

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. FRANCISCO FRANCISCO, DEFENDANT AND APPELLANT.

G.R. No. L-21390. March 26, 1924

Ponente: OSTRAND, J.

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OSTRAND, J.:

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. FRANCISCO FRANCISCO, DEFENDANT AND APPELLANT. body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; }This is an appeal from a judgment of the Court of First Instance of Manila convicting the defendant of robbery and sentencing him to suffer six years, ten months and one day of presidio mayor, with the accessory penalties, to indemnify the offended party in the sum of P2, and to pay the costs.

It appears from the evidence that on August 7, 1923, the accused, Francisco Francisco, who was then a sanitary inspector in the Philippine Health Service, on inspecting the merchandise in Sy Ham's store in Pasay, discovered that some lard there exposed for sale contained some blackish substance and concluding that the lard was unfit for consumption, he threatened to take it to the municipal building unless Sy Ham paid him T2. Sy Ham, for fear that, if the unclean lard was taken to the municipal building, he might be arrested, prosecuted, and convicted, and would have to pay a fine of P15, chose the alternative of complying with the defendant's demands. The payment of the P2 was, however, not effected without considerable bargaining, Sy Ham first offering , then P1.50 and finally paid the P2 when the defendant refused to consider anything less.

Three days later the defendant again came to the store and reprehended Sy Ham for having told others about the incident on August 7th; and on the following day, August 11th, he returned accompanied by a policeman, Sy Ham maintains that everything in the store was then clean as he, after the defendant's second visit, anticipated trouble and had taken special pains to have everything in the store clean, but that the defendant, unnoticed by the policeman, put some cigarette ashes in the supply of lard and also in some wine and after showing the policeman the ashes in the lard confiscated it and lodged a complaint against Sy Ham for infraction of the regulations of the Bureau of Health.

The evidence leaves no room for doubt as to the defendant's guilt, but some doubt has been expressed as to whether the offense committed is bribery, under article 383 of the Penal Code, or whether it constitutes robbery, under paragraph 5 of article 503 of the same Code. Upon this point we are bound by numerous previous decisions of this court. (See, for instance, U. S. vs. Flores, 19 Phil., 178; U. S. vs. Osorio, 21 Phil., 237; U. S. vs. Martin, 23 Phil., 58; U. S. vs. Sanchez, 26 Phil., 83; U. S. vs. Dedulo, 31 Phil., 298.)

The principal distinction between the two offenses is that in bribery the transaction is mutual and voluntary; in the

case of robbery the transaction is neither voluntary nor mutual, but is consummated by the use of force or intimidation. If the offended party in the present case had voluntarily offered to pay the defendant the P2 the transaction would have constituted bribery. But such is not this case. The defendant demanded the payment of the P2, accompanying the demand with threats of prosecution and arrest and is therefore guilty of robbery.

The sentence appealed from is affirmed, with the costs against the appellant. So ordered.

Araullo, C. J., Street, Avancena, and Romualdez, JJ., concur.

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