HER MAJESTY THE QUEEN .....APPELLANT;

AND

PASQUALE NATARELLI, PAUL VOLPE, ALBERT VOLPE and EUGENE VOLPE ..... RESPONDENTS.

1967

*Feb. 23, 24
May 11

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Criminal Law—Extortion—Belief that thing demanded was due—Whether a defence—Criminal Code, 1953-54 (Can.), c. 51, s. 291.

The respondents' acquittal at trial on a charge of extortion under s. 291 of the *Criminal Code* was affirmed by the Court of Appeal. The Crown was granted leave to appeal to this Court on the following question of law: Did the Court of Appeal err in law in holding that there was no evidence of an intent to extort or gain anything if the accused believed that the thing demanded was due and owing at the time the demand was made?

Held: The appeal by the Crown should be allowed.

When it is proved that threats have been made for the making of which there could be no justification or excuse, that the threats were made with intent to gain something and were calculated to induce the person threatened to do something, the commission of the crime defined in s. 291 is established, and it is unnecessary to inquire whether the person making the threats had a lawful right to the thing demanded or entertained an honest belief that he had such a right; that inquiry would be necessary only if the threats were such that there could be a reasonable justification or excuse for making them. In the present case, as found by the Court of Appeal, the threats which, according to the evidence were uttered, were of such a nature that it was impossible as a matter of law for there to have been any reasonable justification or excuse for making them.

Droit criminel—Extorsion—Croyance que la chose demandée était due—Est-ce une défense—Code Criminel, 1953-54 (Can.), c. 51, art. 291.

La Cour d'Appel a confirmé l'acquittement des intimés lors de leur procès pour extorsion en vertu de l'art. 291 du *Code Criminel*. La Couronne a obtenu permission d'en appeler devant cette Cour sur la question de droit suivante: La Cour d'Appel a-t-elle erré en droit en décidant qu'il n'y avait aucune preuve d'une intention d'extorquer ou de gagner quelque chose si l'accusé croyait que la chose demandée était due lorsque la demande en a été faite?

Arrêt: L'appel de la Couronne doit être maintenu.

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*PRESENT: Taschereau C.J. and Cartwright, Fauteux, Judson and Spence JJ.

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Lorsqu'il est prouvé que des menaces ont été proférées sans justification ou excuse, que les menaces ont été proférées avec l'intention de gagner quelque chose et dans le but d'induire la personne menacée à accomplir quelque chose, le crime dont la définition apparaît à l'art. 291 a été commis, et il n'est pas nécessaire de se demander si la personne proférant les menaces avait un droit légal à la chose demandée ou croyait honnêtement qu'elle avait un tel droit; cette enquête ne serait nécessaire que si les menaces étaient telles qu'il pouvait exister une justification ou excuse raisonnable de les proférer. Dans le cas présent, tel que jugé par la Cour d'Appel, les menaces, qui selon la preuve ont été proférées, étaient telles qu'il était impossible comme question de droit qu'il y ait eu une justification ou excuse raisonnable de les proférer.

APPEL de la Couronne d'un jugement de la Cour d'Appel de l'Ontario confirmant l'acquittement des intimés. Appel maintenu.

APPEAL by the Crown from a judgment of the Court of Appeal for Ontario affirming the respondents' acquittal. Appeal allowed.

C. M. Powell and *James Crossland,* for the appellant.

F. Stewart Fisher, for the respondent P. Volpe.

D. H. Humphrey, Q.C., for the respondents A. and E. Volpe.

The judgment of the Court was delivered by

CARTWRIGHT J.:—This is an appeal from judgments of the Court of Appeal for Ontario pronounced on June 6, 1966, dismissing appeals by the Attorney General for Ontario from the acquittals of the above named respondents in December 1965, after trial before His Honour Judge Forsyth and a jury.

