

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ALEJO PAGUIRIGAN, DEFENDANT AND APPELLANT.

G.R. No. 5348. November 16, 1909

Ponente: ELLIOTT, J.

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ELLIOTT, J.:

The defendant Paguirigan, charged with having threatened to kill Sotero Pascua, Vicente Marquez, and Maximo Lopez, was convicted and sentenced under the second part of article 494 of the Penal Code to one month and one day of arresto mayor, and to pay a fine of 325 pesetas, and in case of insolvency, to suffer subsidiary imprisonment at the rate of 12 ½ pesetas a day, said subsidiary imprisonment not to exceed ten days, and to pay the costs of this prosecution. The court found no extenuating or aggravating circumstances, and gave the defendant the benefit of article 11 of the Penal Code, for the purpose of reducing the penalty from the medium to the minimum degree.

The offense was not a serious one, and there is nothing in the evidence to show that the defendant ever really contemplated carrying his threat into effect. The men were engaged in transplanting rice upon land which was claimed by the defendant. While they were at work the defendant appeared, and flourishing a cane in an excited manner, ordered them to stop their work and leave, at the time threatening to kill them unless they obeyed. They obeyed the order, and the incident was closed. Upon these facts the defendant should have been convicted under the third subdivision of article 589, instead of article 494 of the Penal Code. The threats referred to in article 494 consist in formally threatening a private person with some injury to himself or his family which would amount to a crime. A threat made in jest or in the heat of anger is a misdemeanor only under article 589. Subdivision 3 of article 589 provides that "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," shall be punished with the penalty of from one to five days of arrest, or a fine of from 15 to 125 pesetas. The fact that the threat was made in the heat of anger, and that the subsequent actions of the party show that he did not seriously intend to carry the threat into execution, reduce the offense from a crime to a misdemeanor. It is true that the code uses the words "and who by their subsequent actions showed that they persisted in the intention which they gave utterance to in their threat" but a literal adherence to this language would produce the absurd result of making persistence in an illegal purpose operate in mitigation of the offense. The power of a court to supply or omit words from a statute in order to prevent an absurd result which the legislature will not be supposed to have intended, is well established. (*State vs. Bates*, 96 Minn., 110.) It is evident that words of negation should be inserted between the words "they" and "persisted," thus making the provision read "and who by their subsequent actions showed that they had not persisted in the intention which they gave utterance to in their threat." In commenting upon this section, Viada, volume 3, page 310, says:

"The article says * * * 'that did persist.' This is undoubtedly a mistake, because it is precisely the persistence in a threat that gives it the aggravating character so as to amount to a crime. However, this, mistake is not found among the many that were corrected by the decree of January 1, 1870. But the strict moral and juridical sense

should supply this omission."

That this is understood to be the true meaning of the provision of the code appears from the language used in *United States vs. Estrada* (10 Phil. Rep., 583). The defendant had taken offense at some words used by one Delgado, and threatened to kill him. While Estrada was searching for a revolver, Delgado concealed himself. On the following day Estrada called at Delgado's house and stated that the threat had been uttered without premeditation, and that it was not seriously made. The court commented upon the fact that it appeared that the defendant had not persisted in carrying out the threat, and held that the offense had only the characteristics of a misdemeanor, and was punishable under article 589, instead of article 494, of the Penal Code. These articles have been construed by this court in several other cases. In *United States vs. Sevilla* (1 Phil. Rep., 143) it appeared that the defendant while beating certain parties said that he would kill them if they did not return his jewels. It was held that the threats dealt with under article 494, are those made with the deliberate purpose of creating in the mind of the person threatened the belief that the threat will be carried into effect, and that under the circumstances of the case the defendant was punishable under article 589, instead of article 494. So in *United States vs. Simeon* (3 Phil. Rep., 388), a person who raised a bolo as if to strike or stab a light watchman, who thereupon ran away, was held guilty under article 589 of threatening another with weapons.

In *United States vs. Castaños* (8 Phil. Rep., 730), the defendant having taken offense at some remark, drew a revolver and threatened to kill one Yap Gea, who there-upon fled. The trial court held the defendant guilty of *amenaza* under article 494, but this court was of the opinion that the defendant was guilty only, of the offense declared by section 2 of article 589 of the Penal Code. In *United States vs. Algurra* (9 Phil. Rep., 644), it was held that threats made against another, and in the heat of anger, constituted a misdemeanor only under section 3 of article 589 of the Penal Code. The court there remarked that "it has not been shown * * * that he threatened them in earnest with the apparent intent to carry the threat into effect."

Under the authority of these decisions the defendant should have been convicted and punished for a misdemeanor. The sentence is therefore reversed, and the defendant is hereby sentenced to pay a fine of 125 pesetas, and in case of insolvency, to suffer subsidiary imprisonment in the provincial jail of La Union, at the rate of 15 pesetas or P3 a day, said subsidiary imprisonment not to exceed ten days, and to pay the costs of this prosecution. So ordered.

Arellano, C. J., Torres, Johnson, Carson, and Moreland, JJ., concur.

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