

JORGE VYTIACO, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, ET AL., RESPONDENTS.

G.R. Nos. 20246-48. April 24, 1967

Ponente: ZALDIVAR, J.

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ZALDIVAR, J.:

This is a petition for certiorari to review the decision of the Court of Appeals finding the petitioner, Jorge Vytiaco, guilty of the crime of resistance and serious disobedience in Case C.A.-G.R. No. 00528-R.

As a result of an incident which occurred in Aborlan, Palawan, on March 12, 1959, the herein petitioner, Jorge Vytiaco, was charged before the Court of First Instance of Palawan in three criminal cases, to wit:

1. Criminal Case No. 2350, People of the Philippines vs. Jorge Vytiaco, for Grave Threats;
2. Criminal Case No. 2351, People of the Philippines vs. Jorge Vytiaco, for Assault Upon an Agent of a Person in Authority; and
3. Criminal Case No. 2356, People of the Philippines vs. Jorge Vytiaco, for Disobedience to a Person in Authority.

These cases were jointly tried by the Court of First Instance of Palawan, and in all the three cases herein petitioner was found guilty as charged, and sentenced as follows:

(1) In Criminal Case No. 2350, for grave threats, petitioner was sentenced to suffer two (2) months and one (1) day of arresto mayor, to pay a fine of P100.00, and to pay the costs.

(2) In Criminal Case No. 2351, for assault upon an agent of a person in authority, petitioner was sentenced to two (2) months and one (1) day of arresto mayor as minimum, to two (2) years, four (4) months and one (1) day of prision correccional as maximum, to pay a fine of P400.00, and to pay the costs. The gun used by the accused was ordered confiscated.

(3) In Criminal Case No. 2356, for disobedience to a person in authority, petitioner was sentenced to one (1) month and one (1) day of arresto mayor, a fine of P100.00, and to pay the costs.

Regarding the fines imposed on the accused in the three cases, subsidiary imprisonment is to be served in case of insolvency.

From the decision of the Court of First Instance of Palawan, the petitioner appealed to the Court of Appeals, and the abovementioned three cases were respectively docketed as CA-G. R. No. 00528-R, CA-G. R. No. 00528-R.

On July 17, 1962, the Court of Appeals rendered a decision, the dispositive portion of which reads as follows:

"WHEREFORE, in Criminal Cases Nos. 2350 and 2356 for grave threat and serious disobedience, respectively, the decision is reversed and appellant acquitted, with costs de oficio. In Criminal Case No. 2351, he is hereby held guilty, not of direct assault as held by the lower court but of resistance and serious disobedience and is sentenced to 2 months and 1 day of arresto mayor and to pay a fine of P200.00, with

subsidiary imprisonment in case of insolvency, plus the costs."

In the Court of Appeals the three cases were docketed as CA-G. R. Nos. 00527-R, 00528-R and 00529-R. It was in CA-G. R. Nos. 00527-R and 00529-R where the petitioner was acquitted. It is the decision of the Court of Appeals in CA-G. R. No. 00528-R that is now sought to be reviewed by this Court. Because the Court of Appeals rendered only one decision for the three cases, those three cases are now docketed in this Court as G. R. Nos. L-20246, L-20247 and L-20248. Actually, it is Case G. R. No. L-20247 (which corresponds to CA-G. R. No. 00528-R) that is the subject of this decision.

The petitioner contends that, based on the facts as found by the Court of Appeals, the respondent Court of Appeals committed error in holding him guilty of the crime of resistance and serious disobedience. The facts as found by the Court of Appeals are as follows:[1]