The four respondents were jointly charged; the indictment contained two counts which read as follows:

1. The jurors for Her Majesty the Queen present that Pasquale Natarelli, Paul Volpe and Albert Volpe, in the month of March in the year 1965, at the Municipality of Metropolitan Toronto in the County of York, without reasonable justification or excuse and with intent to extort or gain seventeen thousand, five hundred dollars ($17,500.00) in money, more or less, or one hundred thousand (100,000) free shares of Ganda Silver Mines Limited, by threats attempted to induce Richard Roy Angle

to turn over to them, seventeen thousand, five hundred dollars ($17,500.00) in money, more or less, or one hundred thousand (100,000) free shares of Ganda Silver Mines Limited, contrary to the Criminal Code;

2. The said jurors further present that the said Pasquale Natarelli, Paul Volpe, Albert Volpe and Eugene Volpe, in the month of March in the year 1965, at the Municipality of Metropolitan Toronto in the County of York, conspired one with the other and with persons unknown, to commit an indictable offence, to wit, extortion, in that they did, without reasonable justification or excuse and with intent to extort or gain seventeen thousand, five hundred dollars ($17,500.00) in money, more or less, or one hundred thousand (100,000) free shares of Ganda Silver Mines Limited, by threats attempted to induce Richard Roy Angle to turn over to them, seventeen thousand, five hundred dollars ($17,500.00) in money, more or less, or one hundred thousand (100,000) free shares of Ganda Silver Mines Limited, contrary to the Criminal Code.

It will be observed that Natarelli, Paul Volpe and Albert Volpe were charged in Count 1 and all four respondents were charged in Count 2.

From these acquittals the Attorney General appealed to the Court of Appeal pursuant to s. 584(1)(*a*) of the *Criminal Code,* the grounds stated in each notice of appeal being as follows:

1. The learned Trial Judge erred in law in instructing the jury that if the accused honestly believed they were entitled to the 100,000 shares or the $17,500.00 that would constitute a defence.

2. The learned Trial Judge's charge to the jury was inadequate in law in that he failed to instruct the jury that the threat to inflict grevious bodily harm upon someone can never be considered reasonable or justified.

The appeals were dismissed for reasons delivered orally by Aylesworth J.A. on the conclusion of the argument.

On October 4, 1966, the appellant was granted leave to appeal to this Court on the following question of law:

Did the Court of Appeal for Ontario err in law in holding that there is no evidence of an intent to extort or gain anything if the accused believe that the thing demanded is due and owing at the time the demand is made?

The first count in the indictment follows the wording of subs. (1) of s. 291 of the *Criminal Code.* That Section in its entirety reads as follows:

291. (1) Every one who, without reasonable justification or excuse and with intent to extort or gain anything, by threats, accusations, menaces or violence induces or attempts to induce any person, whether or not he is the person threatened, accused or menaced or to whom violence is shown, to do anything or to cause anything to be done, is guilty of an indictable offence and is liable to imprisonment for fourteen years.

(2) A threat to institute civil proceedings is not a threat for the purposes of this section.

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After commenting on the fact that the section was recently enacted and paraphrasing subs. (1), Aylesworth J.A. continued:

> In our view, "without reasonable justification or excuse" as well as "with intent to extort or gain anything", applies in the case at bar, to any attempt to induce by threats and the jury should have been so charged. It is not desirable that any attempt should be made and indeed judicial observations before this have been made to this effect—should be made I say, to define what is or is not reasonable justification or excuse. There may be, although it is somewhat difficult to visualize such a case, facts which would afford reasonable justification or excuse in attempting to induce some person to do anything by threats. Upon the evidence in this case, however, the only evidence of threats was as to threats to the life or limb of persons and on the facts of the case, those threats, if they were made, in our view could not be made with reasonable justification or excuse and therefore the question of reasonable justification or excuse in this case should have been withdrawn from the jury.
>
> We think, too, that as was the law before the enactment of present section 291 so is the law under that section with respect to extortion or intent to extort. We think the law still is that a case of extortion is not made out if that which it is attempted to secure from the person threatened, is due or owing to the person who makes the attempted inducement by threat or if the person making those threats entertains an honest belief that it is due and owing. With respect to the learned trial Judge, his charge as a whole is in our view, confusing and must have been as to certain elements of the crime, confusing to the jury. On the whole, however, it is our view that a proper charge to the jury on the elements of the crime as I have attempted to outline them and with respect to the evidence adduced would have been at least as if not more favourable to the accused persons than the charge actually made to the jury.

