

[G.R. No. 1862. April 08, 1905]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JULIAN DAGALEA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

WILLARD, J.:

It is apparent that Helm, the complaining witness, provoked the assault which was made upon him in the house of the appellant. It is also apparent that in his testimony he grossly exaggerated the occurrence and the effect of the wounds which he received. The affair could not have been as serious as he claims it to have been. He testifies that the first blow was inflicted on the right side of his head and knocked him senseless to the floor; that the defendant Antonio de la Cruz struck him many times with a large club on the arm, back, and shoulders; that there were ten or fifteen men in the room and that they struck him fifteen or twenty times and threw him to the floor four or five times and that he left the house in a delirious state.

This testimony is refuted by the evidence of the American doctor, Heard, who examined Helm immediately after the event and described his wounds. The doctor says nothing about any wounds upon the back or shoulders. The wounds described might well have been inflicted by the weapon which Helm and Clemmer say that the appellant had, namely, a stick with a nail in it. The certificate of the American doctor Huntington as to the wounds which the appellant received upon this occasion shows that they were fully as severe as those received by Helm. The testimony of Helm is also refuted by the fact that after the first disturbance in the house of the appellant, Helm Avent to his own house, secured his revolver, and immediately returned to the house of the appellant. His revolver was taken from him at the door by an American soldier there on guard. Helm entered the house and carried away certain articles which he claimed were his own. The appellant testified that the property thus carried away belonged to himself. According to Helm's own statement he went to the house of the appellant the first time for the purpose of taking away articles of

his own which his former servant Marcos might have stolen from him and carried there. He says that he purposely refrained from seeking the aid of the judicial authorities. His conduct shows that he intended to and did take the law into his own hands and that his purpose was, at least upon the second visit after he had returned to his house and secured his revolver, to take the articles which he claimed to be his own away from the house by force.

There was no evidence to show that Helm was at all disabled or that he was prevented from following his usual occupation for any length of time.

There is not sufficient evidence in the case to show any intent to kill. There was ample opportunity to have done this, according to Helm's statement, before Clemmer arrived, if such had been the purpose of the defendants. The judge below based his decision to the contrary upon a statement made by Clemmer that he heard the defendants say, "Kill him; throw him out of the window." Clemmer's testimony is to the effect that the defendants spoke in Spanish and that is what he understood them to say, Helm testified that the defendants insulted him and said, "Kill him; throw him out of the window." In view of all the evidence it is plain that there was no intent on the part of the defendants to proceed to any such extremities.

The case falls under article 588, No. 1, of the Penal Code and all that the defendants should have been convicted of was a misdemeanor. The judgment so far as it relates to the defendant Julian Dagalea is reversed and the appellant is convicted of the misdemeanor defined in said article 588 and is sentenced to ten days of *arresto menor*, the imprisonment to be suffered in his own house. He is also entitled to an allowance upon this time of one-half of the period of any imprisonment which he may have suffered prior to this date, with costs *de oficio*.

The court below acquitted two defendants and convicted the appellant and Antonio de la Cruz and sentenced them to ten years of imprisonment each. This penalty is four years longer than the highest penalty known to the law for the crime charged in the complaint, and it is five years and ten months longer than the highest penalty which could have been inflicted upon the defendants if the facts stated in the complaint had been proven. However, as the defendant Antonio de la Cruz did not appeal from this judgment, we have no power to interfere with the sentence so far as he is concerned.

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

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