

6 Phil. 489

[G.R. No. 2919. October 12, 1906]

**THE UNITED STATES AND ANDRES AVILA, PLAINTIFFS AND APPELLEES, VS.
LUCAS KANLEON, DEFENDANT AND APPELLANT.**

D E C I S I O N

WILLARD, J.:

While a religious procession was passing through the streets of Maasin, in the Province of Leyte, and several persons were walking immediately behind the band of music which was a part of the procession, the complainant, Padre Andres Avila, who was the parish priest and who was in charge of the procession, directed these persons to leave that place and to join in the procession itself. All of them except one left the place. Thereupon the defendant said to a bystander, "We will see if I will be ordered to leave there," and he went to the place where the former group had been disbanded. Thereupon the complainant went to him and told him that "that was a reserved place in the procession and that if he desired to join in the procession he could go before or in the middle of the procession, and that for him to remain where he was would be a disturbance of the order of the procession." The defendant refused to leave the place and thereupon the complainant laid hands upon him. The defendant pushed the complainant away and the complainant struck the defendant with a candle. The defendant thereupon struck the complainant with his fists, causing slight injuries.

The defendant was prosecuted for the crime of *injurias graves*, as defined in articles 456 and 457 of the Penal Code. He was convicted and sentenced to one year eight months and twenty days of banishment and prohibited from coming within 50 kilometers of the pueblo of Maasin during that time. He was also sentenced to pay a fine of 650 pesetas.

There was considerable testimony in the case as to whether the place in the rear of the band was or was not a part of the procession, it being claimed by the defendant that the procession terminated with the band and that it was the custom of the people to follow the

band without joining the files in front of the band of which the procession was made up. We do not find it necessary to decide this question, because we do not think under any circumstances the defendant can be convicted of the crime of *injurias graves*. We have had occasion recently to discuss that offense and in the case of Padre Simeon Oñate vs. Engracio Beltran,^[1] No. 2182, we said:

“El enjuiciado pudo haber buscado al querellante en otro sitio que no fuera via publica a pedir las explicaciones que deseaba, pero prefirió hacerlo en publico en la calle y a la vista del vecindario con indudable y maliciosa intencion de afrentar, envilecer y menospreciar al sacerdote Onate como ministro del culto de la mayoria de los vecinos de Nabua.”

In the present case, while it appears that the defendant went where he did for the purpose of seeing what the priest would do, we do not think that it appears that he had any intention of committing a physical assault upon the complainant. If he had no such intention, then the offense of *injurias graves* was not committed. Every street fight in which two persons engage can not constitute that offense. There must be evidence that the defendant intended to engage in the fight for the purpose of insulting and bringing his opponent into contempt in the eyes of the public. (Judgments of the supreme court of Spain of the 12th of July, 1878, and the 31st of May, 1892.)

The judgment of the court below is reversed and the defendant is acquitted, with the costs of both instances *de officio*. After the expiration of ten days from the date of final judgment let the cause be remanded to the Court of First Instance for proper procedure. So ordered.

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

^[1] Not reported.
