

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS: TEOFILO ALGURRA, DEFENDANT ARID APPELLANT.*G.R. No. 3993. January 18, 1908*

Ponente: TORRES, J.

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Between 6 and 7 a.m. on the 12th of August, 1906, Teofilo Algurra, a priest of the Independent Philippine Church, accompanied by Marcelo Santos, his acolyte, whose real name is Santos Bracamonte, and by Vicente Hanaysay, called at the church of the barrio of Bayawan, in the municipality of Tolon, Opientai Negros, belonging to the Roman Catholic Church, for the purpose of celebrating mass and performing a marriage ceremony. As Liberata Austero and Nazaria Antique, who apparently were going to the church or chapel to pray, objected to Santos Bracamonte ringing the bell as he intended to do, and to Father Algurra celebrating said religious rites, the latter then threatened the woman Liberata with the revolver which he said he carried in his waist, and told the opponents that if they persisted in their opposition they would have to face the muzzle of his gun. Furthermore, Father Algurra, notwithstanding the statement of Liberata Austero that he could not celebrate mass in the church because it belonged to another denomination, ordered the acolyte, under threats, to open the church, and Braeamonte, according to the information, in complying with the order threatened Pedro Gloria and Francisco Austero, who were there present, with a dagger, which fact they reported to the municipal president.

An information having been presented by the provincial fiscal of Oriental Negros charging Teofilo Algurra, Vicente Hanaysay, and Marcelo Santos, alias Santos ltracamonte, with the crime of threats of death, and proceedings having been instituted, the judge in his final judgment of the 18th of February, 1907, amended in part by /mother of the 20th of said month, sentenced Teofilo Algurra to the penalty of four months of arresto mayor, and to pay a fine of twelve hundred and fifty pesetas, and, in case of insolvency, to suffer subsidiary imprisonment which should not exceed one month and ten days, crediting him with sixty-two days, half of the prision preventiva (temporary detention) already served, there remaining, in case of insolvency, the penalty of three months and eight days of arresto mayor; Marcelo Santos was sentenced to two months of arresto mayor and to pay a fine of 355 pesetas, and, in case of insolvency, to suffer the corresponding subsidiary imprisonment, crediting him with ninety-one days; each of the above to pay one-third of the costs; Vicente Hanaysay was acquitted and the remaining one-third of the costs was declared de oficio. From the above sentence only Teofilo Algurra appealed.

From the alleged facts, as stated above, even if they are admitted as proven, it can not be inferred that the crime of threats, defined and punished under article 494 of the Penal Code, was committed because the case contains no conclusive evidence that the accused Algurra carried in his waist the revolver with which he made the threat as stated by the offended women; no person saw that the accused, either before or after the altercation with Liberata Austero, upon entering the chapel of the barrio in order to celebrate the religious rites, carried a revolver or any other weapon.

It has not been shown that Algurra threatened Liberata Austero and Nazaria Antique or any member of their

families with an injury to their persons, honor or property by any act which would constitute a crime, or that he threatened them in earnest with the apparent intent to carry the threat into effect.

The accused Algorra undoubtedly took offense at the opposition of Liberata Austero to his entering the church or chapel, particularly when she said that she did not want any pare-pare (a mock-priest) within the church. Trouble then arose between them and it is not to be wondered that, in a moment of excitement, Algorra may have uttered threats, making mention to the women trying to prevent his entrance to the church, of a revolver which, as a matter of fact, he did not carry. Such conduct merely constitutes an offense provided for in article 589, No. 3, of the Penal Code which reads:

"The following shall be punished with penalties of from one to five days of arrest, or a fine of from 15 to 125 pesetas :

* * * * *

"3. Those who shall threaten another, by words and in the heat of anger, with an injury that would constitute a crime, and who by their subsequent actions show that they persisted in the intention which they gave utterance to in their threat; provided that, in view of the circumstances of the deed, it should not be included in Book II of this code."

Considering, therefore, that the deed proven in this case has none of the characteristics of the crimes included in articles 494 and 495 of the Penal Code, since it only constitutes a misdemeanor, for which the accused, the only one appealing from the judgment of the court below is liable, it is our opinion that the said judgment should be reversed, and that the accused Teofilo Algorra, being guilty only of uttering threats, should be sentenced to ten days of arresto menor, provided, however, that this penalty shall be offset by one-half of the prision preventiva (temporary detention) suffered by the accused, and to pay one-third of the costs of the first instance, and all the costs in this second instance. So ordered.

Arellano, C. J., Mapa, Johnson, Carson, Willard, and Tracey, JJ., concur.

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