

**GENEROSO CASTRODES AND LAMBERTO CASTRODES,
PETITIONERS, VS. HON. ALFREDO V. CUBELO, AS MUNICIPAL JUDGE
OF ANDA, BOHOL; PEOPLE OF THE PHILIPPINES; DIRECTOR OF
PRISONS, AND JULIAN...**

G.R. No. L-47033. June 16, 1978

Ponente: AQUINO, J.

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AQUINO, J.:

This petition for certiorari was filed on September 9, 1977 in order to annul, on the ground of lack of jurisdiction, the judgment of the municipal court of Anda, Bohol dated April 28, 1976 which was not appealed and which was duly served or complied with by the accused (Criminal Case No. 660).

In that judgment, Generoso Castrodes was convicted of usurpation of real property and sentenced to pay a fine of P350 with subsidiary imprisonment in case of insolvency. He served the subsidiary imprisonment.

On the other hand, his son and co-accused, Lamberto Castrodes, was convicted of usurpation of real property and grave threats, a supposed complex crime. He was sentenced to an indeterminate penalty of four months and one day of arresto mayor, as minimum, to five years of prision correccional as maximum. He served that imprisonment in the New Bilibid Prison. He was paroled on August 10, 1977 but his counsel came to know of the parole only after the filing of the petition herein.

The complaint on which the judgment of conviction was based reads as follows:

"The undersigned Chief of Police of Anda, Bohol, after having been duly sworn in accordance with law, hereby accuses Generoso A. Castrodes and Lamberto Castrodes of Sta. Cruz, Anda, Bohol, Philippines of the crime of Usurpation of Real Property by means of violence with Threats committed as follows:

"That on or about the 10th day of July, 1975, in the barrio of Sta. Cruz, Anda, Bohol, Philippines, and within the jurisdiction of this Honorable Court, the accused did then and there maliciously, criminally, feloniously and unlawfully enter the land of offended parties Julian Ampong, Benedicto Ampong, Venancio Ampong and Josepatro Ampong, and proceeded to plant coconut trees therein without the consent and permission from its owners, and when offended party Julian Ampong confronted both accused regarding their illegal acts the accused merely replied that 'the Ampongs do not have a parcel of land here' and proceeded to threaten Julian Ampong by saying that 'if you touch this land and my plants here blood will drain in this soil' so that offended parties are now deprived of their rightful enjoyment of their own property, and likewise the victims are deprived of cultivating their ricefield for two successive planting seasons, to their damage and prejudice in an amount which they will prove during the trial.

"Acts contrary to law.

"17 Sept. '75

"Ada, Bohol, Philippines.

(Sgd.) CRESCENCIO TONGCO
Chief of Police"

The municipal court found that Generoso is the elder half-brother (uterine) of the offended parties Julian, Benedicto, Venancio and Josepatro, all surnamed Ampong; that Damiana Simacio, the mother of Generoso, acquired a parcel of land; that after Damiana became a widow, she married the man who became the father of complainants Ampong, and that after her death, the land was partitioned and a portion thereof was given to the Ampongs, which portion is the disputed land.

The municipal court also found that Lamberto and Generoso occupied that disputed land in the morning of July 10, 1975 and planted coconuts therein; that when Julian Ampong was apprised of that fact, he repaired to the land and inquired why Lamberto and Generoso were planting coconuts in that land; that Generoso answered that the land belonged to the Castrodes family and not to the Ampong family while Lamberto told his uncle, Julian: "If you touch this land, the blood of the Ampongs will drain here because the Ampongs have no land here", and that, after remarking that there is a court of justice, Julian and his companions left.

The municipal court concluded that Generoso committed only usurpation of real property while Lamberto allegedly committed the complex crime of grave threats and usurpation of real property because he threatened to inflict serious physical injuries on Julian Ampong and he attained his purpose by means of that threat.

The petitioners contend that the municipal court has no jurisdiction to impose the penalty meted to Lamberto Castrodes and that there is no complex crime of usurpation of real property with grave threats.

The issues are whether the complaint filed by the chief of police charges Lamberto Castrodes with the complex crime of usurpation of real property and grave threats and whether the municipal court has jurisdiction over that offense or could impose the penalty which it meted to Lamberto. The Revised Penal Code provides:

"ART. 312. Occupation of real property or usurpation of real rights in property. - Any person who, by means of violence against or intimidation of persons, shall take possession of any real property or shall usurp any real rights in property belonging to another, in addition to the penalty incurred for the acts of violence executed by him, shall be punished by a fine of from 50 to 100 per centum of the gain which he shall have obtained, but not less than 75 pesos.

"If the value of the gain cannot be ascertained, a fine of from 200 to 500 pesos shall be imposed."

The elements of the offense are (1) occupation of another's real property or usurpation of a real right belonging to another person; (2) violence or intimidation should be employed in possessing the real property or in usurping the real right, and (3) the accused should be animated by the intent to gain. (2 Cuello Calon, Derecho Penal, 14th Edition, pp. 911-912).

We hold that the offense charged by the chief of police in the aforequoted complaint is only the crime of usurpation of real property. The threat uttered by Lamberto Castrodes did not give rise to the complex offense of usurpation of real property with grave threats. That threat is the intimidation contemplated in the crime of

usurpation of real property. It does not constitute a distinct crime. (See Decision dated October 3, 1883 of the Supreme Court of Spain, 3 Viada,Codigo Penal, 4th Edition, pp. 460-1; 2 Hidalgo, Codigo Penal, pp. 730-731).

The crime of usurpation of real property, if punishable with a fine of from 200 to 500 pesos, is within the jurisdiction of the municipal court, because, according to section 87(c) of the Judiciary Law, the municipal court has jurisdiction over 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. Hence, the penalty imposed upon Generoso Castrodes is correct.

On the other hand, the municipal court in this case has no jurisdiction to impose upon Lamberto Castrodes an indeterminate penalty of four months and one day of arresto mayor, as minimum, to five years of prison correccional, as maximum.

Respondent judge admits that he has no jurisdiction over the crime of grave threats and that he imposed a penalty which he is not empowered to impose. However, he argues that, because his court has jurisdiction over the "principal crime" of usurpation of real property, he has jurisdiction also over "all its qualifications and complexities" (pp. 64-65, Rollo). That contention is wrong. The sentence imposed upon Lamberto Castrodes is void for lack of jurisdiction (Caluag vs. Pecson, 82 Phil. 8).

Contrary to respondent judge's belief, the fact that Lamberto was paroled after serving a portion of his sentence did not render the instant certiorari case moot and academic. A parole is a conditional pardon. If the sentence imposed upon Lamberto is void for lack of jurisdiction; as we have already shown above, he need not have been paroled. He should have been released because his detention was illegal (See sec. 1, Rule 102, Rules of Court; Cruz vs. Director of Prisons, 17 Phil. 269; Caluag vs. Pecson, supra).

WHEREFORE, the sentence imposed upon Lamberto Castrodes is set aside for lack of jurisdiction. No costs.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, and Santos, JJ., concur.

Concepcion, Jr., J., on leave.

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