

[G.R. No. 1941. March 16, 1905]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. TIBURCIO LAZARO ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

TORRES, J.:

In a complaint dated February 13, 1904, the provincial fiscal of Bulacan Province charged Tiburcio Lazaro and Fermin Pascual with the crime of grave threats. The complaint stated that these defendants on or about January 3 of said year, in the town of Polo, in said province, did willfully and criminally threaten to take the life of Rufino San Diego, aiming at him a revolver, and that they would denounce him as being in illegal possession of said revolver if he did not lend them 20 pesos; all contrary to law.

The court below, after the trial was had and the evidence adduced in the case, sentenced' the defendants to two years four months and one day of *prision correccional* and to pay the costs. From this judgment the depend ants appealed.

From the evidence adduced in the case it appears that on Saturday, the 23d day of January, 1904, the defendants went to the house of Rufino San Diego at about 1 o'clock in the afternoon and asked a loan from him of the sum of 20 pesos that as Rufino told them he did not have that sum the defendants left; that on the next day at about 9 o'clock in the morning the defendants, Lazaro and Pascual, went to the house of Rufino again and demanded of him said sum of 20 pesos, and that when the injured party gave them a negative answer Fermin Pascual displayed the revolver to Rufino and told him that if he, San Diego,

did not give him that sum they would say that the revolver was his; that at this time Tiburcio Lazaro also took out his revolver and, aimed it at the breast of Rufino and threatened to kill him if he did not give him what they asked; that the injured party told defendants he would go for the amount they demanded; that he came down from his house, accompanied by the defendants, and went to the house of Diego San Diego, his cousin, to ask him for the sum of money the defendants wanted; that as Diego San Diego was not at home they waited for him until five soldiers of the Scouts arrived to apprehend the defendants for another charge against them.

By this facts it is clearly proven that the crime of grave threats was committed. The defendants threatened to kill Rufino San Diego if he did not give them the money they wanted. One of them aimed his revolver at him and the other threatened that they would denounce him as the owner of said revolver which defendant had if he did not give them said sum. The defendants did not succeed in getting the money from the injured party, in spite of the efforts the defendants made to obtain it by means of intimidation, because of the timely and casual intervention of some Scouts who arrived at the house where they were found for the purpose of arresting the defendants under another charge against them.

The crime of threats as committed is provided for and punished by article 494, part 2 of paragraph 1 of the Penal Code. The defendants did not succeed in getting what they demanded, and therefore the proper penalty which they have incurred is two degrees lower than that of homicide. The liability of two defendants Tiburcio Lazaro and Fermin Pascual, as principals in the commission of the crime for which they are now prosecuted is evident. Two competent witnesses affirm to have witnessed the execution of the crime in the precise manner testified to by the injured party. Another witness corroborates their testimony. Therefore the liability of the defendants can not be denied.

In the commission of the crime there were present no aggravating or extenuating circumstances, and therefore the judgment below imposed on the defendants, to wit, the penalty of *prisidio correccional* in its medium degree, should be affirmed.

By virtue, then, of the reasons above stated and of those stated in the judgment below, the same is affirmed, with the costs in this instate to be paid by the defendants, one-half each, it being understood that they are also sentenced to the accessory penalties provided for in article 61 of the Penal Code. This case to be returned to the court below with a certified copy of this decision and of the judgment to be rendered in accordance herewith. So ordered.

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

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