

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. POLICARPO RUELLO, DEFENDANT AND APPELLANT.

G. R. No. 9949. September 24, 1915

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

Policarpo Ruello has been convicted by the Court of First Instance of Tayabas as guilty of lesiones graves and sentenced to the penalty of three years six months and twenty-one days of prision correctional and accessories of the law, to pay an indemnity of three hundred pesos to the aggrieved party and to pay the costs. He was allowed half of the time he was held in detention by reason of this prosecution.

The act with which he was charged, as related in the judgment of the lower court, is as follows. On the first of November there were gathered together in the house of Damaso Ramos, Policarpo Ruello, Arcadio Contreras and others, engaged in training and trying-out certain fighting cocks in the lower part of the premises. After finishing this work they went upstairs to get some wine; Ruello asked for more wine, or perhaps asked for it for the first time, considering himself aggrieved because he had not been served like the rest. Out of this incident arose a quarrel between Ruello and Contreras; they exchanged blows within the house until separated. Contreras left the house and from another nearby saw his cock which Ruello had given him and which had been tied up in Damaso Ramos,' yard being carried away by Ruello. Contreras asked Ruello why he was carrying the cock and the latter answered that it was none of his business; blows were again exchanged, Ruello laid a hand on his bob, and Contreras backed away until he was able to lay his two hands on a large piece of wood with which to defend himself; Ruello then struck a blow on Contreras's hands holding the piece of wood, thereby cutting off the right thumb and wounding the left thumb; the latter wound took three months and three days to cure and the first, twenty-seven days, the cost of medical treatment being P220. These facts were shown by a preponderance of oral evidence, some of the witnesses being experts, and were correctly considered by the trial court. The defense, the court continues, consisting in that Ruello did nothing more when attacked than to defend himself from the blows struck by Contreras with the piece of wood, cannot be taken into consideration because it was not duly and satisfactorily supported by the proofs.

The defendant appealed. But though the court below found that the prosecuting witness was injured while crouching down, he did not hold that this fact constituted a qualifying or aggravating circumstance which would increase the penalty, and therein he committed no error. Nor did he err in holding that the defendant did not act in self-defense, since it appears from the finding of facts that defendant was the assailant, it not having been proven that the injured party first attacked him with the piece of wood.

The Attorney-General in his brief asks that the judgment be reversed, because the defendant ought only to be sentenced to the penalty of one year 8 months and 21 days of prision correctional instead of 3 years 6 months and 21 days of the same penalty, as was imposed in the judgment appealed from. He advances as a reason that it is paragraph 3, and not paragraph 2, of article 416 which should be applied because the amputation of the right thumb does not constitute the loss of a principal member; it is rather a deformity or loss of a member that is not a

principal one, and to this end he cites the case of *United States vs. Punsalan* (23 Phil. Rep., 375).

But the necessity of having to reduce to a lesser one in the same class the penalty imposed in the judgment is not a reason for reversing the judgment, but for modifying it, reducing it to its proper limits. It is not proper to reverse the judgment appealed from when the trial court, as in the present case, applied paragraph 2 of article 416, not for the loss of a principal member, but for the reason that "it appears from the record that the complaining witness, Arcadio Contreras, has lost his right thumb, and this loss has permanently disabled him from performing his customary work of plowing."

As the facts held to be proven show that, by reason of his injuries, the complaining" witness has become really disabled from performing some, if not all, forms of agricultural work in which he was habitually employed, the defendant has incurred the punishment provided in paragraph 2 of article 431 of the Penal Code (416 of that of the Philippines). (Decision of the supreme court of Spain of November 3, 1881.)

The same supreme court has held that paragraph 2 of article 431 of the Penal Code (art 416, Penal Code of the Philippines) was properly applied by the trial court because the prosecuting witness was disabled from performing the greater part of his duties as a laborer, his occupation, in consequence of the injury inflicted upon him; that the said disability is what determines the crime defined in the paragraph and article mentioned because, although the aggrieved party might perform some of the work demanded of him as a laborer, said disability is none the less real and effective if, for the majority of his other tasks, he was disabled, as he was held to be in the judgment appealed from. (Decision of November 13, 1888.)

In a case which came up from the criminal sala of the old Audiencia Territorial de Manila for injuries caused to an employee of the tramway company, then in existence, whereby his right hand was affected so that the flexibility of the fingers was impaired and the injury prevented him from performing his duties as a clerk, one of his habitual pursuits, the following decision was rendered: "That one of the habitual pursuits of the injured person being that of a clerk, and since by reason of the injuries he is disabled from performing his work with the necessary perfection, it is evident that the said injuries fall within the provisions of paragraph 2 of article 416, and not those of paragraph 4 as alleged; the latter are only applicable where no permanent impediment or disability results." (Decision of January 16, 1897.)

The judgment appealed from is wholly in accordance with law and is hereby affirmed with the costs against the appellant. So ordered.

Torres, Johnson, Carson, Trent, and Araullo, JJ., concur.

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