

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. GAUDENCIO SANIEL, DEFENDANT AND APPELLANT.

G.R. No. 9911. December 02, 1915

Ponente: ARAULLO, J.

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ARAULLO, J.:

The present proceedings were instituted in the Court of First Instance of Cebu against the above-named defendant for the crime of assault against a person in authority. The complaint, dated January 26, 1914, was drawn up by the fiscal in the following terms:

"The provincial fiscal charges Gaudencio Saniel with the crime of assault against a person in authority, committed as follows:

"That on or about this day, within the municipality of Argao, of this province and judicial district, said Gaudencio Sañiel did, maliciously and criminally, assault, by blows with his fist, Manuel Alburo, justice of the peace of said municipality, on an occasion when this official was discharging the duties of his office as such justice of the peace; with violation of law."

Defendant, on arraignment, pleaded not guilty. After due trial, in which evidence was introduced by both the prosecution and the defense, said court rendered judgment on April 20, 1914, finding defendant guilty of the crime charged and sentencing him to the penalty of four years and two months' imprisonment, to pay a fine of 625 pesetas or, in case of insolvency, to suffer the corresponding subsidiary imprisonment, and to pay the costs. From this judgment defendant has appealed.

The following facts were proven at trial:

Between 8 and 9 o'clock of the morning of January 26, 1914, Manuel Alburo, the justice of the peace of the municipality of Argao, Province of Cebu, and Gaudencio Sañiel, the defendant, were in the railway station of said municipality on private business, alone and engaged in a conversation at a place about 6 or 8 yards away from the station scales, when Sañiel gave the justice of the peace a shove in the belly with his fist. When said official received the shove and hurriedly started to leave the place to call the police to his aid, his hat fell off his head, and defendant stooped down, picked it up and handed it to him. Afterwards they both went, though not together, to the Constabulary barracks of the pueblo, where, although no order of arrest had as yet been issued against defendant, he expressed a desire to remain, for he feared that if he were taken to the municipal building he might be mobbed. At the time of the occurrence just referred to, a charge of estafa was pending against defendant before this same justice of the peace and he had to furnish new bail for his provisional release while awaiting trial under that charge.

The justice of the peace, Manuel Alburo, testified that their conversation was commenced by defendant who, on seeing him in the station, approached him, embraced him and said: "Two words with you, friend Maneng," then, taking him to the place where they conversed, lamented his situation for having been first charged with theft and then with estafa, and also the fact that the bondsmen he had presented had been rejected, which rejection

defendant attributed to personal revenge on the part of the justice of the peace; this accusation the latter denied, saying he had done no more than to comply with his duty in accordance with the fiscal's instructions. The justice of the peace testified that immediately after he had said this and while he was wiping his eyes with his handkerchief, defendant struck him saying: "Ah, evil justice of the peace, servant of the fiscal and of the judge."

Defendant testified that on meeting the justice of the peace in the station on the morning referred to, they began to talk about the bail defendant had offered to furnish in said criminal proceedings for estafa; that the justice of the peace said he could approve it that morning on his return to court, also that he had to talk to defendant about a very important matter, and that he wished to define the situation of them both to determine whether they were friends or enemies; that these statements surprised defendant, who therefore asked what had happened; that the justice said that there were tattle-tales and reproached the defendant for taking the liberty of saying to an aunt of his in Cebu, named Gertrudis Burgos, that the justice of the peace was influencing witnesses in Argao against defendant. The latter added that he thereupon told the justice of the peace that the report was not true; that they then continued to discuss the subject; that defendant said to the justice of the peace that all the charges against him (defendant) were false, and that it was unbelievable that a justice of the peace who had passed his bar examinations and was such a well educated man as he was, should allow himself to be influenced by the defendant's enemies, to which the justice of the peace replied that there had been no such undue influence and that defendant could not prove that there had been any. Defendant also testified, finally, that he and the justice of the peace continued talking about the charges against the former for theft and for estafa; that the justice of the peace said to defendant that the defendant could not clear himself from the charge for estafa, adding "because you are an embezzler;" that when defendant heard this word (embezzler) he gave the justice of the peace a shove in the belly, saying: "Why do you slander me that way?"; that thereupon the justice of the peace struck the defendant a blow in return and started to run, and that in so doing his hat fell off and defendant picked it up and handed it to him.

