

1 Phil. 155

[ G.R. No. 266. March 04, 1902 ]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. VICENTE DEL ROSARIO, DEFENDANT AND APPELLANT.**

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

**TORRES, J.:**

On the night of September 8, 1896, Wenceslao Cristobal, lieutenant of the barrio, ordered that Vicente del Rosario be placed as sentinel in the sentry box at the place called Lauangbato in the pueblo of Santa Maria, Bulacan, and as the latter withdrew to his home and delayed in making his appearance, the said lieutenant ordered that he be called. Upon his appearing after a considerable period of time he stated that he ought not to render said public service because he had already made the rounds and that another should do it. Thereupon the lieutenant raised his stick to strike the defendant who in turn grasped his bolo, perhaps in order to defend himself, so that the blow then given was parried by the said weapon. The lieutenant then seized Rosario, in order to subdue him, with the assistance of two witnesses there present, one of whom tied him while the other took the bolo from him.

The act set forth does not constitute the crime of assault, or that of resisting an agent of the Government, and still less that of grave disobedience to the latter in the exercise of his authority, for the reason that the defendant seized the bolo which he carried in his belt in order to defend himself and for the purpose of parrying the blow given him by the agent of the Government—an instinctive act of defense against an unjustified assault. And as the defendant did not attack nor attempt to assault or intimidate the officer with said weapon—elements in the commission of the crime of assault defined and punished in articles 249 and 250 without which the said crime can not be deemed to exist - and as he did not disobey an order of the said officer (for the statement which has been relied upon can not be construed as disobedience) it is apparent that proof is lacking of the acts which constitute a crime and that the acts committed by the accused are not criminal or of a

criminal character. The defendant must therefore be acquitted.

It follows that the judgment appealed from should be reversed and the defendant acquitted with the costs of both instances de officio. The order declaratory of the defendant's insolvency made in the proceeding of attachment should be approved. So ordered.

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

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