

UY CHIN HUA, PETITIONER VS. RAFAEL DINGLASAN, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, RESPONDENT.

G.R. No. L-2709. June 30, 1950

Ponente: OZAETA, J.

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OZAETA, J.:

The question raised in this case is, which court has original jurisdiction to try an offense penalized with destierro or banishment—the municipal court or the court of first instance?

The petitioner was charged in the Court of First Instance of Manila with attempted bribery by offering the sum of P6 to patrolmen A. Caudal and L. de los Santos in consideration of their refraining from arresting him for a violation of the Price Tag Law (Republic Act No. 71). which offer the said police officers rejected, and placed the offeror under arrest.

Upon denial of his motion to quash for lack of jurisdiction, the petitioner filed the present petition for certiorari (which we interpret to mean prohibition), praying that the respondent judge be ordered to refrain from further proceeding on the ground that he has no jurisdiction to take cognizance of the case.

The consummated crime of bribery or corruption of public officials is penalized by article 212, in relation to the third paragraph of article 210 of the Revised Penal Code, with *arresto mayor* in its medium and maximum periods. The penalty for the attempted crime is two degrees lower, which is *destierro* in its minimum and medium periods. That means that the culprit shall be banished from his present residence (not imprisoned) for a period of not less than 6 months and 1 day and not more than 4 years and 2 months.

We are unanimous in the conclusion that the court of first instance has no jurisdiction over the offense charged and that therefore the writ of prohibition lies. But we are not unanimous as the reasons. A minority hold that if the scale provided by article 71 of the Revised Penal Code is to be followed, the penalty of *destierro* would have to be imposed which, they claim, would produce an absurdity because the duration of said penalty is from 6 months and 1 day to 6 years—"co-extensive with *prision correccional*, a penalty higher than *arresto mayor* in the scale provided by article 71." Therefore, the minority hold that the penalty of *destierro* should be applied only when it is specifically imposed and should be disregarded in the scale provided in article 71. In other words, the minority think that the penalty imposable for the offense charged is *arresto menor*.

A majority of the court, including the writer of this opinion, find no justification for disregarding the scale of penalties provided in article 71 and for not applying the penalty of *destierro* to the offense charged, in accordance with article 51 in relation to the scale of penalties provided in said article 71 of the Revised Penal Code.

To disregard the scale of penalties provided in article 71 and to apply *destierro* only to crimes specifically punished with that penalty, such as those mentioned in articles 247 and 334, would be to amend or change the law, and the court is not empowered to do so. Our sworn duty is to apply the law and not to tamper with it.

Destierro is not higher penalty than *arresto mayor*. *Arresto mayor* means imprisonment or complete deprivation of

liberty, whereas destierro means banishment or only a prohibition from residing within the radius of 25 kilometers from the actual residence of the accused for a specified length of time. The respective severities of arresto mayor and destierro must not be judged by the duration of each of these penalties, but by the degree of deprivation of liberty involved. Penologists have always considered destierro lighter than arresto mayor. Such criterion is reflected both in the old Spanish Penal Code and in our Revised Penal Code. In the graduated scale of article 71 the lawmaker has placed destierro below arresto mayor. There is, therefore, no basis in fact or in law for holding that destierro is a higher penalty than arresto mayor and that an offense penalized with destierro falls under the jurisdiction of the court of first instance.

The judiciary Act of 1948 (Republic Act No. 296) does not expressly confer original jurisdiction on the court of first instance over offenses penalized with destierro. Section 44 of said Act provides that Courts of First Instance shall have original jurisdiction "(f) in all criminal cases in which the penalty provided by law is imprisonment for more than six months, or a fine of more than two hundred pesos." And section 87 of the same Act provides that justices of the peace and judges of municipal courts of chartered cities shall have original jurisdiction over "(b) all offenses in which the penalty provided by law is imprisonment for not more than six months or a fine of not more than two hundred pesos, or both such fine and imprisonment."

Thus there exists a gap in the law as to which court shall have original jurisdiction over offenses penalized with destierro or banishment. Until the lawmaking body should fill that gap by expressly providing otherwise, the Court must do so by reasonable interpretation of the existing law. The reasonable and logical interpretation, in our opinion, is this: Since the legislature has placed offenses penalized with arresto mayor under the jurisdiction of justice of the peace and municipal courts, and since by article 71 of the Revised Penal Code, as amended by section 3 of Commonwealth Act No. 217, it has placed destierro below arresto mayor as a lower penalty than the latter, in the absence of any express provision of law to the contrary it is logical and reasonable to infer from said provisions that its intention was to place offenses penalized with destierro also under the jurisdiction of justice of the peace and municipal courts and not under that of Courts of First Instance.

The writ of prohibition will be issued, without any finding as to costs.

Pablo, Bengzon, and Tuazon, JJ., concur.

MORAN, C.J.:

I concur in the result.

MONTEMAYOR, J.:

I concur in the result.

REYES, J.:

I concur in the result.

MORAN, C.J.:

I hereby certify that Mr. Justice Padilla took part in the consideration of this case and concurred in the opinion of the majority.