Both the two witnesses for the prosecution, who were near the spot where the justice of the peace and defendant were talking, stated that they saw the latter strike the former but that they did not know what the conversation was about; and one of them, Silvestre Albina, only stated that they were talking in Spanish in a low and natural tone of voice, that there was no dispute between them, and that they did not raise their voices.

The witness for the defense, Filomeno Sañiel, a cousin of the defendant, who at the time was also with him in the station, testified, however, that a little while after they had arrived there Manuel Aiburo touched defendant with his finger and invited him to step aside to a place about four yards away from the spot where they were then standing; that when defendant followed Aiburo to spot indicated, the two men began to talk in a low tone of voice, but shortly afterwards Alburo began to talk in a loud manner and then witness heard the word "estafador" (embezzler); that the next moment defendant pushed Alburo in the belly and then struck him on the shoulder with his fist, as a result of which the justice's hat fell off, and defendant picked it up and handed it to him; and that thereupon the two men left the place, each in his own vehicle.

From the statements of what occurred, as related by defendant and his witness and by the justice of the peace and his, it clearly appears that when the justice of the peace, Manuel Alburo, and the defendant, Gaudencio Sañiel, met that morning in the railway station (defendant was to appear before this justice of the peace that same day to furnish bail in the proceedings against him for estafa) they engaged in conversation about this matter, and it is very possible that then, as a result of the excitement they both undoubtedly felt by the accusations and reproaches that passed between them, the defendant, not being able to restrain his temper, actually pushed the justice of the peace, thereby causing him (by considering himself offended in his authority and his fearing that defendant would continue to assault him) precipitously to leave that place, to call the police to his aid, and afterwards to go to the Constabulary barracks for the purpose of obtaining defendant's arrest.

The lower court itself in the judgment appealed from expresses the opinion that defendant did not act with premeditation in assaulting the justice of the peace, and stated that the latter, fearing that defendant, after the shove, would continue to assault him, started to run, but that defendant did not repeat the assault, the affair thus coming to an end without further incident.

The evidence shows that the relations that existed between defendant and the justice of the peace were friendly; this is shown by the fact that, on the two men meeting each other in the station that morning, defendant, as the justice of the peace testified, on seeing the latter, embraced him and said: "Two words with you, friend Maneng." The justice of the peace, in his testimony at the trial, on being asked whether his relations with defendant, up to the moment the latter shoved him, had been friendly, replied clearly that they had been on very friendly terms and had had no dispute. On his being further questioned as to whether they had been very good friends up to that moment, he replied: "Good friends, yes, because we had never quarreled; we were acquaintances and friends because we had worked in the same office together," though he added: "Not intimate friends, as one might say, because we neither lived together nor ate together." He also said that he had lodged with Salo in defendant's house and had entertained no ill-feeling toward the latter. It is possible that those friendly relations between the two had grown somewhat cold, owing to the fact (which it was also attempted to prove at the trial, by means of the questions the honorable judge who presided over the trial repeatedly put to the offended party himself, Alburo) that this justice of the peace of the municipality of Argao had, in fulfilment of his duty, denied some of the petitions addressed him by the defendant, as procurador judicial, in matters in which he had to intervene in the court presided over by said justice of the peace; but aside from there being no conclusive and explicit proof of the certainty of this fact and of its being only possible to make conjectures and deductions from the replies given by the offended party to those questions, it cannot be held to have been proven that, on defendant and the justice of the peace meeting each other in the station that morning, defendant, in doing what he did, acted under the impulse of resentments of so remote an origin as those which caused the waning of the friendly relations that had existed for so long between the two men, and which still existed on that occasion, as the justice of the peace himself testified relations which, according to defendant, were esteemed by him to be very good, notwithstanding all the acts performed and the action taken by the justice of the peace (recalled to defendant in the various questions addressed to him by the fiscal) in matters before the justice of the peace court and in which defendant, prior to the date of the occurrence complained of, had to intervene. Defendant himself on being questioned in substance whether he felt any resentment with regard to the acts performed by Alburo, as justice of the peace, because it seemed to defendant that he was being persecuted, replied as follows: "Resentment, no sir; it is rather my duty to express my gratitude towards Mr. Alburo, because he always treated me fairly in all his official acts and did not prosecute me as a real criminal."

