

DALMACIO DE LOS ANGELES, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES, RESPONDENT.

G. R. No. 10969. March 31, 1958

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

The petitioner, Dalmacio de los Angeles, a member of the bar, was accused of attempted bribery in the Court of First Instance of Manila, for offering and actually delivering various sums of money, aggregating P2,300.00, to one Epifanio T. Villegas, a district agent of the National Bureau of Investigation, who was in the performance of his official duties as such, in order to make said agent refrain from subjecting to investigation the clients of the accused, then engaged in the practice of law, who were then under investigation by the National Bureau of Investigation for acts of smuggling of aliens into the Philippines. After trial, the lower court found the defendant guilty of the charge and sentenced him to 6 months and 1 day of destierro, and to pay the costs. The amount of P2,300 in the custody of the court was ordered confiscated.

On appeal to the Court of Appeals, the latter affirmed the appealed judgment of conviction, but modified the penalty imposed by increasing it to two (2) years, four (4) months and one (1) day of destierro, and by imposing a fine of P2,300, with subsidiary destierro in case of insolvency. Dissatisfied with said decision, the defendant filed with us a petition for review of said decision through certiorari, which petition was given due course.

Pending appeal in the Court of Appeals, petitioner herein filed a motion in that court to dismiss the appeal on the ground of lack of jurisdiction of the trial court to try the case. This motion was denied by the Court of Appeals in its decision under review. The petitioner claims that the Court of Appeals erred in holding that the Court of First Instance of Manila had original jurisdiction to try this case and in not dismissing the case on appeal.

We agree with the petitioner in his contention that, as held by us in the cases of *Uy Chin Hua vs. Dinglasan*, 86 Phil., 617, 47 Off. Gaz. [Supp. 12], 233, and *People vs. Santos*, 87 Phil., 687, promulgated on November 29, 1950, that inasmuch as the consummated crime of bribery is penalized with *arresto mayor* in its medium and maximum degrees, by reason of which penalty Justice of the Peace and Municipal Courts have jurisdiction, attempted bribery which according to the scale of penalties, under Article 71 of the Revised Penal Code, is penalized with *destierro* in its minimum and medium degrees, which does not involve imprisonment or confinement, and therefore, less serious or severe as compared to *arresto mayor*, should with more reasons, fall under the jurisdiction of Justice of the Peace and Municipal Courts, and not Courts of First Instance. That is with regards to the penalty of imprisonment and *destierro*; but the Solicitor General contends and the Court of Appeals has held that in addition to the penalty of imprisonment for consummated bribery, there is the additional penalty of fine of not less than the value of the gift or bribe money and not more than three times such value; that reducing said fine by two degrees for attempted bribery, and applying Article 75 of the Revised Penal Code, the fine impossible in the present case would be not less than P2,300 and not more than three times P2,300 or P6,900, but reducing the latter maximum amount of P6,900 by one-fourth for each degree, which fine would still come within the jurisdiction of the Court of First Instance, for the reason that under the Judiciary Act of 1948, Republic

Act 296, Courts of First Instance have jurisdiction over criminal cases in which the penalty provided by law is imprisonment for more than six months or a fine of more than P200.

In the discussion of this case, particularly, that phase referring to the maximum fine of P6,900 when reduced by two degrees to correspond to attempted bribery, quite an interesting point came up, namely, the manner of reducing said maximum fine. Although the determination of this legal point is not necessary in the present decision, nevertheless, we deem it worthwhile to discuss and decide it for the guidance of the bench and bar, inasmuch as we find no precedents or jurisprudence on the matter. While authoritative commentators on the Spanish Penal Code, such as Viada and Groizard, give their opinion and even examples of how the fine is to be reduced by one degree, they fail to do so as to the manner of reduction of such fine by two degrees.

For instance, where the fine fixed for the consummated offense is not less than P200 and not more than P2,000, then reducing it by one degree for say the frustrated felony, the minimum would still be P200 and the maximum, reducing it by one-fourth will be P1,500. Now, how is the fine to be reduced further by another degree for the attempted crime? In other words, if the minimum still remains at P200, how will the reduction of the maximum by one-fourth be effected? Will it be one-fourth of the original maximum of P2,000, as is done by reducing by one degree, or will it be one-fourth of P1,500, as already reduced? For a better and clearer understanding of the matter, we reproduce Article 75 of the Revised Penal Code:

"Art. 75. Increasing or reducing the penalty of fine by one or more degrees.—Whenever it may be necessary to increase or reduce the penalty of fine by one or more degrees, it shall be increased or reduced, respectively, for each degree, by one-fourth of the maximum amount prescribed by law, without, however, changing the minimum.

"The same rules shall be observed with regard to fines that do not consist of a fixed amount, but are made proportional."

