

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. AGRIPINO ZABALLERO ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 4462. March 31, 1909

Ponente: MAPA, J.

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MAPA, J.:

The defendants were convicted by the lower court of the crime of coercion, as charged in the information, and sentenced to the penalty of two months and one day of *arresto mayor* and to the payment of a fine of 320 pesetas, with the corresponding subsidiary imprisonment in case of insolvency. From this judgment they have appealed to this court.

It appears that there was a suit pending between Agripino Zaballero, one of the defendants, and one Hipolita, over the ownership of a cocoanut grove. Hipolita had sold to Aquilino Cabangca, the complaining witness in this case, three hundred and fifty cocoanuts, the product of the aforesaid grove, which the said Cabangca deposited near his house. The above-mentioned defendant, on becoming aware of the sale and believing himself the lawful owner of the cocoanuts, in the company of the other defendants, proceeded to the house of Cabangca for the purpose of presenting his claim thereto. What happened there and gave rise to the institution of these criminal proceedings, will be seen in the following account by Cabangca during his testimony :

"Q. How long have you been acquainted with them (the accused) ?-A. From the time they took the cocoanuts from me.

* * * * *

"Q. Tell us how it happened.-A. Agripino and his companions, five in number, came to see me and requested me to deliver the cocoanuts to them. I replied that I could not make the delivery of the cocoanuts, because they were delivered to me by their owner, and because they had been already counted.

"Q. What else?-A. They told me that in one way or the other they would take the cocoanuts. I asked them to wait until I had seen the person from whom I had purchased them, so that they could see him about it. They replied that, whether delivery of the cocoanuts was made or not, they would take them, which they did, each of the five mentioned persons participating in the act of seizing the cocoanuts.

"Q. Why did not you object to it?-A. I was afraid, because they were angry.

"Q. How did you know that they were angry?-A. Because they were talking in a loud voice.

"Q. Were they armed or not?-A. No, sir, only one of them carried a bolo"

Nothing else occurred, and from the whole testimony of the complaining witness it does not appear that the defendants had committed any act of violence or intimidation such as would make them liable for the crime of coercion as that offense is defined and punished by article 497 of the Penal Code. They did not, of course, make use of physical strength on the body of said complaining witness, nor did they do or commit any act which could be deemed actual intimidation. Aside from the very act of seizing the cocoanuts, the defendants did nothing

except to tell the complaining witness that he should deliver the cocoanuts to them and that they would at all events take possession of them. Such words, when used in a quarrel or dispute over the rights of persons and not accompanied by such demeanor or gestures as would show the determination of the defendants to use violence in case the complaining witness should refuse to voluntarily deliver the cocoanuts, do not and could not have other meaning than an emphatic expression of their determination to take the cocoanuts, of which, with or without reason, the defendant Agripino Zaballero regarded himself as the lawful owner. At any rate and considering the question from all sides, such words did not per se constitute sufficient threat or intimidation to restrain the freedom of the complaining witness and compel him to do something he did not wish to do. This is best shown by the fact that their acts did not produce any fear in the complaining witness. Such fear as he alleged to have entertained was, he said, due to the fact that they were angry. Neither was this supposed anger fully established, the reason given by the complaining witness, who said that they were talking in a loud voice, is not and can by no means be accepted as conclusive. The mere fact that a person is talking in a loud voice, when the words used are not specified and the gravity thereof can not be ascertained, does not necessarily show anger on the part of the speaker and much less could such anger as would cause real intimidation, as is required by the Penal Code, be inferred therefrom.

The two cases quoted in the Government's brief and decided by this court in *United States vs. Fernando de Vega*, and *United States vs. Braulio Tupular* (2 Phil Rep., 167, and 7 Phil. Rep., 8, respectively), are neither similar nor analogous to the present case. In the first case cited, threats to kill which amounted to intimidation were made, and in the second real compulsion was used on the complaining witness whose liberty was restricted: "The defendant (the decision says in stating the facts) ignored the Chinaman's objection * * * and thus the goods were forcibly taken away by the defendant, * * *." According to the merits of this case, the defendants did not execute any act which amounted to force or intimidation, and, indeed, it did not become necessary for them to use either, because the complaining witness, as he himself testified, made no opposition to the seizure of the cocoanuts in question.

The judgment appealed from is hereby reversed and the defendants are freely acquitted with the costs of both instances de oficio.

Arellano, C. J., Torres, Carson, and Willard, JJ., concur.

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