It is true that defendant, Gaudencio Saniel, had been charged before the justice of the peace, Manuel Alburo, for theft and had a charge then pending against him for estafa, instead of the previous one for theft filed before the same justice of the peace; and on this account some motive might be attributed to defendant for resentment toward that justice of the peace, such as might have impelled him to offend this official in the manner that he did that morning, in which case such an offense, to-wit, the assault made by him in the manner aforesaid, would unquestionably constitute the crime specified in the complaint as assault against a person in authority, because defendant would have made the said assault at a time when the justice of the peace was performing the duties of his office.

The mere fact of defendant's having laid hands upon the justice of the peace, Manuel Alburo, and shoving him, on an occasion when defendant was on trial before this justice of the peace for estafa, and upon the two men accidentally meeting that morning in the Argao railway station and while they were conversing, cannot be held to constitute the crime of assault upon a person in authority defined and punished in paragraph 2 of article 249 of the

Penal Code, unless it be proven that said justice of the peace was then and there engaged in the performance of official duties or that the assault was made by reason of such performance by the justice of the peace of the duties of his office. Groizard, in his commentaries on the Penal Code of 1870, in referring to one of the essential elements of the crime of assault upon persons in authority, which consists in that the offense must be committed by reason of the performance of official duties, says:

"The authorities and their agents exercise duties by reason of the offices they fill. The acts they perform in their official capacity may seriously affect other persons. Whenever those acts produce resentment in the latter and they, on this account, make any serious assault, intimidation, or resistance against such authorities, the crime in question is committed. * * * What the framers of this law wanted was to know the reason of the assault upon a person in authority or upon his agents. If the motives that induced the guilty parties to commit the assault are the acts performed by such person in authority or by his agents, whether such acts immediately preceded the assault or took place some time prior thereto, the crime is committed on the occasion of the performance of public official duties and, consequently, the characteristic elements of atentado exist."

In the case at bar, the record shows that the justice of the peace, Manuel Alburo, testified that defendant, on meeting him in the station, invited him aside to have a talk and that there, while speaking of the bail defendant was to give that morning, and upon defendant's complaining of having been charged first with theft and afterward with estafa—which charges he attributed to personal revenge on the part of the justice of the peace—defendant immediately thereafter struck him saying: "Ah, bad justice of the peace, servant of the fiscal and of the judge." Defendant testified that the justice of the peace reproached him for what he had said to his aunt in Cebu, and required him to define the situation with respect to each other, to say whether they were friends or enemies, and that while they were discussing the charges against defendant for theft and estafa, the justice of the peace called defendant an "embezzler." Whereupon the latter gave him a shove in the belly.

None of the persons who were there present and who testified at the trial, learned of the subject of the conversation between defendant and the justice of the peace, nor did any of them state that he heard defendant address the said injurious and offensive words to the justice of the peace. One of these witnesses, however, Filomeno Sañiel, state that he heard the justice of the peace utter the word "estafador" (embezzler) and that immediately afterwards he saw defendant give the justice of the peace the shove before referred to. Both the former and the latter reciprocally charge the other with having commenced or caused the assault. As the defendant is an intelligent person and knew, for he had been a procurador judicial, the consequences of directing any offensive word to, or performing any act against, the justice of the peace in a public place like that where they were, and above all, as the defendant was then being prosecuted before this same justice of the peace, it is not likely that he assaulted the latter in the manner he did without other reason than that a complaint had been filed against him for estafa by virtue of an order of this justice of the peace, after the dismissal of the proceedings that had been instituted against him for theft, because it must be taken into account that the justice of the peace had stated to defendant the day before, and also that same morning, that he was willing to approve the bail which defendant had proposed to furnish for his continued provisional release during the trial of the cause for estafa, and had promised that he might remain at liberty until said bond should be given, the one the defendant had previously given in the cause for theft having been rejected. Furthermore, it is not understood why the defendant, who intended to go to court that morning with his bondsmen in order to continue in the enjoyment of his liberty and who was sure that the justice of the peace would approve the bond which he was to present very soon afterwards, should have wished to forfeit his liberty and lay himself liable to a new prosecution for an assault against the authority of the justice of the peace.

