

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CONSTANCIO FLORES, DEFENDANT AND APPELLANT.

G.R. No. 6427. March 23, 1911

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of the Province of Cebu, Hon. Adolph Wislizenus presiding, convicting the accused of the crime of bribery and sentencing him to four months and twenty days of arresto mayor, to pay a fine of P65, with subsidiary imprisonment in case of insolvency, and to pay the costs of the trial.

The appellant in this case was tried under the following information:

"That on or about the 13th day of December, 1909, in the municipality of Cebu, in this province and judicial district, said Constancio Flores, being a member of the municipal police, detailed in the department of secret service, maliciously and criminally demanded and obtained from the Chinaman Chan Cam the sum of P25, as a consideration for the said Constancio Flores abstaining, as he did abstain, from complaining against and arresting the said Chan Cam for a violation of Act No. 1761; that the accused, in the performance of the duties of his office as such policeman, should have complained against and arrested the said Chan Cam."

In the case of the United States vs. Buenaventura (6 Phil. Rep., 447), it appeared that one "Sergio was arrested without a warrant by the defendant, an officer of the Constabulary, for a supposed violation of the law against brigandage. After four days' detention the defendant released him upon his promise to pay the defendant P150, which he afterwards did. There was no evidence to show that the defendant arrested Sergio for the purpose of extorting this money from him." The court in that case held "that the crime committed was that of bribery, defined and punished in article 383 of the Penal Code, and not the offense defined in section 19 of Act No. 175."

The court said (p. 448):

"It is suggested by the Solicitor-General that the case falls within section 19 of Act No. 175. We do not think, however, that that section is applicable, for there is no proof that the arrest was made for the purpose of extorting this money from the complaining witness."

In the case at bar it clearly appears from the evidence that the Chinaman from whom the money was extorted had not committed the crime for the commission of which the appellant threatened to arrest him and that he had been guilty of no illegal act whatever. It is equally unquestioned that the accused knew that fact. This being so, it does not fall within the principle involved in the decision of the case above cited, as the particular reason in that case why the accused was held guilty of bribery was that it did not appear that the person from whom the money was obtained was not guilty of any crime, but, on the contrary, it appeared that it was very likely that the crime had been committed and that the accused had reasonable ground upon which to make the arrest. It is the necessary inference from that case that if it had appeared that, to the knowledge of the accused, no crime had been committed, and, therefore, he had no ground upon which to make the arrest, in other words, if he had arrested the

accused knowing that he had no right to do so, he would have been guilty of the crime defined and penalized in section 19 of Act No. 175, instead of being guilty of bribery under article 383 of the Penal Code. This for the reason that he would have made the arrest for the purpose, necessarily, of extorting the money from the complainant.

It appearing in this case that the Chinaman Chan Cam was not guilty of any crime at the time of his arrest, and that the appellant in this case knew that fact, the necessary inference is "that the arrest was made for the purpose of extorting this money from the complaining witness."

In the case of the United States vs. Fulgencio (2 Phil. Rep., 452), it appeared that one Eulogio, with certain companions, "had overturned a barrel from a carter and scattered its contents in the streets. The defendant and his companions had, on this account, either arrested the witness or threatened to do so unless money was paid to them." After the arrest the accused, who was a policeman, told Eulogio that if he would give him P20 he would release him from arrest. Eulogio paid the money as requested and was released from restraint.

In that case the court held that the offense fell within the provisions of article 383 of the Penal Code, saying that "a police officer who receives money in consideration of his not arresting anyone guilty of a breach of a municipal ordinance is guilty of receiving a bribe under article 383 of the Penal Code."

It should be noted that there was present as one of the essential elements in the above case the fact that there had been a crime committed and that it was the duty of the accused to make the arrest and present the offender before the proper authorities for examination. (U. S. vs. Navarro, 3 Phil. Rep., 633; U. S. vs. Valdehueza, 4 Phil. Rep., 470; U. S. vs. Horca, 6 Phil. Rep., 52.)

The presence of this element clearly distinguishes that case from the case at bar.

It is more difficult to distinguish the following case:

In the case of the United States vs. Jader (1 Phil. Rep., 297), it appeared that the defendant, Damaso Jader, as cabeza de barangay and teniente of the barrio of Candelaria demanded of certain of the inhabitants "cocks, hens, bamboo, and other articles under promise to relieve the persons from whom he had obtained them of the obligation to perform certain duties which they as citizens were required to perform." Under such demands said articles were delivered by certain of the citizens. Upon these facts an information was filed against the accused charging him with the crime of bribery.

The court in its decision said (p. 298):

"The facts upon which the prosecutions are based constitute, in our opinion, five offenses of estafa and not of bribery. The articles received by the accused were not offered to him nor were they donated by the five taxpayers of his department for the purpose of corrupting him and in order to induce him to omit the performance of his duty, but were demanded by the defendant, who thereby abused his office as cabeza de barangay and teniente of the barrio. Therefore, instead of applying to these facts articles 383, 385, and 387 of the Penal Code, section 1 of article 534 should be applied, in connection with section 1 of article 535 and article 399 of the same code. These facts constitute exactions committed by a public functionary by an abuse of his official position, to the prejudice and in fraud of his fellow-citizens."

The court in that case reversed the judgment of the court below convicting the accused of bribery, and in lieu thereof convicted him of estafa and sentenced him accordingly.

