

PEDRO R. ARTECHE, PETITIONER AND APPELLANT, VS. ANGEL ROSALES AND JUAN E. REAS, RESPONDENTS AND APPELLEES.*G.R. No. 46323. December 24, 1938*

Ponente: IMPERIAL, J.

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In the justice of the peace court of the municipality of Wright, Province of Samar, a complaint under oath was filed by Juan E. Reas against the petitioner, Pedro R. Arteche, charging the latter with light threats. The case thus filed was docketed under No. 1737 of said justice of the peace court. In the complaint it was alleged that the petitioner had committed the crime of threats because on the 29th of August, 1936, in the barrio of Casandig, municipality of Wright, the petitioner, taking advantage of his position as Provincial Governor of Samar, drew his revolver and with it threatened the complainant; said act having been committed within the jurisdiction of the said justice of the peace court and in violation of article 285, paragraph 1 of the Revised Penal Code. Said complaint was subscribed and sworn to before the justice of the peace and attached thereto was a sworn declaration of Leonardo Z. Cecilio, wherein the latter stated that on said occasion, the petitioner, then holding the position of Provincial Governor of Samar, sent for the complainant, took him to task for posting a placard in certain public places, and during the altercation between them, drew the revolver with his right hand while he held the cartridges in his left, and aiming, according to the declarant, at the right side of the complainant's wrist, asked the latter: "Now, do you want to fight?", to which said complainant answered in the negative. The record of the case does not show that the justice of the peace examined the complainant and his witness under oath", or that the sworn statements thus made were reduced to writing and signed by them; but in the order of August 31, 1936 wherein the arrest of the petitioner was ordered because the justice of the peace was convinced that there was probable cause for the issuance of the warrant of arrest, it is stated that the justice of the peace conducted a previous investigation of the complainant and of his witness, Leonardo Z. Cecilio. The warrant of arrest was complied with and the petitioner, as the accused, posted the required bond. The case was set for trial and the petitioner asked for and was granted various postponements. The petitioner interposed a demurrer to the complaint on the ground that the justice of the peace court had no jurisdiction to take cognizance of the case. that the complaint was not drafted in accordance with law and that he was charged therein with more than one offense. Said demurrer was overruled and the petitioner filed another motion to disqualify the justice of the peace on the ground that he is related to the witness Leonardo Z. Cecilio. The motion to disqualify was likewise denied because said justice of the peace was of the opinion that his relationship with the witness did not disqualify him to act upon the case.

Alleging that the justice of the peace court of Wright was without jurisdiction to try and decide the case and that all its proceedings, principally the issuance of the warrant of arrest, were null and void ab initio, the petitioner filed in the Court of First Instance of Samar a petition for certiorari and prohibition, wherein he prayed that the justice of the peace be declared without jurisdiction to hear and decide the case and that all his proceedings be declared null and void. After trial the Court of First Instance dismissed said case without costs. From the decision thus rendered the petitioner appealed.

- In his first assignment of error the petitioner contends that the trial court erred in not declaring null and void ab initio all the proceedings had in criminal case No. 1737 of the justice of the peace court of Wright. As grounds therefor he alleges (a) that the complaint is fatally defective because the acts constituting the offense were not described therein; (b) that said complaint is fatally defective because it was not supported by a sworn statement of the complainant; (c) that said complaint is fatally defective because the witness, Leonardo Z. Cecilio, did not present a sworn statement in support thereof; (d) that the testimony given by Leonardo Z. Cecilio, the only witness to the complaint, was not even sworn to by him and, consequently, could not support said complaint; (e) that the docketing of the complaint was null and void; and (f) that the warrant issued for his arrest is null and void and the justice of the peace issued the same illegally and arbitrarily, with manifest abuse of discretion.

The petitioner, in this assignment of error, has ably scrutinized all the defects or errors allegedly committed in admitting the complaint and in issuing the warrant for his arrest. As we understand it, the petitioner's allegation is that all the proceedings of the justice of the peace court from the commencement of the case are null and void because the warrant of arrest was issued against him without probable cause, the justice of the peace not having taken in writing the sworn statements of the complainant and that of his only witness. In view of the record before us, we are of the opinion that said contention is untenable. As has been stated, the complaint was subscribed and sworn by Juan E. Reas before the justice of the peace, and the statements of the witness Cecilio were also subscribed and sworn before the justice of the peace as shown by his sworn statement attached to the record. Moreover, in the order which the justice of the peace issued on August 31, 1936, wherein he ordered the arrest of the petitioner after having reached the conclusion that there was probable cause of the petitioner's guilt, it is stated that the justice of the peace made a previous investigation of the complainant and his witness. In view of these circumstances, we believe that the justice of the peace substantially complied with the requirement of section 13 of General Orders, No. 58, as amended by Act No. 3042, before issuing the order of arrest. The justice of the peace could not be compelled to receive the sworn statements of the complainant and his witness by questions and answers, simply because it is of judicial notice that he was not provided with a stenographer.

It is not true that the complaint does not sufficiently describe the facts constituting the offense. It is therein alleged that the petitioner drew his revolver and with it threatened the complainant. These facts, if true, would constitute the misdemeanor defined and penalized in paragraph 1, article 285 of the Revised Penal Code. It is true that in the introductory paragraph of the complaint it is stated that the offense is threats, but this description is evidently erroneous and does not form a part of the allegations proper of a complaint which are the only ones to be considered in determining the nature of the offense.

