

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. DAVID A. ALFECHE, JR., PRESIDING JUDGE, BRANCH 15, REGIONAL TRIAL COURT, CAPIZ, RESPONDENT.**

*G.R. No. 102070. July 23, 1992*

Ponente: DAVIDE, JR., J.

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**DAVIDE, JR., J.:**

Which court has jurisdiction over cases involving a violation of Article 312 of the Revised Penal Code where the intimidation employed by the accused consists of a threat to kill?

This is the issue in this case.

Upon a complaint for Grave Threats and Usurpation of Real Property filed against Ruperto Dimalata and Norberto Fuentes, and after the appropriate preliminary investigation wherein Dimalata presented evidence showing that he is a successor-in-interest of the alleged original owner of the land, and that the threat was established to have been directed against the complainants' tenant-encargado, Assistant Provincial Prosecutor Juliana C. Azarraga of the Office of the Provincial Prosecutor of CapiZ handed down a Resolution, duly approved by the Provincial Prosecutor, finding prima facie evidence of guilt for the crime charged.[1] The complainants are co-owners of the parcel of land allegedly usurped.

On 5 July 1991, Assistant Provincial Prosecutor Azarraga filed the corresponding Information[2] for "Usurpation of Real Rights In Property defined and penalized under Article 312 in relation to Article 282 of the Revised Penal Code" with the Regional Trial Court of CapiZ. It was docketed as Criminal Case No. 3386 and was raffled to Branch 15 thereof. The Information reads as follows:

"The undersigned, with the prior authority and approval of the Provincial Prosecutor, accuses RUPERTO DIMALATA and NORBERTO FUENTES of the crime of Usurpation of Real Rights in Property defined and penalized under Article 312 in relation to Article 282 of the Revised Penal Code, committed as follows:

That sometime in the month of November, 1990, at Brgy. Cabugao, Municipality of Panitan, Province of CapiZ, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, by means of violence against or intimidation of persons, did then and there wilfully, unlawfully and feloniously enter, possess and occupy a portion of Lot No. 3000, Panitan Cadastre, belonging to and owned in common by Teresita Silva and the latter's brothers and sisters, after threatening to kill the tenant-encargado if the latter would resist their taking of the portion of the land, and thereafter, plowed, cultivated and planted palay on said portion of land to the exclusion of the above-named owners thereof who, therefore, were prevented from appropriating the property's produce or earning profits therefrom from the time of the said usurpation by accused up to the present to the damage and prejudice of the said Teresita Silva and her co-owners.

### CONTRARY TO LAW."

On 17 July 1991, respondent Judge, as Presiding Judge of Branch 15 of the court below, dismissed the case *motu proprio* on the ground of lack of jurisdiction considering that "the crime committed by the accused falls under Article 312 of the Revised Penal Code and the violence or intimidation by the accused is (sic) a means to commit it or a mere incident in its commission, hence, the threat is absorbed by the crime charged," and considering that "the impossible (sic) fine as penalty is from P200.00 to P500.00" because the value of the gain cannot be ascertained. The order of dismissal[3] reads as follows:

"Upon personal examination and evaluation of the affidavit of the complainant, annexes and the resolution in support of the information, the crime committed by the accused falls under Article 312 of the Revised Penal Code and the violence or intimidation by the accused is (sic) a means to commit it or a mere incident in its commission, hence, the threat is absorbed by the crime charged.

Under above (sic) facts, an (sic) act of the accused was not a means to commit the other or by their single act, it resulted to (sic) two or more offenses thereby making paragraph 1 of Article 282 the basis in imposing the penalty. In fine, the act of the accused as alleged could not be a complex crime under Article 312 in relation to Article 282. One is a distinct crime from the other with separate elements to prove in case of prosecution.

On the basis of the allegations of the information the value of the gain incurred for the act of violence or intimidation executed by the accused cannot be ascertained, hence the impossible (sic) fine as penalty is from P200 to P500 which is below the jurisdiction of this court.

For lack of jurisdiction over the case the herein information is dismissed."

