

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. GABRIEL HERNANDEZ, DEFENDANT AND APPELLANT.

G.R. Nos. 39840, 39841. December 23, 1933

Ponente: DIAZ, J.

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DIAZ, J.:

After the appellant had been tried in criminal cases Nos. 839 and 844 of the Court of First Instance of Camarines Norte, for resistance to agents of persons in authority and arbitrary detention, respectively, he was convicted and sentenced to three (3) years, six (6) months and one (1) day of prision correccional with the corresponding accessory penalties and to pay a fine of five hundred pesos (P500) with subsidiary imprisonment in case of insolvency, with the costs, in the first case, and to one (1) year and one (1) day of prision correccional with the corresponding accessory penalties and likewise to pay the costs of the suit, in the latter. From both judgments he appealed to this court for a review thereof.

The informations filed by the provincial fiscal of Camarines Norte against the appellant in the aforesaid two cases read as follows:

"That on or about the 27th day of August, 1932, in the municipality of Daet, Province of Camarines Norte, Philippine Islands, after the complainant, as the duly appointed provincial sheriff of Camarines Norte, had informed the said defendant of the existence of a writ of execution issued by the court against him in connection with civil case No. 775 entitled 'The Collector of Internal Revenue vs. Gabriel Hernandez', and after showing him the writ in question and on the occasion that said complainant, then acting in the performance of his duties, proceeded to attach the personal property belonging to him, the said defendant, taking advantage of his public position as provincial governor of Camarines Norte and abusing the same, by means of force and threat, resisted, refused and tenaciously opposed compliance with the aforesaid order of the court to be enforced by said complainant, and in order to accomplish such resistance the said defendant ordered the chief of police of Daet to detain and lock up the complainant, which was so done in effect.

"Contrary to law, and with the concurrence of the first aggravating circumstance specified in article 14 of the Penal Code, that is, the taking advantage by the offender of his public position." (Case No. 839.)

"That on or about the 27th day of August, 1932, in the municipality of Daet, Province of Camarines Norte, Philippine Islands, on the occasion that the offended party, Amador E. Gomez, as provincial sheriff of Camarines Norte, appeared at the house of the defendant, Gabriel Hernandez, to proceed with the attachment of the personal property belonging to the latter and his wife, by virtue of a writ of execution issued by the court in civil case No. 775, entitled 'The Collector of Internal Revenue vs. Gabriel Hernandez', the said defendant Gabriel Hernandez, who was then governor of Camarines Norte, and Marcos Panotes, who was chief of police of the municipality of Daet, taking advantage of their respective public positions and abusing the same, voluntarily, illegally and criminally, without any legal motive or right whatsoever, detained, locked up and deprived the said offended party of his liberty against his will, for a period of time less than three days.

"Contrary to law, and with the concurrence of the first aggravating circumstance (specified in article 14 of the Penal Code), that is, the taking advantage by the offender Hernandez of his public position." (Case No. 844.)

The appellant bases his appeal on the ground that the trial court committed the following alleged errors:

- "1. That in the statement of facts appearing in the decision appealed from, only the evidence of the provincial sheriff was taken into consideration;
- "2. In declaring in its findings of fact that the defendant 'energetically ordered the said chief of police to arrest the provincial sheriff on his responsibility as provincial governor of Camarines Norte';
- "3. In not holding it as a proven and undisputed fact that the provincial sheriff and the defendant were and still are political enemies and that the provincial sheriff harbored a personal grudge against him;
- "4. In not permitting the witnesses for the defense Marcosa Pimentel and Emilio Zaleta to testify in corroboration of the defendant's testimony to the effect that when the provincial sheriff forced his way into the house for the second time, the door thereof was locked, and in holding that the door in question was open;
- "5. In having given more credit to the testimony of the provincial sheriff and his deputy Jose Rada, and in discrediting the testimony of the defendant and his witnesses;
- "6. In holding that the defendant resisted by means of force and intimidation;
- "7. In holding that the defendant by a single act committed the offenses of resistance to agents of persons in authority and arbitrary detention, and in sentencing him to three (3) years, six (6) months and twenty-one (21) days for the first, and to one (1) year and one (1) day for the second;
- "8. In not dismissing these cases and absolving the defendant; and
- "9. In denying the defendant's motion for reconsideration and a new trial."

By agreement of the prosecution and the defense, the two cases in question, and case No. 840, for usurpation of judicial functions, which latter case resulted in the acquittal of the defendant therein, who is the appellant herein, were tried together.

