

3 Phil. 575

[ G.R. No. 1627. April 02, 1904 ]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. GEORGE WASHINGTON, DEFENDANT AND APPELLANT.**

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

**MCDONOUGH, J.:**

The defendant was convicted in the Court of First Instance of having, on the 29th day of April, 1903, at Bilibid Prison, in the city of Manila, assaulted and beaten one H.S. Harris, with a deadly weapon, to wit, a large club, and inflicting injuries on him and causing illness and disability for more than thirty days. The defendant was sentenced to be imprisoned for one year and to pay the costs. He had been previously sentenced to serve a term of three years in that prison on a charge made against him while serving as a soldier in the Ninth Cavalry, United States Army.

As a prisoner, on that occasion, he had charge of the mixing of cement and of the bed of cement, and had been ordered by the master mechanic not to let anyone take the cement without the direction of the master mechanic.

While George Washington was temporarily absent from the cement bed, Harris, another prisoner, attempted to take away a part of the cement without having or exhibiting orders therefor. The defendant on his return caught Harris in the act and used very warm words, which Harris resented. A fight followed, Harris striking the first blow, and then attempting to get hold of a shovel, with a view of doing more effective damage. The defendant picked up a bamboo stick, about as thick as his wrist, and with it struck Harris a heavy blow across the back.

The parties were then separated, but Harris again started to strike the defendant, who ran some distance, picked up bricks or rocks and threatened to throw them at Harris,

but did not do so. Finally, Harris was taken to the hospital, where he remained about a month; and the defendant, to use his own language, was taken to “the guardelo, the dark cell, the place of punishment.”

We are of opinion, inasmuch as Harris was the aggressor and provoked the fracas by taking, without authority, the cement of which defendant had the care; inasmuch as he struck the first blow; as his injuries were not serious; as the defendant was punished for a breach of prison discipline ; and as it was shown that the defendant had a good name and was a well-behaved prisoner, that he should be acquitted.

The judgment of the Court of First Instance is therefore reversed and George Washington, the defendant, is acquitted.

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

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