

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ICASIANO C. CUELLO, DEFENDANT AND APPELLANT.

G.R. No. L-14307. March 27, 1961

Ponente: PADILLA, J.

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PADILLA, J.:

On 20 April 1955 Icasiano Cuello was charged in the Court of First Instance of Manila with a violation of paragraph 2, article 277, of the Revised Penal Code, in an information couched in the following terms:

The undersigned accuses Icasiano Cuello of a violation of Article 277, Revised penal Code, committed as follows:

That in, about and during the period from 1950 and continuously up to the present, in the City of Manila, Philippines the said accused, being then the legitimate father of Armando, 13 years of age and Reynato, 12 years of age, all surname Cuello, did then and there willfully, unlawfully and feloniously neglect his aforesaid children by not giving them the education which his station in life requires and financial condition permits.

Contrary to Law. (Crim. Case No. 31075.)

Upon arraignment, the defendant, who waived his right to be assisted by counsel, entered a plea of not guilty. The Court proceeded with the trial of the case during which the prosecution presented its evidence both oral and documentary and the defendant, assisted by counsel, cross-examined the witnesses for the prosecution. After the prosecution had presented its evidence, counsel for the defendant prayed that without waiving his right to present evidence in his behalf, the information be dismissed on the ground that the evidence presented does not prove the offense charged and that he be granted a period of five days within which to file a memorandum in support of his motion. The Court granted him five days within which to file his memorandum (p. 7, t.s.n., session of 7 December 1955). On 13 December 1955 the defendant filed a motion to quash the information on the ground that the Court has no jurisdiction of the case and that the facts alleged in the information and the evidence presented do not constitute a violation of article 277 of the Revised Penal Code. According to the defendant, as the penalty imposed for violation of article 277 of the Revised Penal Code is *arresto mayor* and a fine not exceeding P500, pursuant to section 87(b), Republic Act No. 296, it is the municipal court that has jurisdiction of the case. On 21 February 1956 the Court denied the defendant's motion to quash. On 20 March 1956 the defendant filed a "petition requesting permission to file a second motion to dismiss," with the motion attached thereto, and on 22 March 1956 the prosecution, an opposition thereto. On the day set by the Court for reception of his evidence (24 March 1956), the defendant waived his right to present it. Whereupon the Court granted the parties fifteen days within which to submit their respective memoranda. On 4 April 1956 the defendant filed his memorandum. The prosecution did not file any. On 25 July 1956 the Court rendered judgement finding the defendant guilty as charged and sentencing him to suffer two (2) months and one (1) day of *arresto mayor*, to pay a fine of P200, with subsidy imprisonment in case of insolvency not to exceed one-third of the principal penalty, the accessories of the law, and to pay the costs. The defendant has appealed. On 29 March 1958, after the parties had filed their respective briefs, the Court of Appeals certified the case to this Court on the ground that the appellant again had

raised the question of jurisdiction.

Section 43 (f), Republic Act No. 296, as amended, provides that Courts of First Instance have original jurisdiction of "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 (b) of the same Act provides that justice of the Peace and Municipal Courts have original jurisdiction over "All offenses in which the penalty provided by law is imprisonment for more than six months, or a fine of not more than two hundred pesos, or both such fine and imprisonment." [1] (Italics supplied) The penalty imposed by article 277 of the Revised Penal Code "upon the parents who shall neglect their children by not giving them the education which their station in life require and financial condition permit," is *arresto mayor* and a fine not exceeding P500. The duration of the penalty of *arresto mayor* is one month and one day to six months. [2] The jurisdiction of courts in criminal offenses is determined by the penalty imposed for an offense as provided- by the statute, and not by what may be meted out to the offended after trial.

As already pointed out, the penalty imposed by article 277 of the Revised Penal Code for the offense with which the appellant is charged is *arresto mayor* and a fine not exceeding P500. It is not only *arresto mayor* or merely a fine not exceeding P500; it is both imprisonment and fine. In *Angeles vs. Jose* (96 Phil., 151), 50 Off. Gaz. 5764-5765, this Court held that where the fine fixed by law is beyond the jurisdiction of the Municipal Court and within that of the Court of First Instance, the latter Court is the one that has original jurisdiction of the case. The facts of that case are: Domingo Mejia y Soriano was charged before the Court of First Instance of Manila with the crime of damage to property in the sum of P645.22 and less serious physical injuries through reckless negligence, committed in one single act. After preliminary investigation, upon motion of the defendant, the Court dismissed the case for lack of jurisdiction because the penalty prescribed for the offense is only *arresto mayor* in its minimum and medium period. Brought by the City Fiscal on *certiorari* to test the legality of the dismissal on the issue of jurisdiction, this Court said:

