

[ G.R. No. 3161. January 22, 1907 ]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. JUAN GONZALEZ ET AL., DEFENDANTS AND APPELLANTS.**

**D E C I S I O N**

**JOHNSON, J.:**

These defendants were charged in the Court of First Instance of the Province of Ambos Camarines with the crime of *lesiones*. They were tried and found to be guilty of said crime and sentenced by the lower court to be imprisoned for a period of four months and one day of *arresto mayor* and each to pay an equal part of 6 pesos to one Carlos Calero, the offended party, as indemnity, and in case of insolvency to suffer subsidiary imprisonment at the rate of one day for every 12½ pesetas and to suffer the accessory penalties provided for in article 61 of the Penal Code. The defendants were found guilty and punished under the provisions of article 418 of the Penal Code, taking into consideration the aggravating circumstance mentioned in paragraph 9 of article 10 of said code. From this decision the defendants Juan Gonzalez, Juan Fermo, and Zacarias Talento appealed to this court. The other two defendants did not appeal.

An examination of the evidence adduced during the trial of said cause discloses the following facts:

That on the night of the 12th of December, 1905, the defendant Juan Gonzales was walking through the streets of the pueblo of Capalonga of said province and met one Carlos Calero with five companions; that the said Juan Gonzales spoke to the said Carlos Calero and requested him to come to one side in order that the former might speak to the latter; that the conversation which took place between these two related to the recent election held in the said pueblo; that during said conversation an altercation arose and the said Gonzalez struck Calero with his cane, whereupon the other above said defendants suddenly appeared upon the scene and each with canes and other instruments began to assist the said Gonzales

in beating the said Calero; that the said Calero received from the said beating several wounds.

During the trial one Narciso San Agustin, a doctor, was called as a witness; he described the wounds received by the said Calero and stated that it would probably require eight or ten days of medical attendance before said wounds would be healed. The said Calero himself appeared as a witness and stated that he was able to pursue his ordinary labors after three days, or, in other words, that he was only disabled from continuing his ordinary labor during the 13th, 14th, and 15th of the said month of December. The said doctor failed in his testimony to give any sufficient reason, in our opinion, to justify his statement, as against the statement of the offended person, that the said wounds would require medical assistance for eight or ten days.

In view of the fact that the offended person himself stated that he was able to pursue his ordinary labors after the expiration of three days, the accused should not be punished under article 418 of the Penal Code, but under article 587 of the same code. Said article 587 provides that—

“Those who shall cause physical injuries that prevent the injured person from working from one to seven days, or make medical attendance necessary for the same period, shall be punished with the penalty of *arresto menor*.”

Considering the aggravating circumstance of superiority mentioned in paragraph 9 of article 10 of the Penal Code and the absence of extenuating circumstances, the defendants must be punished in the maximum degree of *arresto menor*. The lower court condemned the defendants to pay equal shares of the indemnity of 6 pesos. The defendants should have been condemned to pay 6 pesos jointly and severally.

The judgment of the lower court is therefore hereby reversed and the said defendants who appealed from the judgment of the lower court are hereby sentenced to be imprisoned in the provincial jail of the Province of Ambos Camarines for a period of thirty days and to pay jointly and severally to the offended party the sum of 6 pesos, and the costs. After expiration of ten days let judgment be entered in accordance herewith and ten days thereafter the record remanded to the Court of First Instance for execution. So ordered.

*Arellano, C. J., Torres, Mapa, Carson, and Tracey, JJ., concur.*

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