In this case the court expressly found that the property delivered to the accused was obtained by force and intimidation. He being a high official of the pueblo, and having considerable power, was able to coerce by a mere demand, particularly when cognizance is taken of the history of the office of cabeza de barangay and the tradition

which in this country surrounded that office. While in that case the force and intimidation practiced are not so apparent as in the case at bar, still force and intimidation were present. They were the foundation of the decision. If they had not been present, the crime would have fallen under the provisions relating to bribery or kindred crime.

It is apparent, therefore, that under this decision, as well as under those above cited, the crime before us in the case at bar is not bribery. Neither do we believe that it is estafa. Article 399 of the Penal Code, referred to in the case last cited, provides that "the public official who, taking advantage of his office, shall commit any of the crimes specified in chapter 4, section 2, title 13 of this book (swindles and other false pretenses), shall incur in addition to the penalties prescribed herein that of temporary special disqualification in its maximum degree to perpetual special disqualification." As is readily seen, this article does no more than provide an additional punishment for the public officials who make their offices the means of committing estafa. Before this article can be applied, the official must not only have taken advantage of his office but he must also have committed estafa. The essential element of estafa as defined in article 535, paragraph 1, referred to in the decision above quoted, is deceit, artifice, machination, or cunning. (Groizard, vol. 5; Viada, vol. 3.) In that case the presence of deceit is expressly negated by the finding of the court that the property was demanded, indicating clearly that there was on the part of the persons owning the property, no deceit and therefore no voluntary delivery thereof, the latter an element always essential to the crime of estafa. If property is obtained by deceit, cunning, fraud or misrepresentation, the delivery is always voluntary as contrasted with the delivery of property under force or intimidation. Obtaining property by fraud is, in a sense, obtaining it against the true will of the owner; but not in the sense of obtaining it by force or intimidation.

We do not believe, therefore, that this case should govern us in the decision of the case before us. Under the law in force here, we are of the opinion that the correct doctrine is laid down in the case of the United States vs. Smith (3 Phil. Rep., 20). In this case the facts were that (p. 21):

"On or about the 8th day of January, 1903, the defendant entered the house of one Esteban Delgado, acting justice of the peace, and then and there represented that he was a detective and that he was looking for certain persons called Josef a Garcia and Pedro Ralla. These said persons were called by the said defendant to the house of the said Delgado on the said day. When the said Josefa Garcia and Pedro Ralla arrived in the said house, the accused informed them that he had authority to arrest them, and that he had arrested one Isabelo Madera, and that he could release him. The defendant showed a letter to these persons, which he told them was his authority to arrest them. Later, on the same day, the accused ordered the said Josefa and Pedro to prepare their clothing in order to go to Manila, because he was going to take them as prisoners. He also ordered the said Delgado to prepare a vehicle to take the so-called prisoners to a point where he could secure transportation to Manila. A vehicle could not be found. The said Josefa and Pedro prepared their clothing for the trip to Manila. During the conversation between the accused and the said Josefa and Pedro the former continually threatened them with arrest and with personal harm. After the said persons were so arrested by the accused, he informed them that they had a remedy. He gave them to understand that if they would give him \$1,000, Mexican, he would release them. Finally a compromise was made on the amount, and Josef a and Pedro paid to the said accused the sum of \$700, Mexican."

Upon these facts this court held the defendant guilty of the crime of robbery and not estafa. In its opinion the court cited a decision of the supreme court of Spain rendered on the 24th of June, 1875. In that case it appeared that the accused presented himself at the houses of various persons and demanded money on the pretext that it was for a band of malefactors who were in the mountains, and that he had been commissioned by such band to make such demands. He collected various sums from different individuals. The question before the court was whether the crime was robbery with intimidation or simply estafa. That court held that each demand constituted robbery with intimidation, saying:

"Whereas, the essential element of the crime of estafa consists in the ingenuity or cunning employed by the agent for the purpose of deceiving the one whom it is intended to victimize, and such astuteness and cunning consequently exclude all idea of intimidation or the employment of other means of like nature tending to prevent or impede the exercise of the will, which remains free and independent although influenced by the statements made, circumstances which are also present in the perpetration of the deceit as mentioned in the Penal Code; and whereas whether the statement as to the band of malefactors was merely an invention for the purpose of obtaining the money, or whether the band actually existed, Pascual Mengaul y Domenech, on demanding the sums he appears to have received from different persons, attained his object by means of threats of injury which the robbers might inflict upon the persons upon whom the demands were made, if those persons did not comply therewith; and whereas this intimidation was actually present, the acts committed can not legally be considered to constitute estafa or deceit."

The crime of robbery, in its various phases as defined by the Penal Code of these Islands, includes the common-law crimes of burglary, robbery, and some cases of extortion. It does not seem strange or illogical, therefore, to hold the crime proved in the case at bar to be robbery, although in Anglo-Saxon jurisdictions it would probably not be so denominated.

As we have seen, the information in this case charges bribery. It expressly negatives the essential elements of robbery, force or intimidation, or both, by asserting that it was the duty of the accused to make the arrest, indicating necessarily by such assertion that the Chinaman had committed a crime and that he ought to have been apprehended and presented. In such case the Chinaman parted with his money voluntarily in order to escape arrest, conviction and punishment. Bribery and robbery have little in common as regards their essential elements. In the former the transaction is mutual and voluntary. In the latter case the transaction is neither mutual nor voluntary but is consummated by the use of force or intimidation.

The information in this case does not set forth facts constituting robbery, and the accused can not be here convicted of that crime. The facts proved showing robbery under the case of the United States vs. Smith, *supra*, and not bribery, as charged, the judgment below must be reversed and the information dismissed. So ordered.

Arellano, C. J., Mapa, Carson, and Trent, JJ., concur.

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