Assistant Prosecutor Azarraga filed a motion to reconsider the above order[4] alleging therein that it is true that the crime charged is not a complex crime and if mention is made of Article 282, it is because "the penalty of the crime defined under Article 312 is dependent on Article 282. Article 312 'borrows' the pertinent provision on penalty from Article 282, because Article 312 does not provide a penalty" as "Article 312 expressly provides that the penalty for the violence shall likewise be imposed in addition to the fine." In the instant case, the intimidation consists of the threat to kill the encargado, penalized under Article 282 of the Revised Penal Code; considering that the accused attained their purpose, the penalty imposable thereunder is that which is one degree lower than that prescribed by law for the crime they had threatened to commit -- homicide. In his Order of 24 July 1991,[5] respondent Judge denied the motion for reconsideration. The order reads:

"This refers to the motion for reconsideration on (sic) the order of this court dated July 17, 1991, dismissing the case for lack of jurisdiction over the case as charged in the information.

The legal basis of the dismissal is founded on the fact that paragraph 1 of Article 282, and Article 312, of the Revised Penal Code, are separate and distinct offenses. They could not be made a complex crime. Both are simple crimes where only one juridical right or interest is violated. Neither is Article 312 a special complex crime. The mere circumstance that the two crimes may be so related does not make them a special complex crime or be treated (sic) like one for the purpose of imposing the penalty.

Seemingly, the information charges two (2) separate and distinct crimes, one under paragraph 1, Article 282 and the other under Article 312, of the Revised Penal Code. Close examination reveals that the violence or intimidation by the accused as alleged therein is a means to commit the crime under Article 312 or a mere incident in its commission. Under the premises, the test of jurisdiction of the court over the case is the impossible (sic) penalty under Article 312.

Above premises considered, the motion for reconsideration is denied.

SO ORDERED."

Hence, this petition was filed by Assistant Provincial Prosecutor Azarraga for and in behalf of the People of the Philippines against respondent Judge to whom is imputed the commission of grave abuse of discretion amounting to lack of jurisdiction for dismissing the criminal case. In support thereof, it is argued that: (a) respondent Judge erred in not considering the penalty prescribed under Article 282 of the Revised Penal Code as the basis for the imposable penalty in the crime defined in Article 312 thereof, and (b) the crime charged in the information is not complexed with Article 282 by the mere allegation in the caption of the information that it is a prosecution under said Article 312 in relation to Article 282.

Before acting on the petition, this Court required the Office of the Solicitor General to comment on the petition filed by the Assistant Provincial Prosecutor.[6]

In its Comment[7] filed on 13 November 1991, the Office of the Solicitor General, while observing that the Assistant Provincial Fiscal lacks the authority to file the instant petition as only the Solicitor General is authorized by law to represent the People of the Philippines in cases of this nature, declares, nevertheless, that the petition is impressed with merit and, consequently, it ratifies the same and prays that it be admitted, given due course and the questioned orders of the respondent Judge be reversed. It, however, urges that the Assistant Provincial Prosecutor be advised to be more circumspect in filing cases of this nature with this Court without the intervention of, or prior authorization from, the Solicitor General.

In sustaining the position of the Assistant Provincial Prosecutor, the Office of the Solicitor General argues that "in prosecution for Usurpation of Real Property as provided for in Art. 312 of the Revised Penal Code, the over-all penalty imposable on the accused is determined not only by the penalty provided therein but also by the penalty incurred for the acts of violence executed by him. x x x The accused in Crim. Case No. 3386 committed acts of violence on the complainant's tenant. The violent acts with which the accused were charged in attaining their wishes constituted threats to kill Inocencio Borreros, if the latter prevented or prohibited both accused in (sic) taking possession of the lot in question. Hence, accused's threats on the life of Borreros may be considered as the 'violence or intimidation of persons' mentioned in Art. 312, supra, as the means by which accused took possession of the lot in question. And, under Art. 282, the imposable penalty for the threatening act of both accused -- to kill Borreros -- is one (1) degree lower than that prescribed by law for the crime accused threatened to commit -- homicide; hence, the additional penalty imposable on both accused is prision mayor minimum to prision mayor maximum, which is well within the jurisdiction of (sic) Regional Trial Court."

