

SANTIAGO PAERA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 181626. May 30, 2011

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This resolves the petition for review[1] of the ruling[2] of the Regional Trial Court of Dumaguete City[3] (RTC) finding petitioner Santiago Paera guilty of three counts of Grave Threats, in violation of Article 282 of the Revised Penal Code (RPC).

The Facts

As punong barangay of Mampas, Bacong, Negros Oriental, petitioner Santiago Paera (petitioner) allocated his constituents' use of communal water coming from a communal tank by limiting distribution to the residents of Mampas, Bacong. The tank sits on a land located in the neighboring barangay of Mampas, Valencia and owned by complainant Vicente Darong (Vicente), father of complainant Indalecio Darong (Indalecio). Despite petitioner's scheme, Indalecio continued drawing water from the tank. On 7 April 1999, petitioner reminded Indalecio of the water distribution scheme and cut Indalecio's access.

The following day, petitioner inspected the tank after constituents complained of water supply interruption. Petitioner discovered a tap from the main line which he promptly disconnected. To stem the flow of water from the ensuing leak, petitioner, using a borrowed bolo, fashioned a wooden plug. It was at this point when Indalecio arrived. What happened next is contested by the parties.

According to the prosecution, petitioner, without any warning, picked-up his bolo and charged towards Indalecio, shouting "Patyon tikaw!" (I will kill you!). Indalecio ran for safety, passing along the way his wife, Diosetea Darong (Diosetea) who had followed him to the water tank. Upon seeing petitioner, Diosetea inquired what was the matter. Instead of replying, petitioner shouted "Wala koy gipili, bisag babaye ka, patyon tikaw!" ("I don't spare anyone, even if you are a woman, I will kill you!"). Diosetea similarly scampered and sought refuge in the nearby house of a relative. Unable to pursue Diosetea, petitioner turned his attention back to Indalecio. As petitioner chased Indalecio, he passed Vicente, and, recognizing the latter, repeatedly thrust his bolo towards him, shouting "Bisag gulang ka, buk-on nako imo ulo!" ("Even if you are old, I will crack open your skull!").

According to petitioner, however, it was Indalecio who threatened him with a bolo, angrily inquiring why petitioner had severed his water connection. This left petitioner with no choice but to take a defensive stance using the borrowed bolo, prompting Indalecio to scamper.

Except for Vicente, who was seriously ill, the Darongs testified during trial. Petitioner was the defense's lone witness.

The Ruling of the Municipal Circuit Trial Court

The 7th Municipal Circuit Trial Court of Valencia-Baong, Negros Oriental (MCTC) found petitioner guilty as charged, ordering petitioner to serve time and pay fine for each of the three counts.[4] The MCTC found the prosecution evidence sufficient to prove the elements of Grave Threats under Article 282, noting that the Darongs' persistent water tapping contrary to petitioner's directive "must have angered" petitioner, triggering his criminal behavior.[5] The MCTC rejected petitioner's defense of denial as "self-serving and uncorroborated." [6]

Petitioner appealed to the RTC, reiterating his defense of denial.

Ruling of the Regional Trial Court

The RTC affirmed the MCTC, sustaining the latter's finding on petitioner's motive. The RTC similarly found unconvincing petitioner's denial in light of the "clear, direct, and consistent" testimonies of the Darongs and other prosecution witnesses.[7]

Hence, this appeal.

Abandoning his theory below, petitioner now concedes his liability but only for a single count of the "continued complex crime" of Grave Threats. Further, petitioner prays for the dismissal of the case filed by Vicente as the latter's failure to testify allegedly deprived him of his constitutional right to confront witnesses. Alternatively, petitioner claims he is innocent of the charges for having acted in defense of the property of strangers and in lawful performance of duty, justifying circumstances under paragraphs 3 and 5, Article 11 of the RPC.[8]

In its Comment, the Office of the Solicitor General (OSG) finds merit in petitioner's concession of liability for the single count of the "continued complex crime" of Grave Threats. The OSG, however, rejects petitioner's prayer for the dismissal of Vicente's complaint, arguing that petitioner's guilt was amply proven by the prosecution evidence, not to mention that petitioner failed to raise this issue during trial. Further, the OSG finds the claim of defense of stranger unavailing for lack of unlawful aggression on the part of the Darongs. Lastly, the OSG notes the absence of regularity in petitioner's performance of duty to justify his conduct.[9]

The Issue

The question is whether petitioner is guilty of three counts of Grave Threats.

The Ruling of the Court

We rule in the affirmative, deny the petition and affirm the RTC.

Due Process Mischief in Raising

New Issues on Appeal

Although uncommented, petitioner's adoption of new theories for the first time before this Court has not escaped our attention. Elementary principles of due process forbid this pernicious procedural strategy - it not only catches off-guard the opposing party, it also denies judges the analytical benefit uniform theorizing affords. Thus, courts generally refuse to pass upon freshly raised theories.[10] We would have applied this rule here were it not for the fact that petitioner's liberty is at stake and the OSG partially views his cause with favor.