Before presentation of evidence by the fiscal, the appellant spontaneously made the following admissions, to wit: That he, his wife Marcosa Pimentel and Angel Pimentel were defendants in civil case No. 775 instituted by the Collector of Internal Revenue in the justice of the peace court of Daet, Camarines Norte; that judgment was rendered therein sentencing the three of them to pay to the then plaintiff the sum of two hundred twenty-three pesos and twenty-six centavos (P223.26); that said judgment became final and executory on February 23, 1931; that the corresponding writ of execution was issued by the justice of the peace court of Daet; that he (the appellant) was and still is the provincial governor of Camarines Norte since October 16, 1931; that from February 13, 1932, to December 14th of the same year, Amador E. Gomez was the provincial sheriff thereof without having been suspended from such office; that Jose Rada was the deputy sheriff of Camarines Norte during the same period of time; that on August 29, 1932, he (the appellant) filed a complaint for trespass to dwelling against the said Amador E. Gomez in the justice of the peace court.

Immediately thereafter, the fiscal proceeded to present his evidence without any objection on the part of the appellant.

It appears from a careful examination of the evidence of record that on August 20, 1932, the provincial treasurer of Camarines Norte, acting under instructions from the Collector of Internal Revenue, asked for and obtained from the justice of the peace of Daet the writ of execution Exhibit B which was delivered to the provincial sheriff Amador E. Gomez for execution.

As a preliminary step in the execution of the writ in question, the aforesaid provincial sheriff, on August 24, 1932, sent his deputy Jose Rada to the office of the appellant, who was then the governor of Camarines Norte, to demand payment of the amount specified in the judgment rendered against him, his wife and Angel Pimentel, and to show him the writ of execution of the judgment in question. The appellant told the said deputy sheriff that he had no money with which to pay it at that moment but he promised to do so within thirty days. He noted this at the foot of the said writ Exhibit B.

Inasmuch as this proposition of the appellant was not satisfactory to him, the provincial sheriff Amador E. Gomez again sent his deputy on August 26, 1932, to inform the appellant that it was necessary for the latter to satisfy the judgment, otherwise his personal property would be attached in accordance with the requirement of the said writ. The appellant then proposed that the sheriff attach the stripping machine outfit which he had on his hacienda, a motor-propelled sail boat and a banca belonging to him, all of which had cost him more than one thousand fifty pesos but which he appraised at only six hundred forty pesos on that occasion, which sum was double the amount of the judgment in question. To that effect, he delivered to the deputy sheriff a list of said properties, Exhibit 1. Neither did this new proposition of the appellant satisfy the provincial sheriff. For the third time, he sent his deputy to the said appellant's office to tell him that the attachment of the personal property which he had in his house would necessarily take place.

In order to avoid the proposed attachment of his aforesaid personal property, the appellant addressed the letter Exhibit E to the sheriff entreating him in the meantime to suspend execution of the judgment in question, at least until he had received an answer to the telegram which he had sent to the Collector of Internal Revenue. He in fact sent a telegram to the aforesaid official requesting suspension of the execution, binding himself to pay the amount of the judgment with his salary as provincial governor. In reply thereto, said official, in the telegram Exhibit V, advised the appellant to file a petition to that effect with the justice of the peace court, saying that he would agree to the proposed arrangement if the official concerned granted his petition. Notwithstanding this, the deputy sheriff, acting under the provincial sheriff's orders, appeared at the appellant's house with several policemen between 2 and 3 o'clock on the afternoon of August 27, 1932, and again informed the said appellant of his intention to attach his personal property, particularly the piano and chairs which he had in his house, if he did not pay the amount of the afore-mentioned judgment. Believing the presence of so many policemen in his house as unnecessary, the appellant ordered those who accompanied the deputy sheriff to go back and attend to their own duties, addressing the letter Exhibit C to their chief thereby ordering him not to provide the sheriff with policemen.

Upon being informed by his deputy of the appellant's attitude, the sheriff went to the lieutenant of the Constabulary at Daet, and later to Captain Legaspi of the said organization—who happened to be in the barrio of Dogongan at that time—to ask for soldiers to help him enforce the writ of execution. Not having obtained any help, either from the former officer who told him that nothing would happen to the deputy sheriff in view of the fact that the persons involved were educated, or from the latter who requested him to put his petition in writing and furthermore to certify that the police force was unable to provide him with the necessary aid, he applied to the municipal president for police assistance. He was given three men with whom the deputy sheriff, under orders from the said provincial sheriff, again returned to the appellant's house for the same purpose. When the deputy sheriff again failed in his attempt and the appellant ordered the policemen to retire for the second time, the provincial sheriff himself, accompanied by the chief of police, went to the former's house, first passing by and communicating with the municipal president Francisco Carranceja and Froilan Pimentel, who filed the complaint and who was at the said house at that time. When he arrived at the appellant's house, he again insisted in proceeding with the attachment. Said appellant once more reiterated his request not to attach the personal property in his house but those specified in Exhibit 1, adding that he would be willing to surrender other property in case