A theory or suggestion was advanced to the effect that to further reduce the maximum by another degree, in the example given, the basis should be P1,500, and not P2,000, so that the maximum fine reduced by two degrees would be P1,125. However, the overwhelming majority opinion is that the second reduction by one-fourth should be based on P2,000, so that the maximum fine as reduced by two degrees would be P1,000. This view is shared by Prof. Ambrosio Padilla, as shown in his commentaries on the Revised Penal Code, particularly on Article 75 thereof, and we find this view to be more reasonable.

It will be noticed that according to Article 75, the one-fourth reduction is to be made "of the maximum amount prescribed by law". Said maximum amount prescribed by law is for the consummated crime, not of the maximum as already reduced. Furthermore, strictly speaking, the law (Art. 210, par. 3, in relation to Art. 212, Rev. Penal Code) prescribes the amount of the fine only for the consummated crime of bribery. For the frustrated and attempted, the law does not really prescribe the amount of the fine, but merely indicates the manner of reducing the maximum amount of fine prescribed for the consummated felony. In other words, the law expressly and clearly states the penalty (amount of fine) prescribed to be used as a basis for the reduction. Examples: In Articles 50, 51, 52, and 53 of the Revised Penal Code, the basis for reduction of the penalty by one or two degrees, is invariably the penalty prescribed by law for the consummated crime, while under Articles 54, and 55, the basis for the reduction is the penalty prescribed by law for the frustrated felony; and under Articles 56 and 57, the basic penalty to be used for reduction by one or two degrees is that for the attempted felony. From all this, it will be observed that in making any reduction by one or more degrees, the basis used is that already prescribed, not as already reduced. It will also be noticed that under Article 51, the penalty for an attempted crime is that for the consummated felony, reduced by two degrees, not the penalty for the frustrated felony, reduced by one degree. In the present case, by analogy, the basis for the reduction of the first as well as the second degree must necessarily

be the penalty prescribed by law for the consummated felony, which is P6,900.

Counsel for the petitioner, however, counters with the argument that although the fine of not less than the amount of the gift and not more than three times such value is applicable to the case of consummated crime of bribery, nevertheless, such provision about the fine is inapplicable to a case of attempted bribery because:

* * * "the essential element of the alleged 'gift (money) received by the public officer for which he agreed to refrain from doing his official duty' is not present, and therefore, the amount of said alleged gift cannot be a valid basis for the imposition of the additional penalty of fine. The fine must naturally be disregarded." (p. 17, Brief for the Petitioner).

We fail to see the point raised by the petitioner. In both the consummated and attempted bribery, the gift or bribe money is present and is an important element. In the present case, petitioner not only offered, but he actually delivered the total sum of P2,300 to the public official to make him refrain from doing his official duty. The money was received by the official, but not accepted for the purpose for which it was given because said honest official not only advised his superiors of the attempt to corrupt him, but delivered the money to his superiors to be used as evidence. From the point of view of the petitioner, the giving of the gift or bribe money was complete, together with his desire and attempt to corrupt a public official. If the crime had been consummated by the acceptance by the public official of the gift for himself and by fulfilling his part of the bargain to refrain from complying with his official duty of investigating the clients of the petitioner, then there would be no question that the amount of P2,300, up to three times said sum would be the basis for the imposition of the additional penalty or fine. Just because the crime was not consummated but merely attempted, does not eliminate this factor of the gift or bribe money, only that said fine should be reduced by two degrees. But even making that reduction, said fine would still be over P200.00, which would consequently place the case under the jurisdiction of the Courts of First Instance.

In view of the foregoing, the appealed decision of the Court of Appeals is hereby affirmed, with costs. Bengzon, Padilla, Reyes, A., Bautista Angela, Concepcion, and Reyes, J. B. L., JJ., concur.

Paras, C. J., and Endencia, J., concur in the result.

CONCURRING AND DESSENTING

FELIX, J.,

Petitioner Dalmacio de los Angeles, a member of the Bar, was prosecuted for and convicted of the crime of attempted bribery in the Court of First Instance of Manila. After trial, he was sentenced to "6 months and 1 day of destierro (banishment) during which period he shall not be permitted to enter or be in any place within the radius of twenty-five kilometers from his present place of residence, 715 Benavides, Tondo, Manila" and to pay the costs. The amount of P2,300 in the custody of the Court was ordered confiscated. On appeal to the Court of Appeals, the latter Court affirmed the judgment of the lower court, but modified the penalty imposed by increasing it to 2 years, 4 months and 1 day of destierro and by sentencing him to pay in addition thereto, a fine of P2,300 with subsidiary destierro in case of insolvency. With this modification, the Court of Appeals affirmed the decision of the lower court in all other respects.

