

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. EPIFANIO E. GABRIEL, DEFENDANT AND APPELLANT.

G. R. No. 9694. October 07, 1915

Ponente: JOHNSON, J.

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JOHNSON, J.:

The defendant was punished for the crime of contempt in the Court of First Instance of the Province of Cavite. From the record the following facts appear:

First. That on the 14th of January, 1913, the prosecuting attorney of the Province of Cavite presented a complaint against Domingo Topacio and five others, accusing them of a violation of Act No. 1757. The defendants were duly arrested, arraigned, plead guilty and were sentenced. Domingo Topacio and Carlos Sasoy were each sentenced to pay a fine of P100 and costs. Licerio Herrera, Rosendo Encabo, Daniel Cuenca, and Silvino Costa were each sentenced, on the 16th of January, 1913, to pay a fine of P50.

Second. That on the 24th of January, 1913, the judge of the Court of First Instance issued an order to the alcaide of the carcel of the Province of Cavite, for each of said defendants which order contained the statement that said defendants had been convicted of an infraction of Act No. 1757 and had been condemned to pay a fine, and in case of insolvency to suffer subsidiary imprisonment.

Third. While the mittimus or order issued to the alcaide of the provincial carcel contains the statement that the defendants had been sentenced to pay a fine and to suffer subsidiary imprisonment, an examination of the sentence imposed fails to show that subsidiary imprisonment had been imposed upon the defendants. Act No. 1732 provides that when a fine is imposed as punishment for any criminal offense made punishable by an Act of the Philippine Commission, the court shall also sentence the guilty persons to suffer subsidiary imprisonment until the fine is satisfied, in accordance with the provisions of law.

Fourth. Said defendants were received by the alcaide of the provincial carcel of Cavite.

Fifth. Later the said defendants Rosendo Encabo and Daniel Cuenca were delivered or turned over, by the alcaide of the provincial carcel, by virtue of the order issued on the 24th of January, 1913, to the defendant, as president of the municipality of Imus, in order to serve subsidiary imprisonment in the carcel of said province [municipality].

Sixth. Later said prisoners Rosendo Encabo and Daniel Cuenca were permitted to spend some, if not all, of the nights, in their own private houses instead of the provincial [municipal] carcel.

Seventh. On the 13th of February, 1913, the prosecuting attorney presented a complaint in the Court of First Instance of said province, accusing the defendant of the crime of desacato, which complaint alleged :

"That, on the 14th of January, 1913, the undersigned, as provincial fiscal, filed a complaint in the Court of First Instance of Cavite, Cavite, P. I., whereby he charged Domingo Topacio, Carlos Sasoy, Licerio Herrera, Rosendo Encabo, Daniel Cuenca and Silvino Costa with the crime of violating Act No. 1757; that on the 16th

of January, 1913, by virtue of a summons, issued from the said Court of First Instance, the said accused appeared before the same and, having been duly arraigned, pleaded guilty of the crime charged against them in the complaint and the court, in a judgment rendered on the same date, sentenced the accused Domingo Topacio and Carlos Sasoy each to pay a fine of P100, and the other accused, Licerio Herrera, Rosendo Encabo, Daniel Cuenca and Silvino Costa, to pay each a fine of P50; that all these accused were duly notified of that sentence on January 20, 1913; that the accused Rosendo Encabo and Daniel Cuenca, not having been able to pay the fine imposed, were delivered on the same date to the warden of the provincial jail of Cavite, to serve out in the said jail the subsidiary imprisonment of twenty days each; that on January 24, 1913, the said warden, by order of the provincial governor of Cavite, delivered to the accused Epifanio E. Gabriel, municipal president of Imus, the prisoners Daniel Cuenca and Rosendo Encabo, in order that they might serve out their term of imprisonment in the municipal jail of the said municipality, by confinement therein; that the said accused, Epifanio E. Gabriel, as municipal president of Imus and acting as such, received the said prisoners for the purpose of confining them in the municipal jail, and, on the night of January 30, 1913, the accused Epifanio E. Gabriel, having under his charge and responsibility the said prisoners Rosendo Encabo and Daniel Cuenca, did, in the municipality of Imus, Province of Cavite, P. I., willfully, maliciously and unlawfully fail to observe and did disobey the order of the honorable judge of the Court of First Instance of Cavite, to keep 'the said prisoners confined in the municipal jail of Imus, and did allow and permit them to go out of the jail, to sleep in their houses, and to travel the streets of the municipality of Imus, without custody, guard or vigilance of any kind, thus frustrating and disobeying the said order of the honorable judge of the Court of First Instance of Cavite; an act committed in violation of Act No. 190."

Eighth: Upon said complaint the defendant was duly arrested, arraigned, plead not guilty, was tried, found guilty of the crime of desacato and sentenced to pay a fine of P500 in accordance with the provisions of section 232 of Act No. 190, and the costs, and in case of insolvency to suffer subsidiary imprisonment. From that sentence the defendant appealed to this court and made several assignments of error. In each of said assignments of error, the appellant attempts to show that he was not guilty of the crime of desacato.

Without discussing the question whether or not subsidiary imprisonment may be imposed in the absence of a sentence to that effect, we shall proceed to examine the provisions of section 232 of Act No. 190, for the purpose of ascertaining whether or not the defendant was guilty of the crime of contempt, under said article. Said section provides that:

"A person guilty of any of the following acts may be punished as for contempt:

"1. Disobedience of or resistance to a lawful writ, process, order, judgment, or command of a court, or injunction granted by a court or judge;

"2. Misbehavior of an officer of the court in the performance of his official duties or in his official transactions;

"3. A failure to obey a subpoena duly served;

"4. The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of the court held by him."

It will be noted that the only contempt of which a person may be guilty, under said section, is for disobedience or resistance, or for the misbehavior of an officer of the court in the performance of his official duties, or in his official transactions, or for a failure to obey a subpoena, duly served, or for an attempt to rescue persons or property in the custody of an officer. It will be noted from an examination of the complaint presented that the defendant was not detaining the two prisoners, by virtue of an order of the court. The only order of the court was directed to the alcaide of the provincial jail. No order of the court appears in the record directing the defendant, as municipal president, to take into custody the two prisoners. The complaint expressly alleges that the defendant, as

municipal president, took into custody the two prisoners, by virtue of an order of the provincial governor. Whether the order of the provincial governor was approved by the judge, does not appear.

In our judgment the record contains no sufficient proof upon which to convict the defendant of the crime of contempt. The judgment of the lower court is therefore hereby reversed, with costs de officio. So ordered.

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

CONCURRING

CARSON, J.,

I concur with the disposition of this case in the majority opinion.

I deem it proper to add to what has been said in the majority opinion that I am satisfied that if the appellant was guilty of any offense it was that of "infidelidad en la custodia de presos" defined and penalized in the Penal Code, and in the absence of special and compelling reasons therefor, recourse should not have been had to the contempt proceedings authorized in the Code of Civil Procedure in an attempt to penalize the alleged misconduct of the defendant.

Judgment reversed

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