the proceeds of the sale thereof were insufficient to satisfy the judgment. Joining the conversation, the appellant's wife told the said provincial sheriff that, if he so desired, he could sell the shelves under her house, besides the property offered by her husband, except her piano and chairs. Unable to control her temper under the impression that her piano and chairs were to be seized by the provincial sheriff, the said wife of the appellant made more or less insulting remarks to the sheriff. In order that things might not come to the worst and to avoid his wife meddling in said affair, the appellant invited the said sheriff downstairs for the purpose of coming to an understanding with him out of his wife's presence. Once there, the appellant showed the telegram of the Collector of Internal Revenue, Exhibit V, to the sheriff to convince him that his request for the suspension of the execution was reasonable. However, the provincial sheriff said that he did not acknowledge the telegram in question and that, any way, he considered it his duty to proceed with the execution. He likewise stated that he did not agree with the proposition to attach only the appellant's stripping machine outfit and his boats for the reason that they were four kilometers away from the town, and, furthermore, because he believed that in case they were sold at public auction, he would not obtain a good price for them. Neither did he agree with the other proposition to the effect that the latter be allowed to pay his debt with his salary, even if he were given a formal authority to collect the same. While the two were discussing the matter, the appellant's wife or another person, who was upstairs, barred the door, perhaps to prevent the piano and the chairs from being carried away.

Instead of quieting down in view of the reasons given by the appellant, the provincial sheriff curtly asked the latter whether he could guaranty his personal safety. Having been answered in the negative, he then went upstairs, in spite of the appellant's warning not to do so for the reason that the door was barred. After forcing open the door by breaking the bar thereof, he seized one of the chairs, which was within reach of his hand, to begin what he believed, according to him, was a legitimate exercise of his functions as sheriff in the enforcement of a writ of execution which was delivered to him for execution. In view of the provincial sheriff's actions, the appellant approached and held him by the arm with one hand while with the other he wrested the chair which said sheriff wanted to deliver by force to one of the several laborers who were standing by for his orders, under the house. While these developments were taking place, and even prior thereto, that is, from 2 o'clock on the afternoon of that day, August 27, 1932, many people gathered about the appellant's house to see and witness how the governor's property was to be attached inasmuch as the news had spread that the sheriff Amador E. Gomez would go there that afternoon to do so. Many persons, young and old, on the street near the appellant's house said that the sheriff intended to attach the property of the latter and take his piano and chairs. This spectacle was accentuated by the presence of several policemen.

When the provincial sheriff went up to the house to force open the door, as stated, the appellant called the chief of police, who was on the street, and ordered him to arrest the sheriff on the alleged ground that the latter was committing an act of trespass to dwelling. Said officer of the law made the arrest not only because he was ordered to do so by his superior, but also because he really believed that the sheriff was committing an abuse in the house in question by carrying away a chair by force.

The appellant's proposition to the effect that he be permitted to pay the amount of the judgment in question with his salary as governor, was accepted by the Collector of Internal Revenue, and pursuant to such understanding, he actually paid it on October 4 and November 1, 1932, there having been no necessity, therefore, of resorting to the process of execution.

After the provincial sheriff has been placed under arrest by the chief of police, he was brought to the latter's office at about 6 o'clock that afternoon. He was permitted to drop in at the house of the justice of the peace to find out whether he could be released under bond. Inasmuch as the said justice of the peace stated that he could not fix the amount of the bond unless an information was filed against him, it was not possible for the sheriff to file any

bond. When the appellant was informed thereof in a letter, Exhibit B, addressed to him by the chief of police, he replied by means of Exhibit C, as follows:

"Sir: Replying to your query regarding the person in detention, I again reiterate what I have already stated to the effect that you may provisionally release him inasmuch as we shall not be able to file an information against him tonight, nor tomorrow being Sunday. As far as I am concerned I have no objection to placing him at liberty under instructions to appear on Monday morning."

This letter Exhibit C was sent to the chief of police at about 7 o'clock that same evening but, for one reason or another, the sheriff did not leave the former's office until 8.45 o'clock that night.

From the foregoing, which is a summary of the pertinent facts connected with the two cases under consideration, it will be seen that the alleged offense of resistance to an agent of a person in authority, with which the defendant is charged, consisted in his having prevented the provincial sheriff from carrying away his piano and chairs from his house by holding him by the arm with one hand while with the other he wrested the chair which the said sheriff was trying to deliver to one of the several laborers standing by for his orders below or at the foot of the stairs of the appellant's house. The alleged offense of arbitrary detention with which he was likewise charged consisted in his having ordered the chief of police to arrest said sheriff, depriving him of his liberty at least from 6 to 8.45 o'clock in the evening.

