

1 Phil. 143

[G.R. No. 457. February 18, 1902]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. ANTONIO SEVILLA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

WILLARD, J.:

The testimony of the clergyman, Tranquilino Manahan, is written in such a manner that it is almost impossible to know if, reference is made to threats actually made in his presence or to a narration of prior threats related to him in the interview referred to. We are inclined to believe the latter, inasmuch as it is not probable that at an interview at which the accused and the complaining witness were present, which interview seems to have been held for the purpose of securing the money which the latter had promised to pay to the accused, the defendant should have threatened the other with death if she did not do the very thing which he was then performing.

From this testimony it appears doubtful if in the interview referred to there was an actual and certain payment of the \$125 either by the complainant or by the witness. If this payment was made, then it seems certain that there were no threats; if not, then there is lacking evidence to establish such payment. The complainant so testified in her preliminary statement and the lower court in its judgment states that this was confirmed in her statement during the trial; but it does not so appear in the record, nor does it appear that she has given any testimony whatever at the trial.

The witness Segunda Austria testified that the accused struck Benita Vinson because the latter had taken his jewels according to his statements. This witness says nothing concerning the question of whether threats were involved. The only witness who so affirms is Hermogenes de los Reyes. The latter says that he was called to the house of Maria Vinson, where he found the accused striking the said Maria and striking Benita Vinson, saying that he would kill them if they did not return to him the jewelry which he had lost.

With the record in this state we can not declare the accused guilty of a violation of article 494 of the Penal Code. The threats which are there dealt with are those made with the deliberate purpose of creating in the mind of the person threatened the belief that the threat will be carried into effect. The said article does not relate to threats which may be made at the time of an unlawful assault and which form part of the same. The Supreme Court has so declared repeatedly. (Sentences of April 13, 1874, and June 19, 1878.)

With reference to threats, it is seen that the accused is guilty of the misdemeanor provided for and punished in article 589. It appears furthermore, from the evidence, that the defendant is guilty of the crime of compulsion (*coaccion*) according to the provisions of article 497 of the Penal Code. But we can not condemn him for that crime upon the present complaint. In accordance with the provisions of article 6, No. 2, of General Orders, No. 58, the crime is specified in the complaint as that of threatening (*amenazas*). The facts set forth in compliance with No. 3 of the same article state that the accused threatened the complainant with death and that the latter feared that he would carry out his threat. At the conclusion of the complaint it is expressly stated that the defendant is prosecuted for the violation of article 494. This construction served as the basis throughout the entire course of the trial and the attorney for the defense waived the cross-examination of one of the witnesses on the express grounds that her testimony referred solely to the violence and not to the threats. The two crimes of threats and of compulsion are distinct and can not be prosecuted in a single complaint according to article 11 of General Orders, No. 58. The fact that the complaint contains allegations which disclose that the crime of compulsion has been committed does not justify us in convicting the defendant of this crime, because of the lack of evidence to prove the crime of threats of which he is likewise accused in the complaint. We decide that the accused can not be found guilty of compulsion upon this complaint, and therefore the right is reserved to the fiscal to present a further complaint against him for the aforesaid crime if it be deemed proper.

The judgment appealed from is reversed and the accused condemned to five days of imprisonment (*arresto*) and a fine of 125 pesetas, or subsidiary imprisonment as fixed by law in case of insolvency, with costs in this instance taxed officially and those of first instance taxed against appellant. It is so ordered.

Arellano, C, J., Torres, Cooper, Mapa, and Ladd, JJ., concur.

