

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. BERNARDO REYES, ET#8217;AL., DEFENDANTS AND APPELLEES.

G.R. No. L-7712. March 23, 1956

Ponente: PARAS, C.J.

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PARAS, C.J.:

On October 5, 1953, the City Fiscal filed in the Municipal Court, of Manila an information reading as follows:

"The undersigned accuses Bernardo Reyes and Mariano Beyes of the erime of coercion committed as follows:

"That on or about the 26th dayf of August, 1953, in the City of Manila, Philippines, the said accused, conspiring, confederating together and mutually' helping each other, through deceit and misrepresentation, did then and there wilfully, unlawfully and feloniously seize, take and hold possession of passenger jeep bearing plate No. TPU-2695 belonging to Ag'ustin Blasco, without the knowledge and consent of the latter, for the purpose of answering for the debt of the said owner, and despite repeated demands made upon them to return the said jeep, they refused and still refuse to do so, to the damage and prejudice of the said owner."

Upon motion of the defendants, the court dismissed the information because it did pot allege the use of violence, notwithstanding the fact that the offense charged was coercion under Article 287 of the Revised Penal Code which provides, in the first paragraph, that "Any person who, by means of violence, shall seize anything belonging to his debtor, for the purpose of applying the same to the payment of the debt, shall suffer the penalty of arresto mayor in its minirnum period and a fine "equivalent to the value of the thing, but in no case less than 75 pesos." An appeal to the Court of First Instance of Manila having been dismissed for lack of merit, the prosecution has elevated the case to us in third instance, contending that the offense charged is coercion or unjust vexation under the second, paragraph of Article 287 of the Revised Penal Code which provides that "Any other coercions or unjust vexations shall be punished by arresto menor or a fine ranging from 5 to 200 pesos, or both," under which violence is not, an essential element.

We agree with appellant's contention. Although the offense named in the information is coercion, it does not necessarily follow that the applicable provision is the first paragraph, since the second paragraph also speaks of "coercions". Inasmuch as the recitals in the information do not include violence, the inevitable conclusion is that the coercion contemplated is that described and penalized in the second paragraph. The offense falling under the second paragraph cannot include violence as an element; otherwise it would come under the first paragraph.'

Another view we take of the case is that the information, though wrongly calling the offense charged as coercion, alleges facts sufficiently constituting unjust vexation, now mixed with coercion and also penalized under the second paragraph of Article 287. Under the old. Penal Code, other coercions and unjust vexations were considered misdemeanors against persons treated under a separate chapter., The principal feature of coercion under the first paragraph is that there be a taking by a person of his debtor's' property for the purpose of applying it to the payment of debt. This feature is recited in the information, consummated not by violence (distinguishing element specified in the first paragraph of Article 287), but thru deceit and misrepresentation no less effective

than actual force in depriving the offended party of his free will. The decision in *U. S. vs. Tupular*, 7 Phil., 8, relied upon by the court of origin, is not controlling, because the offense involved therein was coercion defined in Article 498 of the old Penal Code which expressly called for violence, and which is the counterpart of the first paragraph of Article 287 of the Revised Penal Code.

The contention of defendant-appellees that the present appeal would place them in double jeopardy is unfounded. "Where the complaint or information is in truth valid and sufficient,, but the case is dismissed upon petition of the accused on the ground that the complaint or information is invalid and insufficient, such dismissal will not bar another prosecution for the same offense and the defendant is estopped from alleging in the second prosecution .that the former dismissal was wrong because the complaint or information was valid." (Morgan, Comments on the Rules of Court 52 ed., Vol. II, p. 802.)

Wherefore, the appealed order is reversed and the .case is ordered remanded to the Municipal Court of Manila for further proceedings.: So ordered, without costs.

Bengzon, Padilla, Reyes, A., Bautista. Angelo, Labrador, Reyes, J. B. L. and Endencia, JJ., concur.

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