

4 Phil. 158

[G.R. No. 1989. January 23, 1905]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. CELEDONIO NERY,
DEFENDANT AND APPELLANT.**

D E C I S I O N

JOHNSON, J.:

The defendant in this case was charged with the crime of sedition and was tried in the Court of First Instance of the Province of Nueva Ecija. After hearing the testimony in the case and the arguments of the counsel for the State and the defendant, the court found that the evidence was not sufficient to support the charge of sedition, but did find that the evidence was sufficient to find the defendant guilty of a violation of section 1 of Act No. 619, and sentenced him to five years *de presidio* and to pay the costs.

The evidence shows that the defendant, in the month of February, 1903, was a Constabulary soldier, and was stationed in the pueblo of San Jose, in said province; that the Constabulary were attacked by the band of Felipe Salvador, called "Santa Iglesia," composed of about one hundred armed persons; that at the time of the attack the defendant was acting as corporal of the guard; that the band was armed with firearms, bolos, and clubs; that the object of the said band was to capture the arms of the Constabulary; that when the said band retired from the attack the said defendant retired with them; that he was the only member of the Constabulary who was captured or went away with said band; that later the accused was captured in company with said band of Felipe Salvador. The defendant offered no defense whatever.

The evidence adduced in this case clearly fails to show that the

defendant was guilty of the crime of sedition, as defined in section 5 of Act No. 292 of the Commission, and the question is whether or not a Court of First Instance, where a person is charged with the crime of sedition, can find the defendant guilty of the crime defined in Act No. 619, an act entitled "An act to promote good order and discipline in the Philippines Constabulary."

Section 1 of Act No. 619 provides:

"Any member of the Constabulary who begins, excites, causes, or joins in any opposition or resistance to, or defiance of, any superior authority in the Constabulary with intent to usurp, subvert, or override the same, or who, being present, does not use his utmost endeavor to suppress all such opposition, resistance, or defiance, or who, having knowledge of any such opposition, resistance, or defiance being intended, does not, without delay, give information thereof to such superior authority, shall be fined not exceeding ten thousand dollars or imprisoned not exceeding ten years, or both."

Act No. 619 is an act to promote good order and discipline in the Philippines Constabulary. Section 1 of said act punishes the members of the Constabulary who in any way manifest or excite or join in any opposition or resistance or defiance of "any superior authority in the Constabulary" with intent to usurp, subvert, or override such authority; or who, being present, does not use his utmost endeavor to suppress such opposition or resistance or who does not give information to such "superior authority."

Act No. 292 of the Civil Commission, creating the punishment for the crime of sedition, was enacted for the purpose of punishing resistance to the lawful authority and laws of the Government.

Act No. 619 is purely disciplinary in its operation, enacted for the purpose of preserving the loyalty and obedience of the members of the Constabulary to the "superior authority in the Constabulary." The offense created by Act No. 619 is not a cognate offense to the crime of

sedition. When a person is charged in a complaint with a crime under the provisions of General Orders, No. 58, and the evidence does not show that he is guilty of the crime charged, but does show that he is guilty of some crime or other lesser offense, the court may sentence him for the other lesser offense, provided the lesser offense is a cognate offense and is included in the complaint with the court.

An offense against the "superior authority in the Constabulary" is not a cognate offense to an offense against the sovereignty or laws of the State and the court could not under a complaint for sedition, defined in section 5 of Act No. 292, find the defendant guilty of the crime defined in section 1 of Act No. 619. Therefore the sentence in this case is reversed and the provincial fiscal is hereby ordered to present a complaint against the defendant for a violation of the provisions of Act No. 619 of the Philippine Commission within ten days after this cause is received by the clerk of the Court of First Instance of said province. The clerk of the Court of First Instance of the Province of Nueva Ecija is hereby directed, upon receipt of this decision, to give the fiscal of said province immediate notice of the foregoing decision. So ordered.

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