"The States' evidence tends to show that at about noon of March 12, 1959, in the private market of Manuel Zambales in Panacan, Aborlan, Rosalino Jagmis was informed by his brother-in-law, Zambales, that the previous day a certain Eduardo created trouble in the market, over-turning the tables. Jagmis got mad and started talking in a loud voice. Appellant Jorge Vytiaco, who was passing by, heard Jagmis. Appellant told him to calm down. Jagmis did not take the remark good-naturedly. He told appellant to mind his own business. An exchange of unfriendly words followed and the two in no time grabbed each other. Esteban Gapilango, a PC enlisted man who was in plainclothes and on patrol duty, saw the two adversaries and separated them. Appellant ran away but told Jagmis to wait and he would get his gun. On the way, appellant met his brother-in-law, Ramon Ramos, carrying a .22 caliber rifle and a .38 caliber pistol. Someone apparently had relayed the tiff to appellant's house. When Gapilango saw Ramos handing the pistol to appellant, he approached to demand the surrender of the fire-arms. He however, failed to get the weapons because Ramos ran away with the rifle and appellant held him by the waist and tried to snatch his service pistol in his back pocket. He tried to prevent appellant from gaining possession of the pistol and while they were grappling, it went off. Gapilango lost his balance and appellant succeeded in wresting the gun from him. With a revolver in each hand, his own and that of Gapilango, appellant ordered the former and Jagmis, who followed Gapilango, to raise their hands and not to advance or he would shoot them. Gapilango did as ordered but asked appellant to return to him his pistol, identifying himself as a PC soldier. Appellant refused to give the gun back and did not recognize Gapilango's authority. So Gapilango sent somebody to call the PC detachment commander, Sgt. Pelucio Buñag. In the meantime, one Jesus Lepasana arrived and Gapilango also requested him to help get his gun back from appellant who already went home. While Lepasana was talking to appellant, Sgt. Buñag came. He asked appellant for Gapilango's pistol and promised that he would try to amicably settle the case. Appellant, who was standing outside his house, again declined to yield the gun and instead went inside and told the soldiers to get it if they wanted it. Later in the afternoon, Capt. Pastor Escano, PC assistant provincial commander to whom Sgt. Buñag reported the incident, went to appellant's house and talked to him. The revolver was returned to Capt. Escano by the vice mayor of Aborlan to whom appellant surrendered it earlier.

"Appellant offers this story: On the day in question, he went to Zambales' market to see a Mr. Murillo to have him sign some papers. While conversing with Murillo, appellant heard Jagmis angrily talking aloud. Appellant, in a manner of greeting Jagmis who was his friend, told him to cool off as the weather was already hot. Jagmis resented the remark and collared appellant. Surprised by Jagmis' reaction, appellant tried to free himself and protested that he had done Jagmis no wrong and that they were friends. A companion of appellant and another man, who turned out to be Gapilango, intervened and Jagmis released appellant. When appellant asked Jagmis why he collared him, he (appellant) having merely intended his remark as a greeting to a friend, Jagmis again grabbed him and said that appellant was a rich man and had no business interfering. Appellant again remonstrated and told Jagmis not to treat him that way because they were friends. Jagmis' brother-in-law, Zambales, intervened and separated the two. Already peeved and embarrassed, appellant prepared to defend himself if Jagmis would charge again. But as appellant happened to look towards the road, he saw his brother-in-law carrying a rifle and a pistol. So he ran out and shouted at him to go home. He was followed by

Gapilango and Jagmis. Jagmis told Gapilango to get the guns. Gapilango drew his pistol and demanded the surrender of the fire-arms. Appellant, sensing Gapilango to be close behind, suddenly wheeled around and seeing the latter's gun aimed at him, grabbed it. In the ensuing struggle for its possession, it fired. Finally, appellant was able to wrest it from Gapilango and with his own revolver which he got from his brother-in-law, appellant pointed them at Gapilango and Jagmis and warned them, while retreating, not to go near him or he would shoot. Mrs. Zambales at this stage approached appellant and they went home together. A little later after he had hidden the guns and while he was standing outside his house, Gapilango and Sgt. Buñag came. Sgt. Buñag, without asking any question, collared him and harshly demanded for Gapilango's revolver. Gapilango also held him by the shirt. Appellant asked Sgt. Buñag that they clear matters first. When he was released, appellant went inside his house and told the soldiers to come inside if they wanted to get the pistol. But the soldiers left instead. Appellant then delivered Gapilango's revolver to the vice mayor.