I take the first paragraph of this passage to mean that the threats, which according to the evidence led by the prosecution were uttered, were of such a nature that it was impossible as a matter of law for there to have been any reasonable justification or excuse for making them and that the learned trial Judge should have explicitly so charged the jury; I agree with this conclusion.

In the second paragraph the learned Justice of Appeal expresses the view that an accused who by threats seeks to induce the person threatened to hand over something to him is not guilty of the offence defined in s. 291(1) if he is entitled or if he entertains an honest belief that he is entitled to the thing demanded.

The argument before us was directed chiefly to the question whether this is a correct statement of the law. Its solution depends on the true construction of s. 291.

This section has already been quoted. It was first enacted as part of the revised *Criminal Code* Statutes of Canada,

1953-54, 2 and 3 Eliz. II, c. 51, which came into force on April 1, 1955, and by which the *Criminal Code*, R.S.C. 1927, c. 36, was repealed.

Section 291 is new in form. It is stated in the "Table of Concordance Showing Source of Sections in the New Criminal Code", prepared in the Department of Justice from tables that accompanied the report of the Criminal Code Revision Commission to the Minister of Justice, that its sources are ss. 450, 451, 452, 453 and 454 of the former Code. While this Table of Concordance does not have any Parliamentary sanction, a comparison of the two Codes shows this statement to be accurate.

The crimes defined in ss. 450 to 454 may be briefly described as follows:

Section 450: Compelling the execution of a document by violence or restraint of the person of another or by threat thereof: penalty imprisonment for life.

Section 451: Uttering a letter or other writing demanding with menaces, and without any reasonable or probable cause, any valuable thing: penalty 14 years imprisonment.

Section 452: Demanding with menaces anything capable of being stolen with intent to steal it: penalty 2 years imprisonment.

Section 453: With intent to extort or gain anything accusing or threatening to accuse a person, whether the person accused or threatened with accusation is guilty or not, of certain listed crimes: penalty 14 years imprisonment.

Section 454: With intent to extort or gain anything accusing or threatening to accuse a person, whether the person accused or threatened with accusation is guilty or not, of crimes other than those listed in s. 453: penalty 7 years imprisonment.

It will be observed that under s. 451 it was necessary that the menaces be in writing and that it was the only one of the five sections which contained the words "without any reasonable or probable cause". Under the other four sections the threats might be either oral or written.

It appears to me that the wording of s. 291 of the present *Code* is so different from that of ss. 450 to 454 of the former

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Code that little is to be gained from a consideration of the cases decided under those sections.

The words of Lord Herschell in *Bank of England v. Vagliano Brothers*[1] appear to me to be appropriate to the problem before us. They are accurately summarized in *Halsbury*, 3rd ed., vol. 36, p. 406, s. 614, as follows:

> In construing a codifying statute the proper course is, in the first instance, to examine its language and to ask what is its natural meaning; it is an inversion of the proper order of consideration to start with inquiring how the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear interpretation in conformity with this view. The object of a codifying statute has been said to be that on any point specifically dealt with by it the law should be ascertained by interpreting the language used, instead of roaming over a number of authorities. After the language has been examined without presumptions, resort must only be had to the previous state of the law on some special ground, for example for the construction of provisions of doubtful import, or of words which have acquired a technical meaning.

In the case at bar there was evidence on which it was open to the jury to find that the accused named in the first count in the indictment by threats to cause death or bodily injury to Angle or members of his family attempted to induce him to turn over to them the money or shares mentioned in the indictment. The appeal was argued on the assumption that there was some evidence in the record on which it was open to the jury to find that the accused had an honest belief that the money or shares demanded were owing to them.