It is reasonable to believe that, in said conversation had between the two men (in which it would not be at all strange that the justice of the peace should have reprimanded the defendant for what the latter, as it was claimed,

had said to an aunt of his in Cebu), in view of the relations of friendship and good fellowship that existed between them, something may have been said which impelled defendant, considering himself offended by the justice of the peace, to have shoved the latter as he did, in a moment of excitement or anger. This must have been but of short duration, for the justice of the peace corroborated the testimony of the defendant that the latter picked up the justice's hat that had fallen on the ground and handed it to him. Defendant, moreover, testified that the justice of the peace called him an "estafador" and that, on hearing this word, he shoved the justice of the peace on the belly, but that defendant did not strike him, and on being asked: "Why did you shove him?" replied: "For his insult in calling me an embezzler; it made me hot." One witness testified that he heard the justice of the peace employ that word, and although his testimony cannot be accepted without reservation, because he is a cousin of the defendant, yet after considering the whole of the evidence and all the circumstances of the case, the time when and the place where the conversation took place and the relations that existed between these two men, it cannot be held that it was proven that defendant gave the justice of the peace that shove out of resentment for the acts performed by said justice of the peace in the performance of his official duties in the proceedings prosecuted before him, first for theft and afterwards for estafa. There does not exist, therefore, the necessary and essential element in order that that act performed by defendant may be classified as a crime of assault upon a person in authority, and much less can it be considered as such if it be admitted that the justice of the peace had called defendant an "embezzler," because then, as the justice of the peace abused his authority and originated the provocation, even though it be admitted that they were then talking of the cause for estafa pending in court at the time, the justice of the peace was not at that moment engaged in the performance of his official duties.

At all events, it is unquestionable that the justice of the peace, Manuel Alburo, did not act with proper prudence and discretion by discussing with the defendant in a public place like the railway station, as stated by the latter in his testimony, the propriety and legality of his orders and rulings in the proceedings that had been prosecuted against defendant for estafa, thereby giving occasion for the defendant to give the justice of the peace a simple shove, either because he believed himself authorized to do so by the friendship that existed between them, or because he deemed himself offended by the behavior of the justice of the peace, or on account of some word employed by the latter which he may have deemed offensive. That shove would have had no consequence whatever if the justice of the peace, as the lower court said in the judgment appealed from, fearing he would again be assaulted, had not started to run, for defendant did not repeat the assault and, as the same court also said in his judgment, the matter came to an end without further incident. The very fact that defendant picked up the justice's hat which had fallen from his head as a result of that shove, and immediately returned it, divests of all importance the alleged criminal act performed by defendant and shows that it was not of the nature ascribed to it in bringing a criminal prosecution for assault against a person in authority.

It was not proven, as aforesaid, that defendant in shoving the justice of the peace acted under the impulse of any resentment caused by the acts performed by the justice of the peace or by the rulings made by him in the proceedings for estafa then pending against defendant before the same justice of the peace, or by any other act performed by the latter in the performance of the duties of his office, with respect to defendant. It is, therefore, evident that said offense does not constitute the crime of criminal attempt against a person in authority, but that it was a simple assault and battery, or a misdemeanor against the person provided for and punished in paragraph 1 of article 689 of the Penal Code with a penalty of from one to five days' arresto or a fine of from 15 to 125 pesetas.

For the foregoing reasons, we reverse the judgment appealed from, order the dismissal of the proceedings for the crime of assault against a person in authority as charged, and sentence the defendant, as guilty of said misdemeanor against the person, to five days' arresto menor and to pay the costs corresponding to an action for a misdemeanor; the rest of the costs shall be paid de officio. So ordered.

Torres, Johnson, Carson, and Moreland, JJ., concur.

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