Under other circumstances, the appellant's act in trying to prevent the sheriff from carrying away his piano and chairs, in the manner above stated, would constitute a slight offense of resistance to an agent of a person in authority, but under the circumstances which led to the commission thereof, it cannot be considered as such. There is no question that a sheriff may attach the property of a judgment or execution debtor if he is clothed with the necessary authority under a judicial writ, as provided for in section 453 of Act No. 190. However, it should not be construed to mean that, having discretion in choosing the property to be attached, he should necessarily levy upon such property as is valued by the execution debtor, particularly when the latter places other property at his disposal, as was done herein, the value of which is greatly in excess of the amount of the judgment under execution. The aforesaid provision does not forbid the execution debtor, in case he has sufficient property to answer for the payment of the judgment, to point out to the sheriff which of such property should be attached and sold to satisfy the judgment with the proceeds thereof. On the contrary, it may be inferred from the provisions of section 457 of the aforesaid Act that there would be no irregularity committed by such procedure. It should be noted that, after describing the manner in which the personal property of the execution debtor should be sold at public auction, the last sentence of the afore-cited section reads as follows:

"The judgment debtor, if present at the sale, may direct the order in which property, real or personal, shall be sold. when such property consists of several known lots or parcels of articles which can be sold to advantage separately, and the officer must follow such directions."

If this is permissible, and it is being followed in all cases, why may not the same be done in the case of an attachment when there are several properties that may be attached and, furthermore, their value is sufficient to answer for the amount of the judgment?

The provincial sheriff really acted arbitrarily and with malice, and even more than that, with unnecessary severity and abuse. The time requested by the appellant for the suspension of his action was only a little more than one day, which was the intervening period of time between Saturday night, when the incidents which gave rise to the two criminal processes under consideration occurred, and the following Monday, when, pursuant to the suggestion of the Collector of Internal Revenue, his judgment creditor of which suggestion said sheriff was fully aware, he would be able to apply to the justice of the peace court which issued the writ, for even a temporary

suspension of the writ in question, inasmuch as said judgment creditor was agreeable thereto. The amount involved therein was only two hundred twenty-three pesos and twenty-six centavos. Neither was it a case in which an insolvent person was concerned for the appellant was not insolvent because he had other property aside from that offered by him under Exhibit 1 and the shelves which he had under his house, which shelves must be considered valuable on the ground that the prosecution did not prove the contrary. Furthermore, he had his salary as governor, which he also offered in payment of his obligation, even to the extent of expressing his willingness to execute the necessary power of attorney so that the sheriff could collect and apply it to satisfy the judgment which he was endeavoring to execute. The truth is that the sheriff saw an opportunity to get even with the appellant who defeated him in the preceding elections and to avenge the affront which the latter offered him in tenaciously opposing his appointment as provincial sheriff. These facts place the latter's testimony in disrepute, making it entirely unworthy of credit, inasmuch as it had been given the lie by the appellant himself and by the other witnesses for the defense. It is true that his testimony was corroborated in some points by that of the deputy sheriff Jose Rada and of the municipal president of Daet Francisco Carranceja, but the former is a subordinate of the said provincial sheriff and it is to be expected that he would side with the latter; and, with respect to the other witness, according to the testimony of the sheriff himself, he was manhandled, to avoid quoting his offensive words, by the appellant years before. Furthermore, both of them are the appellant's political rivals.

When an obligation may be complied with or a right enforced in one way or another without detriment to the person charged with such compliance or enforcement, there is no need of so doing to the annoyance and humiliation of the persons concerned. As much as possible, one should find some means of harmonizing compliance with such duty and enforcement of such right with the rights and obligations of others.

In view of the foregoing proven facts, we are of the opinion that the provincial sheriff exceeded his authority in the performance of his duties as such, and the rule in such cases is that the victim of the abuse has a legitimate right to defend himself. (People vs. Chan Fook, 42 Phil., 230.) The appellant did nothing more than act in that sense and therefore he cannot be guilty of resistance. His was an act of legitimate self-defense.

With respect to the alleged arbitrary detention, the evidence of the prosecution is not convincing. The preponderance of the evidence shows that the provincial sheriff really forced open the door of the upper story of the appellant's house in spite of having been warned not to go upstairs because said door was barred. Under such circumstances his arrest by the chief of police, upon petition of the appellant, was not entirely without justification on the ground that the latter, as well as the said chief of police, believed that he was committing an abusive act. The arrest of the said sheriff should be considered as a mere incident of the defense availed of by the appellant to protect his rights.

Wherefore, we are of the opinion and so hold that the appellant is not guilty of the offenses with which he was charged in the two cases in question. Therefore, the judgments of the trial court appealed from are hereby reversed, and the defendant is hereby acquitted of the offenses of resistance to an agent of a person in authority and arbitrary detention of which he was convicted under the aforesaid two cases, with the costs of both instances de oficio. So ordered.

Street, Abad Santos, Vickers, and Butte, JJ., concur

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