Petitioner Liable for Three Counts of Grave Threats

To limit his liability to one count of Grave Threats, petitioner tries to fit the facts of the case to the concept of "continued crime" (*delito continuado*) which envisages a single crime committed through a series of acts arising from one criminal intent or resolution.[11] To fix the penalty for his supposed single continued crime, petitioner

invokes the rule for complex crime under Article 48 of the RPC imposing the penalty for the most serious crime, applied in its maximum period.

The nature of the crime of Grave Threats and the proper application of the concepts of continued and complex crimes preclude the adoption of petitioner's theory.

Article 282 of the RPC holds liable for Grave Threats "any person who shall threaten another with the infliction upon the person x x x of the latter or his family of any wrong amounting to a crime[.]" This felony is consummated "as soon as the threats come to the knowledge of the person threatened." [12]

Applying these parameters, it is clear that petitioner's threat to kill Indalecio and Diosetea and crack open Vicente's skull are wrongs on the person amounting to (at the very least) homicide and serious physical injuries as penalized under the RPC. These threats were consummated as soon as Indalecio, Diosetea, and Vicente heard petitioner utter his threatening remarks. Having spoken the threats at different points in time to these three individuals, albeit in rapid succession, petitioner incurred three separate criminal liabilities.

Petitioner's theory fusing his liability to one count of Grave Threats because he only had "a single mental resolution, a single impulse, and single intent" [13] to threaten the Darongs assumes a vital fact: that he had foreknowledge of Indalecio, Diosetea, and Vicente's presence near the water tank in the morning of 8 April 1999. The records, however, belie this assumption. Thus, in the case of Indalecio, petitioner was as much surprised to see Indalecio as the latter was in seeing petitioner when they chanced upon each other near the water tank. Similarly, petitioner came across Diosetea as he was chasing Indalecio who had scampered for safety. Lastly, petitioner crossed paths with Vicente while running after Indalecio. Indeed, petitioner went to the water tank not to execute his "single intent" to threaten Indalecio, Diosetea, and Vicente but to investigate a suspected water tap. Not having known in advance of the Darongs' presence near the water tank at the time in question, petitioner could not have formed any intent to threaten any of them until shortly before he inadvertently came across each of them.

The importance of foreknowledge of a vital fact to sustain a claim of "continued crime" undergirded our ruling in *Gamboa v. Court of Appeals*. [14] There, the accused, as here, conceded liability to a lesser crime - one count of estafa, and not 124 as charged - theorizing that his conduct was animated by a single fraudulent intent to divert deposits over a period of several months. We rejected the claim -

[f]or the simple reason that [the accused] was not possessed of any fore-knowledge of any deposit by any customer on any day or occasion and which would pass on to his possession and control. At most, his intent to misappropriate may arise only when he comes in possession of the deposits on each business day but not in futuro, since petitioner company operates only on a day-to-day transaction. As a result, there could be as many acts of misappropriation as there are times the private respondent abstracted and/or diverted the deposits to his own personal use and benefit. [15] x x x x (Emphasis supplied)

Similarly, petitioner's intent to threaten Indalecio, Diosetea, and Vicente with bodily harm arose only when he chanced upon each of his victims.

Indeed, petitioner's theory holds water only if the facts are altered - that is, he threatened Indalecio, Diosetea, and Vicente at the same place and at the same time. Had this been true, then petitioner's liability for one count of Grave Threats would have rested on the same basis grounding our rulings that the taking of six roosters [16] or 13 cows [17] found at the same place and taken at the same time results in the commission of only one count of theft because -

[t]here is no series of acts committed for the accomplishment of different purposes, but only of one which was consummated, and which determines the existence of only one crime. The act of taking the roosters [and heads

of cattle] in the same place and on the same occasion cannot give rise to two crimes having an independent existence of their own, because there are not two distinct appropriations nor two intentions that characterize two separate crimes.[18] (Emphasis in the original)

Having disposed of petitioner's theory on the nature of his offense, we see no reason to extensively pass upon his use of the notion of complex crime to avail of its liberal penalty scheme. It suffices to state that under Article 48 of the RPC, complex crimes encompass either (1) an act which constitutes two or more grave or less grave offenses; or (2) an offense which is a necessary means for committing another[19] and petitioner neither performed a single act resulting in less or less grave crimes nor committed an offense as a means of consummating another.

The Prosecution Proved the Commission of Grave Threats Against Vicente

We find no reversible error in the RTC's affirmance of the MCTC's ruling, holding petitioner liable for Grave Threats against Vicente. The prosecution's evidence, consisting of the testimonies of Indalecio, Diosetea and two other corroborating witnesses,[20] indisputably show petitioner threatening Vicente with death.[21] Vicente's inability to take the stand, for documented medical reason,[22] does not detract from the veracity and strength of the prosecution evidence. Petitioner's claim of denial of his constitutional right to confront witnesses is untenable as he had every opportunity to cross-examine the four prosecution witnesses. No law requires the presentation of the private complainant as condition for finding guilt for Grave Threats, especially if, as here, there were other victims and witnesses who attested to its commission against the non-testifying complainant. Significantly, petitioner did not raise Vicente's non-appearance as an issue during the trial, indicating that he saw nothing significant in the latter's absence.

