

ALFREDO DALAO Y PANILO, PETITIONER VS. FRANCISCO GERONIMO, JUDGE OF THE MUNICIPAL COURT OF MANILA, RESPONDENT.*G. R. No. L-5969. April 29, 1953*

Ponente: MONTEMAYOR, J.

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This is a petition for certiorari and prohibition. According to the petition, petitioner Alfredo Dalao y Panilo was on June 14, 1952, charged before the Municipal Court of Manila with the crime of attempted bribery in that on or about June 9, 1950, in the City of Manila, the petitioner was said to have inserted "Two one-peso bills between the pages of his (accused's) driver's license and delivering the said license with said cash money to Patrolman F. Jaymalin, a member of the Manila Police Department", in consideration of the patrolman's refraining from arresting him for disregarding a traffic sign along Quezon Boulevard, but "the said police officer refused to be corrupted" and instead placed him under arrest right then and there; that the trial judge ordered petitioner to plead to the information, but instead of interposing a plea of "not guilty", he moved to quash the information on the ground that the criminal action had prescribed; and that respondent judge denied the verbal motion to quash on the ground that the penalty for the said crime being destierro, a correctional penalty, in its minimum and medium periods, the period of prescription was five years.

Petitioner contends that the order of denial is against the law for the reason that according to him the penalty imposable for attempted bribery is arresto menor in its minimum and medium periods, and that consequently, the offense prescribes in two (2) months, while more than two years have elapsed from the time the offense was committed on June 9, 1950 until the complaint was filed on June 14, 1952.

It is unnecessary to discuss extensively the question involved in the present case. In the case of *Uy Chin Hua vs. Hon. Judge Rafael Dinglasan*,^[1] G. R. No. L-2709, this Court held that the penalty imposable for attempted bribery is destierro in its minimum and medium periods. That doctrine was affirmed in the case of *People vs. Emilio Santos y Bautista*,^[2] G. R. No. L-3582, promulgated on November 29, 1950. Consequently, we find the contention of the petitioner that attempted bribery is penalized with arresto menor in its minimum and medium periods, untenable.

The period of prescription of the offense of attempted bribery, penalized with destierro, is ten (10) years according to the provisions of article 90 of the Revised Penal Code for the reason that destierro is classified as a correctional penalty under article 25 of the same Code. For the reasons above given the petition for certiorari and prohibition is hereby denied, with costs.

Feria, Pablo, Bengzon, Tuason, Jugo, Bautista Angelo and Labrado, JJ., concur.

DISSENTING**PARAS, C. J.,**

I dissent.

For the same reasons stated in my concurring opinion in *Uy Chin Hua vs. Hon. Rafael Dinglasan*, G. R. No. L-2709, decided on June 30, 1950. I hold that the penalty for attempted bribery is *arresto menor* in its minimum and medium periods, or 1 day to 20 days. Accordingly, the criminal action against the herein petitioner for attempted bribery filed on June 14, 1952, or more than two years after the offense was allegedly committed on June 9, 1950, had already prescribed, considering that when the imposable penalty is *arresto menor*, the period of prescription is two months.

The consummated offense of bribery is penalized by *arresto mayor* in its medium and maximum periods, or from 2 months and 1 day to 6 months. When the penalty is *arresto mayor*, the criminal action prescribes in five years. Under the theory of the majority, the action for attempted bribery prescribes longer than the action for consummated bribery, and this is obviously anomalous, if not absurd.

Reyes, J., concurs.

[1] 86 Phil., 617.

[2] 87 Phil., 687.

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