

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS. MONICO O. CERVERA, DEFENDANT-APPELLEE.

G.R. No. L-26395. November 21, 1969

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Appeal from an order of dismissal of the Court of First Instance of Antique upon the ground of double jeopardy.

On September 29, 1962, Ambrosio Elequin filed, with the Municipal Court of Sibalom, Antique, two criminal complaints against Monico O. Cervera. In the first complaint, Criminal Case No. 682, Cervera was charged with grave oral defamation, later changed to slight defamation. It alleged:

"That on or about September 28, 1962, bet-ween 4:00 and 5:00 o'clock in the afternoon, while inside the restaurant in the poblacion of Sibalom, Antique, Philippines, * * * the said accused MONICO O. CERVERA did then and there, willfully, unlawfully and feloniously, utter to the undersigned the following words in the Visayan dialect, to wit:

" 'Baboy ikaw; wala huya; Hijodepota ikaw; Bastos, patay huya mabato ikaw? Sabat; Caron badilon ta; Palotawon co caron ikaw sa suba, and other words of similar import, which when trans-lated into English, means: 'You are pig; Shame-less; Son of a Bastard (whore); Shameless (rough); you will fight? Answer. I will shoot you and throw your body into the river,' and words of similar im-port."

Charging Cervera with grave threats, it was alleged in the second complaint, Criminal Case No. 683:

"That on or about September 28, 1962, bet-ween 4:00 and 5:00 o'clock in the afternoon, while the undersigned was inside the restaurant of Juana de los Santos, situated in the vicinity of the public market, within the Poblacion of Sibalom, Antique, * * * the said accused MONICO O. CERVERA, did then and there, willfully, unlawfully, and felonious-ly, threaten to kill the undersigned and throw his body into the river, when he uttered the following words, as follows, to wit:

" 'Caron badilon ta; Patyon ta; Caron palo-tawon co caron ikaw sa suba; Pa lukpon co ang olo mo; Sabat cay badilon to ikaw,' and words of si-milar import, and which when translated into Eng-lish reads as follows: 'I will shoot you; I will kill you; I will throw your body into the river; I will blast your head; Answer and I will shoot you,' and other words of similar import."

On April 15, 1963, the defendant filed a motion to quash the complaint in Criminal Case No. 683, for grave threats, upon the ground: (1) that the charge therein should have been for light threats, the acts imputed to him having been allegedly committed in the heat of anger; and (2) that he would be placed twice in jeopardy of punishment for the same act. The motion was denied, on May 9, 1963.

The two cases were jointly tried. After the introduction of the evidence for the prosecution, on January 27, 1964, the defen-dant moved to dismiss both cases, upon the ground of insufficiency of the evidence to establish his guilt beyond reasonable doubt. The complainant objected to the motion, which was denied on February 28, 1964. Thereafter, the municipal court proceeded with the trial, up to its conclusion.

On April 15, 1964, said court rendered judgment in the two cases, acquitting the defendant in Criminal Case No. 682, for slight oral defamation, but finding him guilty of light threats in Criminal Case No. 683 and sentencing him to pay a fine of P100.00, with subsidiary imprisonment in case of insolvency.

The defendant appealed from the judgment in Criminal Case No. 683 to the Court of First Instance of Antique, in which the Provincial Fiscal charged the defendant with light threats, under an information (Criminal Case No. 428) alleging:

"That on or about the 28th day of September, 1962, in the municipality of Sibalom, province of Antique, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, in the presence of several persons, did then and there willfully, unlawfully and feloniously threaten Ambrosio Elequin with a blunt instrument (caborata) and at the same time uttering the following words, to wit: 'Caron badilon ta; Patyon ta; Caron palotawon co caron ikaw sa suba; Pa lukpon co ang olo mo; Sabat cay badilon to ikaw.' which translated into English is as follows: (I will shoot you; I will kill you; I will throw your body into the river; I will blast your head; Answer so that I will shoot you), and other words of similar import."

The defendant moved to quash the information, upon the ground that his acquittal in Criminal Case No. 682 of the municipal court for slight oral defamation was a bar to his prosecution for light threats, both the oral defamation and the light threats having been allegedly committed on one and the same occasion. The prosecution objected thereto alleging that, although made on a single occasion, the utterances conveyed distinct implications and meanings falling under two separate provisions of the Revised Penal Code, one for oral defamation, and the other for threats. On December 3, 1965, the court of first instance denied the motion to quash, holding that the offense of oral defamation, of which the defendant had been acquitted, was not necessarily included in the offense of light threats.

