

## SECOND DIVISION

[ G.R. No. 181626, May 30, 2011 ]

**SANTIAGO PAERA, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### DECISION

**CARPIO, J.:**

#### The Case

This resolves the petition for review<sup>[1]</sup> of the ruling<sup>[2]</sup> of the Regional Trial Court of Dumaguete City<sup>[3]</sup> (RTC) finding petitioner Santiago Paera guilty of three counts of Grave Threats, in violation of Article 282 of the Revised Penal Code (RPC).

#### The Facts

As *punong barangay* of Mampas, Bacong, Negros Oriental, petitioner Santiago Paera (petitioner) allocated his constituents' use of communal water coming from a communal tank by limiting distribution to the residents of Mampas, Bacong. The tank sits on a land located in the neighboring barangay of Mampas, Valencia and owned by complainant Vicente Darong (Vicente), father of complainant Indalecio Darong (Indalecio). Despite petitioner's scheme, Indalecio continued drawing water from the tank. On 7 April 1999, petitioner reminded Indalecio of the water distribution scheme and cut Indalecio's access.

The following day, petitioner inspected the tank after constituents complained of water supply interruption. Petitioner discovered a tap from the main line which he promptly disconnected. To stem the flow of water from the ensuing leak, petitioner, using a borrowed bolo, fashioned a wooden plug. It was at this point when Indalecio arrived. What happened next is contested by the parties.

According to the prosecution, petitioner, without any warning, picked-up his bolo and charged towards Indalecio, shouting "*Patyon tikaw!*" (I will kill you!). Indalecio ran for safety, passing along the way his wife, Diosetea Darong (Diosetea) who had followed him to the water tank. Upon seeing petitioner, Diosetea inquired what was the matter. Instead of replying, petitioner shouted "*Wala koy gipili, bisag babaye ka, patyon tikaw!*" ("I don't spare anyone, even if you are a woman, I will kill you!"). Diosetea similarly scampered and sought refuge in the nearby house of a relative. Unable to pursue Diosetea, petitioner turned his attention back to Indalecio. As petitioner chased Indalecio, he passed Vicente, and, recognizing the latter, repeatedly thrust his bolo towards him, shouting "*Bisag gulang ka, buk-on nako imo ulo!*" ("Even if you are old, I will crack open your skull!").

According to petitioner, however, it was Indalecio who threatened him with a bolo, angrily inquiring why petitioner had severed his water connection. This left petitioner

with no choice but to take a defensive stance using the borrowed bolo, prompting Indalecio to scamper.

Except for Vicente, who was seriously ill, the Darongs testified during trial. Petitioner was the defense's lone witness.

### **The Ruling of the Municipal Circuit Trial Court**

The 7<sup>th</sup> Municipal Circuit Trial Court of Valencia-Bacong, Negros Oriental (MCTC) found petitioner guilty as charged, ordering petitioner to serve time and pay fine for each of the three counts.<sup>[4]</sup> The MCTC found the prosecution evidence sufficient to prove the elements of Grave Threats under Article 282, noting that the Darongs' persistent water tapping contrary to petitioner's directive "must have angered" petitioner, triggering his criminal behavior.<sup>[5]</sup> The MCTC rejected petitioner's defense of denial as "self-serving and uncorroborated."<sup>[6]</sup>

Petitioner appealed to the RTC, reiterating his defense of denial.

### **Ruling of the Regional Trial Court**

The RTC affirmed the MCTC, sustaining the latter's finding on petitioner's motive. The RTC similarly found unconvincing petitioner's denial in light of the "clear, direct, and consistent" testimonies of the Darongs and other prosecution witnesses.<sup>[7]</sup>

Hence, this appeal.

Abandoning his theory below, petitioner now concedes his liability but only for a single count of the "continued complex crime" of Grave Threats. Further, petitioner prays for the dismissal of the case filed by Vicente as the latter's failure to testify allegedly deprived him of his constitutional right to confront witnesses. Alternatively, petitioner claims he is innocent of the charges for having acted in defense of the property of strangers and in lawful performance of duty, justifying circumstances under paragraphs 3 and 5, Article 11 of the RPC.<sup>[8]</sup>

In its Comment, the Office of the Solicitor General (OSG) finds merit in petitioner's concession of liability for the single count of the "continued complex crime" of Grave Threats. The OSG, however, rejects petitioner's prayer for the dismissal of Vicente's complaint, arguing that petitioner's guilt was amply proven by the prosecution evidence, not to mention that petitioner failed to raise this issue during trial. Further, the OSG finds the claim of defense of stranger unavailing for lack of unlawful aggression on the part of the Darongs. Lastly, the OSG notes the absence of regularity in petitioner's performance of duty to justify his conduct.<sup>[9]</sup>

### **The Issue**

The question is whether petitioner is guilty of three counts of Grave Threats.

### **The Ruling of the Court**

We rule in the affirmative, deny the petition and affirm the RTC.

### ***Due Process Mischief in Raising New Issues on Appeal***

Although uncommented, petitioner's adoption of new theories for the first time before this Court has not escaped our attention. Elementary principles of due process forbid this pernicious procedural strategy - it not only catches off-guard the opposing party, it also denies judges the analytical benefit uniform theorizing affords. Thus, courts generally refuse to pass upon freshly raised theories.<sup>[10]</sup> We would have applied this rule here were it not for the fact that petitioner's liberty is at stake and the OSG partially views his cause with favor.

### ***Petitioner Liable for Three Counts of Grave Threats***

To limit his liability to one count of Grave Threats, petitioner tries to fit the facts of the case to the concept of "continued crime" (*delito continuado*) which envisages a single crime committed through a series of acts arising from one criminal intent or resolution.<sup>[11]</sup> To fix the penalty for his supposed single continued crime, petitioner invokes the rule for complex crime under Article 48 of the RPC imposing the penalty for the most serious crime, applied in its maximum period.

The nature of the crime of Grave Threats and the proper application of the concepts of continued and complex crimes preclude the adoption of petitioner's theory.

Article 282 of the RPC holds liable for Grave Threats "any person who shall threaten another with the infliction upon the person x x x of the latter or his family of any wrong amounting to a crime[.]" This felony is consummated "as soon as the threats come to the knowledge of the person threatened."<sup>[12]</sup>

Applying these parameters, it is clear that petitioner's threat to kill Indalecio and Diosetea and crack open Vicente's skull are wrongs on the person amounting to (at the very least) homicide and serious physical injuries as penalized under the RPC. These threats were consummated as soon as Indalecio, Diosetea, and Vicente heard petitioner utter his threatening remarks. Having spoken the threats at different points in time to these three individuals, albeit in rapid succession, petitioner incurred three separate criminal liabilities.

Petitioner's theory fusing his liability to one count of Grave Threats because he only had "a single mental resolution, a single impulse, and single intent"<sup>[13]</sup> to threaten the Darongs assumes a vital fact: that he had foreknowledge of Indalecio, Diosetea, and Vicente's presence near the water tank in the morning of 8 April 1999. The records, however, belie this assumption. Thus, in the case of Indalecio, petitioner was as much surprised to see Indalecio as the latter was in seeing petitioner when they chanced upon each other near the water tank. Similarly, petitioner came across Diosetea as he was chasing Indalecio who had scampered for safety. Lastly, petitioner crossed paths with Vicente while running after Indalecio. Indeed, petitioner went to the water tank not to execute his "single intent" to threaten Indalecio, Diosetea, and Vicente but to investigate a suspected water tap. Not having known in advance of the Darongs' presence near the water tank at the time in question, petitioner could not have formed any intent to threaten any of them