

1 Phil. 537

[G.R. No. 926. December 09, 1902]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. PAULO CATEQUISTA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

LADD, J.:

The defendant was convicted by the court below of the offense of *lesiones menos graves* under article 418 of the Code. We are of opinion that the evidence was sufficient to warrant the conviction.

The first paragraph of the article cited fixes the general rule for the punishment of the offense, which is to be by "*arresto mayor, or destierro and a fine of from 325 to 3,250 pesetas* in the discretion of the court." The second paragraph makes an exception of cases where the injury is inflicted "with manifest intent of outrage or under humiliating circumstances;" in these cases the punishment is to be by *arresto mayor* and a fine of from 325 to 3,250 pesetas. In the present case the conviction was under the first paragraph, and the evidence would not have warranted a conviction under the second. The penalty imposed was two months and one day of *arresto mayor* and a fine of 325 pesetas.

The two alternative penalties which may be imposed under the first paragraph are (1) *arresto mayor* and (2) *destierro* and a fine. The fine can not be imposed as a part of the first alternative penalty. Such is the construction of the clause indicated by the punctuation, which in the case of a carefully prepared Code is entitled to considerable weight, and such is the construction which has been placed upon the same clause in the corresponding article of the Code of Spain by the highest judicial authority of that country, judgment in cassation of January 12, 1875. See also to the same effect 3 Viada, Commentaries on the Penal Code of Spain, 86; 4 Groizard, Commentaries on the Penal Code of Spain, 565. The court erred, therefore, in the present case in imposing a fine in addition to the imprisonment.

The court also erred in not determining in the judgment the civil liability of the defendant for the *danos* and *perjuicios* which resulted from the criminal act. Such civil liability is a necessary consequence of criminal responsibility (Penal Code, article 17), and is to be declared and enforced in the criminal proceeding except where the injured party reserves his right to avail himself of it in a distinct civil action. (Code of Criminal Procedure of Spain, article 112; Provisional Law for the Application of the Penal Code in the Philippines, article 51, No. 4.) No such waiver or reservation is disclosed by the record here.

The judgment of the court below must therefore be modified as respects the penalty imposed by eliminating the fine; and there should be added a declaration that the defendant is entitled to indemnification in the sum of 5 pesos for the *perjuicios* which resulted from his inability to work for ten days in consequence of the assault, together with such sum as he may be able to prove that he has expended for medical attendance.

As thus modified the judgment will be affirmed, and case remanded to the court below for the execution thereof. Costs will be *de officio*. So ordered.

Arellano, C. J., Torres, Cooper, Smith, Mapa, and Willard, JJ., concur.
