

PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. NG PEK, DEFENDANT AND APPELLANT.*G.R. No. L-1895. October 02, 1948*

Ponente: OZAETA, J.

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In the Court of First Instance of Manila appellant was Accused of, and pleaded guilty to, attempted bribery. Forthwith he was sentenced to suffer two months and one day of arresto mayor and to pay a fine of P3, with subsidiary Imprisonment in case of insolvency, and to pay the costs.

From that sentence he appealed to this Court, contending that (1) "the lower court erred in considering that the statement given by the accused during his arraignment to the court interpreter that he gave a peso to the complaining witness is a manifestation or a declaration of a plea of guilty," and (2) "the lower court erred in forthwith sentencing the accused to a prison term of two months and one day and to pay a fine of P3 on the day of the arraignment, without giving him a chance to defend himself."

Appellant's first assignment of error is premised upon allegations of fact which were not proven during the trial and do not appear in the record before us. We cannot sustain an assignment of error based on such allegations.

The record shows that when the case was called for the arraignment of the accused on November 3, 1947, the accused waived his right to be assisted by counsel and then and there entered the plea of guilty. That plea necessarily foreclosed the right of the accused to defend himself and left the court with no other alternative than to impose the penalty prescribed by law. Therefore the second assignment of error is also devoid of merit.

The only questions for us to determine in this appeal are (1) the nature of the crime committed and (2) the propriety of the penalty imposed.

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The offense charged in the information falls under article 212 of the Revised Penal Code, entitled "Corruption of Public Officials," in relation to the third paragraph of article 210 of the same Code. The trial court found the accused guilty of the crime charged in the information, according to the contention of the Solicitor General, is frustrated corruption of a public official. We note, however, that the penalty imposed by the trial court corresponds to that of consummated corruption of a public official, as penalized in article 212, in relation to the third paragraph of article 210, of the Revised Penal Code. Was the crime alleged in the information attempted, frustrated, or Consummated?

The information charged the appellant with attempted bribery, alleging that on September 23, 1947, in the city of Manila, he wilfully, unlawfully, and feloniously did offer and deliver the amount of one peso to Patrolman M. Garcia in order to dissuade him from complying with his duty of arresting said accused for a violation of City Ordinance No. 2646 and filing charges against him, adding, however (using the language of article 6 of the Revised Penal Code, which defines an attempt to commit a felony), that "the said accused did not perform all the

acts of execution which should have produced the crime of bribery as a consequence by reason of a cause other than his own voluntary desistance, that is, because the said police officer did not allow himself to be corrupted. This additional allegation seems to contradict the main allegation that the accused offered and delivered the money to the police officer. Be that as it may, and assuming that the accused really offered and delivered the money to the police officer, there is no question that the latter refused to be corrupted. In similar cases this court has repeatedly held the crime to be attempted. (U.S. vs. Paua, 6 Phil. 740; U.S. vs. Camacan, 7 Phil. 329; U.S. vs. Tan Gee, 7 Phil. 738; U.S. vs. Sy-Suikao, 18 Phil. 482; and U.S. vs. Te Tong, 26 Phil. 453.)

In the last of the cases herein cited, it appears that the accused Te Tong offered and delivered P500 to a police officer in consideration of the latter's agreeing to deliver to the Chinaman certain books, which the police officer had seized from him and which showed that he was guilty of playing the prohibited game of jueteng, and to substitute said books with others fraudulently concocted for the purpose. Immediately after the delivery and substitution of the books and the receipt of P500, the police officer arrested the Chinaman. The court said that the only question was whether the crime was attempted, frustrated, or consummated bribery. Following the previous cases above cited, which involved similar facts, the court held that "while there is some authority to the contrary, we are of the opinion that we should follow the substantially uniform holding of this court which declares the crime to be attempted bribery."

We do not feel inclined to disturb that ruling in this case in the absence of compelling reasons and in view of the ambiguity of the information to which the herein appellant pleaded guilty, which ambiguity should be resolved in this favor. We therefore hold that the crime committed was attempted corruption of a public official.

- The penalty prescribed in the third paragraph of article 210, in relation to article 212, of the Revised Penal Code for the consummated crime of corruption of a public official is arresto mayor in its medium and maximum periods and a fine of not less than the value of the gift and not more than three times such value. In accordance with article 51 of the Revised Penal Code, a penalty lower by two degrees than that prescribed by law for the consummated felony should be imposed upon the principal in an attempt to commit a felony. Two degrees lower than arresto mayor in its medium and maximum periods is destierro in its minimum and medium periods. (Article 71, Revised Penal Code, as amended by section 3 of Commonwealth Act No. 217.)

Conformably to articles 27 (paragraph 4) and 87 of the Revised Penal Code, the accused-appellant should be as he is hereby sentenced to suffer six months and one day of destierro or banishment, during which period he shall not be permitted to enter or be in any place within the radius of twenty-five kilometers from his present place of residence, 419 T. Pinpin, Manila. As thus modified, the sentence appealed from is affirmed in all respects, with costs.

SO ORDERED.

Moran, C. J., Paras, Pablo, Perfecto, Bengzon, Briones, Tuason, and Montemayor, JJ., concur

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