

**GREGORIO A. CONCON, PETITIONER, VS. COURT OF APPEALS,
HONORABLE JOAQUIN T. MAAMBONG, AS JUDGE OF THE CITY
COURT OF CCBU CITY, PEOPLE OF THE PHILIPPINES, REPRESENTED
BY THE SOLIC...**

G.R. No. L-32737. May 08, 1985

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

This original petition for certiorari, mandamus and prohibition seeks the issuance of a writ of injunction to enjoin respondent Court of Appeals, now the Intermediate Appellate Court, from taking cognizance of an appeal interposed by petitioner Gregorio A. Concon from the decision of the City Court of Cebu, now Municipal Trial Court of Cebu, convicting him of the offense of grave threats.

Charged with grave threats for having xxx "unlawfully and feloniously threaten(ed) to kill one Cecilio Abella with said shotgun," petitioner was found guilty as charged and sentenced to suffer imprisonment of one [1] month and one [1] day of arresto mayor and to pay a fine of P200.00. Immediately after promulgation of the sentence on July 2, 1968, he filed a notice of appeal, stating that he was appealing the decision to the Court of First Instance of Cebu. The City Court, however, instead of transmitting the records to the Court of First Instance, forwarded the same to the Court of Appeals where the case was docketed as CA-G.R. No. 09188.

On "November 2, 1970, or two years after the perfection of the appeal, petitioner filed a motion asking that the records be remanded to the Court of First Instance of Cebu on the ground that the latter court, and not the Court of Appeals, had appellate jurisdiction over the case. The appellate court denied the motion and required petitioner to file his brief. The motion for reconsideration was likewise denied. Hence, this petition.

In support of the thesis that the appeal should be determined by the Court of First Instance, petitioner relies on Section 42 of the Rep. Act 3857, otherwise known as the Revised Charter of Cebu City, which provides that "an appeal shall lie to the Court of First Instance in all cases where fine or imprisonment or both is imposed by the City Court xxx." The provision cited, however, applies only to appeals from the criminal cases decided by the Cebu City Court in the exercise of its exclusive original jurisdiction.

Under the Judiciary Act of 1948, as amended, the law in force at the time of perfection of petitioner's appeal, the offense of grave threats, punishable under Article 282 of the Revised Penal Code, fell within the concurrent jurisdiction of the City Court and the Court of First Instance.[1] Pursuant to the provisions of Section 44(f),[2] and of paragraph (b), (c) and the penultimate paragraph of Section 84 of the 1948 Judiciary Act, said courts exercised concurrent, original jurisdiction in the offenses enumerated or referred to therein.

Considering that the City Court of Cebu had tried and decided the case against petitioner in the exercise of its original jurisdiction concurrently with the Court of First Instance of Cebu, the appeal interposed by petitioner was rightly certified to the Court of Appeals, the proper forum for such appeal. The last paragraph of Section 87(c) of

the Judiciary Act is clear and categorical:

"All cases filed under the next preceding paragraph with municipal judges of capitals and city court judges shall be tried and decided on the merits by the respective municipal judges or city judges. Proceedings had shall be recorded and decisions therein shall be appealable direct to the Court of Appeals or the Supreme Court, as the case may be." (Italics supplied.)

It should be pointed out, however, that the above ruling applies only to appeals perfected before the implementation on January 17, 1983 of Batas Pambansa Blg. 129. This new law, otherwise known as the Judiciary Reorganization Act, has repealed those provisions of the Judiciary Act of 1948 which relate to the jurisdictions of the Court of Appeals, Courts of First Instance, City and Municipal Courts. By defining the precise periphery of the original as well as appellate jurisdiction of lower courts, this law completely eliminated the conflict of jurisdiction of the courts obtaining under the 1948 Judiciary Act. And under Section 22 of Batas Pambansa Blg. 129 "regional trial courts shall exercise appellate jurisdiction over all cases decided by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in their respective jurisdictions xxx"

WHEREFORE, the petition is hereby dismissed with costs against petitioner.

SO ORDERED.

Makasiar (Chairman), Aquino, Abad Santos, and Cuevas, JJ., concur.
Concepcion, Jr., J., on vacation leave.

[1] People v. Fernando, 23 SCRA 867.

[2] "SIX:. 44. Original jurisdiction. — Courts of First Instance shall have original jurisdiction:

xxx xxx xxx

"(b) In all criminal casts in which the penalty provided by law is imprisonment lor more than six months, or a fine of more than two hundred pesos;

xxx xxx xxx

"SEC. 87. Original jurisdiction to try criminal cases. — Municipal judges and judges of city courts of chartered cities shall have original jurisdiction over:

xxx xxx xxx

"(b) All criminal eases arising under the laws relating to:

- (1) Gambling and management operation of lotteries;
- (2) Assaults where the intent to kill is not charged or evident upon the trial;
- (3) Larceny, embezzlement and estafa where the amount of money or property stolen, embezzled or otherwise involved, does not exceed the sum or value of two hundred pesos;
- (4) Sale of intoxicating liquors;
- (5) Falsely impersonating an officer;
- (6) Malicious mischief;
- (7) Trespass on Government or private property;
- (8) Threatening to take human life;
- (9) Illegal possession of firearms, explosives and ammunition;
- (10) Illegal use of aliases; and
- (11) Concealment of deadly weapons.

"(c) Except violations of election laws all other offenses in which the penalty provided by law is imprisonment for not more than three years, or a fine of not more than three thousand pesos, or both such fine and

imprisonment.

xxx xxx xxx

"Municipal judges in the capitals of provinces and sub-provinces and judges of city courts shall have like jurisdiction as the Court of First Instance to try parties charged with an offense committed within their respective jurisdictions, in which the penalty provided by law does not exceed prison correctional or imprisonment for not more than six years or fine not exceeding six thousand pesos or both. and in the absence of the district judge, shall have like jurisdiction within the province as the Court of First Instance to hear applications for bail.

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