

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CASTOR REYES AND APOLONIO PALANCA, DEFENDANTS AND APPELLANTS.

G.R. No. 9522. March 30, 1915

Ponente: TORRES, J.

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TORRES, J.:

Under date of September 17, 1913, the provincial fiscal of Laguna filed an information in the Court of First Instance of said province charging Castor Reyes, Apolonio Palanca, Pedro Agorilla, and Mateo Monserrat with the crime of frustrated homicide, in that they did on June 6, 1913, in the municipality of Santa Cruz of said province, willfully, maliciously, and criminally, with abuse of authority and taking advantage of their public position as officers of the law, attempt to kill Perfecto de Ramos whom they assaulted and beat until they left him severely wounded; and even though he did not die as a result of said wounds it was through causes independent of the defendants' will.

The accused pleaded not guilty, but after legal proceedings the Honorable Isidro Paredes, judge, found them all guilty of the crime charged and sentenced Apolonio Palanca as a recidivist to the penalty of ten years and one day of prison mayor, and each of the three defendants Castor Reyes, Mateo Monserrat, and Pedro Agorilla, to the penalty of eight years and eleven days of prison mayor, with the corresponding accessories, a joint and several indemnity of P100 to the offended party, and the costs pro rata. But on October 29, 1913, the same judge issued an order of reconsideration whereby he ratified his previous sentence with reference to the defendants Castor Reyes and Apolonio Palanca but annulled it with reference to the defendants Pedro Agorilla and Mateo Monserrat, freely acquitting them of the charge and directing their immediate release, with the proportional costs, because Pedro Agorilla's participation in the crime prosecuted was in defense and protection of the injured person and not in aid of the other defendants, while Mateo Monserrat deserved from the court the benefit of a reasonable doubt, since at the day and hour of the occurrence he was, on duty outside the cockpit where the offense occurred, and upon hearing the disturbance that arose inside he made his way in to preserve order by authority of his office, his share in said disturbance being a simple intervention without proof that he was one of those who beat and assaulted Perfecto de Ramos.

The defendants Castor Reyes and Apolonio Palanca have appealed to this court from said judgment and the reconsideration thereof, alleging in this instance that the lower court erred in finding the two appellants guilty of the crime of frustrated homicide, in finding the aggravating circumstances of abuse of superior strength and of taking advantage of their public position, in not holding the existence of a reasonable doubt in favor of the defendant Castor Reyes, and in holding that his codefendant Apolonio Palanca was a recidivist.

About 4 o'clock in the afternoon of June 6, 1913, the injured person, Perfecto de Ramos, was in the Kaliwanagan cockpit of the town of Santa Cruz, Laguna, and while he was talking with another person with whom he had a question over a bet the policeman Apolonio Palanca, who was at that time dressed in citizen's clothes, intervened in said question by striking Perfecto de Ramos a blow on the head with his fist, afterwards showing his policeman's badge to Perfecto who upon seeing it became silent and did nothing; but said Apolonio Palanca

caught him by the nape of his neck and continued to beat him with his fist, when another policeman and a person named Flaviano Delgado intervened in an attempt to free Perfecto de Ramos from the assault on the said Palanca. At this moment the sergeant of police, Castor Reyes, who was also in citizen's clothes, leaped out of the arena of the cockpit and with his fists assailed the injured person Perfecto whom he caught by the neck and dragged toward the outside, continuing all the while to beat him with his right fist which was covered with a handkerchief, while Apolonio Palanca was striking him from behind with his revolver.

The injured person was examined that same afternoon by the municipal health officer who certified (Exhibit A) on June 12, 1913, that on that date the wounded man was still in a critical condition on account of the wounds which he had received on the 6th instant and which could not be fully diagnosed because internal organs were affected. Dr. Gertrudo de los Reyes who also examined Perfecto de Ramos the next night—that is, June 7, 1913—certified (Exhibit B) that the injured person showed a wound in the right facial region 3 centimeters in length by 1 in breadth, four circular wounds a millimeter and a half in diameter situated above the right zygomatic arch, various scratches on both sides of his larynx, and a bruise 10 centimeters long by 5 wide in the lower rear costal region, in addition to congestions noticed in the larynx, trachea, lungs, liver, intestines, and bladder, produced by the external wounds already described. Said physician added that although the external wounds could be cured in five days, the internal ones were of a serious nature and could not be fully diagnosed.