"It is now urged that appellant's conviction for assault upon an agent of a person in authority, i.e., upon Esteban Gapilango, a constabulary soldier, was an error, the prosecution having failed utterly to show that appellant knew that Gapilango was a soldier or an agent of a person in authority when he disarmed him, which knowledge is essential for conviction. (U.S. v. Alvear, 35 Phil. 625; People v. Rellin, 77 Phil. 1033.) We find the contention meritorious. Indeed, nowhere in the testimony of any of the prosecution witnesses can it be found that appellant knew or ought to have known at the time he seized Gapilango's gun that the latter was a peace officer. Gapilango revealed his identity to appellant only after the latter had dispossessed him of his gun and he was asking it back. It is contended by the prosecution, nonetheless, that appellant's act in pointing the revolver at Gapilango even after he was informed that he (Gapilango) was a peace officer constitutes direct assault. The whole trouble started when appellant was unjustifiably roughed up by Jagmis. When appellant ran away, he was followed by Gapilango and Jagmis. The fact that Gapilango had his gun in hand was perhaps not without reason considering that appellant's brother-in-law appeared in the scene carrying firearms. Appellant was able to wrest Gapilango's pistol. While retreating, he warned Gapilango, together with Jagmis, not to advance or he would shoot. At this particular moment when appellant could understandably be under the apprehension that his pursuers, one of whom he still did not know to be a constabulary soldier, were still after him, his act of pointing the guns at them with warning not to come forward is not properly an act of intimidation but rather of self-protection; appellant thereby hoped to discourage them from committing any rash action or violence against his person. Gapilango asked for the return of his gun, identifying himself. Appellant did not give the gun back. The evidence does not show whether or not, after knowing of Gapilango's identity, appellant continued to point the gun at him. There is no question, however, that he thereafter went home. Under the circumstance, it cannot be said with certainty that there was on the part of appellant a palpable intent or determination to defy a law officer and therefore his failure to heed Gapilango's order to return the revolver constitutes merely resistance and serious disobedience. (See U.S. v. Tabiana and Canillas, 37 Phil. 515; People v. Lapitan, 58 Phil. 774; People v. Reyes, 40 O.G. (118) No. 15, 24.)

"As above shown, appellant also pointed a revolver at Rosalino Jagmis and threatened to shoot him if he advanced. The trial court considered this as constituting grave threat. Appellant claims that when he saw his brother-in-law carrying firearms, he ran towards him and told him to go home. The prosecution, on the other hand, asserts that when he ran away he told Jagmis to wait and he would get his gun. That appellant said this seems doubtful in the light of Jagmis' own statement that when appellant ran away, he did not follow the latter anymore because he thought that they were pacified already. Had appellant really told Jagmis that he would get his gun, the latter would not have the impression that the incident was already closed. The picture as we see it seems to be that when Jagmis saw appellant's brother-in-law carrying guns, Jagmis, with Gapilango, went after appellant to prevent him from getting hold of the weapons. Appellant, who had just been subjected to unwarranted violence by Jagmis, on his part, thought that he would be attacked again. Thus, it is not farfetched, as we have observed above, that the purpose of appellant in pointing the gun at Jagmis was to protect himself from what he thought was an impending aggression. This is evident from appellant's warning to Jagmis not to come near him while at the same time retreating. The essence of threat is intimidation. Appellant's act, in this particular case, cannot be considered an act of intimidation.

"Appellant was also held guilty of grave disobedience in refusing to return Gapilango's pistol to Sgt. Buñag despite the latter's order therefor. The prosecution would like it to appear that Sgt. Buñag did nothing but demand from appellant the gun and that appellant, instead of obeying this lawful order, defied and challenged him. The defense, on the other hand, would like us to believe that Sgt. Buñag employed unnecessary violence in the performance of his duty and therefore he exceeded the limit of his authority and ceased to be a peace officer from that moment and appellant was justified in disobeying him, nay even in repelling the aggression. (People v. Dumo, 400. O.G. (58) No. 9, 58). There is reason to believe the claim of appellant that Sgt. Buñag used unnecessary force in demanding the return of the revolver. Appellant declared that Sgt. Buñag, upon arriving at his house, collared him and shook him violently and in a harsh tone said, 'will you give me the pistol or not?' In his testimony, Sgt. Buñag stated that when he arrived, he approached appellant, 'touching his collar and tapping his shoulder,' and asked for Gapilango's gun. He also stated that 'when I was holding his collar' appellant uttered angry words. In asking for the pistol, Sgt. Buñag did not have to 'touch' or 'hold' appellant's collar. If by using adequate means to repel the unlawful aggression of Sgt. Buñag, appellant would be merely acting in self-defense and therefore free from any criminal liability (People v. Dumo, supra), then he could not be guilty of disobedience in just declining to return the gun without using force or violence."