No Justifying Circumstances Attended Petitioner's Commission of Grave Threats

There is likewise no merit in petitioner's claim of having acted to "defend[] and protect[] the water rights of his constituents" in the lawful exercise of his office as punong barangay.[23] The defense of stranger rule under paragraph 3, Article 11 of the RPC, which negates criminal liability of -

[a]nyone who acts in the defense of the person or rights of a stranger, provided that the first and second requisites mentioned in the first circumstance of this article are present and that the person defending be not induced by revenge, resentment or other evil motive.

requires proof of (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) absence of evil motives such as revenge and resentment.[24] None of these requisites obtain here. Not one of the Darongs committed acts of aggression against third parties' rights when petitioner successively threatened them with bodily harm. Indeed, all of them were performing ordinary, peaceful acts - Indalecio was standing near the water tank, Diosetea was walking towards Indalecio and Vicente was standing in the vegetable garden a few meters away. With the element of unlawful aggression absent, inquiry on the reasonableness of the means petitioner used to prevent or repel it is rendered irrelevant. As for the third requisite, the records more than support the conclusion that petitioner acted with resentment, borne out of the Darongs' repeated refusal to follow his water distribution scheme, causing him to lose perspective and angrily threaten the Darongs with bodily harm.

Lastly, the justifying circumstance of fulfillment of duty or exercise of office under the 5[th] paragraph of Article 11 of the RPC lies upon proof that the offense committed was the necessary consequence of the due performance of duty or the lawful exercise of office.[25] Arguably, petitioner acted in the performance of his duty to "ensure

delivery of basic services"[26] when he barred the Darongs' access to the communal water tank. Nevertheless, petitioner exceeded the bounds of his office when he successively chased the Darongs with a bladed weapon, threatening harm on their persons, for violating his order. A number of options constituting lawful and due discharge of his office lay before petitioner[27] and his resort to any of them would have spared him from criminal liability. His failure to do so places his actions outside of the ambit of criminally immune official conduct. Petitioner ought to know that no amount of concern for the delivery of services justifies use by local elective officials of violence or threats of violence.

WHEREFORE, we DENY the petition. We AFFIRM the Decision dated 28 November 2007 of the Regional Trial Court of Dumaguete City, Branch 39.

SO ORDERED.

Nachura, Peralta, Abad, and Mendoza, JJ., concur.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Dated 28 November 2007, penned by Judge Arlene Catherine A. Dato.

[3] Branch 39.

[4] The dispositive portion of the MCTC's ruling provides (Rollo, p. 171):

WHEREFORE, judgment is hereby rendered finding accused Santiago Paera GUILTY beyond reasonable doubt of the crime of Grave Threats under paragraph 2, Article 282 of the Revised Penal Code, as amended, in all the above-entitled cases, and the Court hereby sentences him the penalty of two (2) months and one (1) day to four (4) months of arresto mayor and FINE of Five Hundred Pesos (P500.00) for each case.

[5] Id. at 170.

[6] Id. at 171.

[7] Id. at 39.

[8] Id. at 21-28.

[9] Id. at 190-200.

[10] Heirs of Lorenzo and Carmen Vidad v. Land Bank of the Philippines, G.R. No. 166461, 30 April 2010, 619 SCRA 609.

[11] Santiago v. Garchitorena, G.R. No. 109266, 2 December 1993, 228 SCRA 214, 224, citing Padilla, Criminal Law 53-54 (1988).

[12] People v. Villanueva, Nos. 3133-3144-R, 27 February 1950, 48 O.G. 1376 (No. 4), 1381.

[13] Rollo, p. 22.

[14] 160-A Phil. 962 (1975).

[15] Id. at 971.

[16] People v. Jaranilla, 154 Phil. 516 (1974). See also People v. De Leon, 49 Phil. 437 (1926) (involving conviction for one count of theft for the taking of two roosters).

[17] *People v. Tumlos*, 67 Phil. 320 (1939).

[18] *Gamboa v. Court of Appeals*, supra note 14 at 970 (internal citations omitted).

[19] Article 48 provides: "Penalty for complex crimes. - When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period."

[20] *Pedro Salvoro and Roberto Pontonilla*.

[21] *Rollo*, p. 169.

[22] The prosecution presented in evidence the certification of Dr. Fe V. Tagimacruz, municipal health officer of Valencia, Negros Oriental, attesting that Vicente suffered from Alzheimer's disease (*id.*).

[23] *Rollo*, pp. 24-25.

[24] The first two requisites correspond to the first two requirements under the first paragraph of the provision.

[25] *People v. Pajenado*, 161 Phil. 234 (1976).

[26] Republic Act No. 7160, Section 389(b)(12).

[27] Among others, petitioner could have given the Darongs a final warning or, dispensing with such, immediately sought injunctive relief from the courts.

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