Acting on the Comment of the Office of the Solicitor General, this Court admitted the petition and required respondent Judge to file his Comment thereon, which he complied with on 9 December 1991.[8] Defending his challenged orders, respondent Judge argues that: (a) only the crime of usurpation of real property is charged in the information; the violence against or intimidation of persons alleged therein is an element of the crime charged; it cannot constitute a distinct crime of grave threats or give rise to the complex crime of usurpation of real property with gave threats as basis for determining the jurisdiction of the court; (b) the clause "in addition to the penalty incurred for the acts of violence executed by him" does not refer to Article 282 of the Revised Penal Code; both Articles 312 and 282 are distinct offenses where only one juridical interest is violated; if ever there are resultant offenses arising from the acts of violence of the accused in their occupation of the real property or usurpation of real rights over the same, they shall be subject to other criminal prosecutions not necessarily under Article 282. He further claims that although not dwelt upon in his order of dismissal, there is another ground for the dismissal of the case; this ground is the failure to allege intent to gain in the information, an essential element of Article 312.

On 29 January 1992, this Court required the Assistant Provincial Prosecutor to file a Reply to the respondent's Comment. Considering the appearance of the Office of the Solicitor General, she moved to be excused from

complying with the same. The Office of the Solicitor General subsequently filed the Reply.

This Court thereafter resolved to give due course to the petition.

Article 312 of the Revised Penal Code provides:

"ART. 312. Occupation of real property or usurpation of real rights in property. -- Any person who, by means of violence against or intimidation of persons, shall take possession of any real property or shall usurp any real rights in property belonging to another, in addition to the penalty incurred for the acts of violence executed by him, shall be punished by a fine of from 50 to 100 per centum of the gain which he shall have obtained, but not less than 75 pesos.

If the value of the gain cannot be ascertained, a fine of from 200 to 500 pesos shall be imposed."

The Article is not as simple as it appears to be. What is meant by the phrase "by means of violence against or intimidation of persons" and the clause "in addition to the penalty incurred for the acts of violence executed by him"? What penalty should be made the basis for determining which court shall acquire jurisdiction over a case involving a violation of the said Article?

An inquiry into the nature of the crime may yield the desired answers.

The offense defined in this Article is one of the crimes against property found under Title Ten, Book Two of the Revised Penal Code, and is committed in the same manner as the crime of robbery with violence against or intimidation of persons defined and penalized in Article 294 of the same Code. The main difference between these two (2) crimes is that the former involves real property or real rights in property, while the latter involves personal property.[9] In short, Article 312 would have been denominated as robbery if the object taken is personal property.

Accordingly, the phrase "by means of violence against or intimidation of persons" in Article 312 must be construed to refer to the same phrase used in Article 294. There are five (5) classes of robbery under the latter, namely: (a) robbery with homicide (par. 1); (b) robbery with rape, intentional mutilation, or the physical injuries penalized in subdivision 1 of Article 263 (par. 2); (c) robbery with the physical injuries penalized in subdivision 2 of Article 263 (par. 3); (d) robbery committed with unnecessary violence or with physical injuries covered by subdivisions 3 and 4 of Article 263 (par. 4); and (e) robbery in other cases, or simple robbery (par. 5), where the violence against or intimidation of persons cannot be subsumed by, or where it is not sufficiently specified so as to fall under, the first four paragraphs.[10]

Paragraphs one to four of Article 294 indisputably involve the use of violence against persons. The actual physical force inflicted results in death, rape, mutilation or the physical injuries therein enumerated. The simple robbery under paragraph five may cover physical injuries not included in paragraphs two to four. Thus, when less serious physical injuries or slight physical injuries are inflicted upon the offended party on the occasion of a robbery, the accused may be prosecuted for and convicted of robbery under paragraph five.[11]

It seems obvious that intimidation is not encompassed under paragraphs one to four since no actual physical violence is inflicted; evidently then, it can only fall under paragraph five.

But what is meant by the word intimidation? It is defined in Black's Law Dictionary[12] as "unlawful coercion; extortion; duress; putting in fear". To take, or attempt to take, by intimidation means "willfully to take, or attempt to take, by putting in fear of bodily harm". As shown in *United States vs. Osorio*,[13] material violence is not indispensable for there to be intimidation; intense fear produced in the mind of the victim which restricts or hinders the exercise of the will is sufficient. In an appropriate case, the offender may be liable for either (a)

robbery under paragraph 5 of Article 294 of the Revised Penal Code if the subject matter is personal property and there is intent to gain or animus furandi, or (b) grave coercion under Article 286 of said Code if such intent does not exist.[14]

In the crime of grave coercion, violence through force or such display of force that would produce intimidation and control the will of the offended party is an essential ingredient.[15]

In the crime of Grave Threats punished under Article 282 of the Revised Penal Code, intimidation is also present. However, this intimidation, as contra-distinguished from the intimidation in paragraph 5, Article 294 or Article 286 -- which is actual, immediate and personal -- is conditional and not necessarily personal because it may be caused by an intermediary.[16]

Paragraphs one to five of Article 294 are single, special and indivisible felonies, not complex crimes as defined under Article 48 of the Revised Penal Code.[17] The penalties imposed do not take into account the value of the personal property taken, but the gravity of the effect or consequence of the violence or intimidation.