"The above-quoted provision [1] simply means that if there is only damage to property the amount fixed therein shall be imposed, but if there are also physical injuries there should be an additional penalty for the latter. The information cannot be split into two; one for the physical injuries, and another for the damage to property for both the injuries and the damage committed were caused by one single act of the defendant and constitute what may be called a complex crime of physical injuries and damage to property. It is clear that the fine fixed by law in this case is beyond the jurisdiction of the municipal court and within that of the court of first instance."

In like manner, since the penalty imposed for violation of article 277 of the Revised Penal Code is both imprisonment and fine, the penalty cannot be split into two, the Municipal Court, which has jurisdiction of an offense in which the penalty provided by law is imprisonment for not more than six months, imposing imprisonment and the Court of First Instance, which has jurisdiction of a case in which the penalty imposed by law is a fine of more than P200, imposing the fine. Consequently, the Court of First Instance has jurisdiction of the case and correctly took cognizance of it.

The latter case of *People vs. Ocampo*, 100 Phil., 513; 53 Off. Gaz. 612-614, relied upon by the appellant, is not applicable. There the defendant was charged in the Court of First Instance of Manila with the crime of attempted theft involving the sum of P202 in cash. Pursuant to article 309 of the Revised Penal Code, if the value of the property stolen is more than P200 but does not exceed P2,000, the penalty of *prision correccional* in its minimum and medium periods shall be imposed. The offense charged being only attempted theft, the penalty that should be imposed is two degrees lower than the penalty prescribed for a consummated offense, which, in this case, is *destierro* in its maximum period to *arresto mayor* in its minimum period. This Court held that the Municipal Court and not the Court of First Instance has jurisdiction of the case. The case at bar is different from this case relied upon by the appellant. Here the penalty for the offense charged is *arresto mayor* and a fine not exceeding P500.

There it is destierro in its maximum period to arresto mayor in its minimum period. Clearly, the latter case is not within the jurisdiction of the Court of First Instance.

As the question of jurisdiction raised by the appellant is so unsubstantial to bring his appeal within the appellate jurisdiction of this Court on the one hand, and the review of the judgment appealed from requires revision and determination of facts as found by the trial Court, on the other, as indicated or revealed in the six assignment of errors claimed by the appellant to have been committed by the trial Court, to wit:

Al no declarar que el hecho de que cuando la denunciante entrego los menores Armando y Renato Cuello sin al consentimiento del apelante como padre al "Boys Town", ella infringio las disposiciones del articulo 277 delCodigo Penal Revisado.

Al declarar que durante la estancia del apelante en Okinawa, solo ha enviado a la denunciante la suma de cincuenta (\$50.00) dolar, equivalente a cien (P100.00) pesos y un (1) reloj de pulsera y al volver en el pais solo entrego la suma de cuarenta pesos (P40.00).

Al declarar que el apelante a su vuelta en el pais construyo una casa para Prescila Gloria.

Al declarar que el apelante abandono a sus hijos y es responsable por dicho abandono de acuerdo con las disposiciones del articulo 277 del Codigo Penal Revisado.

El condenar al apelante a la pena de dos (2) mese y un (1) dia de arresto mayor, y una multa de doscientos pesos (P200.00) con las cortas. (pp. b to c, brief for the appellants.)

the appeal taken by the appellant is remanded to the Court of Appeals for determination pursuant to the provisions of Section 31, in connection with sections 17 and 29, Republic Act No. 296, as amended.

Bengzon, Acting C. J., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, and Dizon, JJ., concur.

[1] As amended by Republic Act No. 2613, which took effect on 1 August 1959, section 87 (c) provides: "All other offenses except violation of election laws 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." The amendment, however, is not decisive of the case.

[2] Article 27, Revised Penal Code.

[1] Referring to paragraph 3, article 365 of the Revised Penal Code, which provides: "When the execution of the act covered by this article shall have only resulted in damage to the property of another, the offender shall be punished by a fine ranging from an amount equal to the value of said damage to three times such value, but which shall in no case be less than P25."

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