The question of law raised on this appeal is whether assuming the threats to cause death or bodily injury were made and that the accused had the honest belief that the money or shares demanded were owing to them they were guilty of the offence defined in s. 291. The answer depends on what is the true meaning of the words of the section.

For the respondents it is submitted that on the assumption referred to in the preceding paragraph the accused might well be guilty of assault or of the offence of threatening as defined in s. 316(1)(*a*) of the present *Code* but that they would not be guilty of extortion as defined in s. 291, because the honest belief referred to would constitute reasonable justification or excuse for making the demand.

In my opinion, this argument should be rejected. To constitute a defence there must be reasonable justification or

[1] [1891] A.C. 107 at 144-45, 60 L.J.Q.B. 145.

excuse not only for the demand but for the making of the threats or menaces by which the accused sought to compel compliance with the demand.

There are courses of action which a person might express his intention of taking which would constitute threats within the meaning of that word as used in the section but which would in some circumstances be in themselves lawful; an example is the statement of the intention to place the name of a person on a "stop list" in circumstances such as existed in *T'horne v. Motor Trade Association*[1].

That decision indicates that while it was lawful for the defendant to threaten to put the name of the plaintiff on a "stop list" it would be criminal to accompany the threat with a demand for the payment of an unreasonable sum as an alternative. It is not authority for the proposition that, because a demand is reasonable and there exists reasonable justification or excuse for the making of it, it is lawful to seek to enforce compliance with it by making threats which are unlawful and for which there is no justification or excuse.

I have already expressed my agreement with the opinion of the Court of Appeal that in the case at bar if the jury found that the threats alleged were made it was impossible as a matter of law for them to find that there was any reasonable justification or excuse for making them.

When it is proved that threats have been made for the making of which there could be no justification or excuse, that the threats were made with intent to gain something and were calculated to induce the person threatened to do something, the commission of the crime defined in s. 291 is established, and it is unnecessary to inquire whether the person making the threats had a lawful right to the thing demanded or entertained an honest belief that he had such a right; that inquiry would be necessary only if the threats were such that there could be reasonable justification or excuse for making them.

Speaking generally, the essential ingredients of an offence under s. 291 are, (i) that the accused has used threats, (ii) that he has done so with the intention of obtaining something by the use of threats; (whatever meaning be given to the word "extort" the word "gain" as used in the section is simply the equivalent of "obtain") and, (iii) that either

[1] [1937] A.C. 797.

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the use of the threats or the making of the demand for the thing sought to be obtained was without reasonable justification or excuse; (the question on this aspect of the matter is not whether one item in the accused's course of conduct, if considered in isolation, might be said to be justifiable or excusable but rather whether his course of conduct considered in its entirety was without justification or excuse).

My view as to the true construction of s. 291 expressed above is not altered by the circumstance that on the assumption as to the facts on which the appeal was argued the accused could have been properly convicted if they had been charged under s. 316(1)(*a*) of the *Code* as it now reads since it was amended by Statutes of Canada 1960-61, c. 43, s. 10. In this connection, however, it may be observed that from April 1, 1955, until it was so amended s. 316 applied only to threats which were in writing.

For the reasons given above it is my opinion that the learned trial Judge should have instructed the jury that if they were satisfied beyond a reasonable doubt that the accused made the alleged threats to cause death or bodily injury with intent to induce Angle to hand over to them the money or shares mentioned in the indictment they should find the accused guilty regardless of whether the accused had a right to the money or shares demanded or honestly believed they had such a right.

It follows that, in my opinion, the question of law on which this appeal is brought should be answered in the affirmative.

I would allow the appeal, set aside the orders of the Court of Appeal and the verdicts of acquittal and order a new trial of all the respondents.

Appeal allowed and new trial ordered.

Solicitor for the appellant: The Attorney General for Ontario.

Solicitor for the respondent P. Volpe: F. S. Fisher, Toronto.

Solicitor for the respondents A. and E. Volpe: D. G. Humphrey, Toronto.