

[ G.R. No. 1367. January 04, 1904 ]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. PACIFICO GONZAGA, DEFENDANT AND APPELLANT.**

**D E C I S I O N**

**TORRES, J.:**

On October 21, 1902, the provincial fiscal of Cebu filed an information in the Court of First Instance charging Pacifico Gonzaga with having, in the month of July of that year and while acting as president of the municipality of Ronda, Cebu Province, committed the crime of usurpation of judicial power. It was alleged in the information that there was in the town at the time referred to a justice of the peace named Ruperto Gimarino and an auxiliary justice named Salvador Veloso; that both had been duly appointed and were clothed with the necessary authority to discharge the duties of their respective offices whenever called upon; that between the 21st and the 25th of July, 1902, a woman named Rafaela Mercado appeared before Gonzaga, who was in the town hall of Ronda, as the president of the municipality and charged the said justice of the peace, Gimarino, with the crime of malfeasance; that President Gonzaga, who had long been an enemy of Gimarino, illegally, willfully, and maliciously admitted the complaint presented by the woman Mercado, acted upon it, held a preliminary investigation, took the testimony of the prosecutrix and her witnesses, and ordered the arrest of Gimarino, contrary to the statute in the case made and provided.

The accused, having been arraigned upon the information, pleaded not guilty. The case subsequently came on for trial, evidence was taken, and upon the proof so adduced the judge entered a decision on

February 24, 1903, condemning the defendant, Gonzaga, to the penalty of three years of suspension from office and to the payment of the costs. Against this judgment the defendant appealed.

A judge who assumes authority pertaining to the executive officials or impedes them in the lawful exercise of their powers is punishable by suspension.

The same penalty is incurred by any executive officer who assumes judicial power or prevents the execution of an order or decision rendered by a competent judge. (Art. 374 of the Penal Code.)

The penalty for this offense is from one month and one day to six years of suspension from public office, from the right of suffrage, from qualification for elective office, and from the exercise of a profession or trade. (Arts. 25 and 96 of the Penal Code.)

The proof in this case establishes the fact that the defendant, as municipal president of Konda, by virtue of the complaint filed by Micaela Bucog, the mother-in-law of the complaining witness, Rafaela Mercado, proceeded to try Ruperto Gimarino, the justice of the peace of said town, for the crime of malfeasance in office, the said justice of the peace having been held under arrest for several hours in the municipal building and the charge being that he had failed to act upon a complaint filed by the said women and neglected to make investigation concerning certain ill treatment and abuse of the prosecutrix and her husband by two Constabulary soldiers.

It is also an established fact that when a demand was made upon the defendant by the auxiliary justice of the peace for the delivery to the latter of the records of the preliminary investigation concerning the charge of malfeasance brought against Gimarino, although at first the defendant alleged that he had jurisdiction over such proceedings, he finally acceded to the demand and forwarded the said record to the auxiliary justice.

Both the Municipal Code and Act No. 194 invest the municipal presidents with judicial authority in criminal cases in the absence

of the justice of the peace or his auxiliary, or when these two officers are absent or disqualified from acting in any particular case.

From the mere fact that the municipal president, upon the demand of the auxiliary justice, discontinued the prosecution he had commenced against Gimarino for malfeasance, we conclude that in this case the defendant did not act in bad faith and with malice, but merely exceeded his authority. Although the justice of the peace and his auxiliary are absolutely without executive authority, the municipal president on the other hand is authorized by the law cited to make in certain cases, like those above mentioned, an investigation concerning criminal acts, and to take steps for their punishment.

This being so, it is to be presumed that the defendant believed in good faith in view of the complaint presented by the prosecutrix that it was his duty to conduct the prosecution against the justice of the peace for malfeasance upon the ground that the latter had refused to administer justice and under the belief that the auxiliary justice had also refused to take any action upon the complaint of the prosecutrix, Mercado.

For the reasons stated we are of the opinion that the judgment of the court below should be reversed and the defendant dismissed with the *costs de officio*. So ordered.

*Arellano, C.J., Cooper, Willard, Mapa, McDonough, and Johnson, JJ., concur.*