

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ANDRES V. ESTRADA, DEFENDANT AND APPELLANT.*G.R. No. 4418. March 26, 1908*

Ponente: TORRES, J.

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On the night of May 17, 1907, for the reason that the wife of the accused had entered a billiard room situated in the barrio of Santo Angel, in the capital town,' and because Anastasio Delgado, who was also present, said to his friend Clemente Calabinhi who was by his side "are women allowed to come into billiard rooms?," the woman, whose name was Cecilia, took offense, and hot words passed between her and the said Delgado; Andres V. Estrada, the woman's husband, took part in the quarrel and, notwithstanding the fact that Anastasio Delgado had left the place, hiding himself in the next house, the accused also went out and returned shortly thereafter provided with a revolver and commenced to look for Delgado who, fearing injury, returned to his home. A short time after, Isaias Santiago and Miguel de la Cruz called on Delgado and told him to hide himself because the accused was looking for him in order to kill him. Delgado, through fear, did not leave his house that night nor on the following day, because he was informed that the accused was still searching for him, having said that he would kill him wherever he found him.

By reason of the above, a complaint was filed and the present proceedings were instituted. On the 26th of October, 1907, the judge sentenced the accused to the penalty of two months and one day of arresto, to pay a fine of 1,301 pesetas, and, in case of insolvency, to suffer subsidiary imprisonment not to exceed one-third of the main penalty, and to pay the costs. From said judgment the accused has appealed.

The above related facts, as they appear in the present case, do not constitute a crime but simply a misdemeanor for uttering threats, such as is defined and punished by article 589, No. 3, of the Penal Code, because, although it is true that on the night of May 17, 1907, the accused, Andres V. Estrada, being provided with a revolver, threatened Anastasio Delgado in earnest and in the heat of anger at a time when the latter, seeing the attitude of the accused, who left the place where he was in order to get the weapon, went away in order to avoid possible danger; and that the accused, when he returned to the billiard room, was still looking for the said Anastasio Delgado, for which reason two witnesses who heard the threat advised Delgado, who was in hiding near by, to return to his house and not to leave it that night nor on the following day, as he did; yet it does not appear that on the following day the accused persisted in carrying out the threat; on the contrary, the brother of the injured party, Flaviano Delgado, testifies that the accused and his wife, after the information had been filed, called at the house of the witness to implore pardon, Estrada alleging that the threat was uttered without premeditation, and that it was done unintentionally. Therefore, the deed, which has only the characteristics of a misdemeanor, should be punished in accordance with the provisions of the said article of the Penal Code.

For the foregoing reasons, it is our opinion that the judgment appealed from should be reversed, and that Andres V. Estrada should be sentenced to pay a fine of 125 pesetas, and, in case of insolvency, to suffer subsidiary imprisonment at the rate of one day for every 15 pesetas which he fails to pay, and to pay the costs of both

instances. So ordered.

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

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