Article 312 may also be considered as defining and penalizing the single, special and indivisible crime of occupation of real property or usurpation of real rights in property by means of violence against or intimidation of persons. It is likewise not a complex crime as defined under Article 48. However, while Article 294 provides a single penalty for each class of crime therein defined, Article 312 provides a single, albeit two-tiered, penalty consisting of a principal penalty, which is that incurred for the acts of violence, and an additional penalty of fine based on the value of the gain obtained by the accused. This is clear from the clause "in addition to the penalty incurred for the acts of violence executed by him." For want of a better term, the additional penalty may be designated as an incremental penalty.

What Article 312 means then is that when the occupation of real property is committed by means of violence against or intimidation of persons, the accused may be prosecuted under an information for the violation thereof, and not for a separate crime involving violence or intimidation. But, whenever appropriate, he may be sentenced to suffer the penalty for the acts of violence and to pay a fine based on the value of the gain obtained. Thus, if by reason or on the occasion of such occupation or usurpation, the crime of homicide, or any of the physical injuries penalized in either subdivisions 1 or 2 of Article 263 is committed; or when the same shall have been accompanied by rape or intentional mutilation; or when, in the course of its execution, the offender shall have inflicted upon any person not responsible for its commission any of the physical injuries covered by subdivisions 3 and 4 of Article 263; or when it is committed through intimidation or through the infliction of physical injuries not covered by subdivisions 1 to 4 of Article 263 of the Revised Penal Code, i.e., physical injuries penalized under Articles 265 and 266 of the Revised Penal Code, the accused may be convicted for the violation of Article 312. However, he shall be sentenced: (a) to suffer the penalty for homicide, rape, intentional mutilation and physical injuries provided under subdivisions 1 to 4 of Article 263, other physical injuries[18] or for the intimidation, which may fall under Article 282 (Grave Threats) or Article 286 (Grave Coercion) of the Revised Penal Code, as the case may be, and (b) to pay a fine based on the value of the gain obtained by him, which shall be an amount equivalent to 50 to 100 per centum of such gain, but in no case less than seventy-five (P75.000) pesos, provided, however, that if such value cannot be ascertained, the fine shall be from 200 to 500 (P200.00 to P500.00) pesos.

Respondent Judge then was wrong in his two (2) inconsistent propositions.

This Court cannot agree with the first which postulates that the threat was the means employed to occupy the land and is therefore absorbed in the crime defined and penalized in Article 312. If that were the case, the clause "in addition to the penalty incurred for the acts of violence executed by him" would be meaningless. As earlier

explained, intimidation is a form of violence which may come in the guise of threats or coercion. Besides, the peculiar theory of absorption would result in an absurdity whereby a grave or less grave felony defined in paragraph 1 of Article 282 and punished by an afflictive correctional penalty<sup>[19]</sup> consisting of the deprivation of liberty, would be absorbed by a crime (Article 312) penalized only by a fine. Neither can this Court accept his second proposition that Article 282 and Article 312 refer to two (2) separate crimes, both of which "are simple crimes where only one juridical right or interest is violated." As already stated, the crime of occupation of real right in property is a single, special and indivisible crime upon which is imposed a two-tiered penalty. Also, such a proposition obfuscates the first proposition and ignores the distinction between the two Articles. Article 286 is a crime against personal security while Article 312 is a crime against real property or real rights thereon.