It is contended that the justice of the peace could not legally issue the order of arrest because the case was for a mere misdemeanor, the petitioner being then Provincial Governor residing in the province and because, under section 1 of Act No. 4178 amending section 13 of General Orders, No. 58, in such a case the justice of the peace should have only required the appearance of the petitioner. Section 13 of General Orders, No. 58, as amended by section 1 of said law, reads:

"Sec. 13. When a complaint or information alleging the commission of a crime is laid before a magistrate, he must examine, on oath, the informant or prosecutor and the witnesses produced, and take their depositions in writing, causing them to be subscribed by the parties making them. If the magistrate be satisfied from the investigation that the crime complained of has been committed, and that there is reasonable ground to believe that the party charged has committed it, he must issue an order for his arrest. If the offense be bailable, and the defendant offers a sufficient security, he shall be admitted to bail; otherwise he shall be committed to prison. Upon issuing the order of arrest, the magistrate shall ascertain whether the accused is within or without his jurisdiction. In the latter case he shall make an order fixing the amount of the bail and authorizing any justice of the peace or judge of a

Court of First Instance where the accused may be found or arrested to accept his bail. The magistrate who has admitted the accused to bail shall forthwith release him and inform the magistrate who issued the order of arrest of his action, forwarding the papers in the case: Provided, however, That in any case in which the complaint or information is for the violation of some law or ordinance and the penalty provided for such violation is imprisonment for not over one month or a fine of not more than two hundred pesos, or both, the magistrate shall not issue any order for the arrest of the accused but shall order the latter to appear on the day and hour fixed in the order to answer to the complaint or information, unless the accused is a recidivist, habitual criminal or fugitive from justice, or is charged with physical injuries, does not reside in the place where the violation of the law or ordinance was committed, or has no known residence in any other locality and unless the magistrate, for reasons which shall be stated in the record of the case, shall order that the accused be not released except on bail, and unless the fiscal, any Constabulary officer or the chief of police who participated in the investigation of the case, recommends that the accused be not released except on bail, and the magistrate considers such recommendation as well founded: Provided, further, That if the accused, while at liberty on bail, shall without good reason disobey any legal order of the court, the latter may order him arrested and he shall not be released except upon furnishing bail."

It will be seen, according to this amended section, that in cases of mere misdemeanor the justice of the peace should not order the arrest of the accused if the latter resides within his territorial jurisdiction. But in the present case the justice of the peace ordered the arrest of the petitioner doubtless because the latter's legal residence is in Catbalogan, capital of the Province of Samar. We are unable to agree with the holding of the Court of First Instance that the justice of the peace clearly abused his discretion in ordering the arrest of the petitioner as he knew that the latter had his legal residence in Catbalogan. On the contrary, such knowledge made it the duty of the justice of the peace, under the provisions of Act No. 4178, to issue the warrant of arrest because the petitioner did not reside within his territorial jurisdiction. We do not of course approve of the action of the justice of the peace who, even for the sake of courtesy to the petitioner who was then holding the position of Provincial Governor, should have refrained from issuing the order of arrest and should have merely cited said petitioner to appear. Mere lack of courtesy cannot be considered a grave abuse of discretion, nor does such act render the proceedings irregular and void.

- In the second assignment of error the petitioner insists that the trial court erred in not declaring that the justice of the peace abused his judicial discretion and exceeded his jurisdiction in arbitrarily refusing to dismiss the complaint in spite of the objection timely interposed thereto.

The petitioner refers to his demurrer to the complaint and contends that the same should have been sustained. We find all the grounds of said demurrer to be untenable. The justice of the peace had jurisdiction to try and decide the case because the subject matter was a mere misdemeanor punishable with *arresto menor* or a fine not exceeding P200. According to section 4 of Act No. 2041, then in force, the justice of the peace had ample jurisdiction to try and decide cases of misdemeanors or violations of municipal ordinances, the penalty for which does not exceed six months of imprisonment or a fine of P200 or both. Assuming that the justice of the peace erred in overruling the demurrer, the incorrect exercise of his discretion or the erroneous interpretation of the applicable law certainly neither deprived him of the jurisdiction conferred by law, nor rendered his proceedings null and void, as claimed.

In the third and last assignment of error the petitioner alleges that the court should have dismissed criminal case No. 1737 of the justice of the peace court of Wright and refrained from ordering said court to go forward with the case. We find no merit in this contention. The complaint being valid and sufficient and the justice of the peace court having jurisdiction over the case, the court had no alternative but to dismiss the action of the petitioner and

to order the justice of the peace of Wright to proceed and decide the criminal case. Any irregularity that may have been committed by the justice of the peace court not affecting its jurisdiction or the constitutional rights of the petitioner, can be properly corrected in the appeal which the latter has the right to take in case he is found guilty. Fortunately we do not find it necessary to make use of any extraordinary remedy in the present case because the petitioner is not deprived of his liberty having posted the required bail.

In view of the foregoing considerations, the decision appealed from is hereby affirmed, without special pronouncement as to costs in this instance. So ordered.

Avanceña, C. J., Villa-Real, Diaz, Laurel, and Concepcion, JJ., concur.

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