1 Phil. 73

[G.R. No. 412. November 16, 1901]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. CAYETANO ABALOS, DEFENDANT AND APPELLANT.

D E C I S I O N

ARELLANO, C.J.:

Shortly after 8 o'clock in the evening of October 23, 1900, six unknown persons presented themselves in the immediate vicinity of the house of Pedro Pascua, situated in the pueblo of Santa Maria, Province of Ilocos Sur. One of these ordered that the man within the house come down, and as Pascua did not do so because of his fear, one of the unknown, who was recognized and proved later to be the accused, Cayetano Abalos, went up into the house. There the accused, without any apparent motive, struck Pascua repeated blows with a dagger, inflicting upon him five wounds, two of which, in the left side of the chest and in the abdomen, were serious and dangerous according to the medical practitioner who examined him. The patient was cured in thirty-one days, with the result that an opening remained in the abdominal region which produced a hernia which exposed the patient to grave accidents. Notwithstanding the fact that the aggressor set Out to escape immediately after committing the assault, the wife and daughter of the wounded person, as well as he himself, were able to recognize him.

The facts related appear duly proved in the action as well as the guilt of the accused, Cayetano Abalos, fully convicted as principal by direct participation of the crime of assault of grave character on the person of Pedro Pascua. Although the accused pleaded not guilty to the charge of the crime imputed to him, his guilt is established by the testimony of two eyewitnesses who confirm the accusation and, together with the person attacked, recognized the accused at the time of the assault; by the statements of three neighbors who were attracted by the cries of the wife of the complainant and who were then informed of what had taken place and of the fact that the attacking person was Cayetano Abalos; by the inexplicable absence and disappearance of the accused from his house since the date of the

occurrence, without having appeared in spite of judical citations until he was arested on April 3 of this year. This absence is proved by the answers given by the justices of the peace of the districts of Ilocos Sur and Union and by the local president of Narvacan, which contradict and destroy the proof of an *alibi* attempted by the defendant. It is also to be noted that whereas the wife and daughter of the accused assert this *alibi* two other witnesses whom he had also cited testified that Cayetano Abalos absented himself from his house, going, according to one of them, to the town of San Jose de Abra.

There should be considered in the perpetration of the crime the concurrence of the aggravating circumstances Nos. 15 and 20 of article 10 of the Code, since the defendant committed the same by availing himself of the darkness and silence of the night, attacking the complainant in his own house without the latter's having provoked or given reason for the deed. Owing to the nature of the crime the mitigating circumstance provided in article 11 should not be considered, nor should any other extenuating circumstances be deemed present. Since on account of the consequences produced by the wound of the abdomen, the deed must be classed as constituting a grave assault (*lesion grave*) included in article 416, No. 3, of the Penal Code, it follows that the accused has incurred the penalty prescribed in the aforesaid article and number in the maximum degree.

In this court the Solictor-General asks that the final judgment of the Court of First Instance be annulled on the ground that the same was pronounced after the 16th day of June last, from which he infers that it was rendered by one who was not a judge.

By article 65 of the law organizingcourts of justice for the Philippine Islands, No. 136 of those promulgated by the legislative commission, the Courts of First Instance which then existed became extinguished by the subsitution of those which that same act created. The latter was passed the 11th day of June, of the present year and went into effect on the 16th day of the same month. (Art. 92.)

Consequently the said judges should have ceased to act on the 16th, the day on which the new organic law commenced to operate, but in fact almost all of them continued exercising their functions until the newly appointed judges arrived to take charge. The reason for this continuation was, as to some, due to ignorance of the new organization, and as to others, the circumstance that, under previous laws which controlled the commencement and the termination of the jurisdiction which they exercised, certain prior acts were necessary without which they would have incurred criminal responsibility, such as might have been incurred in the present case for abandonment of their public functions to the injury of the

public, which would have been without an administration of justice during the days that elapsed until the new judges assumed charge. As to the public there was nothing to induce a contrary belief, that is, that certain judges whom the public was accustomed to recognize as true and legitimate judges were incompetent.

Therefore they were judges of the new courts *de facto* and in good faith. No usurpation of jurisdiction can be imputed to them. As such judges they were accepted by common error.

It is a universally professed doctrine that the acts of judges, considered such by common error, whether there be color of title or not (as in this case there was), are valid and effective in favor of the public welfare. This, according to the phrase of one law, is the most humane course, one which can injure no one, and brings no discredit upon the administration of justice. On the other hand much harm would result to the prejudice of the public, wholly free from blame and unchargeable with any responsibility, if by the rigor of the law such acts must be declared null, solely upon the ground that the judges were, according to the intent of the legislator, to cease to be such after the 16th of June last.

In the American law there can be cited the decision of the Supreme Court of the United States in the case of Norton *vs.* Shelby County (118 U. S., 425, 445, 446).

In the Spanish law, law 4, title 4 of the third *Partida*, in which is reproduced the famous law of *Barbarius Philippus* of the Roman Digest, treats of the acts of a slave who had been invested with judicial authority, it not being known that he was in slavery; in such case as this, declares the law, "the judgments and the orders and all other things done in virtue of his office, until the day it was discovered he was a slave, would be valid. And this the ancient sages thought just, because when a whole people commit an error it should be overlooked by all of them, as though it had never happened." The fifth law, first title of Book XI, of the *Novisima Recopilacion*, concerning this same case, declares "that the judgments and orders and all other things done in virtue of his office as judge were valid up to the day he was discovered to be a slave since by *common opinion he was regarded as free*."

For these reasons we decide that the judgment here alleged to be null should not be so declared.

For the foregoing considerations it is proper that Cayetano Abalos be sentenced to the penalty of four years of *prision correccional* together with the accessory penalties prescribed in article 61 of the Code and to indemnify the injured party in the sum of 100 pesos and in the event of insolvency to the corresponding subsidiary imprisonment; and to

the payment of the costs in both instances. In the penalty imposed there is not to be computed the provisional imprisonment of the defendant for the reason that he is within the exception provided in No. 3 of the ninety-third rule of the provisional law for the application of the Penal Code. The judgment appealed from is therefore affirmed in so far as the same is in accord with the foregoing opinion and reversed in so far as it is not so. So ordered.

Torres, Cooper, Willard, and *Mapa, JJ.,* concur.
Ladd, J., did not sit in this case.

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