

**EFIGENIO S. DAMASCO, PETITIONER, VS. JUDGE HILARIO L. LAQUI,
IN HIS CAPACITY AS PRESIDING JUDGE OF METROPOLITAN TRIAL
COURT, BR. 59, MANDALUYONG, METRO MANILA AND THE PEOPLE
OF ...**

G.R. No. 81381. September 30, 1988

Ponente: PADILLA, J.

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PADILLA, J.:

In an Information dated 11 September 1987, but filed only on 17 September 1987 with the Municipal Trial Court of Mandaluyong, Branch 59, presided over by respondent Judge Hilario L. Laqui, petitioner Atty. Efigenio S. Damasco was charged with the crime of grave threats committed as follows:

"That on or about the 8th day of July 1987, in the Municipality of Mandaluyong, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously threaten one Rafael K. Sumadohat, with the infliction upon his person of a wrong amounting to a crime, that is, by then and there uttering the following remarks, to wit:

‘BAKIT MO AKO GINAGANITO? MAGBABAYAD KA. . . . PAPATAYIN KITA. . . MAYROON AKONG BARIL, BABARILIN KITA, TAGADIYAN LANG AKO.’" (Rollo, p. 13)

Upon arraignment, petitioner pleaded not guilty. After trial, respondent Judge found that the evidence presented did not establish the crime of grave threats but only of light threats. As a result, petitioner was convicted of the latter crime and was sentenced to pay a fine of P100.00 and the costs.

Subsequently, petitioner filed a Motion to Rectify and Set Aside the dispositive part of respondent Judge's decision, contending that he cannot be convicted of light threats, necessarily included in grave threats charged in the information, as the lighter offense had already prescribed when the information was filed. Petitioner states that the crime was committed on 8 July 1987 and the information was filed only on 17 September 1987 or after the lapse of 71 days. (Incidentally, the affidavit/complaint was filed with the Fiscal's Office only on 7 September 1987, or after the lapse of 61 days from 8 July 1987.[1]) Upon the other hand, the crime of light threats, which is a light offense, prescribes in two (2) months[2] which means sixty (60) days.[3]

In denying petitioner's motion, the lower court held that:

"Just to disabuse the mind of the movant, let it be said that the Court is fully aware of the respective date of the commission of the offense and of the filing of the information. The Court holds on to the principle that the allegation in the information confers jurisdiction and that jurisdiction once acquired cannot be lost.

"Thus, since the Court acquired jurisdiction to try the case because the information was filed within the prescriptive period for the crime charged, which is Grave Threats, the same cannot be lost by prescription, if after trial what has been proven is merely light threats."[4]

The Office of the Solicitor General, in its Comment, recommends that the petition be given due course, stating that:

"Respondent Judge denied the 'Motion to Rectify and Set Aside the Dispositive Portion of the Decision' apparently with the misimpression that what was being questioned was the court's jurisdiction over the offense charged, ratiocinating that jurisdiction, once acquired, cannot be lost. But such is not the case. True, the allegations in the Information confer jurisdiction upon the courts, and once acquired, such jurisdiction cannot be lost. However, this principle is not applicable in the case at bar. The jurisdiction of the lower court over the crime was never questioned. Rather, the legal dispute lies in whether or not it was proper for respondent Judge to still convict petitioner after finding him guilty of the lesser offense of light threats but which has already prescribed. Verily, the query should be answered in the negative for reasons heretofore discussed." [5]

In the case of *Francisco vs. Court of Appeals*, [6] the Court held that where an accused has been found to have committed a lesser offense includible within the graver offense charged, he cannot be convicted of the lesser offense if it has already prescribed. To hold otherwise, according to the Court, would be to sanction a circumvention of the law on prescription by the simple expedient of accusing the defendant of the graver offense.

Incidentally, in the case of *Felino Reyes vs. Hon. Intermediate Appellate Court and People of the Philippines*, [7] a Memorandum prepared by this ponente for the Court, entitled "An Examination of the Rule Which Holds That One Cannot Be Convicted Of A Lesser Offense Includible Within a Greater Offense, Where Prosecution For The Latter Was Commenced After Expiration Of Limitations Applicable To The Lesser Offense", discusses a possible attempt to depart from the rule laid down in *Francisco vs. CA*, [8] by invoking the principle of presumption of regularity in the performance of official acts and duties, and by interpreting the phrase "prescription of a crime or offense" as merely "a bar to the commencement of a criminal action." [9]

However, Philippine jurisprudence considers prescription of a crime or offense as a loss or waiver by the State of its right to prosecute an act prohibited and punished by law. [10] Hence, while it is the rule that an accused who fails to move to quash before pleading, is deemed to waive all objections which are grounds of a motion to quash, yet, this rule cannot apply to the defense of prescription, which under Art. 69 of the Revised Penal Code extinguishes criminal liability. To apply the suggestion in the aforecited memorandum could contravene said Article 89, which is a part of substantive law. [11] This position is further strengthened by Sec. 8, Rule 117, 1985 Rules on Criminal Procedure, which added extinction of offense as one of the exceptions to the general rule regarding the effects of a failure to assert a ground of a motion to quash.

Thus, as suggested by the cited memorandum, a departure from the ruling in *Francisco vs. CA*, [12] can be done only "through an overhaul of some existing rules on criminal procedure to give prescription a limited meaning, i.e., a mere bar to the commencement of a criminal action and therefore, waivable." [13] But this will have to contend with the Constitutional provision that while the Supreme Court has the power to promulgate rules concerning the protection and enforcement of constitutional rights, pleadings, practice and procedure in all courts, the admission to the practice of law, the integrated bar, and the legal assistance to the underprivileged, such rules shall not however diminish, increase or modify substantive rights. [14]

ACCORDINGLY, the petition is GRANTED and the questioned decision is SET ASIDE.

SO ORDERED.

Melencio-Herrera, Paras, Sarmiento, and Regalado, JJ., concur.

[1] Rollo, pp. 32 and 45

- [2] Art. 90, Revised Penal Code
- [3] People v. Del Rosario, G.R. No. L-7234, May 21, 1955, 97 Phil. 67
- [4] Rollo, p. 16
- [5] Ibid., p. 28
- [6] G.R. No. L-45674, 13 May 1983, 122 SCRA 538
- [7] G.R. No. 69867, 7 July 1987
- [8] Francisco vs. CA, supra
- [9] Memorandum, pp. 2 and 10
- [10] People vs. Moran, 44 Phil. 387, 433; Santos vs. Superintendent, 55 Phil. 345
- [11] Page 694, Vol. I, The Revised Penal Code, by Ramon C. Aquino
- [12] Francisco vs. CA, supra
- [13] Memorandum, p. 10
- [14] Sec. 5, [5], Art. 8, 1987 Constitution

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