The defendant filed a motion for reconsideration. Relying principally upon *People vs. Yebra*,¹ on February 28, 1966, the court of first instance reconsidered its order of December 3, 1965 and dismissed the information, upon the theory that, having been committed on the same occasion, the offense of oral defamation was necessarily included in that of light threats, and that, in view of defendant's acquittal in the case for oral defamation, his prosecution for the offense of light threats would place him in double jeopardy. The prosecution sought a reconsideration, which said court of first instance denied on April 22, 1966. Hence, this appeal by the prosecution.

Appellant maintains that *People vs. Yebra*,² is not in point, because in that case only one information was filed, where-as, in the present case, there have been two separate criminal complaints, one for oral defamation and another for light threats. In the *Yebra* case, the trial court dismissed the information, upon the ground that it charged two offenses, namely libel and threats, committed and made in a letter written and sent by the defendant. In reversing the order of dismissal, this Court held that the libelous remarks contained in said letter were merely preparatory acts culminating in the final threat, which was the offense committed by the defendant.

In the case at bar, the court of first instance seemed to believe that defendant's acquittal in criminal case No. 682 of the municipal court, for slight defamation, necessarily implied his acquittal for the threatening remarks alleged in the complaint in that case, for, apart from setting forth the insults heaped upon the complainant, it was averred therein that the accused had added: "You will fight? (Will you fight?) Answer. I will shoot you and throw your body into the river," and "words of similar import." The conclusion thus reached by the court of first instance is untenable.

To begin with, a remark that is literally insulting may be made without the slightest intention of casting any aspersion upon the person to whom it is addressed or even as an expression of affection for him or of joy upon

seeing him. So, too, a person may say that he will kill another and throw his body into the river, for the purpose, not of intimidating, but of insulting him, as a manifestation of the former's contempt for him and to express the feeling that the former considers the latter so worthless and insignificant, as well as so lacking in manly qualities, that the former could do whatever he wanted to with the latter, as if he were a chicken or a rat. Thus, in the Yebra case, it was held that the offensive remarks made by the accused did not constitute defamation, the remarks being merely an incident preliminary to the threat made by him, in the heat of anger.

We note that - unlike the complaint in case No. 683 of the municipal court, in which it is alleged that the defendant had threatened to kill the complainant - in case No. 682 of the same court, the complaint did not allege that the remarks above-quoted were uttered with the intention of intimidating the complainant. Moreover, in choosing to designate the offense therein charged as grave oral defamation, and, later, as slight oral defamation, the complainant impliedly indicated therein that said remarks had not been made for the purpose of intimidating him. Indeed, the words "you will fight? (Will you fight?) Answer, " allegedly uttered by the defendant, before saying "I will shoot you and throw your body into the river," suggested that he had doubts about the courage of the complainant, not only to fight, but, even to answer him back. The defendant intimated thereby that complainant was afraid of him. Thus, the complaint in case No. 682, when considered in its entirety, strongly suggests the intention of asserting that the acts therein set forth were performed for no other purpose than to insult the complainant. We are not prepared, therefore, to hold that the crime of light threat was included in the charge contained in said complaint.

Secondly, we should bear in mind that the two (2) cases were heard and decided, by the municipal court, at the same time. Let us suppose that the complaint in said case No. 682 was exactly identical to that filed in case No. 683 of the municipal court, and that, in deciding both, the same declared that, since the two (2) cases involved one and the same offense, it was not proper to twice punish the accused therefor, and that, accordingly, he should be and was convicted in one case only, and acquitted in the other. In such event, it would be clear that said judgment of conviction would not violate the constitutional injunction against double jeopardy of punishment for the same offense.

No such infringement has similarly taken place in the case at bar. Besides, a breach of the fundamental law should not be assumed. On the contrary, the municipal judge is presumed to have done his duty and complied with the law, unless and until the contrary is clearly established, and the defendant has not done so. Indeed, the decision of the municipal court, in said case No. 682, does not appear in the record of the present case. Neither does the latter show that the judgment of acquittal in case No. 682 was based either upon failure to prove the facts alleged in the complaint or upon proof that the allegations thereof are not true. What is more, the denial of the motion to quash filed by the defendant, in the municipal court, upon the conclusion of the evidence for the prosecution, premised upon the alleged insufficiency of the evidence to establish his guilt beyond reasonable doubt, and his conviction in case No. 683 of said court indicate the exact opposite and that his acquittal in case No. 682 was due merely to the belief that said facts constituted the crime of light threat, not slight defamation. Under these circumstances, the court of first instance erred in reconsidering its order of December 3, 1965 and in dismissing the information in the present case.

WHEREFORE, the order appealed from should be, as is hereby set aside, and the case at bar remanded to the Court of First Instance of Antique for further proceedings, in conformity with this decision, without special pronouncement as to costs.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Sanchez, Castro, Fernando, and Teehankee, JJ., concur.
Zaldivar and Barredo, JJ., did not take part.

1 L-14348, September 30, 1960.

2 Supra.

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