It does not, however, necessarily follow that just because the respondent Judge is wrong, the petitioner is correct. This Court finds the proposition of petitioner similarly erroneous and untenable. As earlier stated, the complainants in the case are the co-owners of the lot and not the tenant-encargado who was the person threatened. The latter was in actual physical possession of the property for, as found by the investigating prosecutor:

"x x x This lot was tenanted by Inocencio Borreros after the latter was installed thereat by Teresita Silva herself. Lot No. 3000 is an agricultural land devoted to palay."<sup>[20]</sup>

Accepting this to be a fact and without necessarily inquiring into the effects of P.D. No. 27 and R.A. No. 6657 on such tenancy, the tenant has, at the very least, a real right over the property -- that of possession -- which both accused were alleged to have usurped through the threat to kill. Borreros is, therefore, the offended party who was directly threatened by the accused; while the information expressly states this fact, Borreros is not, most unfortunately, made the offended party. The information does not even suggest that the accused threatened complainants or their families with the infliction upon their persons, honor or property of any wrong amounting to a crime so as to bring the former within the purview of Article 282 of the Revised Penal Code. At most, the liability of the accused to the complainants would only be civil in nature. Hence, to the extent that it limits the offended parties to just the co-owners of the property who were not even in possession thereof, the information in question does not charge an offense.<sup>[21]</sup> It may, therefore, be dismissed in accordance with Section 3 (a), Rule 117 of the Rules of Court. Considering, however, that both accused have not yet been arraigned, the information may be accordingly amended to include the tenant as the offended party. This of course is on the assumption that the accused usurped the tenant's real right with intent to gain or with *animus furandi*; for without such intent, he could only be charged with coercion.<sup>[22]</sup> In so holding, this Court does not preclude the owner of a piece of property from being the offended party in the crime of occupation of real property or usurpation of real rights in property by means of intimidation consisting of a threat, under Article 282, provided, however, that all the elements thereof are present. In such a case, the penalty imposable upon the accused would be the penalty prescribed therein plus a fine based on the value of the gain obtained by the accused. As stated earlier, intimidation as found in Article 312 could result in either the crime of grave threats under Article 282 or grave coercion under Article 286 of the Revised Penal Code. Thus, if complainants were in fact the parties threatened and paragraph 1 of Article 282 is applicable,<sup>[23]</sup> the Regional Trial Court would have exclusive original jurisdiction over the offense charged because the corresponding penalty for the crime would be *prision mayor*, which is the penalty next lower in degree to that prescribed for the offense threatened to be committed -- homicide -- which is *reclusion temporal*,<sup>[24]</sup> and a fine based on the value of the gain obtained by the accused.<sup>[25]</sup>

WHEREFORE, the Orders of respondent Judge of 17 July 1991 and 24 July 1991 in Criminal Case No. 3386 are hereby SET ASIDE. The petitioner may amend the information as suggested above; otherwise, it should be dismissed not for the reason relied upon by the respondent Judge, but because it does not charge an offense.

No pronouncement as to costs.

**SO ORDERED.**

Gutierrez, Jr., (Chairman), Feliciano, Bidin, and Romero, JJ., concur.

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[1] Annex "A" of Petition; Rollo, 8-12.

[2] Attached to Manifestation/Motion; Id., 39, et seq.

[3] Annex "B" of Petition; Rollo, 13.

[4] Annex "C" of Petition; Rollo, 14-16.

[5] Annex "D", Id.,; Id., 17.

[6] Rollo, 19.

[7] Id., 28, et seq.

[8] Rollo, 30, et seq.

[9] Article 293, Revised Penal Code.

[10] People vs. Egido, 90 Phil. 762 [1952].

[11] REYES, JR., L.B., The Revised Penal Code, Book Two, Twelfth Edition [1981], 617, citing United States vs. Barroga, 21 Phil. 161 [1912]; People vs. Mandia, 60 Phil. 372 [1934]; People vs. Magramo, 62 Phil. 307 [1935].

[12] Fifth Edition [1979], 737.

[13] 21 Phil. 237 [1912].

[14] U.S. vs. Vega, 2 Phil. 167 [1903].

[15] REYES, op. cit., 565.

[16] PADILLA, A., Revised Penal Code Annotated, Book II, vol. III, Eleventh Ed. [1977], 54.

[17] People vs. Labita [unreported], 99 Phil. 1068 [1956]. REYES, op. cit., 603, considers them special complex crimes.

[18] Article 265 and 266, Revised Penal Code.

[19] Depending on whether the offender attained his purpose.

[20] Resolution [Annex "A" of Petition], 21; Rollo, 9.

[21] See Section 12, Rule 110, Rules of the Court.

[22] U.S. vs. Vega, supra.

[23] The threat to kill having been made, as alleged, subject to a condition and that the accused would have attained his purpose.

[24] Article 249, Revised Penal Code.

[25] Section 20, in relation to Section 32, The Judiciary Reorganization Act of 1980.

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