We have now before Us a petition of Dalmacio de los Angeles for review through certiorari of said decision and the majority of this Court affirmed the decision of the Court of Appeals as mentioned. I could have concurred in the result of the majority decision were it not for the cogent reason that although I agree with the fine imposed

upon the defendant in the sum of P2,300, because in imposing the fine the Court may fix any amount within the limit established by law attention being given not only to the mitigating and aggravating circumstances, but more particularly to the wealth or means of the culprit (Art. 66, Revised Penal Code), yet I can by no means agree as to the manner in which the penalty of fine as established by law has been lowered by 2 degrees in the case at bar. For a better understanding of my points of view in this regard, i.e., as to how the penalty of fine may be lowered by 2 degrees, I deem it convenient to state the genesis and development of the majority decision.

When this case was submitted for the first time to Our deliberation, all the members of the Court agreed to find appellant guilty of attempted bribery. There was no discussion as to the penalty to be imposed upon the defendant, but the general understanding among the members of the Court was that it should be in line with the penalty imposed by the Court of Appeals. So when the Justice in charge of delivering the opinion of the Court submitted the decision, I called his attention to the fact that in accordance with a standing practice in operation since time immemorial in the Courts of First Instance and Fiscal's Office of the City of Manila, the lowering of the fine by 2 degrees could not be made by merely deducting 1/2 of the maximum of the fine fixed by law for the principal of the consummated offense. He asked me what authority I had for my contention and what Viada, Groizard and other renowned commentators on criminal law said on this regard. I answered him that Article 75 of the Revised Penal Code is so clear that with all probabilities, said commentators did not deem it necessary to make any explanation of the matter. But Mr. Justice Montemayor found in the work of Criminal Law, 1955 ed., Vol. I, p. 464, of Professor Ambrosio Padilla, an example that apparently sustained his theory. So he insisted in his opinion as expressed in his first project. The matter was then submitted anew to the Court for deliberation on this point and at that time, one member of the Court (Mr. Justice Cesar Bengzon) called the attention of the body to the fact that in the "Cuadros Sinopticos" (Synoptic Tables) of Viada, 6th ed., 1916, this famous commentator made the lowering of the maximum of the fine by 2 degrees in the same manner as I had suggested to him, which will be later shown, and as it was being done by the Courts and Fiscal's Office of Manila since time immemorial (See Table No. 42). Yet the majority of the Court deemed it better to ignore the opinion of Viada and maintain their own interpretation of the Code. I do not impugn the right of the Court to make its own interpretation of what the law says, but certainly I do question their wisdom in doing so, especially when the opinion of Viada is propped up by a long standing practice.

The basis for the imposition of the fine in the case at bar was P2,300 which is the amount of the bribe offered and delivered (in vain) to a public officer as an inducement for refraining from doing something which it was his official duty to do; so the fine for the author of the consummated offense charged shall be not less than the value of the gift (P2,300) and not more than 3 times such value (P6,900), that is, from P2,300 to P6,900 (Art. 210, par. 8, and Art. 212 of the Revised Penal Code). Article 75 of this legal body reads as follows:

ART. 75. INCREASING OR REDUCING PENALTY OR FINE BY TWO OR MORE DECREES.—Whenever it may be necessary to increase or reduce the penalty of fine by one or more degrees, it shall be increased or reduced, respectively, for each degree, by one-fourth of the maximum amount prescribed by law, without however, changing the minimum.

The fine that can be imposed in this case for the principal of the consummated offense of bribery is from P2,300 as minimum to P6,900 as maximum. As the crime committed in the case at bar was merely an attempted corruption of a public officer the lowering of the fine by 2 degrees should be made as follows: 1/4 of P6,900 which is P1,725 shall be deducted from the former amount and that leaves the maximum of the penalty of fine to P5,175 This sum is the MAXIMUM amount of the fine prescribed by law for the principal of a FRUSTRATED offense of bribery or corruption of a, public official under the circumstances charged in the information filed in the case at bar; so that if We have to reduce this fine to the next lower degree, We should not and could not deduct from said maximum of P5,175 of the same amount of P1,725 because this sum is not 1/4 of the maximum of the

fine prescribed by law for the frustrated offense. One-fourth of the maximum of the fine prescribed by law for the frustrated offense is P1,293.75, which deducted from P5,175 leaves a balance of P3,881.25 as the maximum of the fine provided for ATTEMPTED corruption of a public official and NOT P3,450 as it would be according to the majority decision.

The provisions of Articles 50 to 57 of the Revised Penal Code do not support the theory of the majority opinion and it is immaterial that the basis for the reduction of the penalty by one or 2 degrees is that fixed for the consummated, frustrated or attempted felony, for each degree has its own penalty prescribed by law. To do otherwise with regard to the penalty of fine would be to provide for two different ways of making the reduction when said penalty of fine is to be lowered by two or more degrees.

For the foregoing considerations, I dissent from the doctrine that the majority of this Court try to lay down as to the manner of reducing the fine by 2 degrees of the penalty of fine, although I admit that the fine of P2,300 imposed in the decision is within the range prescribed by law (Art. 66, Revised Penal Code). I concur in the majority opinion in all other respects.

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