We find merit in the contention of petitioner. We gather, from a reading of the decision of the Court of Appeals, that the petitioner was acquitted of the charge of grave threats against the person of Rosalino Jagmis upon the ground that when he pointed a gun at Jagmis his act did not constitute an act of intimidation, which is an essential element in the crime of grave threats, but was simply an act of self-defense, to prevent Jagmis and Es-teban Gapilango from getting nearer to him while he (petitioner) was at the same time retreating. The Court of Appeals said: "Appellant was able to wrest Gapilango's pistol. While retreating, he warned Gapilango, together with Jagmis, not to advance or he would shoot. At this particular moment when appellant could understandably be under the apprehension that his pursuers, one of whom he still did not know to be a constabulary soldier, were still after him, his act of pointing the guns at them with warning not to come forward is not properly an act of intimidation but rather of self protection; appellant thereby hoped to discourage them from committing any rash action or violence against his person." The Court of Appeals further said: Appellant, who had just been subjected to unwarranted violence by Jagmis, on his part, thought that he would be attacked again. Thus, it is not far-fetched, as we have observed above, that the purpose of the appellant in pointing the gun at Jagmis was to protect himself from what he thought was an impending aggression. This is evident from appellant's warning to Jagmis not to come near him while at the same time retreating. The essence of threat is intimidation. Appellant's act, in this particular case, cannot be considered an act of intimidation."

The Court of Appeals found that the petitioner did not know that Gapilango was a soldier when he disarmed Gapilango. This is what the Court of Appeals said: "Indeed, nowhere in the testimony of any of the prosecution witnesses can it be found that appellant knew or ought to have known at the time he seized Gapilango's gun that the latter was a peace officer. Gapilango revealed his identity to appellant only after the latter had dispossessed him of his gun and he was asking it back." The petitioner, at that particular moment, had two guns, one in each hand - his own pistol and the pistol that he had wrested from Gapilango. The Court of Appeals considered the act of the petitioner of pointing the guns at Jagmis and Gapilango as an act of self-defense. That is why the Court of Appeals did not find the petitioner guilty of grave threats against the person of Jagmis, and of assault against Gapilango as an agent of a person in authority. But while the Court of Appeals had declared that under those circumstances the petitioner had not committed the crime of assault against an agent of a person in authority he had, however, committed the crime of resistance and serious disobedience against the agent of a person in authority. The reason of the Court of Appeals in finding that the petitioner had committed the crime of resistance and serious disobedience is because he did not return the gun of Gapilango after Gapilango had identified himself as a constabulary soldier. In this connection, this is what the Court of Appeals said: "At this particular moment when appellant could understandably be under the apprehension that his pursuers, one of whom he still

did not know to be a constabulary soldier, were still after him, his act of pointing the gun at them with warning not to come forward is not properly an act of intimidation but rather of self protection; appellant thereby hoped to discourage them from committing any rash action or violence against his person. Gapilango asked for the return of his gun, identifying himself. Appellant did not give the gun back. The evidence does not show whether or not, after knowing Gapilango's identity, appellant continued to point the gun at him. There is no question, however, that he thereafter went home. Under the circumstance, it cannot be said with certainty that there was on the part of appellant a palpable intent or determination to defy a law officer and therefore his failure to heed Gapilango's order to return the revolver constitutes merely resistance and serious disobedience."

