

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MAXIMO, LEDESMA AND MATEO BERNAD, DEFENDANTS AND APPELLANTS.*G.R. No. 9514. February 10, 1915*

Ponente: CARSON, J.

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The defendants and appellants were convicted in the court below of the crime of lesiones graves, and sentenced to suffer one year and one day of prision correccional.

The evidence of record conclusively establishes the guilt of these defendants and appellants of the assault upon the complaining witness of which they were convicted in the court below, the only question of fact as to which there is any serious dispute being the degree of injury inflicted upon him. The trial judge found that the injured person was incapacitated from work for more than thirty days, and this finding is sustained by the practically uncontroverted testimony of the complaining witness. We find nothing in the record which would justify us in disturbing the finding of the trial judge in this regard.

As to the appellant Bernad, it is contended that the court below erred in declining to dismiss the information as to him, it appearing that he had been tried in the court of the justice of the peace upon a complaint charging him with the crime of lesiones graves (grave physical injuries) committed upon the person of the complaining witness in this action in the court of the justice of the peace of the municipality of Misamis, and that he had been convicted by the justice of the peace of the offense of lesiones leves (slight physical injuries), the conviction being based upon proof of the identical assault charged and proven in the action instituted in the Court of First Instance. Relying on the authority of the case of *United States vs. Diaz* (15 Phil. Rep., 123) ; *Diaz vs. United States* (223 U. S., 442), we are of opinion that the trial court properly declined to accept the pleas of jeopardy and autrefois convict.

In that case the Supreme Court of the United States said:

"The provision against double jeopardy, in the Philippine Civil Government Act (32 Stat. at L., 691, chap. 1369, par. 5), is in terms restricted to instances where the second jeopardy is 'for the same offense' as was the first. (*Gavieres vs. United States*, 220 U. S., 338; 55 L. ed., 489; 31 Sup. Ct. Rep., 421.) That was not the case here. The homicide charged against the accused in the Court of First Instance and the assault and battery for which he was tried before the justice of the peace, although identical in some of their elements, were distinct offenses both in law and in fact. The death of the injured person was the principal element of the homicide, but was no part of the assault and battery. At the time of the trial for the latter the death had not ensued, and not until it did ensue was the homicide committed. Then, and not before, was it possible to put the accused in jeopardy for that offense. (*Com. vs. Roby*, 12 Pick., 496; *State vs. Littlefield*, 70 Me., 452; 35 Am. Rep., 335; *Johnson vs. State*, 19 Tex. App., 453; 53 Am. Rep., 385.) Besides, under the Philippine law, the justice of the peace, although possessed of jurisdiction to try the accused for assault and battery, was without jurisdiction to try him for homicide; and, of course, the jeopardy incident to the trial before the justice did not extend to an offense beyond his jurisdiction. All that could be claimed for that jeopardy was that it protected the accused from being again prosecuted for the assault and battery, and therefore required that the latter be not treated as

included, as a lesser offense, in the charge of homicide, as otherwise might have been done under Phil. Comp. Stat. par. 3284. (State vs. Littlefield, supra.) It follows that the plea of former jeopardy disclosed no obstacle to the prosecution for homicide."

The reasoning of the Supreme Court of the United States in the Diaz case would appear to apply with equal force to the facts in the case at bar. The crime of lesiones graves (the unlawful infliction of grave injuries, incapacitating the injured party from work for more than thirty days), and the offense of lesiones leves (the unlawful infliction of slight injuries which do not incapacitate the injured person from work), "although identical in some of their elements, are distinct offenses;" and "the justice of the peace, although possessed of jurisdiction to try the accused for the offense" of lesiones leves, was "without jurisdiction to try him" for the crime of lesiones graves.

The judgment of the trial court convicting and sentencing the accused should therefore be affirmed, with the proportionate share of the costs in this instance against each of the appellants. So ordered.

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

MORELAND, J., concurring:

I agree, but on the ground of collusion between the justice of the peace and the accused in the bringing and conduct of the action against the latter in the justice's court; and that the decision in that case is not, therefore, ground for the plea of former jeopardy or former acquittal or conviction.

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