

JOSE “PEPITO” TIMONER, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES AND THE HONORABLE COURT OF APPEALS, IV DIVISION,

G.R. No. 62050, November 25, 1983

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

Petition for review of the affirmance in toto by the Court of Appeals, now the Intermediate Appellate Court, of the judgment of conviction handed down by the then Municipal Court of Daet, Camarines Norte, in Criminal Case No. 4281, entitled "People of the Philippines vs. Jose Timoner," finding petitioner guilty of the crime of grave coercion, as follows:

"WHEREFORE, this Court finds the accused JOSE 'PEPITO' TIMONER guilty beyond reasonable doubt of the crime of Grave Coercion as penalized under Art. 286 of the Revised Penal Code, and hereby sentences the said accused pursuant to the provision of Rule 64, Par. 3, to suffer SIX MONTHS OF IMPRISONMENT OF ARRESTO MAYOR IN ITS MAXIMUM PERIOD, to pay a fine of P300.00 and to pay the offended party in the amount of P5,000.00 as damages, without subsidiary liability in case of insolvency. The other accused SAMUEL MORENA and ERNESTO QUIBRAL are hereby ordered ACQUITTED."

The salient facts are not disputed. At about 10:00 in the evening of December 13, 1971, petitioner, then Mayor of Daet, Camarines Norte, accompanied by two uniformed policemen, Samuel Morena and Ernesto Quibral, and six laborers, arrived in front of the stalls along Maharlika highway, the main thoroughfare of the same town. Upon orders of petitioner, these laborers proceeded to nail together rough lumber slabs to fence off the stalls which protruded into the sidewalk of the Maharlika highway. Among the structures thus barricaded were the barbershop of Pascual Dayaon, the complaining witness, and the store belonging to one Lourdes Pia-Rebustillos. These establishments had been recommended for closure by the Municipal Health Officer, Dra. Alegre, for non-compliance with certain health and sanitation requirements.

Thereafter, petitioner filed a complaint in the Court of First Instance of Camarines Norte against Lourdes Pia-Rebustillos and others for judicial abatement of their stalls. The complaint, docketed as Civil Case No. 2257, alleged that these stalls constituted public nuisances as well as nuisances per se. Dayaon was never able to reopen his barbershop business.

Subsequently, petitioner and the two policemen, Morena and Quibral, were charged with the offense of grave coercion before the Municipal Court of Daet. As already noted, the said court exonerated the two police-men, but convicted petitioner of the crime charged as principal by inducement.

On appeal, the Court of Appeals affirmed in full the judgment of the trial court. Hence, the present recourse.

Petitioner contends that the sealing off of complainant Dayaon's barbershop was done in abatement of a public nuisance and, therefore, under lawful authority.

We find merit in this contention. Unquestionably, the barbershop in question did constitute a public nuisance as defined under Article Nos. 694 and 695 of the Civil Code, to wit:

"ART. 694. A nuisance is any act, omission, establishment, business, condition of property, or anything else which:

- (1) Injures or endangers the health or safety of others; or
- (2) Annoys or offends the senses; or
- (3) Shocks, defies or disregards decency or morality; or
- (4) Obstructs or interferes with the free passage of any public highway or street, or any body of water; or
- (5) Hinders or impairs the use of property.

"ART. 695. Nuisance is either public or private. A public nuisance affects a community or neighborhood or any considerable number of persons, although the extent of the annoyance, danger or damage upon individuals may be unequal. A private nuisance is one that is not included in the foregoing definition."

The barbershop occupied a portion of the sidewalk of the poblacion's main thoroughfare and had been recommended for closure by the Municipal Health Officer. In fact, the Court of First Instance of Camarines Norte, in its decision in Civil Case No. 2257, declared said barbershop as a nuisance per se. Thus:

"Under the facts of the case, as well as the law in point, there is no semblance of any legality or right that exists in favor of the defendants to build a stall and conduct their business in a sidewalk, especially in a highway where it does not only constitute a menace to the health of the general public passing through the street and also of the unsanitary condition that is bred therein as well as the unsightly and ugly structures in the said place. More-over, even if it is claimed and pretended that there was a license, permit or toleration of the defendants' makeshift store and living quarters for a number of years does not lend legality to an act which is a nuisance per se. Such nuisance affects the community or neighborhood or any considerable number of persons and the general public which posed a danger to the people in general passing and using that place, for in addition, this is an annoyance to the public by the invasion of its rights - the fact that it is in a public place and annoying to all who come within its sphere [Baltazar vs. Carolina Midland, Ry. Co., 54 S.C. 242, 32 S.B. 358, cited in 11 Tolentino's Civil Code of the Philippines, p. 375; Kapisanan Lingkod ng Bayan, Inc. vs. Lacson, CA-G.R. No. 27260-R, March 25, 1964; 61 O.G. 2487].

x x x x x

"IN VIEW OF THE FOREGOING, the Court hereby declares that the structures subject of this complaint as well as those occupied by the impleaded defendants are nuisances per se, and therefore orders the defendants to demolish the stall and vacate the premises immediately x x x."

But even without this judicial pronouncement, petitioner could not have been faulted for having fenced off said barbershop. Paragraph 3, Article 699 of the Civil Code authorizes the abatement of a public nuisance without judicial proceedings.

"ART. 699. The remedies against a public nuisance are:

- [1] A prosecution under the Penal Code or any local ordinance; or
- [2] A civil action; or
- [3] Abatement, without judicial proceedings."

In the case at bar, petitioner, as mayor of the town, merely implemented the aforesaid recommendation of the

Municipal Health Officer. Having then acted in good faith in the performance of his duty, petitioner incurred no criminal liability.

Grave coercion is committed when "a person who, without authority of law, shall by means of violence, prevent another from doing something not prohibited by law or compel to do something against his will, either it be right or wrong." [1] The three elements of grave coercion are: [1] that any person be pre-vented by another from doing something not prohibited by law, or compelled to do something against his will, be it right or wrong; [2] that the prevention or com-pulsion be effected by violence, either by material force or such display of it as would produce intimi-dation and control the will of the offended party, and [3] that the person who restrained the will and liberty of another had no right to do so, or, in other words, that the restraint was not made under authority of law or in the exercise of a lawful right.[2]

The third element being absent in the case at bar, petitioner cannot be held guilty of grave coercion.

WHEREFORE, the decision of the Court of Appeals in CA-G.R. No. 19534-CR, is hereby set aside and peti-tioner is acquitted of the crime charged. Costs de oficio.

SO ORDERED.

Makasiar, (Chairman), Aquino, Concepcion, Jr., Guerrero, Abad Santos, and De Castro, JJ., concur.

[1] Article 286, Revised Penal Code.

[2] Justice Ramon C. Aquino, The Revised Penal Code, Book II, 1976, p. 1392.

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