PARAS, J., concurring:

The herein petitioner was charged in the Court of First Instance of Manila with having committed on August 10,

1948, the attempted offense of corruption of public officials in that he offered to patrolmen A. Cudal and L. de los Santos the sum of six pesos in order that the latter might refrain from arresting the petitioner for a violation of the Price Tag Law (Republic Act No. 71), but that said police officers refused to be thus corrupted. The petitioner filed a motion to quash on the ground of lack of jurisdiction, it being contended that, as the penalty for the consummated offense of corruption of public officials provided by article 212, in relation to the third, paragraph of article 210, of the Revised Penal Code, 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, the penalty for the attempted offense charged in the information is only *arresto menor* in its minimum and medium periods, and a fine of not more than eighteen pesos. This motion to quash having been denied, the petitioner instituted the present petition for *certiorari*.

In the scale of penalties provided in article 71 of the Revised Penal Code, as amended by Commonwealth Act No. 217, the two penalties successively lower than *arresto mayor* are *destierro* and *arresto menor*. Under article 25, *destierro* is classified as a correctional penalty and, under article 27, its duration is from 6 months and 1 day to 6 years. Upon the other hand, the duration of *arresto mayor*, classified also as a correctional penalty (article 25), is from 1 month and 1 day to 6 months (article 27). There can be no question that, pursuant to the Judiciary Act of 1948 (Republic Act No. 296), the consummated offense of corruption of public officials, penalized with *arresto mayor* in its medium and maximum periods, or from 2 months and 1 day to 6 months, comes within the original jurisdiction of the justice of the peace or municipal court. Under article 51, the penalty for an attempt to commit the offense of corruption of public officials is two degrees lower than *arresto mayor* in its medium and maximum periods. Said penalty—if the scale in article 71 of the Revised Penal Code, as amended by Commonwealth Act No. 217, is to be followed to the letter—is *destierro* in its minimum and medium periods, or from 6 months and 1 day to 4 years and 2 months, with the result that an attempt would fall, pursuant also to the Judiciary Act of 1948, under the original jurisdiction of the court of first instance. This is the theory of counsel for respondent judge.

According to this theory, an attempted offense is penalized with a greater penalty than the consummated offense, and is to be tried by a higher court than that which will try the consummated offense. This absurd result could not have been contemplated by the lawmakers in amending article 71 of the Revised Penal Code and should accordingly be avoided.

An attempt to commit a felony is certainly lower than the consummated felony, and this is the reason why article 51 of the Revised Penal Code specifically provides that a penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed upon the principals in an attempt to commit said felony. If this fundamental provision is, as it should be, given effect, the penalty for the attempted offense of corruption of public officials, which is a penalty lower by two degrees than *arresto mayor* in its medium and maximum periods (from 2 months and 1 day to 6 months), is *arresto menor* in its minimum and medium periods (from 1 day to 20 days). The penalty for said attempted offense should not be taken from *destierro*, because the duration of this penalty is from 6 months and 1 day to 6 years, and is therefore equal to and co-extensive in duration with *prision correccional*, a penalty higher than *arresto mayor* in the scale provided by article 71 of the Revised Penal Code, as amended by Commonwealth Act No. 217. Although *destierro* may not be an "imprisonment", it is nonetheless a "deprivation of liberty" (*People vs. Abilong*, G. R. No. L-1960, November 26, 1948[1]).

It is noteworthy that before article 71 was amended by Commonwealth Act No. 217, the scale of penalties from which a lower or higher penalty was taken, was that provided by article 70, under which the penalty lower than *arresto mayor* was *arresto menor*. *Destierro* was not included. The obvious reason is that *destierro* is an exceptional penalty, prescribed as a principal penalty only in two cases (article 247 and 334) and as an additional penalty only in one case (article 284). The exceptional character of *destierro* is recognized in the fact that although

it is classified as a correctional penalty having a duration of from 6 months and 1 day to 6 years, in parity with prision correccional, it is placed in the scale fixed in article 70 of the Revised Penal Code, as amended by Commonwealth Act No. 217, below arresto menor, as regards severity and for purposes of successive service of sentences; and in the scale provided in article 71, as amended by Commonwealth Act No. 217, it is placed below arresto mayor. But, as heretofore stated, if the scale in article 71 is followed literally, we shall have the unthinkable and absurd situation that the consummated offense of corruption of public officials is penalized with arresto mayor in its medium and maximum periods (from 2 months and 1 day to 6 months) originally triable in the justice of the peace or municipal court, whereas the lower offense of attempted corruption of public officials is penalized with destierro in its minimum and medium periods (from 6 months and 1 day to 4 years and 2 months) and originally triable in the court of first instance. To avoid this absurdity, I am constrained to hold that the penalty of destierro is to be considered only when it is specifically imposed and is to be disregarded in the scale provided in article 71.

It is true that in the case of *People vs. Ng Pek* (G. R. No. L-1895, decided on October 2, 1948[1]), we held that the penalty lower by two degrees than arresto mayor in its medium and maximum periods is destierro in its minimum and medium and maximum periods; but in said case the point decided in the case at bar was not actually raised and passed upon. Upon the other hand, in the case of *Rivera vs. Geronimo* (43 Off. Gaz., 841[2]), decided on July 22, 1946, we ruled that the penalty lower by two degrees than prision correccional in its minimum and medium periods is arresto menor in its maximum period to arresto mayor in its minimum period, the penalty of destierro having been disregarded.

Wherefore, I concur in the result of the majority decision.

[1] 82 Phil., p. 172.

[1] 81 Phil., 562.

[2] 76 Phil., 838.

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