graves (serious physical injuries) as defined and penalized in paragraph 2 of article 416 of the Penal Code, and sentenced him to three years six months and twenty-one days of prision correccional. We are of opinion, however, that the crime with which the defendant and appellant was charged in the information is that defined in paragraph 3 of article of the Penal Code, and that, even if the evidence of record were sufficient to establish the guilt of the accused of the higher offense defined and penalized in paragraph 2 of that article, the trial court, nevertheless, convicting the defendant of a higher offense than that with which he was charged in the information upon which he was tried. Paragraphs 2 and 3 of article 416 of the Penal Code are as follows:

"Art. 416. Any person who shall wound, beat, or assault another shall be guilty of the crime of inflicting serious physical injuries, and shall suffer:

* * * * *

"2. The penalty of prision correccional in its medium and maximum degree in consequence of the physical injuries the person injured shall have eye or any principal member, or shall have lost the use of such member or shall have become incapacitated for the work in which he shall have been habitually engaged before receiving the injury.

"3. The penalty of prision correccional in its minimum and medium degree if in consequence of the physical injuries the person injured shall have become deformed, or shall have lost some member other than a principal member, or shall have lost the use of such member, or shall have been or incapacitated for the performance of

the work in which he was habitually engaged, for a period of more than ninety days."

The trial judge found, and the evidence of record sustains his finding that as a result of the injuries received by the offended party, he lost use of three of the fingers of his left hand, he having lost "the power of flexion of those fingers." The trial judge appears to have been of opinion that this finding was equivalent to a finding that the offended party had lost the use of a principal member, as that term is used in paragraph 2 of article 416, and, in accordance with this conclusion, imposed the penalty prescribed in that section.

Under a decision of the supreme court of Spain dated August 21, 1874, might become an interesting question in a proper case whether or not the loss of capacity to bend three fingers of one hand should be taken to be equivalent to the loss of the use of that hand so as to sustain a conviction of the violation of the provision of paragraph 2 of article 416. In that case the supreme court of Spain held, upon proof that three fingers of one hand had been cut off, that the injured party had lost the use of the hand itself, and that since the hand is a principal member under the provisions of paragraph 2 of article 416, the offender should be convicted and sentenced under the provisions of that section. (Viad Penal Code, Vol. III, 4th ed., p. 73.)

In the case at bar, however, we are not called upon to go into this question, because the information does not charge that the injuries caused by the accused resulted in the loss of the use of a principal member. The allegation contained in the information is merely to the effect that the injured party lost the use of three of the fingers of his left hand and there is no allegation touching the loss of the use of the hand itself. The fingers of the hand are not principal members, and it is evident, therefore, that without an allegation that as a result of the use of several fingers the use of the hand itself had been lost information charges the infliction of injuries of the class defined in paragraph 3 of article 416, and not of the class of paragraph 2 of article 416.

We have frequently held that since an accused person is entitled to be advised at the outset of the proceedings as to the nature and character of the offense with which he is charged, a conviction cannot be sustained for a higher or different offense than that charged, even though the proof adduced at the trial be sufficient to establish the guilt of the accused of a higher offense.

The judgment of conviction and the sentence imposed by the trial court should be and are hereby reversed, but the evidence of record establish the guilt of the defendant beyond a reasonable doubt of the offense with which he is charged, that is to say, of the offense defined and penalized in paragraph 3 of article 416, we find him guilty as charged there being neither aggravating nor extenuating circumstances, we sentence him to one year eight months and twenty-one days of prision correccional, that being the medium penalty prescribed by law, together with the accessory penalties prescribed by law, to pay the costs of the proceedings in both instances, and to the indemnification of the offended party in the sum of P13, that being the amount of the damages proven at the trial as found by the trial court.

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

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