It is urged by the petitioner that there is no positive finding by the Court of Appeals that in failing to obey Gapilango's demand for the return of his gun petitioner intended to resist or seriously disobey said Gapilango in his capacity as an agent of a person in authority engaged in the performance of his official duties. The petitioner maintains that the particular act for which the petitioner was held guilty by the Court of Appeals - that is, his failure to return the gun - was but one of a series of acts done in self-defense and/or under a mistake of fact, one act following the other closely in point of time, all arising from the same incident and each one performed under the same impulse. The petitioner points out that Gapilango's demand for the return of the gun and petitioner's refusal to deliver the same happened immediately after the struggle for the gun and the warning made by petitioner to Gapilango and Jagmis not to advance any farther or he would shoot, and that was at a time when, as the Court of Appeals had found, the petitioner was understandably under the apprehension that his pursuers were still after him.

We find merit in the stand of the petitioner. Let it be noted that, as the Court of Appeals itself had found, the petitioner did not know that Gapilango was a constabulary soldier at the time when he grabbed Gapilango's gun and at the time when he started pointing the guns at both Gapilango and Jagmis. The Court of Appeals had found this act of petitioner in pointing the guns at both Gapilango and Jagmis as an act of self-protection. As the petitioner was pointing the guns at Gapilango and Jagmis he was retreating and at the same time warning them not to approach. Under that circumstance We consider that the refusal of the petitioner to return the gun to Gapilango was but one of the series of acts on his part to protect himself. Under that circumstance it cannot reasonably be said that he meant to defy, or resist, or disobey an agent of a person in authority who was in the performance of his official duties. What assurance had the petitioner at that precise moment, immediately after he had a struggle with Gapilango for the possession of the latter's gun and while he was pointing that gun to Gapilango and Jagmis, that Gapilango was really a peace officer? The evidence shows that Gapilango was in civilian clothes, he did not exhibit any badge - he simply identified himself verbally after the petitioner had wrested his gun from him. The refusal of petitioner to return Gapilango's gun was but a continuation of his efforts to defend himself from whatever harm that could come from both Jagmis and Gapilango. Under the circumstances, the petitioner had reason to believe that once he had returned the gun to Gapilango, Gapilango would use that gun against him. His refusal to return the gun was what any reasonable person would have done under the situation that the petitioner found himself.

We agree with the petitioner that in the decision of the Court of Appeals there is no positive finding that the petitioner intended to resist or seriously disobey an agent of a person in authority while engaged in the performance of official duties. Likewise, there is no positive finding that when the petitioner refused to return Gapilango's gun he believed that Gapilango was a constabulary soldier, and that the petitioner knew that Gapilango was at the time performing his official duties as a peace officer. We accept the hypothesis offered by counsel for the petitioner that the petitioner had reason to suspect that Gapilango was helping Jagmis, because right at the start of the incident between Jagmis and the petitioner at the store of Ramon Zambales Gapilango did not identify himself as a peace officer and both of them pursued the petitioner from the store.

Before a person can be held guilty of the crime of resistance or disobedience to a person in authority or the agent of such person it must be shown beyond reasonable doubt that the accused knew that the person he disobeyed or resisted is a person in authority or the agent of such person who is actually engaged in the performance of his official duties. What is punished as an act of resistance or serious disobedience under the Revised Penal Code is not the resistance or disobedience against a person in authority or an agent of such person in his capacity as a private individual but in his official capacity as an authority under the law, or as agent of the law, while engaged in the performance of his official duties. The facts as narrated in the decision of the Court of Appeals engender in the mind a serious doubt as to whether or not the petitioner had the intention to resist and disobey a peace officer who was in the performance of his official duty. That doubt must be resolved in favor of the petitioner. Consequently, We hold that the Court of Appeals erred when in case CA-G. R. No. 00528-R it found the petitioner guilty of the crime of resistance and serious disobedience as defined in Article 151 of the Revised Penal Code.

WHEREFORE, the decision of the Court of Appeals under review, insofar as it relates to case CA-G. R. No. 00528-R which is now before this Court on appeal in case G. R. No. L-20247, should be, as it is hereby reversed, and the petitioner is thereby acquitted of the crime of resistance and serious disobedience of which he was found guilty by the Court of Appeals, with costs de oficio.

IT IS SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Regala, Makalintal, Bengzon, J.P., Sanchez, and Castro, JJ., concur.

[1] As quoted from the decision.

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