As a consequence of the beating and wounds inflicted upon him Perfecto de Ramos lost his voice and for over a month had attacks of asthma and coughed up blood, with discharges of blood in his feces and urine, was confined to his bed for a month and was ill over three months, and that he finally did recover was due to the immediate medical attendance given him.

The facts set forth, duly proven in the case, really constitute the crime of lesiones graves, provided for and penalized in article 416, No. 3, of the Penal Code, since the defendants without justifiable cause and with the positive intention of doing injury beat with their fists (and furthermore, the defendant Palanca with his revolver) Perfecto de Ramos who suffered external and internal injuries, the latter of a nature so serious that had it not been for the immediate attendance of a physician the injured man would perhaps have succumbed as a result of the wounds which were inflicted upon him with such unusual cruelty.

Counsel for the defendants presented as evidence in their defense their own testimony and that of three other witnesses who asserted that the disturbance in the cockpit was caused by the fact that the injured person had struck his betting opponent with his fists, so that the intervention of four policemen was necessary, among these the appellants, to preserve order and to take Perfecto de Ramos under arrest to the town hall, by order of the municipal president himself who was present in the cockpit on that occasion; and that the defendants did nothing more to the injured person than arrest him. But in spite of these declarations it is duly proven from the trial by the testimony of the witnesses for the prosecution that on account of the altercation which the injured person had with another person, and without the former having committed any offense, the policemen Apolonio Palanca approached him and for no reason whatever immediately assailed him with fisticuffs on the head, ribs, back, and other parts of his body, although Flaviano Delgado tried to free him from this assault. At this moment the sergeant of police, Castor Reyes, came up and, according to the declarations of the eyewitnesses Delgado and Bautista, caught the injured person by the neck and dragged him toward the outside of the cockpit in order to place him under arrest, all the time beating him with his fist, while Apolonio Palanca, who came behind, forcibly shoved him along and struck him with the revolver he was carrying.

The case presents no features which would raise a doubt of the guilt of these defendants, for the municipal president, whom Castor Reyes alleges to have been present in the cockpit on that occasion and to have ordered the injured person's arrest, was not called to testify as to the truth of this allegation. On the contrary, the trial shows to

be duly proven the responsibility which the appellants have incurred, as well as how in consequence of the beating inflicted upon him the injured person suffered internal injuries that caused him to lose his voice, to cough up blood, to expel blood in his urine and feces, to be confined to his bed and to be unable to work for over three months, all which demonstrates the serious condition in which he was placed as a consequence of his injuries, according to the medical certificate.

Nevertheless, the case affords no good reason whereupon to base a finding that the assailants positively intended to kill the injured person, notwithstanding the persistent and repeated beatings they gave him, and however much they very plainly demonstrated their intention of doing him injury by striking him in different parts of his body, it is improper to classify the crime as frustrated or attempted homicide, and the offense must merely be punished according to its consequences and the harm done the victim.

It is proper to hold in the commission of the crime the concurrence of the aggravating circumstances of abuse of superior strength and the fact that the defendants took advantage of their public position as officers of the law, for had they not been policemen they would not have been able to beat up the injured person in the way they did; thus taking advantage of their position to attack him illegally and in unison, while he was alone and unarmed, preventing not only any defense but also flight to free himself from them; and with reference to the defendant Palanca the circumstance of recidivism, for he has been previously sentenced to punishment for homicide. However, one of the said aggravating circumstances is compensated by the mitigating circumstance that the defendants did not intend to cause the victim such great injury as they did (Penal Code, art. 9, No. 3; art. 10, Nos. 9, 11), wherefore the penalty fixed for the crime must be imposed in its maximum degree.

For these reasons, whereby the last errors assigned to the judgment appealed from are refuted, the said judgment should be reversed. Castor Reyes should be and is hereby sentenced to the penalty of three years of prison correccional and Apolonio Palanca to four years and two months of the same penalty, the accessories, indemnity of P100 to the injured party, payment of his medical expenses, and in case of insolvency to the corresponding subsidiary imprisonment; each shall pay his share of the costs. So ordered.

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

CARSON, J., dissenting:

I dissent. The accused should be acquitted. They were in the lawful performance of their duty when they made the arrest and do not appear to have had any motive for the use of force other than what was rendered necessary in making the arrest under the conditions then existing. I do not think that the evidence shows beyond a reasonable doubt that the indisposition of the complaining witness was caused by these defendants.

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