

[G.R. No. 1406, November 26, 2009]

**UNITED STATES, COMPLAINANT AND APPELLANT, VS.
BOSCOE C. COX, DEFENDANT AND APPELLEE.**

D E C I S I O N

TORRES, J.:

On May 26, 1903, the provincial fiscal of Iloilo filed an information in the Court of First Instance of that province charging Roscoe C. Cox with the crime of assaulting an officer of the law. The information alleged that at 9 o'clock on the night of Tuesday, the 10th of February last, while on duty in General Hughes Street in the city of Iloilo, the policeman Damaso Gonzalez was approached by three American soldiers. The accused, who was one of the trio, asked Gonzalez if he wished to fight, and immediately after, without giving the latter time to reply, seized him by the throat. Having succeeded, with the aid of the other two soldiers, in overcoming the policeman, the accused possessed himself of the club which Gonzalez carried, and with it struck the latter several blows, causing the wounds described in the medical statement exhibited. Gonzalez thereupon shouted for help. Two citizens ran to his aid, at sight of whom the accused and his two companions took to flight.

The information having been admitted, the trial began. George M. Saul, E. J. Saul, the policeman Damaso Gonzalez, and the police sergeant Pedro Carpio, witnesses for the prosecution, testified that on the night and in the street referred to the policeman Gonzalez, who was on patrol duty, encountered three American soldiers; that one of these, the defendant herein, asked the officer if he wanted to fight, to which the latter replied in the negative; that the defendant repeated the question, and then, without waiting for a reply, seized Gonzalez by the throat, threw him to the ground, and struck him several blows with the club which he succeeded in arresting from the policeman; that the latter thereupon shouted for help, and, having succeeded in regaining his feet, recovered the possession of the club which his assailant had taken from him; that at this point two native residents came to the aid of Gonzalez, who ordered his assailant to stand where he was; that as the latter took no notice of the command and began to run Gonzalez discharged his revolver four times and started off in pursuit, followed by another policeman patrolling Duran Street; that the soldier was here overtaken, and, after a struggle between the two policemen and the accused, the three fell to the ground, all more or less injured; that at this moment Captain Ferry